TABLE OF SECTION CHANGES BY 1979 LEGISLATIVE SESSIONS

Key: **A**—Amendment of an existing section.
R—Repeal of an existing section.
T—Transfer of an existing section.
Re—Reenactment of a section.
N—Addition of a new section.
Rn—Renumbering of a new section.
X—Nullification of a previous action of the Legislature.
*—Becomes effective at a future time.

Note: If the entry does not show a session law chapter number, the action was performed by the reviser in the course of revision.

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11.6105(2)(f)	N	79-225
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11.6105(2)(h)	N	79-227
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PREFACE

THE CONTINUOUS REVISION PROGRAM

Florida long followed the practice of publishing the entire body of general law in force after each regular biennial legislative session. With the advent of annual sessions following the adoption of the Florida Constitution as revised in 1968, this practice was necessarily altered. Thereafter, the *Florida Statutes* has been published biennially following each odd-year regular session, and a Supplement is published following each even-year regular session. The Supplement contains the full text of each section amended or added during that session, together with the catchlines of sections repealed or transferred or otherwise affected. Despite this change in practice, the principal advantage of the Florida system remains: It provides an up-to-date, authoritative statement of the general law for use by practitioners, judges, legislators, and other interested persons. The following paragraphs identify and explain the principal attributes and consequences of the Florida program that should be of interest to all who use the *Florida Statutes*.

Biennial adoption of the Florida Statutes.—A vitally important part of the continuous statutory revision program is the enactment of the biennial adoption act during each odd-year regular session. This act amends ss. 11.2421, 11.2422, 11.2424, and 11.2425. It prospectively adopts as an official document the edition of the *Florida Statutes* to be published following that session. Perhaps more important, it adopts as the official statute law of the state those portions of that edition that are carried forward from the preceding regular edition.

As a result of the biennial adoption act, together with the standing provision of s. 11.242(5)(c) directing that the laws of a general and permanent nature enacted during the current session be meshed into the standing law and published as part of the *Florida Statutes*, each regular edition of the *Florida Statutes* contains matter having different evidential consequences: The portions carried forward from the preceding regular edition are the official law of the state and therefore constitute the best evidence of what the law is. The portions resulting from sessions occurring subsequent to the preceding odd-year regular session (i.e., the preceding even-year session, the current odd-year session, and any special sessions) are made prima facie evidence of the law in all courts of the state. Of course, during the period a provision is characterized as prima facie evidence, the enrolled act stands as the best evidence of the law as to the matter dealt with and would prevail in event of conflict.

Some consequences.—The Florida continuous statutory revision system has some significant consequences. For one, the task of the statutory researcher is greatly simplified in that he need examine only the current edition of the *Florida Statutes*, including the Supplement, if any, and the session law volumes for the period since publication of the preceding regular edition. Any law of a "general and permanent nature" enacted prior to that time which does not appear in the current edition stands repealed, both by the logic of the system and by the operation of s. 11.2422. See *National Bank of Jacksonville v. Williams*, 38 Fla. 305, 20 So. 931 (1896).

Another beneficial result of the Florida system is that the biennial adoption of the *Florida Statutes* is viewed as curing title defects that existed in the act as originally passed. See *State v. Lee*, 22 So.2d 804 (Fla. 1945). Thus, general legislation remains susceptible to attack on this ground only during the period between its original enactment and its subsequent adoption as the official law of the state two years or three years later, depending upon whether the original enactment occurred in an odd or even year.

Construction of acts enacted during the same session.—It occasionally happens that the Legislature enacts two or more bills that relate to the same provision of the *Florida Statutes*. In such cases, the editors must find the legislative intent from the best evidence available. When the provisions of two amendatory acts are not mutually inconsistent, the language is meshed and full effect is given to both acts. On the other hand, when the provisions of two amendatory statutes are in irreconcilable conflict, the editors apply the usual canons of statutory construction in determining which version to publish, inserting a note calling attention to the conflict and setting forth the alternative text pending resolution of the conflict by further legislative action. See also s. 1.04, F.S.

When an act purports to amend a section of the *Florida Statutes* which an earlier act has repealed, the course to be followed depends on whether the substance of the amendatory act makes sense standing alone. If it does not, it is omitted along with the repealed provision; if it does make sense standing alone, the amended or added portion of the amendatory act is published as a new enactment. Of course, if an act repeals a provision which an earlier act purported to amend, the amended provision is deleted.

ADDITIONAL FEATURES OF THE FLORIDA STATUTES

Arrangement of chapters and titles.—The object of any arrangement of compiled statutes is to facilitate the finding of the law. There are two methods of arrangement in general use in the United States: The "logical," or "topical," grouping of related subjects, as used in many digests; and the "alphabetical" arrangement, as used in legal encyclopedias. Florida has followed the majority of states in adopting the former of these arrangements.

The Numerical Title and Chapter Index printed in the front part of Volumes 1, 2, and 3 provides a quick reference to the chapters grouped under the logical title system. It lists groups of related subjects in a general subject field and lists in numerical order all chapters assigned. Some chapters have been divided into parts based on logical organization or related subject matter.

Numbering system.—The sections of the *Florida Statutes* are identified by decimal numbers. Having first been arranged by subject matter, the chapters of the *Florida Statutes* are each assigned a whole number which appears to the left of the decimal point in each number that identifies a section. The section within the chapter is then identified by the whole decimal number, including the digits appearing to the right of the decimal point. Thus, s. 16.01 would identify a section in chapter 16 of the *Statutes*.

The principal advantage of the decimal numbering system is its infinite flexibility. A new section can always be inserted between any two existing sections. For example, a new section to be inserted between ss. 16.12 and 16.13 could be assigned any number from 16.121 through 16.129 without using more than three digits to the right of the decimal point. This is because, in the decimal numbering system, 16.12 is the same as 16.120 and 16.13 is the same as 16.130. If the zeros are added, it can easily be seen that 16.125, for example, comes in between 16.120 and 16.130.

As a corollary to this discussion of the decimal numbering system, it should be emphasized that the number of a section has no significance other than to indicate its location. In other words, a section that is identified by a number containing four digits to the right of the decimal point is of no less dignity or importance than a section having a number with only two or three digits to the right of the decimal point.

The hierarchical arrangement of textual subdivisions is indicated by various designations. Thus, chapters are indicated by whole arabic numbers; sections, by numbers containing a decimal point; subsections, by whole arabic numbers enclosed by parentheses; paragraphs, by lowercase letters enclosed by parentheses; subparagraphs, by whole arabic numbers followed by a period; and sub-subparagraphs, by lowercase letters followed by a period. Subdivisions beyond the sub-subparagraph are not ordinarily used.

Finding the law.—There are two general methods for finding those sections of the *Florida Statutes* that deal with a particular subject matter. The choice of which to use on any particular occasion should be determined by the preference of the searcher and the degree of his familiarity with the *Statutes* and the indexing systems contained therein. One who has considerable familiarity with the body of law being searched may save some time by simply using the chapter outline which appears at the beginning of the appropriate chapter. The proper chapter can usually be located by use of either the Numerical Title and Chapter Index or the Alphabetical Index to Chapter Titles located at the front of Volumes 1, 2, and 3. One who is less familiar with the subject matter, or who is conducting a more wide-ranging search, will probably prefer to use the general index which is located in Volume 4.

History notes.—Every section is followed by a history note containing citations to the section and chapter number of the act that created the section and of each subsequent amendatory act. For an explanation of citations to early compilations, see the following segment of this Preface.

Cross-references.—Cross-references appear in the *Florida Statutes* in two forms. Whenever it might be helpful to the users of the *Statutes*, the editors insert notes immediately following the history notes containing references to related or qualifying sections.

Cross-references, both specific and general, also appear as incorporated into the text of the *Statutes* by legislative enactment, and a word of caution concerning such specific references is in order. Florida follows the rule of construction that is applied in most other jurisdictions, that a specific reference to a statute in effect incorporates the language of that statute as it existed at the time the reference was enacted, unaffected by any subsequent amendment or repeal of the incorporated statute. *Williams v. State*, 125 So. 358 (Fla. 1930); *Overstreet v. Blum*, 227 So.2d 197 (Fla. 1969).

It is true that this rule often disappoints any popular expectation that such references are to the current text of the incorporated statute which may therefore be immediately consulted, but this is apparently unavoidable. Consequently, when users of the *Florida Statutes* encounter an internal reference to a specific statute that appears to be of critical importance to the meaning of the incorporating section, they will be well-advised to find and read the language actually incorporated.

On the other hand, the rule concerning a general reference to the body of law relating to a specified subject matter, without reference to a specific statute, is different in that a general reference is understood as including any subsequent amendment or repeal of the referenced body of law. *Williams v. State, ibid.; State ex rel. Springer v. Smith*, 189 So.2d 846 (Fla. 1966).

Table of section changes.—A table of changes to sections of the *Florida Statutes* is located at the front of Volumes 1, 2, and 3, printed on yellow paper. This table shows: (1) the sections, by number, that have been changed in any way and (2) whether the change consisted of an amendment, a repeal, a transfer, or an addition. It is a convenient device for pinpointing changes to a given segment of the general law.

Tracing table.—A table tracing all general laws enacted since 1919 into the *Florida Statutes* is located in Volume 4. The word "omitted" indicates that the act or section of an act was not of a "general and permanent nature." For the text of an omitted provision, consult the appropriate volume of the *Laws of Florida*.

Immediately following the tracing table for general laws enacted by the legislative process is a special table tracing various provisions of the Constitution of 1885, as amended, into the *Florida Statutes*. This conversion of constitutional provisions into statutory law occurred pursuant to the provisions of s. 10, Article XII of the Constitution as revised in 1968.

Table of repealed and transferred sections.—Immediately preceding the General Index in Volume 4 is a table showing repealed and transferred sections. Whenever a section is repealed or transferred to a new location in the *Statutes*, the former section number becomes inactive and will not be used again. Such numbers are then listed in this table, along with the chapter number of the session law which effected the repeal or transfer or the year in which the section number was changed in the course of revision. The entry for a transferred section also includes the new location of the section. For the text of the repealed or transferred section or the content of its history note, consult the edition of the *Statutes* prior to the repeal or transfer. The table is of primary utility to the researcher who is interested in the movement of the law as well as its current content.

Miscellaneous materials.—Section 11.242(4) authorizes the inclusion in the published edition of the *Florida Statutes*, in addition to the general laws as adopted and enacted, the Florida Constitution, and complete indexes, "such other matters, notes, data, and other material as may be deemed necessary or admissible by the joint committee for reference, convenience or interpretation." The various items published under this authority are located in Volume 4 and are identified in the table of contents at the front of each volume.

FORMER REVISIONS AND COMPILATIONS

The laws of general application of the territory of Florida and of the State of Florida have either been compiled unofficially or revised under authority of law and adopted as official statutes in the following publications: *Duval's Compilation of Territorial Laws, 1840* (compilation); *Thompson's Digest, 1847* (compilation); *Bush's Digest, 1872* (compilation); *McClellan's Digest, 1881* (compilation); *Revised Statutes* (R.S.) *1892* (revision enacted as a law); *General Statutes* (G.S.) *1906* (revision enacted as a law); *Revised General Statutes* (R.G.S.) *1920* (revision enacted as a law); *Compiled General Laws* (C.G.L.) *1927* (compilation unofficial); revision of 1940 and the beginning of the continuous revision system; adoption of the official 1940 revision in 1941 (F.S. 1941); the *Florida Statutes* of 1949 (F.S. 1949) (consolidation of 1941 statutes and supplements printed during the war years in 1943, 1945, 1947); and *Florida Statutes* of 1951, 1953, 1955, 1957, 1959, 1961, 1963, 1965, 1967, 1969, 1971, 1973, 1975, and 1977.

THE STATUTORY REVISION DIVISION

By chapter 22012, Laws of Florida, 1943, the Legislature created a permanent statutory revision and legislative drafting and reference department under the supervision and control of the Attorney General. The principal functions of this department were to publish the general laws of the state and to maintain a bill drafting department and legislative reference library. In 1949 the Legislature established the Legislative Council and Legislative Reference Bureau as an arm of the Legislature and completely separate from the Attorney General. By chapter 67-472, Laws of Florida, the Legislature removed the Statutory Revision Department from the office of the Attorney General and established it as a part of the Legislative Reference Bureau under the supervision of the Legislative Council. By chapter 69-52, Laws of Florida, the Legislative Reference Bureau was renamed the Legislative Service Bureau, and the Statutory Revision Department became the Statutory Revision Service within the bureau and its work was made subject to the supervision of the Joint Legislative Management Committee, which replaced the Legislative Council. In 1971, by order of the Joint Legislative Management Committee, the statutory revision and indexing functions were consolidated in a new division of the Joint Legislative Management Committee, the Division of Statutory Revision and Indexing. The division was renamed the Division of Statutory Revision in 1978.

The powers, duties, and functions of the Statutory Revision Division are set out in s. 11.242. In general, they are: (1) to conduct a systematic and continuing study of the statutes and laws of the state to reduce their number and bulk; remove inconsistencies, redundancies, and unnecessary repetitions; and otherwise improve their clarity and facilitate their correct and proper interpretation; (2) to publish the *Florida Statutes*; and (3) to index various publications of the Joint Legislative Management Committee.

Section 11.242(5) defines the limits of the editorial license that is available to the Statutory Revision Division in preparing the *Florida Statutes*. Pursuant to this section, the division has broad authority over the arrangement and grammatical structure of the *Statutes*. Although the statute provides that the product of the division's work shall constitute only prima facie evidence of the law until it has subsequently been formally adopted, the Statutory Revision Division nonetheless traditionally exercises its editorial prerogatives with self-restraint. It believes its mandate to be to produce the *Statutes* in usable and literate form, but strictly within the framework of the legislative intent.

The reviser's office is a clearinghouse where lawyers, judges, legislators, and administrators may help to improve the statutory law of the state. Persons calling attention to errors, omissions, conflicts, and other defects in the law can be a material help in administering Florida's continuous revision program.

JANE REYNOLDS HARRIS, Director
Division of Statutory Revision

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FLORIDA STATUTES
1979

Volume 1

TITLE I

CONSTRUCTION OF STATUTES

CHAPTER 1

DEFINITIONS

1.01 Definitions.—In construing these statutes and each and every word, phrase, or part hereof, where the context will permit:

(1) The singular includes the plural and vice versa.

(2) The masculine includes the feminine and neuter and vice versa.

(3) The word "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

(4) The word "writing" includes handwriting, printing, typewriting and all other methods and means of forming letters and characters upon paper, stone, wood, or other materials.

(5) The words "lunatic," "insane persons" and other like terms include idiots, lunatics, insane persons, non compos mentis and persons of deranged or unsound mind.

(6) The word "oath" includes affirmations.

(7) Reference to any office or officer includes any person authorized by law to perform the duties of such office.

(8) Reference to the population or number of inhabitants of any county, city, town, village, or other political subdivision of the state, shall be taken to be that as shown by the last preceding official decennial federal census, beginning with the Federal Census of 1950, which shall also be the state census and shall control in all population acts and constitutional apportionments, unless otherwise ordered by the legislature.

(9) The words "public body," "body politic" or "political subdivision" include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts and all other districts in this state.

(10) Crude turpentine gum (oleoresin), the product of a living tree or trees of the pine species, and gum-spirits-of-turpentine and gum resin as processed therefrom, shall be taken and understood to be agricultural products, farm products and agricultural commodities.

(11) The term "natural barrier" when used with reference to the possession of real estate shall include any cliff, river, sea, gulf, lake, slough, marsh, swamp, bay, lagoon, creek, saw grass area, or the like.

(12) The words "registered mail" shall include certified mail with return receipt requested.

(13) Whenever the terms "agriculture," "agricultural purposes," "agricultural uses" or words of similar import are used in any of the statutes of the state, such terms shall include horticulture and floriculture, horticultural purposes and floricultural purposes, horticultural uses and floricultural uses, and words of similar import applicable to agriculture shall likewise be applicable to horticulture and floriculture.

(14) The word "minor" includes any person who has not attained the age of 18 years.

(15) The term "veteran" means a person who served in the active military, naval, or air service and who was discharged or released therefrom under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the Veterans Administration on individuals discharged or released with other than honorable discharges. To receive benefits as a wartime veteran, a veteran must have served during one of the following periods of wartime service:

(a) Mexican Border Period: May 9, 1916, to April 5, 1917, in the case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto.

(b) World War I: April 6, 1917, to November 11, 1918; extended to April 1, 1920, for those veterans who served in Russia; also extended through July 1, 1921, for those veterans who served after November 11, 1918, and before July 2, 1921, provided that such veterans had at least 1 day of service between April 5, 1917, and November 12, 1918.

(c) World War II: December 7, 1941, to December 31, 1946.

(d) Korean Conflict: June 27, 1950, to January 31, 1955.

(e) Vietnam Era: August 5, 1964, to May 7, 1975.

History.—RS 1, 2064; GS 1, 2580; RGS 1, 3939; CGL 1, 5858; s. 1, ch. 16297, 1933; CGL 1936 Supp. 1(1); s. 1, ch. 17750, 1937; CGL 1940 Supp. 1365(43); s. 1, ch. 24139, 1947; s. 1, ch. 57-98; s. 1, ch. 61-486; s. 1, ch. 63-572; s. 1, ch. 69-195; s. 1, ch. 73-21; s. 1, ch. 78-10.

Note.—(11) Former s. 1.03.

1.02 [1]Legal time.—In all laws, statutes, orders, rules and regulations of this state, relating to the time of performance of any act by any officer or department of this state, whether in the legislative, executive or judicial branches, or relating to the time within which any rights shall accrue or determine, or within which any act shall or shall not be performed, by any person subject to the jurisdiction of this state, it shall be understood and intended that the said time shall be the United States standard time of the zone within which the act is to be performed or the right shall accrue or determine.

History.—s. 1, ch. 3916, 1889; RS 1307; GS 1739; s. 1, ch. 6938, 1915; RGS 2954; CGL 4681.

[1]**Note.**—15 U.S.C. s. 260a, which provides for daylight saving time, authorizes any state to exempt itself from its provisions. Florida has not so acted to exempt itself.

1.04 Statutory construction; amendatory acts passed at the same session.—Acts passed during the same legislative session and amending the same statutory provision are in pari materia, and full effect should be given to each, if that is possible. Language carried forward unchanged in one amendatory act, pursuant to s. 6, Art. III of the State Constitution, should not be read as conflicting with changed language contained in another act passed during the same session. Amendments enacted during the same session are in conflict with each other only to the extent that they cannot be given effect simultaneously.

History.—s. 1, ch. 74-153.

CHAPTER 2

COMMON LAW IN FORCE; REPEALED STATUTES

2.01 Common law and certain statutes declared in force.—The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the 4th day of July, 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the constitution and laws of the United States and the acts of the legislature of this state.

History.—s. 1, Nov. 6, 1829; RS 59; GS 59; RGS 71; CGL 87.
cf.—ss. 775.01—775.03 Common law of England.

2.04 Repealed statute not revived by implication.—No statute of this state which has been repealed shall ever be revived by implication; that is to say, if a statute be passed repealing a former statute, and a third statute be passed repealing the second, the repeal of the second statute shall in no case be construed to revive the first, unless there be express words in the said third statute for this purpose.

History.—Nov. 2, 1829; RS 62; GS 62; RGS 74; CGL 90.
cf.—s. 6, Art. III, State Const.

TITLE II

STATE ORGANIZATION

CHAPTER 6

ADMISSION INTO UNION; CONCESSIONS; STATE BOUNDARIES

6.01 Assent to terms of admission into the union.—The State of Florida assents as by the statute approved July 25, 1845, to the terms of admission of this state into the Confederacy and Union of the United States, and to the provisions of the Acts of Congress respecting the public lands of the United States in this state.

History.—Ch. 14, 1845; RS 6; GS 4; RGS 4; CGL 4.

6.02 United States authorized to acquire lands for certain purposes.—The United States may purchase, acquire, hold, own, occupy, and possess such lands within the limits of this state as they shall seek to occupy and hold as sites on which to erect and maintain forts, magazines, arsenals, dockyards, and other needful buildings, or any of them, as contemplated and provided in the Constitution of the United States; such land to be acquired either by contract with owners, or in the manner hereinafter provided.

History.—s. 1, ch. 25, 1845; RS 7; GS 5; RGS 5; CGL 5.
cf.—ss. 6.06, 253.21 Swamp and forest lands.

6.03 Condemnation of land when price not agreed upon.—If the officer or other agent employed by the United States to make such purchase and the owner of the land contemplated to be purchased, as aforesaid, cannot agree for the sale and purchase thereof, the same may be acquired by the United States by condemnation in the same manner as is hereinafter provided for condemnation of lands for other public purposes, and any officer or agent authorized by the United States may institute and conduct such proceedings in their behalf.

History.—s. 2, ch. 25, 1845; RS 8; GS 6; RGS 6; CGL 6.
cf.—Ch. 73 for uniform procedure in condemnation suits.

6.04 Jurisdiction over such lands; how ceded to the United States.—Whenever the United States shall contract for, purchase or acquire any land within the limits of this state for the purposes aforesaid, in either of the modes above mentioned and provided, or shall hold for such purposes lands heretofore lawfully acquired or reserved therefor, and shall desire to acquire constitutional jurisdiction over such lands for said purposes, the Governor of this state may, upon application made to him in writing on behalf of the United States for that purpose, accompanied by the proper evidence of said reservation, purchase, contract, or acquisition of record, describing the land sought to be ceded by convenient metes and bounds, thereupon, in the name and on behalf of this state, cede to the United States exclusive jurisdiction over the land so reserved, purchased, or acquired and sought to be ceded; the United States to hold, use, occupy, own, possess, and exercise said jurisdiction over the same for the purposes aforesaid, and none other whatsoever; provided, always, that the consent aforesaid is hereby given and the cession aforesaid is to be granted and made as aforesaid, upon the express condition that this state shall retain a concurrent jurisdiction with the United States in and over the land or lands so to be ceded, and every portion thereof, so far that all process, civil or criminal, issuing under authority of this state, or of any of the courts or judicial officers thereof may be executed by the proper officers thereof, upon any person amenable to the same, within the limits and extent of lands so ceded, in like manner and to like effect as if this law had never been passed; saving, however, to the United States security to their property within said limits and extent, and exemption of the same, and of said lands from any taxation under the authority of this state while the same shall continue to be owned, held, used and occupied by the United States for the purposes above expressed and intended, and not otherwise.

History.—s. 3, ch. 25, 1845; RS 9; GS 7; RGS 7; CGL 7.

6.05 Transfer of title and jurisdiction over land owned by state.—Whenever a tract of land containing not more than four acres shall be selected by an authorized officer or agent of the United States for the bona fide purpose of erecting thereon a lighthouse, beacon, marine hospital, or other public work, and the title to the said land shall be held by the state, then on application by the said officer or agent to the Governor of this state, the said executive may transfer to the United States the title to, and jurisdiction over, said land; provided, always, that the said transfer of title and jurisdiction is to be granted and made, as aforesaid, upon the express condition that this state shall retain a concurrent jurisdiction with the United States, in and over the lands so to be transferred, and every portion thereof, so far that all process, civil or criminal, issuing under authority of this state, or any of the courts or judicial officers thereof, may be executed by the proper officer thereof, upon any person amenable to the same, within the limits and extent of the lands so ceded, in like manner and to like effect as if this law had never been passed; saving, however, to the United States, security to their property within said limits or extent. The said lands shall hereafter remain the property of the United States and be exempt from taxation as long as they shall be needed for said purposes.

History.—ss. 1, 2, ch. 630, 1855; RS 10; GS 8; RGS 8; CGL 8.
cf.—Ch. 17937, Acts 1937, for certain described land in Putnam County declared to be state property.

6.06 United States may acquire state lands for national forests.—The consent of the state is given to the acquisition by the United States, by purchase, gift, or condemnation with adequate compensation, of such lands in Florida as in the opinion of the Federal Government may be needed for the establishment, consolidation and extension of national forests in the state; provided, that the state shall retain a concurrent jurisdiction with the United States in and over lands so acquired so far that civil process in all cases, and such criminal process as may issue under the authority of the state against any person charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this section had not been passed.

History.—s. 1, ch. 8564, 1921; CGL 9.
cf.—Ch. 17938, Acts 1937, for conveyance of land in Putnam County to United States.

6.07 Power conferred on congress to legislate with respect to state lands acquired for national forests.—Congress may pass such laws and make or provide for the making of such rules and regulations, of both a civil and criminal nature, and provide punishment therefor, as in its judgment may be necessary for the administration, control, and protection of such lands as may be from time to time acquired by the United States under the provisions of s. 6.06.

History.—s. 2, ch. 8564, 1921; CGL 10.

6.08 Boundary between Florida and Alabama.—The line commencing on the Chattahoochee River near a place known as "Irwin's Mills," and running west to the Perdido, marked throughout by blazes on the trees, and also by mounds of earth thrown upon the line, at distances of 1 mile, more or less, from each other, and commonly known as the "Mound line" or "Ellicott's line," and by these names distinguished from another line above, running irregularly at different distances not exceeding one and a half miles from the "Mound line" and marked by blazes only, and known as the "Upper line," or "Coffee's line," is the boundary line between the States of Florida and Alabama.

History.—s. 2, ch. 165, 1848; RS 2; GS 2; RGS 2; CGL 2.
cf.—s. 1, Art. II, Const. Boundaries of Florida.

6.081 Florida-Alabama boundary redefined.—

(1) The middle of the Perdido River at its mouth, as defined by the Constitutions of the States of Alabama and Florida, is at latitude 30°16'53" N. and longitude 87°31'06" W. as the control point; the boundary line at the mouth of the Perdido River is fixed, as nearly as may be, in the axis of the mouth of said river, passing through the control point and running north and south and having as its northern terminus a point of latitude 30°17'02" N. and longitude 87°31'06" W., and as its southern terminus a point 1,000 feet due south of the control point; from the northern terminus of the boundary line at the mouth of the river, the boundary up the lower portion of said river be a straight line to a point at latitude 30°18'00" N., longitude 87°27'08" W., thence by a straight line to a point in the center line of the intracoastal canal at longitude 87°27'00" W.; the seaward boundary between Florida and Alabama extends from the south end of the boundary line at the mouth of the Perdido River, thence south 0°01'00" W. to the seaward limit of each respective state; and shall be deemed, taken and declared, and is hereby deemed, taken and declared to be the boundary line between the States of Florida and Alabama, at the mouth of the Perdido River and adjacent thereto, and shall be deemed and taken as such by the authorities and people of this state.

(2) Nothing herein contained, nor any operations of the provisions of this section, shall prejudice the rights or claims of private individuals to any of the lands herein involved whether such rights or claims arise or exist upon the basis that the lands herein defined as being within the boundaries of the State of Alabama were previously a part of the State of Florida or included within the boundaries of the State of Florida or otherwise.

History.—ss. 2, 5, ch. 28141, 1953.
Note.—Boundary.—Consent given by Public Law 351—83rd Congress; House Joint Resolution 347.
cf.—s. 1, Art. II, Const. Boundaries of Florida.

6.09 Boundary between Florida and Georgia.—

(1) The line run and marked by B. J. Whitner, Jr., on the part of Florida, and G. J. Orr, on the part of Georgia, is the permanent boundary line between the States of Florida and Georgia.

(2) The boundary line between the States of Florida and Georgia as described in subsection (1) herein shall be extended from a point 37 links north of Ellicott's Mound on the Saint Marys River; thence down said river to the Atlantic Ocean; thence along the middle of the presently existing Saint Marys entrance navigational channel to the point of inter-

section with a hypothetical line connecting the seawardmost points of the jetties now protecting such channel; thence along said line to a control point of latitude 30°42'45.6" N., longitude 81°24'15.9" W.; thence due east to the seaward limit of Florida as now or hereafter fixed by the Congress of the United States; such boundary to be extended on the same true 90° bearing so far as a need for further delimitation may arise.

History.—Resolution No. 16, Feb. 8, 1861; RS 3; GS 3; RGS 3; CGL 3; s. 1, ch. 69-4.

Note.—Boundary.—Consent given by Public Law 498, 91st Congress, October 22, 1970.

cf.—s. 1, Art. II, State Const. Boundaries of Florida.

6.10 Confirmation of certain grants of Georgia.—The titles of bona fide holders of land under any grant from the State of Georgia prior to December 22, 1859, in the territory formerly claimed by the said state, which land is within the State of Florida by the line specified in s. 6.09 remain confirmed so far as this state had the right and power to confirm the same as provided by the act of December 22, 1859.

History.—s. 2, ch. 1017, 1859; RS 456; GS 645; RGS 1229; CGL 1785.

CHAPTER 7

COUNTY BOUNDARIES

7.01 Alachua County.—The boundary lines of Alachua County are as follows: Begin where the range line between ranges sixteen and seventeen east intersects the thread of the Santa Fe River; thence run south on said range line to the southwest corner of section seven, township eleven south, range seventeen east; thence run east along the south line of sections seven, eight, nine, ten, eleven and twelve to the northwest corner of section eighteen, township eleven south, range eighteen east; thence run south along the west line of sections eighteen, nineteen, thirty and thirty-one, township eleven south, range eighteen east to southwest corner of said section thirty-one; thence run east along south line of sections thirty-one, thirty-two, thirty-three and thirty-four to southeast corner of section thirty-four, township eleven south, range eighteen east outside of Arredonda Grant; thence run north along east line of said section thirty-four to southwest corner of section thirty-four, township eleven south, range eighteen east inside said grant; thence run east along the township line between townships eleven and twelve, south, to its intersection with the west margin of Orange Lake; thence following the western and southern margin of Orange Lake to its intersection with the range line between range twenty-two and twenty-three east; thence run north along said range line to where same is intersected by the north and east margin of Santa Fe Lake; thence run north following the east margin of said Santa Fe Lake to its westernmost intersection with a line which is the prolongation of the north line of McManus Subdivision as per plat book "A", page 117 of the public records of Alachua County; thence west along the north line of said subdivision to its intersection with the east line of government lot three of section twenty-one, township eight south, range twenty-two east; thence north along said east line to the southeast corner of the southwest quarter of the northwest quarter of said section twenty-one; thence north along the line between the east half and the west half of the northwest quarter of said section twenty-one to the north line of said section twenty-one; thence west along the north line of said section twenty-one to the southeast corner of section seventeen, township eight south, range twenty-two east; thence west to the southwest corner of the southeast quarter of the southeast quarter of said section seventeen; thence north to the southeast corner of the southwest quarter of the northeast quarter of said section seventeen; thence west to the southwest corner of the east half of the southwest quarter of the northeast quarter of said section seventeen; thence north to the northwest corner of the east half of the southwest quarter of the northeast quarter of said

section seventeen; thence west to the southwest corner of the northwest quarter of the northeast quarter of said section seventeen; thence north to the half-mile corner of the south line of section eight, township eight south, range twenty-two east; thence west to the southwest corner of the east half of the southeast quarter of the southwest quarter of said section eight; thence north to the northwest corner of the east half of the northeast quarter of the northwest quarter of said section eight; thence north to the northeast corner of the west half of the southeast quarter of the southwest quarter of section five, township eight south, range twenty-two east; thence west to the northwest corner of the southwest quarter of the southwest quarter of said section five; thence north along the west line of said section five to the northeast corner of the southeast quarter of the northeast quarter of section six, township eight south, range twenty-two east; thence west to the southwest corner of the northeast quarter of the northeast quarter of said section six; thence north to the northwest corner of the northeast quarter of the northeast quarter of said section six; thence west along the north line of said section six to the northwest corner of said section six; thence north along the east line of section one, township eight south, range twenty-one east to the southeast corner of section thirty-six, township seven south, range twenty-one east; thence north along the east line of said section thirty-six to the northeast corner of the southeast quarter of the southeast quarter of said section thirty-six; thence west to the northwest corner of the southwest quarter of the southwest quarter of said section thirty-six; thence north along the west line of said section thirty-six to its intersection with the thread of the Santa Fe River; thence northerly and westerly along the thread of the Santa Fe River to its intersection with the east line of the southwest quarter of the northwest quarter of section thirty-three, township seven south, range twenty-one east; thence north to the northeast corner of the southwest quarter of the northwest quarter of said section thirty-three; thence west to the northeast corner of the southeast quarter of the northeast quarter of section thirty-two, township seven south, range twenty-one east; thence west to the northwest corner of the southwest quarter of the northwest quarter of said section thirty-two; thence west to the southwest corner of the northeast quarter of the northeast quarter of section thirty-one, township seven south, range twenty-one east; thence north to the northwest corner of the northeast quarter of the northeast quarter of said section thirty-one; thence west to the half-mile corner of the south line of section thirty, township seven south, range twenty-one east; thence north on the quarter section line of said section thirty to its intersection with the thread of the Santa Fe River; thence southerly and westerly along the thread of said Santa Fe River to its intersection with the south line of the southwest quarter of the northeast quarter of section twenty-eight, township seven south, range twenty east; thence west to the southwest corner of the northeast quarter of said section twenty-eight; thence north to the northwest corner of the northeast quarter of said section twenty-eight; thence west to the northwest corner of said section twenty-eight; thence north along the east line of section twenty, township seven south, range twenty east to the southeast corner of the northeast quarter of said section twenty; thence west on the quarter section line of said section twenty to its intersection with the thread of the Santa Fe River; thence northerly and westerly along the thread of the Santa Fe River to its southernmost intersection with the east line of section two, township seven south, range seventeen east; thence run south along the east line of said section two to the northeast corner of section eleven, township seven south, range seventeen east; thence run south along the east line of said section eleven to the northeast corner of government lot four in said section eleven; thence run west to the northwest corner of said government lot four; thence run south along west line of said government lot four to the southwest corner of said government lot four; thence run west along the south line of said section eleven to the northwest corner of section fourteen, township seven south, range seventeen east; thence run south along the west line of said section fourteen to the southwest corner of said section fourteen; thence run east along south line of said section fourteen to its intersection with the thread of the Santa Fe River; thence run southerly and westerly along the thread of said river to the point of beginning.

History.—s. 6, Dec. 29, 1824; s. 3, Nov. 23, 1828; s. 1, Feb. 10, 1835; s. 1, ch. 106, 1846; s. 1, ch. 923, 1859; s. 1, ch. 1765, 1870; RS 38; GS 36; s. 1, ch. 6243, 1911; s. 1, ch. 6509, 1913; RGS 39; s. 1, ch. 11371, 1925 CGL 41; s. 1, ch. 28312, 1953.

7.02 Baker County.—The boundary lines of Baker County are as follows: Beginning at a point at center of township four south, on range line dividing ranges eighteen and nineteen east; thence north on said range line to the Georgia line; thence easterly on said Georgia line to the St. Marys River, and then down said river, concurrent with the boundary line between the States of Georgia and Florida, to where the said river intersects with range line dividing ranges twenty-two and twenty-three east; thence south on said range line to the center line of township four south; and then west on said township line to the point of beginning.

History.—s. 1, Feb. 4, 1832; s. 1, Mar. 15, 1844; s. 3, ch. 895, 1858; ch. 1039, 1859; s. 1, ch. 1185, 1861; RS 31; GS 29; s. 1, ch. 6244, 1911; RGS 31; CGL 33.

7.03 Bay County.—The boundary lines of Bay County are as follows: Beginning at the southwest corner of section eighteen in township two, north, range eleven, west; thence west on the section line to the southwest corner of section eighteen in township two, north, range twelve, west; thence south on the range line dividing ranges twelve and thirteen, west, to the Meridian base line; thence west on the base line to the thread of Pine Log Creek in range sixteen, west; thence southwesterly along the thread of said creek into the Choctawhatchee River to the thread of said river; thence southwesterly along the thread of said river to a point where said river intersects the range line dividing ranges seventeen and eighteen, west; thence south on said range line to the Gulf of Mexico; thence in a southeastwardly direction following the meanderings of said gulf, including the waters of said gulf within the jurisdiction of the State of Florida, including all islands opposite the

shoreline to a point where range line dividing ranges eleven and twelve, west, intersects with said gulf; thence north on said range line to place of beginning.

History.—ss. 1, chs. 6505, 6506, 6508, 1913; RGS 15; CGL 17.

7.04 Bradford County.—The county lines of Bradford County are as follows: beginning at a point where the thread of New River intersects the thread of the Santa Fe River; thence northeasterly concurrent with the east boundary of Union County following the meanderings of the said New River to where same is intersected by the middle township line of township four south, range twenty-two east; thence east on said middle township line to the range line between ranges twenty-two and twenty-three east; thence south on said range line to the southeast corner of section twelve, township nine south, range twenty-two east; thence west on the section line between section twelve and thirteen, township nine south, range twenty-two east to Santa Fe Lake; thence northwesterly following the northeast shore of Santa Fe Lake to its westernmost intersection with a line which is the prolongation of the north line of McManus Subdivision as per plat book "A," page 117 of the public records of Alachua County; thence west along the north line of said subdivision to its intersection with the east line of government lot three of section twenty-one, township eight south, range twenty-two east; thence north along said east line to the southeast corner of the southwest quarter of the northwest quarter of said section twenty-one; thence north along the lines between the east half and the west half of the northwest quarter of said section twenty-one to the north line of said section twenty-one; thence west along the north line of said section twenty-one to the southeast corner of section seventeen, township eight south, range twenty-two east; thence west to the southwest corner of the southeast quarter of the southeast quarter of said section seventeen; thence north to the southeast corner of the southwest quarter of the northeast quarter of said section seventeen; thence west to the southwest corner of the east half of the southwest quarter of the northeast quarter of said section seventeen; thence north to the northwest corner of the east half of the southwest quarter of the northeast quarter of said section seventeen; thence west to the southwest corner of the northwest quarter of the northeast quarter of said section seventeen; thence north to the half-mile corner on the south line of section eight, township eight south, range twenty-two east; thence west to the southwest corner of the east half of the southeast quarter of the southwest quarter of said section eight; thence north to the northwest corner of the east half of the northeast quarter of the northwest quarter of said section eight; thence north to the northeast corner of the west half of the southeast quarter of the southwest quarter of section five, township eight south, range twenty-two east; thence west to the northwest corner of the southwest quarter of the southwest quarter of said section five; thence north along the west line of said section five to the northeast corner of the southeast quarter of the northeast quarter of section six, township eight south, range twenty-two east; thence west to the southwest corner of the northeast quarter of the northeast quarter of said section six; thence north to the northwest corner of the northeast quarter of the northeast quarter of said section six; thence west along the north line of said section six to the northwest corner of said section six; thence north along the east line of section one, township eight south, range twenty-one east to the southeast corner of section thirty-six, township seven south, range twenty-one east; thence north along the east line of said section thirty-six to the northeast corner of the southeast quarter of the southeast quarter of said section thirty-six; thence west to the northwest corner of the southwest quarter of the southwest quarter of said section thirty-six; thence north along the west line of said section thirty-six to its intersection with the thread of the Santa Fe River; thence northerly and westerly along the thread of the Santa Fe River to its intersection with the east line of the southwest quarter of the northwest quarter of section thirty-three, township seven south, range twenty-one east; thence north to the northeast corner of the southwest quarter of the northwest quarter of said section thirty-three; thence west to the northeast corner of the southeast quarter of the northeast quarter of section thirty-two, township seven south, range twenty-one east; thence west to the northwest corner of the southwest quarter of the northwest quarter of said section thirty-two; thence west to the southwest corner of the northeast quarter of the northeast quarter of section thirty-one, township seven south, range twenty-one east; thence north to the northwest corner of the northeast quarter of the northeast quarter of said section thirty-one; thence west to the half-mile corner on the south line of section thirty, township seven south, range twenty-one east; thence north on the quarter section line of said section thirty to its intersection with the thread of the Santa Fe River; thence southerly and westerly along the thread of said Santa Fe River to its intersection with the south line of the southwest quarter of the northeast quarter of section twenty-eight, township seven south, range twenty east; thence west to the southwest corner of the northeast quarter of said section twenty-eight; thence north to the northwest corner of the northeast quarter of said section twenty-eight; thence west to the northwest corner of said section twenty-eight; thence north along the east line of section twenty, township seven south, range twenty east to the southeast corner of the northeast quarter of said section twenty; thence west on the quarter section line of said section twenty to its intersection with the thread of the Santa Fe River; thence northerly and westerly along the thread of said Santa Fe River to the point of beginning.

History.—s. 1, Mar. 10, 1844; s. 3, ch. 895, 1858; s. 1, ch. 1039, 1859; s. 1, ch. 1185, 1861; s. 1, ch. 1765, 1870; RS 30; GS 28; RGS 20; s. 1, ch. 8516, 1921; CGL 32; s. 2, ch. 28312, 1953.

7.05 Brevard County.—The boundary lines of Brevard County are as follows: Beginning in the thread of the St. Johns River where the line dividing townships twenty-one and twenty-two south, intersects said river; thence east on said township line to the range line dividing ranges thirty-three and thirty-four east; thence north on said range line to where the same intersects the line dividing townships nineteen and twenty south; thence east on said township

line to the Atlantic Ocean; thence southward along the Atlantic coast, including the waters of the Atlantic Ocean within the jurisdiction of Florida, to the intersection with the centerline of the Sebastian Inlet produced eastwardly, said inlet being in section twenty of township thirty south range thirty-nine east; thence westerly on said centerline and continuing southwesterly along the centerline of the approach channel to said inlet from the Indian River to a point due east of the mouth of the St. Sebastian River; thence due west to the mouth of the St. Sebastian River; thence south along the thread of the St. Sebastian River and the thread of the south fork of the St. Sebastian River to a point where the line dividing townships thirty and thirty-one south intersects the thread of said south fork; thence west on said township line to the line dividing ranges thirty-four and thirty-five east; thence north on said range line to the northeast corner of township twenty-five south, range thirty-four east and the St. Johns River; thence northerly following the thread of said river to the point of beginning.

History.—Ch. 651, 1855; s. 2, ch. 1998, 1874; s. 1, ch. 3175, 1879; s. 1, ch. 3768, 1887; RS 50; ss. 1, 19, ch. 5567, 1905; GS 48; RGS 53; s. 1, ch. 10148, 1925; CGL 55; s. 1, ch. 59-486.

7.06 Broward County.—The boundary lines of Broward County are as follows: Beginning on the east boundary of the State of Florida at a point where the south boundary of township forty-seven south of range forty-three east, produced easterly, would intersect the same; thence westerly on said township boundary to its intersection with the axis or center line of Hillsborough State Drainage Canal, as at present located and constructed; thence westerly along the center line of said canal to its intersection with the section line dividing sections twenty-six and thirty-five of township forty-seven south, of range forty-one east; thence westerly on the said section line dividing sections twenty-six, thirty-five and other sections to the northwest corner of said section thirty-one of township forty-seven south of range forty-one, east; thence south on the range line dividing ranges forty and forty-one east, of township forty-seven south, to the northeast corner of section twenty-five of township forty-seven, south, of range forty east, a distance of one hundred and six feet, more or less; thence due west on the north boundaries of the sections numbered from twenty-five to thirty, inclusive, of townships forty-seven south, of ranges thirty-seven to forty east, inclusive, as the same have been surveyed, or may hereafter be surveyed, by the authority of the Board of Trustees of the Internal Improvement Trust Fund, to the northwest corner of section thirty of township forty-seven south, of range thirty-seven east; thence continuing due west to the range line between ranges thirty-four and thirty-five east; thence southerly on the range line dividing ranges thirty-four and thirty-five east, to the southwest corner of township fifty-one south, of range thirty-five east; thence east following the south line of township fifty-one south, across ranges thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine and forty, to the southwest corner of township fifty-one south of range forty-one east; thence north on the range line dividing ranges forty and forty-one to the northwest corner of section thirty-one of township fifty-one south, of range forty-one east; thence east on the north boundary of section thirty-one and other sections to the waters of the Atlantic Ocean; thence easterly to the eastern boundary of the State of Florida; thence northerly along said eastern boundary to the point of beginning. In addition, the boundary lines of Broward County include the following: Begin at the northwest corner of section thirty-five, township fifty-one south, range forty-two east, Dade County, Florida; thence, southerly following the west line of section thirty-five, township fifty-one south, range forty-two east to the intersection with a line which is two hundred and thirty feet south of and parallel to the north line of section thirty-five, township fifty-one south, range forty-two east; thence, easterly following the line which is two hundred and thirty feet south of and parallel to the north line of section thirty-five, township fifty-one south, range forty-two east, to the intersection with the west boundary line of the Town of Golden Beach; thence, northerly following the west boundary line of the Town of Golden Beach to the intersection with the north line of section thirty-five, township fifty-one south, range forty-two east; thence, westerly following the north line of section thirty-five, township fifty-one south, range forty-two east to the point of beginning.

History.—s. 1, ch. 6934, 1915; RGS 60; CGL 66; ss. 27, 35, ch. 69-106; s. 1, ch. 78-119.

7.07 Calhoun County.—The boundary lines of Calhoun County are as follows: Beginning at a point in the thread of the Apalachicola River where the northern boundary of township two north, range seven west, crosses said river; thence west on said township line to the thread of the Chipola River; thence southerly down the thread of the stream of the said Chipola River to a point where a line drawn through the center of township two north, crosses said river; thence west on said middle township line to the range line between ranges eleven and twelve west; thence south on said range line, concurrent with the east boundary of Bay County, to the southwest corner of section nineteen, township three south, range eleven west; thence east on the south line of said section nineteen and other sections across ranges eleven west, ten west and a portion of nine west to where said section line intersects the thread of the Apalachicola River between sections twenty-three and twenty-six, township three south, range nine west; thence follow the thread of said river to the place of beginning.

History.—s. 1, Jan. 26, 1838; s. 1, ch. 1850, 1873; s. 1, ch. 2061, 1875; RS 17; ss. 1, chs. 4576, 4577, 1897; GS 15; s. 1, ch. 6506, 1913; RGS 17; s. 1, ch. 10132, 1925; CGL 19.

7.08 Charlotte County.—The boundary lines of Charlotte County are as follows: Beginning at the northeast corner of township forty south, range twenty-seven east; thence south on range line dividing ranges twenty-seven and twenty-eight east, to the township line dividing townships forty-two and forty-three south, and Lee County; thence west on said township line to the waters of the Gulf of Mexico; thence northerly and westerly along said Gulf of Mexico, including the waters of said gulf within the jurisdiction of the State of Florida, to the intersection therewith of the township line dividing town-

ships forty and forty-one south; thence east on said township line to the southeast corner of township forty south, range twenty east; thence north on the range line dividing ranges twenty and twenty-one east to the northwest corner of township forty south, range twenty-one east; thence east on township line dividing townships thirty-nine and forty south to the place of beginning.

History.—s. 3, ch. 3770, 1887; s. 1, ch. 8513, 1921; CGL 62.

7.09 Citrus County.—The boundary lines of Citrus County are as follows: Beginning at a point in the thread or center of the Withlacoochee River on the section line dividing sections twelve and thirteen, township twenty-one south, range twenty east; thence on said line west to the southwest corner of section nine, township twenty-one south, range nineteen east; thence north on said section line to township line dividing townships twenty and twenty-one south; thence west on said township line to the Gulf of Mexico; thence north along said gulf including all islands along said gulf coast, and including the waters of said gulf within the jurisdiction of the State of Florida, to the most southern outlet of the Withlacoochee River at its mouth, leaving out all the islands in the mouth of said river; thence westerly along the north bank of the said Withlacoochee River to where range line dividing ranges seventeen and eighteen east, crosses the river; thence south on said range line to the thread of said river; thence along the thread of said river to point of beginning, including all the lands and islands which said river line may enclose.

History.—Ch. 107, 1847; ch. 415, 1850; s. 1, ch. 3772, 1887; RS 44; GS 42; s. 1, ch. 6245, 1911; RGS 46; CGL 48.

7.10 Clay County.—The boundary lines of Clay County are as follows: Beginning at the west margin of the channel of the St. Johns River at its intersection with the southerly limited access right-of-way line of State Road 9-A, also known as Interstate 295; thence north 86°49'27" west on said right-of-way line to a point where said right-of-way line intersects the westerly boundary of the St. Johns River; thence south 87°54'15" west 816.30 feet; thence north 86°49'27" west 228.51 feet; thence north 86°10'22" west 891.45 feet to the beginning of a curve concave to the south and having a radius of 22,768.31 feet running westerly 1,466.89 feet along said curve through a central angle of 03°41'29" to the end of said curve; thence south 83°23'50" west 290.48 feet; thence south 64°29'41" west 145.12 feet; thence south 49°31'32" west 101.97 feet; thence south 38°21'40" west 165.23 feet; thence south 08°45'26" west 119.74 feet to an intersection with the easterly limited access right-of-way line of U.S. 17, being located south 88°33'33" west 2.37 feet of the southwest corner of Lot 12, Block 11 of Island View Subdivision, according to the plat thereof recorded in Plat Book 6, page 10, Public Records of Duval County, Florida; thence west on a line to the range line dividing ranges twenty-two and twenty-three east; thence south on said range line, concurrent with the eastern boundary of Baker and Bradford Counties, to the southeast corner of section twelve, township nine south, range twenty-two east; thence east on the line dividing sections seven and eighteen, eight and seventeen, township nine south, range twenty-three east to the Bellamy or federal road leading from St. Augustine to Tallahassee; thence east along the north margin of said road to its intersection with the south boundary line of township seven south; thence east along said line to the west margin of the channel of the St. Johns River; thence northerly along said west margin to the place of beginning. Clay County shall also include all lands lying north of township 4-S range, 26-E and south of I-295, east of State Road 21 (Blanding Boulevard) and west of U.S. 17 lying presently within Duval County, Florida, including section 31-3S-26E: all southeast quarter lying east of Blanding Boulevard and south of the right-of-way line of Interstate 295; section 32-3S-26E: all Jacksonville Heights Plat Book 5-93 of Public Records of Duval County lying south of Interstate 295; section 33-3S-26E: all section 33 lying south of Interstate 295; section 40-3S-26E: Ambrose Hull Grant lying south of Interstate 295; and all Island View S/D Plat Book 6, page 10, Public Records of Duval County, Florida, lying south of Interstate 295 and west of U.S. 17 (Roosevelt Boulevard).

History.—Ch. 866, 1858; s. 1, ch. 1039, 1859; s. 1, ch. 3469, 1883; RS 34; GS 32; s. 1, ch. 5978, 1909; RGS 34; s. 1, ch. 12489, 1927; CGL 36; s. 1, ch. 76-17; s. 1, ch. 78-421.

7.11 Collier County.—The boundary lines of Collier County are as follows: Beginning where the north line to township forty-eight south extended westerly intersects the western boundary of the State of Florida in the waters of the Gulf of Mexico; thence easterly on said township line to the northwest corner of section four of township forty-eight south of range twenty-five east; thence south to the northwest corner of section nine of said township and range; thence east to the eastern boundary line of range twenty-six east; thence north on said range line to the northwest corner of township forty-seven south of range twenty-seven east; thence east on the north line of township forty-seven south to the east line of range twenty-seven east; thence north on said range line to the north line of township forty-six south; thence east on the north line of township forty-six south to the east line of range thirty east; thence south on said range line to the north line of township forty-nine south; thence east on the north line of said township forty-nine south to the east line of range thirty-four east and the west boundary of Broward County; thence south on said range line, concurrent with the west boundary of Broward and Dade Counties, to the point of intersection with the south line of township fifty-three south; thence west on the south line of said township fifty-three south to where that line extended intersects the western boundary of the State of Florida in the waters of the Gulf of Mexico; thence northwesterly and along the waters of said Gulf of Mexico, including the waters of said gulf within the jurisdiction of the State of Florida, to the point of beginning.

History.—s. 1, ch. 9362, 1923; CGL 74.

7.12 Columbia County.—The boundary lines of Columbia County are as follows: Beginning at the mouth of the Ichetucknee River where it enters the Santa Fe River; thence up the thread of the said Ichetucknee River to Ichetucknee Spring; thence

north on the range line dividing ranges fifteen and sixteen east to the section line dividing sections one and twelve and sections two and eleven, township six south, range fifteen east; thence west on said section line to the southwest corner of section two, township six south, range fifteen east; thence north on the section line dividing sections two and three, township six south, range fifteen east, across townships six, five, four, three, and two south, to the thread of the Suwannee River; thence northeast up the thread of said river to the Georgia line; thence along said line to the range line dividing ranges eighteen and nineteen east; thence south on said range line to Olustee Creek; thence southerly down the thread of said creek to the Santa Fe River; thence southwesterly and northwesterly down the thread of said river to its southernmost intersection with the east line of section two, township seven south, range seventeen east; thence south along the east line of said section two to the northeast corner of section eleven, township seven south, range seventeen east; thence south along the east line of said section eleven to the northeast corner of government lot four in said section eleven; thence west along the north line of said government lot four to its northwest corner; thence south along the west line of said government lot four to its southwest corner; thence west along the north line of section fourteen, township seven south, range seventeen east to the northwest corner of said section fourteen; thence south along the west line of said section fourteen to its southwest corner; thence east along the south line of said section fourteen to the thread of the Santa Fe River; thence south and west along the thread of the Santa Fe River to the point of beginning.

History.—Feb. 4, 1832; s. 3, ch. 895, 1858; s. 1, ch. 1048, 1859; ch. 3948, 1889; RS 29; GS 27; s. 1, ch. 5979, 1909; RGS 29; CGL 31; s. 3, ch. 28312, 1953.

7.13 Dade County.—The boundary lines of Dade County are as follows: Beginning at the southwest corner of township fifty-one south, range thirty-five east; thence east following the south line of township fifty-one south, across ranges thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine and forty east, to the southwest corner of township fifty-one south, range forty-one east; thence north on the range line dividing ranges forty and forty-one east to the northwest corner of section thirty-one, township fifty-one south, range forty-one east; thence east on the north boundary of said section thirty-one and other sections to the waters of the Atlantic Ocean; thence easterly to the eastern boundary of the State of Florida; thence southward along the coast, including the waters of the Atlantic Ocean and the gulf stream within the jurisdiction of the State of Florida, to a point on the reefs of Florida immediately opposite the mouth of Broad Creek (a stream separating Cayo Lago from Old Rhodes Key); thence in a direct line through the middle of said stream to a point east of Mud Point, said point being located on the east line of the west one half of section seven, township fifty-nine south, range forty east, at a distance of two thousand three hundred feet, more or less, south of the northeast corner of the west one half of said section seven being a point on the existing Dade County boundary line as established by s. 7.13; thence run southerly along the east line of the west one half of said section seven, township fifty-nine south, range forty east, to a point two thousand feet, more or less, north of the south line of said section seven; thence run westerly along a line parallel to the south line of said section seven, through the open water midway between two islands lying in the west one half of said section seven to a point on the west line of section seven, township fifty-nine south, range forty east; thence run southerly for a distance of two thousand feet, more or less, to the southwest corner of said section seven; thence run southerly along the west line of section eighteen, township fifty-nine south, range forty east, to the southwest corner of said section eighteen; thence run in a southwesterly direction along a straight line to the southwest corner of section twenty-four, township fifty-nine south, range thirty-nine east; thence run southerly along the east line of section twenty-six, township fifty-nine south, range thirty-nine east, to the southeast corner of said section twenty-six; thence run southerly along the east line of section thirty-five, township fifty-nine south, range thirty-nine east, to a point of intersection with a line drawn parallel with the north line of said section thirty-five and through the open water midway between Main and Short Key; thence run westerly along a line parallel to the north line of said section thirty-five, through the open water midway between Main and Short Key to a point on the west line of section thirty-five and a point on the east line of section thirty-four, township fifty-nine south, range thirty-nine east; thence run southwesterly in a straight line to the southwest corner of the southeast quarter of said section thirty-four and the northeast corner of the northwest quarter of section three, township sixty south, range thirty-nine east; thence run southerly along the east line of the northwest quarter of said section three to the southeast corner of the northwest quarter of said section three; thence run westerly along the south line of the northwest quarter of said section three to the southwest corner of the northwest quarter of said section three; thence run westerly to a point on the northerly bank of Manatee Creek at the easterly mouth of said Manatee Creek; thence run westerly meandering the northerly bank of Manatee Creek to the intersection thereof with the west right-of-way line of United States Highway No. 1, said right-of-way line being the east boundary of the Everglades National Park and said north bank of Manatee Creek being the southerly line of the mainland of the State of Florida and the existing boundary line between Dade County and Monroe County; thence along the mainland to the range line between ranges thirty-four and thirty-five east, thence due north on said range line to place of beginning. However, the boundary lines of Dade County shall not include the following: Begin at the northwest corner of section thirty-five, township fifty-one south, range forty-two east, Dade County, Florida; thence, southerly following the west line of section thirty-five, township fifty-one south, range forty-two east to the intersection with a line which is two hundred and thirty feet south of and parallel to the north line of section thirty-five, township fifty-one south, range forty-two east; thence, easterly following the line which is two hundred and thirty feet

south of and parallel to the north line of section thirty-five, township fifty-one south, range forty-two east, to the intersection with the west boundary line of the Town of Golden Beach; thence, northerly following the west boundary line of the Town of Golden Beach to the intersection with the north line of section thirty-five, township fifty-one south, range forty-two east; thence, westerly following the north line of section thirty-five, township fifty-one south, range forty-two east to the point of beginning.

History.—Feb. 4, 1836; s. 1, ch. 1998, 1874; RS 53; GS 51; s. 1, ch. 5970, 1909; s. 1, ch. 6934, 1915; RGS 58; CGL 64; s. 1, ch. 61-16; s. 2, ch. 78-119.

7.14 DeSoto County.—The boundary lines of DeSoto County are as follows: Beginning at the southeast corner of township thirty-nine south, range twenty-seven east; thence west on the township line dividing townships thirty-nine south and forty south to the southwest corner of township thirty-nine south, range twenty-three east; thence north on the range line dividing ranges twenty-two east and twenty-three east to the northwest corner of section nineteen, township thirty-six south, range twenty-three east; thence east on the section lines to the northeast corner of section twenty-four, township thirty-six south, range twenty-seven east; thence south on the range line dividing ranges twenty-seven east and twenty-eight east to the southeast corner of township thirty-nine south, range twenty-seven east, the same being the place of beginning.

History.—s. 3, ch. 3770, 1887; RS 52; GS 50; RGS 57; s. 1, ch. 8513, 1921; CGL 63.

7.15 Dixie County.—The boundary lines of Dixie County are as follows: Beginning at a point where township line between townships seven and eight south, intersects the Suwannee River, thence southerly down the thread of the main stream of said Suwannee River to the Gulf of Mexico; thence along said Gulf of Mexico, including the waters of said gulf within the jurisdiction of the State of Florida, to the mouth of the Steinhatchee River; thence northerly along the thread of the said Steinhatchee River to the point where it is intersected by the section line between sections fifteen and sixteen, in township eight, south of range ten east; thence north on said section line and other sections to the township line between townships seven and eight south; thence east on said township line dividing townships seven and eight south, to the point of beginning.

History.—s. 1, ch. 8514, 1921; CGL 69.

7.16 Duval County.—The boundary lines of Duval County are as follows: Beginning at the mouth of the Nassau River; thence up the thread of the main stream of said river to the run of Thomas Swamp; thence up the run of said swamp to where same would intersect the prolongation of a line drawn from the southwest corner of township one north, of range twenty-five east, to the southwest corner of township two south, of range twenty-three east; thence on said last mentioned line in a southwesterly direction to where its extension would intersect the range line dividing ranges twenty-two and twenty-three east; thence south on said range line, concurrent with the Baker County line, to the dividing line between townships three and four south; thence east on said township line, concurrent with the north boundary of Clay County, to its intersection with the easterly limited access right-of-way line of U.S. 17, said point being located south 88°33'33" west 2.37 feet of the southwest corner of Lot 12, Block 11 of Island View Subdivision, according to the plat thereof recorded in Plat Book 6, page 10, Public Records of Duval County, Florida; thence, along the limited access boundary of State Road 9-A, north 08°45'26" east 119.74 feet; thence north 38°21'40" east 165.23 feet; thence north 49°31'32" east 101.97 feet, thence north 64°29'41" east 145.12 feet; thence north 83°23'50" east 290.48 feet to the beginning of a curve concave to the south and having a radius of 22,768.31 feet; thence, from a tangent bearing of south 89°51'51" east, run easterly 1,466.89 feet along said curve through a central angle of 03°41'29" to the end of said curve; thence south 86°10'22" east 891.45 feet; thence south 86°49'27" east 228.51 feet; thence north 87°54'15" east 816.30 feet, thence south 86°49'27" east, to the west margin of the main channel of the St. Johns River; thence southerly along the west margin of the main channel of said river, concurrent with the east boundary of Clay County, to a point where a line drawn due west from the mouth of Julington Creek would intersect said western margin of the main channel of the St. Johns River; thence, concurrent with the north boundary of St. Johns County, due east to the mouth of Julington Creek; thence along the thread of said Julington Creek to the south bank of Durbin Creek; thence eastwardly along the south bank of said Durbin Creek to a point where the range line dividing ranges twenty-seven and twenty-eight east intersects said south bank; thence south on said range line to the southwest corner of township four south, range twenty-eight east; thence east on the township line dividing townships four and five south to the southeast corner of township four south, range twenty-eight east; thence north on twenty-nine east to a point where an extension of the section line between sections eight and seventeen and sections nine and sixteen, township three south, range twenty-nine east, would intersect said section line; thence east on said section line to the Atlantic Ocean; thence northward along the Atlantic coast, including the waters of said ocean within the jurisdiction of the State of Florida, to the point of beginning.

History.—Aug. 12, 1822; s. 7, Dec. 29, 1824; s. 5, Nov. 23, 1828; ss. 1, chs. 920, 1039, 1859; s. 1, ch. 1185, 1861; s. 1, ch. 2068, 1875; RS 33; GS 31; RGS 33; CGL 35; s. 2, ch. 76-17.

7.17 Escambia County.—The County of Escambia comprehends all that part of the State of Florida lying to the west and south of a line beginning at the Alabama line where said line crosses the Escambia River; running thence down the thread of said river to Escambia Bay; thence along said bay to Deer Point, at the intersection of Santa Rosa Sound with said bay; thence up said Santa Rosa Sound to a line parallel to and exactly three miles west of the range line dividing ranges twenty-five and twenty-six west, thence south along such parallel line to the waters of the Gulf of Mexico; excluding only that area of Santa Rosa Island and Santa Rosa Sound comprising right-of-way of a bridge from the mainland of Santa Rosa County near Navarre to Santa

Rosa Island said right-of-way being two hundred feet wide plus such additional width as may be required for fills and other construction, and a road right-of-way on Santa Rosa Island one hundred twenty feet wide, running from the west line of section twenty-seven in township two south, range twenty-six west, westerly to the west line of section thirty-six in township two south, range twenty-seven west on said island; providing that Escambia County shall have jurisdiction of offenses committed on the waters of the Gulf of Mexico adjacent to the shores of Santa Rosa Island which lie west of the parallel line three miles west of the range line between ranges twenty-five and twenty-six west; and the Counties of Escambia and Santa Rosa shall have concurrent jurisdiction over the waters of Santa Rosa Sound and the area on Santa Rosa Island comprising the right-of-way of the bridge and road heretofore described.

History.—July 21, 1821; Nov. 23, 1828; Feb. 18, 1842; RS 11; GS 9; RGS 9; CGL 11; s. 1, ch. 23867, 1947; s. 1, ch. 57-834.

7.18 Flagler County.—The boundary lines of Flagler County are as follows: Beginning on the township line between townships nine and ten south at a point directly north of Summer Haven; thence southwesterly to the mouth of Pellicer's Creek; thence westerly along the middle of Pellicer's Creek to a point where said creek intersects the range line between ranges twenty-nine and thirty east; thence south on said range line to the southeast corner of section thirteen, township ten south, range twenty-nine east; thence west on the south boundary of said section thirteen and other sections to the range line between ranges twenty-seven and twenty-eight east; thence south on said range line to the township line between townships eleven and twelve south; thence south and easterly through the middle of Crescent Lake crossing Bear Island on a line easterly of and parallel to the west line of section nineteen, township twelve south, range twenty-eight east, said line being ten thousand two hundred eighty feet easterly, measured at right angles from said west line of section nineteen, which line crosses approximately in the center of Bear Island, then continuing south and easterly through the middle of said lake to the mouth of Haw Creek; thence due east to a point where said creek is intersected by the range line between ranges twenty-eight and twenty-nine east; thence south on said range line to the southwest corner of section nineteen, township fourteen south, range twenty-nine east; thence east on the south line of said section nineteen and other sections to the southeast corner of section twenty-two, township fourteen south, range thirty-one east; thence north on the east line of said section twenty-two and other sections to the township line between townships twelve and thirteen south; thence east on said township line to a point where same is intersected by the King's Road; thence northerly along said King's Road to a point where the line dividing the Bulow and Ormond Grants intersects said road; thence along the said line between the said two grants in a northeasterly direction across Bulow Creek; thence following a continuance of this line, being the line dividing the lots seven and eight of the subdivision of the Bulow Grant, to the intersection with the Haulover or Smith Creek; thence along said Haulover or Smith Creek to the intersection of the line running east between sections thirty and thirty-one, and twenty-nine and thirty-two, township twelve south, range thirty-two east; thence along said line to the Atlantic Coast; thence northerly along the shore of the Atlantic Ocean, including the waters of said ocean within the jurisdiction of the State of Florida, to the point of beginning.

History.—s. 1, ch. 7399, 1917; RGS 36; CGL 38; s. 1, ch. 59-488.

7.19 Franklin County.—The boundary lines of Franklin County are as follows: Beginning at a point on the Apalachicola River, known as the mouth of Black or Owl Creek; thence northerly up the western bank of said creek to where the same intersects the middle section line of section twenty-six, township five south, range eight west; thence due east on the middle section line to the eastern bank of the Ochlockonee River; thence south and easterly following the eastern bank of said river, including the islands in said river; to a point directly north of the easternmost point of James Island; thence easterly to the boundary line of the State of Florida; thence south and westerly along said boundary line, including the waters of the Gulf of Mexico within the jurisdiction of the State of Florida, to the Forbes line, produced southerly; thence following the Forbes line to the Jackson River; thence follow the Jackson River until it joins the Apalachicola River; thence northerly along the Apalachicola River to the mouth of the Brothers River; thence follow the Brothers River until it intersects the stream known as Brickyard Cutoff; thence follow Brickyard Cutoff to the Apalachicola River; thence northerly along the thread of said river to the place of beginning.

History.—Feb. 8, 1832; s. 1, ch. 412, 1851; ch. 3624, 1885; RS 18; GS 16; RGS 18; CGL 20; s. 1, ch. 72-119.

7.20 Gadsden County.—The boundary lines of Gadsden County are as follows: Beginning at a point in the thread of the Apalachicola River where said river is intersected by the boundary line between the States of Georgia and Florida; thence east on said boundary line to the thread of the Ochlockonee River; thence southerly along the thread of the said Ochlockonee River to a point where the north boundary line of section sixteen, township one south, range four west, intersects said thread of said river; thence due west to the western bank of said river; thence southerly along the western bank of said river to a point where same is intersected by the north line of section twenty, township one south, range four west; thence west to the northwest corner of section nineteen, township one south, range four west; thence north to the southeast corner of section one, township one south, range five west; thence west to the southwest corner of section two, township one south, range five west; thence north to the southeast corner of section twenty-two, township one north, range five west; thence west to the range line between ranges five and six west; thence north on said range line to the southeast corner of township two north, range six west; thence west to the southwest corner of section thirty-five, township two north, range six west; thence north to the northwest corner of said section thirty-five; thence west to the range line between ranges six and seven west; thence north, to

the northwest corner of township two north, range six west; thence west to the thread of the Apalachicola River; thence north, following the thread of said river, to the place of beginning.

History.—June 24, 1823; s. 4, Dec. 29, 1824; s. 6, Nov. 23, 1828; s. 1, ch. 1046, 1859; RS 19; GS 17; s. 1, ch. 5966, 1909; RGS 19; CGL 21; s. 1, ch. 16436, 1933.

7.21 Gilchrist County.—The boundary lines of Gilchrist County are as follows: Beginning at a point where the range line between ranges sixteen and seventeen east, is intersected by the township line between townships ten and eleven south; thence west on the township line dividing townships ten and eleven south, to the range line dividing ranges fifteen and sixteen east; thence north on said range line to the northeast corner of section thirty-six, township ten south, range fifteen east; thence west to the northwest corner of said section thirty-six; thence north on the section line between sections twenty-five and twenty-six, township ten south, range fifteen east, one half mile, to the northeast corner of the southwest quarter of said section twenty-five; thence due west through the center of section twenty-six and other sections in township ten south, range fifteen east, to the range line dividing ranges fourteen and fifteen east; thence north on said range line one half mile to the northeast corner of section twenty-five, in township ten south, range fourteen east; thence due west on the north boundary line of said section twenty-five and other sections to the thread of the Suwannee River; thence northerly up the thread of the Suwannee River to the thread of the Santa Fe River; thence north and easterly up the thread of the said Santa Fe River to a point where the same is intersected by the range line dividing ranges sixteen and seventeen east; thence south on said range line to the place of beginning.

History.—s. 1, ch. 11371, 1925; CGL 78.

7.22 Glades County.—The boundary lines of Glades County are as follows: Beginning at the northwest corner of township forty south, range twenty-eight east; thence east on township line dividing townships thirty-nine and forty south to the southeast corner of township thirty-nine south, range thirty east; thence north on range line dividing ranges thirty and thirty-one east, to the northwest corner of township thirty-nine south, range thirty-one east; thence east on township line dividing townships thirty-eight and thirty-nine south, to the northeast corner of township thirty-nine south, range thirty-one east; thence north on range line dividing ranges thirty-one and thirty-two east, to the northwest corner of township thirty-eight south, range thirty-two east; thence east on township line dividing townships thirty-seven and thirty-eight south, to the intersection of the same with the Kissimmee River, and the western boundary of Okeechobee County; thence southerly along the thread of the Kissimmee River and the western boundary of Okeechobee County, to the mouth of said Kissimmee River; thence in a southerly direction in a straight course to the southeast corner of section twenty-five, being the northeast corner of section thirty-six, township forty south, range thirty-four east; thence southwesterly in a straight course to a point two miles east of the range line between ranges thirty-three and thirty-four east, on the line between townships forty-two and forty-three south; thence west on the township line dividing townships forty-two and forty-three south, to the southwest corner of section thirty-three, township forty-two south, range twenty-nine east; thence north on the section line to the northwest corner of said section thirty-three; thence west to the northwest corner of the northeast quarter of section thirty-one, township forty-two south, range twenty-nine east; thence south on the half section line to the township line dividing townships forty-two and forty-three south; thence west on said township line dividing townships forty-two and forty-three south to the southwest corner of township forty-two south, range twenty-eight east; thence north on the range line dividing ranges twenty-seven and twenty-eight east, concurrent with the eastern boundary of Charlotte County, to the place of beginning.

History.—s. 3, ch. 3770, 1887; s. 1, ch. 8513, 1921; s. 1, ch. 10596, 1925; CGL 61; s. 1, ch. 18568, 1937; s. 1, ch. 63-200.

7.221 Glades County, extension of boundary.—

(1) The existing boundaries of Glades County, Florida, be, and the same are enlarged and extended so as to comprise and include the following described additional territory now described as follows:

All that portion of the S½ of section 32, township 39 south, range 30 east lying east of Federal Highway No. 19 in Highlands County, Florida.

(2) Said territory herein and hereby added to Glades County, Florida, shall, after June 13, 1949, be as much a portion of said Glades County, as if originally incorporated therein.

History.—s. 1, ch. 25612, 1949.

7.23 Gulf County.—The boundary lines of Gulf County are as follows: Beginning at a point in the Apalachicola River where said river is intersected by the section line between sections twenty-three and twenty-six, township three south, range nine west; thence west on said section line and other section lines across the remainder of ranges nine west and ranges ten and eleven west to the southwest corner of section nineteen, township three south, range eleven west, at the Bay County line; thence south on the range line between ranges eleven and twelve west, concurrent with the eastern boundary of Bay County, to the Gulf of Mexico; thence south and easterly through said gulf, including the waters of the Gulf of Mexico within the jurisdiction of the State of Florida, to a point where the Forbes line would intersect said boundary line; thence northeasterly with said line until same crosses the waters of the Apalachicola River; thence northerly up the thread of said river to the place of beginning.

History.—s. 1, ch. 10132, 1925; CGL 75.

7.24 Hamilton County.—The boundary lines of Hamilton County are as follows: Beginning in the thread of the Withlacoochee River where the boundary line between the States of Georgia and Florida intersects said river; thence southerly along the thread of said river to where it joins the thread of the Suwannee River; thence east and northerly following the thread of said Suwannee River where same

is intersected by the boundary line between the States of Georgia and Florida; thence west along said boundary line to the place of beginning.

History.—Dec. 26, 1827; s. 12, Nov. 23, 1828; RS 27; GS 25; RGS 27; CGL 29.

7.25 Hardee County.—The boundary lines of Hardee County are as follows: Beginning at the northeast corner of township thirty-three south, range twenty-seven east; thence south on range line dividing ranges twenty-seven and twenty-eight east, to the southeast corner of section thirteen, township thirty-six south, range twenty-seven east; thence west following the section line to the southwest corner of section eighteen, township thirty-six south, range twenty-three east; thence north on range line dividing ranges twenty-two and twenty-three east to the northwest corner of township thirty-three south, range twenty-three east; thence east on township line dividing townships thirty-two and thirty-three east, to the place of beginning.

History.—s. 3, ch. 3770, 1887; s. 1, ch. 8513, 1921; CGL 59.

7.26 Hendry County.—The boundary lines of Hendry County are as follows: Beginning where the north line of township forty-three south, intersects the range line between ranges twenty-seven and twenty-eight east, at the line between Charlotte and Glades Counties; thence south on said range line to the north line of township forty-six south; thence east on the north line of township forty-six south, to the east line of range thirty east; thence south on said east line of range thirty east, to the north line of township forty-nine south; thence east on said north line of township forty-nine south, to the east line of range thirty-four east, and the west boundary of Broward County; thence north on said east line of range thirty-four east, concurrent with the west boundary of Broward and Palm Beach Counties, to where said east line intersects the south shore of Lake Okeechobee; thence due north on said east line of range thirty-four east, to the northeast corner of section thirty-six, township forty south, range thirty-four east; thence southwesterly in a straight course to a point two miles east of the range line between ranges thirty-three and thirty-four east, on the line between townships forty-two and forty-three south; thence west on the north line of township forty-three south, to the southwest corner of section thirty-three, township forty-two south, range twenty-nine east; thence north on the west line of said section thirty-three to the northwest corner of said section thirty-three; thence west on the north boundary line of sections thirty-two and thirty-one of township forty-two south, range twenty-nine east, to the northwest corner of the northeast quarter of section thirty-one in said township and range; thence south on the middle section line of said section thirty-one to the north line of township forty-three south; thence west on said township line to the place of beginning.

The existing boundaries of Hendry County are hereby enlarged and extended so as to comprise and include the following described additional territory: Begin on the County Line between Hendry and Glades County, on the South line of Section 36, Township 42 South, Range 29 East, at a point 2572.81 feet Westerly of the Southeast corner of said Section 36, thence from a tangent bearing of north 73°20'59" East run Northeasterly along a curve concaved to the Southeast having a radius of 1196.28 feet through a central angle of 16°37'14" for a distance of 347.02 feet to the end of curve; thence North 89°58'13" East 2230.64 feet to East line of Section 36, Township 42 South, Range 29 East; thence North 89°58'13" East 2563.80 feet; thence North 89°55'43" East 1170.63 feet; thence North 89°57'23" East 3029.37 feet; thence North 89°54'53" East 3900.00 feet; thence North 89°56'53" East 4114.17 feet; thence North 89°55'53" East 2612.89 feet; thence North 89°54'08" East 6272.94 feet; thence North 89°52'53" East 3411.00 feet; thence South 89°45'26" East 2789.00 feet; thence South 89°47'46" East 700.00 feet; thence South 89°45'26" East 1300.00 feet; thence South 89°53'26" East 95.20 feet to the East line of Section 36, Township 42 South, Range 30 East, at a point 5259.75 feet South of the Northeast corner of said Section 36; thence continue South 89°53'26" East 3340.50 feet; thence South 89°56'11" East 4664.30 feet; thence South 89°57'11" East 1500.00 feet; thence South 89°59'31" East 2000.00 feet; thence South 89°57'11" East 1064.05 feet; thence South 89°58'11" East 2493.95 feet; thence North 89°53'49" East 4142.00 feet; thence North 89°55'09" East 2234.94 feet to the East line of Section 34, Township 42 South, Range 31 East, at a point 5229.50 feet South of the Northeast corner of said Section 34; thence continue North 89°55'09" East 5.38 feet; thence South 89°43'31" East 3859.68 feet; thence South 89°41'51" East 1390.84 feet to the West line of Section 36, Township 42 South, Range 31 East, at a point 5251.30 feet South of the Northwest corner of said Section 36; thence continue South 89°41'51" East 5083.59 feet to beginning of curve concaved to the Southwest having a radius of 1196.28 feet and a central angle of 18°05'19"; thence Southeasterly along said curve a distance of 377.67 feet to its intersection with the South line of Section 36, Township 42 South, Range 31 East on the County Line between Glades and Hendry Counties.

Such deletion from Glades County and addition to Hendry County shall not affect the computation of taxes on or from gasoline made pursuant to law.

History.—s. 1, ch. 9360, 1923; s. 1, ch. 10090, 1925; CGL 72, 73; s. 1, ch. 18568, 1937; s. 7, ch. 22858, 1945; s. 2, ch. 63-200; ss. 1, 2, ch. 63-391.

7.27 Hernando County.—The boundary lines of Hernando County are as follows: Beginning at a point on the Withlacoochee River where the same is intersected by the section line dividing sections twelve and thirteen, township twenty-one south, range twenty east; thence southeasterly along the thread of said river to the juncture therewith of the Little Withlacoochee River; thence southeasterly along the thread of said Little Withlacoochee River to the head of same; thence east to the range line between ranges twenty-two and twenty-three east; thence south on said range line to the line dividing sections twenty-four and thirteen, township twenty-three south, range twenty-two east; thence west on said section line and other section lines to the line between ranges twenty and twenty-one east; thence south on said range line to the line dividing townships twenty-three and twenty-four south; thence west on said township line to the Gulf of Mexico;

thence northerly, including the waters of said gulf within the jurisdiction of the State of Florida, to the township line dividing townships twenty and twenty-one south; thence east, concurrent with the south boundary line of Citrus County, on said township line to where same is intersected by the section line dividing sections four and five, township twenty-one south, range nineteen east; thence south on said section line and other section lines to the southwest corner of section nine, township twenty-one south, range nineteen east; thence east on the south line of said section nine and other sections to the place of beginning.

History.—s. 1, ch. 107, 1847; ch. 415, 1850; ss. 1, 8, ch. 3772, 1887; RS 45; GS 43; RGS 47; CGL 49.

7.28 Highlands County.—The boundary lines of Highlands County are as follows: Beginning at the northwest corner of township thirty-three south, range twenty-eight east; thence east on township line dividing townships thirty-two and thirty-three south, to the intersection of same with the Kissimmee River; thence southerly along the thread of said river and bordering Okeechobee County, to the intersection of the township line dividing townships thirty-seven and thirty-eight south with said river and boundary; thence west on said township line to the southwest corner of township thirty-seven south, range thirty-two east; thence south on range line dividing ranges thirty-one and thirty-two east to the southwest corner of township thirty-eight south, range thirty-two east; thence west on the township line dividing townships thirty-eight and thirty-nine south to the northwest corner of township thirty-nine south, range thirty-one east; thence south, on the range line dividing ranges thirty and thirty-one east, to the southwest corner of township thirty-nine south, range thirty-one east; thence west on the township line dividing townships thirty-nine and forty south, to the northwest corner of township forty south, range twenty-eight east; thence north on the range line dividing ranges twenty-seven and twenty-eight east to the place of beginning.

History.—s. 3, ch. 3770, 1887; s. 1, ch. 8513, 1921; CGL 60.

cf.—s. 7.221 Certain territory formerly included in Highlands County now included in boundaries of Glades County.

7.29 Hillsborough County.—The boundary lines of Hillsborough County are as follows: Beginning at the northeast corner of section one in township twenty-seven south, range sixteen east; thence east on the north line of township twenty-seven south to the line between ranges twenty-two and twenty-three east; thence south on said range line to the line between townships thirty-two and thirty-three south; thence west on said township line to the south bank of Tampa bay; thence in a direct line to a point midway between Egmont and Passage Keys in the Gulf of Mexico; thence westerly to the boundary of the State of Florida; thence northerly on the boundary of the State of Florida to a point in the Gulf of Mexico due west of the northern shore of Mullet Key; thence due east to a point one hundred yards due west of the northernmost shore of Mullet Key; thence in a line one hundred yards from the shore line around the southern portion of Mullet Key to a point one hundred yards due east of the easternmost shore of Mullet Key; thence due north to a point due east of the northernmost shore of Mullet Key; thence due east to the middle waters of Tampa Bay; thence in a northerly direction through the middle waters of Tampa Bay and Old Tampa Bay to a point where the range line between ranges sixteen and seventeen east strikes said shore; thence north on said range line to the place of beginning.

History.—Jan. 25, 1834; s. 2, ch. 107, 1847; s. 2, ch. 1201, 1861; ss. 4, 6, ch. 1998, 1874; RS 47; GS 45; s. 1, ch. 6247, 1911; RGS 49; CGL 51; s. 1, ch. 19058, 1939.

7.30 Holmes County.—The boundary lines of Holmes County are as follows: Beginning on the Alabama state line where it is intersected by the line dividing centrally range eighteen, west: thence south on the section lines to the line dividing townships two and three, north, in range eighteen, west; thence east on said township line to the thread of the Choctawhatchee River; thence up the thread of said river to a point where said river is intersected by the township line between townships four and five north; thence east on said township line to the northwest corner of section four, township four north, range fifteen west; thence south one mile on section line to the southwest corner of section four, township four north, range fifteen west; thence east one mile to the southeast corner of section four, township four north, range fifteen west; thence south on section lines two miles to the southwest corner of section fifteen, township four north, range fifteen west; thence east on section lines to the thread of Holmes Creek; thence northward up the thread of Holmes Creek to a point where said creek crosses the Alabama line; thence west on said state line to the place of beginning.

History.—s. 1, ch. 176, 1848; RS 14; GS 12; s. 2, ch. 6935, 1915; RGS 13; CGL 15.

7.31 Indian River County.—The boundary lines of Indian River County are as follows: Beginning at the northwest corner of township thirty-one south, of range thirty-five east; thence east on the line dividing the townships thirty and thirty-one south, to the point where said line intersects the medial line of the south fork of the St. Sebastian River; thence northerly down the thread of said stream to the main stream of the St. Sebastian River; thence down the thread of the St. Sebastian River to its confluence with the Indian River; thence east to the intersection with the southwesterly extension of the centerline of the approach channel to the Sebastian Inlet from the Indian River; thence northeasterly along said centerline and continue northeasterly and easterly along the centerline of the Sebastian Inlet to the Atlantic Ocean; thence southward along the Atlantic coast, including the waters of the Atlantic Ocean within the jurisdiction of the State of Florida to the township line between townships thirty-three and thirty-four south; thence west on said township line to range line dividing ranges thirty-five and thirty-six east; thence north between ranges thirty-five and thirty-six east to the northeast corner of section one, township thirty-three south, range thirty-five east; thence west on township line dividing townships thirty-two and thirty-three south, range thirty-five east to the range line dividing ranges thirty-four and thirty-five east; thence north on said range line to the northwest corner of township

thirty-one south, range thirty-five east, being the place of beginning.

History.—s. 1, ch. 10148, 1925; CGL 76; s. 2, ch. 59-486.

7.32 Jackson County.—The boundary lines of Jackson County are as follows: Beginning at the point where the state line between the State of Florida and the State of Alabama crosses Holmes Creek; thence southerly down the thread of said creek to the section line in the middle of township five north, range fourteen west; thence east on the section line to the northeast corner of section twenty-four, township five north, range thirteen west; thence south on range line between ranges twelve and thirteen west, to the township line between townships four and five north; thence east on said township line to the middle of range twelve west; thence south on the middle of said range to the middle of township two north, range twelve west; thence east on the middle of township two north, to the thread of the Chipola River; thence northerly up the thread of the Chipola River to the northern boundary line of said township two; thence east on the northern boundary line of township two north, to the thread of the Apalachicola River; thence northward up the thread of said river and the Chattahoochee River to the Alabama line; and thence westward along said state line to the place of beginning.

History.—Aug. 12, 1822; Dec. 29, 1824; s. 1, ch. 1954, 1873; s. 1, ch. 2061, 1875; RS 16; s. 1, ch. 4296, 1893; s. 1, ch. 4576, 1897; GS 14; s. 1, ch. 6935, 1915; RGS 16; CGL 18.

7.33 Jefferson County.—The boundary lines of Jefferson County are as follows: Beginning at the point on the Gulf of Mexico where the line between ranges two and three east strikes said gulf; thence north on said line to the base parallel line; thence in a direction northeast to the point where the sections twenty-one, and twenty-eight and twenty-nine of township one north, range three east, corner; thence north on the section line dividing sections twenty and twenty-one and other sections of township one north, range three east, to township line dividing townships one and two north, range three east; thence east on said township line to the waters of the Miccosukee; thence up Lake Miccosukee to the south boundary of township three north, range three east; thence on said township line to the east line of section thirty-four in said township three north, range three east; thence north on the east line of section thirty-four and other sections in said township and said range to the boundary line between the States of Georgia and Florida; thence east along said boundary line to the northwest corner of lot number one hundred eighty, township three north, range seven east, or the west boundary of Madison County; thence south to the southwest corner of said lot number one hundred eighty; thence east on the south boundary of said lot number one hundred eighty to the northeast corner of section twenty-seven, township three north, range seven east; thence due south to the southeast corner of section ten, township two north, range seven east; thence due west to the southwest corner of the said section ten; thence due south to the southeast corner of section sixteen, township two north, range seven east; thence due west to the southwest corner of said section sixteen; thence due south to the southeast corner of section twenty, township two north, range seven east; thence due west to the southwest corner of section nineteen, township two north, range seven east; thence due south to the southeast corner of section twenty-five, township two north, range six east; thence due west to the southwest corner of section twenty-six, township two north, range six east; thence due south to the southwest corner of section thirty-five, township two north, range six east; thence due west to the thread of the Big Aucilla River; thence southerly along the thread of said river, concurrent with the west boundary of Madison and Taylor Counties, to the mouth of said Big Aucilla River; thence westerly through the waters of the Gulf of Mexico, including the waters of said gulf within the jurisdiction of the State of Florida, to the point of beginning.

History.—Jan. 20, 1827; Nov. 23, 1828; s. 1, ch. 3176, 1879; s. 1, ch. 3304, 1881; RS 23; GS 21; RGS 23; CGL 25.

7.34 Lafayette County.—The boundary lines of Lafayette County are as follows: Beginning at a point where township line between townships seven and eight south intersects and crosses the Suwannee River; thence west on said township line to the southeast corner of section thirty-one, township seven south, range ten east; thence north on the east line of said section thirty-one and other sections to the southeast corner of the northeast quarter of section seven, township seven south, range ten east; thence due west to the range line dividing ranges nine and ten east; thence north on said range line to the northwest corner of township three south, range ten east; thence east on the township line dividing townships two and three south, to where same intersects the Suwannee River; thence southerly following the thread of said river to the place of beginning.

History.—s. 2, ch. 806, 1856; ch. 3766, 1887; RS 26; GS 24; s. 1, ch. 6246, 1911; RGS 26; s. 1, ch. 8514, 1921; CGL 28.

7.35 Lake County.—The boundary lines of Lake County are as follows: Beginning at the intersection of the range line dividing ranges twenty-three and twenty-four east with the township line dividing townships twenty-four and twenty-five south; thence east on said township line to the range line dividing ranges twenty-four and twenty-five east; thence north on said range line to the section line dividing sections thirty and thirty-one, in township twenty-four south, range twenty-five east; thence east on the north line of sections thirty-one, thirty-two, thirty-three and thirty-four in said township twenty-four south, range twenty-five east, to the northeast corner of said section thirty-four; thence south on the east line of said section thirty-four to the township line dividing townships twenty-four and twenty-five south; thence east on said township line to the range line dividing ranges twenty-six and twenty-seven east; thence north to the south shore of Lake Apopka; thence north across the waters of Lake Apopka, taking in all islands and peninsulas along the west shore of said lake to the north shore of Lake Apopka where it is intersected by the range line dividing ranges twenty-six and twenty-seven east; thence north on said range line to the township line dividing townships nineteen and twenty south; thence east on

said township line to the Wekiva River; thence north along the thread of the said Wekiva River to the St. Johns River; thence in a northerly and northwesterly direction through the thread of the St. Johns River to the southwest shore of Lake George; thence north along the west shore of Lake George to the range line dividing ranges twenty-six and twenty-seven east; thence south on said range line to the township line dividing townships seventeen and eighteen south; thence west on the said township line to the range line dividing ranges twenty-three and twenty-four east; thence south on the said range line to the place of beginning; and all of township twenty south, of range twenty-seven east, bounded on the south and east by the waters of Lake Beauclaire, shall be and are declared to be a part of the territory of Lake County.

History.—s. 1, ch. 3771, 1887; ch. 3944, 1889; ch. 4066, 1891; RS 42; GS 40; RGS 44; CGL 46.

7.36 Lee County.—The boundary lines of Lee County are as follows: Beginning where the north line of township forty-three south, intersects the range line between ranges twenty-seven and twenty-eight east, at the line between Charlotte and Glades Counties; thence west on said township line to the Gulf of Mexico; thence southerly along said gulf, including all islands and the waters of said gulf within the jurisdiction of the State of Florida, to the north line of township forty-eight south, extended westward; thence east on said township line to the northwest corner of section four, township forty-eight south, range twenty-five east; thence south to the northwest corner of section nine of said township and range; thence east on the north boundary of said section nine and other sections to the eastern boundary of range twenty-six east; thence north on said range line to the northwest corner of township forty-seven south, range twenty-seven east; thence east on the north line of township forty-seven south, to the east line of range twenty-seven east; thence north on said range line to the place of beginning.

History.—ss. 1, 5, ch. 1998, 1874; s. 1, ch. 3769, ss. 2, 3, ch. 3770, 1887; RS 54; GS 52; RGS 61; ss. 1, chs. 9360, 9362, 1923; CGL 67.

7.37 Leon County.—The boundary lines of Leon County are as follows: Beginning at a point where the range line between ranges two and three east leaves the Wakulla line at the northeast corner of Wakulla County, and the southeast corner of section twenty-five, township two south, range two east; thence north on said range line to the base parallel; thence in a direction northeast to the point where sections twenty-one, twenty-eight and twenty-nine of township one north, range three east, corner; thence north to where the township line between townships one and two north of range three east, is intersected; thence east on said line to the waters of the Miccosukee; thence up Lake Miccosukee to the south boundary line of township three north, range three east; thence on said township line to the line of section thirty-four in said township three; thence due north on the east line of section thirty-four and other sections in said township to the Georgia line; thence west along the Georgia line to where same intersects the thread of the stream of the Ochlockonee River; thence, concurrent with the east boundary line of Gadsden County, southerly along the thread of the stream of the said Ochlockonee River to where the north boundary line of section sixteen in township one south, range four west, intersects said thread of the stream of said Ochlockonee River; thence west to the west bank of said Ochlockonee River; thence southerly along the west bank of the Ochlockonee River to a point where same is intersected by the north line of section twenty, township one south, range four west; thence, concurrent with the east boundary line of Liberty County, southerly along the west bank of said Ochlockonee River to a point where same is intersected by the middle township line of township two south; thence east, concurrent with the north boundary line of Wakulla County, on said middle township line across ranges five, four, three, two, one, west and range one east, to the railroad leading from Tallahassee to St. Marks; thence south along said railroad two sections to the south boundary of section twenty-eight, township two south, range one east; thence east on said south boundary and the south boundary of other sections across ranges one and two east, to the place of beginning.

History.—s. 5, Dec. 29, 1824; Feb. 13, 1831; s. 1, ch. 3176, 1879; s. 1, ch. 3304, 1881; RS 21; GS 19; RGS 21; CGL 23; s. 1, ch. 16436, 1933.

7.38 Levy County.—The boundary lines of Levy County are as follows: Beginning at the mouth of the most southern outlet of the Big Withlacoochee River, running in an eastwardly direction, including all the islands in the mouth of said river, up the northern bank of said river to where the range line dividing ranges seventeen and eighteen east intersects said river; thence north on said range line to the township line between townships fourteen and fifteen south; thence west on said township line to the middle line of township fourteen south, range nineteen east; thence north on said middle line to the township line between townships eleven and twelve south; thence west on said township line to the range line between ranges seventeen and eighteen east; thence north on said range line to the northeast corner of section thirteen, township eleven south, range seventeen east; thence west on the north line of said section thirteen and other sections to the range line between ranges sixteen and seventeen east; thence north on said range line to the township line between townships ten and eleven south; thence west on said township line to the range line between ranges fifteen and sixteen east; thence north on said range line to the northeast corner of section thirty-six, township ten south, range fifteen east; thence west on the north boundary of said section thirty-six to the northwest corner of said section thirty-six, thence north one half mile to the middle line of section twenty-six, township ten south, range fifteen east; thence west on the middle line of said section twenty-six and other sections to the range line between ranges fourteen and fifteen east; thence north to the northeast corner of section twenty-five, township ten south, range fourteen east; thence west on the north line of said section twenty-five and other sections to the thread of the Suwannee River; thence southerly along the thread of the main stream of said river to its mouth; thence south and easterly along the Gulf of Mexico, including all the islands,

keys, and the waters of said gulf within the jurisdiction of the State of Florida, to the point of beginning.

History.—s. 1, Mar. 10, 1845; s. 1, ch. 106, 1846; s. 1, ch. 3060, 1877; RS 37; GS 35; s. 1, ch. 6243, 1911; s. 1, ch. 6509, 1913; RGS 38; s. 1, ch. 10778, 1925; CGL 40.

7.39 Liberty County.—The boundary lines of Liberty County are as follows: Beginning on the Apalachicola River where the township line dividing townships two and three north intersects said river; thence southerly along the thread of said river to Black or Owl Creek; thence northerly along the western bank of said creek to where same is intersected by the middle section line of section twenty-six, township five south, range eight west; thence due east on the middle section lines to the thread of the Ochlockonee River; thence northwesterly along the thread of said river to a point where the north boundary line of section twenty, township one south, range four west, intersects said river; thence west to the northwest corner of section nineteen, township one south, range four west; thence north to the southeast corner of section one, township one south, range five west; thence west to the southwest corner of section two, township one south, range five west; thence north to the southeast corner of section twenty-two, township one north, range five west; thence west to the range line between ranges five and six west; thence north on said range line to the southeast corner of township two north, range six west; thence west to the southwest corner of section thirty-five, township two north, range six west; thence north to the northwest corner of said section thirty-five; thence west to the range line between ranges six and seven west; thence north to the northwest corner of township two north, range six west; thence west to the place of beginning.

History.—Ch. 771, 1855; s. 1, ch. 949, ss. 1, 2, ch. 1046, 1859; ch. 3624, 1885; RS 20; GS 18; s. 2, ch. 5966, 1909; RGS 20; CGL 22.

7.40 Madison County.—The boundary lines of Madison County are as follows: Beginning at the point where the west boundary line of lot number one hundred forty-three of fifteenth district Georgia fractions intersects with the Georgia state line and run thence due south along the west boundary line of lots numbers one hundred forty-three and one hundred eighty to the southwest corner of lot one hundred eighty; thence easterly along the south line of lot number one hundred eighty to the east line of section twenty-seven, township three north, range seven east; thence due south to the southeast corner of section ten, township two north, range seven east; thence due west to the southwest corner of said section ten; thence due south to the southeast corner of section sixteen, township two north, range seven east; thence due west to the southwest corner of said section sixteen; thence due south to the southeast corner of section twenty, township two north, range seven east; thence due west to the southwest corner of section nineteen, township two north, range seven east; thence due south to the southeast corner of section twenty-five, township two north, range six east; thence due west to the southwest corner of section twenty-six, township two north, range six east; thence due south to the southwest corner of section thirty-five, township two north, range six east; thence due west to the thread of the Big Aucilla river; thence southerly along the thread of said river to the middle line of township two south, range five east, or the north boundary line of Taylor County; thence east, concurrent with the north boundary line of Taylor County, on said middle township line to the range line dividing ranges eight and nine east; thence south on said range line to the township line dividing townships two and three south; thence east on said township line to the range line dividing ranges nine and ten east, or the northwest corner of Lafayette County; thence east, concurrent with the north boundary line of Lafayette County, on said township line to the thread of the Suwannee River; thence north and easterly, concurrent with the west boundary line of Suwannee County, along the thread of said Suwannee River to where it joins the thread of the Withlacoochee River; thence northerly, concurrent with the west boundary line of Hamilton County, along the thread of the said Withlacoochee River to the boundary line between the States of Georgia and Florida; thence west along said boundary line to the place of beginning.

History.—Dec. 26, 1827; s. 11, Nov. 23, 1828; s. 1, Feb. 5, 1844; s. 1, ch. 806, 1856; RS 24; GS 22; RGS 24; s. 1, ch. 9361, 1923; CGL 26.

7.41 Manatee County.—The boundary lines of Manatee County are as follows: Beginning on the south bank of Tampa Bay where the line between townships thirty-two and thirty-three south strikes said bay; thence east on said township line to where same is intersected by the line dividing ranges twenty-two and twenty-three east; thence south on said range line, known as the Washington line, to the southeast corner of township thirty-seven south, range twenty-two east; thence west on the township line between townships thirty-seven and thirty-eight south to the southwest corner of township thirty-seven south, range twenty-one east; thence north on the range line between ranges twenty and twenty-one east to the southeast corner of township thirty-five south, range twenty east; thence west on the township line between townships thirty-five and thirty-six south to the Gulf of Mexico; thence northward along the said gulf, including the waters of said gulf within the jurisdiction of the State of Florida, to a point midway between Egmont and Passage Keys; thence in a direct line to the place of beginning.

History.—Ch. 628, 1855; s. 4, ch. 1998, 1874; s. 1, ch. 3062, 1877; s. 2, ch. 3770, 1887; RS 51; GS 49; RGS 56; s. 1, ch. 8515, 1921; CGL 58.

7.42 Marion County.—The boundary lines of Marion County are as follows: Beginning in the thread of the Withlacoochee River, at the range line dividing ranges seventeen and eighteen east; thence north to the township line dividing townships fourteen and fifteen south; thence east on said township line to the middle of township fourteen south, range nineteen east; thence north to the line dividing townships eleven and twelve south; thence east on said township line to Orange Lake; thence down said lake along its southern margin to Orange Creek; thence northerly and easterly down the thread of said creek to its junction with the Oklawaha River; thence northeasterly down the south side of the Oklawaha River at low water mark to a point on the south side of the Oklawaha River at low water mark, where the range line dividing ranges twenty-four

and twenty-five east in township eleven south, crosses said river; thence south on said range line to where it intersects the township line dividing townships eleven and twelve south; thence east on said township line to where it intersects the section line dividing sections two and three, in township twelve south, of range twenty-five east; thence south on said section line and other section lines to the southwest corner of section twenty-three of said township twelve south, of range twenty-five east; thence east on the section line dividing sections twenty-three and twenty-six and other section lines to the range line dividing ranges twenty-five and twenty-six east; thence south on said range line to the southwest corner of section seven, township thirteen south, range twenty-six east; thence east on the section line dividing sections seven and eighteen, township thirteen south, range twenty-six east, and other section lines to the west shore of Lake George; thence southwardly along the shore of Lake George to the mouth of Sulphur Spring; thence along the western bank of Lake George until it arrives at range line dividing ranges twenty-six and twenty-seven east; thence south on said range line to township line dividing townships seventeen and eighteen south; thence due west on the said township line to the thread of the Withlacoochee River; thence northwesterly down the thread of said last mentioned river to the place of beginning.

History.—s. 1, Mar. 14, 1844; s. 1, ch. 106, 1846; s. 1, ch. 548, 1853; s. 1, ch. 923, 1859; s. 1, ch. 3060, 1877; ch. 3767, 1887; RS 39; GS 37; RGS 40; CGL 42.

7.43 Martin County.—The boundary lines of Martin County are as follows: Beginning at the northwest corner of township thirty-eight south, range thirty-seven east; thence east, concurrent with the south boundary line of St. Lucie County, to the southwest corner of section thirty-one, township thirty-seven south, range forty-one east; thence north on the west line of said section thirty-one and other sections to the northwest corner of section eighteen, township thirty-seven south, range forty-one east; thence east on the north line of said section eighteen and other sections to the waters of the Atlantic Ocean; thence easterly to the eastern boundary of the State of Florida; thence southward along the coast, including the waters of the Atlantic Ocean within the jurisdiction of the State of Florida, to the south line of section twenty, township forty south, range forty-three east, produced easterly; thence west on the south line of said section twenty, and other sections, to the southwest corner of section twenty-two, township forty south, range forty-two east; thence south on the east line of section twenty-eight, township forty south, range forty-two east, to the southeast corner of said section twenty-eight; thence west on the south line of said section twenty-eight and other sections to the east shore of Lake Okeechobee; thence continue west in a straight course to the northeast corner of section thirty-six, township forty south, range thirty-four east, being the southwest corner of section thirty, township forty south, range thirty-five east; thence northeasterly in a straight course to the line of normal water level on the boundary of Lake Okeechobee at its intersection with the line dividing ranges thirty-six and thirty-seven east, township thirty-eight south; thence north on said range line to the place of beginning.

History.—s. 1, ch. 10180, 1925; CGL 77; s. 3, ch. 63-200.

7.44 Monroe County.—So much of the State of Florida as is situated south of the County of Collier and west or south of the County of Dade, constitutes the County of Monroe.

History.—July 3, 1823; ss. 1, 5, ch. 1998, 1874; ch. 8769, 1887; RS 55; GS 53; RGS 62; CGL 68.

7.45 Nassau County.—The boundary lines of Nassau County are as follows: Beginning at the mouth of the Nassau River; thence northwesterly up the thread of the main stream of said river to the run of Thomas Swamp; thence southwesterly up the run of said swamp to where it would intersect the prolongation of a line drawn from the southwest corner of township one north, of range twenty-five east, to the southwest corner of township two south, of range twenty-three east; thence on said last mentioned line in a southwesterly direction to where its extension would intersect the range line dividing ranges twenty-two and twenty-three east and the eastern boundary of Baker County, all concurrent with the north boundary of Duval County; thence north on said range line and said eastern boundary of Baker County to the St. Marys River and the boundary line between the States of Georgia and Florida; thence north and easterly along the said river, concurrent with the said boundary line of the States of Georgia and Florida to the Atlantic Ocean; thence southerly, including the waters of said ocean within the jurisdiction of the State of Florida, to the place of beginning.

History.—s. 8, Dec. 29, 1824; s. 8, Nov. 23, 1828; s. 1, Mar. 15, 1844; s. 3, ch. 895, 1858; ch. 920, 1859; ch. 1185, 1861; RS 32; GS 30; s. 1, ch. 6244, 1911; RGS 32; CGL 34.

7.46 Okaloosa County.—The boundary lines of Okaloosa County are as follows: Beginning on the Alabama state line where same is intersected by range line dividing ranges twenty-five and twenty-six west; thence east on said state line to the intersection of said state line with the range line dividing ranges twenty-one and twenty-two west; thence south on said range line to the Gulf of Mexico; thence in a westerly direction following the meanderings of said gulf, including the waters of said gulf within the jurisdiction of the State of Florida, to the line dividing ranges twenty-five and twenty-six west; thence north on said range line to the place of beginning; provided that the counties of Escambia, Santa Rosa and Okaloosa shall have concurrent jurisdiction of any offenses committed on the waters of Santa Rosa Sound.

History.—s. 1, ch. 6937, 1915; RGS 12; CGL 14; s. 2, ch. 23867, 1947.

7.47 Okeechobee County.—The boundary lines of Okeechobee County are as follows: Beginning at the northeast corner of section one, township thirty-four south, range thirty-six east; thence west six miles to the northwest corner of township thirty-four south, range thirty-six east; thence north to the northeast corner of township thirty-three south, range thirty-five east; thence west on the line divid-

ing townships thirty-two and thirty-three south, to the Kissimmee River; thence in a southerly direction along the thread of the Kissimmee River to the normal water level on the boundary of Lake Okeechobee; thence southerly in a straight course to the southeast corner of section twenty-five, being the northeast corner of section thirty-six, township forty south, range thirty-four east; thence northeasterly in a straight course to the line of normal water level on the boundary of Lake Okeechobee at its intersection with the line dividing ranges thirty-six and thirty-seven east, township thirty-eight south, thence north between ranges thirty-six and thirty-seven east to the point of beginning.

History.—s. 1, ch. 7401, 1917; RGS 55; CGL 57; s. 4, ch. 63-200.

7.48 Orange County.—The boundary lines of Orange County are as follows: Beginning at the intersection of the range line dividing ranges twenty-six and twenty-seven east, with the township line dividing townships twenty-four and twenty-five south; thence north to the waters of Lake Apopka; thence north across the waters of Lake Apopka and along the eastern boundary of Lake County to the north shore of Lake Apopka where it is intersected by the range line dividing ranges twenty-six and twenty-seven; thence north on said range line to the township line dividing townships nineteen and twenty south; thence east on said township line to Wekiva River; thence through the thread of the Wekiva River in a southerly direction to the northwest corner of section thirty-one, township twenty south, range twenty-nine east; thence south on the range line between ranges twenty-eight and twenty-nine east, to the southwest corner of section nineteen, township twenty-one south, range twenty-nine east; thence east to the southeast corner of section twenty, township twenty-one south, range thirty east; thence south to the township line between townships twenty-one and twenty-two south, range thirty east; thence east on said township line to the thread of the St. Johns river; thence southerly down the thread of the said river to the northeast corner of township twenty-five south, range thirty-four east; thence west on said township line to the place of beginning; provided that all of township twenty south, range twenty-seven east, bounded on the south and east by the waters of Lake Beauclaire shall be and are declared to be a part of the territory of Lake County.

History.—s. 4, Nov. 23, 1828; s. 1, Jan. 30, 1845; s. 1, ch. 548, 1853; ch. 1764, 1870; s. 1, ch. 1895, 1872; s. 2, ch. 3177, 1879; ss. 1, chs. 3768, 3771, 1887; ch. 3944, 1889; RS 41; GS 39; s. 1, ch. 6511, 1913; RGS 42; CGL 44; s. 1, ch. 61-483.

7.49 Osceola County.—The boundaries of Osceola County are as follows: Beginning at the northwest corner of township twenty-five south, range twenty-seven east; thence east on said township line to the northeast corner of township twenty-five south, range thirty-four east; thence south on the range line dividing ranges thirty-four and thirty-five east, to the line dividing townships thirty-two and thirty-three south; thence west on said township line to the west bank of Central and South Florida Flood Control District Canal C-38 (Kissimmee River); thence northerly along said west bank to Lake Kissimmee; thence northerly and westerly along the west shore of Lake Kissimmee to the west bank of Central and South Florida Flood Control District Canal C-37; run thence northerly along said west bank of canal to Lake Hatchineha; thence westerly, northerly and easterly along the west and north shore of Lake Hatchineha to the thread of the stream of Dead River; run thence northerly along the thread of the stream of Dead River, and Reedy Creek to the west shore of Lake Cypress; run thence northerly along said west shore of Lake Cypress to the township line dividing townships twenty-seven and twenty-eight south; thence west on said line to the range line dividing ranges twenty-eight and twenty-nine east; thence north along the range line to the southeast corner of section twelve, township twenty-seven south, range twenty-eight east; thence west along section lines to the southwest corner of section nine, township twenty-seven south, range twenty-eight east; thence north along section lines to the southwest corner of section twenty-one, township twenty-six south, range twenty-eight east; thence northwesterly through respective section and quarter section corners to the southeast corner of township twenty-five south, range twenty-seven east; thence west along township line to the point where the dividing line between ranges twenty-six and twenty-seven east intersects the line dividing townships twenty-five and twenty-six south; run thence north on the range line to the point of beginning. The shorelines of Lakes Kissimmee and Hatchineha shall be as physically present unless and until the Board of Trustees of the Internal Improvement Trust Fund shall establish bulkhead lines along the said lake shores; in which event, the said shorelines shall be the said bulkhead lines to the extent they are so established.

History.—s. 2, ch. 1201, 1861; s. 2, ch. 1998, 1874; ch. 3177, 1879; s. 1, ch. 3768, 1887; RS 49; GS 47; s. 1, ch. 7401, 1917; RGS 52; CGL 54; s. 1, ch. 67-592; ss. 27, 35, ch. 69-106.

7.50 Palm Beach County.—The boundary lines of Palm Beach County are as follows: Beginning on the east boundary of Florida at a point where the south boundary of township forty-seven south, of range forty-three east, produced easterly would intersect the same; thence westerly on said township line to its intersection with the axis or center line of the Hillsborough State Drainage Canal as at present located and constructed; thence westerly along the center line of said canal to its intersection with the section line dividing sections twenty-six and thirty-five of township forty-seven south, range forty-one east; thence westerly on the section line dividing said sections twenty-six and thirty-five and other sections to the northwest corner of section thirty-one, of township forty-seven south, range forty-one east; thence south on the range line dividing ranges forty and forty-one, township forty-seven south, to the northeast corner of section twenty-five of township forty-seven south, range forty east, a distance of one hundred six feet more or less; thence due west on the north boundary of the sections numbered from twenty-five to thirty, inclusive, of townships forty-seven south, ranges thirty-seven to forty east, inclusive, as the same have been surveyed or may hereafter be surveyed by the authority of the Board of Trustees of the Internal Improvement Trust Fund, to the northwest corner of section thirty, township

forty-seven south, range thirty-seven east; thence continuing due west to the range line between ranges thirty-four and thirty-five east, and the east boundary of Hendry County; thence north on said range line, concurrent with the east boundary of Hendry County, to the south shore of Lake Okeechobee; thence continuing north on said range line to the northeast corner of section thirty-six, township forty south, range thirty-four east; thence easterly parallel to and one mile north from the township line dividing townships forty and forty-one south to where the south boundary of section twenty-six, township forty south, range thirty-seven east intersects the normal water level on the boundary of Lake Okeechobee; thence east on the south boundary line of said section twenty-six and other sections across ranges thirty-seven, thirty-eight and thirty-nine, forty, forty-one and forty-two east, to the east line of section twenty-eight, township forty south, range forty-two east; thence north on said east section line to the north line of said section twenty-eight; thence east on the section line between sections twenty-two and twenty-seven of township forty south, range forty-two east, and other sections to the waters of the Atlantic Ocean; thence easterly to the eastern boundary of Florida; thence southward along the coast, including the waters of the Atlantic Ocean within the jurisdiction of the State of Florida, to the place of beginning.

History.—s. 1, ch. 5970, 1909; s. 1, ch. 6934, 1915; s. 1, ch. 7401, 1917; RGS 59; ss. 1, chs. 10090, 10180, 10596, 1925; CGL 65, 73; s. 5, ch. 63-200; ss. 27, 35, ch. 69-106.

7.51 Pasco County.—The boundary lines of Pasco County are as follows: Beginning at the intersection of the section line between sections thirty-three and thirty-four of township twenty-six south, of range twenty-two east, with the township line between townships twenty-six and twenty-seven south, of range twenty-two east; thence north along the section lines to the line dividing sections three and four of said township and to the township line dividing townships twenty-five and twenty-six; thence east on said township line to the range line dividing ranges twenty-two and twenty-three east; thence north on said range line to the line dividing sections twenty-four and thirteen of township twenty-three south, of range twenty-two east; thence west to the line dividing ranges twenty and twenty-one east; thence south to the line dividing townships twenty-three and twenty-four south; thence west on said line to the Gulf of Mexico; thence southerly along the gulf coast, including islands and the waters of said gulf within the jurisdiction of the State of Florida, to the north line of Pinellas County, the township line dividing townships twenty-six and twenty-seven south; thence east on said line to the place of beginning.

History.—Ch. 107, 1847; ch. 415, 1850; ch. 3471, 1883; s. 8, ch. 3772, 1887; RS 46; GS 44; RGS 48; CGL 50; s. 1, ch. 25440, 1949.

7.52 Pinellas County.—The boundary lines of Pinellas County are as follows: Beginning at a point where the line dividing townships twenty-six and twenty-seven south if projected in a westerly direction intersects with the western boundary of the jurisdictional waters of the State of Florida in the Gulf of Mexico; thence east on said line to the northeast corner of section one in township twenty-seven south, range sixteen east; thence south to the shore of old Tampa Bay; thence in a southerly direction through the middle waters of old Tampa Bay and Tampa Bay, to a point in Tampa Bay due east of the north shore of Mullet Key; thence due west to a point due north of a point 100 yards due east from the easternmost point of Mullet Key; thence in a line 100 yards from the shoreline around the southern portion of Mullet Key to a point 100 yards west of the northernmost shore of Mullet Key; thence west to a point where such line intersects the western boundary of the jurisdictional waters of the State of Florida in the Gulf of Mexico and northward, including the waters of said gulf within the jurisdiction of the State of Florida, to point of beginning; provided however that nothing herein contained shall now or at any time hereafter in any manner whatsoever repeal, amend, change or disturb in any manner whatsoever the apportionment, allotment, allocation, basis of computation, or other formula wherein and whereby the participation in the gas tax by both counties hereto under and by virtue of ss. 206.41 and 206.47 or any law hereafter enacted, is changed so that Hillsborough County would receive a lesser amount and Pinellas County would receive a greater amount of such gas funds or tax by reason of the change of the boundary line herein authorized.

History.—s. 1, ch. 6247, 1911; RGS 50; CGL 52; s. 1, ch. 19058, 1939; s. 1, ch. 67-601; ss. 1, 2, ch. 70-995.

7.53 Polk County.—The boundary lines of Polk County are as follows: Beginning at a point where the range line between ranges twenty-two and twenty-three east is intersected by the township line between townships thirty-two and thirty-three south; thence east on said township line to the west bank of Central and South Florida Flood Control District Canal C-38 (Kissimmee River); thence northerly along said west bank to Lake Kissimmee; thence northerly and westerly along the west shore of Lake Kissimmee to the west bank of Central and South Florida Flood Control District Canal C-37; thence northerly along said west bank of canal to Lake Hatchineha; thence westerly, northerly and easterly along the west and north shore of Lake Hatchineha, to the thread of the stream of Dead River; thence northerly along the thread of the stream of Dead River and Reedy Creek to the west shore of Lake Cypress; run thence northerly along said west shore of Lake Cypress to the township line between townships twenty-seven and twenty-eight south; thence west on said line to the range line dividing ranges twenty-eight and twenty-nine east; thence north along the range line to the southeast corner of section twelve township twenty-seven south, range twenty-eight east; thence west along section lines to the southwest corner of section nine, township twenty-seven south, range twenty-eight east; thence north along section lines to the southwest corner of section twenty-one, township twenty-six south, range twenty-eight east; thence northwesterly through respective section and quarter section corners to the southeast corner of township twenty-five south, range twenty-seven east; thence west on the township line to the range line between ranges twenty-six and twenty-seven east; thence north on said

range line to the township line between townships twenty-four and twenty-five south; thence west on said township line to the section line between sections thirty-four and thirty-five, township twenty-four south, range twenty-five east; thence north on said section line to the northeast corner of said section thirty-four; thence west on the north line of said section thirty-four and the sections to the west of it to the range line between ranges twenty-four and twenty-five east; thence south on said range line to the township line between townships twenty-four and twenty-five south; thence west on said township line to the range line between ranges twenty-three and twenty-four east; thence south on said range line to the thread of the Withlacoochee River; thence southerly and westerly following the thread of said river to where same is intersected by the range line between ranges twenty-two and twenty-three east; thence south on said range line to the township line dividing townships twenty-five and twenty-six south; thence west on said township line to the section line dividing sections three and four in township twenty-six south, range twenty-two east; thence south along the section lines to the township line dividing townships twenty-six and twenty-seven south; thence east along said township line to the range line dividing ranges twenty-two and twenty-three east; thence south on said range line to the place of beginning. The shorelines of Lakes Kissimmee and Hatchineha shall be as physically present unless and until the Board of Trustees of the Internal Improvement Trust Fund shall establish bulkhead lines along the said lake shores; in which event, the said shorelines shall be the said bulkhead lines to the extent they are so established.

History.—s. 2, ch. 1201, 1861; ch. 1848, 1871; ss. 3, 6, ch. 1998, 1874; s. 2, ch. 3177, 1879; ch. 3471, 1883; ch. 3932, 1889; s. 1, ch. 4066, 1891; RS 48; GS 46; RGS 51; CGL 53; s. 2, ch. 25440, 1949; s. 2, ch. 67-592; ss. 27, 35, ch. 69-106.

7.54 Putnam County.—The boundary lines of Putnam County are as follows: Beginning at a point on the south side of the Oklawaha River at low watermark where the range line dividing ranges twenty-four and twenty-five east, township eleven south, crosses said river; thence south on said range line to where same intersects the township line dividing townships eleven and twelve south; thence east on said township line to where same intersects the section line dividing sections two and three, township twelve south, range twenty-five east; thence south on said section line and other section lines to the southwest corner of section twenty-three of said township twelve south, range twenty-five east; thence east on the section line dividing sections twenty-three and twenty-six and other sections to the range line dividing ranges twenty-five and twenty-six east; thence south on said range line to the southwest corner of section seven, township thirteen south, range twenty-six east; thence east on the south boundary of said section seven and other sections to the west shore of Lake George; thence southwardly along the shore of Lake George to the mouth of Sulphur Spring; thence to a point on Lake George south of the Spanish Grant, known as the Acosta Grant of land, and on the northern boundary of Volusia County; thence in a direct line and along the northern boundary of Volusia County to the most southern part of Crescent Lake; thence along said northern boundary of Volusia County, following the southeast shore of Crescent Lake, to the mouth of Haw Creek and the boundary of Flagler County; thence westerly and then northwardly along the boundary of Flagler County through the middle of Crescent Lake crossing Bear Island on a line easterly of and parallel to the west line of section nineteen, township twelve south, range twenty-eight east, said line being ten thousand two hundred eighty feet easterly, measured at right angles from said west line of section nineteen, which line crosses approximately in the center of Bear Island, then continuing north and westerly through the middle of Crescent Lake, to the range line dividing ranges twenty-seven and twenty-eight east; thence north on said range line to its intersection with Deep Creek; thence west along the center of Deep Creek to the mouth thereof; thence due west to the west margin of the main channel of the St. Johns River; thence northerly along the west margin of the main channel of said river to the intersection of the south boundary line of township seven south with said river; thence west on said township line to its intersection with the north margin of the Bellamy or federal road leading from St. Augustine to Tallahassee; thence south and westerly along the north margin of said road to where same intersects the north boundary of section seventeen, township nine south, range twenty-three east; thence west on the section line between sections eight and seventeen, seven and eighteen, township nine south, range twenty-three east, to the southeast corner of said section seven; thence continue west on the section line between sections twelve and thirteen, township nine south, range twenty-two east to Santa Fe Lake; thence in a southeasterly direction to a point on the range line dividing ranges twenty-two and twenty-three east where said range line is intersected by the Bellamy Road; thence south on said range line to where the same intersects the thread of Orange Creek; thence westerly along the thread of said creek to the intersection of same with the Oklawaha River; thence westerly along the south bank of said river at low watermark to the place of beginning.

History.—s. 1, 280, 1849; s. 1, ch. 923, s. 3, ch. 1039, 1859; s. 1, ch. 2068, 1875; ch. 3469, 1883; ch. 3767, 1887; RS 36; GS 34; s. 1, ch. 5978, 1909; RGS 37; s. 1, ch. 12489, 1927; CGL 39; s. 2, ch. 59-488.

7.55 Santa Rosa County.—The boundary lines of Santa Rosa County are as follows: Beginning at the Alabama line, where said line crosses the Escambia River; thence down the thread of said river to Escambia Bay; thence along said bay to Deer Point, at the intersection of Santa Rosa Sound with said bay; thence up said Santa Rosa Sound to where the line dividing ranges twenty-five and twenty-six west, strikes said sound; thence running up said line to the dividing line between the State of Florida and the State of Alabama; thence with said line westwardly to the point of beginning; provided that the Counties of Escambia, Santa Rosa and Okaloosa shall have concurrent jurisdiction of any offenses committed on the waters of Santa Rosa Sound.

That part of Santa Rosa Island and Santa Rosa Sound comprising a right-of-way of a bridge from the mainland of Santa Rosa County near Navarre to

Santa Rosa Island said right-of-way being two hundred feet wide plus such additional width as may be required for fills and other construction and a road right-of-way on Santa Rosa Island one hundred twenty feet wide running from the west line of section twenty-seven in township two south, range twenty-six west, westerly to the west line of section thirty-six, township two south, range twenty-seven west on the island, and that part of Santa Rosa Island lying between a line dividing ranges twenty-five and twenty-six west and a parallel line exactly three miles west of such range line, together with adjacent waters, is hereby included in Santa Rosa County; provided that Santa Rosa and Escambia Counties shall have concurrent jurisdiction of offenses committed in that area of the island comprising the road right-of-way.

History.—s. 1, Feb. 18, 1842; ch. 411, 1851; s. 1, ch. 571, 1853; ch. 3258, 1881; RS 12; GS 10; s. 1, ch. 6937, 1915; RGS 10; CGL 12; s. 1, ch. 26860, 1951; s. 2, ch. 57-834.

7.56 Sarasota County.—The boundary lines of Sarasota County are as follows: Beginning in the Gulf of Mexico at a point on a prolongation of the township line between townships thirty-five and thirty-six south; thence east on said prolongation and said line to the southeast corner of township thirty-five south, range twenty east; thence south on the range line between ranges twenty and twenty-one east, to the southwest corner of township thirty-seven south, range twenty-one east; thence east on the township line between townships thirty-seven and thirty-eight south to the southeast corner of township thirty-seven south, range twenty-two east; thence south on the range line between ranges twenty-two and twenty-three east, to the southeast corner of township thirty-nine south, range twenty-two east; thence west on the township line between townships thirty-nine and forty south to the southwest corner of township thirty-nine south, range twenty-one east; thence south on the range line between ranges twenty and twenty-one east to the southeast corner of township forty south, range twenty east; thence west on the township line between townships forty and forty-one south to the Gulf of Mexico; thence northerly along the coast of the Gulf of Mexico, including the waters of said gulf within the jurisdiction of the State of Florida, to the place of beginning.

History.—s. 1, ch. 8515, 1921; CGL 70.

7.57 Seminole County.—The boundary lines of Seminole County are as follows: Beginning in the center of Wekiva River and in the center of the St. Johns River, at the place where the Wekiva River discharges its waters into the St. Johns River; thence through the thread of the said Wekiva River in a southerly direction to the northwest corner of section thirty-one, township twenty south, of range twenty-nine east; thence south on the range line between ranges twenty-eight and twenty-nine east, to the southwest corner of section nineteen, township twenty-one south of range twenty-nine east; thence east to the southeast corner of section twenty, township twenty-one south of range thirty east; thence south to the township line between townships twenty-one and twenty-two south of range thirty east; thence east on said township line to the thread of the St. Johns River; thence following the thread of the St. Johns River to and through Lake Harney, into the St. Johns River; thence following the thread of the St. Johns River to and through Lake Monroe, into the St. Johns River; thence following the thread of the St. Johns River to its juncture with the Wekiva River at the point of beginning.

The common boundary line between the counties of Seminole and Volusia, from the place where the St. Johns River enters Lake Harney to the corner common to Volusia, Seminole, Orange and Brevard Counties is more fully defined, located and described as beginning where the center line of the St. Johns River enters Lake Harney at a point approximately seven hundred feet west of the south half mile post of section twenty, township twenty south, range thirty-three east, thence southeasterly following the center line of the St. Johns River to Puzzle Lake at a point one thousand feet south and three hundred feet west of the east half mile post of section four, township twenty-one south, range thirty-three east, thence southwesterly to a point in Puzzle Lake six hundred sixty feet north of the southwest corner of the southeast quarter of the southeast quarter of said section four, thence south one and one eighth miles through Puzzle Lake to the south line of section nine, thence southeasterly to the point where the center line of the St. Johns River enters Puzzle Lake in the southwest quarter of section fifteen, township twenty-one south, range thirty-three east, thence southeasterly along the center line of the St. Johns River and the easterly channel thereof to a point in the southeast quarter of section twenty-seven, township twenty-one south, range thirty-three east, where the two channels unite, thence following the center line of the St. Johns River southeasterly to a point approximately four hundred feet east of the south half mile post of section thirty-five, township twenty-one south, range thirty-three east. Said point being corner common to Volusia, Seminole, Orange and Brevard Counties.

History.—s. 1, ch. 6511, 1913; RGS 43; CGL 45; s. 1, ch. 20888, 1941; s. 1, ch. 61-167.

7.58 St. Johns County.—The boundary lines of St. Johns County are as follows: Beginning at a point on the Atlantic coast, at a point where the section line between ten and fifteen, in township three south of range twenty-nine east, intersects the said Atlantic coast; thence west on the said section line to a point where said section line would intersect the range line between ranges twenty-eight and twenty-nine east; thence south on said range line to a point where said range line intersects the township line between townships four and five south; thence west on the township line between townships four and five south, in range twenty-eight east, to a point where said township line intersects the range line between ranges twenty-seven and twenty-eight east; thence north on said range line to where the same intersects Durbin Creek; thence along the south bank of Durbin Creek to Julington Creek; thence along the thread of Julington Creek to the mouth thereof; thence due west to the west margin of the main channel of the St. Johns River and boundary line of Clay County; thence southwardly along the

west margin of the main channel of said river and boundaries of Clay and Putnam Counties to a point due west of the mouth of Deep Creek; thence due east to the mouth of Deep Creek; thence up the center of Deep Creek to the point of intersection of Deep Creek with the range lines between ranges twenty-seven and twenty-eight east; thence south on said range line to a point where the south boundary line of section eighteen, in township ten south, range twenty-eight east, intersects said range line; thence east on said section line to the range line between ranges twenty-nine and thirty east; thence north on said range line to the middle of Pellicer's Creek; thence easterly on an imaginary line down the middle of said creek to the mouth of said creek; thence northeasterly on an imaginary line extending from the mouth of Pellicer's Creek to a point on the extension of township line between townships nine and ten south, range thirty-one east and immediately north of Summer Haven on the Atlantic coast; thence northwardly along said Atlantic coast, including the waters of the Atlantic Ocean within the jurisdiction of the State of Florida, to place of beginning.

History.—Ord. July 21, 1821; Aug. 12, 1822; s. 9, Dec. 29, 1824; s. 1, ch. 2068, 1875; RS 35; GS 33; s. 1, ch. 5730, 1907; s. 1, ch. 7399, 1917; RGS 35; CGL 37.

7.59 St. Lucie County.—The boundary lines of St. Lucie County are as follows: Beginning on the eastern boundary of the State of Florida at a point where the north section line of section thirteen, township thirty-seven south, range forty-one east, produced easterly, would intersect the same; thence westerly on the north line of said section and other sections to the northwest corner of section eighteen, township thirty-seven south, range forty-one east; thence south on the range line between ranges forty and forty-one east, to the township line between townships thirty-seven and thirty-eight south; thence west on the said township line to the range line dividing ranges thirty-six and thirty-seven east; thence north on said range line, concurrent with the east boundary of Okeechobee County, to the northwest corner of township thirty-four south, range thirty-seven east; thence east on the township line dividing townships thirty-three and thirty-four south, to the Atlantic Ocean; thence continuing easterly to the eastern boundary of the State of Florida; thence southerly along said east boundary, including the waters of the Atlantic Ocean within the jurisdiction of the State of Florida, to the place of beginning.

History.—s. 1, Mar. 14, 1844; ss. 1, 19, ch. 5567, 1905; s. 1, ch. 7401, 1917; RGS 54; ss. 1, chs. 10148, 10180, 1925; CGL 56.

7.60 Sumter County.—The boundary lines of Sumter County are as follows: Beginning at the intersection of the township line dividing townships seventeen and eighteen south, with the range line dividing ranges twenty-three and twenty-four east; thence west on said township line to the thread of the Withlacoochee River; thence southerly up the thread of said river to the junction therewith of the Little Withlacoochee River; thence southeasterly up the thread of the said Little Withlacoochee River to the head of the same; thence east to the range line dividing ranges twenty-two and twenty-three east; thence south on said range line to the thread of the Withlacoochee River; thence easterly along the thread of the said river to its intersection by the range line dividing ranges twenty-three and twenty-four east; thence north on said range line to the place of beginning.

History.—s. 1, ch. 106, 1846; ch. 107, 1847; s. 1, ch. 548, 1853; ch. 1848, 1871; s. 1, ch. 1895, 1872; s. 1, ch. 3771, 1887; ch. 3932, 1889; RS 43; GS 41; RGS 45; CGL 47.

7.61 Suwannee County.—The boundary lines of Suwannee County are as follows: Beginning in the thread of the Suwannee River where the section line dividing sections two and three in township two south, of range fifteen east, crosses said river; thence south on said section line across townships two, three, four and five in range fifteen east, to section line dividing sections two and eleven in township six in said range; thence on said section line due east to range line dividing ranges fifteen and sixteen; thence south to Ichetucknee Spring; thence down the thread of the Ichetucknee River to the Santa Fe River to its junction with Suwannee River; thence up the thread of said river to the point of beginning.

History.—s. 2, ch. 895, 1858; s. 1, ch. 1048, 1859; s. 1, ch. 1391, 1863; ch. 3948, 1889; RS 28; GS 26; RGS 28; CGL 30.

7.62 Taylor County.—The boundary lines of Taylor County are as follows: Beginning in the mouth of the Big Aucilla River; thence northerly, concurrent with the east boundary of Jefferson County, along the thread of said river to where same is intersected by the middle line of township two south, range five east; thence east on said middle township line, concurrent with the south boundary line of Madison County, across ranges six, seven and eight east to the range line between ranges eight and nine east; thence south on said range line to the township line between townships two and three south; thence east on said township line to the range line between ranges nine and ten east; thence south on said range line, concurrent with the west boundary of Lafayette County to the middle line of section seven, township seven south, range ten east; thence east on said middle line to the east line of said section seven; thence due south on the east line of said section seven and other sections to the township line between townships seven and eight south; thence east on said township line to the east line of section four, township eight south, range ten east, or the northwest corner of Dixie County; thence south, concurrent with the west boundary of Dixie County, on the east line of said section four and other sections to where same intersects the thread of the Steinhatchee River; thence southerly along the thread of the said Steinhatchee River to the mouth of said river; thence northerly through the Gulf of Mexico, including the waters of said gulf within the jurisdiction of the State of Florida, to the place of beginning.

History.—s. 3, ch. 806, 1856; s. 1, ch. 3061, 1877; ch. 3766, 1887; RS 25; GS 23; RGS 25; CGL 27.

7.63 Union County.—The boundary lines of Union County are as follow: Beginning at the mouth of the Olustee Creek; thence northerly up the thread of said creek to a point where said creek is intersected by the middle line of township four south, range eighteen east; thence east on said middle township line, concurrent with the south boundary line of Baker County to a point where the bed of New River

intersects said line; thence following the meanderings of the thread of said New River in a southwesterly direction to the thread of the Santa Fe River; thence northwesterly down the thread of said Santa Fe River to the mouth of Olustee Creek and the place of beginning.

History.—s. 1, ch. 8516, 1921; CGL 71.

7.64 Volusia County.—Beginning at a point where the southerly boundary of the Domingo Acosta Grant, also known as section thirty-eight, township thirteen south, range twenty-seven east (said Acosta Grant lying and being in Putnam County) intersects the easterly shore of Lake George, said point being south sixty-five degrees west a distance of thirty-two chains from the southeasterly corner of said Acosta Grant, according to United States Government survey of township thirteen south, range twenty-seven east; run thence north seventy-five degrees fifteen feet east to a point in the shore of Crescent Lake (see map of boundary line dividing Putnam and Volusia Counties recorded in map book 5, page 87, Volusia County, Florida); thence along the southeasterly shore of said Crescent Lake to the north bank of Haw Creek; thence easterly along the north bank of said Haw Creek to the range line between range twenty-eight east and range twenty-nine east; thence south along said range line to the southwest corner of section nineteen, township fourteen south, range twenty-nine east; thence east along the south boundary of said section nineteen and other sections to the southeast corner of section twenty-two, township fourteen south, range thirty-one east; thence north on the east boundary of said section twenty-two and other sections to the township line between township twelve south and township thirteen south; thence east on said township line to the point where said township line is intersected by Old King's Road; thence northerly along said Old King's Road to its point of intersection with the line dividing the Bulow and Ormond Grants; thence northeasterly along said line between Bulow and Ormond Grants to the easterly shore of Bulow Creek; thence following a continuance of said line between Bulow and Ormond Grants, which line now becomes the line dividing lots 7 and 8 as shown on map of partition of the Bulow Tract (Filed in office—September 20, 1867, L. M. Richardson, clerk, Volusia County) according to map recorded in St. Augustine, to the intersection with Haulover or Smith Creek; thence northerly, along said Haulover or Smith Creek, to the intersection with the section line running between sections twenty-nine and thirty and thirty-one and thirty-two, township twelve south, range thirty-two east; thence east along said township line to the Atlantic Ocean; thence southerly along line of the Atlantic Ocean, including the waters of the Atlantic Ocean within the jurisdiction of the State of Florida to the township line between township nineteen south and township twenty south; thence west on said township line to the range line between range thirty-three east and range thirty-four east; thence south on said range line to the township line between township twenty-one south and township twenty-two south; thence west on said township line to the thread of the St. Johns River; thence north along the thread of said St. Johns River, what is known as "Old River," and running on the south and west sides of what is known on the maps of public surveys as "Huntoon's Island" and on the south and west shores of Lake George to the mouth of Sulphur Springs (now Salt Springs run); thence northeasterly, in a direct line, across Lake George to the place of beginning.

History.—s. 4, Nov. 23, 1828; s. 1, Jan. 30, 1845; s. 1, ch. 624, 1854; s. 1, ch. 925, 1859; s. 1, ch. 1764, 1870; s. 1, ch. 2068, 1875; s. 1, ch. 3175, 1879; RS 40; GS 38; s. 2, ch. 5730, 1907; s. 1, ch. 7399, 1917; RGS 41; CGL 43; s. 1, ch. 20888, 1941; s. 1, ch. 67-190.

cf.—s. 7.57 Seminole County.

7.65 Wakulla County.—The boundary lines of Wakulla County are as follows: Beginning on the range line between ranges two and three east where the same strikes the Gulf of Mexico; thence north on said range line to the north boundary of section thirty-six, township two south, range two east; thence due west on the north line of said section thirty-six and other sections to the railroad leading from Tallahassee to St. Marks; thence north along said railroad two sections; thence west on the north line of section twenty, township two south, range one east, and other sections, to the thread of Ochlockonee River; thence southerly along the thread of said river to where same is intersected by the middle section line running through sections twenty-eight and twenty-nine, township five south, range three west, same being the north boundary line of Franklin County; thence east on said middle section line to the east bank of the Ochlockonee River; thence southerly and easterly along the east bank of said river to the Gulf of Mexico; thence north and easterly along said gulf, including the waters of said gulf within the jurisdiction of the State of Florida, to the place of beginning.

History.—s. 1, Mar. 11, 1843; s. 1, ch. 414, 1851; RS 22; GS 20; RGS 22; CGL 24.

7.66 Walton County.—The boundary lines of Walton County are as follows: Beginning on the Alabama state line where same is intersected by the line dividing centrally range eighteen west; thence south on the section lines to the line dividing townships two and three north, in range eighteen west; thence east to the Choctawhatchee River; thence down the thread of the Choctawhatchee River to a point where said Choctawhatchee River intersects the range line dividing ranges seventeen and eighteen west; thence south on said range line to the Gulf of Mexico; thence in a westwardly direction following the meanderings of said gulf, including the waters of said gulf within the jurisdiction of the State of Florida, to the range line dividing ranges twenty-one and twenty-two west; thence north on said line to the dividing line between Florida and Alabama; thence easterly along said state line to the place of beginning.

History.—s. 2, Dec. 29, 1824; s. 2, Dec. 9, 1825; s. 7, Nov. 23, 1828; s. 1, ch. 176, 1848; ch. 411, 1851; s. 1, ch. 571, 1053; ch. 3258, 1881; RS 13; GS 11; s. 1, ch. 6508, 1913; s. 1, ch. 6937, 1915; RGS 11; CGL 13.

7.67 Washington County.—The boundary lines of Washington County are as follows: Beginning on the Choctawhatchee River on the line dividing townships four and five north; thence east on said township line to northwest corner of section four in township four north, thence east on said township line to northwest corner of section four in township four north, range fifteen west; thence south one mile on

section line to the southwest corner of section four, township four north, range fifteen west; thence east one mile to southeast corner of section four, township four north, range fifteen west; thence south on section lines two miles to the southwest corner of section fifteen, township four north, range fifteen west; thence east on section lines to Holmes Creek; thence northward along the thread of Holmes Creek to a point where said creek intersects with section line running east and west between sections thirteen and twenty-four, fourteen and twenty-three in township five north, range fourteen west; thence east on said section line to the northeast corner of section twenty-four, township five north, range thirteen west; thence south on range line between ranges twelve and thirteen west to where said range line intersects with township line between townships four and five north; thence east on said township line to the southeast corner of section thirty-three, township five north, range twelve west; thence south on the section line to southwest corner of section fifteen, township two north, range twelve west; thence west on the section line to the southwest corner of section eighteen, township two north, range twelve west; thence south on the range line between ranges twelve and thirteen west to the meridian base line; thence west on the base line to the thread of Pine Log Creek in range sixteen west; thence down the thread of said creek into the Choctawhatchee River to the thread of said river; thence up the thread of said river to the place of beginning.

History.—s. 4, Dec. 9, 1825; s. 1, ch. 1950, 1873; s. 1, ch. 3258, 1881; RS 15; s. 1, ch. 4236, 1893; s. 1, ch. 4577, 1897; GS 13; s. 1, ch. 6505, 1913; ss. 1, 2, ch. 6935, 1915; RGS 14; CGL 16.

CHAPTER 8

CONGRESSIONAL DISTRICTS

8.001 Definitions.—In accordance with s. 8(a), Art. X, State Constitution, the decennial census of 1970 is recognized as the official census of the state for the purposes of this law.

(1) The designation "CCD" shall mean "census county division";

(2) The designation "ED" shall mean "enumeration district";

(3) The word "tract" shall mean "census tract";

(4) The designation "place" shall mean "census place";

(5) The designation "BG" shall mean "block group"; and

(6)(a) The terms "census county division," "enumeration district," "census tract," "place," and "block group" shall have the same meaning and describe the same geographical boundaries as provided in the Bureau of the Census Reports of the United States Decennial Census of 1970 for the State of Florida.

(b) Block groups are subdivisions of census tracts as defined on census metropolitan maps which differentiate block groups by the first digit of the block numbers assigned to city blocks within each tract.

The populations within the above described geographical census units are the population figures contained in the corrected official 1970 decennial census master enumeration district list.

History.—s. 4, ch. 72-390.
cf.—s. 11.031 Official census.

8.01 Division of state into congressional districts.—The state is hereby divided into 15 congressional districts, the same to be serially numbered, to be designated by such numbers, and to have the areas as follows, to wit:

District 1 shall be composed of Bay, Escambia, Gulf, Okaloosa, Santa Rosa, Walton, and Washington Counties and that part of Holmes County included in places 185 and 1783 and enumeration districts 6, 7, 8, 11, 12, and 13.

District 2 shall be composed of Alachua, Baker, Bradford, Calhoun, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Suwannee, Taylor, Union, and Wakulla Counties; that part of Holmes County included in place 600 and enumeration districts 2, 3, and 4; and that part of Marion County included in place 1830 and enumeration districts 39, 40, and 41.

District 3 shall be composed of Nassau County and that part of Duval County included in tracts 1, 1.99, 2, 2.99, 3, 3.99, 4, 4.99, 5, 5.99, 6, 6.99, 7, 8, 8.99, 9, 9.99, 10, 10.99, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 138.99, 143, 146, 147, 148, 149, 150, 151, 152, 153, 154, and 157; block groups 1, 3, and 9 of tract 0139; and enumeration districts 16 and 17 of tract 0139.

District 4 shall be composed of Clay, Flagler, Putnam, St. Johns, and Volusia Counties; that part of Duval County included in tracts 140, 141, 142, 144, 145, 155, 156, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, and 168 and block group 2 of tract 0139; that part of Lake County included in tract 301 and enumeration district 17 of tract 0309; that part of Marion County included in places 145, 535, 1265, 1545, and 2205 and enumeration districts 1, 1B, 1C, 2, 2B, 3, 4, 4B, 5, 28, 29, 30, 31, 32, 33, 34, 35, 38, 42, 43, 47, 48, 49, 50, 51, 52, 53, 56, 57, 57B, 58, 59, 60, 60B, 61, 62, 63, 66, 67, 67B, and 67C; and that part of Seminole County included in tracts 202, 203, 210, and 211.

District 5 shall be composed of Citrus, Hernando, Pasco, and Sumter Counties; that part of Lake County included in tracts 302, 303, 304, 305, 306, 307, 308, 310, 311, 312, and 313 and enumeration districts 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of tract 0309; that part of Orange County included in tracts 107, 116, 117, 118, 119, 120, 121, 122, 123, 124, 126, 146, 147, 148, 149, 150, 151, 170, 172, 173, 174, 175, 176, 177, 178, and 179 and enumeration districts 249, 253, 253B, and 254L of tract 0171; that part of Pinellas County included in tracts 259, 259.99, 260, 261, 261.99, 262, 263, 268.02, 269.01, 269.02, 270, 271.01, 271.02, 271.03, 272, 273.01, 273.02, 274, and 275; and that part of Seminole County included in tracts 201, 204, 205, 206, 207, 208, 209, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, and 222.

District 6 shall be composed of that part of Pinellas County included in tracts 201.01, 201.02, 202.01, 202.02, 202.03, 202.99, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 213.99, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224.01, 224.02, 225.01, 225.02, 225.03, 226.01, 226.02, 227, 228.01, 228.02, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240.01, 240.02, 240.03, 241, 242, 243.01, 243.02, 244.01, 244.02, 245, 246, 247, 248, 249.01, 249.02, 249.03, 250.01, 250.02, 251.01, 251.02, 251.03, 251.04, 251.05, 252.01, 252.02, 253, 254.01, 254.02, 254.03, 255.01, 255.02, 256, 257, 258, 264, 265, 266, 267, 268.01, 276, 277, 278, 279, 280.01, 280.02, 281, 282, 283, 284, and 285.

District 7 shall be composed of that part of Hillsborough County included in tracts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52,

52.99, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 72.99, 73, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 132, 133, 134, 135, 136, 137, 138, 140, and 141.

District 8 shall be composed of Hardee, Manatee, and Polk Counties; that part of Hillsborough County included in tracts 124, 125, 126, 127, 128, 129, 130, 131, and 139; and that part of Sarasota County included in tracts 1, 2, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, and 21 and enumeration districts 36, 38, 39, and 93 of tract 0003.

District 9 shall be composed of Brevard County and that part of Orange County included in tracts 101, 102, 103, 104, 105, 106, 108, 109, 110, 111, 112, 113, 114, 115, 125, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, and 169.

District 10 shall be composed of Charlotte, Collier, DeSoto, Glades, Hendry, Highlands, Indian River, Lee, Martin, Okeechobee, Osceola, and St. Lucie Counties; that part of Orange County included in enumeration district 254 of tract 0171; that part of Palm Beach County included in tracts 1, 2, 3, 8, 9, and 78 and block group 3 of tract 0004; and that part of Sarasota County included in tracts 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, and 27 and enumeration district 37 of tract 0003.

District 11 shall be composed of that part of Broward County included in tracts 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 201, 202, 203, 204, 205, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 501, 502, and 601 and enumeration districts 46 and 54 of tract 0610 and that part of Palm Beach County included in tracts 5, 5.99, 6, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 79, 80, 81, 82, and 83; block groups 1, 2, and 9 of tract 0004; and enumeration districts 4, 4B, and 18 of tract 0004.

District 12 shall be composed of that part of Broward County included in tracts 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 422.99, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 503, 504, 505, 506, 507, 508, 509, 510, 602, 603, 604, 605, 606, 607, 608, 609, 611, 701, 702, 703, 704, 705, 706, 801, 802, 803, 804, 805, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 920, 1007, 1101, 1102, 1103, 1104, 1105, and 1201; block groups 1 and 9 of tract 0610; block groups 1, 2, 3, 5, 6, 7, and 9 of tract 0919; and enumeration district 55 of tract 0610.

District 13 shall be composed of that part of Broward County included in tracts 1001, 1002, 1003, 1004, 1005, 1006, and 1008 and block group 4 of tract 0919 and that part of Dade County included in tracts 1.01, 1.02, 2.01, 2.02, 2.03, 2.04, 2.05, 2.06, 2.07, 2.08, 3.01, 3.02, 3.03, 3.04, 4.01, 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.08, 5.01, 5.02, 5.03, 6.01, 6.02, 6.03, 6.04, 6.05, 6.06, 7.01, 9.01, 9.02, 10.01, 10.02, 10.03, 10.04, 11.01, 11.02, 11.03, 11.04, 12.01, 12.02, 13, 14, 15.01, 15.02, 18.01, 19.01, 20.01, 92, 93.01, 93.02, 93.03, 94, 95.01, 95.02, 96, 97, 98, 99.01, 99.02, 99.03, 99.04, 100.01, 100.02, 100.03, 100.04, 101.01, and 101.02; block groups 1, 3, 4, and 5 of tract 0009.03; and block groups 5 and 6 of tract 0019.02.

District 14 shall be composed of that part of Dade County included in tracts 1.03, 7.02, 8.01, 8.02, 16.01, 16.02, 17.01, 17.02, 17.03, 18.02, 18.03, 20.02, 21, 22.01, 22.02, 23, 24, 25, 26, 27.02, 28, 29, 30.01, 30.02, 31, 34, 36.01, 36.02, 37.99, 38, 39.01, 39.02, 39.03, 40, 41.01, 41.99, 47.01, 47.02, 47.03, 48, 49, 50, 51, 52, 53, 54.01, 54.02, 55.01, 55.02, 56, 57, 58.01, 58.02, 61.01, 61.02, 62, 63.01, 63.02, 64, 65, 66, 70.01, 70.02, 74, 90, 91, and 101.03; block group 2 of tract 0009.03; block groups 1, 2, 3, 4, 7, 8, and 9 of tract 0019.02; block groups 1, 2, and 3 of tract 0027.01; block groups 3, 4, 5, and 9 of tract 0069; and block groups 1, 4, 5, 6, and 9 of tract 0075.

District 15 shall be composed of Monroe County and that part of Dade County included in tracts 37.01, 37.02, 41.02, 42, 43, 44, 45, 46, 59.01, 59.02, 59.03, 59.04, 60.01, 60.02, 67.01, 67.02, 68, 71, 72, 73, 76.01, 76.02, 76.03, 76.04, 77.01, 77.02, 77.03, 78.01, 78.02, 78.03, 79.01, 79.02, 80, 81, 82.01, 82.02, 83.01, 83.02, 83.03, 84.01, 84.02, 84.03, 85.01, 85.02, 86, 87, 88.01, 88.02, 89.01, 89.02, 89.03, 101.04, 101.05, 102, 103, 104, 105, 106.01, 106.02, 106.03, 107, 108, 109, 110, 111, 112, 113, 114, and 115; block group 4 of tract 0027.01; block groups 1 and 2 of tract 0069; and block groups 2 and 3 of tract 0075.

History.—ss. 1-3, ch. 4913, 1901; GS 55-57; ss. 1-5, ch. 6472, 1913; RGS 64-68; ss. 2, chs. 8513-8516, 1921; ss. 2, chs. 9360, 9362, 1923; ss. 2, chs. 10132, 10148, 10180, 11371, 1925; CGL 80-84; ss. 1-6, ch. 16876, 1935; CGL 1936 Supp. 84(1); ss. 1-7, ch. 21975, 1943; s. 1, ch. 26717, 1951; s. 1, ch. 61-302; s. 1, ch. 65-2441; s. 1, ch. 72-390.

8.011 Inclusion of unlisted territory in contiguous districts.—Any portion of the state which is not stated herein as being included in any district described in this law but which is entirely surrounded by a district shall be deemed to be included within that district. Any portion of the state which is not included in any district described in this law and which is not entirely surrounded by a district shall be included within that district contiguous to such portion which contains the least population per congressman according to the United States Decennial Census of 1970.

History.—s. 5, ch. 72-390.

8.02 New counties.—When any new counties are created, such new counties shall become a part of the congressional district in which the territory for such new county is located.

History.—s. 6, ch. 6472, 1913; RGS 69; CGL 85; s. 7, ch. 16876, 1935; s. 8, ch. 21975, 1943; s. 10, ch. 26484, 1951.

8.03 Election of representatives to congress.—The districts hereinbefore named shall constitute and form the congressional districts of the state, and a representative to the congress shall be selected in and for each of said congressional districts, as now provided by law.

History.—s. 4, ch. 4913, 1901; GS 58; RGS 70; CGL 86; s. 9, ch. 16876, 1935.

8.04 Effective dates.—Candidates for the office of congressman for each of the districts provided in s. 8.01 shall be nominated in 1972, as provided by law, and a congressman shall be elected from each such district at the general election to be held in

1972. For all other purposes s. 8.01 shall take effect at the expiration of the term of office of the congressmen now serving from the state.

History.—s. 10, ch. 21975, 1943; s. 2, ch. 26717, 1951; s. 2, ch. 61-302; s. 2, ch. 65-2441; s. 2, ch. 72-390.

8.05 Membership of governmental agencies appointed pursuant to former district boundaries unaffected by new district boundaries.—A change in the division of the state into congressional districts shall not vacate or otherwise affect the office of any member of a board or council who is serving at the time such change is effected and who was appointed by reference to a congressional district as it existed immediately prior to the effective date of such change. Any such member serving on such date shall continue to represent the congressional district in which he resides until the expiration of his term. A vacancy shall exist in such board or council in any congressional district in which no existing member resides and the same shall be filled as provided by applicable law. If two or more such members reside in a single congressional district as constituted after such change, each shall be entitled to serve until the expiration of his term.

History.—s. 3, ch. 72-390.

8.06 Severability.—In the event any section, subsection, sentence, clause or phrase of this law or any congressional district established herein shall be declared, determined to be, or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this law, or any other districts established herein, which shall remain of full force and effect as if the section, subsection, sentence, clause, phrase or district so declared, determined to be or adjudged invalid or unconstitutional were not originally a part hereof. The legislature hereby declares that it would have passed the remaining parts of this law as if it had known that such part or parts hereof would be declared, determined to be, or adjudged invalid or unconstitutional.

History.—s. 6, ch. 72-390.

TITLE III

LEGISLATIVE BRANCH—COMMISSIONS

CHAPTER 10

SENATE AND HOUSE OF REPRESENTATIVES

10.001 Legislative representation.—Beginning with the general election held in the second year following each decennial census, the representation of the people of Florida in the Florida Legislature shall be as set forth earlier in such year by the Legislature by joint resolution or by the Supreme Court by order, as the case may be. A joint resolution of apportionment or an order of the Supreme Court adopted or entered pursuant to s. 16 of Art. III of the State Constitution shall be included in the Florida Statutes in the same manner as a statute.

History.—s. 4, ch. 67-479; s. 1, ch. 72-242; s. 1, SJR 1305, 1972 Regular Session.

10.003 Definitions.—In accordance with s. 8(a) of Art. X, State Constitution, the decennial census of 1970 is recognized as the official census of the state for the purposes of this chapter.

(1) The designation "CCD" shall mean "census county division."

(2) The designation "ED" shall mean "enumeration district."

(3) The word "tract" shall mean "census tract."

(4) The designation "BG" shall mean "block group."

(5)(a) The terms "census county division," "enumeration district," "census tract," and "block group" shall have the same meaning and describe the same geographical boundaries as provided in the Bureau of the Census Reports of the United States Decennial Census of 1970 for the State of Florida.

(b) Block groups are subdivisions of census tracts as defined on census metropolitan maps which differentiate block groups by the first digit of the block numbers assigned to city blocks within each tract.

The populations within the above described geographical census units are the population figures contained in the corrected official 1970 decennial census master enumeration district list.

History.—s. 6, SJR 1305, 1972 Regular Session.

cf.—s. 11.031 Official census.

10.005 Legislative intent.—

(1) In the adoption of the House of Representatives districts contained in this chapter and in its deliberations preceding such adoption and culminating therein, this Legislature is following in good faith the following rational state policy of:

(a) Recognizing the continuous and dynamic population growth in this state by establishing a House of Representatives of 120 members, and in doing so guaranteeing better access between the inhabitants of this state and their representatives.

(b) Providing multimember districts for densely populated counties to guarantee effective representation and operation of government at the state level.

(c) Providing single-member districts for the rural counties, which achieves the state policy of guaranteeing effective representation and operation of government at the state level.

(d) Establishing the following formula to achieve the above objectives: Multimember districts in densely populated counties of the state are based on the county's representational ratio; however, no multimember district exceeds six representatives. Single-member districts are based on the same policy and are provided in the counties not covered above.

However, the Legislature's overriding consideration to this policy is its good faith effort to achieve mathematical preciseness.

(2) The Legislature, in addition to the above policy, has apportioned the Florida Senate in accordance with the Constitutions of the State of Florida and the United States.

History.—s. 2, SJR 1305, 1972 Regular Session.

10.05 Senate; apportionment, districts, terms of office.—

(1) The Senate of the Florida Legislature shall consist of 40 members, each representing a district; where a single description is used to describe more than one district, each district is identical and includes the same entire territory. The state shall be apportioned into senatorial districts as follows:

Districts 1 through 2 shall be composed of Escambia, Okaloosa, and Santa Rosa Counties and that

part of Walton County included in place 1690 and enumeration districts 3, 4, 5, 12, 13, 14, 15, 16, 17, 18, and 19.

Districts 3 through 4 shall be composed of Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Wakulla, and Washington Counties; that part of Taylor County included in enumeration district 206; and that part of Walton County included in place 500 and enumeration districts 2 and 11.

Districts 5 through 6 shall be composed of Alachua, Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Marion, Nassau, Suwannee, and Union Counties; that part of Clay County included in places 1065 and 1703 and enumeration districts 1803, 1804, 1806, 1807, 1808, and 1810; that part of Levy County included in places 245, 350, 2053, and 2255 and enumeration districts 904, 905, 908, and 909; that part of Putnam County included in places 985 and 1630 and enumeration districts 1201, 1202, 1203, 1204, 1205, 1206, 1208, and 1209; and that part of Taylor County included in place 1725 and enumeration districts 207, 208, and 209.

Districts 7 through 9 shall be composed of that part of Duval County included in tracts 1, 1.99, 2, 2.99, 3, 3.99, 4, 4.99, 5, 5.99, 6, 6.99, 7, 8, 8.99, 9, 9.99, 10, 10.99, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 138.99, 139, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, and 168.

District 10 shall be composed of Flagler County and that part of Volusia County included in tracts 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 902, 903, 904, 905, 906, 907, 908, 909, and 910.

District 11 shall be composed of St. Johns and Sumter Counties; that part of Clay County included in tract 9501, place 770, and enumeration districts 1802, 1814, 1815, and 1816; that part of Duval County included in tracts 140, 141, and 142; that part of Lake County included in tracts 301, 302, 303, 304, 305, 306, 307, 308, 310, 311, 312, and 313 and enumeration districts 7, 8, 9, 10, 11, 12, 14, 15, and 16 of tract 0309; that part of Putnam County included in places 435, 545, 1775, and 2200 and enumeration districts 1218, 1219, 1220, 1225, and 1226; and that part of Volusia County included in tract 901.

Districts 12 through 13 shall be composed of Citrus, Hernando, and Polk Counties; that part of Levy County included in places 325, 980, and 2295 and enumeration district 913; that part of Osceola County included in tract 401; and that part of Pasco County included in places 103, 263, 413, 433, 465, 467, 468, 643, 794, 907, 908, 937, 1007, 1085, 1475, 1477, 1800, 1895, 1915, 2067, and 2300 and enumeration districts 3, 4, 13, 14, 15, 16, 23, 24, 25, 26, 27, 28, 28B, 29, 30, 33, 34, 43, 43B, 43C, 43D, 43E, 43F, 43G, 52, 56, 68, 69, 78, and 78B.

Districts 14 through 15 shall be composed of that part of Lake County included in enumeration districts 13 and 17 of tract 0309 and that part of Orange County included in tracts 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, and 179; block groups 1 and 9 of tract 0165; and enumeration districts 267 and 268 of tract 0165.

Districts 16 through 17 shall be composed of Brevard and Seminole Counties; that part of Orange County included in tract 166 and enumeration districts 272 and 273 of tract 0165; and that part of Osceola County included in tracts 402, 403, 404, 405, and 406.

Districts 18 through 20 shall be composed of that part of Pinellas County included in tracts 201.01, 201.02, 202.01, 202.02, 202.03, 202.99, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 213.99, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224.01, 224.02, 225.01, 225.02, 225.03, 226.01, 226.02, 227, 228.01, 228.02, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240.01, 240.02, 240.03, 241, 242, 243.01, 243.02, 244.01, 244.02, 245, 246, 247, 248, 249.01, 249.02, 249.03, 250.01, 250.02, 251.01, 251.02, 251.03, 251.04, 251.05, 252.01, 252.02, 253, 254.01, 254.02, 254.03, 255.01, 255.02, 256, 257, 258, 259, 259.99, 260, 261, 261.99, 262, 263, 264, 265, 266, 267, 268.01, 268.02, 269.01, 269.02, 270, 271.01, 271.02, 271.03, 273.01, 276, 277, 278, 279, 280.01, 280.02, 281, 282, 283, 284, and 285 and enumeration districts 9, 10, 11, and 14 of tract 0272.

Districts 21 through 23 shall be composed of Hillsborough County; that part of Pasco County included in enumeration districts 29B, 29C, 29D, 35, and 36; and that part of Pinellas County included in tracts 273.02, 274, and 275; block groups 1, 2, 3, 4, 6, 7, 8, and 9 of tract 0272; and enumeration districts 7, 7B, and 8 of tract 0272.

District 24 shall be composed of DeSoto, Glades, Hardee, Highlands, Manatee, and Okeechobee Counties.

District 25 shall be composed of Charlotte and Sarasota Counties and that part of Lee County included in place 293 and enumeration districts 25, 26, 36, 37, 38, 39, and 9900.

Districts 26 through 28 shall be composed of Hendry, Indian River, Martin, and St. Lucie Counties; that part of Lee County included in places 187, 654, 655, 661, 662, 663, 1217, 1493, and 2100 and enumeration districts 12, 13, 14, 15, 16, 17, 17B, 88, 89, 90, 91, 92, 93, 94, and 95; and that part of Palm Beach County included in tracts 1, 2, 3, 4, 5, 5.99, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 66, 70, 77, 78, 79, 80, 81, 82, and 83.

Districts 29 through 31 shall be composed of Collier County; that part of Broward County included in tracts 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 201, 202, 203, 204, 205, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 422.99, 423, 424, 425,

426, 427, 428, 429, 430, 431, 432, 433, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 701, 702, 706, 802, 803, 804, and 1201; and that part of Palm Beach County included in tracts 63, 64, 65, 67, 68, 69, 71, 72, 73, 74, 75, and 76.

District 32 shall be composed of that part of Broward County included in tracts 703, 704, 705, 801, 805, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 1001, 1002, 1003, 1004, 1005, 1006, 1007, and 1008 and block group 1 of tract 1105.

Districts 33 through 34 shall be composed of that part of Broward County included in tracts 1101, 1102, 1103, and 1104; block groups 2, 3, 4, and 5 of tract 1105; and enumeration district 841 of tract 1105 and that part of Dade County included in tracts 2.04, 3.01, 3.02, 3.03, 3.04, 4.01, 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.08, 5.01, 5.02, 5.03, 6.01, 6.02, 6.03, 6.04, 6.05, 6.06, 7.01, 7.02, 8.01, 8.02, 9.01, 9.02, 10.02, 10.03, 11.01, 11.02, 11.03, 11.04, 16.01, 16.02, 92, 93.01, 93.02, 93.03, 94, 95.01, 95.02, 96, 99.01, 99.02, 99.03, 99.04, 100.01, 100.02, 100.03, 100.04, 101.01, and 101.02.

Districts 35 through 37 shall be composed of that part of Dade County included in tracts 1.01, 1.02, 1.03, 2.01, 2.02, 2.03, 2.05, 2.06, 2.07, 2.08, 9.03, 10.01, 10.04, 12.01, 12.02, 13, 14, 15.01, 15.02, 17.01, 17.02, 17.03, 18.01, 18.02, 18.03, 19.01, 19.02, 20.01, 20.02, 21, 22.01, 22.02, 23, 24, 25, 26, 27.01, 27.02, 28, 29, 30.01, 30.02, 31, 34, 35.01, 36.02, 37.01, 37.02, 37.99, 38, 39.01, 39.02, 39.03, 40, 41.01, 41.02, 41.99, 42, 43, 44, 45, 46, 51, 52, 53, 54.01, 54.02, 64, 65, 66, 67.01, 67.02, 68, 69, 70.01, 97, and 98.

Districts 38 through 40 shall be composed of Monroe County and that part of Dade County included in tracts 47.01, 47.02, 47.03, 48, 49, 50, 55.01, 55.02, 56, 57, 58.01, 58.02, 59.01, 59.02, 59.03, 59.04, 60.01, 60.02, 61.01, 61.02, 62, 63.01, 63.02, 70.02, 71, 72, 73, 74, 75, 76.01, 76.02, 76.03, 76.04, 77.01, 77.02, 77.03, 78.01, 78.02, 78.03, 79.01, 79.02, 80, 81, 82.01, 82.02, 83.01, 83.02, 83.03, 84.01, 84.02, 84.03, 85.01, 85.02, 86, 87, 88.01, 88.02, 89.01, 89.02, 89.03, 90, 91, 101.03, 101.04, 101.05, 102, 103, 104, 105, 106.01, 106.02, 106.03, 107, 108, 109, 110, 111, 112, 113, 114, and 115.

(2) Each senator shall be elected for a term of 4 years, except that those elected from even-numbered districts in the general election of 1972 shall be elected for 2 years.

History.—ss. 3, 4, SJR 1305, 1972 Regular Session.

10.06 House of Representatives; apportionment, districts.—The House of Representatives of the Florida Legislature shall consist of 120 members, each representing a district. Where a single description is used to describe more than one district, each district is identical and includes the same entire territory. The state shall be apportioned into representative districts as follows:

Districts 1 through 3 shall be composed of that part of Escambia County included in tracts 1, 2, 2.99, 3, 3.99, 4, 5, 6, 7, 7.99, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 23.99, 24, 26, 27, 28, 29, 30, 31, 32, and 35 and block groups 1, 2, 3, 5, and 9 of tract 0034.

Districts 4 through 6 shall be composed of Okaloosa County; that part of Escambia County included in tracts 25, 33, 36, 37, 38, 39, and 40; block groups 4, 6, and 7 of tract 0034; and enumeration districts 320, 321, and 924 of tract 0034; that part of Santa Rosa County included in tracts 101, 102, 103, 104, 105, 106, 107, 108, and 109; and that part of Walton County included in place 500 and enumeration districts 12, 13, 17, 18, and 19.

District 7 shall be composed of Holmes County; that part of Jackson County included in places 280, 430, 463, 755, 760, 783, 1285, 1305, and 1970 and enumeration districts 2, 3, 5, 6, 9, 9B, 10, 12, 13, 20, 21, 22, 23, 25, 26, 27, 30, 31, 32, 35, 36, and 37; that part of Walton County included in place 1690 and enumeration districts 2, 3, 4, 5, and 11; and that part of Washington County included in places 305 and 355 and enumeration districts 7, 8, 9, 11, 12, and 17.

District 8 shall be composed of that part of Bay County included in places 100, 564, 1240, 1255, 1674, 1675, 2025, and 2220 and enumeration districts 6, 12, 13, 14, 15, 16, 17, 26, and 9903; that part of Walton County included in enumeration districts 14, 15, and 16; and that part of Washington County included in places 582, 2145, and 2187 and enumeration districts 16 and 18.

District 9 shall be composed of Calhoun and Gulf Counties; that part of Bay County included in places 277, 315, 887, 1367, 1685, 2022, and 2123 and enumeration districts 1, 2, 5, 25, 36, 37, 38, 70, and 71; that part of Gadsden County included in place 345 and enumeration districts 19, 20, and 22; that part of Jackson County included in place 10 and enumeration districts 39 and 40; and that part of Liberty County included in place 240 and enumeration districts 4 and 5.

District 10 shall be composed of Franklin County; that part of Gadsden County included in places 775, 785, 835, and 1825 and enumeration districts 3, 4, 5, 6, 7, 9, 9B, 10, 11, 12, 13, 14, 23, 24, 33, 34, 35, and 36; that part of Jefferson County included in enumeration districts 105 and 107; that part of Liberty County included in enumeration districts 1 and 2; that part of Taylor County included in place 1725 and enumeration districts 206 and 207; and that part of Wakulla County included in places 1898 and 1980 and enumeration districts 2, 3, 4, 7, and 8.

Districts 11 through 12 shall be composed of Leon County; that part of Jefferson County included in place 1425 and enumeration districts 103, 104, and 106; that part of Madison County included in place 780 and enumeration districts 704 and 705; and that part of Wakulla County included in enumeration district 6.

District 13 shall be composed of Columbia and Hamilton Counties; that part of Madison County included in places 1210 and 1275 and enumeration districts 701, 702, 710, and 711; and that part of Suwannee County included in places 230 and 1230 and enumeration districts 6, 7, 10, 11, and 13.

District 14 shall be composed of Citrus, Dixie, Gilchrist, Lafayette, and Levy Counties; that part of Hernando County included in enumeration districts 15 and 16; that part of Marion County included in place 535 and enumeration districts 40, 41, 48, 49, 50, 66, 67, 67B, and 67C; that part of Suwannee County included in enumeration districts 8 and 9; and that

part of Taylor County included in enumeration districts 208 and 209.

District 15 shall be composed of Baker and Nassau Counties; that part of Duval County included in tracts 103, 106, 117, 136, and 137; and that part of Union County included in place 1105 and enumeration districts 801 and 803.

Districts 16 through 20 shall be composed of that part of Duval County included in tracts 1, 1.99, 2, 2.99, 3, 3.99, 4, 4.99, 5, 5.99, 6, 6.99, 7, 9, 9.99, 10, 10.99, 11, 12, 13, 14, 15, 16, 17, 18, 28, 29, 101, 102, 104, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 138, 138.99, 139, 143, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, and 158.

Districts 21 through 24 shall be composed of that part of Duval County included in tracts 8, 8.99, 19, 20, 21, 22, 23, 24, 25, 26, 27, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 140, 141, 142, 144, 157, 159, 160, 161, 162, 163, 164, 165, 166, 167, and 168.

District 25 shall be composed of Bradford and Clay Counties and that part of St. Johns County included in tract 9501 and enumeration districts 3, 4, 4B, 5, 6, 7, 8, 9, and 11.

Districts 26 through 27 shall be composed of Alachua County; that part of Marion County included in enumeration districts 28, 29, 30, and 31; that part of Putnam County included in place 985 and enumeration districts 1206 and 1208; and that part of Union County included in place 2293 and enumeration district 805.

District 28 shall be composed of that part of Flagler County included in places 160, 265, 630, 1315, and 1628 and enumeration districts 6 and 9; that part of Putnam County included in places 435, 545, 1630, 1775, and 2200 and enumeration districts 1201, 1202, 1203, 1204, 1205, 1209, 1218, 1219, 1220, 1225, and 1226; and that part of St. Johns County included in places 830, 1315, 1884, and 1885 and enumeration districts 10, 26B, 27, 28, 30, 31, 32, and 33.

Districts 29 through 31 shall be composed of Volusia County and that part of Flagler County included in enumeration district 10.

District 32 shall be composed of that part of Lake County included in enumeration district 3 of tract 0301 and that part of Marion County included in places 1265, 1545, 1830, and 2205 and enumeration districts 1, 1B, 1C, 2, 2B, 3, 4, 5, 32, 33, 34, 35, 38, 39, 42, 43, 47, 51, 52, 53, 56, 57, 57B, 58, 59, and 60.

District 33 shall be composed of that part of Orange County included in block group 1 of tract 0151 and that part of Seminole County included in tracts 201, 202, 203, 205, 209, 210, 211, 213, 217, 218, 220, and 222 and enumeration districts 65, 66, and 69 of tract 0212.

District 34 shall be composed of that part of Lake County included in tracts 302 and 307; enumeration districts 1, 2, 4, 5, and 6 of tract 0301; enumeration districts 33, 34, and 35 of tract 0303; enumeration districts 43, 44, 47, and 49 of tract 0306; and enumeration districts 13 and 17 of tract 0309; that part of Marion County included in enumeration district 4B; and that part of Seminole County included in tracts 204, 206, 207, 208, 214, 215, 216, 219, and 221.

District 35 shall be composed of that part of Lake County included in tracts 304, 305, 308, 310, 311, 312, and 313, enumeration district 36 of tract 0303, enumeration districts 45, 46, 48, and 57 of tract 0306, and enumeration districts 7, 8, 9, 10, 11, 12, 14, 15, and 16 of tract 0309; that part of Marion County included in place 145 and enumeration districts 60B, 61, 62, and 63; and that part of Sumter County included in places 330, 410, 1620, 2195, and 2250 and enumeration districts 5, 6, 7, 11, 12, and 16.

District 36 shall be composed of that part of Hernando County included in places 255 and 2196 and enumeration districts 1, 2, 3, 4, 5, 6, 12, 13, 17, and 18; that part of Pasco County included in places 465, 467, 468, 1085, 1895, 1915, and 2300 and enumeration districts 3, 4, 13, 14, 15, 16, 23, 24, 25, 26, 27, 28, 28B, 29, 29B, 29C, 29D, 30, 33, 35, and 36; that part of Polk County included in tract 123 and enumeration districts 15, 16, 18, 19, 20, 24, and 25 of tract 0121; and that part of Sumter County included in place 270 and enumeration districts 13, 14, and 15.

District 37 shall be composed of that part of Pasco County included in places 103, 263, 413, 433, 643, 794, 907, 908, 937, 1007, 1475, 1477, 1800, and 2067 and enumeration districts 34, 43, 43B, 43C, 43D, 43E, 43F, 43G, 52, 56, 68, 69, 78, and 78B and that part of Pinellas County included in tracts 268.01, 268.02, 273.01, and 273.02.

Districts 38 through 43 shall be composed of that part of Orange County included in tracts 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, and 179; block groups 2, 4, 5, and 9 of tract 0151; and enumeration districts 229, 230, 230B, 231, and 232 of tract 0151.

Districts 44 through 47 shall be composed of that part of Brevard County included in tracts 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 661, 662, 663, 664, 665, 666, 667, 668, 669, 671, 681, 682, 683, 684, 685, 686, 691, 692, 693, 694, 695, 696, 697, 698, 699, 701, 711, and 712; that part of Orange County included in tract 166; and that part of Seminole County included in enumeration district 70 of tract 0212.

District 48 shall be composed of Indian River County; that part of Brevard County included in tracts 641 and 713; that part of Okeechobee County included in enumeration districts 6 and 8; that part of Osceola County included in tracts 404, 405, and 406; and that part of St. Lucie County included in enumeration district 4.

Districts 49 through 52 shall be composed of that part of Highlands County included in place 67 and enumeration districts 9 and 11; that part of Osceola County included in tracts 401, 402, and 403; and that part of Polk County included in tracts 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, and 122; places 65, 85, 461, 475, 525, 540, 542, 553, 580, 650, 680, 810, 880, 890, 1006, 1100, 1125, 1153, 1160, 1527, 1770, 2160, 2190, 2201, 2225, and 2285; enumeration districts 3, 4, 5, 137, 138, 169,

170, 171, 172, 175, 178, 194, 195, 195B, 197, 198, 199, 200, 211, 212, 212B, 212C, 213, 214, 215, 219, 220, 221, 226, 228, 229, 230, and 231; enumeration districts 105, 114, 115, 116, 118, 119, 121, and 122 of tract 0118; and enumeration districts 8, 17, 21, 22, 23, and 26 of tract 0121.

Districts 53 through 56 shall be composed of that part of Pinellas County included in tracts 228.01, 245, 246, 247, 248, 249.01, 249.02, 249.03, 250.01, 250.02, 252.01, 252.02, 253, 254.01, 254.02, 254.03, 255.01, 255.02, 256, 257, 258, 259, 259.99, 260, 261, 261.99, 262, 263, 264, 265, 266, 267, 269.01, 269.02, 270, 271.01, 271.02, 271.03, 272, 274, 275, and 276.

Districts 57 through 61 shall be composed of that part of Pinellas County included in tracts 201.01, 201.02, 202.01, 202.02, 202.03, 202.99, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 213.99, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224.01, 224.02, 225.01, 225.02, 225.03, 226.01, 226.02, 227, 228.02, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240.01, 240.02, 240.03, 241, 242, 243.01, 243.02, 244.01, 244.02, 251.01, 251.02, 251.03, 251.04, 251.05, 277, 278, 279, 280.01, 280.02, 281, 282, 283, 284, and 285.

Districts 62 through 65 shall be composed of that part of Hillsborough County included in tracts 101, 102, 103, 104, 105, 107, 108, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, and 141 and that part of Polk County included in tracts 119 and 120; places 220 and 1445; enumeration districts 227, 249, 250, 251, 252, and 253; and enumeration districts 117 and 120 of tract 0118.

Districts 66 through 70 shall be composed of that part of Hillsborough County included in tracts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 52.99, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 72.99, 73, 106, and 109.

Districts 71 through 72 shall be composed of Hardee County; that part of Manatee County included in tracts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, and 20; and that part of Sarasota County included in tract 12, enumeration district 95 of tract 0009, and enumeration district 94 of tract 0010.

Districts 73 through 74 shall be composed of that part of Charlotte County included in enumeration district 32; that part of Manatee County included in tract 17; and that part of Sarasota County included in tracts 1, 2, 3, 4, 5, 6, 7, 8, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26; enumeration districts 24, 25, 26, 27, and 28 of tract 0009; and enumeration districts 22 and 23 of tract 0010.

District 75 shall be composed of DeSoto County; that part of Charlotte County included in places 590, 787, and 1790 and enumeration districts 10, 11, 12, 16, 28, 34, and 35; that part of Highlands County included in places 1150 and 1950 and enumeration districts 10, 12, 23, 24, 25, 26, 27, 30, and 31; and that part of Sarasota County included in tracts 14 and 27.

District 76 shall be composed of that part of Martin County included in places 1548 and 1807 and enumeration districts 13, 14, 15, and 15B and that part of St. Lucie County included in places 665, 667, 1807, and 1897 and enumeration districts 5, 6, 7, 8, 38, 39, 40, 40B, 40C, 40D, 41, 42, 43, 44, 45, and 46.

District 77 shall be composed of that part of Martin County included in places 905, 975, 1045, 1907, 1960, and 2035 and enumeration districts 12, 16, 16B, 17, 18, 19, 22, 22B, 23, 28, 29, 30, 31, and 32; that part of Okeechobee County included in places 462 and 1565 and enumeration districts 7 and 9; and that part of Palm Beach County included in tracts 1, 2, 3, 4, 6, 8, and 9.

Districts 78 through 83 shall be composed of that part of Broward County included in tracts 103, 104, 105, 106, 203, 305, and 306 and that part of Palm Beach County included in tracts 5, 5.99, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, and 83.

Districts 84 through 88 shall be composed of that part of Broward County included in tracts 101, 102, 107, 108, 109, 110, 201, 202, 204, 205, 301, 302, 303, 304, 307, 308, 309, 310, 311, 312, 401, 402, 403, 404, 405, 406, 407, 408, 415, 416, 417, 418, 419, 420, 421, 422, 422.99, 423, 424, 425, 426, 433, 501, 502, 503, 504, 505, 506, 507, 509, 510, 601, 602, 603, 604, and 605.

District 89 shall be composed of Collier and Glades Counties; that part of Hendry County included in places 385, 825, and 1080 and enumeration districts 7, 8, 9, 13, and 14; that part of Highlands County included in enumeration districts 29 and 32; and that part of Lee County included in enumeration districts 17B and 95.

Districts 90 through 91 shall be composed of that part of Charlotte County included in places 1820 and 1975 and enumeration districts 13, 14, and 15; that part of Hendry County included in enumeration district 12; and that part of Lee County included in places 187, 293, 654, 655, 661, 662, 663, 1217, 1493, and 2100 and enumeration districts 12, 13, 14, 15, 16, 17, 25, 26, 36, 37, 38, 39, 88, 89, 90, 91, 92, 93, 94, and 9900.

Districts 92 through 97 shall be composed of that part of Broward County included in tracts 409, 410, 411, 412, 413, 414, 427, 428, 429, 430, 431, 432, 508, 606, 607, 608, 609, 610, 611, 701, 702, 703, 704, 705, 706, 801, 802, 803, 804, 805, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1101, 1102, 1103, 1104, 1105, and 1201 and that part of Dade County included in tracts 94, 100.01, 100.02, and 100.04.

Districts 98 through 103 shall be composed of that part of Dade County included in tracts 1.01, 1.02, 1.03, 2.01, 2.02, 2.03, 2.04, 2.05, 2.06, 2.07, 2.08, 3.01, 3.02, 3.03, 3.04, 4.01, 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.08, 5.01, 5.03, 6.01, 10.01, 10.02, 10.03, 11.01, 11.02, 11.03, 11.04, 12.01, 12.02, 38, 39.01, 39.02, 39.03, 40, 41.01, 42, 43, 95.01, 95.02, 96, 97, 98, 99.01, 99.02, 99.03, 99.04, and 100.03.

Districts 104 through 108 shall be composed of that part of Dade County included in tracts 5.02, 6.02, 6.03, 6.04, 6.05, 6.06, 7.01, 7.02, 8.01, 8.02, 9.01, 9.02, 9.03, 10.04, 13, 14, 15.01, 15.02, 16.01, 16.02,

17.01, 17.02, 17.03, 18.01, 18.02, 18.03, 19.01, 19.02, 20.01, 20.02, 22.02, 23, 25, 29, 47.01, 47.02, 47.03, 90, 91, 92, 93.01, 93.02, 93.03, 101.01, 101.02, and 101.03 and block groups 1 and 3 of tract 0048.

Districts 109 through 114 shall be composed of that part of Dade County included in tracts 21, 22.01, 24, 26, 27.01, 27.02, 28, 30.01, 30.02, 31, 34, 36.01, 36.02, 37.01, 37.02, 37.99, 41.02, 41.99, 44, 45, 46, 49, 50, 51, 52, 53, 54.01, 54.02, 55.01, 55.02, 56, 57, 58.01, 61.01, 61.02, 62, 63.01, 63.02, 64, 65, 66, 67.01, 67.02, 68, 69, 70.01, 70.02, 71, 72, 73, 74, 75, 76.01, 76.03, 76.04, 79.01, 79.02, and 80; block groups 4, 5, and 9 of tract 0076.02; and enumeration district 31 of tract 0048.

Districts 115 through 119 shall be composed of that part of Dade County included in tracts 58.02, 59.01, 59.02, 59.03, 59.04, 60.01, 60.02, 77.01, 77.02, 77.03, 78.01, 78.02, 78.03, 81, 82.01, 82.02, 83.01, 83.02, 83.03, 84.01, 84.02, 84.03, 85.01, 85.02, 86, 87, 88.01, 88.02, 89.01, 89.02, 89.03, 101.04, 101.05, 102, 103, 104, 105, 106.01, 106.02, 106.03, 107, 108, 109, 110, 111, and 112; block groups 1, 2, and 3 of tract 0076.02; and enumeration districts 73, 74, 75, 76, 77, 82, 82B, and 89 of tract 0113.

District 120 shall be composed of Monroe County and that part of Dade County included in tracts 114 and 115 and enumeration district 81 of tract 0113.

History.—s. 5, SJR 1305, 1972 Regular Session.

10.07 Inclusion of unlisted territory in contiguous districts.—Any portion of the State of Florida which is not stated herein as being included in any district described in this chapter but which is entirely surrounded by a district shall be deemed to be included within that district. Any portion of the state which is not included in any district described in this chapter and which is not entirely surrounded by a district shall be included within that district contiguous to such portion which contains the least population per legislator according to the United States Decennial Census of 1970.

History.—s. 7, SJR 1305, 1972 Regular Session.

10.08 Severability.—In the event any section, subsection, sentence, clause or phrase of this chapter or any senatorial or representative district established herein shall be declared, determined to be or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this chapter, or any other districts established herein, which shall remain of full force and effect, as if the section, subsection, sentence, clause, phrase or district so declared, determined to be or adjudged invalid or unconstitutional were not originally a part hereof. The legislature hereby declares that it would have passed the remaining parts of this chapter as if it had known that such part or parts hereof would be declared, determined to be or adjudged invalid or unconstitutional.

History.—s. 9, SJR 1305, 1972 Regular Session.

CHAPTER 11

LEGISLATIVE ORGANIZATION, PROCEDURES, AND STAFFING

11.011 Special session; called by presiding officers.—The President of the Senate and the Speaker of the House of Representatives, by joint proclamation duly filed with the Department of State, may convene the Legislature in special session pursuant to the authority of s. 3, Art. III of the State Constitution. During such special session, only such legislative business may be transacted as is within the purview of the purpose or purposes stated in the proclamation or in a communication from the Governor or is introduced by consent of two-thirds of the membership of each house.

History.—s. 6, ch. 69-52; ss. 10, 35, ch. 69-106.

11.012 Extra session convened by legislative membership.—The Legislature may also be convened in extra session in the following manner: When 20 percent of the members of the Legislature shall execute in writing and file with the Department of State their certificates that conditions warrant the convening of the Legislature into extra session, the Department of State shall, within 7 days

after receiving the requisite number of such certificates, poll the members of the Legislature, and upon the affirmative vote of three-fifths of the members of both houses, shall forthwith fix the day and hour for the convening of such extra session. Notice thereof shall be given each member by registered mail within 7 days after receiving the requisite number of said certificates. The time for convening of said session shall not be less than 14 days nor more than 21 days from the date of mailing said notices. In pursuance of said certificates, affirmative vote of the membership, and notice, the Legislature shall convene in extra session for all purposes as if convened in regular session; provided, however, that any such extra session shall be limited to a period of 30 days. Should the Department of State fail to receive the requisite number of said certificates requesting the convening of an extra session of the Legislature within a period of 60 days after receipt of the first of said certificates, all certificates previously filed shall be rendered null and void and no extra session shall be called, and said certificates shall not be used at any future time for the convening of the Legislature.

History.—Former s. 2, Art. III of the Constitution of 1885, as amended; converted to statutory law by s. 10, Art. XII of the Constitution as revised in 1968; ss. 10, 35, ch. 69-106.

11.013 Reports of executive officers and other information; available to Legislature.—Each officer of the executive department shall make a full report of his official acts and of the receipts and expenditures of his office and the requirements of the same to the Governor at the beginning of each regular session of the Legislature or whenever the Governor shall require it. Such reports shall be laid before the Legislature by the Governor at the beginning of each regular session thereof. Either house of the Legislature may at any time call upon any officer of the executive department for information required by it.

History.—Former s. 27, Art. IV of the Constitution of 1885, as amended; converted to statutory law by s. 10, Art. XII of the Constitution as revised in 1968.

11.02 Notice of special or local legislation or certain relief acts.—The notice required to obtain special or local legislation or any relief act specified in s. 11.065(3) shall be by publishing the identical notice in each county involved in some newspaper as defined in chapter 50 published in or circulated throughout the county or counties where the matter or thing to be affected by such legislation shall be situated one time at least 30 days before introduction of the proposed law into the Legislature or, there being no newspaper circulated throughout or published in the county, by posting for at least 30 days at not less than three public places in the county or each of the counties, one of which places shall be at the courthouse in the county or counties where the matter or thing to be affected by such legislation shall be situated. Notice of special or local legislation shall state the substance of the contemplated law, as required by s. 10, Art. III of the State Constitution. Notice of any relief act specified in s. 11.065(3) shall state the name of the claimant, the nature of the injury or loss for which the claim is made, and the amount of the claim against the affected municipality's revenue-sharing trust fund.

History.—s. 1, ch 3708, 1887; RS 66; GS 67; RGS 78; CGL 94; s. 1, ch. 13791, 1929; s. 2, ch. 69-52; s. 5, ch. 69-216; s. 1, ch. 78-302; s. 1, ch. 78-307.
cf.—ss. 10, 11, Art. III, State Const.

11.021 Evidence of publication of notice.—The evidence that such notice has been published shall be established in the Legislature before such bill shall be passed, and such evidence shall be filed or preserved with the bill in the Department of State in such manner as the Legislature shall provide. The fact that such notice was established in the Legislature shall in every case be recited upon the journals of the Senate and of the House of Representatives.

History.—Former s. 21, Art. III of the Constitution of 1885, as amended; converted to statutory law by s. 10, Art. XII of the Constitution as revised in 1968; ss. 10, 35, ch. 69-106.

11.03 Proof of publication of notice.—

(1) Affidavit of proof of publication of such notice of intention to apply therefor, may be made, in substantially the following general form, but such form shall not be exclusive:

STATE OF FLORIDA
COUNTY OF .....

Before the undersigned authority personally appeared ....., who on oath does solemnly swear (or affirm) that he has knowledge of the matters stated herein; that a notice stating the substance of a contemplated law or proposed bill relating to

(here identify bill)

has been published at least 30 days prior to this date, by being printed in the issues of (here state day, month and year of issue or issues) of the ....., a newspaper or newspapers published in ..... County or Counties, Florida (or) there being no newspaper, by being posted for at least 30 days prior to this date at three public places in ..... County or Counties, one of which places was at the courthouse of said county or counties, where the matter or thing to be affected by the contemplated law is situated; that a copy of the notice that has been published as aforesaid and also this affidavit of proof of publication are attached to the proposed bill or contemplated law, and such copy of the notice so attached is by reference made a part of this affidavit.

.....

Sworn to and subscribed before me this ..... 19.....

(SEAL)

.....(Signature).....

Notary Public, State of Florida.

My commission expires .....

(2) Such affidavit of proof of publication shall be attached to the contemplated law when it is introduced into the Legislature. A true copy of the notice published or posted shall also be attached to the bill when introduced, but it shall not be necessary to enter said published or posted notice, or proof thereof, in the journals. The fact that such notice was established in the Legislature shall in every case be recited upon the journals of the Senate and of the House of Representatives, and the notice published and affidavit of publication thereof shall accompany

the bill throughout the Legislature and be preserved as a part thereof in the Department of State.

History.—s. 2, ch. 3708, 1887; RS 67; GS 68; RGS 79; CGL 95; s. 1, ch. 13791, 1929; s. 1, ch. 21635, 1943; ss. 10, 35, ch. 69-106.

11.031 Official census.—

(1) All acts of the Florida Legislature based upon population and all constitutional apportionments shall be based upon the last federal decennial statewide census.

(2) No special county or district census shall be effective for any purposes other than to ascertain the population for the purpose of interpreting an existing law relating to additional judges of the circuit court and additional county court judges, but no existing population or apportionment act shall be affected by a special census.

(3) The last federal decennial statewide census shall not be effective for the purpose of affecting acts of the Legislature enacted prior thereto which apply only to counties of the state within a stated population bracket until July 1 of the year following the taking of such census.

History.—ss. 1, 2, ch. 57-126; ss. 1, 2, ch. 59-28; ss. 1, chs. 59-410, 59-264; s. 2, ch. 63-572; s. 3, ch. 73-333.
cf.—s. 8, Art. X, State Const.

11.04 Notices declared to be sufficient.—Any notice heretofore published, now being published, or hereafter published which conforms to the requirements of s. 11.02 shall be sufficient in manner, form and substance; provided, however, any notice by posting in the manner provided by this chapter, which has heretofore been posted in any county or counties having a newspaper, is sufficient in manner, form and substance.

History.—s. 2, ch. 13791, 1929; CGL 1936 Supp. 95(1).

11.045 Lobbyists; registration and reporting; exemptions; penalties.—

(1) As used in this section, unless the context otherwise requires:

(a) "Committee" means the committee of each house charged by the presiding officer with responsibility for ethical conduct of lobbyists.

(b) "Joint legislative office" means a central office designated jointly by the President of the Senate and the Speaker of the House of Representatives. Said office shall be under the immediate responsibility of the Secretary of the Senate and the Clerk of the House of Representatives.

(c) "Principal" means the person, firm, corporation, or other entity which has employed or retained a lobbyist.

(2) All persons, except members of the Florida Legislature, or duly authorized aides designated in writing by such members, who seek to encourage the passage, defeat, or modification of any legislation in the Senate or the House of Representatives, or any committee thereof, shall, before engaging in such lobbying activity in Tallahassee, register with the joint legislative office. Every person required to register as a lobbyist shall register on forms prepared by the joint legislative office and shall state under oath his name, business address, the name and business address of each principal represented, and the general and specific areas of his legislative interest. Separate registration is required for each principal represented. In addition, every registrant shall be required to state under oath the extent of any direct business association or partnership with any current member of the Legislature. All registrations shall be open to the public. Any person who merely appears before a member or committee of the House of Representatives or Senate in his individual capacity for the purpose of self-representation without compensation or reimbursement to express support of or opposition to any legislation, and who shall so declare to the legislator or legislative committee with whom he discusses any proposed legislation, shall not be required to register as a lobbyist.

(3) A lobbyist shall semiannually submit to the joint legislative office a signed statement under oath listing all lobbying expenditures and sources from which funds for making such expenditures have come. The statement of session expenditures shall be filed by July 15 of each year and shall include expenditures for the period from January 1 through June 30. The statement of interim expenditures shall be filed by January 15 and shall include expenditures for the period from July 1 through December 31, including expenditures for any special sessions. Lobbying expenditures shall not include personal expenses for lodging, meals, and travel. Said statements shall be rendered in the form provided by the joint legislative office and shall be open to public inspection. A statement shall be filed even if there have been no expenditures during a reporting period.

(4) A lobbyist, when in doubt about the applicability and interpretation of this section in a particular context, shall submit in writing the facts for an advisory opinion to the committee of the respective house and may appear in person before the committee. The committee shall render advisory opinions to any lobbyist who seeks advice as to whether the facts in a particular case would constitute a violation of this section. The committee shall make sufficient deletions to prevent disclosing the identity of persons in the decisions or opinions. All advisory opinions of the committee shall be numbered, dated, and furnished to the joint legislative office and shall be open to public inspection.

(5) The joint legislative office shall keep all advisory opinions of the committees relating to lobbyists and lobbying activities, as well as a current list of registered lobbyists and their respective reports required under this section, all of which shall be open for public inspection.

(6) The committee of the respective house shall investigate any person engaged in legislative lobbying upon receipt of a sworn complaint alleging a violation of this section. If the committee finds that there has been a violation of this section, it shall report its findings to the President of the Senate or Speaker of the House of Representatives, as appropriate, together with a recommended penalty of reprimand, censure, probation, or prohibition from lobbying for all or any part of the legislative biennium during which the violation occurred. Upon the receipt of such report, the President of the Senate or Speaker of the House of Representatives shall cause the committee report and recommendations to be brought before the respective house and a final de-

termination shall be made by a majority of said house.

(7) Any person who swears falsely to any material fact in any registration statement or report taken under the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 78-268.

11.05 Oath by lobbyist; penalty for false swearing.—

(1) Whenever any person shall appear before any committee of the Legislature of the state for the purpose of advocating or opposing proposed changes or amendments, or in anywise discussing a measure or matter being considered by such committee, such committee, or any member thereof, may require such person to state upon oath in writing:

(a) Whether or not he appears in his own individual interest; or

(b) In the interest of some other person; and

(c) If so the name of such person; and

(d) If he has been or is to be paid a fee or any compensation, directly or indirectly, for such service, or as expenses or otherwise to so appear before such committee; and

(e) When such oath is required by a committee or any member thereof the chairman of the committee shall file the written oath with the Secretary of the Senate and the Clerk of the House, and said oath shall at once be spread upon the journal of each house for the information of the members of the Legislature.

(2) Any person who shall swear falsely as to any material fact in such oath shall be guilty of false swearing, which constitutes a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 1, 2, ch. 5712, 1907; RGS 80, 5342; CGL 96, 7475; s. 7, ch. 71-136; s. 2, ch. 77-104.

11.06 Member of committee may administer oath.—For the purpose of s. 11.05 the chairman or any member of the committee before whom such person may appear, may administer the oath herein provided for.

History.—s. 3, ch. 5712, 1907; RGS 81; CGL 97.

11.061 State employee lobbyists; registration; recording attendance; penalty; exemptions.—

(1) Any person employed by any executive, judicial, or quasi-judicial department of the state who seeks to encourage the passage, defeat, or modification of any legislation by personal appearance or attendance before the House of Representatives or the Senate, or any committee thereof, shall, prior thereto, register as a lobbyist with the joint legislative office on a form to be provided by the joint legislative office in the same manner as any other lobbyist is required to register, whether by rule of either house or otherwise. This shall not preclude any person from contacting his legislator regarding any matter during hours other than the established business hours of his respective agency.

(2)(a) Each state employee registered pursuant to the provisions of this section shall:

1. Record with the chairman of the committee any attendance before any committee during established business hours of the agency by which he is employed.

2. Record with the joint legislative office any attendance in the legislative chambers, committee rooms, legislative offices, legislative hallways, and other areas in the immediate vicinity during the established business hours of the agency by which he is employed.

(b) Persons who appear before a committee or subcommittee of the House of Representatives or Senate at the request of the committee or subcommittee chairman as a witness or for informational purposes shall be exempt from the provisions of this subsection.

(3) Any state employee who violates any provision of this section by not registering with the joint legislative office as a lobbyist or by failing to record hours spent as a lobbyist in areas and activities as set forth in this section during the established business hours of the agency by which he is employed shall have deducted from his salary an amount equivalent to his hourly wage times the number of hours that he was in violation of this section.

(4) Those persons employed by any executive, judicial, or quasi-judicial department whose position is designated in that department's budget as being used during all, or a portion of, the fiscal year for lobbying shall comply with the provisions of subsection (1), but shall be exempt from the provisions of subsections (2) and (3).

History.—s. 1, ch. 74-161; s. 2, ch. 78-268.

11.062 Use of state funds for lobbying prohibited; penalty.—No funds, exclusive of salaries, travel expenses, and per diem, appropriated to, or otherwise available for use by, any executive, judicial, or quasi-judicial department shall be used by any state employee or other person for lobbying purposes, which shall include the cost for publication and distribution of each publication used in lobbying; other printing; media; advertising, including production costs; postage; entertainment; and telephone and telegraph. Any state employee of any executive, judicial, or quasi-judicial department who violates the provisions of this section shall have deducted from his salary the amount of state moneys spent in violation of this section.

History.—s. 2, ch. 74-161.

11.065 Claims against state; limitations; notice.—

(1) No claims against the state shall be presented to the Legislature more than 4 years after the cause for relief accrued. Any claim presented after this time of limitation shall be void and unenforceable.

(2) All relief acts of the Legislature shall be for payment in full. No further claims for relief shall be submitted to the Legislature in the future.

(3) Notice shall be given as provided in s. 11.02 prior to the introduction of any relief act which provides for the payment of the claim from funds sched-

uled for distribution to a municipality from the revenue-sharing trust fund for municipalities.

History.—ss. 1, 2, ch. 26953, 1951; s. 25, ch. 74-382; s. 1, ch. 78-307.
Note.—Former s. 95.37.
cf.—s. 215.26 Limitation on right to refund from State Treasury.

11.07 Method of enrolling bills, etc.—

(1) All bills and joint resolutions passed by the Senate and House of Representatives shall be duly enrolled in black record by typewriting machines or by photographing, on paper, by the Secretary of the Senate or the Clerk of the House, accordingly as the bills or joint resolutions may have originated in the Senate or House, before they shall be presented to the Governor or filed in the Department of State.

(2) Coded indicators of words to be added or deleted from existing sections of the Florida Statutes or the State Constitution, as authorized by the rules of the Senate and House, shall not be deleted upon enrolling of the act. However, such indicators are solely for the convenience of those using the pamphlet and session laws and shall not be considered to constitute a part of the act as passed.

(3) The size, style and quality of the paper to be used shall be prescribed by the Department of State and furnished by it, in sufficient quantities, to the Secretary of the Senate and the Clerk of the House. The cost of said enrolling paper shall be paid for by the Legislature from the appropriation for legislative expense.

History.—ss. 1, 2, ch. 7346, 1917; RGS 82; CGL 98; s. 1, ch. 25005, 1949; s. 1, ch. 29741, 1955; s. 3, ch. 69-52; ss. 10, 35, ch. 69-106.

11.075 Estimate of economic impact.—Prior to the enactment of any general or special law, each house of the Legislature shall consider the economic impact such legislation will have upon the public and upon the agencies of government assigned to implement or enforce such legislation. For purposes of this section, economic impact shall be defined as in paragraph 120.54 (2)(a). No general or special law shall be declared invalid for failure to comply with the provisions of this act.

History.—s. 3, ch. 76-276; s. 1, ch. 79-400.

11.076 General laws affecting local financing; special requirements.—

(1) Any general law, enacted by the Legislature after July 1, 1978, which requires a municipality or county to perform an activity or to provide a service or facility, which activity, service, or facility will require the expenditure of additional funds, must include an economic impact statement, as defined in s. 11.075, estimating the amount sufficient to cover the total cost to municipalities and counties to implement such activity, service, or facility and must provide a means to finance such activity, service, or facility. Additionally, any general law which grants an exemption or changes the manner by which property is assessed or changes the authorization to levy local taxes must provide a means to finance such exemptions or changes. Such general law shall provide a means to finance the ongoing cost for those municipalities and counties which are providing the activity, service, or facility on the effective date of such law. Except that, where the Legislature determines that a general law serves both state and local objectives, a means to partially finance such activity, service, or facility may be provided by the Legislature. The means of financing such activity, service, or facility may be through remission of additional funds of the state to said municipality or county, through specific authority granted the municipality or county to levy a special tax therefor, or through other sources provided by such law. If financing is provided by means other than the levy of a special tax, the method of financing shall bear a reasonable relationship to the actual costs of performing the activity or providing the service or facility, and shall not reduce, supplant, or adversely affect other state or federal revenues shared with or granted to municipalities or counties. No subsequent legislation shall be deemed to supersede or modify any provision of this act, whether by implication or otherwise, except to the extent that such legislation shall do so expressly; reasons for legislative deviation from this section shall be stated with particularity in the preamble of the act.

(2) This act shall not apply to any general law under which the required expenditure of additional local funds is incidental to the main purpose of the law.

History.—ss. 1, 2, ch. 78-274.

11.111 Continuance of certain causes for term of Legislature and period of time prior and subsequent thereto and committee workdays.— Any proceeding before any court, municipality, or agency of government of this state shall stand continued during any session of the Legislature and for a period of time 15 days prior to any session of the Legislature and 15 days subsequent to the conclusion of any session of the Legislature, and during any period of required committee work and for a period of time 1 day prior and 1 day subsequent thereto, when either attorney representing the litigants is a legislator or when a member of the Legislature is a party or witness or is scheduled to appear before any municipal government, administrative board, or agency, when notice to that effect is given to the convening authority by such member. The immunity herein granted shall extend to any member not an attorney who is engaged in any proceeding before any court or any state, county, or municipal agency or board in a representative capacity for any individual or group or as a witness in any proceeding. After said notice the proceeding may proceed notwithstanding such notice if the party calling such member as a witness shall agree.

History.—s. 1, ch. 15995, 1933; CGL 1936 Supp. 4356(1); s. 1, ch. 61-176; s. 1, ch. 67-2X; s. 1, ch. 70-28; s. 1, ch. 77-119.
Note.—Former s. 54.08.

11.12 Salary, subsistence, and mileage of members and employees; expenses authorized by resolution; appropriation; preaudit by Comptroller.—

(1) The Treasurer is authorized to pay the salary, subsistence, and mileage of the members of the Legislature, as the same shall be authorized from time to time by law, upon receipt of a warrant therefor of the Comptroller, countersigned by the Governor, for the stated amount. He is authorized to pay the compensation of employees of the Legislature, together with reimbursement for their authorized travel as

provided in s. 112.061, and such expense of the Legislature as shall be authorized by law, a concurrent resolution, a resolution of either house, or rules adopted by the respective houses, provided the total amount appropriated to the legislative branch shall not be altered, upon receipt of such warrant therefor. The number, duties, and compensation of the employees of the respective houses and of their committees shall be determined as provided by the rules of the respective house or in this chapter. When the Legislature is in session, each legislator's assistant and each legislator's secretary who change their places of residence in order to attend the session shall be paid subsistence at a rate to be established by the Joint Legislative Management Committee in accordance with policies and procedures adopted by the appropriate administrative authorities in the respective houses, but in no case shall the subsistence paid exceed the maximum allowable rate as provided in s. 112.061(6). Such assistants and secretaries, in addition to subsistence, shall be paid travel expenses in accordance with s. 112.061(7) and (8) for actual travel between their homes and the seat of government in order to attend the legislative session and return home, as well as for one round trip during the course of any regular session of the Legislature.

(2) All vouchers covering legislative expenses shall be preaudited by the Comptroller, and, if found to be correct, state warrants shall be issued therefor.

History.—ss. 1, 2, ch. 12077, 1927; CGL 103; ss. 1, 2, ch. 21933, 1943; ss. 1, chs. 23638, 24157, 1947; s. 1, ch. 24997, 1949; s. 1, ch. 29627, 1955; s. 1, ch. 57-15; ss. 2, 3, ch. 67-371; s. 4, ch. 69-52; s. 1, ch. 79-2.

11.13 Compensation of members.—

(1) The annual salaries of members of the Senate and House of Representatives, payable in 12 equal monthly installments, shall be:

(a) The President of the Senate and Speaker of the House of Representatives, $15,000 each; however, on November 5, 1980, this figure shall be increased to $25,000.

(b) All other members of the Senate and House of Representatives, $12,000 each.

(2) During the time the Legislature is in session, each legislator shall be paid subsistence at a rate to be established by the Joint Legislative Management Committee. Each legislator, in addition to subsistence, shall be paid travel expenses in accordance with s. 112.061(7) and (8) for actual travel between his home and the seat of government for not more than one round trip per week or fraction of a week during any regular, special, or extraordinary session of the Legislature or for the convening of either the House or Senate for official business.

(3) Members of any standing or select committee or subcommittee thereof shall receive per diem and travel expenses as provided in s. 112.061 from the appropriation for legislative expenses.

(4) Each member of the Legislature shall be entitled to receive $700 monthly for intradistrict expenses. The procedure for disbursement of the monthly intradistrict expense allowed shall be set from time to time by the Joint Legislative Management Committee. Said expenses shall be a proper expense of the Legislature and shall be disbursed from the appropriation for legislative expense. The expenses provided under this subsection shall not include any travel and per diem reimbursed under subsections (2) and (3) or the rules of either house.

(5)(a) All expenditures of the Senate, House of Representatives, and offices, committees, and divisions of the Legislature shall be made pursuant to and, unless changed as provided below, within the limits of budgetary estimates of expenditure for each fiscal year prepared and submitted prior to June 15 by the administrative head of each such house, office, committee, or division and approved by the Committee on Rules and Calendar of the Senate and the President of the Senate as to Senate budgets, by the Committee on Administration of the House of Representatives and the Speaker of the House as to House budgets, and by the Joint Legislative Management Committee as to joint committees and the divisions of the Legislature other than the Legislative Auditing Committee and the Auditor General's office. Amounts in the approved estimates of expenditure may be transferred between budgetary units within the Senate, House of Representatives, and joint activities by the original approving authority. Funds may be transferred between items of appropriation to the Legislature when approved by the President of the Senate, the Speaker of the House of Representatives and the Joint Legislative Management Committee, provided the total amount appropriated to the legislative branch shall not be altered. The Joint Legislative Management Committee shall formulate and present to each house and office thereof recommendations concerning the form and preparation of such budgets and procedures for their adoption and transmission.

(b) Thirty days prior to the date established by s. 216.023 for submission of legislative budgets by all state agencies to the Governor, all budgetary units required to submit estimates of expenditures as provided by paragraph (a) of this subsection shall annually submit tentative estimates of their financial needs for the next fiscal year beginning July 1 to the authorities required by said paragraph so that the financial needs of the Legislature for the ensuing fiscal year may be reported to the Governor by a committee composed of the President of the Senate, the Speaker of the House of Representatives, and the chairman or cochairmen of the Joint Legislative Management Committee, pursuant to ss. 11.148 and 11.40 and as required by s. 216.081.

(c) The Joint Legislative Management Committee shall submit on forms prescribed by the State Comptroller requested allotments of appropriations for the fiscal year. It shall be the duty of the State Comptroller to release the funds and authorize the expenditures for the legislative branch to be made from the appropriations on the basis of the requested allotments. However, the aggregate of such allotments shall not exceed the total appropriations available for the fiscal year.

(6) The pay of members of the Senate and House of Representatives shall be only as set by law.

History.—s. 1, ch. 19626, 1939; CGL 1940 Supp. 103(1); s. 1, ch. 20839, 1941; s. 3, ch. 21933, 1943; s. 1, ch. 24999, 1949; s. 1, ch. 26539, 1951; s. 2, ch. 29627, 1955; s. 1, ch. 57-343; s. 1, ch. 57-1988; s. 1, ch. 62-7; s. 2, ch. 63-400; s. 1, ch. 69-3; s. 5, ch. 69-52; s. 8, ch. 69-82; ss. 31, 35, ch. 69-106; s. 1, ch. 73-113; s. 1, ch. 77-88; s. 1, ch. 79-215; s. 1, ch. 79-224.

cf.—s. 15, Art. III, State Const. Terms and qualifications of legislators.

11.131 Monetary supplements prohibited.—All laws or parts of laws, both general or local, which provide a monetary supplement to state legislators from county funds, either as a direct salary supplement or as an expense allowance or as reimbursement for expenses, are hereby repealed. This act shall not be construed to repeal any laws or parts of laws which provide for salaries or expenses to legislative aides or assistants or for the maintenance of a legislative delegation office.

History.—s. 1, ch. 67-602.

11.141 Standing and select committees; creation.—

(1) The Senate is authorized to designate standing committees in such number as it may determine to be necessary, which shall include a committee on rules and calendar.

(2) The House of Representatives is authorized to designate standing committees in such number as it may determine to be necessary, which shall include a Committee on Rules and Calendar and a Committee on House Administration.

(3) When created and designated by rule of the respective house, such standing committees shall exist until the next ensuing general election, both during and between sessions, and shall be empowered to exercise all lawful functions and authority heretofore exercised by both standing and interim committees, including, but without limitation to, those provided by s. 5, Art. III, State Constitution and by this chapter.

(4) The President of the Senate and the Speaker of the House of Representatives are authorized to appoint select committees of their respective houses and, when they deem it necessary or appropriate, to appoint joint select committees.

History.—s. 1, ch. 68-35; s. 7, ch. 69-52; s. 3, ch. 69-216.

11.142 Standing and select committees; meetings.—Each standing and select committee shall meet at such times as it shall determine and shall abide by the general rules and regulations adopted by its respective house to govern the conduct of meetings by such committees.

History.—s. 2, ch. 68-35; s. 8, ch. 69-52.

11.143 Standing or select committees; powers.—

(1) Each standing or select committee or subcommittee thereof is authorized to invite public officials and employees and private individuals to appear before the committee for the purpose of submitting information to it. Each such committee is authorized to maintain a continuous review of the work of the state agencies concerned with its subject area and the performance of the functions of government within each such subject area and for this purpose to request reports from time to time, in such form as the committee shall designate, concerning the operation of any state agency and presenting any proposal or recommendation such agency may have with regard to existing laws or proposed legislation in its subject area.

(2) In order to carry out its duties, each such committee is empowered with the right and authority to inspect and investigate the books, records, papers, documents, data, operation and physical plant of any public agency in this state.

(3)(a) In order to carry out its duties, each such committee, whenever required, may issue subpoena and other necessary process to compel the attendance of witnesses before such committee, and the chairman thereof shall issue said process on behalf of the committee. The chairman or any other member of such committee may administer all oaths and affirmations in the manner prescribed by law to witnesses who shall appear before such committee for the purpose of testifying in any matter concerning which such committee may desire evidence.

(b) Each such committee, whenever required, may also compel by subpoena duces tecum the production of any books, letters, or other documentary evidence it may desire to examine in reference to any matter before it.

(c) Either house during the session may punish by fine or imprisonment any person not a member who shall have been guilty of disorderly or contemptuous conduct in its presence or of a refusal to obey its lawful summons, but such imprisonment shall not extend beyond the final adjournment of the session.

(d) The sheriffs in the several counties or a duly constituted agent of a Florida legislative committee 18 years of age or older shall make such service and execute all process or orders when required by such committees. Sheriffs shall be paid as provided for in s. 30.231.

(4)(a) Whoever willfully affirms or swears falsely in regard to any material matter or thing before any such committee shall be guilty of false swearing, which constitutes a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Should any witness fail to respond to the lawful subpoena of any such committee at a time when the Legislature is not in session or, having responded, fail to answer all lawful inquiries or to turn over evidence that has been subpoenaed, such committee may file a complaint before any circuit court of the state setting up such failure on the part of the witness. On the filing of such complaint, the court shall take jurisdiction of the witness and the subject matter of said complaint and shall direct the witness to respond to all lawful questions and to produce all documentary evidence in his possession which is lawfully demanded. The failure of any witness to comply with such order of the court shall constitute a direct and criminal contempt of court, and the court shall punish said witness accordingly.

(5) All witnesses summoned before any such committee shall receive reimbursement for travel expenses and per diem at the rates provided in s. 112.061. However, the fact that such reimbursement is not tendered at the time the subpoena is served shall not excuse the witness from appearing as directed therein.

History.—s. 3, ch. 68-35; s. 9, ch. 69-52; s. 1, ch. 69-72; (3)(c) formerly s. 9, Art. III of the Constitution of 1885, as amended; converted to statutory law by s. 10, Art. XII of the Constitution as revised in 1968; s. 8, ch. 71-136; s. 1, ch.

77-121.

11.144 Appointment of advisory committees by standing committees.—Each standing committee may designate such advisory committees as it determines to be needed upon approval, authorization, and appointment by the President of the Senate or the Speaker of the House. Advisory committees shall be selected from or composed of such groups of individuals as the parent committee may determine and submit reports at such time and in such manner as the parent committee shall prescribe. Any advisory committee appointed hereunder shall conduct its operations, make its study, and submit its report in accordance with the general rules and regulations of the respective house. Members of advisory committees shall serve without additional compensation, but may be reimbursed for traveling expenses as provided in s. 112.061.

History.—s. 4, ch. 68-35; s. 10, ch. 69-52.

11.145 Standing committees; records.—Following the organizational session, any standing committee which does not have provision for its operation after the general election shall deliver to the executive director of the Joint Legislative Management Committee its books, memoranda, reports, and records having permanent research value. This section shall apply also to any select committee or other legislative study group and to any revision or study commission having at least one-third of its membership composed of members of the Legislature on or prior to the date on which such committee or commission ceases to operate. The joint committee shall deliver the same or copies thereof to any subsequent committee or commission succeeding to substantially the same study area in order to preserve a continuity of information.

History.—s. 5, ch. 68-35; s. 11, ch. 69-52; s. 1, ch. 72-178; s. 1, ch. 76-94.

11.1465 Services provided to Legislature.—The House of Representatives and the Senate shall be independently responsible for providing the following services to their respective members and committees:

(1) The drafting of legislation for individual members and committees.

(2) Review of legislation and drafting of amendments.

(3) The preparation of bill summaries.

(4) Providing staff facilities comparable in quality and adequacy to those which the Legislature provides for other departments of state government, and, to the extent that funds are available, providing such other adequate expert assistance as may be necessary to assist each house in performing its required functions.

(5) To the extent that funds are available, furnishing each standing committee such professional assistance as may be required in order to provide comprehensive research capabilities for each such committee.

History.—s. 2, ch. 72-178.

11.147 Joint Legislative Management Committee.—

(1) There is hereby created the Joint Legislative Management Committee, which shall consist of three members of the House of Representatives appointed by the Speaker of the House, one of whom shall be a member of the minority party, and three members of the Senate appointed by the President of the Senate, one of whom shall be a member of the minority party.

(2) If a vacancy occurs in the joint committee, the same shall be filled as provided for original appointments.

(3)(a) The joint committee shall meet at times and places necessary to perform the functions assigned to it by law, and shall adopt rules and regulations for its own organization and operation and for the organization and operation of such management divisions as may be deemed advisable from time to time by the joint committee in order to carry out the functions assigned by law to the joint committee. It shall have general administrative responsibility for the operation of such divisions.

(b) There shall be an executive director of the Joint Legislative Management Committee who shall be appointed by majority vote of the joint committee.

(c) The executive director shall coordinate the activities of all of the divisions of the joint committee. He shall have authority to hire and remove personnel of the joint committee and its divisions, except that division directors may be hired and removed by the executive director only with the concurrence of the joint committee.

(d) The executive director and the division directors of the joint committee shall be chosen without reference to political affiliation, solely on the basis of fitness to perform the duties assigned them.

(4) The joint committee shall prepare and adopt rules and procedures governing the following matters:

(a) The purchase or acquisition by the Legislature of all supplies, capital outlay items, and other commodities required for the proper functioning of the Legislature. Such rules and procedures shall govern all legislative purchases as contemplated herein and shall be in accord with, but not limited to, the following requirements:

1. A purchase in excess of $2,500 shall be made only upon competitive bids received.

2. If the director of any division of the Legislature determines that an emergency exists in regard to the purchase of any commodities, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the provisions herein for competitive bidding shall not apply and the director shall file with the joint committee a statement under oath certifying the conditions and circumstances of the emergency. Upon receiving a statement the joint committee may authorize the purchase.

3. There is excepted from bid requirements purchasing agreements, contracts, maximum price regulations executed or approved by the joint committee, and noncompetitive items available from one source only. In connection with the purchase of noncompetitive items only available from one source, a

certification of the conditions and circumstances requiring the purchase shall be filed with the joint committee. Upon receipt of such certification, the joint committee may, in writing, authorize the purchase.

4. Whenever two or more competitive bids are received, one or more of which relates to commodities manufactured within this state, and whenever all things stated in such received bids are equal with respect to price, quality, and service, the commodities manufactured within this state shall be given preference. A similar preference shall be given to commodities manufactured within this state whenever purchases are made without competitive bids, and when practical the joint committee may establish reasonable preferential policies for other commodities giving preference to resident suppliers of this state. Any foreign manufacturing company with a factory in the state and with over 200 employees working in the state shall have preference over any other foreign company where both price and quality are the same, regardless of where the product is manufactured.

5. Any procedures adopted by the joint committee with reference to public printing must comply with the provisions of chapter 283. However, if any division director determines, from the nature of the type printing to be done, that it would be detrimental to the interests of the state to requisition certain printing through the joint committee due to delay incident to giving opportunity for competitive bidding, unusual problems presented, or to any type of emergency, the division director may file with the joint committee a statement under oath certifying his reasons therefor. Upon receipt of the statement, the joint committee may, in writing, authorize the purchase contemplated by the division subject to the provisions of chapter 283.

6. All purchases or acquisition of supplies, capital outlay items, and other commodities within the purview of this section shall be made on the lowest and best bid.

(b) The vouchering of and reimbursement for authorized travel by members and employees of the Legislature.

(c) The adoption and administration of a uniform personnel, job classification, and pay plan for all legislative employees.

(d) Other matters deemed appropriate by the joint committee.

(5) The joint committee shall contract with an actuarial firm for the provision of actuarial services to those standing committees whose areas of responsibility include the retirement systems supported by state funds, to other standing committees requiring such services, and to administrators concerned with the operation of such retirement systems. The cost of such services, whether in the form of actuarial studies or of special projects, shall be considered a proper expense of the Legislature to be paid by the joint committee. However, by agreement between the committee and the administering agency, all or pro rata portions of the cost may be contributed from the funds charged with the costs of administering the respective retirement systems.

(6) The joint committee shall contract with a certified public accountant licensed under the Public Accountancy Law of this state for an annual audit of the financial records and reports of the Legislature and to deliver such audit to the President of the Senate, the Speaker of the House, and the members of the joint committee.

(7) The joint committee shall enter into such other contracts as it shall deem necessary in the performance of its functions.

(8) Action by a majority vote of the membership of the joint committee shall control and be conclusive on any matter properly concerning the several divisions of the Legislature.

(9) The Joint Legislative Management Committee shall, upon the request of the standing committee of either house of the Legislature having jurisdiction over the area of insurance, retain the services of an actuary who is a Fellow of the Casualty Actuarial Society to assist each such standing committee in developing automobile insurance legislation.

History.—s. 7, ch. 68-35; s. 13, ch. 69-52; s. 1, ch. 71-329; s. 3, ch. 72-178; s. 2, ch. 77-468; s. 1, ch. 78-121.

11.148 Functions under administration of Joint Legislative Management Committee.—The Joint Legislative Management Committee shall be responsible for the administration of the following functions:

(1) Developing uniform policies and procedures relating to the keeping of an inventory record of capital outlay items owned and purchased by the Legislature in accordance with chapter 273.

(2) Preparing suggested budgets in conformity with s. 216.023 for all expenditures of each house, the joint committee, and the divisions of the Legislature and submitting same to the respective presiding officers for their final approval before transmission to the Executive Office of the Governor.

(3) Ascertaining that proper authorization has been obtained for all expenditures of the Legislature.

(4) Preparing all payrolls for the Legislature, including the certification of vouchers and transmission of same to the Comptroller, and maintaining the required and necessary payroll records.

(5) Preparing and certifying all vouchers for expense and capital outlay expenditures for transmission to the Comptroller. Expenditures chargeable to the Senate shall be approved by the President or his duly authorized agent; expenditures chargeable to the House of Representatives shall be approved by the Speaker or his duly authorized agent; expenditures chargeable to the divisions under the joint committee shall be approved by the joint committee or its duly authorized agent. All vouchers covering legislative expenses shall be preaudited by the Comptroller and, if found to be correct, state warrants shall be issued therefor.

(6) Maintaining records of disbursements from the legislative appropriation by offices, divisions or departments, including standing committees, or other categories as needed, indicating a breakdown as to type of disbursements.

(7) Preparing monthly reports of disbursements of the respective houses and joint committee.

(8) Conducting a study of the purchases by the Legislature of commodities as defined in s. 287.012(2)

and compiling and coordinating information relative thereto.

(9) Planning and coordinating purchases in volume for the Legislature in order to take advantage of, and secure the economies made possible by, volume purchasing, providing for the negotiation and execution of purchasing agreements and contracts, and establishing methods for obtaining competitive bid prices upon which the Legislature may purchase.

(10) Taking advantage of Federal GSA [General Services Administration] contracts and state contracts negotiated by the Division of Purchasing of the State Department of General Services.

(11) Issuing and approving all purchase orders under the authority of the Joint Legislative Management Committee.

(12) Developing uniform purchasing policies and procedures relating to the acquisition of supplies, capital outlay items, and contractual services.

(13) Assisting each house of the Legislature with such personnel services as the joint committee may deem necessary, including but not limited to recruiting of new employees, examining the backgrounds of applicants or new employees and providing for periodic service ratings. However, each house shall retain the authority to hire and remove its own employees and to accept and review applications for employment.

(14) Compiling final reports of the work of each standing committee of the Legislature.

(15) Maintaining and preserving, from biennium to biennium, the books, memoranda, reports, and records of each standing committee having permanent research value.

(16) Listing and maintaining all of the reference materials located within both houses of the Legislature.

(17) Maintaining a library adequate for the needs of the Legislature.

(18) Cooperating and maintaining an exchange service with legislative service agencies of other states, the federal government, foreign governments, local units of government in this state, the council of state governments, and other agencies which carry on research in governmental problems, and through cooperation with such agencies, securing information for the members of the Legislature of this state.

(19) Furnishing the presiding officers or members of either house of the Legislature material upon any question of parliamentary law or legislative procedure submitted by any of them.

(20) Preparing periodic subject indexes, sponsor reports, section citators, and similar materials and distributing same as the joint committee shall determine.

(21) Maintaining a permanent and continuous statutory revision plan under the supervision of the joint committee and in the manner provided in ss. 11.242-11.246, including periodic publication of the Florida Statutes.

(22) Maintaining a system of continual distribution of research materials to all legislative standing committee chairmen and staff directors, and providing up-to-date information to all standing committees on available reference material.

(23) Analyzing all prefiled bills and all bills introduced during legislative sessions and, with respect thereto:

(a) Compiling information relating to citations based on statutes affected and on bill number.

(b) Determining the existence of identical, companion, and similar bills.

(c) Determining the classification of bills as general, special, or general laws of local application.

(d) Compiling any other information which the joint committee may deem necessary.

(24) Maintaining a bill status system supplying such information relating to all prefiled bills and all bills introduced during legislative sessions as the joint committee may deem necessary.

(25) Coordinating all matters relative to legislative printing and carrying out all duties assigned to the joint committee by chapter 283 and as otherwise assigned by law.

(26) Publishing a handbook of all rules, regulations and policies affecting the administration of the committee and its divisions and the joint administration of the Legislature. Such handbook shall be regularly updated and shall be made available to legislators, legislative staff, and the public.

(27) Carrying on such other functions as are determined by the joint committee, with the consent of the presiding officers of both houses of the Legislature, to be joint functions.

History.—s. 7, ch. 25369, 1949; ss. 8, 12, ch. 68-35; ss. 14, 15, 21, 22, ch. 69-52; ss. 22, 31, 35, ch. 69-106; s. 4, ch. 72-178; s. 54, ch. 79-190.

Note.—Former ss. 11.148, 11.1481, 11.24.

11.149 Inapplicability of certain sections of the Florida Statutes to the Legislative Auditing Committee.—The amendments to ss. 11.141-11.148, 11.23(1), 11.241, 11.242(7)(a), 11.243(3), 11.246(2)(a), 11.25(1), and 11.26 enacted by chapter 68-35, Laws of Florida, shall not apply to the Legislative Auditing Committee or the Auditor General.

History.—s. 23, ch. 68-35; s. 8, ch. 69-82; s. 1, ch. 79-164.

11.15 Permanent offices of the Legislature.—

(1) The following permanent offices of the Legislature are established:

(a) President of the Senate.
(b) Speaker of the House of Representatives.
(c) President Pro Tempore of the Senate.
(d) Speaker Pro Tempore of the House of Representatives.
(e) Senate Minority Leader.
(f) House Minority Leader.
(g) Secretary of the Senate.
(h) Clerk of the House.
(i) Senate Sergeant at Arms.
(j) House Sergeant at Arms.

(2)(a) The President of the Senate, Speaker of the House, President Pro Tempore of the Senate, Speaker Pro Tempore of the House of Representatives, Secretary of the Senate, Clerk of the House, Sergeant at Arms of the Senate, and Sergeant at Arms of the House shall be elected by the members of their respective houses.

(b) The Senate Minority Leader and the House Minority Leader shall be elected by the members of their respective parties serving in their respective

houses and serve until the election of their successors.

(3) Subject to provisions of law and the rules of their respective houses, the President of the Senate, Speaker of the House, Senate Minority Leader, House Minority Leader, Secretary of the Senate, Clerk of the House, Sergeant at Arms of the Senate, and Sergeant at Arms of the House are authorized to incur expenses and employ personnel as may be required to carry out their assigned duties.

History.—s. 3, ch. 19626, 1939; CGL 1940 Supp. 103(3); s. 3, ch. 20839, 1941; s. 5, ch. 21933, 1943; ss. 1, 2, ch. 57-51; s. 1, ch. 59-462; s. 1, ch. 59-75; s. 1, ch. 61-524; s. 1, ch. 63-293; s. 16, ch. 69-52.

11.151 Annual legislative appropriation to contingency fund for use of Senate President and House Speaker.—There is established a legislative contingency fund consisting of $5,000 for the President of the Senate and $5,000 for the Speaker of the House of Representatives, which amounts shall be set aside annually from moneys appropriated for legislative expense. These funds shall be disbursed by the Comptroller upon receipt of vouchers authorized by the President of the Senate or the Speaker of the House. Said funds may be expended at the unrestricted discretion of the President of the Senate or the Speaker of the House in carrying out their official duties during the entire period between the date of their election as such officers at the organizational meeting held pursuant to s. 3(a), Art. III of the State Constitution and the next general election.

History.—s. 1, ch. 63-328; s. 17, ch. 69-52.

11.23 Location of Joint Legislative Management Committee; interchange of research.—

(1) The joint committee shall be provided with adequate quarters in a state-owned building in the capitol center, conveniently accessible to the members of the Legislature.

(2) The facilities of the State Library and the state institutions of higher learning and of any other libraries maintained by the state shall be available for the use of the Legislature. Each state department shall, upon request, furnish to the joint committee or its designee such documents or material or certified copies thereof and other information as may be desired by the members of the Legislature or as may be necessary for the joint committee or any of its divisions to perform their functions.

History.—s. 6, ch. 25369, 1949; s. 3, ch. 29673, 1955; s. 11, ch. 68-35; s. 20, ch. 69-52; s. 5, ch. 72-178.

11.241 Permanent statutory revision plan created.—There is created a permanent statutory revision plan to be implemented and maintained under the supervision of the joint committee.

History.—s. 2, ch. 67-472; s. 13, ch. 68-35; ss. 29, 30, ch. 69-52; s. 6, ch. 72-178.

11.242 Powers, duties and functions as to statutory revision.—The powers, duties and functions of the joint committee in the operation and maintenance of a statutory revision program shall be as follows:

(1) To conduct a systematic and continuing study of the statutes and laws of this state for the purpose of reducing their number and bulk, removing inconsistencies, redundancies and unnecessary repetitions and otherwise improving their clarity and facilitating their correct and proper interpretation; and for the same purpose, to prepare and submit to the Legislature reviser's bills and bills for the amendment, consolidation, revision, repeal or other alterations or changes in any general statute or laws or parts thereof of a general nature and application of the preceding session or sessions which may appear to be subject to revision. Any revision, either complete, partial or topical, prepared for submission to the Legislature shall be accompanied by revision and history notes relating to the same, showing the changes made therein and the reason for such recommended change.

(2) To carry on the arrangements and identification of the general statutes and laws of the state, as adopted in the Florida Statutes, and the contents of the same, by adding thereto, in the future and in proper place, all new matter belonging therein; this new material to be compiled, revised and republished periodically in continuation of the present systems, matters, tables and other material as contained in the Florida Statutes.

(3) Reviser's bills shall not deal with nor carry forward into the Florida Statutes any statute of any of the following classes:

(a) Statutes relating to, for, or concerning only one or more counties or parts thereof, except in cases where the subject matter of the statute relates to the creation or jurisdiction of state or county courts;

(b) Statutes relating to, for, or concerning and operative in only a portion of the state, except in cases where the subject matter of the statute relates to the creation or jurisdiction of state or county courts;

(c) Statutes relating to, for, or concerning only a certain municipal corporation;

(d) Statutes relating to, for or concerning only one or more designated individuals or corporations;

(e) Statutes incorporating a designated individual corporation or making a grant thereto;

(f) Road designation laws.

(4) The published edition of the Florida Statutes, shall contain the following:

(a) The Florida Statutes, as adopted and enacted, together with the laws of a general nature enacted at any current session of the Legislature and directed to be embodied in said edition.

(b) The Florida Constitution.

(c) Complete indexes of all the material in the statutes.

(d) Such other matters, notes, data, and other material as may be deemed necessary or admissible by the joint committee for reference, convenience or interpretation.

(5) In carrying on the work of statutory revision and in preparing the Florida Statutes for publication:

(a) All amendments made to any section or chapter, or any part thereof, of the Florida Statutes or session laws of this state by any current session of the Legislature, whenever such amendments in express terms refer to sections or chapters of said statutes or session laws, shall be incorporated with the body of the text of the Florida Statutes.

(b) All sections, chapters or titles of the Florida

Statutes or session laws of this state which are expressly repealed by any current session of the Legislature shall be omitted.

(c) All laws of a general and permanent nature which are of general application throughout the state enacted by any current session of the Legislature shall be compiled and included, assigning thereto in all appropriate places such chapter and section identification, by the decimal system of numbering heretofore embodied in the Florida Statutes, as is appropriate and proper, but all chapters and sections so compiled shall be indicated with a history note, clearly showing that said section or chapter was not a part of the revision at the time of its adoption and giving the proper legislative session law chapter and section number. The matter included under the authority of this subsection shall be incorporated as enacted in any current session and shall be prima facie evidence of such law in all courts of the state.

(d) Any two or more sections, chapters or laws, or parts thereof, may be consolidated.

(e) Any section, chapter or law, or part thereof, may be transferred from one location to another.

(f) The form or arrangement of any section, chapter or law, or part thereof, may be altered or changed by transferring, combining or dividing the same.

(g) Subsections, sections, chapters and titles may be renumbered and reference thereto may be changed to agree with such renumbering.

(h) Grammatical, typographical and like errors may be corrected and additions, alterations and omissions, not affecting the construction or meaning of the statutes or laws, may be freely made.

(i) All statutes and laws, or parts thereof, which have expired, become obsolete, been held invalid by a court of last resort, have had their effect or have served their purpose, or which have been repealed or superseded, either expressly or by implication, shall be omitted through the process of reviser's bills duly enacted by the Legislature.

(j) All statutes and laws general in form but of such local or limited application as to make their inclusion in the Florida Statutes or any revision or supplement thereof impracticable, undesirable or unnecessary shall be omitted therefrom, without effecting a repeal thereof.

(k) All things relating to form, position, order or arrangement of the revision, not inconsistent with the Florida Statutes system, which may be found desirable or necessary for the improvement, betterment or perfection of same, may be done.

(l) In preparing manuscript for the printing of the Florida Statutes or any supplement thereto, the joint committee shall, in the absence of specific provision to the contrary, conform the terminology of all acts passed by the 1970 or subsequent sessions to the terminology of the 1969 reorganization act, chapter 69-106, Laws of Florida, as amended.

(6)(a) To award contracts from time to time for editorial work in the preparation of copy and other necessary material, and for printing and binding; to pay expenses only of members of revision committees appointed by the joint committee to assist in revision of whole titles or chapters; and to pay for such other things as are authorized to be done and performed as part of a statutory revision program under the laws of this state.

(b) Contracts for printing and binding of any volume of the Florida Statutes shall only be awarded to the lowest and best responsible bidders who are equipped and qualified to do such printing and binding upon bids submitted pursuant to not less than 28 days' notice thereof in one or more newspapers published in this state as defined by chapter 50.

(c) Each such bid for printing and binding shall be accompanied by a certified check, in an amount to be fixed by the joint committee but not less than $500, to evidence the good faith of the bidder.

(d) The successful bidder shall be required to post a good and sufficient bond, in such sum as the joint committee may fix, to guarantee the prompt and faithful performance of the obligations under the said bid and contract made pursuant thereto.

(e) The contract for printing and binding aforesaid shall contain a provision that only the number of copies therein specified will be printed and that all copies printed will be delivered to the joint committee.

(f) The contract may contain such other and further provisions as may be deemed necessary or proper by the joint committee to insure prompt, speedy and efficient execution of the said printing and binding.

(g) Publication of notices of intention to award contracts for work or services other than printing and binding aforesaid, is not required.

(7) To exchange Florida Statutes, and other available publications, with the officers, boards and agencies of other states and of the United States, and with other governments.

(8) To exercise all other powers, duties and functions necessary or convenient for properly carrying out the provisions of this law and all other laws relating to statutory revision.

History.—s. 3, ch. 67-472; s. 14, ch. 68-35; ss. 23, 29, 30, ch. 69-52; s. 1, ch. 70-169; s. 1, ch. 70-439; s. 2, ch. 71-355; s. 7, ch. 72-178.

11.2421 Florida Statutes 1979 adopted.—The accompanying revision, consolidation, and compilation of the public statutes of 1977 of a general and permanent nature, excepting tables, rules, indexes, and other related matter contained therein, prepared by the joint committee under the provisions of s. 11.242, together with corrections, changes, and amendments to and repeals of provisions of Florida Statutes 1977 enacted in additional reviser's bill or bills by the 1979 Legislature, is adopted and enacted as the official statute law of the state under the title of "Florida Statutes 1979" and shall take effect immediately upon publication. Said statutes may be cited as "Florida Statutes 1979," "Florida Statutes," or "F.S. '79."

History.—s. 1, ch. 20719, 1941; s. 1, ch. 22000, 1943; s. 1, ch. 22858, 1945; s. 1, ch. 24337, 1947; s. 1, ch. 25035, 1949; s. 1, ch. 26484, 1951; s. 1, ch. 27991, 1953; s. 1, ch. 29615, 1955; s. 1, ch. 57-1; s. 1, ch. 59-1; s. 1, ch. 61-1; s. 1, ch. 63-2; s. 1, ch. 65-1; s. 1, ch. 67-1; s. 9, ch. 67-472; s. 1, ch. 69-352; ss. 29, 30, ch. 69-52; s. 1, ch. 71-251; s. 1, ch. 73-70; s. 1, ch. 75-169; s. 1, ch. 77-266; s. 1, ch. 79-281.
Note.—Former s. 16.19.

11.2422 Statutes repealed.—Every statute of a general and permanent nature enacted by the State or by the Territory of Florida at or prior to the regular and special 1977 legislative sessions, and every part of such statute, not included in Florida Statutes

1979, as adopted by s. 11.2421, as amended, or recognized and continued in force by reference therein or in ss. 11.2423 and 11.2424, as amended, is repealed.

History.—s. 2, ch. 20719, 1941; s. 2, ch. 22000, 1943; s. 2, ch. 22858, 1945; s. 2, ch. 24337, 1947; s. 2, ch. 25035, 1949; s. 2, ch. 26484, 1951; s. 2, ch. 27991, 1953; s. 2, ch. 29615, 1955; s. 2, ch. 57-1; s. 2, ch. 59-1; s. 2, ch. 61-1; s. 2, ch. 63-2; s. 2, ch. 65-1; s. 2, ch. 67-1; s. 1, ch. 69-352; s. 1, ch. 71-251; s. 1, ch. 73-70; s. 1, ch. 75-169; s. 1, ch. 77-266; s. 1, ch. 79-281.

Note.—Former s. 16.20.

11.2423 Laws or statutes not repealed.—

(1) No special or local statute, or statute, local, limited or special in its nature, shall be repealed by the Florida Statutes, now or hereafter adopted, and, for the purpose of this saving from repeal any statute of the following classes shall be taken to be included in such exception, namely:

(a) Any statutes for or concerning only a certain county or certain designated counties.

(b) Any statute for, or concerning or operative in only a portion of the state.

(c) Any statute for or concerning only a certain municipal corporation.

(d) Any statute for or concerning only a designated individual corporation or corporations.

(e) Any statute incorporating a designated individual corporation, or making a grant thereto.

(f) Any statute of such limited or local application as makes its inclusion in a general statute impracticable or undesirable.

(g) Road designation laws.

(h) Severability section in any law.

(2) The foregoing enumeration of classes of statutes not repealed shall not be construed to imply a repeal of other statutes which are local, limited or special in their nature.

History.—s. 3, ch. 20719, 1941; s. 3, ch. 22000, 1943; s. 3, ch. 22858, 1945; s. 3, ch. 24337, 1947; s. 3, ch. 25035, 1949; s. 3, ch. 26484, 1951; s. 3, ch. 27991, 1953; s. 3, ch. 59-1; s. 3, ch. 77-104.

Note.—Former s. 16.21.

11.2424 Laws not repealed.—Laws enacted at the 1978 regular and special sessions and the 1979 regular session are not repealed by the adoption and enactment of the Florida Statutes 1979 by s. 11.2421, as amended, but shall have full effect as if enacted after its said adoption and enactment.

History.—s. 4, ch. 20719, 1941; s. 4, ch. 22000, 1943; s. 4, ch. 22858, 1945; s. 4, ch. 24337, 1947; s. 4, ch. 25035, 1949; s. 4, ch. 26484, 1951; s. 4, ch. 27991, 1953; s. 3, ch. 29615, 1955; s. 3, ch. 57-1; s. 1, ch. 57-233; s. 4, ch. 59-1; s. 3, ch. 61-1; s. 3, ch. 63-2; s. 3, ch. 65-1; s. 3, ch. 67-1; s. 1, ch. 69-352; s. 1, ch. 71-251; s. 1, ch. 73-70; s. 1, ch. 75-169; s. 1, ch. 77-266; s. 1, ch. 79-281.

Note.—Former s. 16.22.

11.2425 Rights reserved under repealed statutes.—The repeal of any statute by the adoption and enactment of Florida Statutes 1979, by s. 11.2421, as amended, shall not affect any right accrued before such repeal or any civil remedy where a suit is pending.

History.—s. 5, ch. 20719, 1941; s. 5, ch. 22000, 1943; s. 5, ch. 22858, 1945; s. 5, ch. 24337, 1947; s. 5, ch. 25035, 1949; s. 5, ch. 26484, 1951; s. 5, ch. 27991, 1953; s. 4, ch. 29615, 1955; s. 4, ch. 57-1; s. 5, ch. 59-1; s. 4, ch. 61-1; s. 4, ch. 63-2; s. 4, ch. 65-1; s. 4, ch. 67-1; s. 1, ch. 69-352; s. 1, ch. 71-251; s. 1, ch. 73-70; s. 1, ch. 75-169; s. 1, ch. 77-266; s. 1, ch. 79-281.

Note.—Former s. 16.23.

11.2427 Conflict of laws.—If any section in the civil part of the Florida Statutes, creating a crime or prescribing a punishment, conflicts with any section in the part relating to crimes, the latter shall prevail.

History.—s. 9, ch. 20719, 1941; s. 7, ch. 25035, 1949; s. 7, ch. 26484, 1951.

Note.—Former s. 16.27.

11.243 Publishing Florida Statutes; price, sale; disposal of obsolete statutes.—

(1) The joint committee shall continue the statutory revision system heretofore adopted in this state and shall bring the general acts of the Legislature within the revision system, as promptly after the adjournment of the legislative session as possible.

(2) All copies of the Florida Statutes shall be delivered by the printer to the joint committee, which shall distribute copies to state agencies and personnel as provided by law and sell to purchasers at a price to be fixed by the joint committee that will substantially recover printing and handling costs. Any law school bookstore officially designated by the dean of any law school in Florida may submit orders for sets of the Florida Statutes to be distributed by the joint committee. The joint committee shall subsequently remit to the dean of each such law school an amount equal to 16 percent of the selling price for each set so ordered, up to a total of 200 sets for each law school. All sets shall be sold at the established state price.

(3) All moneys collected by the joint committee from such sales shall be deposited in the State Treasury and credited to the appropriation for legislative expense. Any payment on a contract entered into as provided in s. 11.242, other costs of publication, costs of packaging and mailing, and the cost of other legal indexes and publications prepared as part of a statutory revision program, as well as refunds due on moneys collected by the joint committee, shall be expenses of the Legislature and paid as provided in s. 11.148.

(4) All moneys received for the sale of other books paid for out of the legislative appropriation shall be deposited in the State Treasury and credited to the appropriation for legislative expense. Free distribution of legal matter shall be determined by the joint committee based upon need and circumstances.

(5) The joint committee is directed to take inventory of obsolete statutes in its custody upon delivery of the latest official statutes following each regular legislative year and is authorized to destroy so many thereof as may appear to exceed all future requirements.

History.—s. 4, ch. 67-472; s. 15, ch. 68-35; ss. 24, 28-30, ch. 69-52; s. 2, ch. 70-245; s. 1, ch. 70-439; s. 2, ch. 71-355; s. 8, ch. 72-178.

11.246 Distribution of free copies.—

(1) Two sets of the Florida Statutes and any supplementary matter thereto shall be furnished free to members of the Senate and House of Representatives, to the Secretary of the Senate and the Clerk of the House of Representatives, and to the Sergeants at Arms of the Senate and House of Representatives. One set of Florida Statutes and any supplementary matter thereto shall be furnished free only to:

(a) The Governor and the Cabinet officers of the state;

(b) The Justices of the Florida Supreme Court and the judges of the Florida court system;

(c) The prosecuting officers in the Florida court

system and their assistants; the public defenders and their assistants; the clerks of the circuit court; the sheriffs; the property appraisers; the tax collectors; the superintendents of schools; and the supervisors of elections; and

(d) The Justices of the Supreme Court of the United States; the judges of the Fifth Circuit Court of Appeals of the United States; the federal district judges residing within the state; the Attorney General of the United States; the United States district attorneys and assistants within the state; and the Florida Senators and Representatives in Congress.

(2) Sets of Florida Statutes and any supplementary matter thereto shall be furnished free only for official use upon requisition as follows:

(a) By the offices of President of the Senate, Speaker of the House, Majority Leader of the Senate, Majority Leader of the House, Minority Leader of the Senate and Minority Leader of the House, upon certification of need by same; by the divisions under the supervision of the Joint Legislative Management Committee, upon certification of need by the directors thereof; by the office of Auditor General, upon certification of need by the Auditor General; by standing committees and for other legislative use in the capitol, upon certification of need by the Secretary of the Senate or Sergeant at Arms of the House; by county delegation offices for use in such offices, upon certification of need by the Secretary of the Senate or Sergeant at Arms of the House;

(b) By any executive department or other administrative unit created by law, under such limitations as prescribed by rule of the joint committee, upon certification of need by the chief executive officer thereof;

(c) By Florida Supreme Court research assistants, library, clerk's office, marshal's office, courtroom, or other official use, upon certification of need by the Supreme Court librarian; by district court of appeal research assistants, clerk's office, marshal's office, courtroom, libraries, or other official use, upon certification of need by the clerk; by circuit courts for use in courtroom or chambers, upon certification of need by the clerk; by county courts for use in courtroom or chambers, upon certification of need by the clerk of the county court;

(d) By State Attorneys for use in their offices outside the resident county or for State Attorneys' staff, upon certification of need by the State Attorney, and by Public Defenders for use in offices outside of the resident county or for Public Defenders' staff, upon certification of need by the Public Defender;

(e) By offices and departments of state universities or as needed by the library of each state-supported university or community college, under such limitation as prescribed by rule of the joint committee, upon certification of need by the president thereof;

(f) By the law libraries, respectively, of Stetson University, the University of Florida, the Florida State University, and the University of Miami, upon requisition by the dean of the law college, up to a maximum computed on the basis of one set for every ten students enrolled during the school year, based upon the average enrollment as certified by the registrar; and

(g) By the faculties of the law colleges, respectively, of Stetson University, the University of Florida, the Florida State University, and the University of Miami, upon requisition by the dean of the law college, up to a maximum of one copy for each member of the faculty.

History.—s. 1, ch. 29736, 1955; s. 3, ch. 63-517; s. 1, ch. 67-441; s. 7, ch. 67-472; s. 17, ch. 68-35; ss. 29, 30, ch. 69-52; s. 1, ch. 69-300; s. 1, ch. 70-245; s. 9, ch. 72-178; s. 70, ch. 72-221; s. 1, ch. 77-102; ss. 1, 2, ch. 79-28.

Note.—Former s. 16.501.

11.25 Salaries and expenditures not subject to control of executive agencies.—

(1) The Legislature hereby declares and determines that the employees of the several offices, committees, and other divisions of the Legislature are and shall continue to be groups of employees employed by the Legislature to perform such services as may be provided by law, by rule of the respective house, or directed by the joint committee, whichever is applicable. Such offices, committees and divisions are not agencies of government within the intent of the Legislature as expressed in chapters 216 and 287.

(2) The Department of Administration shall have no power to determine the number or fix the compensation of legislative employees or exercise any manner of control over them. The selection of such employees, the determination of their qualifications and compensation, and the establishment of policies relating to their work, including hours of work, leave, and other matters, shall be the sole prerogative of the Legislature.

History.—s. 9, ch. 25369, 1949; ss. 1-4, ch. 29659, 1955; ss. 2, 3, ch. 67-371; s. 18, ch. 68-35; s. 25, ch. 69-52; ss. 31, 35, ch. 69-106; s. 4, ch. 77-104.

11.26 Employees of the Legislature; restrictions on employment.—

(1) No employee of the Legislature shall:

(a) Reveal to any person outside the area of his direct responsibility the contents or nature of any request for services made by any member of the Legislature, except with the written consent of the person making such request.

(b) Give legal advice on any subject to any person, firm, or corporation, except members of the Legislature.

(c) During his employment by any division of the Legislature, engage in any activity which seeks to influence any legislative action outside the scope of his specific employment.

(2) A violation of any provision of this section by any such employee shall be sufficient cause for his or her immediate dismissal; provided that this section shall not be a limitation on the authority of the Legislature to dismiss or change its employees.

History.—s. 11, ch. 25369, 1949; s. 19, ch. 68-35; s. 26, ch. 69-52; s. 1, ch. 75-208.

cf.—s. 112.3141 Additional standards of conduct for legislators and legislative employees.

11.30 Legislative staff internships.—

(1) SPONSORING COMMITTEES; CREATION; COMPOSITION; APPOINTMENT.—There is created a House Sponsoring Committee for Legislative Staff Internships and a Senate Sponsoring Committee for Legislative Staff Internships. The President of the Senate may appoint three members of the Senate, designating the chairman, to serve on the Senate Sponsoring Committee, and the Speaker of

the House of Representatives may appoint three House members, designating the chairman, to serve on the House Sponsoring Committee. Academic members from the cooperating universities may serve on a sponsoring committee at the discretion of the presiding officer of the house the committee serves. Members shall serve until November 1 of each odd-numbered year. Vacancies shall be filled by appointment in the same manner as the original appointments. Appointments shall be in writing and filed with the Clerk of the House of Representatives or Secretary of the Senate, as appropriate. The program administrator for each committee may serve as staff director of the committee without vote and may be selected to serve the Senate Sponsoring Committee by the President and to serve the House Sponsoring Committee by the Speaker.

(2) COOPERATING UNIVERSITIES.—Public and private universities in this state which offer programs leading to a degree in disciplines relevant to the legislative process may be entitled to participate as cooperating universities. The Board of Regents of the State University System is authorized to designate as cooperating universities any of the qualified universities in the State University System. The designation of a private university which is accredited by the Southern Association of Schools and Colleges as a cooperating university shall be by the board of trustees or comparable governing body thereof. Each cooperating university may be entitled to one academic member on the sponsoring committee, to be appointed by the cooperating university. However, if there are more than five cooperating universities, the legislative members of the sponsoring committee may select and appoint the five academic members to serve with them on the sponsoring committee from among the nominees designated by the cooperating universities. Three of the five academic members will be designated on a rotating basis by the chairmen to be members of the sponsoring committee.

(3) DUTIES; APPOINTMENTS OF INTERNS.—Each sponsoring committee for legislative staff internships may recruit, select, appoint, fix the stipends for interns, and assign them to appropriate offices of the Legislature for the pursuit of study or research appropriate for professional training. Such interns shall be appointed for a 12-month internship which shall not be renewable.

(4) PROGRAM ADMINISTRATOR.—A program administrator for each sponsoring committee may be selected from the staff of an appropriate legislative office designated by the Speaker or the President, as appropriate. The program administrator shall perform the following duties in addition to other duties as the sponsoring committee may direct:

(a) Maintain appropriate committee records.

(b) Maintain a file pertinent to each legislative staff intern during the period of internship.

(c) Coordinate the specific work assignment of legislative staff interns.

(d) Coordinate the individual academic requirements of legislative staff interns with the cooperating universities.

(e) Coordinate the recruitment, screening, and selection process.

(5) PRIVATE GRANTS; STIPENDS.—When a charitable foundation or other donor has made a grant of funds to the Legislature for the payment of the expenses of administration of a legislative staff internship program and for the payment of a share of the monthly stipends to be awarded to such interns and such grant has been approved and accepted by the sponsoring committees, the sponsoring committees shall designate the manner of distribution of such funds to defray the cost of said program.

(6) COMPENSATION AND EXPENSES.—Members of the sponsoring committees shall serve without compensation, but shall be reimbursed for necessary expenses in connection with the performance of their duties, as provided by law.

(7) MEETINGS.—Each sponsoring committee may hold two regular meetings annually. Special meetings may be called by the committees or by the chairmen, specifying the time and place. The secretary shall notify members at least 5 days in advance of each meeting.

(8) STATEMENT OF POLICY.—Each sponsoring committee shall adopt a statement of policy to be followed by the program administrator and a faculty administrator in the administration of the legislative staff internship programs and for the guidance of legislative offices and commissions desiring to utilize the services of legislative interns.

(9) REPORTS.—In addition to any reports required by the statement of policy, each program administrator may submit a report to the committee at its last meeting in even-numbered years. After the receipt of such reports, the committee shall prepare a report to be submitted to the Speaker or President, as appropriate.

(10) EXPENDITURES.—Expenditures for stipends for interns and for the costs of administering the internship programs, to the extent not paid from other funds, shall be a proper charge against legislative expense and shall be paid upon voucher approved by the chairman of the appropriate sponsoring committee and the approving legislative committee.

History.—ss. 1-10, ch. 67-314; ss. 1-3, ch. 69-147; ss. 29, 30, ch. 69-52; ss. 10, 35, ch. 69-106; s. 10, ch. 72-178; s. 4, ch. 73-333; s. 1, ch. 76-92.

11.40 Legislative Auditing Committee.—There is created a standing joint committee of the Legislature designated the Legislative Auditing Committee, composed of ten members as follows: five members of the Senate, to be appointed by the President of the Senate, and five members of the House, to be appointed by the Speaker of the House. The terms of members shall be for 2 years and shall run from the organization of one Legislature to the organization of the next Legislature. Vacancies occurring during the interim period shall be filled in the same manner as the original appointment. The members of the committee shall elect a chairman and vice chairman. During the 2-year term, a member of each house shall serve as chairman for 1 year.

History.—s. 1, ch. 67-470; s. 1, ch. 69-82; s. 1, ch. 73-6.

Note.—Former s. 11.181.

11.401 Legislative Auditing Committee; annual audit of financial records and reports.—The Legislative Auditing Committee shall contract with a certified public accountant licensed under chapter 473 for an annual audit of the financial records of the Legislative Auditing Committee and the Auditor General. Copies of the audit shall be delivered to the President of the Senate, the Speaker of the House of Representatives, the Auditor General, and the members of the Legislative Auditing Committee. The committee shall not contract with the same certified public accountant or the firm of which he is a member for the purposes of the audit required by this section for more than 2 consecutive years.

History.—s. 1, ch. 73-78.

11.41 Designation of Auditor General.—The Auditor appointed to office under the State Constitution by the Legislature in the manner set forth in s. 11.42 is hereby designated the Auditor General.

History.—s. 2, ch. 67-470; s. 2, ch. 69-82.
Note.—Former s. 11.182.

11.42 The Auditor General.—

(1) The Auditor General shall be appointed to office by the Legislative Auditing Committee by a majority vote of the members of the committee. At the time of his appointment, the Auditor General shall have been certified under the Public Accountancy Law in this state for a period of at least 10 years, and shall have had not less than 10 years' active experience with the Auditor General or not less than 10 years' active practice as a certified public accountant. Vacancies in the office shall be filled in the same manner as the original appointment.

(2)(a) To carry out his duties the Auditor General shall employ qualified persons necessary for the efficient operation of his office and shall fix their duties and compensation and, with the approval of the Legislative Auditing Committee, shall adopt and administer a uniform personnel, job classification, and pay plan for such employees.

(b) No person shall be employed as an auditor who does not possess the qualifications to take the examination for a certificate as certified public accountant under the laws of this state, and no person shall be employed or retained as legal advisor, on either a full-time or a part-time basis, who is not a member of The Florida Bar.

(c) Any person employed as an accountant or postauditor on the staff of the Auditor General who is qualified to take an examination for the purpose of determining whether or not such person shall be permitted to practice in this state as a certified public accountant, and who takes and passes such examination, shall be entitled to receive a certificate from the State Board of Accountancy, under the provisions of chapter 473, authorizing such person to practice in this state as a certified public accountant upon the completion of 1 year of experience as an accountant or postauditor under the supervision and direction of the Auditor General.

(3) The Auditor General, before entering upon the duties of his office, shall take and subscribe the oath of office required of state officers by the State Constitution.

(4) The Auditor General, before entering upon the duties of his office, shall give bond, with some surety company authorized to do business in Florida as surety, in the amount of $10,000 payable to the President of the Senate and the Speaker of the House and their successors in office and conditioned that he will well and faithfully discharge the duties of his office, promptly report any delinquency or shortage discovered in any accounts and records audited by him, and promptly pay over and account for any and all funds that shall come into his hands as such auditor. If the Auditor General, within 30 days after receiving notice of his appointment, fails to file with the Legislative Auditing Committee the required oath and bond, such appointment shall be of no effect and another appointment shall be made.

(5) All auditors employed by the Auditor General shall be covered by individual bonds or by a blanket position bond. Said bonds or bond shall meet and contain the same conditions as are required in the bond of the Auditor General. All bonds shall be filed with the Legislative Auditing Committee. If an auditor is not covered in the blanket position bond, an individual bond shall be filed within 30 days after such employee receives notice of his employment. The amount of any such bond shall be determined by the Auditor General. Failure thus to file such individual bond or to be covered in the blanket position bond shall terminate his employment.

(6) The annual premium of all bonds shall be paid out of any funds provided for the operation of the office.

(7) The headquarters of the Auditor General shall be at the state capital, but to facilitate auditing and to eliminate unnecessary traveling the Auditor General may establish divisions and assign auditors to each division and determine their duties and the areas of the state to be served by the respective divisions. The Auditor General shall be provided with adequate quarters in a state-owned building in the capitol center and shall be furnished such space as may be necessary to carry out his functions in public-owned buildings in other areas of the state.

(8) The Auditor General may make and enforce reasonable rules and regulations necessary to facilitate audits which he is authorized to perform.

(9) No officer or full-time employee of the office of Auditor General shall actively engage in any other business or profession; serve as the representative of any political party or on any executive committee or other governing body thereof; serve as an executive, officer, or employee of any political party committee, organization, or association; or be engaged on behalf of any candidate for public office in the solicitation of votes or other activities in behalf of such candidacy. Neither the Auditor General nor any employee of the Auditor General shall become a candidate for election to public office unless he shall first resign from his office or employment.

History.—s. 3, ch. 67-470; s. 3, ch. 69-82.
Note.—Former s. 11.183.

11.43 Mandatory duties; termination of appointment.—The duties of the Legislative Auditing Committee and of the Auditor General under law or concurrent resolution are mandatory unless the context clearly indicates otherwise, and failure on the

part of the Auditor General to perform such mandatory duties under the direction of the committee shall constitute cause for termination of appointment. The appointment of the auditor general may be terminated at any time by a majority vote of both houses of the Legislature.

History.—s. 4, ch. 67-470; s. 4, ch. 69-82.
Note.—Former s. 11.184.

11.44 Salaries and expenses.—

(1)(a) The expenses of the members of the Legislative Auditing Committee shall be approved by the chairman of the committee and paid from the appropriation for legislative expense.

(b) The Auditor General shall prepare and submit annually to the Legislative Auditing Committee a proposed budget for the ensuing fiscal year. The committee shall review the budget request and may amend or change the budget request as it deems necessary. The budget request, as amended or changed by the committee, shall become the operating budget of the Auditor General for the ensuing fiscal year; provided that the budget so adopted may subsequently be amended under the same procedure.

(c) Within the limitations of the approved operating budget, the salaries and expenses of the Auditor General and his staff shall be paid from the appropriation for legislative expense or any other moneys appropriated by the Legislature for that purpose. The Auditor General shall approve all bills for salaries and expenses, except expenses of members of the Legislative Auditing Committee, before the same shall be paid.

(d) All payrolls and vouchers prepared by the Auditor General for the operations of his office shall be submitted directly to the Comptroller for preaudit and, if found to be correct, state warrants shall be issued therefor. The Auditor General shall submit a quarterly report of such expenditures, including expenditures of the committee, to the Legislative Auditing Committee, the President of the Senate, the Speaker of the House, the Secretary of the Senate, the Clerk of the House, and the Joint Legislative Management Committee.

(2) The Legislature hereby declares and determines that the Legislative Auditing Committee is a standing committee of the Legislature with interim powers and that the Auditor General is an office under the legislative branch of government; they are not agencies of government within the intention of the Legislature as expressed in chapter 216, and no power shall rest in the Executive Office of the Governor or its successor to release or withhold funds appropriated to them, but the same shall be available for expenditure as provided by law and the rules or decisions of the committee. The Department of Administration or its successor shall have no power to determine the number or fix the compensation of the employees of the committee or of the Auditor General or to exercise any manner of control over them. The Legislative Auditing Committee shall submit to the Joint Legislative Management Committee, for planning purposes only, an estimate of the financial needs of the committee and the Auditor General.

History.—s. 5, ch. 67-470; s. 5, ch. 69-82; ss. 31, 35, ch. 69-106; s. 5, ch. 77-104; s. 55, ch. 79-190.
Note.—Former s. 11.185.

11.45 Definitions; duties; audits; reports.—

(1) The following words and phrases have the following meanings unless a different meaning is required by the context:

(a) "Performance audit" means an examination of the effectiveness of administration and its efficiency and adequacy in terms of the program of the state agency authorized by law to be performed.

(b) "Political subdivision" means a separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

(c) "Postaudit" means an audit made at some point after the completion of a transaction or a group of transactions.

(d) "State agency" means a separate agency or unit of state government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, commission, department, division, institution, office, officer, or public corporation, as the case may be, except any such agency or unit within the legislative branch of state government.

(e) "County agency," for the exclusive purposes of this section, means a board of county commissioners or other legislative and governing body of a county however styled, including that of a consolidated or metropolitan government, a Clerk of the Circuit Court, a separate or ex officio clerk of the county court, a sheriff, a property appraiser, a tax collector, and other officers in whom any portion of the fiscal duties of the above may under law be separately placed from time to time.

(2) The Auditor General shall make postaudits and performance audits of public records and perform related duties as prescribed by law or concurrent resolution of the Legislature. He shall perform his duties independently but under the general policies established by the Legislative Auditing Committee.

(3)(a)1. The Auditor General shall annually make postaudits and performance audits of the accounts and records of all state agencies, as defined in this section, and make postaudits of the accounts and records of all district school boards and district boards of trustees of community colleges, as defined in this section.

2. The Auditor General may at any time make postaudits and performance audits of the accounts and records of all governmental entities created pursuant to law. The postaudits and performance audits referred to in this subparagraph shall be made whenever determined by the Auditor General, whenever directed by the Legislative Auditing Committee, or whenever otherwise required by law or concurrent resolution.

3. Each local governmental entity created pursu-

ant to law, for which entity a postaudit was not performed pursuant to subparagraph 1. or subparagraph 2., except a municipality with an annual budget of less than $100,000, shall require that an annual postaudit of its accounts and records be completed, within 6 months after the end of its respective fiscal year, by an independent certified public accountant retained by it and paid from its public funds.

4. Any postaudit required to be performed under subparagraph 3. shall be submitted to the Auditor General no later than 7 months after the end of the fiscal year of the governmental entity. If the Auditor General does not receive the postaudit within such period, he shall notify the Legislative Auditing Committee that such governmental entity has not complied with this subparagraph. Following notification of failure to submit the required audits, the Legislative Auditing Committee may:

a. In the case of a city or county, notify the Department of Revenue and the Department of Banking and Finance that the local unit of government has failed to comply. Upon notification, the department shall withhold any funds payable to such governmental entity until the required postaudit is received by the Auditor General.

b. In the case of a special district, notify the Department of Community Affairs that the special district has failed to provide the required audits. Upon notification, the department shall proceed pursuant to ss. 189.008 and 189.009.

5. The Auditor General, in consultation with the Board of Accountancy, shall review all audits completed for local units of government by an independent certified public accountant.

(b) The committee may authorize and direct the Auditor General to postaudit the affairs of any municipality or independent agency or authority of any municipality within the state, and the committee shall direct him to make such postaudit whenever petitioned to do so by at least 20 percent of the electors of any municipality. The supervisor of elections of the county in which the municipality is located shall certify whether or not the petition contains the signatures of at least 20 percent of the electors of the municipality. The expenses of such postaudit shall be paid by said municipality and, in the event the municipality fails to pay the cost of the audit, the Department of Revenue shall, upon certification of the Auditor General, withhold from that portion of the municipal financial assistance trust fund for municipalities which is derived from the cigarette tax imposed under chapter 210, and which is distributable to said municipality, a sum sufficient to pay the cost of the audit, and shall deposit said sum in the General Revenue Fund of the state.

(c) The Auditor General shall exercise any power and duty which by any law, general or otherwise, is now vested in the state auditor or the legislative auditor. The Auditor General shall make an annual postaudit of accounts and records of any other public body or political subdivision when required by law or concurrent resolution to do so.

(d) The Auditor General shall at least every 2 years make a performance audit of the local government financial reporting system required by this subsection; ss. 23.0115, 165.091, and 189.001-189.009; and part VII of chapter 112 and part III of chapter 218. The performance audit shall analyze each component of the reporting system separately and analyze the reporting system as a whole. The purpose of such audits is to determine the efficiency and effectiveness of the reporting system in monitoring and evaluating the financial conditions of local governments and to make recommendations to the local governments, the Governor, and the Legislature as to how the reporting system can be improved and how program costs can be reduced.

(4) Each such audit, when practicable, shall be made and completed within not more than 12 months following the end of each fiscal year of the state agency or political subdivision, if an annual audit, or at such lesser time which may be provided by law or concurrent resolution or directed by the Legislative Auditing Committee. When the Auditor General is required by law to make a postaudit of the whole or a portion of a fiscal year of a political subdivision and his current workload of audits of state agencies and political subdivisions is so great that it is not practicable within the required time to perform such postaudit and also to postaudit that political subdivision as to any other period not previously postaudited by him, then in his discretion he may temporarily or indefinitely postpone his postaudit of such other period or any portion thereof unless otherwise directed by the committee.

(5) The Legislative Auditing Committee may at any time, without regard to whether the Legislature is then in session or out of session, take under investigation any matter within the scope of an audit either completed or then being conducted by the Auditor General, and in connection with such investigation may exercise the powers of subpoena by law vested in a standing committee of the Legislature.

(6)(a) The Auditor General may, when in his judgment it is necessary, designate and direct any auditor employed by him to audit any accounts or records within the power of the Auditor General to audit. The auditor shall report his findings for review by the Auditor General, who shall prepare the audit report.

(b) The audit report when final shall be a public record. The audit work papers and notes shall not be a public record; provided, however, those work papers necessary to support the computations in the final audit report may be made available by a majority vote of the Legislative Auditing Committee after a public hearing showing proper cause. The audit work papers and notes shall be retained by the Auditor General until no longer useful in his proper functions after which time they may be destroyed.

(c) The audit report shall make special mention of:

1. Any violation of the laws within the scope of the audit; and

2. Any illegal or improper expenditure, any improper accounting procedures, all failures to properly record financial transactions, and all other inaccuracies, irregularities, shortages, and defalcations.

(d) At the conclusion of the audit, the Auditor General or his designated representative shall discuss the audit with the official whose office is subject to audit and submit to him a list of his adverse find-

ings which may be included in the audit report. If the official is not available for receipt of the list of adverse audit findings, clearly designated as such, then delivery thereof is presumed to be made when it is delivered to his office. The official shall submit to the Auditor General or his designated representative, within 20 days after the receipt of said list of findings, his written statement of explanation or rebuttal concerning all of the findings, including therein corrective action to be taken to preclude a recurrence of all adverse findings.

(7) A copy of the audit report shall be submitted to each member of the Legislative Auditing Committee, to the Governor, to the Comptroller, and to the officer or person in charge of the state agency or political subdivision audited. One copy shall be filed as a permanent public record in the office of the Auditor General. In the case of county reports, one copy of the report of each county office, school or other district audited shall be submitted to the board of county commissioners of the county in which the audit was made and shall be filed in the office of the Clerk of the Circuit Court of that county as a public record; provided, that when an audit is made of the records of the district school board, a copy of the audit report shall also be filed with the district school board, and thereupon such report shall become a part of the public records of such board. Copies of such reports may also be furnished such other persons as in the opinion of the Auditor General may be directly interested in the audit or who may have some duty to perform in connection therewith.

(8) If the Auditor General discovers any errors, unusual practices, or any other discrepancies in connection with his audit or postaudit of a state agency or state officer, the Auditor General shall, as soon as practicable, notify in writing the President of the Senate and the Speaker of the House of Representatives, respectively, who, in turn, shall promptly thereafter forward a copy thereof to the chairmen of the respective legislative committees, which in the judgment of the President of the Senate and the Speaker of the House of Representatives, respectively, are substantially concerned with the functions of the involved state agency or state officer. Thereafter, and in no event later than the 10th day of the next succeeding legislative session, the person in charge of the involved state agency, or the involved state officer, as the case may be, shall explain in writing to the chairmen of the said respective legislative committees and to the Legislative Auditing Committee the reasons or justifications for such errors, unusual practices, or discrepancies and the corrective measures, if any, taken by the agency.

History.—s. 6, ch. 67-470; s. 6, ch. 69-82; s. 1, ch. 72-6; ss. 1, 2, ch. 73-234; s. 1, ch. 75-122; s. 1, ch. 76-73; s. 1, ch. 77-102; s. 2, ch. 79-183.

Note.—Former s. 11.186.

cf.—s. 1.01 Definition of "political subdivision."

11.46 Accounting procedures.—

(1) Accounting systems and procedures referred to in this section mean those designed to fulfill the requirements of generally accepted governmental accounting principles and practices and good internal control and in keeping with generally accepted accounting forms, accounts, records, methods, and practices relating to colleges and universities, hospitals, institutions, and general government.

(2) State officers and agencies referred to in this section mean any state agency as defined in ss. 11.40-11.48.

(3) State officers and agencies shall at all times maintain proper accounting systems and procedures.

(4) In addition to the postauditing functions of the Auditor General he shall have the following duties with respect to accounting systems and procedures:

(a) To develop and promulgate an overall plan for management accounting and reporting designed to provide an economical and efficient management accounting system for state officers and agencies consistent with generally accepted governmental accounting principles, practices, and internal control, within the requirements and spirit of the laws of Florida;

(b) Consistent with such overall plan, to expedite, guide, and assist in the installation of modern accounting and data processing systems and procedures in the offices administered by state officers and agencies;

(c) To stimulate the building of competent and efficient accounting and internal audit organizations in the offices administered by state officers and agencies;

(d) To provide to state officers and agencies consultation services on their financial and accounting systems and procedures and related problems;

(e) To conduct field studies of fiscal and accounting problems of state officers and agencies;

(f) Whenever in his judgment it is practicable, to develop and recommend uniform accounting systems and procedures for state officers and agencies insofar as their accounting and procedural requirements are similar; and

(g) To report annually to the Legislative Auditing Committee concerning accounting systems and procedures employed by state officers and agencies.

(5) If the Auditor General finds that any state officers and agencies have failed to install an adequate management accounting system he shall immediately report his findings in detail to the Legislative Auditing Committee, together with his recommendations for corrective action.

History.—s. 7, ch. 69-82.

11.47 Penalties; failure to make a proper audit; making a false audit report; failure to produce documents or information.—

(1) All officers whose respective offices the Auditor General is authorized to audit shall enter into their public records sufficient information for his proper audit, and shall make the same available to him on his demand.

(2) The willful failure or refusal of the Auditor General or any auditor employed by the Auditor General to make a proper audit in line with his duty, the willful making of a false report as to any audit, or the willful failure or refusal to report a shortage or misappropriation of funds or property shall be cause for removal from such office or employment, and the Auditor General or auditor shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. No proceeding under this subsection shall preclude any proceeding

against the bond of the Auditor General or auditor.

(3) Any person who willfully fails or refuses to furnish or produce any book, record, paper, document, data, or sufficient information necessary to a proper audit which the Auditor General is by law authorized to perform shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Any officer who willfully fails or refuses to furnish or produce any book, record, paper, document, data, or sufficient information necessary to a proper audit which the Auditor General is by law authorized to perform, shall be subject to removal from office.

History.—s. 7, ch. 69-82; s. 9, ch. 71-136.

11.48 Present employees retained.—Each person who has been employed by the State Auditing Department or the legislative auditor for a period of 1 year or more prior to the effective date of this act and whose service rating is good or excellent shall continue in the same position with the Auditor General. Former active experience with the state auditor or with the legislative auditor shall be the equivalent of service with the Auditor General for the purpose of determining the qualifications of a person for appointment to the office of Auditor General or for employment by the auditor general.

History.—s. 7, ch. 69-82.

11.49 Senate seal and coat of arms.—

(1) There is created an official seal of the Senate and a Senate coat of arms. The seal shall be the size of a circle of 2½ inches in diameter, having in the center thereof a fan of the five flags which have flown over Florida, above a disc containing the words "In God We Trust" arched above a gavel, quill, and scroll. At the top of the field of flags shall be the word "Seal"; at the bottom, the date "1838." The perimeter of the seal shall contain the words "Senate" and "State of Florida."

(2) There is created an official coat of arms of the Senate. The coat of arms shall contain a fan of the five flags that have flown over Florida, above the Great Seal of Florida. At the base of the coat of arms shall be the words "The Florida Senate."

History.—s. 1, ch. 72-376.

11.50 Division of Public Assistance Fraud.—

(1)(a) The Auditor General shall investigate, on his own initiative or when required by the Legislative Auditing Committee, public assistance made under the provisions of chapter 409. In the course of such investigation the Auditor General shall examine all records and make inquiry of all persons who may have knowledge as to any irregularity incidental to the disbursement of public moneys, food stamps, or other items to recipients.

(b) All public assistance recipients, as a condition precedent to qualification for assistance under the provisions of chapter 409, shall first give in writing, to the Department of Health and Rehabilitative Services and to the Division of Public Assistance Fraud, consent to make inquiry of past or present employers and records, financial or otherwise.

(2) In the conduct of such investigation the Auditor General may employ persons having such qualifications as are useful in the performance of this duty, and those individuals shall be assigned to the Division of Public Assistance Fraud which is hereby created within the office of the Auditor General.

(3) The results of such investigation shall be reported by the Auditor General to the Legislative Auditing Committee and the Department of Health and Rehabilitative Services and to such others as that committee or the Auditor General may determine.

(4) The Department of Health and Rehabilitative Services shall report to the Auditor General the final disposition of all cases wherein action has been taken pursuant to s. 409.325, based upon information furnished by the Division of Public Assistance Fraud.

(5) All lawful fees and expenses of officers and witnesses, expenses incident to taking testimony and transcripts of testimony and proceedings requested by the Legislative Auditing Committee or the Auditor General shall be a proper charge to the appropriation of the Auditor General. All payments for these purposes shall be on vouchers approved by the Auditor General.

(6) The provisions of this section shall be liberally construed in order to carry out effectively the purposes of this section in the interest of protecting public moneys and other public property.

History.—s. 1, ch. 72-387; s. 1, ch. 77-147.

11.60 Administrative Procedures Committee; creation; membership; powers; duties.—

(1) There is created a joint standing committee of the Legislature designated as the "Administrative Procedures Committee," composed of six members appointed as follows: three members of the House of Representatives appointed by the Speaker of the House, one of whom shall be a member of the minority party; and three members of the Senate appointed by the President of the Senate, one of whom shall be a member of the minority party. The president shall appoint the chairman in even years and the vice chairman in odd years, and the speaker shall appoint the chairman in odd years and the vice chairman in even years, from among the committee membership. Vacancies shall be filled in the same manner as the original appointment. Members shall serve without additional compensation, but shall be reimbursed for expenses.

(2) The committee shall:

(a) Maintain a continuous review of the statutory authority on which each administrative rule is based and, whenever such authority is eliminated or significantly changed by repeal, amendment, holding by a court of last resort, or other factor, advise the agency concerned of the fact.

(b) Review administrative rules and advise the agencies concerned of its findings.

(c) Have the duties prescribed by chapter 120 concerning the adoption and promulgation of rules.

(d) Generally review agency action pursuant to the operation of the Administrative Procedure Act.

(e) Report to the Legislature at least annually, no later than the first week of the regular session, and recommend needed legislation or other appropriate action.

(f) Adopt rules and regulations necessary for its own organization and operation and for that of its

staff, consistent with general law and the rules of each house.

(g) Appoint an executive director and general counsel, by majority vote of the members of the committee, and fill any vacancy in that office in the same manner.

(h) Have general administrative responsibility for the operations of its staff.

(i) Have standing to seek review in the courts of the state, on behalf of the Legislature or the citizens of Florida, of the validity or invalidity of any administrative rule to which the committee has voted an objection and which has not been withdrawn, modified, repealed, or amended to meet the objection. Judicial review under this paragraph shall not be initiated until the Governor and the agency head of the agency making the rule to which the committee has objected have been notified of the committee's proposed action and have been given a reasonable opportunity for consultation with the committee. The committee is hereby authorized to expend public funds from its appropriation for the purpose of seeking judicial review.

(3) Expenses required for the work of the committee shall be included in and paid from the appropriation for legislative expense.

History.—s. 2, ch. 74-310; s. 1, ch. 77-453; s. 2, ch. 79-400.

11.61 Legislative review of regulatory functions.—

(1) This act shall be known as the "Regulatory Reform Act of 1976."

(2) It is the intent of the Legislature:

(a) That no profession, occupation, business, industry, or other endeavor shall be subject to the state's regulatory power unless the exercise of such power is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage. The exercise of the state's police power shall be done only to the extent necessary for that purpose.

(b) That the state shall not regulate a profession, occupation, industry, business, or other endeavor in a manner which will unreasonably adversely affect the competitive market.

(c) To provide systematic legislative review of the need for, and the public benefits derived from, a program or function which licenses or otherwise regulates the initial entry into a profession, occupation, business, industry, or other endeavor by a periodic review and termination, modification, or reestablishment of such programs and functions.

(3) Legislative committee review of licensing and regulatory functions shall begin 2 years prior to the repeal date of the respective sections and chapters enumerated in subsections (2), (3), and (4) of [1]s. 3, chapter 76-168, Laws of Florida, and shall conclude with a recommendation, on or before January 1 prior to the repeal date, for continuation, modification, or repeal.

(4) In determining whether to reestablish a program or function, the Legislature shall consider the following criteria:

(a) Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?

(b) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public health, safety, or welfare?

(c) Is there another, less restrictive method of regulation available which could adequately protect the public?

(d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

(e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

(f) Are all facets of the regulatory process designed solely for the purpose of, and have as their primary effect, the protection of the public?

(5) One year from the date of repeal of any section or chapter enumerated in [1]s. 3, chapter 76-168, Laws of Florida, the unit of government or subunit thereof and the personnel positions responsible for carrying out the powers, duties, and functions created by such section or chapter shall be abolished, and all unexpended balances of appropriations, allocations, or other funds shall revert to the fund from which they were appropriated or, if that fund is abolished, to the General Revenue Fund.

(6) Any program or function scheduled for termination under this act or any subsequent act may be reestablished by the Legislature for any period of time specified by law, not to exceed 6 years, at the end of which time the Legislature shall again review such program or function pursuant to [1]s. 3, chapter 76-168, Laws of Florida, and may again reestablish, modify, or allow the termination of, such program or function pursuant to this section.

(7) Any program or function created in part to regulate the entry into any profession, occupation, business, industry, or other endeavor by law enacted after the effective date of this act shall be reviewed by the Legislature, as required in [1]s. 3, chapter 76-168, Laws of Florida, beginning not later than 48 months after the law authorizing the regulation becomes law, and such review shall be completed not later than January 1 of the next odd-numbered year following the commencement of review. Any such law is repealed on July 1 of such odd-numbered year unless reestablished by the Legislature.

(8) The Speaker of the House and the President of the Senate shall act to appoint a select joint committee to be named no later than January 1, 1977. Said select joint committee shall be charged with the duty of assisting in the implementation of the provisions of this act and shall be charged with the duty of establishing administrative procedures which shall facilitate the review and evaluation required in this act. The appropriate substantive committees of both the House and Senate, upon assignment by the Speaker and the President, respectively, and sitting jointly, shall be responsible for completing the review and evaluation required in this act. A report of their recommendations and a proposed bill shall be completed pursuant to subsection (3) and shall be submitted to the offices of the Speaker and the President for distribution to legislators prior to the ensuing legislative session.

(9) This act shall not affect the right to institute or prosecute any cause of action by or against a unit or subunit of government terminated pursuant to

this act if the cause of action accrued prior to the date the unit or subunit was terminated. Any cause of action pending on the date the unit or subunit is terminated, or instituted thereafter, shall be prosecuted or defended in the name of the state by the Department of Legal Affairs.

History.—ss. 1, 2, 4-9, 11, ch. 76-168; ss. 1, 2, ch. 77-457.
[1]**Note.**—See s. 1, ch. 77-237, and s. 1, ch. 77-457, which amended s. 3, ch. 76-168.
cf.—11.6105 Legislative review of regulatory functions; additional provisions.

11.6105 Legislative review of regulatory functions; additional provisions.—

(1) Chapter 78-155, Laws of Florida, including this subsection, is repealed July 1, 1983. Chapter 78-155 shall be reviewed by the Legislature pursuant to the Regulatory Reform Act.

(2)(a) Chapter 486 shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

(b) Chapter 79-194, Laws of Florida, including this paragraph, shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

(c) Chapter 79-200, Laws of Florida, including this paragraph, is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

(d) Chapter 79-202, Laws of Florida, including this paragraph, is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

(e) Chapter 79-211, Laws of Florida, including this paragraph, shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

(f) Chapter 79-225, Laws of Florida, including this paragraph, shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

(g) Chapter 465 shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

(h) Chapter 79-227, Laws of Florida, including this paragraph, shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

(i) Chapter 79-228, Laws of Florida, including this paragraph, shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by chapter 77-457, Laws of Florida.

(j) Chapter 79-229, Laws of Florida, including this paragraph, shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

(k) Chapter 79-230, Laws of Florida, including this paragraph, shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

(l) Chapter 470 is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

(m) Sections 604.15-604.23, 604.25, and 604.27-604.30 are repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

(n) Chapter 475 is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

(o) Sections 1-40 of chapter 79-243, Laws of Florida, are repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

(p) Chapter 79-272, Laws of Florida, including this paragraph, is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

(q) Chapter 79-273, Laws of Florida, including this paragraph, is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

(r) Chapter 484 shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

(s) Part I of ch. 79-302, Laws of Florida, shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

(t) Chapter 466 shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

(u) Chapter [1]498 is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

(v) Chapter 79-407, Laws of Florida, including this paragraph, is repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

(3) Chapter 509 is repealed on July 1, 1981, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

History.—s. 28, ch. 78-155; s. 2, ch. 79-116; s. 6, ch. 79-194; s. 17, ch. 79-200; s. 25, ch. 79-202; s. 7, ch. 79-211; s. 6, ch. 79-225; s. 7, ch. 79-226; s. 2, ch. 79-227; s. 2, ch. 79-228; s. 6, ch. 79-229; s. 6, ch. 79-230; s. 5, ch. 79-231; s. 14, ch. 79-238; s. 42, ch. 79-239; s. 42, ch. 79-240; s. 42, ch. 79-243; s. 17, ch. 79-272; s. 19, ch. 79-273; s. 5, ch. 79-275; s. 8, ch. 79-302; s. 3, ch. 79-330; s. 32, ch. 79-347; s. 18, ch. 79-407.
[1]**Note.**—Reference to ch. 498 was substituted by the editors for one to ch. 478 to reflect the reassignment of ch. 478, as amended by ch. 79-347, by the editors.
Note.—Former s. 476.264.
cf.—s. 11.61 Legislative review of regulatory functions.

11.611 Legislative review of boards, committees, commissions, and councils adjunct to executive agencies.—

(1) This act shall be known and may be cited as the "Sundown Act."

(2) The Legislature finds it to be in the public interest to systematically review the need for and the benefits derived from boards, committees, commissions, and councils adjunct to executive agencies which were created by statute. The Legislature further finds it to be in the public interest to abolish without further review boards, committees, commissions, and councils adjunct to executive agencies which were created by statute which have held no official meetings subsequent to January 1, 1975, according to the Legislative Information Division computer printout of December 2, 1977. The Legislature declares this act to be supplemental to chapter 76-168, Laws of Florida (the Regulatory Reform Act of 1976).

(3) The records of the boards, committees, com-

missions, and councils enumerated in subsection (1) of s. 3 of chapter 78-323, Laws of Florida, are transferred to the executive agency to which such boards, committees, commissions, or councils were assigned on the established repeal date.

(4) Two years prior to the date of repeal of the boards, committees, commissions, and councils enumerated in subsection (1) of s. 4 of chapter 78-323, Laws of Florida, the Legislature shall review said boards, committees, commissions, and councils to determine which, if any, should be reestablished in the public interest; provided no such reestablishment shall be for a period of time longer than 6 years.

(5) Any new board, committee, commission, or council adjunct to executive agencies which is created by statute after October 1, 1978, shall not be established for a period of time longer than 6 years, at which time such board, committee, commission, or council shall undergo legislative review as required by subsections (4) and (6).

(6) The select joint committee appointed pursuant to s. 11.61(8) shall establish the criteria and the procedures for the review required by this act.

History.—ss. 1-4, ch. 78-323.

11.6115 Legislative review of boards, committees, commissions, and councils adjunct to executive agencies; additional provisions.—

(1)(a) In accordance with the intent expressed in s. 11.611, Florida Statutes, 1978 Supplement, s. 553.77, as amended by chapter 78-323, Laws of Florida, shall be repealed on October 1, 1981, and the State Board of Building Codes and Standards shall be subject to legislative review as required by s. 11.611(4), (5), and (6), Florida Statutes, 1978 Supplement.

(b) In accordance with the intent expressed in s. 11.611, Florida Statutes, 1978 Supplement, s. 450.54, as created by chapter 79-261, Laws of Florida, shall be repealed on October 1, 1981, and the Balance of the State Private Industry Council shall be subject to legislative review as required by s. 11.611(4), (5), and (6), Florida Statutes, 1978 Supplement.

(2) In accordance with the intent expressed in s. 11.611, Florida Statutes, 1978 Supplement, s. 381.3712(4) shall be repealed on July 1, 1985, and the Florida Cancer Control and Research Advisory Board shall be subject to legislative review as required by s. 11.611(4), (5), and (6), Florida Statutes, 1978 Supplement.

(3) In accordance with the intent expressed in s. 11.611, Florida Statutes, 1978 Supplement, s. 372.5745, as created by chapter 79-285, Laws of Florida, shall be repealed on October 1, 1985, and the Waterfowl Advisory Committee shall be subject to legislative review as required by s. 11.611(4), (5), and (6), Florida Statutes, 1978 Supplement.

History.—s. 8, ch. 79-152; s. 9, ch. 79-261; s. 3, ch. 79-285; s. 8, ch. 79-320.

CHAPTER 13

MISCELLANEOUS COMMISSIONS

PART I INTERSTATE COOPERATION; COMMISSIONERS ON UNIFORM STATE LAWS (ss. 13.01-13.10)

PART II LAW REVISION (ss. 13.90-13.996)

PART I

INTERSTATE COOPERATION; COMMISSIONERS ON UNIFORM STATE LAWS

13.01 Commission on Interstate Cooperation; composition.—

(1) There is hereby established the Florida Commission on Interstate Cooperation. This commission shall be composed of 20 members, namely:

(a) The members of the Senate Committee on Interstate Cooperation,

(b) The members of the House Committee on Interstate Cooperation,

(c) The members of the Governor's Committee on Interstate Cooperation,

(d) The Chief Justice of the Supreme Court or an associate justice designated by him.

(2) The chairman of the judicial council and the Florida Commissioners for the Promotion of Uniformity of Legislation in the United States appointed pursuant to s. 13.10 shall be ex officio honorary nonvoting members of this commission. The commission shall elect a chairman and a vice chairman from among its members. The [1]director of the Division of Budget shall serve ex officio as secretary of the Governor's committee, and an employee of the Joint Legislative Management Committee designated by the executive director of the Joint Legislative Management Committee shall serve as secretary of the Joint Legislative Committee on Interstate Cooperation.

(3) The members of the commission and members of all special committees which it establishes shall serve without compensation for such service, but they shall be reimbursed for their traveling expenses incurred in carrying out their obligations under this law as provided in s. 112.061.

History.—ss. 1, 8, ch. 28292, 1953; s. 1, ch. 57-203; s. 3, ch. 63-400; s. 1, ch. 67-222; ss. 2, 3, ch. 67-371; ss. 29, 30, ch. 69-52; ss. 31, 35, ch. 69-106; s. 11, ch. 72-178; s. 5, ch. 73-333.

[1]**Note.**—See s. 10, ch. 79-190, which abolished the Division of Budget of the Department of Administration and transferred all records, property, and funds of the division to the Executive Office of the Governor.

Note.—Former s. 12.01.

13.02 Senate Committee on Interstate Cooperation created; members.—There is hereby established a standing committee of the Senate of this state, to be officially known as the Senate Committee on Interstate Cooperation, and to consist of the President of the Senate or an alternate designated by him and five senators appointed by the president. The members and the chairman of this committee shall be designated in the same manner as is provided by the rules of the Senate for the appointment of the members and chairmen of other standing committees of the Senate.

History.—s. 2, ch. 28292, 1953; s. 2, ch. 67-222.

Note.—Former s. 12.02.

13.03 House of Representatives Committee on Interstate Cooperation; members.—There is hereby established a similar standing committee of the House of Representatives of this state, to be officially known as the House Committee on Interstate Cooperation and to consist of the Speaker of the House of Representatives or an alternate designated by him and five members of the House of Representatives appointed by the speaker. The members and the chairman of this committee shall be designated in the same manner as is provided by the rules of the House of Representatives for the appointment of the members and chairmen of other standing committees of the House of Representatives.

History.—s. 3, ch. 28292, 1953; s. 3, ch. 67-222.

Note.—Former s. 12.03.

13.04 House and Senate committees; terms; functions.—The said standing committee of the Senate and the said standing committee of the House of Representatives shall function during the regular sessions of the Legislature and also during the interim period between such sessions; their members shall serve until their successors are designated; and they shall together constitute the Joint Legislative Committee on Interstate Cooperation.

History.—s. 5, ch. 28292, 1953; s. 4, ch. 67-222.

Note.—Former s. 12.04.

13.05 Governor's Committee on Interstate Cooperation; members.—

(1) There is hereby established a committee of administrative officials of this state to be officially known as the Governor's Committee on Interstate Cooperation, and to consist of seven members. Its members shall be the Governor, Secretary of State, Attorney General, Comptroller, Treasurer, Commissioner of Education, and Commissioner of Agriculture. Any member of the Governor's committee may designate an alternate to serve in his place upon any occasion; such alternate shall be an administrative official or employee of the state.

(2) The Governor shall appoint one of the members of this committee as its chairman. The incumbency of each member of this committee shall extend until his successor is appointed.

History.—s. 4, ch. 28292, 1953; s. 5, ch. 67-222; s. 1, ch. 69-300.
Note.—Former s. 12.05.

13.06 Designation.—The committees and the commission established by ss. 13.01-13.09 shall be informally known, respectively, as the Senate Cooperation Committee, the House Cooperation Committee, the Governor's Cooperation Committee and the Florida Commission on Interstate Cooperation.

History.—s. 9, ch. 28292, 1953.
Note.—Former s. 12.06.

13.07 Functions of commission.—It shall be the function of this commission:

(1) To carry forward the participation of this state as a member of the Council of State Governments.

(2) To encourage and assist the legislative, executive, administrative and judicial officials and employees of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise, with officials and employees of the other states, of the federal government, and of local units of government.

(3) To endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for, and by facilitating;

(a) The adoption of compacts,

(b) The enactment of uniform or reciprocal statutes,

(c) The adoption of uniform or reciprocal administrative rules and regulations,

(d) The informal cooperation of governmental offices with one another,

(e) The personal cooperation of governmental officials and employees with one another, individually,

(f) The interchange and clearance of research and information, and

(g) Any other suitable process.

(4) In short, to do all such acts as will, in the opinion of this commission, enable Florida to do its part in forming a more perfect union among the various governments in the United States and in developing the Council of State Governments for that purpose.

History.—s. 6, ch. 28292, 1953.
Note.—Former s. 12.07.

13.08 Powers and duties of commission.—

(1) The commission shall establish such committees as it deems advisable, in order that they may confer and formulate proposals concerning effective means to secure intergovernmental harmony, and may perform other functions for the commission in obedience to its decisions.

(2) Subject to the approval of the commission, the member or members of any special committee shall be appointed by the chairman of the commission. State officials or employees who are not members of the Commission on Interstate Cooperation may be appointed as members of any such special committee, but private citizens holding no governmental position in this state shall not be eligible.

(3) The commission may provide such other rules as it considers appropriate concerning the membership and the functioning of any such special committee.

(4) The commission may provide for advisory boards for itself and for its various committees, and may authorize private citizens to serve on such boards.

(5) The commission shall report to the Governor and to the Legislature within 15 days after the convening of each regular legislative session, and at such other times as it deems appropriate.

(6) The commission, by contributions from the state to the Council of State Governments, may participate with other states in maintaining the said council's district and central secretariats and its other governmental services.

(7) The commission may appoint a secretary who shall serve without compensation except that he shall be reimbursed for traveling expenses as provided in s. 112.061. The secretary shall keep records of commission activities and assist in preparing the periodic reports.

History.—ss. 7, 8, ch. 28292, 1953; s. 1, ch. 57-307; s. 19, ch. 63-400; s. 1, ch. 73-305.
Note.—Former s. 12.08.

13.09 Council of State Governments as joint governmental agency.—The Council of State Governments is hereby declared to be a joint governmental agency of this state and of the other states which cooperate through it.

History.—s. 10, ch. 28292, 1953.
Note.—Former s. 12.09.

13.10 Commissioners for the Promotion of Uniformity of Legislation in the United States.—

(1) The Governor shall appoint, subject to confirmation by the Senate, three commissioners by the name and style of Commissioners for the Promotion of Uniformity of Legislation in the United States.

(2) The said board shall examine the subjects of marriage and dissolution of marriage, insolvency, form of notarial certificates, descent and distribution of property, acknowledgment of deeds, execution and probate of wills, and other subjects; ascertain the best means to effect assimilation and uniformity in the laws of the state, and cooperate and advise with similar commissions appointed for a like purpose in other states of the union; and, if wise and practicable, draft uniform laws to be submitted for the approval and adoption of the several states, and devise and recommend such other course of action as

shall best accomplish the purposes of this section.

(3) Said commissioners shall serve for 4 years and without compensation, but shall be reimbursed for traveling expenses as provided in s. 112.061.

(4) The executive director of the Joint Legislative Management Committee shall designate an appropriate employee of the joint committee staff to serve as an associate member and secretary of the commission. He shall prepare and sign all vouchers authorized by law and keep such records as directed by the commissioners.

History.—s. 1, ch. 4447, 1895; GS 66; RGS 77; CGL 93; s. 1, ch. 61-42; s. 19, ch. 63-400; s. 2, ch. 67-472; ss. 1, 29, 30, ch. 69-52; s. 12, ch. 72-178; s. 1, ch. 73-300; s. 1, ch. 77-85.

Note.—Former s. 11.01.

PART II

LAW REVISION

13.90 Establishment.—The Florida Legislative Law Revision Council is hereby established.

History.—s. 1, ch. 67-472; s. 1, ch. 72-107; s. 1, ch. 77-37.

13.91 Members.—The council shall be composed of 12 members. The President of the Senate shall appoint four members, at least two of whom shall be members of the Senate; the Speaker of the House of Representatives shall appoint four members, at least two of whom shall be members of the House; and four members shall be appointed by the Board of Governors of The Florida Bar. Each appointee shall be a member of The Florida Bar or a member of the faculty of an accredited college of law in the state and shall be a person who has demonstrated an interest in law reform. Appointments shall be made without regard to political affiliation.

History.—s. 1, ch. 67-472; s. 2, ch. 72-107; s. 1, ch. 77-37.

13.92 Term.—Each of the legislative members appointed by the presiding officer of each house of the Legislature shall serve for a term of 2 years commencing July 1 of each odd-numbered year. The offices of legislative members shall become vacant if they cease to be members of the house of the Legislature from which they were appointed. Each of the other members shall serve for a term of 4 years, commencing July 1 in the year of appointment. Vacancies shall be filled for the unexpired terms in the same manner in which the initial members were appointed.

History.—s. 1, ch. 67-472; s. 3, ch. 72-107; s. 1, ch. 77-37.

13.93 Reappointment of members.—All members of the council are eligible for reappointment.

History.—s. 1, ch. 67-472; s. 4, ch. 72-107.

13.94 Chairman.—Members of the council shall elect a chairman and vice chairman who shall serve for terms of 2 years and shall be eligible to succeed themselves.

History.—s. 1, ch. 67-472; s. 5, ch. 72-107.

13.95 Compensation of members.—The members of the council shall serve without compensation, but they shall be reimbursed for expenses pursuant to s. 112.061.

History.—s. 1, ch. 67-472; s. 6, ch. 72-107.

13.96 Functions.—The council shall:

(1) Examine the common law, constitution and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms;

(2) Recommend, from time to time, such changes in the law as it deems proper to modify or eliminate antiquated and inequitable rules of law, and to bring the law of the state into harmony with modern conditions;

(3) Conduct such surveys or research of the law of Florida as the Legislature may request.

History.—s. 1, ch. 67-472; s. 7, ch. 72-107.

13.97 Receipt of suggested reforms.—The council shall receive and consider and may prepare comments and recommendations on proposed changes in the law recommended by any public official, organization or person.

History.—s. 1, ch. 67-472; s. 8, ch. 72-107.

13.98 Report to Legislature.—The council shall submit a report of its actions to each regular session of the Legislature at the beginning of the session with any legislative drafts which it proposes. The report shall include a description of the projects initiated, pending or completed during the preceding period, and may include recommendations and comments.

History.—s. 1, ch. 67-472; s. 9, ch. 72-107.

13.99 Personnel.—The council shall appoint an executive director who shall serve at the pleasure of the council. The council shall appoint such additional personnel as are necessary for the work of the council or by rule may delegate the executive director to make the appointments. The council shall fix the compensation of the executive director and of all other persons within the amount from time to time appropriated for the council. The council is authorized to pay compensation to personnel who are simultaneously employed by the council and by the state or by any agency or subdivision of the state.

History.—s. 1, ch. 67-472; s. 10, ch. 72-107.

13.992 Powers.—The council may procure temporary and intermittent professional services and render compensation therefor within the amount appropriated for the work of the council. The council may also contract for the services with colleges, universities, schools of law, or other research institutions and may cooperate generally with any learned or professional association or institution.

History.—s. 1, ch. 67-472; s. 11, ch. 72-107.

13.993 Procurement of information; state agencies, etc.—The council may procure information and assistance from the state or any subdivision or municipal corporation or public officer or governmental department or agency thereof. All agencies, officers and political subdivisions of the state or municipal corporations shall give the council all relevant information and reasonable assistance on any matters of research within their knowledge or control.

History.—s. 1, ch. 67-472; s. 12, ch. 72-107.

13.994 Rules and regulations.—The council may make rules and regulations for the conduct of its business and to carry out the purposes of this act.

History.—s. 1, ch. 67-472; s. 13, ch. 72-107.

13.995 Appropriations and use of funds.—At each regular session of the Legislature an appropriation shall be made to carry out the purpose of this act. Funds appropriated for the purposes of this act or transferred to the council by other state agencies for such purposes are available for the exercise of any authority granted by this act.

History.—s. 1, ch. 67-472; s. 14, ch. 72-107.

13.996 Revision of criminal laws.—The first duty of the council shall be to initiate, supervise and complete a revision of the criminal laws of this state, either in bulk or in the stages or parts that the council determines to be feasible. In so doing, it shall consult with persons experienced in the application and enforcement of the criminal laws in this state and persons who have experience in working with similar entities in other states.

History.—s. 1, ch. 67-472; s. 15, ch. 72-107.

TITLE IV

EXECUTIVE BRANCH

CHAPTER 14

GOVERNOR

14.01 Governor; residence; office; authority to protect life, liberty and property.—The Governor shall reside at the head of government and shall have his office in the capitol. The Governor may have such other offices within the state as he may deem necessary. The Governor may employ as many persons as he, in his discretion, may deem necessary to procure and secure protection to life, liberty and property of the inhabitants of the state, also to protect the property of the state.

History.—Ch. 1660, 1868; RS 68; GS 69; RGS 83; CGL 104; s. 1, ch. 65-54.

14.02 Governor may preserve peace and order by military force.—The Governor may, in cases of insurrection or rebellion, violence, disorder or insecurity of life, liberty and property, support and preserve the public peace and order by the military force of the state.

History.—s. 1, ch. 1745, 1870; RS 69; GS 70; RGS 84; CGL 105.
cf.—s. 250.28 Order for troops to aid civil authorities.

14.021 Governor; promulgation and enforcement of emergency rules and regulations.—

(1) The Governor of Florida is hereby authorized and empowered to promulgate and enforce such emergency rules and regulations as are necessary to prevent, control, or quell violence, threatened or actual, during any emergency lawfully declared by him to exist. In order to protect the public welfare, persons and property of citizens against violence, public property damage, overt threats of violence, and to maintain peace, tranquillity, and good order in the state, these rules and regulations may control public parks, public buildings, or any other public facility in Florida and shall regulate the manner of use, the time of use, and persons using the facility during any emergency. These rules and regulations shall have the same force and effect as law during any emergency and shall affect such persons, public buildings, and public facilities as in the judgment of the Governor shall best provide a safeguard for protection of persons and property where danger, violence, and threats exist or are threatened among the citizens of Florida.

(2) Whenever the Governor shall promulgate emergency rules and regulations, such rules and regulations shall be published and posted during the emergency in the area affected, in addition to any other notice required by law.

(3) The Governor shall have emergency power to call upon the military forces of the state or any other law enforcement agency, state or county, to enforce the rules and regulations authorized by this law.

(4) The powers herein granted are supplemental to and in aid of powers now vested in the Governor of this state under the constitution, statutory laws and police powers of said state.

(5) The provisions of this section shall continue in full force and effect until otherwise amended.

History.—ss. 1-4, 6, ch. 31389, 1956; s. 1, ch. 61-239; s. 1, ch. 65-95; ss. 10, 35, ch. 69-106; s. 18, ch. 78-95.

14.022 Governor; emergency powers to quell violence.—

(1) The Governor of Florida is hereby authorized and empowered to take such measures and to do all and every act and thing which he may deem necessary in order to prevent overt threats of violence or violence, to the person or property of citizens of the state and to maintain peace, tranquillity and good order in the state, and in any political subdivision thereof, and in any area of the state designated by him.

(2) The Governor when, in his opinion, the facts warrant, shall, by proclamation, declare that, because of unlawful assemblage, violence, overt threats of violence, or otherwise, a danger exists to the person or property of any citizen or citizens of

the state and that the peace and tranquillity of the state, or any political subdivision thereof, or any area of the state designated by him, is threatened, and because thereof an emergency, with reference to said threats and danger, exists. In all such cases when the Governor shall issue his proclamation as herein provided he shall be and is hereby further authorized and empowered, to cope with said threats and danger, to order and direct any individual person, corporation, association or group of persons to do any act which would in his opinion prevent danger to life, limb or property, prevent a breach of the peace or he may order such individual person, corporation, association or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb, or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of society, and shall have full power by appropriate means to enforce such order or proclamation.

(3) The Governor, upon the issuance of a proclamation as provided for in subsection (2), is hereby authorized and empowered to take and exercise any, either, or all of the following actions, powers, and prerogatives:

(a) Call out the military forces of the state (state militia) and order and direct said forces to take such action as in his judgment may be necessary to avert the threatened danger and to maintain peace and good order in the particular circumstances.

(b) Order any sheriff or sheriffs of this state, pursuant to a proclamation as herein provided, to exercise fully the powers granted them, and each of them, under s. 30.15(6) (suppress tumults, riots, and unlawful assemblies in their counties with force and strong hand when necessary) and to do all things necessary to maintain peace and good order.

(c) Order and direct the State Highway Patrol, and each and every officer thereof, to do and perform such acts and services as he may direct and in his judgment are necessary in the circumstances to maintain peace and good order.

(d) Authorize, order or direct any state, county, or city official to enforce the provisions of such proclamation in each and every and all of the courts in the state by injunction, mandamus, or other appropriate legal action.

(4) The Governor is hereby authorized and empowered to intervene in any situation where there exists violence, overt threats of violence to persons or property and take complete control thereof to prevent violence, or to quell violence or any disturbance or disorder which threatens the peace and good order of society.

(5) The powers herein granted are supplemental to and in aid of powers now vested in the Governor under the constitution, statutory laws and police powers of said state.

(6) The provisions of this section shall continue in full force and effect until otherwise amended.

History.—ss. 1-6, ch. 31390, 1956; s. 2, ch. 61-239; s. 2, ch. 65-95; ss. 10, 35, ch. 69-106; s. 18, ch. 78-95.

14.03 Governor's private secretary.—The Governor of this state may appoint and commission a fit and proper person to hold his office during the pleasure of the Governor, as private secretary of the Governor, and as clerk for the executive department, and who shall attend daily, during office hours, at the capitol, and perform such duties in the office of the Governor as he may be directed by the Governor to perform.

History.—s. 3, ch. 3, 1845; RS 71; GS 72; RGS 86; CGL 107.

14.055 Succession to office of Governor.—Upon vacancy in the office of Governor, the Lieutenant Governor shall become Governor. Upon vacancy in the office of Governor and in the office of Lieutenant Governor, the Secretary of State shall become Governor; or if the office of Secretary of State be vacant, then the Attorney General shall become Governor; or if the office of Attorney General be vacant, then the Comptroller shall become Governor; or if the office of Comptroller be vacant, then the Treasurer shall become Governor; or if the office of Treasurer be vacant, then the Commissioner of Education shall become Governor; or if the office of Commissioner of Education be vacant, then the Commissioner of Agriculture shall become Governor. A successor under this section shall serve for the remainder of the term and shall receive all the rights, privileges and emoluments of the Governor. In case a vacancy shall occur in the office of Governor and provision is not made herein for filling such vacancy, then the Speaker of the House and the President of the Senate shall convene the Legislature by joint proclamation within 15 days for the purpose of choosing a person to serve as Governor for the remainder of the term. A successor shall be elected by a majority vote in a joint session of both houses.

History.—s. 1, ch. 70-171.

cf.—s. 3, Art IV. State Const. Succession to office of Governor; Acting Governor.

14.056 Succession as Acting Governor.—Upon impeachment of the Governor and until completion of trial thereof, or during his physical or mental incapacity, the Lieutenant Governor shall become Acting Governor. Upon impeachment or physical or mental incapacity of an Acting Governor, or upon vacancy in the office of the person serving as Acting Governor, the powers and duties of Acting Governor shall devolve upon the same officer as in the case of vacancy in the office of Governor. A successor shall serve until the disability of either the Lieutenant Governor or Governor ceases. Incapacity and restoration of capacity to serve as Acting Governor shall be determined in the same manner as in making such determinations for Governor. In any case in which succession as Acting Governor is not provided herein, the Speaker of the House and the President of the Senate shall convene the Legislature by joint proclamation within 15 days for the purpose of choosing a person to serve as Acting Governor. Such person shall be elected by a majority vote in a joint session of both houses.

History.—s. 2, ch. 70-171.

cf.—s. 3, Art. IV, State Const. Succession to office of Governor; Acting Governor.

14.057 Governor-elect; establishment of operating fund.—

(1) There is established an operating fund for the use of the Governor-elect during the period dating from the certification of his election by the Elections

Canvassing Commission to his inauguration as Governor. The Governor-elect during this period may allocate the fund to travel, expenses, his salary, and the salaries of his staff as he determines. Such staff may include, but not be limited to, a chief administrative assistant, a legal advisor, a fiscal expert, and a public relations and information advisor. The salary of the Governor-elect and each member of his staff during this period shall be determined by the Governor-elect, except that the total expenditures chargeable to the state under this section, including salaries, shall not exceed the amount appropriated to the operating fund. The Executive Office of the Governor shall supply to the Governor-elect suitable forms to provide for the expenditure of the fund and suitable forms to provide for the reporting of all expenditures therefrom. The Comptroller shall release moneys from this fund upon the request of the Governor-elect properly filed.

(2) The Department of General Services shall provide for the Governor-elect, his staff, and the inauguration staff temporary office facilities in the capitol center for the period extending from the day of the certification of his election by the Elections Canvassing Commission to the day of his inauguration.

(3) In the event an incumbent Governor is reelected for a second consecutive term the moneys appropriated hereby to the operating fund for the Governor-elect shall revert to the general revenue fund. An incumbent Governor reelected for a second consecutive term shall not be considered a Governor-elect for the purposes of expending the operating fund established in subsection (1).

History.—ss. 1-3, ch. 70-1006; s. 59, ch. 79-190.

14.058 Inauguration expense fund.—There is established an inauguration expense fund for the use of the Governor-elect in planning and conducting the inauguration ceremonies. The Governor-elect shall appoint an inauguration coordinator and such staff as necessary to plan and conduct the inauguration. Salaries for the inauguration coordinator and his staff shall be determined by the Governor-elect and shall be paid from the inauguration expense fund. The Executive Office of the Governor shall supply to the inauguration coordinator suitable forms to provide for the expenditure of the fund and suitable forms to provide for the reporting of all expenditures therefrom. The Comptroller shall release moneys from this fund upon the request of the inauguration coordinator properly filed.

History.—s. 4, ch. 70-1006; s. 60, ch. 79-190.

14.06 Governor authorized to employ clerical assistance for departments of state.—The Governor of the state may employ clerical aid to work in any department of the state under the supervision and direction of the head of such department whenever in the judgment of the Governor such additional help is necessary for the proper conduct of the business and affairs of such department, and when the same has become necessary by reason of the increase in the business of such department and was not foreseen and adequately provided for in the general appropriations bill. The Governor is further authorized to employ such persons as may be required from time to time to make such investigations as may, in the judgment of the Governor, be necessary or expedient to efficiently conduct the affairs of the state government, especially to make investigation and report of matters concerning taxation and finance throughout the state.

History.—s. 1, ch. 11369, 1925; CGL 109.

14.071 Security of the governor.—

(1) The Division of Criminal Investigation, Department of Law Enforcement, shall provide and maintain the security of the governor, the governor's immediate family, and the governor's office and mansion and the grounds thereof.

(2) The department shall employ such personnel as may be necessary to carry out this responsibility, including uniformed and nonuniformed agents who shall have authority to bear arms and make arrests, with or without warrant, for violations of any of the criminal laws of the state, under the same terms and conditions as investigative personnel of the division, and be considered peace officers for all purposes, including, but not limited to, the privileges, protections, and benefits of ss. 112.19, 121.051, 122.34 and 870.05.

(3) The executive director of the division shall assign no fewer than nine agents for the performance of the duties prescribed in this section. The assignment of such agents shall be subject to continuing approval of the governor. Upon request of the governor, the executive director shall reassign an agent from continued performance of such duties.

(4) Per diem and subsistence allowance for security personnel traveling with the governor or his family away from Tallahassee shall be computed by payment of a sum up to the amounts permitted in s. 112.061(6)(d) for meals, plus actual expenses for lodging to be substantiated by paid bills therefor.

History.—s. 4, ch. 74-386; s. 1, ch. 79-8.

14.201 Executive Office of the Governor.—There is created the Executive Office of the Governor. The head of the Executive Office of the Governor is the Governor.

History.—s. 1, ch. 79-190.

14.202 Administration Commission.—There is created as part of the Executive Office of the Governor an Administration Commission composed of the Governor and Cabinet. The Governor is chairman of the commission. The Governor or Comptroller may call a meeting of the commission promptly each time the need therefor arises. Unless otherwise provided herein, affirmative action by the commission shall require the approval of the Governor and at least three other members of the commission. The commission shall adopt such rules as it deems necessary to carry out its duties and responsibilities.

History.—s. 1, ch. 79-190.

14.22 Governor's Council on Physical Fitness and Sports; powers.—

(1)(a) The Florida Governor's Council on Physical Fitness and Sports is created within the office of the Governor, to be composed of 25 members with appropriate interests and representing the various geographical areas of the state. The members shall

be appointed by the Governor for staggered terms of 3 years expiring on July 1 in the appropriate year, except that the initial terms of the five additional members shall be 1 year for two members, 2 years for two members, and 3 years for one member. Members presently serving on the council shall continue to serve until the expiration of their present terms. The Governor may reappoint any person who has served or is serving as a member of the council.

(b) The Governor shall appoint a member of the council to serve as chairperson, and the council shall elect one of its members to serve as vice chairperson. Each shall serve terms of 2 years.

(c) The council shall meet semiannually and at the call of the chairperson.

(d) Members of the council shall receive no compensation, but shall receive per diem and travel expenses as provided in s. 112.061.

(e) The Governor may appoint, upon the recommendation of the council, an executive director, and the executive director may employ such staff as may be authorized by the Governor. The compensation of the executive director and staff shall be set by the Governor.

(f) By a two-thirds vote of the council, a member may be dismissed from membership for such reasons as the council may establish, which reasons shall include lack of interest in council duties or repeated absences from council meetings. Vacancies created by dismissal shall be filled by the Governor.

(2) In order to promote physical fitness and sports, the Florida Governor's Council on Physical Fitness and Sports shall have the power and duty to:

(a) Develop, foster, and coordinate services and programs of physical fitness and sports for the people of Florida.

(b) Sponsor physical fitness and sports workshops, clinics, conferences, and other similar activities.

(c) Give recognition to outstanding developments and achievements in, and contributions to, physical fitness and sports.

(d) Stimulate physical fitness research.

(e) Collect and disseminate physical fitness and sports information and initiate advertising campaigns promoting physical fitness and sports.

(f) Assist schools in developing health and physical fitness programs for students.

(g) Encourage local governments and communities to develop local physical fitness programs and amateur athletic competitions.

(h) Develop programs to promote personal health and physical fitness in cooperation with medical, dental, and other similar professional societies.

(i) Enlist the support of individuals, civic groups, amateur and professional sports associations, and other organizations to promote and improve physical fitness and sports programs.

(j) Develop means of attracting and locating professional sports franchises and sports-related industries in the state as well as assisting those located in the state.

(k) Promote the development of recreational athletic opportunities and professional athletic activities in the state including means of facilitating the acquisition, proper financing, construction, and rehabilitation of sports facilities for the holding of professional and amateur athletic events.

(l) Promote the development of a program of statewide amateur athletic competition to be known as the "Sunshine State Games." The Sunshine State Games shall be patterned after the Summer Olympics with variations as necessitated by availability of facilities, equipment, and expertise. The games shall be designed to encourage the participation of athletes representing a broad range of age groups, skill levels, and Florida communities. Participants shall be residents of this state. Regional competitions shall be held throughout the state, and the top qualifiers in each sport shall proceed to the final competitions to be held at a site geographically centered in the state with the necessary facilities and equipment for conducting the competitions. The frequency of the games shall be determined by the council.

(3) The council may accept grants, gifts, and bequests and enter into contracts to carry out the purposes of this act.

History.—ss. 1, 2, ch. 77-169; s. 1, ch. 79-195.

14.23 State-Federal relations.—

(1) LEGISLATIVE INTENT.—It is the intent of this legislation to establish mechanisms through which the legislative and executive branches of state government can work together in a cooperative alliance, to strengthen the state's relationship with our Congressional Delegation and with federal agencies, and to improve our position over federal legislative impact on the state. Florida's Congressional Delegation is, in this regard, the most important linkage in representing Florida's interests in the nation's capital. Therefore, the mechanisms and resources created herein, for the furtherance of the state's intergovernmental efforts, shall include the Congressional Delegation and be available to meet its needs.

(2) CREATION OF THE OFFICE OF STATE-FEDERAL RELATIONS.—

(a) There is created, within the Executive Office of the Governor, the Office of State-Federal Relations for the State of Florida, hereinafter referred to as the "office," to be located in Washington, D.C. The office shall represent both the legislative and executive branches of state government. The Legislature shall have direct access to the staff of the office.

(b) The duties of the office shall be determined by the Governor, in consultation with the President of the Senate and the Speaker of the House of Representatives, and shall include, but not be limited to, the following:

1. To provide legislative and administrative liaison between state and federal officials and agencies and with Congress.

2. To provide grants assistance and advice to state agencies.

3. To assist in the development and implementation of strategies for the evaluation and management of the state's federal legislative program and intergovernmental efforts.

4. To facilitate the activities of Florida officials traveling to Washington, D.C., in the performance of their official duties.

(c) The head of the office shall be the director,

who shall be appointed by and serve at the pleasure of the Governor.

(3) COOPERATION.—For the purpose of centralizing the state-federal relations efforts of the state, state agencies and their representatives shall cooperate and coordinate their state-federal efforts and activities with the office. State agencies which have representatives headquartered in Washington, D.C., are encouraged to station their representatives in the office.

History.—ss. 5, 6, ch. 77-419; s. 9, ch. 79-190.

14.25 Florida State Commission on Hispanic Affairs.—

(1) It is the intent of the Legislature to provide a means by which the state may obtain a comprehensive and ongoing study relating to those citizens of Florida who are of an Hispanic origin. The commission created by this act is not an executive department or agency for purposes of assignment under s. 6 of Art. IV of the State Constitution, nor is it an agency within the legislative intent of chapter 216 or chapter 287.

(2)(a) There is created within the Executive Office of the Governor a Florida State Commission on Hispanic Affairs. The commission shall consist of 15 members appointed by the Governor and broadly representative of the interests and needs of persons in this state who are of Hispanic origin, including, but not limited to, such areas as education, social services, commerce, and general culture and the arts.

(b) The commission shall annually designate one of its members to serve as chairperson. The duties of the chairperson shall include responsibility for the administration of the commission.

(c) Members of the commission shall serve without compensation, but shall be reimbursed for per diem and travel expenses in accordance with s. 112.061.

(d) Members shall serve for terms of 4 years, except that, of those initially appointed, seven shall serve for terms of 2 years and eight shall serve for terms of 4 years. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(e) The Executive Office of the Governor shall provide administrative support and service to the commission. The commission shall not be subject to control, supervision, or direction by the Executive Office of the Governor.

(f) The commission shall have the authority to employ an executive director and such other personnel as may be necessary to carry out the provisions of this section.

(3)(a) The commission shall secure staff assistance and utilize clerical resources, materials, and other support services of the Executive Office of the Governor and other executive agencies and coordinate and consult with existing legislative staff, in order that minimum costs and maximum expertise be achieved.

(b) The commission shall utilize the talents, expertise, and resources within the state, and especially those of the university system, to whatever extent practicable.

(c) The commission may procure information and assistance from the state or any subdivision, municipal corporation, public officer, governmental department, or agency thereof. All agencies, officers, and political subdivisions of the state or municipal corporations shall give the commission all relevant information and reasonable assistance on any matters of research within their knowledge or control. In the case of a refusal to honor a request for information or request to any person, the commission may make application to any circuit court in this state, which shall have jurisdiction to order the witness to appear before the commission or to produce evidence, if so ordered, or to give testimony concerning the matter in question. Failure to obey the order may be punished by the court as contempt.

(d) The commission may apply for and accept funds, grants, gifts, and services from the state, the government of the United States or any of its agencies, or any other public or private source and is authorized to use funds derived from these sources to defray clerical and administrative costs as may be necessary for carrying out the commission's assigned duties.

(4)(a) It is the duty of the commission to carry out an ongoing study on the problems and needs of those citizens of Florida who predominantly speak the Spanish language. The study shall include, but not be limited to, the following areas:

1. A survey of existing programs within the educational system of the state, including such areas as teacher training, resource availability, and transportation of students, with recommendations for the extension and improvement of such programs.

2. A survey of the needs of such persons in the areas of social services and commerce, with recommendations regarding types of family and community services that would be useful in aiding such persons in adapting to, and functioning within, an English-speaking society.

3. A survey of the general cultural and artistic interests and needs of such persons and of the contributions such persons can make to the people of Florida, with recommendations for meeting those needs and fostering and encouraging those interests and contributions.

(b) The commission shall prepare an annual report based on the study carried out under the provisions of paragraph (4)(a), to be presented to the Governor no later than January 1, with copies to the Speaker of the House of Representatives and President of the Senate. The report shall include specific suggestions for necessary legislation and specific recommendations for any necessary administrative or regulatory reform.

History.—ss. 1-4, ch. 77-233; ss. 1-3, ch. 78-297; s. 6, ch. 79-190.
Note.—Former ss. 13.9964, 13.9965, 13.9966, and 13.9967.

14.26 Citizen's Assistance Office.—

(1) There is created in the Executive Office of the Governor the Citizen's Assistance Office. The head of the Citizen's Assistance Office shall be appointed by and shall serve at the pleasure of the Governor.

(2) The Citizen's Assistance Office may:

(a) Investigate, on complaint or on its own motion, any administrative action of any state agency, the administration of which is under the direct supervision of the Governor, regardless of the finality

of the administrative action.

(b) Request, and shall be given by any state agency, such assistance and information as may be necessary for the performance of its duties.

(c) Examine the records and reports of any state agency, the administration of which is under the direct supervision of the Governor, not made specifically confidential by law when the office determines that it is necessary.

(d) Coordinate individual state agency complaint-handling activities.

(3) The Citizen's Assistance Office shall make quarterly reports to the Governor, which shall include:

(a) The number of investigations and complaints made during the preceding quarter and the disposition of such investigations.

(b) Recommendations in the form of suggested legislation or suggested procedures for the alleviation of problems disclosed by investigations.

(c) A report including statistics which reflect the types of complaints made and an assessment as to the cause of the complaints.

(d) Such other information as the Executive Office of the Governor shall require.

(4) The Citizen's Assistance Office shall refer consumer-oriented complaints to the Division of Consumer Services of the Department of Agriculture and Consumer Services.

(5) The Citizen's Assistance Office shall perform such other duties as the Executive Office of the Governor shall direct.

History.—s. 7, ch. 79-190.

CHAPTER 15

SECRETARY OF STATE

15.01 Residence, office and duties.—The Secretary of State shall reside at the seat of government and shall have his office in the capitol and perform the duties prescribed by the State Constitution. The Department of State shall have the custody of the constitution and Great Seal of this state, and of the original statutes thereof, and of the resolutions of the Legislature, and of all the official correspondence of the Governor. The department shall keep in its office a register and an index of all official letters, orders, communications, messages, documents and other official acts issued or received by the Governor or the Secretary of State, and record these in a book numbered in chronological order. The Governor, before issuing any order or transmission of any official letter, communication or document from the executive office or promulgation of any official act or proceeding, except military orders, shall deliver the same or a copy thereof to the Department of State to be recorded.

History.—s. 1, ch. 1, 1845; ch. 1845, 1871; RS 73; GS 74; RGS 88; CGL 110; s. 1, ch. 28086, 1953; ss. 10, 35, ch. 69-106.
cf.—s. 2, Art. II; s. 4, Art. IV, State Const.

15.012 State flag.—The state flag shall conform with standard commercial sizes and be of the following proportions and description: The seal of the state, in diameter one-half the hoist, shall occupy the center of a white ground. Red bars, in width one-fifth the hoist, shall extend from each corner toward the center, to the outer rim of the seal.

History.—s. 2, ch. 70-300.
cf.—s. 4, Art. II, State Const.

15.02 Custodian of state flag; certain state papers, etc.—The Department of State shall have custody of the state flag, of all books, papers, files and documents belonging to the office of Secretary of State and of the laws of the state and books, papers, journals and documents of the Legislature.

History.—s. 3, ch. 1, 1845; RS 74; GS 75; RGS 89; CGL 111; s. 2, ch. 28086, 1953; ss. 10, 35, ch. 69-106.

15.03 State seal.—

(1) The great seal of the state shall be of the size of the American silver dollar, having in the center thereof a view of the sun's rays over a highland in the distance, a sabal palmetto palm tree, a steamboat on water, and an Indian female scattering flowers in the foreground, encircled by the words "Great Seal of the State of Florida: In God We Trust."

(2)(a) The Department of State shall be the custodian of the great seal of the state.

(b) The great seal of this state shall also be the seal of the Department of State, and the department may certify under said seal, copies of any statute, law, resolution, record, paper, letter or document, by law placed in its custody, keeping and care, and such certified copy shall have the same force and effect in evidence, as the original would have.

(3) Only the Department of State shall be authorized to affix the seal to any document for the purpose of attesting, certifying or otherwise formalizing such document. Any facsimile, copy, likeness, imitation or other resemblance thereto of the great seal shall be used, displayed, or otherwise employed by anyone only upon the approval of the Department of State. The Department of State may grant a certificate of approval upon application to it by any person showing good cause for the use of the seal for a proper purpose. The great seal of the state shall in no way be employed for the purpose of advertising or promoting the sale of any article of merchandise whatever within this state or for the promoting of any other commercial purpose. The Department of State may promulgate reasonable rules and regulations for the use of the great seal or any facsimile, copy, likeness, imitation, or other resemblance thereto. Any person violating the provisions of this subsection shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 4, ch. 1, 1845; RS 75; GS 76; RGS 90; CGL 112; s. 1, ch. 29841, 1955; s. 1, ch. 65-209; ss. 10, 35, ch. 69-106; (2)(a) formerly s. 21, Art. IV of the Constitution of 1885, as amended; converted to statutory law by s. 10, Art. XII of the Constitution as revised in 1968; s. 1, ch. 70-300; s. 11, ch. 71-136.
cf.—s. 4, Art. II, State Const.

15.031 State tree designated.—

(1) The sabal palmetto palm, which is also known as the cabbage palm, and sometimes as the cabbage palmetto, a tree native to Florida, is hereby designated as the Florida state tree.

(2) Said state tree being now extensively used for commercial purposes, the provisions of this section shall not be construed to limit in any manner said use thereof in business, industry, commerce, for food, or for any other commercial purposes.
History.—ss. 1, 2, ch. 28126, 1953.

15.032 State beverage.—The juice obtained from mature oranges of the species *Citrus sinensis* and hybrids thereof is hereby adopted as the official beverage of Florida.
History.—s. 1, ch. 67-4.

15.033 State shell designated.—The horse conch, which is also known as *Pleuroploca gigantea*, and sometimes as the giant band shell, a shell native to the marine waters surrounding the State of Florida, is hereby designated as the Florida state shell.
History.—s. 1, ch. 69-107.

15.0336 State stone designated.—Agatized coral, a chalcedony pseudomorph after coral, appearing as limestone geodes lined with botryoidal agate or quartz crystals and drusy quartz fingers, indigenous to Florida, is hereby designated the Florida state stone.
History.—s. 1, ch. 79-278.

15.034 State gem designated.—The moonstone, a transparent or translucent feldspar of pearly or opaline luster, is hereby designated the Florida state gem.
History.—s. 1, ch. 70-53.

15.035 Official state play.—The historical pageant by Paul Green known as the "Cross and Sword," presented annually by the citizens of the City of St. Augustine, is hereby designated the official play of the state.
History.—s. 1, ch. 73-79.

15.036 Official state freshwater fish.—The Florida largemouth bass *(Micropterus salmoides floridanus)* is hereby designated and declared as the official Florida state freshwater fish.
History.—s. 1, ch. 75-1.

15.037 Official state saltwater fish.—The Atlantic sailfish *(Istiophorus platypterus)* is hereby designated and declared as the official Florida state saltwater fish.
History.—s. 2, ch. 75-1.

15.038 State marine mammal and state saltwater mammal designated.—
(1) The manatee, also commonly known as the sea cow, is hereby designated the Florida state marine mammal.
(2) The porpoise, also commonly known as the dolphin, is hereby designated as the Florida state saltwater mammal.
History.—s. 1, ch. 75-75.

15.039 Official state air fair.—The Central Florida Air Fair is hereby designated as the official Florida State Air Fair.
History.—s. 1, ch. 76-45.

15.041 Official litter control symbol.—The litter control symbol and official litter control trademark of the Florida Federation of Garden Clubs, Inc., "Glenn Glitter," is hereby designated as the Florida state litter control symbol.
History.—s. 1, ch. 78-296.

15.043 Official state pageant.—The pageant "Indian River," a Florida historical pageant presented annually by the citizens of Brevard County, is hereby designated an official state pageant of Florida.
History.—s. 1, ch. 79-196.

15.07 Acts and papers of the Legislature to be deposited with the Department of State.—All original acts and resolutions passed by the Legislature, and all other original papers acted upon thereby, together with the Journal of the Senate, and the Journal of the House of Representatives, shall, immediately upon the adjournment thereof, be deposited with, and preserved in, the Department of State, by which they shall be properly arranged, classified, and filed, provided that the journal of the executive session of the Senate shall be kept free from inspection or disclosure except upon the order of the Senate itself or some court of competent jurisdiction.
History.—s. 1, ch. 1904, 1872; RS 78; GS 79; s. 10, ch. 7838, 1919; RGS 94; CGL 116; s. 7, ch. 24337, 1947; ss. 10, 35, ch. 69-106.
cf.—s. 4, Art. IV, State Const.

15.08 Not to issue commission until tax therefor is paid.—The Secretary of State is prohibited from affixing his signature and the seal of the state to the commission of any public officer until such officer has paid the amount of the tax required to be paid by said officer for the commission.
History.—s. 1, ch. 1936, 1873; RS 79; GS 80; RGS 95; CGL 117; s. 5, ch. 28086, 1953.
cf.—ss. 15.09, 113.01 Commission fees.

15.09 Fees.—
(1) The fees, except as provided by law, to be collected by the Department of State, are:
(a) For searching of papers or records, $2, except that there shall be no charge for telephone requests for general corporate information, including the corporation's status, names of officers and directors, address of principal place of business, and name and address of resident agent;
(b) For providing certificate with seal, $5;
(c) For furnishing statistical information and for copying any document not mentioned, 50 cents per page or fraction thereof;
(d) For certifying a copy of a corporation charter, $5 unless the charter is more than eight pages; if more than eight pages, $5 plus 50 cents per page for each page over eight. When a copy of a corporation charter is furnished and needs only to be verified and certified, the total fee is $5.
(2) The department may in its discretion establish a reasonable fee for filing or copying any document or instrument not mentioned herein or provided for in other laws.

(3) All fees arising from certificates of election or appointment to office and from commissions to officers shall be paid to the State Treasurer for deposit in the General Revenue Fund.

History.—s. 1, ch. 2089, 1877; RS 80; GS 81; RGS 96; CGL 118; s. 6, ch. 28086, 1953; s. 2, ch. 29841, 1955; s. 1, ch. 69-292; ss. 10, 35, ch. 69-106; s. 1, ch. 71-114; s. 22, ch. 76-209.

cf.—ss. 15.08, 113.01 Commission fees.
ss. 48.161, 48.091 Service of process upon nonresident.
s. 111.03 Accounting for fees.
Ch. 120 Administrative Procedure Act.
s. 609.02 Declaration of trust.

15.091 Fees; filing under chapter 679, Uniform Commercial Code.—The fees for filing of any financing statement or other writing required or permitted to be filed by any provisions of chapter 679 of the Uniform Commercial Code are $5 for the first page of each financing statement or other writing and $2 for each additional page thereof.

History.—s. 1, ch. 65-254; s. 1, ch. 67-363; s. 2, ch. 71-114.

cf.—s. 679.402 Formal requisition of financing statements; amendments.

15.092 Fees; exemption for state attorney.—The Department of State shall provide, without charge, any state attorney or his designated representative:

(1) Copies of any document or certificate under seal as provided in this chapter.

(2) Any of the services provided in this chapter.

History.—s. 1, ch. 79-344.

15.13 Administration of certain laws.—The Department of State shall have general supervision and administration of the election laws, corporation laws and such other laws as are placed under it by the Legislature and shall keep records of same.

History.—s. 7, ch. 28086, 1953; ss. 10, 35, ch. 69-106.

15.14 Report of notaries public; periodic report.—

(1) The Secretary of State shall not publish a report of the persons commissioned as a notary public.

(2) The periodic report required by s. 11.013 to be made by the Secretary of State shall be furnished upon request to all members of the Legislature, all officials of the executive branch, and all officials of the judicial branch of the state without charge. The expense of printing such report shall be paid from moneys appropriated to the Secretary of State for the operation of his office.

History.—s. 8, ch. 28086, 1953; s. 1, ch. 61-201; s. 1, ch. 73-305.

15.15 Publication of summaries of documents; charge.—The Department of State may in its discretion publish summaries of all instruments, papers, or documents filed with it pursuant to any law and may establish a reasonable fee for providing such service. All fees collected hereunder shall be deposited in the General Revenue Fund.

History.—s. 1, ch. 67-392; ss. 10, 35, ch. 69-106.

15.16 Reproduction of records; admissibility in evidence.—

(1) The Department of State may cause to be made copies of any records maintained by it by miniature photographic microfilming or microphotographic processes or any other photographic, mechanical, or other process heretofore or hereafter devised, including electronic data processing.

(2) Photographs or microphotographs in the form of film or prints of any records made in compliance with the provisions of this section shall have the same force and effect as the originals thereof, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs shall be admitted in evidence equally with the original photographs or microphotographs.

History.—s. 1, ch. 67-15; ss. 10, 35, ch. 69-106.

15.17 Organization of American States, regional headquarters.—The Legislature hereby authorizes the Department of State to provide assistance and facilities to the Organization of American States in establishing and maintaining a regional headquarters in this state.

History.—s. 1, ch. 67-462; ss. 10, 35, ch. 69-106.

CHAPTER 16

ATTORNEY GENERAL

16.01 Residence, office, and duties of Attorney General.—The Attorney General:

(1) Shall reside at the seat of government and shall keep his office in the capitol.

(2) Shall perform the duties prescribed by the Constitution of this state and also perform such other duties appropriate to his office as may from time to time be required of him by law or by resolution of the Legislature.

(3) Notwithstanding any other provision of law, shall, on the written requisition of the Governor, a member of the Cabinet, the head of a department in the executive branch of state government, the Speaker of the House of Representatives, the President of the Senate, the Minority Leader of the House of Representatives, [1]or the Minority Leader of the Senate, and may, upon the written requisition of a member of the Legislature, other state officer, or officer of a county, municipality, other unit of local government, or political subdivision, give his official opinion and legal advice in writing on any question of law relating to the official duties of the requesting officer.

(4) Shall appear in and attend to, in behalf of the state, all suits or prosecutions, civil or criminal or in equity, in which the state may be a party, or in anywise interested, in the Supreme Court and district courts of appeal of this state.

(5) Shall appear in and attend to such suits or prosecutions in any other of the courts of this state or in any courts of any other state or of the United States.

(6) Shall have and perform all powers and duties incident or usual to such office.

(7) Shall make and keep in his office a record of all his official acts and proceedings, containing copies of all of his official opinions, reports, and correspondence, and also keep and preserve in his office all official letters and communications to him and cause a registry and index thereof to be made and kept, all of which official papers and records shall be subject to the inspection of the Governor of the state and to the disposition of the Legislature by act or resolution thereof.

History.—s. 2, ch. 2, 1845; ch. 1845, 1871; RS 85; GS 87; RGS 101; CGL 125; s. 7, ch. 22858, 1945; s. 7, ch. 59-1; s. 1, ch. 78-399; s. 1, ch. 79-159.

[1]**Note.**—The word "or" was substituted for "and" by the editors.

cf.—s. 2, Art. II; s. 4, Art. IV, State Const.

16.015 Legal services responsibility of Department of Legal Affairs.—The Department of Legal Affairs shall be responsible for providing all legal services required by any department, unless otherwise provided by law. However, the Attorney General may authorize other counsel where emergency circumstances exist and shall authorize other counsel when professional conflict of interest is present. Each board, however designated, of which the Attorney General is a member may retain legal services in lieu of those provided by the Attorney General and the Department of Legal Affairs.

History.—s. 2, ch. 77-105.

16.016 Payment of per diem, mileage, and other expense.—Whenever the Department of Legal Affairs is called upon to represent any administrative agency or regulatory board, the agency or regulatory board so represented shall pay the per diem, mileage, and other reasonable expense of the representative of such department.

History.—s. 1, ch. 65-522; ss. 11, 35, ch. 69-106; s. 5, ch. 79-36.

Note.—Former s. 455.07.

16.02 Appointment of person to act in case of disability of attorney general.—In case of the disability of the Attorney General to perform any official duty devolving on him, by reason of interest or otherwise, the Governor or Attorney General of this state may appoint another person to perform such duty in his stead.

History.—s. 3, ch. 2, 1845; RS 85a; GS 88; RGS 102; CGL 126.

16.05 To report on laws.—The Attorney General shall make a written report to the Governor 5 days before the first day of every session of the Legislature, as to the effect and operation of the acts of the last previous session, the decisions of the courts thereon, and referring to the previous legislation on the subject, with such suggestions as in his opinion the public interest may demand, which report shall be laid before the Legislature by the Governor with his first message.

History.—s. 5, ch. 2, 1845; RS 88; GS 91; RGS 105; CGL 129.

16.07 Not to receive fee for defending offender.—It shall be a misdemeanor in office for the Attorney General to take or receive any fee for defending any supposed offender in any of the courts.

History.—s. 6, ch. 2, 1845; RS 89; GS 92; RGS 106; CGL 130.

16.08 To have superintendence and direction of state attorneys.—The Attorney General shall exercise a general superintendence and direction over the several state attorneys of the several circuits as to the manner of discharging their respective duties, and whenever requested by the state at-

torneys, shall give them his opinion upon any question of law.

History.—s. 1, ch. 2098, 1877; RS 90; GS 93; RGS 107; CGL 131.

16.09 To prescribe regulations as to the reports of state attorneys.—The Attorney General shall prescribe the time and manner in which regular quarterly reports shall be made to him by state attorneys, and they shall comply with his instructions in this respect.

History.—s. 3, ch. 2098, 1877; RS 91; GS 94; RGS 108; CGL 132.

16.10 To receive Supreme Court reports for office.—The Clerk of the Supreme Court shall deliver to the Attorney General a copy of each volume, or part of volume, of the decisions of the Supreme Court, which may be in the care or custody of said clerk, and which the Attorney General's office may be without, and take the Attorney General's receipt for the same. The Attorney General shall keep the same in his office at the capitol, and each retiring Attorney General shall take the receipt of his successor for the same and file such receipt in the Treasurer's office; provided that this shall not authorize the taking away of any book belonging to the supreme court library, kept for the use of said court.

History.—Ch. 3264, 1881; RS 92; GS 95; RGS 109; CGL 133.

16.101 Supreme Court reporter.—The Attorney General shall be the reporter for the Supreme Court.

History.—Formerly s. 22, Art. IV of the Constitution of 1885, as amended; converted to statutory law by s. 10, Art. XII of the Constitution as revised in 1968.

16.52 Participation in preserving constitutional integrity of state.—

(1) In order to provide for independent action and cooperative participation by the state in a program of concerted action among the states, and independent procedure to oppose any existing or proposed federal legislative encroachments upon constitutional state powers, it is hereby made a duty of the Department of Legal Affairs to make a study of federal legislation—existing and proposed—to determine whether such legislation has resulted, or may result, in objectionable or harmful encroachments upon the constitutional integrity of state governments, and with due regard to this state's full contribution to the national war effort, in cooperation with the attorneys general of other states, or alone, to pursue that course best calculated to preserve and safeguard the constitutional state powers of the government of this state. It shall furnish to each of the several representatives in the Congress from this state, a written statement giving the reasons for any action being considered, or about to be taken hereunder at the time; and if possible, shall procure the assistance of such representatives therein and therefor.

(2) It shall be the duty of the Department of Legal Affairs of this state to render opinions to the representatives in Congress from this state, on any question arising within the scope of the subject matter of this act.

(3) In performing the duties imposed upon it under the provisions of this section, the Department of Legal Affairs is hereby authorized to employ therefor the services of the Council of State Governments, a national conference organization, or its successors in name or organization, or any other similar organization, in such manner not inconsistent with its powers and duties, as it may deem desirable; provided, that the cost of such employment, if any, shall be paid from the necessary and regular appropriation of the Department of Legal Affairs.

History.—ss. 1-3, ch. 21679, 1943; ss. 11, 35, ch. 69-106.

16.53 Legal Affairs Revolving Trust Fund.—

(1) There is created in the State Treasury the Legal Affairs Revolving Trust Fund, from which the Legislature may appropriate funds for the purpose of funding investigation, prosecution, and enforcement by the Attorney General of the provisions of the Racketeer Influenced and Corrupt Organization Act or state or federal antitrust laws.

(2) Notwithstanding the provisions of s. 943.464(2), 20 percent of all moneys recovered by the Attorney General on behalf of the state, its agencies, or units of state government and 10 percent of all moneys recovered on behalf of local governments or persons resident in this state or, alternatively, attorneys' fees and costs, whichever is greater, in any civil action for violation of the Racketeer Influenced and Corrupt Organization Act or state or federal antitrust laws shall be deposited in the fund.

(3) The remainder of the moneys recovered on behalf of the state, its agencies, or units of state government shall be deposited in the General Revenue Fund; in the case of other governmental units, transferred to the appropriate fund of such government; or in the case of persons, distributed to such persons or for their benefit, as approved by a court of competent jurisdiction.

(4) "Moneys recovered" means damages or penalties or any other monetary payment, including monetary proceeds from property forfeited to the state pursuant to s. 943.464, made by any defendant by reason of any decree or settlement in any Racketeer Influenced and Corrupt Organization Act or state or federal antitrust action prosecuted by the Attorney General, but excludes attorneys' fees and costs.

(5) Any moneys remaining in the fund at the end of any fiscal year in excess of $1,000,000 shall be transferred to the General Revenue Fund unallocated.

History.—s. 1, ch. 79-301.

cf.—ss. 943.46-943.465 Florida RICO (Racketeer Influenced and Corrupt Organization) Act.

CHAPTER 17

COMPTROLLER

17.01 The Comptroller to give bond.—The Comptroller of the state before entering upon the discharge of the duties of his office shall give a bond with at least four good and sufficient securities payable to the state in the penal sum of $50,000, conditioned for the faithful discharge of all duties of said office. Before being accepted said bond shall be approved by the Attorney General and also by the Governor of the state and filed and recorded when accepted in the Department of State.

History—s. 1, ch. 8, 1845; RS 93; GS 97; RGS 110; CGL 140; s. 1, ch. 67-424; ss. 10, 35, ch. 69-106.

cf.—s. 113.07 Bonds of officials.

17.011 Assistant comptroller.—The Comptroller of the state may appoint an assistant comptroller to hold office during the pleasure of the Comptroller.

History.—s. 2, ch. 67-424.

17.02 Place of residence and office.—The Comptroller shall reside at the seat of government of this state, and shall hold his office in a room in the capitol.

History.—s. 2, ch. 8, 1845; ch. 1845, 1871; RS 94; GS 98; RGS 111; CGL 141.

17.03 To audit claims against the state.—

(1) The Comptroller of this state, using generally accepted auditing procedures for testing or sampling, shall examine, audit, and settle all accounts, claims, and demands, whatsoever, against the state, arising under any law or resolution of the Legislature, and issue his warrant to the Treasurer directing him to pay out of the State Treasury such amount as shall be allowed by the Comptroller thereon.

(2) The Comptroller shall have the legal duty of delivering all state warrants and shall be charged with the official responsibility of the protection and security of said state warrants while in his custody. The Comptroller may delegate this authority by contractual agreement to other state agencies.

History.—s. 1, ch. 146, 1848; RS 95; GS 99; RGS 112; CGL 142; s. 1, ch. 71-173; s. 1, ch. 79-95.

cf.—s. 17.20 To charge state attorneys with claims.
s. 27.08 et seq. Surrender of papers, etc., to successor.

17.031 Security of Comptroller's office.—The Comptroller is authorized to engage the full-time services of two law enforcement officers, with power of arrest, to prevent all acts of a criminal nature directed at the property in the custody or control of the Comptroller. While so assigned, said officers shall be under the direction and supervision of the Comptroller, and their salaries and expenses shall be paid from the general fund of the office of Comptroller.

History.—s. 1, ch. 71-174.

17.04 To audit and adjust accounts of officers and those indebted to the state.—The Department of Banking and Finance of this state shall examine, audit, adjust and settle the accounts of all the officers of this state, and any other person in anywise intrusted with, or who may have received any property, funds or moneys of this state, or who may be in anywise indebted or accountable to this state for any property, funds or moneys, and require such officer, or persons to render full accounts thereof, and to yield up such property or funds according to law, or pay such moneys into the treasury of this state, or to such officer or agent of the state as may be appointed to receive the same, and on failure so to do, to cause to be instituted and prosecuted proceedings, criminal or civil, at law or in equity, against such persons, according to law.

History—s. 4, ch. 8, 1845; RS 96; GS 100; RGS 113; CGL 143; ss. 12, 35, ch. 69-106.

cf.—s. 1.01 Definition of "person."
s. 116.03 Fee officers to report to.
s. 657.06 Credit unions, examination.
s. 658.07 et seq. Banks and trust companies examination.
s. 939.13 Costs against state in criminal cases.

s. 4, Art. IV, State Const.

17.041 County and district accounts and claims.—

(1) It shall be the duty of the Department of Banking and Finance of this state to adjust and settle, or cause to be adjusted and settled, all accounts and claims heretofore or hereafter certified to it by the auditor general against all county and district officers and employees, and other persons, firms and corporations, entrusted with, or who may have received any property, funds, or moneys of a county or district, or may be in anywise indebted to or accountable to a county or district for any property, funds, moneys or other thing of value, and to require such officer, employee, person, firm or corporation to render full accounts thereof, and to yield up such property, funds, moneys or other thing of value according to law to the officer or authority entitled by law to receive the same.

(2) On the failure of such officer, employee, person, firm or corporation to adjust and settle such account, or to yield up such property, funds, moneys or other thing of value, the department shall direct the attorney for the board of county commissioners, the district school board, or the district, as the case may be, entitled to such account, property, funds, moneys or other thing of value, to represent such county or district in enforcing settlement, payment or delivery of such account, property, funds, moneys or other thing of value.

(3) Should the attorney for the county or district aforesaid be disqualified or unable to act, and no other attorney be furnished by the county or district, or should the department otherwise deem it advisable, such account or claim may be certified to the Department of Legal Affairs by the department, to be prosecuted by the Department of Legal Affairs at county or district expense, as the case may be, including necessary per diem and travel expense in accordance with s. 112.061, as now or hereafter amended. Such expenses, when approved by the department, shall be paid forthwith by such county or district.

(4) Should it appear to the department that any criminal statute of this state has or may have been violated by such defaulting officer, employee, person, firm or corporation, such information, evidence, documents, and other things tending to show such a violation, whether in the hands of the comptroller, auditor general, county or district, shall be forthwith turned over to the proper state attorney for his inspection, study, and such action as he may deem proper, or the same may be brought to the attention of the proper grand jury.

(5) No such account or claim, after it has been certified to the department, may be settled for less than the amount due according to law without the written consent of the department, and any attempt to make settlement in violation of this subsection shall be deemed null and void. A county or district board desiring to make such a settlement shall incorporate the proposed settlement into a resolution, stating that the proposed settlement is contingent upon the Comptroller's approval, and shall submit two copies of the resolution to the department. The department shall return one copy with his action endorsed thereon.

(6) No settlement of account of any such officer, employee, person, firm or corporation, with the county or district, or any of their officers or agents, made in an amount or manner other than as authorized by law or for other than a lawful county or district purpose, shall be binding upon such county or district unless and until approved by the department, or unless more than 4 years shall have elapsed from the date of such settlement.

(7) Nothing in this section shall supersede the continuing duty of the proper county and district officers to require any officer, employee, person, firm or corporation to render full accounts of and to yield up according to law to the officer or authority entitled by law to receive the same, any property, funds, moneys or other thing of value as to which such officer, employee, person, firm or corporation is in anywise indebted to or accountable to such county or district. The provisions of this section provide for collections and recoveries which the proper county or district officers have failed to make, and for correction of settlements made in an amount or manner other than as authorized by law.

History.—s. 1, ch. 59-145; s. 8, ch. 69-82; s. 1, ch. 69-300; ss. 11, 12, 35, 69-106; s. 1, ch. 73-334; s. 7, ch. 77-104.

17.05 May examine under oath parties and privies to accounts.—The Comptroller of this state may demand and require full answers on oath from any and every person, party or privy to any account, claim or demand against or by the state, such as it may be his official duty to examine into, and which answers he may require to be in writing and to be sworn to before himself or before any judicial officer or clerk of any court of the state so as to enable such Comptroller to decide as to the justice or legality of such account, claim or demand.

History.—s. 5, ch. 8, 1845; RS 97; GS 101; RGS 114; CGL 144; s. 1, ch. 73-334.

17.06 Disallowed items and accounts.—The Comptroller shall erase from any original account all items disallowed by him; and when he shall reject the whole of any account he shall write across the face of it the word "disallowed," and the date, and file the same in his office or deliver it to the claimant.

History.—s. 2, ch. 146, 1848; RS 98; GS 102; RGS 115; CGL 145.

17.075 Form of state warrants; direct deposit of funds to account of beneficiary.—

(1) The Department of Banking and Finance is authorized to establish the form or forms of state warrants which are to be drawn by it and countersigned by the Governor for payment or disbursement of moneys out of the State Treasury and to change the form thereof from time to time as the department may consider necessary or appropriate.

(2) If authorized in writing by the beneficiary of such payment or disbursement, state warrants may provide for direct deposit of the funds to the account of the beneficiary of such payment or disbursement in any financial institution designated in writing by such beneficiary and having lawful authority to accept such deposits. The written authorization of a beneficiary shall be filed with the Department of

Banking and Finance. Direct deposits of funds may be by any electronic or other medium approved by the department for such purpose.

History.—s. 1, ch. 77-240; s. 6, ch. 79-400.

17.08 Accounts, etc., on which warrants drawn, to be filed.—All accounts, vouchers and evidence, upon which warrants have heretofore been, or shall hereafter be, drawn upon the treasury by the Comptroller shall be filed and deposited in the office of Comptroller.

History.—Ch. 351, 1851; RS 100; GS 104; RGS 117; CGL 147.

17.09 Application for warrants for salaries.—All public officers who are entitled to salaries in this state, shall make their application for warrants in writing, stating for what terms and the amount they claim, which written application shall be filed by the Comptroller as vouchers for the warrants issued thereupon.

History.—s. 1, ch. 1567, 1866; RS 101; GS 105; RGS 118; CGL 148.

17.10 Record of warrants paid.—The Comptroller shall cause to be entered in the warrant register a record of the warrants paid during the previous month, and shall make such entry in the record so required to be kept as shall show the number of each warrant paid, in whose favor drawn, to whom paid and the date of payment.

History.—s. 1, ch. 1536, 1866; RS 103; GS 107; ch. 7270, 1917; RGS 119; CGL 149.

17.11 To report warrants paid.—The Comptroller shall make in all his future annual reports an exhibit stated from the record of warrants paid during the fiscal year, and the several heads of expenditures under which said warrants were paid.

History.—s. 3, ch. 1536, 1866; RS 104; GS 108; RGS 120; CGL 150.

17.12 Authorized to issue warrants to tax collector or sheriff for payment.—Whenever it shall appear to the satisfaction of the Comptroller of this state, from examination of the books of his office, that the tax collector or the sheriff for any county in this state has paid into the state treasury, through mistake or otherwise, a larger or greater sum than is actually due from said collector or sheriff, then the Comptroller may issue a warrant to said collector or sheriff for the sum so found to be overpaid.

History.—Ch. 1762, 1870; RS 105; GS 109; RGS 121; CGL 151.

17.13 To duplicate warrants lost or destroyed.—

(1) The Comptroller is required to duplicate any Comptroller's warrants that may have been lost or destroyed, or may hereafter be lost or destroyed, upon the owner thereof or his agent or attorney presenting the Comptroller the statement, under oath, reciting the number, date, and amount of any warrant or the best and most definite description in his knowledge and the circumstances of its loss; if the Comptroller deems it necessary, the owner or his agent or attorney shall file in the office of the Comptroller a surety bond, or a bond with securities, to be approved by one of the judges of the circuit court or one of the justices of the supreme court, in a penalty of not less than twice the amount of any warrants so duplicated, conditioned to indemnify the state and any innocent holders thereof from any damages that may accrue from such duplication.

(2) The Comptroller is required to duplicate any Comptroller's warrant that may have been lost or destroyed, or may hereafter be lost or destroyed, when sent to any payee via any state agency when such warrant is lost or destroyed prior to being received by the payee and provided the director of the state agency to whom the warrant was sent presents to the Comptroller a statement, under oath, reciting the number, date, and amount of the warrant lost or destroyed, the circumstances surrounding the loss or destruction of such warrant, and any additional information that the Comptroller shall request in regard to such warrant.

(3) Any duplicate Comptroller's warrant issued in pursuance of the above provisions shall be of the same validity as the original was before its loss.

History.—ss. 1, 3, ch. 1758, 1870; RS 106; GS 110; RGS 122; CGL 152; s. 1, ch. 24280, 1947; s. 1, ch. 73-148.

17.14 To prescribe forms.—The Department of Banking and Finance may prescribe the forms of all papers, vouchers, reports and returns and the manner of keeping the accounts and papers to be used by the officers of this state or other persons having accounts, claims, or demands against the state or entrusted with the collection of any of the revenue thereof or any demand due the same, which form shall be pursued by such officer or other persons.

History.—s. 12, ch. 8, 1845; RS 107; GS 111; RGS 123; CGL 153; s. 4, ch. 71-377.

17.16 Seal.—The seal of office of the Comptroller of the state shall be the same as the seal heretofore used for that purpose.

History.—s. 7, ch. 8, 1845; RS 108; GS 112; RGS 124; CGL 154.

17.17 Examination by Governor and report.—The office of Comptroller of the state, and the books, files, documents, records and papers shall always be subject to the examination of the governor of this state, or any person he may authorize to examine the same; and on the first day of January of each and every year, or oftener if called for by the Governor, the Comptroller shall make a full report of all his official acts and proceedings for the last fiscal year to the Governor, to be laid before the legislature with his message, and shall make such further report as the constitution may require.

History.—s. 8, ch. 8, 1845; RS 109; GS 113; ch. 7342, 1917; RGS 125; CGL 155.

cf.—s. 1, Art. IV, State Const.

17.18 Statement of defaulters.—The Comptroller in his annual reports to the Governor shall make a full statement of all defaulters, showing the name of the defaulting officer or party against whom the claim exists, the name of the sureties upon the bond, the several heads under which the default arises, the total amount of the claim of the state, the state attorney to whom forwarded, and when forwarded, the amount realized therefrom, and, in case an execution has been delivered to the sheriff, he shall give the name of the sheriff as well as the report of the sum realized from him, or a statement of the reasons for his failure to realize in the event of such failure.

A copy of the said tabulated statement of defaulters shall be published in a newspaper at Tallahassee.

History.—s. 1, ch. 2083, 1877; RS 110; GS 114; RGS 126; CGL 156.

17.19 Duty to examine as to the sufficiency of bonds of state officers.—The Comptroller of the state, within 10 days of the first day of January and June of each year, shall carefully examine as to the sufficiency of the bonds of the various state officials, and if by reason of the death, assignment, or insolvency of any of the sureties on the bonds of said officials, he has reason to believe that the sufficiency of said bond has become impaired, he shall at once report the same to the Governor, who shall thereupon call upon and require such official or officials to execute and file with the proper officer a new bond for the same amount and under the same conditions as his former bond. If the Comptroller shall fail to perform the duties required herein he shall be liable to the state for any loss that may be sustained by the state, by reason of such failure, such sum to be recovered by suit against such Comptroller.

History.—ss. 1, 4, ch. 4413, 1895; GS 115; RGS 127; CGL 157.

cf.—s. 137.07 Liability for loss, neglect of duty.

17.20 To charge state attorneys with claims in their hands.—The Department of Banking and Finance shall charge the several state attorneys of this state with all claims which it may place in their hands for collection of money for and on behalf of the state, or which it may otherwise require them to collect. Said charges shall be evidence of indebtedness on the part of any state attorney against whom any charge is made for the full amount of such claim to the state, until the same shall be collected and paid into the treasury, or the legal remedies of the state exhausted, or until said state attorney shall make it fully appear to the department that the failure to collect the same did not originate from any neglect of his, and the department shall have made proper entry of satisfaction of such charge against such state attorney.

History.—ss. 1, 2, ch. 1413, 1863; RS 112; GS 116; RGS 128; CGL 158; ss. 12, 35, ch. 69-106.

cf.—ss. 27.08, 27.10 et seq.

17.21 Not to allow any claim of state attorney against state until report made.—The Comptroller shall not audit or allow any claim which any state attorney may have against the state for services who shall fail to make any report which by law he is required to make to the Comptroller of claims of the state which it is his duty to collect.

History.—s. 3, ch. 1413, 1863; RS 113; GS 117; RGS 129; CGL 159.

cf.—s. 27.08 Surrender of papers, etc., to successor by state attorney.

s. 27.11 Report upon claims committed to state attorney.

17.22 Notice to Department of Legal Affairs.—Whenever the Department of Banking and Finance forwards any bond or account or claim for suit to any state attorney, it shall advise the Department of Legal Affairs of the fact, giving it the amount of the claim and other necessary particulars for its full information upon the subject.

History.—s. 2, ch. 2083, 1877; RS 114; GS 118; RGS 130; CGL 160; s. 5, ch. 71-377.

17.25 May certify copies.—The Comptroller of this state may certify, under his seal of office, copies of any record, paper or document, by law placed in his custody, keeping and care; and such certified copy shall have the same force and effect as evidence as the original would have.

History.—s. 13, ch. 8, 1845; RS 117; GS 121; RGS 133; CGL 163.

17.26 Cancellation of state warrants not presented within 1 year; 3-year limitation on payment of warrants not presented for payment.—

(1) If any state warrant issued by the Comptroller and countersigned by the governor, against any fund in the state treasury, is not presented for payment within 1 year after the last day of the month in which it was originally issued, the Comptroller may cancel the same and credit the amount of such warrant to the fund upon which it is drawn. If the warrant so canceled was issued against a fund which is no longer operative, then the amount of such warrant shall be credited to the general revenue fund. The state treasurer shall not honor any state warrant after same has been canceled.

(2) When the payee or person entitled to any warrant so canceled by the Comptroller requests payment thereof, the Comptroller may, within 3 years from the last day of the month in which it was originally issued, upon investigation, issue a new warrant therefor, to be paid out of the proper fund in the state treasury, provided the payee or other person shall execute the statement under oath as required by s. 17.13 or surrender the canceled warrant. There is appropriated a sufficient amount for the payment of any new warrant issued within such 3-year period to replace a canceled warrant charged against an expired appropriation or charged against a fund which is no longer operative.

(3) In the event a warrant has not been presented for payment within 3 years from the last day of the month in which it was originally issued, the obligation shall thereafter be unenforceable, and no action shall be commenced for recovery of any funds represented by such obligation, and no additional warrant shall be issued by the Comptroller or honored for payment by the treasurer. This provision shall apply to all warrants, including those issued and outstanding on July 1, 1973.

(4) As to all warrants issued and outstanding prior to July 1, 1973, and which are unenforceable because of the limitations provided in this section, the person entitled to or claiming the right to payment on such warrant shall present the same for payment, or a claim for payment thereon, to the Comptroller within 90 days from July 1, 1973; otherwise, such claims shall be barred. If a warrant has been issued and has been outstanding for a period of less than 3 years on July 1, 1973, and the same has not yet become unenforceable, the person entitled to or claiming the right to payment thereon shall have a period of 90 days from July 1, 1973, or 3 years from the date of original issue of the warrant, whichever is greater, to present the same for payment or to present a claim to the Comptroller; otherwise, such claim shall be barred.

(5) If a valid obligation of the state is due, owing, and unpaid and the same becomes unenforceable for any reason because of the provisions and limitations

contained in this section, the person entitled to payment on such obligation shall be entitled to present a claim for relief to the legislature, provided such claim shall be made within the time limitations presently provided by law.

(6) If a warrant has become unenforceable or canceled under this section, and if the amount has been transferred to any special cancellation or restoration account, the Comptroller shall return the funds to the fund of original issue within one year.

(7) Nothing herein shall be construed to extend any existing statute of limitations which would be applicable to any state obligation which is outstanding and unpaid on July 1, 1973.

History.—ss. 1, 2, ch. 22006, 1943; s. 1, ch. 29645, 1955; s. 1, ch. 73-220.

17.27 Microfilming and destroying records and correspondence.—

(1) The Department of Banking and Finance may destroy general correspondence files and also any other records which the department may deem no longer necessary to preserve in accordance with retention schedules and destruction notices established under rules of the Division of Archives, History, and Records Management of the Department of State. Such schedules and notices relating to financial records of the department shall be subject to the approval of the Auditor General.

(2) The Department of Banking and Finance may photograph, microphotograph, or reproduce on film such documents and records as it may select, in such manner that each page will be exposed in exact conformity with the original.

(3) The Department of Banking and Finance may destroy any of said documents after they have been photographed and filed in accordance with the provisions of subsection (1).

(4) Photographs or microphotographs in the form of film or prints of any records made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

History.—ss. 1-3, ch. 23909, 1947; ss. 12, 35, ch. 69-106; s. 6, ch. 71-377; s. 1, ch. 77-102; s. 1, ch. 78-177.

17.28 Comptroller may authorize biweekly salary payments.—The comptroller is authorized and may permit biweekly salary payments to personnel upon written request by a specific state agency. The comptroller shall promulgate reasonable rules and regulations to carry out the intent of this section.

History.—s. 1, ch. 67-425.

CHAPTER 18

TREASURER

18.01 Bond of Treasurer.—The State Treasurer shall, within 10 days before he enters upon the duties of his office, give a bond to the state, in the sum of $100,000, with any solvent surety insurer authorized to transact such business in this state and qualified for the posting of bonds of public officials under s. 627.754, to be approved by the Governor, conditioned that he will faithfully execute the duties of his office; and shall take and subscribe an oath or affirmation faithfully to discharge the duties of his office; which bond and oath or affirmation shall be deposited with the Department of State; and after such bond shall have been given, upon the filing with the Department of State of a certificate from the Comptroller, that the retiring Treasurer has turned over vouchers for all payments made as required by law, and that his account has been truly credited with the same, and that he has filed receipts from his successor for all vouchers paid since the end of last quarter, and for balance of cash, and for all bonds and other securities held by him as such Treasurer, and a certificate from each board of which he is made by law ex officio Treasurer, that he has satisfactorily accounted to such board as its Treasurer; the bond given by such Treasurer and his sureties shall be discharged and delivered up and shall be canceled by the Comptroller. Such bond shall be deemed to extend to the faithful execution of the office of Treasurer by the person giving such bond until his successor shall have qualified, and to the faithful performance of the duties of Treasurer of each board or fund of which he is or may be made by law ex officio the Treasurer.

History.—s. 3, ch. 9, 1845; s. 2, ch. 3684, 1887; RS 118; GS 123; RGS 134; CGL 164; ss. 10, 35, ch. 69-106; s. 1, ch. 71-19.
cf.—s. 113.07 Bond of officials.

18.02 Moneys paid on warrants.—

(1) The Treasurer shall pay all warrants on the treasury drawn by the Comptroller and countersigned by the Governor, and no moneys shall be paid out of the treasury except on such warrant.

(2) However, the Treasurer is authorized to furnish a personal check-cashing service at the capitol for the benefit of state employees and other responsible persons who properly identify themselves.

(3) If a personal check is dishonored or a state warrant is forged and the Treasurer has made diligent but unsuccessful effort to collect and has forwarded the returned check for prosecution by the appropriate State Attorney, then he may include such amount in his budget request to be considered during the next legislative session.

History.—s. 5, ch. 9, 1845; RS 119; GS 124; RGS 135; CGL 165; s. 1, ch. 73-266; s. 1, ch. 75-115.
cf.—s. 4, Art. IV; s. 1, Art. VII, State Const.

18.03 Residence and office.—The Treasurer shall reside at the seat of government of this state, and shall keep his office in a room in the capitol. Said office shall be open every day, Sundays, holidays and public festivals excepted, from 8 a.m. to 5 p.m. Monday through Friday of every week.

History.—s. 12, ch. 9, 1845; ch. 1845, 1871; RS 120; GS 125; RGS 136; CGL 166; s. 8, ch. 29615, 1955.
cf.—s. 2, Art. II, State Const.

18.05 Annual report to Governor.—The Treasurer shall make a report in detail to the Governor as soon after the 1st day of July of each year as it is practicable to prepare same of the transactions of his office for the preceding fiscal year, embracing an itemized statement of the receipts and payments on account of each of the several funds of which he has the care and custody.

History.—s. 2, ch. 3563, 1885; RS 122; GS 127; RGS 138; CGL 168; s. 1, ch. 23094, 1945.

18.06 Examination by and monthly statements to the Governor.—The office of the Treasurer of this state, and the books, files, documents, records and papers thereof, shall always be subject to the examination of the Governor of the state, or any person he may authorize to examine same. The Treasurer shall exhibit to the Governor monthly a trial balance sheet from his books and a statement of all the credits, moneys, or effects on hand on the day for which said trial balance sheet is made, and said statement accompanying said trial balance sheet shall particularly describe the exact character of funds, credits, and securities, and shall state in

detail the amount which he may have representing cash, including any not yet entered upon the books of his office, and such statement shall be certified and signed by the Treasurer officially.

History.—s. 3, ch. 3563, 1885; RS 123; s. 1, ch. 4588, 1897; GS 128; RGS 139; CGL 169; s. 2, ch. 73-266.

18.07 To keep record of warrants and of state funds and securities.—The Treasurer shall keep a record of the warrants which he pays and shall account for all state funds and securities.

History.—s. 4, ch. 3563, 1885; RS 124; GS 129; RGS 140; CGL 170; s. 3, ch. 73-266.

18.08 To turn over to the Comptroller all warrants paid.—The Treasurer shall turn over to the Comptroller, through the data service center, all warrants drawn by the Comptroller and paid by the Treasurer. Said warrants shall be turned over as soon as the Treasurer shall have recorded such warrants and charged the same against the accounts upon which such warrants are drawn; and when such warrants have been delivered to the Comptroller through the data service center, the Comptroller shall credit the Treasurer's accounts with the amounts thereof, giving the Treasurer a certificate or receipt setting forth the amounts of such warrants and the dates of such credits.

History.—s. 5, ch. 3563, 1885; RS 125; GS 130; RGS 141; CGL 171; s. 1, ch. 23093, 1945; s. 4, ch. 73-266.

18.09 Exhibit to Legislature.—The Treasurer shall exhibit to the Legislature at its regular sessions, an exact statement of the balance in the treasury to the credit of the people of the state, with a summary of the receipts and payments of the treasury during the preceding year.

History.—s. 6, ch. 9, 1845; RS 126; GS 131; RGS 142; CGL 172; s. 1, ch. 77-320.

18.091 Legislative sessions; additional employees.—

(1) Hereafter during any period of time the Legislature of Florida may be in actual session, the State Treasurer is empowered to employ not more than two persons to assist in performing the services required of the State Treasurer in connection with legislative expenses as provided in s. 11.12. The salaries to be paid such employees of the State Treasurer shall not be in excess of the highest salary paid by the House of Representatives or the state senate for secretarial services; and the salaries for said employees shall begin with the convening of the Legislature in session and shall continue for not more than 7 days after the close of the legislative session; provided, that recesses of the Legislature not in excess of 3 days shall be considered as time during which the Legislature is actually in session.

(2) In addition to the regular annual appropriations for the State Treasurer, there is hereby appropriated for use of the State Treasurer from the general revenue fund, from time to time as necessary, sufficient sums to pay the salaries of the above-described employees of the State Treasurer.

History.—ss. 1, 2, ch. 57-2; s. 1, ch. 73-305.

18.10 Deposits and investments of state money.—

(1) The Treasurer, acting with the approval of a majority of the Governor, Comptroller, and Treasurer acting as the State Board of Administration, and hereinafter referred to as "board," shall deposit the money of the state or any money in the State Treasury in such banks of the state as will offer satisfactory collateral security for such deposits, pursuant to s. 18.11. The board may invest such money in savings accounts of savings and loan associations which are under state supervision and in savings accounts of federal savings and loan associations organized and located in this state under federal law and federal supervision. However, the collateral security required for such investments shall be in accordance with the provisions of s. 665.321(1). It is the duty of the State Treasurer to keep the board advised as to the amounts of such money available at all times, and it is the duty of the board, consistent with the cash requirements of the state, to keep such money fully invested or deposited in interest-bearing time deposits or savings accounts as provided herein in order that the state may realize maximum earnings and benefits to the economy.

(2) Money of the state or any money in the State Treasury which the board estimates will be available for investment only for short periods of time of not more than 90 days may be invested in direct United States Treasury obligations in varying maturities, and such investments may be in book-entry form. Investments made pursuant to this subsection may be under repurchase agreement.

(3)(a) Money of the state or any money in the State Treasury which the board estimates will not be needed for the immediate cash requirements of the state and which is not invested as provided in subsection (2) shall be deposited in time deposits or invested in savings accounts for such period of time as the board may determine in such banks or savings and loan associations of the state as will pay rates established by the board at levels not less than prevailing United States treasury bill rates.

(b) In the event money is available for interest-bearing time deposits or savings accounts as provided herein and the banks or savings and loan associations of the state are unwilling to accept such money and pay thereon the rates as established in paragraph (a), then all or any part of such money which the banks or savings and loan associations of the state are unwilling to accept shall be invested by the board in short-term direct obligations of the United States maturing on dates such funds are anticipated to be needed.

(4) All earnings on any investments made pursuant to this section shall be credited to the state General Revenue Fund.

(5) The fact that a municipal officer or a state officer, including an officer of any municipal or state agency, board, bureau, commission, institution, or department, is a stockholder or an officer or director of a bank or savings and loan association will not bar such bank or savings and loan association from being a depository of funds coming under the jurisdiction of any such municipal officer or state officer if it shall appear in the records of the municipal or state

office that the governing body of such municipality or state agency has investigated and determined that such municipal or state officer is not favoring such banks or savings and loan associations over other qualified banks or savings and loan associations.

History.—s. 1, ch. 4586, 1897; GS 132; s. 1, ch. 7929, 1919; RGS 143; CGL 173; s. 1, ch. 17712, 1937; s. 1, ch. 23976, 1947; s. 1, ch. 57-354; s. 1, ch. 63-114; ss. 28, 35, ch. 69-106; s. 1, ch. 71-104; s. 1, ch. 77-155; s. 1, ch. 78-110.

cf.—s. 18.11 Security to be given.

s. 518.15 Bonds or motor vehicle tax anticipation certificates legal investments and securities.

s. 659.21 Banking Code; security of deposits.

18.101 Deposits of public money outside of the State Treasury; revolving funds.—

(1) All moneys collected by state agencies, boards, bureaus, commissions, institutions, and departments shall, except as otherwise provided by law, be deposited in the State Treasury. However, when the volume and complexity of collections so justify, the Treasurer may give written approval for such moneys to be deposited in clearing accounts outside the State Treasury. Such deposits shall only be made in banks designated by the State Board of Administration. No money may be maintained in such clearing accounts for a period longer than approved by the Treasurer or 40 days, whichever is shorter, prior to its being transmitted to the Treasurer, distributed to a statutorily authorized account outside of the State Treasury, refunded, or transmitted to the Department of Revenue. All banks so designated shall pledge sufficient collateral to be security for such funds, said securities to be the same type as those prescribed by law as eligible for the purpose of securing the deposits made by the Treasurer. Such collateral securities shall be deposited with, or pledged to, the Treasurer in the same manner as set out in s. 18.11.

(2) Revolving funds authorized by the Executive Office of the Governor for all state agencies, boards, bureaus, commissions, institutions, and departments may be deposited by such agencies, boards, bureaus, commissions, institutions, and departments in banks designated by the Governor, Comptroller, and Treasurer for such revolving fund deposits, and the banks in which such deposits are made shall pledge collateral security in an amount equal to or in excess of the total amount of such revolving funds, said collateral securities to be of the type and pledged in the manner as provided for the pledge of collateral security in subsection (1).

(3) Each department shall furnish a statement to the Treasurer, on or before the 20th of the month following the end of each calendar quarter, listing each clearing account and revolving fund within that department's jurisdiction. Such statement shall report, as of the last day of the calendar quarter, the cash balance in each revolving fund and that portion of the cash balance in each clearing account that will eventually be deposited to the State Treasury as provided by law. The Treasurer shall show the sum total of state funds in clearing accounts and revolving funds, as most recently reported to him by various departments, in his monthly statement to the Governor, pursuant to s. 18.06.

History.—ss. 1, 2, ch. 28133, 1953; s. 3, ch. 67-129; ss. 2, 3, ch. 67-371; ss. 28, 31, 35, ch. 69-106; s. 1, ch. 72-162; s. 1, ch. 74-28; s. 1, ch. 78-54; s. 50, ch. 79-190.

18.102 Deposits of public money by boards, agencies, etc.—All state agencies, boards, bureaus, commissions, institutions, and departments may, upon written approval of the State Treasurer, deposit their funds in local banks to the credit of the State Treasurer, provided evidence of deposit is forwarded immediately to the State Treasurer with sufficient information to credit the proper fund.

History.—s. 1, ch. 61-71; s. 1, ch. 72-162.

18.11 Security to be given.—

(1) The security to be given by such banks as may be designated under ss. 18.10 and 18.101 shall consist of:

(a) Bonds of the United States.

(b) Obligations of federal agencies that are lawful investments for commercial banks and may be accepted as security for all fiduciary, trust, and public funds under the authority and control of the United States and are eligible collateral for treasury tax and loan accounts, provided there is no default in the payment of principal or interest on such obligations at the time of the pledge of such obligations.

(c) United States Government Guaranteed Student Loans, provided there is no default in the payment of principal or interest on such obligations at the time of the pledge of such obligations.

(d) Small Business Administration Loans, provided there is no default in the payment of principal or interest on such obligations at the time of the pledge of such obligations.

(e) State bonds pledging the full faith and credit of the state and revenue bonds additionally secured by the full faith and credit of the state.

(f) Bonds, notes, or certificates of any county, board, commission, authority, agency, or other instrumentality of the state which contain a pledge of, and are solely payable from, the 80 percent surplus 2 cents second gasoline tax accruing under s. 16, Art. IX of the State Constitution of 1885, as adopted by the 1968 revised constitution and s. 9, Art. XII of said revision, provided that such securities have been approved by the State Board of Administration as to their legal and fiscal sufficiency.

(g) County and municipal bonds or certificates, and county or district school time warrants, issued by any of the counties, school districts, or cities of the state; bonds or certificates issued by any of the state agencies, departments, or commissions authorized to issue bonds or certificates; or bonds or certificates issued by authorities created by the State Legislature. Such bonds or certificates may be general obligations of the issuing authority or they may be secured by utility revenues, other revenues, excise taxes, or a limited ad valorem tax.

(h) Bonds or certificates of the several states.

(i) Farmers Home Administration Loans, provided there is no default in the payment of principal or interest on such obligations at the time of the pledge of such obligations.

(j) Securities of the Federal Home Loan Mortgage Corporation in an amount at least 15 percent in excess of the amount to be secured by collateral.

(k) Securities of the Government National Mortgage Association in an amount at least 15 percent in excess of the amount to be secured by collateral.

(2) Except as to bonds of the United States, bonds

the payment of whose principal and interest is guaranteed by the United States, or federal certificates of indebtedness, the bonds or certificates herein mentioned shall be rated in one of the four highest classifications by two established, nationally recognized investment rating services. The amount or value of any and all bonds or certificates shall be in such amount as may be examined and adjudged by the Treasurer to conform with standards agreed to by the Governor, Comptroller, and Treasurer.

(3) In lieu of the actual depositing of said securities, the State Treasurer may accept a safekeeping receipt issued by any federal reserve bank, or member bank thereof or by any bank incorporated under the laws of the United States, therefor, provided the member bank or bank incorporated under the laws of the United States shall have been previously approved and accepted for such purposes by the Governor, Comptroller, and Treasurer. The safekeeping receipt shall substantially comply with the following form and provisions, to wit:

(Name of Bank) (Address)

SAFEKEEPING RECEIPT
NONNEGOTIABLE

No. .....

The undersigned (Name and address of bank accepting the securities) hereby acknowledges that it holds for safekeeping the following described bonds, certificates, notes, or other securities, hereinafter referred to as securities, to wit:

(Specifically describing the securities)

The (Name of bank depositing the securities) for convenience, hereinafter referred to as the depositing bank, has made written application bearing date of ....., to the (Name of bank accepting the securities), requesting it to hold said securities for safekeeping only, and has represented in said application that said securities have been pledged or deposited by it with the STATE TREASURER OF THE STATE OF FLORIDA, for the purposes of indemnity or guaranty, pursuant to the laws of the State of Florida.

In said application under which said securities were lodged with the undersigned by the said depositing bank, the (Name of bank accepting the securities) is authorized and empowered to surrender, release or deliver said securities, or any part of them, only upon the sole written direction and authorization of said State Treasurer, or his successors in office. It is recognized that said securities are to be held by said (Name of bank accepting the securities) for safekeeping only and solely as an accommodation to said depositing bank and State Treasurer, or his successors in office, and that in no event is the said (Name of bank accepting the securities for deposit) to rest under any liability or responsibility for or with respect to said securities or any of them, except such as may be involved in the safekeeping thereof.

This receipt is nonnegotiable and any person into whose hands the same may come is hereby notified that the securities described above will only be delivered, surrendered, or otherwise disposed of, upon the written direction and authorization of said State Treasurer or his successors in office.

Should the undersigned collect any interest accruing on said securities, or any of them, such interest may be disbursed to the depositing bank or its order, unless otherwise directed in writing by said State Treasurer.

When and as thereunto directed and authorized in writing by said State Treasurer, the (Name of bank accepting the securities) will surrender, release and deliver said securities pursuant to such written direction and authorization, and in such event this receipt to be surrendered to (Name of bank accepting securities for deposit) for cancellation.

IN WITNESS WHEREOF, (Name of bank accepting the securities for deposit) acting by and through its proper officers, has caused these presents to be duly executed this the ..... day of ....., 19.....

(Name of bank accepting securities for deposit)

By (Name and Title of Officer)

ATTEST:

(Name of person attesting)

(4) Provided, however, that a safekeeping receipt issued for the purpose contemplated above by any federal reserve bank shall not be required to comply as to form with the form of safekeeping receipt above set forth, if any such receipt which does not comply as to form with the above form has been authorized for the use of said bank by its governing authority and if the provisions thereof comply in substance with the provisions of the above form of safekeeping receipt; provided further, that the bank issuing the safekeeping receipt to the State Treasurer pursuant to the provisions of subsection (2) shall not be required to have the securities described in its safekeeping receipt in its actual physical possession if such approved bank holds a safekeeping receipt therefor from another bank approved by the Governor, Comptroller and Treasurer in the manner provided for approval and acceptance of the banks specified in subsection (2), provided such secondary safekeeping receipt authorizes and empowers the approved bank having the actual physical possession of said securities to surrender, release or deliver the same or any part thereof only to or upon the sole written direction and authorization of the bank issuing the safekeeping receipt to the State Treasurer.

(5) The State Treasurer may accept a telegram or telex from an approved bank for a reasonable length of time not to exceed 15 business days pending the actual receipt of a safekeeping receipt, provided the telegram or telex clearly describes and defines the securities being pledged and states that said securities are being held for and on behalf of the State Treasurer.

(6) The State Treasurer, with the approval of the State Board of Administration, may authorize the treasurer of the Board of Administration and county treasurer ex officio to authorize a bank holding securities in safekeeping to liquidate said securities at a future date where such liquidation or maturity is predetermined for the purpose of reinvestment, the settlement date of the disposal and the purchase date being one and the same, without requiring the bank holding such investment in safekeeping to cover the transaction with an additional comparable safekeeping receipt of collateral.

History.—s. 2, ch. 4586, 1897; GS 133; RGS 144; s. 1, ch. 8529, 1921; CGL 174; s. 1, ch. 20938, 1941; s. 1, ch. 23938, 1947; s. 24, ch. 57-1; s. 1, ch. 59-25; s. 1, ch. 59-26; s. 2, ch. 61-71; s. 1, ch. 61-518; ss. 28, 35, ch. 69-106; s. 1, ch. 72-361; s. 5,

ch. 73-266; s. 1, ch. 77-191; s. 2, ch. 79-164; s. 1, ch. 79-262; s. 7, ch. 79-400.
cf.—s. 518.09 Housing bonds, legal investments and securities.
s. 518.15 Bonds or motor vehicle tax anticipation certificates legal investments and security.
s. 660.08 Deposit of securities with State Treasurer.

18.12 May sell securities.—The Governor, Comptroller and Treasurer may sell at public or private sale any or all of the bonds and securities that may be deposited in the State Treasurer's office as collateral security for the deposit of any public funds whenever there shall be a failure or refusal on the part of the bank depositing such securities to pay any check drawn by the State Treasurer on such bank.

History.—s. 3, ch. 4586, 1897; GS 134; RGS 145; CGL 175; s. 1, ch. 14653, 1931.

18.13 Notice of sale to be given.—Notice of the sale of bonds or securities under s. 18.12, shall be given for 30 days in the newspaper published in Tallahassee, and when a sale of bonds or securities is made by the Governor, Comptroller and Treasurer, either at public or private sale under said section, the absolute ownership of said bonds or securities shall vest in the purchaser or purchasers upon payment of the purchase money to the State Treasurer. Upon the sale of collateral securities as provided in s. 18.12 should there be any surplus after the State Treasurer shall have paid the amount due by reason of such deposit and the expense of sale, such surplus shall be paid over to the bank making the deposit, or to the liquidator of such bank in case such bank is in the process of liquidation. In the case of settlement with a bank in liquidation, should the Governor, Comptroller and Treasurer consider it to be in the best interest of the state they may take such collateral securities, or any part of the same, on a basis to be agreed upon in settlement of such account and to carry all assets thus received in such settlement in a suspense account that may be created for that purpose, such account to be credited from time to time, as dividends, interest or principal of such assets are realized upon, until final liquidation of the account in full, and should there be any surplus upon the final liquidation of such account, such surplus shall be transferred to and placed in the General Revenue Fund of the state. A copy of the notice of sale herein required shall be forwarded by the State Treasurer by registered mail to the cashier or the liquidator of the bank or trust company by which the deposit of securities was made.

History.—s. 3, ch. 4586, 1897; GS 135; RGS 146; CGL 176; s. 2, ch. 14653, 1931.
cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

18.14 To exchange bonds of political subdivisions for refunding bonds.—The Governor, Comptroller and Treasurer may exchange bonds of any city, town, municipality, county, school district, special tax school district, special road and bridge district, transportation district, drainage district or political subdivision located within the state for refunding bonds, which refunding bonds have been issued by any such city, town, municipality, county, school district, special tax school district, special road and bridge district, transportation district, drainage district or political subdivision, to take the place and stead of bonds which are now held by the Governor, Comptroller or Treasurer and which bonds have been acquired, owned or held under and by virtue of s. 18.13, provided however, that prior to the exchange of such bonds the Governor, Comptroller and Treasurer shall have first determined that they consider it to the best interest of the state to accept such refunding bonds.

History.—s. 1, ch. 17756, 1937; CGL 1940 Supp. 176(1); s. 24, ch. 57-1; s. 2, ch. 73-58.

18.15 Interest on money deposited to be paid quarterly to treasurer or semiannually with consent of State Board of Administration.—Interest on state moneys deposited in banks under s. 18.10, shall be payable to the State Treasurer quarterly or, with the consent of the Governor, Comptroller and State Treasurer acting as the State Board of Administration, semiannually, and such interest money shall be credited on account of general revenue.

History.—s. 4, ch. 4586, 1897; GS 136; RGS 147; CGL 177; s. 1, ch. 65-99; ss. 28, 35, ch. 69-106.

18.16 Treasurer not to deposit money without the consent of Governor and Comptroller.—It is unlawful for the State Treasurer to deposit or keep any money not deposited in accordance with s. 18.10, in any bank, without the consent of the Governor and Comptroller.

History.—s. 5, ch. 4586, 1897; GS 137; RGS 148; CGL 178.

18.17 Not to issue evidences of indebtedness.—It is not lawful for the Treasurer of this state to issue any treasury certificates, or any other evidences of indebtedness, for any purpose whatever, and he is prohibited from issuing the same.

History.—s. 2, ch. 1737, 1870; RS 130; GS 138; RGS 149; CGL 179.

18.20 State Treasurer to make reproductions of certain warrants, records and documents.—

(1) All vouchers or checks heretofore or hereafter drawn by appropriate court officials of the several counties of the state against money deposited with the State Treasurer under the provisions of s. 43.17, and paid by the State Treasurer, may be photographed, microphotographed or reproduced on film by the State Treasurer. Such photographic film shall be durable material and the device used to so reproduce such warrants, vouchers or checks shall be one which accurately reproduces the originals thereof in all detail; and such photographs, microphotographs or reproductions on film shall be placed in conveniently accessible and identified files and shall be preserved by the State Treasurer as a part of the permanent records of his office. When any such warrants, vouchers or checks have been so photographed, microphotographed or reproduced on film, and the photographs, microphotographs or reproductions on film thereof have been placed in files as a part of the permanent records of the office of the State Treasurer as aforesaid, the State Treasurer is authorized to return such warrants, vouchers or checks to the offices of the respective county officials who drew the same and such warrants, vouchers or checks shall be retained and preserved in such offices to which returned as a part of the permanent records of such offices.

(2) Such photographs, microphotographs or re-

productions on film of said warrants, vouchers or checks shall be deemed to be original records for all purposes; and any copy or reproduction thereof made from such original film, duly certified by the State Treasurer as a true and correct copy or reproduction made from such film, shall be deemed to be a transcript, exemplification or certified copy of the original warrant, voucher or check such copy represents, and shall in all cases and in all courts and places be admitted and received in evidence with the like force and effect as the original thereof might be.

(3) The State Treasurer is also hereby authorized to photograph, microphotograph or reproduce on film, all records and documents of said office, as he may, in his discretion, select; and said Treasurer is hereby authorized to destroy any of the said documents or records after they have been photographed and filed and after audit of his office has been completed for the period embracing the dates of said documents and records.

(4) Photographs or microphotographs in the form of film or prints of any records made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

History.—ss. 1, 2, ch. 22704, 1945; s. 9, ch. 29615, 1955; s. 1, ch. 57-36.

18.22 Rules and regulations.—All rules and regulations necessary to effectuate the provisions of this chapter may be adopted by the department in accordance with the provisions of chapter 120.

History.—s. 7, ch. 73-266; s. 1, ch. 77-117.

18.23 Treasurer to prescribe forms.—The Treasurer may prescribe the forms, and the manner of keeping the same, for all receipts, credit advices, abstracts, reports, and other papers furnished the Treasurer by the officers of this state or other persons or entities as a result of their having, or depositing, state moneys.

History.—s. 8, ch. 73-266.

CHAPTER 19

COMMISSIONER OF AGRICULTURE

19.12 Collection and publication of statistics.—The Commissioner of Agriculture shall arrange and adopt some plan for collecting and publishing agricultural, horticultural, pomological, and farm statistics in connection with his annual report, in such form and numbers as he may deem best, or the financial condition of the department will permit; and he shall, before the first day of January in each year, furnish the property appraisers of the several counties of the state with the necessary blanks, together with such instructions as will properly direct them in that work, and such blanks shall contain only such questions as relate to agriculture, horticulture and stock raising.

History.—s. 5, ch. 3857, 1889; RS 143; GS 153; RGS 164; CGL 196; s. 1, ch. 77-102.

19.14 Bond and oath of office.—The Commissioner of Agriculture shall, before he enters upon the duties of his office, give bond with good security to be approved by the governor of this state, in the sum of $10,000, conditioned for the faithful discharge of the duties of his office; and shall take the oath of office prescribed by the constitution of the state.

History.—s. 3, ch. 54, 1845; s. 3, ch. 236, 1849; RS 145; s. 1, ch. 4962, 1901; GS 155; RGS 166; CGL 198.
cf.—s. 5, Art. II, State Const.
s. 113.07 Bonds of officials.

19.23 Residence and office.—The Commissioner of Agriculture shall reside at the seat of government in this state, and shall keep his office in a room in the capitol.

History.—s. 1, ch. 54, 1845; s. 2, ch. 1822, 1870; ch. 1845, 1871; RS 152; GS 162; RGS 174; CGL 206; s. 7, ch. 22858, 1945.
cf.—s. 2, Art. II; s. 4, Art. IV, State Const.

19.52 Stamps or tags.—Whenever under the law, stamps are now required to be used in connection with inspection fees, the Department of Agriculture and Consumer Services is authorized to use and direct the use of either stamps or tags as it shall determine to be for the best interest of the state, and all laws or regulations now applicable to such stamps shall be applicable to tags whenever used instead of stamps under such direction of the department.

History.—s. 1, ch. 14671, 1931; CGL 1936 Supp. 222(1); ss. 14, 35, ch. 69-106.

19.54 Nathan Mayo Building.—The name of the state chemistry building in Tallahassee, Florida, is designated and declared to be "The Nathan Mayo Building," in tribute to the Honorable Nathan Mayo, Commissioner of Agriculture of the state.

History.—s. 1, ch. 22590, 1945.

CHAPTER 20

ORGANIZATIONAL STRUCTURE

20.01 Short title.—This chapter shall be known as the Governmental Reorganization Act of 1969.

History.—s. 1, ch. 69-106.

20.02 Declaration of policy.—

(1) The State Constitution contemplates the separation of powers within state government among the legislative, executive, and judicial branches of the government. The legislative branch has the broad purpose of determining policies and programs and reviewing program performance. The executive branch has the purpose of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature. The judicial branch has the purpose of determining the constitutional propriety of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws.

(2) Within constitutional limitations, the agencies which comprise the executive branch should be consolidated into a reasonable number of departments consistent with executive capacity to administer effectively at all levels. The agencies in the executive branch should be integrated into one of the departments of the executive branch to achieve maximum efficiency and effectiveness as intended by s. 6, Art. IV of the State Constitution.

(3) Structural reorganization should be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to public needs.

(4) The responsibility within the executive branch of government for the implementation of programs and policies should be clearly fixed and ascertainable.

(5) Departments should be organized along functional or program lines.

(6) The management and coordination of state services should be improved and overlapping activities eliminated.

(7) When this reorganization of state government abolishes positions, the individuals affected, when otherwise qualified, should be given priority consideration for any new positions created by reorganization or for other vacant positions in state government.

History.—s. 2, ch. 69-106.

20.03 Definitions.—To provide uniform nomenclature throughout the structure of the executive branch, the following definitions shall apply in this and all future acts.

(1) "Cabinet" means collectively the Secretary of State, Attorney General, Comptroller, Treasurer, Commissioner of Agriculture, and Commissioner of Education, as specified in s. 4, Art. IV of the State Constitution.

(2) "Department" means the principal administrative unit within the executive branch of state government.

(3) "Examining and licensing board" means a board authorized to grant and revoke licenses to engage in regulated occupations.

(4) "Head of the department" means the individual or board in charge of the department.

(5) "Secretary" means an individual who is the head of a department and who is not otherwise named in the constitution.

(6) "Executive director" means the chief administrative employee or officer of a department headed by a board or by the Governor and the Cabinet.

(7) "Council" means an advisory body appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and the recommendation of solutions and policy alternatives.

(8) "Committee" means an advisory body appointed to study a specific problem and recommend a solution or policy alternative within a time certain with respect to that problem. Its existence shall terminate upon the completion of its assignment.

(9) "Coordinating council" means an interdepartmental advisory body created by law to coordinate programs and activities for which one department has primary responsibility but in which one or more other departments have an interest.

(10) "Commission," unless otherwise required by

the State Constitution, means a body established within a department and exercising limited quasi-legislative or quasi-judicial powers or both independently of the head of the department.

(11) "Agency," as the context requires, means an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or another unit or entity of government.

History.—s. 3, ch. 69-106.

20.04 Structure of executive branch.—The executive branch of state government is structured as follows:

(1) The department is the principal administrative unit of the executive branch. Each department shall bear a title beginning with the words "State of Florida" and continuing with "Department of ....."

(2) For field operations, departments may establish district or area offices which may combine division, bureau, section, and subsection functions.

(3) For their internal structure, all departments, except for the Departments of Health and Rehabilitative Services and Corrections, shall adhere to the following standard terms:

(a) The principal unit of the department is the "division." Each division shall be headed by a "director."

(b) The principal unit of the division is the "bureau." Each bureau shall be headed by a "chief."

(c) The principal unit of the bureau is the "section." Each section shall be headed by an "administrator."

(d) If further subdivision is necessary, sections may be divided into units which shall be known as "subsections" which shall be headed by "supervisors."

(4) Within the Department of Health and Rehabilitative Services there shall be organizational units called "offices," integral to the positions of deputy secretary, assistant secretary, and deputy assistant secretary, and organizational units called "program offices," which shall operate in a staff capacity to the assistant secretary for program planning and development.

(5) Within the Department of Corrections the principal policy and program development unit of the department is the "office." Each "office" shall be headed by a director.

(6) Unless specifically authorized herein, the head of the department shall not reallocate duties and functions specifically assigned herein to a specific unit of the department. Those functions or agencies assigned generally to the department without specific designation to a unit of the department may be allocated and reallocated to a unit of the department at the discretion of the head of the department. Within the limitations of this subsection, the head of the department may establish additional divisions, bureaus, sections, and subsections of the department to promote efficient and effective operation of the department. However, no department of state government shall have the authority to establish additional divisions of department after July 1, 1970, and no new bureaus, sections, and subsections of departments may be established until approved by the Executive Office of the Governor or by law.

(7) The exemptions from the Career Service Law designated in s. 110.205 shall include the appointed secretaries and executive directors of the departments established herein. Unless otherwise provided herein, the exemptions of s. 110.205 shall also include the directors of the divisions of such departments.

(8) The Governor may assign the Lieutenant Governor, without Senate confirmation, the duty of serving as the head of any one department, the head of which is a secretary appointed by the Governor, notwithstanding any qualifications therefor.

History.—s. 4, ch. 69-106; s. 1, ch. 70-384; s. 1, ch. 75-48; s. 5, ch. 75-49; s. 1, ch. 75-275; s. 2, ch. 77-147; s. 2, ch. 78-95; s. 1, ch. 79-3; ss. 28, 61, ch. 79-190.

20.05 Heads of departments; powers and duties.—Each head of a department, except as otherwise provided herein, shall:

(1)(a) Plan, direct, coordinate, and execute the powers, duties, and functions vested in that department or vested in a division, bureau, or section of that department; powers and duties assigned or transferred to a division, bureau, or section of the department shall not be construed to be a limitation upon this authority and responsibility;

(b) Have authority, without being relieved of responsibility, to execute any of the powers, duties, and functions vested in said department or in any administrative unit thereof through said administrative units and through such assistants and deputies as shall be designated by the head of the department from time to time, unless the head of the department is explicitly required by law to perform the same without delegation.

(2) Compile annually a comprehensive program budget covering such period as may be required reflecting all program and fiscal matters related to the operation of his department, each program, subprogram and activity therein and such other matters as may be required by law;

(3) Reimburse the members of advisory bodies for their actual and necessary expenses incurred in the performance of their duties in accordance with the provisions of s. 112.061;

(4) If not otherwise required by law, have authority to require that any officer or employee of the department give an official bond;

(5) Subject to requirements of chapter 120 (Administrative Procedure Act), have existing authority to promulgate rules pursuant and limited to the powers, duties, and functions transferred herein and have authority to promulgate rules pursuant and limited to the powers, duties, and functions enacted hereby;

(6) Have authority on behalf of the department to accept gifts, grants, bequests, loans, and endowments for purposes consistent with the powers, duties, and functions of the department;

(7) If a department is under the direct supervision of a board, including a board consisting of the Governor and cabinet, however designated, employ an executive director to serve at its pleasure; and

(8) Make recommendations concerning more effective internal structuring of the department to the

1970 regular session and ensuing sessions of the Legislature.

History.—s. 5, ch. 69-106; s. 2, ch. 74-256; s. 8, ch. 77-104.

20.06 Method of reorganization.—The executive branch of state government shall be reorganized by transferring the specified agencies, programs, and functions to the departments, commissions or offices created or referred to herein. Types of transfers used herein are defined as follows:

(1) TYPE ONE TRANSFER.—A type one transfer is the transferring intact of an existing agency or of an existing agency with certain identifiable programs, activities, or functions transferred or abolished so that the agency becomes a unit of a department. Any agency transferred to a department by a type one transfer shall henceforth exercise its powers, duties, and functions as prescribed by law, subject to review and approval by, and under the direct supervision of, the head of the department.

(2) TYPE TWO TRANSFER.—A type two transfer is the assigning to any department of an examining and licensing board which has as a function the setting of standards for, or the regulation of, a profession or the examination, licensing, or certifying of practitioners of such profession.

(3) TYPE THREE TRANSFER.—A type three transfer is the merging into a department of an existing agency or, if elsewhere in this chapter certain identifiable programs, activities, or functions have been removed from an existing agency, it is the merging into a department of the existing agency with the certain identifiable programs, activities, or functions removed therefrom. Any agency transferred by a type three transfer shall have all its statutory powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those transferred elsewhere by other provisions of this chapter, transferred to the department to which it is transferred. The transfer of segregated funds shall be made in such manner that the relation between program and revenue source as provided by law is retained. If an agency transferred by a type three transfer was headed by a board, however designated, all of the board's statutory powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those transferred elsewhere by other provisions of this chapter, are transferred to the department to which the agency is transferred, and the board is abolished.

(4) TYPE FOUR TRANSFER.—A type four transfer is the merging of an identifiable program, activity, or function of an existing agency into a department. Any program or activity transferred by a type four transfer shall have all its statutory powers, duties, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds transferred to the department to which it is transferred. The transfer of segregated funds shall be made in such manner that the relation between program and revenue source as provided by law is retained.

(5) TYPE FIVE TRANSFER.—A type five transfer is identical with a type three transfer except that the board that headed the existing agency is not abolished but is hereby renamed a "council," and its powers shall be strictly advisory to the division or bureau to which it is attached, if specified, or, if not specified, then to the head of the department.

(6) TYPE SIX TRANSFER.—A type six transfer is the termination of an existing agency and the transfer of all its statutory powers, duties and functions, records, and property to a department. All personnel positions affected by a type six transfer are abolished, and all unexpended balances of appropriations, allocations, or other funds affected by a type six transfer revert to the General Revenue Fund.

(7) TYPE SEVEN TRANSFER.—A type seven transfer is the termination of an identifiable program, activity, or function within an existing agency and the transfer of the related statutory powers, duties, functions, records, and property assigned to that agency to a department. All personnel positions affected by a type seven transfer are abolished, and all unexpended balances of appropriations, allocations, or other funds affected by a type seven transfer revert to the General Revenue Fund of the state.

History.—s. 6, ch. 69-106; s. 1, ch. 79-36.

20.10 Department of State.—There is created a Department of State.

(1) The head of the Department of State is the Secretary of State.

(2) The following divisions of the Department of State are established:

(a) Division of Elections;

(b) Division of Archives, History and Records Management;

(c) Division of Corporations;

(d) Division of Library Services;

(e) Division of Licensing; and

(f) Division of Cultural Affairs.

History.—s. 10, ch. 69-106; s. 1, ch. 70-329; s. 3, ch. 71-355; s. 1, ch. 74-272; s. 15, ch. 75-22; ss. 1-3, ch. 77-122; s. 3, ch. 79-164.

20.11 Department of Legal Affairs.—There is created a Department of Legal Affairs. The head of the Department of Legal Affairs is the Attorney General.

History.—s. 11, ch. 69-106; ss. 1, 2, ch. 77-105.

20.12 Department of Banking and Finance.—There is created a Department of Banking and Finance. The head of the Department of Banking and Finance is the Comptroller.

History.—s. 12, ch. 69-106; ss. 1, 2, ch. 77-106.

20.13 Department of Insurance.—There is created a Department of Insurance.

(1) The head of the Department of Insurance is the Treasurer who shall hereafter be named the "Insurance Commissioner and Treasurer."

(2) The following divisions of the Department of Insurance are established:

(a) Division of Insurance Company Regulation;

(b) Division of Insurance Consumer Services;

(c) Division of Risk Management;

(d) Division of State Fire Marshal;

(e) Division of Liquefied Petroleum Gas; and

(f) Division of Insurance Rating.

(3) The Division of Insurance Company Regula-

tion shall have a director, an assistant director, and at least two secretaries.

(4) There is created within the Department of Insurance a Division of Insurance Fraud to enforce the provisions of s. 626.989.

History.—s. 13, ch. 69-106; ss. 1, 2, ch. 72-173; s. 2, ch. 75-151; s. 8, ch. 76-266; ss. 1, 3, ch. 77-107; s. 1, ch. 78-258; s. 1, ch. 79-361.

20.14 Department of Agriculture and Consumer Services.—There is created a Department of Agriculture and Consumer Services.

(1) The head of the Department of Agriculture and Consumer Services is the Commissioner of Agriculture.

(2) The following divisions of the Department of Agriculture and Consumer Services are established:

(a) Administration.
(b) Plant Industry.
(c) Animal Industry.
(d) Dairy Industry.
(e) Inspection.
(f) Standards.
(g) Fruit and Vegetable Inspection.
(h) Chemistry.
(i) Marketing.
(j) Consumer Services.
(k) Forestry.

History.—s. 14, ch. 69-106; s. 1, ch. 70-309; s. 1, ch. 71-196; ss. 1-3, ch. 77-108.

20.15 Department of Education.—There is created a Department of Education.

(1) The head of the Department of Education is the State Board of Education composed of the Governor and cabinet as specified in s. 2, Art. IX of the State Constitution. The Governor is chairman of the board, and the Commissioner of Education is the secretary and executive officer and in the absence of the Governor shall serve as chairman.

(2)(a) The following divisions of the Department of Education are established:

1. Division of Public Schools.
2. Division of Vocational Education.
3. Division of Community Colleges.
4. Division of Universities.
5. Division of Blind Services.

(b) The Commissioner of Education is authorized to establish within the Department of Education a Division of Administration.

(3) The Board of Regents is the director of the Division of Universities pursuant to chapter 240. The directors of all other divisions shall be appointed by the commissioner subject to approval by the state board.

(4) The State Board of Education and the Commissioner of Education:

(a) Shall assign to the Division of Public Schools such powers, duties, responsibilities, and functions as shall be necessary to insure the greatest possible coordination, efficiency, and effectiveness of kindergarten through twelfth grade education.

(b) Shall assign to the Division of Vocational Education such powers, duties, responsibilities, and functions as shall be necessary to insure the greatest possible coordination, efficiency, and effectiveness of vocational education.

(c) Shall assign to the Division of Community Colleges such powers, duties, responsibilities, and functions as shall be necessary to insure the coordination, efficiency, and effectiveness of community colleges, except those duties specifically assigned to the Commissioner of Education in ss. 229.512 and 229.551 and the duties concerning physical facilities in chapter 235.

(5) Notwithstanding anything contained in law to the contrary, all members of all councils and committees of the Department of Education, except the Board of Regents, the State Community College Coordinating Board, and the community college boards of trustees, shall hereafter be appointed by the State Board of Education from a list of two or more names nominated for each position by the Commissioner of Education. However, each member of a board, council, or committee transferred herein to the Department of Education by a type five transfer shall continue in office for the remainder of his current term.

(6) Notwithstanding anything contained in law to the contrary, all members of the Board of Regents, the Community College Coordinating Board, and the community college boards of trustees shall be appointed according to chapter 240.

(7) Effective July 1, 1977, all blind services programs transferred to the Department of Education on April 1, 1976, by chapter 75-48, Laws of Florida, shall be assigned to the Division of Blind Services. The internal organizational structure of the Division of Blind Services shall be designed for the purpose of insuring the greatest possible efficiency and effectiveness of services to the blind consistent with this chapter.

History.—s. 15, ch. 69-106; s. 33, ch. 75-48; s. 1, ch. 75-302; ss. 2, 3, ch. 77-123; s. 1, ch. 77-259; s. 104, ch. 79-222.
cf.—s. 229.053 General powers of State Board of Education.
Ch. 229, part III, Department of Education.

20.16 Department of Business Regulation.—There is created a Department of Business Regulation.

(1) The head of the Department of Business Regulation is the Secretary of Business Regulation. The secretary shall be appointed by the Governor, subject to confirmation by the Senate. The secretary shall serve at the pleasure of the Governor.

(2) The following divisions of the Department of Business Regulation are established:

(a) Division of Pari-mutuel Wagering.
(b) Division of Hotels and Restaurants.
(c) Division of Florida Land Sales and Condominiums.
(d) Division of Alcoholic Beverages and Tobacco.
(e) Division of General Regulation.

(3) Each of the directors of the divisions of the Department of Business Regulation shall be appointed by the secretary of the department and shall serve at the pleasure of the secretary, as provided in s. 110.205.

(4) There is created within the Department of Business Regulation a Florida Pari-mutuel Commission, to consist of a chairman and four other members, all to be appointed by the Governor, subject to confirmation by the Senate. The initial Florida Pari-mutuel Commission shall consist of the Board of Business Regulation as constituted on July 1, 1978, and said members shall serve on the commission until June 30, 1979. Thereafter, the Governor shall appoint the members of the commission as follows:

One member whose term shall end June 30, 1981; two members whose terms shall end June 30, 1982; and two members whose terms shall end June 30, 1983. Thereafter, each member appointed by the Governor shall serve for a term of 4 years. The Florida Pari-mutuel Commission shall have the authority only to:

(a) Hear and approve the dates and changes of dates for racing and the dates within which any track or fronton may be operated as prescribed by chapters 550 and 551, and it shall not delegate said function to any subordinate officer or division of said department.

(b) Hear all appeals of decisions of the department which relate to the suspension or revocation of a pari-mutuel wagering license.

(c) Make recommendations to the director of the Division of Pari-mutuel Wagering regarding new or existing rules for all racing and jai alai operations which relate to the powers granted in this subsection.

(d) Issue an annual report to the Governor and the Legislature on the racing and jai alai industry in Florida.

(5) The Director of the Division of Pari-mutuel Wagering shall have the authority to approve minor changes in racing dates after the award by the Florida Pari-mutuel Commission when there is no objection from any other permitholder or other affected party after due notice to all parties concerned. In the event of an objection, the date change must be approved by the Florida Pari-mutuel Commission.

(6) Notwithstanding any other provision of law, the department is authorized to establish uniform application forms and certificates of license for use by the divisions within the department. Nothing contained in this subsection shall authorize the department to vary any substantive requirements, duties, or eligibilities for licensure or certification as provided by law.

History.—s. 16, ch. 69-106; s. 1, ch. 70-107; s. 1, ch. 71-2(B); s. 1, ch. 71-98; s. 9, ch. 71-157; s. 1, ch. 74-311; ss. 1, 2, ch. 74-313; s. 1, ch. 75-62; ss. 1, 2, ch. 77-109; s. 1, ch. 77-253; s. 9, ch. 78-95; s. 1, ch. 78-131; s. 29, ch. 79-190.

20.17 Department of Commerce.—There is created a Department of Commerce.

(1) The head of the Department of Commerce is the Secretary of Commerce. The secretary shall be appointed by the Governor subject to confirmation by the Senate. The secretary shall serve at the pleasure of the Governor.

(2) The following divisions of the Department of Commerce are established:

(a) Division of Economic Development.

(b) Division of Tourism.

(3)(a) There is created within the Division of Economic Development the Motion Picture and Television Advisory Council, hereinafter referred to as the "council." The council shall consist of 19 persons, each of whom is, or has been, actively engaged in the motion picture or television industry or a related area. The members of the council shall possess the qualifications provided herein and shall, with the consent of the Secretary of Commerce, be appointed by the Director of the Division of Economic Development, who shall appoint 10 members to 4-year terms and 9 members to 3-year terms. The council shall function as a body from which the secretary may obtain differing and varying views as to what actions or proposals are needed throughout the state regarding economic development. The council shall meet no less than quarterly, in conjunction with the secretary, to offer its views on the state of motion picture and television development and to recommend proposed action.

(b) The council shall also:

1. Promote the use of locations in Florida for the filming of motion pictures or television films by the motion picture industry, the television industry, and independent film producers.

2. Develop graphic presentations to the motion picture and television industries concerning the many possible sites in Florida which are suitable for filming.

(c) A majority of the members of the council shall constitute a quorum for the transaction of all business and the carrying out of the duties of the council.

(d) For the accomplishment of its purposes, the council shall have the power and authority to perform such duties and functions as are authorized by the Secretary of Commerce.

(e) Members of the council shall be compensated for per diem and traveling expenses as provided in s. 112.061.

(4)(a) There is created within the Division of Economic Development the Economic Development Advisory Council, hereinafter referred to as the "council." The council shall consist of 19 persons who are resident citizens of the state, each of whom is or has been actively engaged in industry or a related business area. The members of the council shall possess the qualifications provided herein and shall, with the consent of the Secretary of Commerce, be appointed by the Director of the Division of Economic Development for terms of 4 years, except that of the initial appointment 10 members shall be appointed to 4-year terms and 9 members shall be appointed to 3-year terms.

(b) The council shall function as a body from which the secretary may obtain differing and varying views as to what actions or proposals are needed throughout the state regarding economic development. The council shall meet no less than quarterly, to offer its views on the state of economic development and to recommend proposed actions.

History.—s. 17, ch. 69-106; s. 1, ch. 72-205; s. 1, ch. 72-241; s. 1, ch. 73-283; s. 3, ch. 74-230; s. 3, ch. 74-313; s. 1, ch. 74-363; ss. 1-3, ch. 75-237; s. 2, ch. 75-275; s. 1, ch. 75-276; s. 2, ch. 77-85; ss. 1-5, ch. 77-110; s. 1, ch. 77-174; s. 1, ch. 77-185; s. 1, ch. 77-360; s. 6, ch. 77-399; s. 1, ch. 78-201; s. 3, ch. 79-7.

20.171 Department of Labor and Employment Security.—There is created a Department of Labor and Employment Security.

(1) The head of the Department of Labor and Employment Security is the Secretary of Labor and Employment Security. The secretary shall be appointed by the Governor subject to confirmation by the Senate. The secretary shall serve at the pleasure of the Governor.

(2) The following divisions of the Department of Labor and Employment Security are established:

(a) Division of Labor.

(b) Division of Employment Security.

(c) Division of Administrative Services.

(d) Division of Workers' Compensation.

(e) Division of Employment and Training. The Division of Employment and Training shall be headed by a director who shall be appointed by the Secretary of Labor and Employment Security.

(3) The following commissions are established within the Department of Labor and Employment Security:

(a) Public Employees Relations Commission.

(b) [1]Industrial Relations Commission.

(c) Unemployment Appeals Commission.

[1](4)(a)1. There is created within the Department of Labor and Employment Security an Industrial Relations Commission to consist of a chairman and four other members, all to be appointed by the Governor, subject to confirmation by the Senate, and all to serve full time. Each appointee shall have the qualifications required by law for judges of the district courts of appeal. Three commissioners shall consider each case, and the concurrence of two shall be necessary to a decision.

2. The chairman may, by order filed in the records of the commission and with the approval of the Governor, appoint associate commissioners to serve as temporary members of the commission. Such appointment may be made only of a currently commissioned judge of industrial claims. This appointment shall be for such periods of time as not to cause an undue burden on the case load in the judge's jurisdiction. Each associate commissioner appointed shall receive no additional pay during the appointment except for expenses incurred in the performance of the additional duties.

3. The total salaries of all members of the commission are to be paid from the trust fund created by s. 440.50. Notwithstanding any other provisions of existing law, the commissioners shall be paid a salary equal to that paid under state law to the judges of district courts of appeal.

(b)1. The commission is vested with all authority, powers, duties, and responsibilities relating to review of orders of judges of industrial claims in workmen's compensation proceedings under chapter 440. Orders of the commission relating to workmen's compensation under chapter 440 shall be subject to review only by petition for writ of certiorari to the Supreme Court in the manner provided in s. 440.27.

2. The commission, in the performance of its powers and duties under chapter 440, shall not be subject to control, supervision, or direction by the Department of Labor and Employment Security.

3. The property, personnel, and appropriations related to the commission's specified authority, powers, duties, and responsibilities shall be provided to the commission by the Department of Labor and Employment Security.

(c) The commission shall make such expenditures, including expenditures for personal services and rent at the seat of government and elsewhere; for law books, books of reference, periodicals, furniture, equipment, and supplies; and for printing and binding, as may be necessary in exercising its authority and powers and carrying out its duties and responsibilities. All such expenditures of the commission shall be allowed and paid as provided in s. 440.50 upon the presentation of itemized vouchers therefor approved by the chairman.

(d) The commission may charge, in its discretion, for publications, subscriptions, and copies of records and documents. Such fees shall be deposited in the fund established in s. 440.50.

(e) The commission shall maintain and keep open during reasonable business hours an office, which shall be provided in the Capitol or some other suitable building in the City of Tallahassee, for the transaction of its business, at which office its official records and papers shall be kept. The office shall be furnished and equipped by the commission. The commission may hold sessions and conduct hearings at any place within the state.

(f) The commission shall have a seal for authentication of its orders, awards, and proceedings, upon which shall be inscribed the words "State of Florida-Industrial Relations Commission-Seal," and it shall be judicially noticed.

(g) The commission is expressly authorized to provide by regulation for, and to destroy, obsolete records of the commission.

(5)(a) There is created within the Department of Labor and Employment Security an Unemployment Appeals Commission, hereinafter referred to as the "commission." The commission shall consist of a chairman and two other members to be appointed by the Governor, subject to confirmation by the Senate. Not more than one appointee shall be a person who, on account of his previous vocation, employment, or affiliation, shall be classified as a representative of employers; and not more than one such appointee shall be a person who, on account of his previous vocation, employment, or affiliation, shall be classified as a representative of employees.

1. The chairman shall devote his entire time to his commission duties and shall be responsible for the administrative functions of the commission.

2. The chairman shall have the authority to appoint a general counsel and such other personnel as may be necessary to carry out the duties and responsibilities of the commission.

3. The chairman shall have the qualifications required by law for a judge of the circuit court and shall not engage in any other business vocation or employment. Notwithstanding any other provisions of existing law, the chairman shall be paid a salary equal to that paid under state law to a judge of the circuit court.

4. The remaining members shall be paid an honorarium of $100 for each day they are engaged in the work of the commission. The chairman and other members shall also be reimbursed for traveling expenses, as provided in s. 112.061.

5. The total salary and traveling expenses of each member of the commission shall be paid from the Employment Security Administration Trust Fund.

(b) Members shall serve for terms of 4 years each, except that, beginning July 1, 1977, the chairman shall be appointed for a term of 4 years, one member for 3 years, and one member for 2 years. A vacancy for the unexpired term of a member shall be filled in the same manner as provided in this subsection for an original appointment. The presence of two members shall constitute a quorum for any called meeting of the commission.

(c) The commission is vested with all authority, powers, duties, and responsibilities relating to unemployment compensation appeal proceedings under chapter 443.

(d) The property, personnel, and appropriations relating to the commission's specified authority, powers, duties, and responsibilities shall be provided to the commission by the Department of Labor and Employment Security.

(e) The commission shall not be subject to control, supervision, or direction by the Department of Labor and Employment Security in the performance of its powers and duties under chapter 443.

(f) The commission shall make such expenditures, including expenditures for personal services and rent at the seat of government and elsewhere; for law books, books of reference, periodicals, furniture, equipment, and supplies; and for printing and binding as may be necessary in exercising its authority and powers and carrying out its duties and responsibilities. All such expenditures of the commission shall be allowed and paid as provided in s. 443.14 upon the presentation of itemized vouchers therefor approved by the chairman.

(g) The commission may charge, in its discretion, for publications, subscriptions, and copies of records and documents. Such fees shall be deposited in the Employment Security Administration Trust Fund.

(h) The commission shall maintain and keep open during reasonable business hours an office, which shall be provided in the Capitol or some other suitable building in the City of Tallahassee, for the transaction of its business, at which office its official records and papers shall be kept. The offices shall be furnished and equipped by the commission. The commission may hold sessions and conduct hearings at any place within the state.

(i) The commission shall prepare and submit a budget covering the necessary administrative cost of the commission.

(j) The commission shall have a seal for authentication of its orders, awards, and proceedings, upon which shall be inscribed the words "State of Florida-Unemployment Appeals Commission-Seal," and it shall be judicially noticed.

(k) The commission shall, in accordance with chapter 120, adopt, promulgate, amend, or rescind such rules as it deems necessary and administratively feasible to carry out its responsibilities.

(l) Orders of the commission relating to unemployment compensation under chapter 443 shall be subject to review only by notice of appeal to the district courts of appeal in the manner provided in s. 443.07(4)(e).

History.—ss. 2, 3, ch. 78-201; s. 4, ch. 79-7; s. 47, ch. 79-40; s. 1, ch. 79-46; s. 62, ch. 79-190; ss. 6, 7, ch. 79-261; s. 1, ch. 79-308.

[1]**Note.**—See s. 1, ch. 79-312, which abolished the Industrial Relations Commission and transferred all appeals pending before, and all property, leaseholds, equipment, and other assets of, the commission to the District Court of Appeals, First District, effective October 1, 1979.

20.18 Department of Community Affairs.—There is created a Department of Community Affairs.

(1) The head of the Department of Community Affairs is the Secretary of Community Affairs. The secretary shall be appointed by the Governor subject to confirmation by the Senate. The secretary shall serve at the pleasure of the Governor.

(2) The following units of the Department of Community Affairs are established:

(a) Office of Community Services;

(b) Division of Public Safety Planning and Assistance;

(c) Division of Veterans' Affairs; and

(d) Division of Local Resource Management.

(3) Unless otherwise provided by law, the Secretary of Community Affairs shall appoint the directors or executive directors of any commission or council assigned to the department, who shall serve at his pleasure as provided for division directors in s. 110.205. The appointment or termination by the secretary will be done with the advice and consent of the commission or council, and the director or executive director may employ, subject to departmental rules and procedures, such personnel as may be authorized and necessary.

[2](4) Within the Department of Community Affairs, there is created a Council of Community Affairs consisting of nine members appointed by the Governor from among the citizens of the state. In making the appointments, the Governor shall give representation to local officials and community leaders and to the various geographical areas of the state. Of the members first to be appointed, three shall be appointed for terms of 1 year each, three shall be appointed for terms of 2 years each, and three shall be appointed for terms of 3 years each. The successors of the members first appointed shall be appointed for 3-year terms. Vacancies other than by expiration of terms shall be filled by appointment of the Governor for the remainder of the unexpired term. All members of the council shall serve without compensation, except for the reimbursement of their necessary expenses as provided by law.

(a) The Council on Community Affairs shall annually select a chairman and a vice chairman. The chairman shall annually submit a report to the Governor with recommendations of appropriate legislative or executive action.

(b) The council shall meet at such times as the Governor, the secretary, or the council determines.

(c) The Council on Community Affairs shall consult with and advise the Secretary of Community Affairs, the Governor, and the Legislature regarding the affairs and problems of local government and other problems within the jurisdictional concern of the department, and shall conduct such studies of specific community problems as may be referred to the council by the governor, the legislature, or the Secretary of Community Affairs. In conducting studies the council shall hold hearings throughout the state as are necessary.

(d) The Department of Community Affairs shall furnish equipment and staff necessary to implement the work of the council.

[2](5)(a) Within the Department of Community Affairs there is created an Interdepartmental Coordinating Council on Community Services consisting of the Secretary of Community Affairs as chairman, and the following:

[1]1. The Director of the Division of Family Services of the Department of Health and Rehabilitative Services;

2. The Secretary of Health and Rehabilitative Services;
3. The Director of the Division of Employment Security of the Department of Labor and Employment Security;
4. The Secretary of Environmental Regulation;
5. The Director of the Division of Veterans' Affairs;
6. The Director of the Division of Recreation and Parks of the Department of Natural Resources;
7. The Chancellor of the Board of Regents;
8. The assistant to the Commissioner of Education who is in charge of coordinating vocational-technical education programs and activities;
9. The Secretary of Transportation;
10. A representative of the Department of Administration in charge of budgeting; and
11. A representative of the Department of Administration in charge of planning.

In the event that any of the foregoing offices are changed, renamed, abolished, or merged with other offices, membership on the Interdepartmental Coordinating Council on Community Services shall devolve upon the office assuming the duties of the former office and the provisions of this section shall apply equally upon the new office as they did upon the former.

(b) The chairman of the coordinating council is authorized to convene, within his discretion, meetings of the coordinating council at appropriate times and places for purposes which enable the Department of Community Affairs to exercise its powers and perform its duties.

(c) The chairman of the coordinating council is authorized to make appointments to ad hoc working groups of the council to consider special problems within the scope of the responsibilities of the department.

(d) The members of the coordinating council, or policy-making representatives designated by them, shall participate in council meetings and in ad hoc working group meetings called by the chairman and, to the extent permitted by law and available funds, shall furnish information, at the request of the chairman, pertaining to programs within the responsibilities of such department.

(e) The Department of Community Affairs shall provide the necessary administrative services for the coordinating council.

(f) The chairman of the coordinating council shall make periodically, and at the request of the Governor, a report to the Governor on the activities of the council.

(6) In addition to its other powers, duties, and functions, the [3]Division of Community Services shall, under the general supervision of the director and the Interdepartmental Coordinating Council on Community Services, assist and encourage the development of state programs by the various departments for the productive use of human resources, and shall work with other state agencies in order that together they might:

(a) Effect the coordination by the responsible agencies of the state of the vocational, technical, and adult educational programs of the state in order to provide the maximum use and meaningful employment of persons completing courses of study from such programs; and

(b) Assist the Department of Commerce in the development of employment opportunities.

(7) The role of state government required by chapter 421 (Housing Authorities Law), chapter 422 (Housing Cooperation Law), chapter 423 (tax exemption of housing authorities), and chapter 424 (limited dividend housing companies), is the responsibility of the Department of Community Affairs, and the department is the agency of state government responsible for the state's role in housing and urban development.

History.—s. 18, ch. 69-106; s. 2, ch. 71-137; ss. 2, 3, ch. 74-285; ss. 1, 2, ch. 74-307; s. 2, ch. 75-151; s. 7, ch. 75-210; s. 9, ch. 77-104; s. 1, ch. 77-330; s. 4, ch. 78-323; s. 5, ch. 79-7; s. 1, ch. 79-10; s. 1, ch. 79-65; s. 4, ch. 79-164; s. 47, ch. 79-190; s. 7, ch. 79-261.

[1]**Note.**—The Division of Family Services was abolished by s. 3, ch. 75-48.

[2]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subsection prior to that date.

[3]**Note.**—See s. 47, ch. 79-190, which changed the name of the Division of Community Services to the Office of Community Services.

cf.—s. 23.154 Bureau of Criminal Justice Assistance.

20.19 Department of Health and Rehabilitative Services.—There is created a Department of Health and Rehabilitative Services.

(1) PURPOSE.—The purpose of the reorganization of the Department of Health and Rehabilitative Services is to integrate the delivery of all health, social, and rehabilitative services offered by the state to those citizens in need of assistance, herein referred to as "clients." The purpose of the department is to:

(a) Provide such assistance as is authorized to all eligible clients in order that they might achieve or maintain economic self-support and self-sufficiency to prevent, reduce, or eliminate dependency.

(b) Prevent or remedy the neglect, abuse, or exploitation of children and of adults unable to protect their own interests.

(c) Aid in the preservation, rehabilitation, and reuniting of families.

(d) Prevent or reduce inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care.

(e) Secure referral or admission for institutional care when other forms of care are not appropriate, or to provide services to individuals in institutions when necessary.

(f) Prevent the occurrence and spread of communicable diseases and other physical and mental diseases and disabilities to the maximum degree possible.

(g) Promote the maintenance and improvement of health and mental health.

(h) Disseminate health information to the public with recommendations for self-help aimed at the prevention of disease and the maintenance and improvement of the health of all residents and visitors in Florida.

(i) Plan and develop health resources to assure effective and efficient delivery of high quality health services fully accessible to all citizens.

(2) SECRETARY OF HEALTH AND REHABILITATIVE SERVICES; DEPUTY SECRETARY.—

(a) The head of the department is the Secretary of Health and Rehabilitative Services. The secretary shall be appointed by the Governor subject to confir-

mation by the Senate. The secretary shall serve at the pleasure of the Governor.

(b) The secretary shall appoint a deputy secretary who shall act in the absence of the secretary. The deputy secretary shall be directly responsible to the secretary and shall perform such duties as are assigned to him by the secretary. He shall serve at the pleasure of the secretary.

(c) In addition to his other duties, the secretary shall be responsible for evaluation, departmental legal services, and internal audit functions. The secretary may assign performance of such functions to any appropriate unit within the department.

(3) ASSISTANT SECRETARIES.—

(a) The secretary shall appoint an assistant secretary for operations, an assistant secretary for program planning and development, and an assistant secretary for administrative services, each of whom shall serve at the pleasure of, and be directly responsible to, the secretary. The secretary shall appoint a deputy assistant secretary for program planning, and a deputy assistant secretary for state health planning and development, and a deputy assistant secretary for Medicaid, each of whom shall serve at the pleasure of the secretary and shall be directly responsible to the assistant secretary for program planning and development.

(b) The assistant secretary for operations shall be responsible for, and have line authority over, all service program operations of the department, including the management of all institutions and residential treatment programs, assuring that such programs comply with federal and state laws and regulations, and such other duties as are assigned to him by the secretary. However, he shall delegate as much authority for the administration of service programs within the districts as practicable to the respective district administrators. The assistant secretary for operations shall have line authority over all departmental employees engaged in providing services directly to the client or support services therefor.

(c) The assistant secretary for program planning and development shall have responsibility for general statewide supervision of the administration of service programs operated by the department and such other program development and planning duties as are assigned to him by the secretary. General statewide supervision of the administration of service programs shall mean service program development and planning; program research; identifying client needs and recommending solutions and priorities; developing client service programs, including the policies and standards therefor; providing technical assistance to the district administrators; assisting the district administrators in staff development and training; reviewing and monitoring district-level program operations; assuring compliance with statewide program standards and performance criteria; assuring uniform program quality among districts; developing funding sources external to state government; and obtaining, approving, monitoring, and coordinating research and program development grants; but shall not involve line authority over any service program operations of the department, including the management of institutions and residential treatment programs.

1. Program offices shall be designed to operate in a staff capacity to the assistant secretary for program planning and development. Each program office shall be headed by a program staff director who shall be appointed by, and serve at the pleasure of, the secretary and be directly responsible to the assistant secretary for program planning and development. In no case shall the total professional staff of all of the program offices combined exceed 450 persons. The assistant secretary for program planning and development shall delegate to the program offices the following responsibilities, which shall include, but not be limited to:

a. Identification of client needs.

b. Intra-program policy development.

c. Short-term and long-term intra-program planning.

d. Intra-program standards setting, monitoring, and quality control.

e. Intra-program staff development, training, and technical assistance programs.

f. Advising the assistant secretary for program planning and development and others within the department, upon request, on issues within their areas of substantive expertise.

g. Acting as liaison, when assigned by the assistant secretary for program planning and development, to other governmental agencies and the public on programmatic issues.

h. Developing state program plans.

i. Developing resource forecasts and working within the state on community resource development.

j. Quality control.

k. Statewide supervision of the administration of service programs.

l. Any other program planning and development duties assigned by the secretary.

[2]2. The following program offices are established:

a. Children's Medical Services Program Office.—The responsibilities of this office encompass all children's medical services programs operated by the department.

b. Social and Economic Services Program Office.—The responsibilities of this office encompass all income support and related social services programs within the department, such as aid to families with dependent children (AFDC), food stamps, supplemental security income (SSI) supplemental payments, AFDC child support enforcement, and food distribution; protective services and all dependency programs; adoptions; child care; and foster care programs.

c. Health Program Office.—The responsibilities of this office encompass all health programs operated by the department, including county health departments and the review and coordination of departmental health services, as well as the insurance of an accepted level of quality.

d. Developmental Services Program Office.—The responsibilities of this office encompass programs operated by the department for developmentally disabled persons. Developmental disabilities shall include retardation, cerebral palsy, epilepsy, and autism, as defined in s. 393.063.

e. Vocational Rehabilitation Program Office.—

The responsibilities of this office encompass all vocational rehabilitation programs operated by the department.

f. Aging and Adult Services Program Office.—The responsibilities of this office encompass all aging and adult programs operated by the department.

g. Youth Services Program Office.—The responsibilities of this program office encompass all programs operated by the department relating to delinquent children.

h. Mental Health Program Office.—The responsibilities of this office encompass all mental health programs operated by the department. In addition, the responsibility for forensic programs shall be located here.

The secretary may appoint an advisory council for the purpose of acting as an advisory body to each program office. Members shall serve staggered terms not to exceed 4 years, although they may be appointed to one subsequent term. Members shall receive no compensation, but shall be reimbursed for per diem and travel expenses in accordance with the provisions of s. 112.061.

3. The responsibilities of the deputy assistant secretary for health planning and development shall include, but not be limited to, comprehensive health planning, Hill-Burton programs, and certificate-of-need determinations, as well as those functions authorized by law in conformance with Pub. L. No. 93-641. The assistant secretary may assign other responsibilities to this office in keeping with the intent of this act. The functions of this office relating to Pub. L. No. 93-641 shall not be decentralized to the districts.

4. The responsibilities of the deputy assistant secretary for Medicaid shall encompass all Medicaid planning and development functions, including, but not limited to, policy and program development, program monitoring, provider relations, interprogram planning, and program surveillance and utilization review. In addition, the secretary shall appoint a Medicaid advisory council in accordance with the provisions of federal regulations relating to Medicaid.

(d) The assistant secretary for administrative services shall be responsible for:

1. Providing administrative and management support services above the district level.

2. Monitoring administrative and management support services in the districts.

3. Developing and implementing uniform policies, procedures, and guidelines with respect to personnel administration, finance and accounting, budget, grants management and disbursement, procurement, information and communications systems, management evaluation and improvement, and general services, including housekeeping, maintenance, and leasing of facilities.

4. Performing such other administrative duties as are assigned to him by the secretary.

(4) SERVICE DISTRICTS.—

(a) The department shall plan and administer its programs of health, social, and rehabilitative services through service districts and subdistricts composed of the following counties:

District 1.—Escambia, Santa Rosa, Okaloosa, and Walton Counties;

District 2, Subdistrict A.—Holmes, Washington, Bay, Jackson, Calhoun, and Gulf Counties;

District 2, Subdistrict B.—Gadsden, Liberty, Franklin, Leon, Wakulla, Jefferson, Madison, and Taylor Counties;

District 3, Subdistrict A.—Hamilton, Suwannee, Lafayette, Dixie, Columbia, Gilchrist, Levy, Union, Bradford, Putnam, and Alachua Counties;

District 3, Subdistrict B.—Marion, Citrus, Hernando, Sumter, and Lake Counties;

District 4, Subdistrict A.—Baker, Nassau, Duval, and Clay Counties;

District 4, Subdistrict B.—St. Johns, Flagler, and Volusia Counties;

District 5.—Pasco and Pinellas Counties;

District 6.—Hillsborough and Manatee Counties;

District 7, Subdistrict A.—Seminole, Orange, and Osceola Counties;

District 7, Subdistrict B.—Brevard County;

District 8, Subdistrict A.—Polk, Hardee, and Highlands Counties;

District 8, Subdistrict B.—Sarasota and DeSoto Counties;

District 8, Subdistrict C.—Charlotte, Lee, Glades, Hendry, and Collier Counties;

District 9.—Indian River, Okeechobee, St. Lucie, Martin, and Palm Beach Counties;

District 10.—Broward County; and

District 11.—Dade and Monroe Counties.

(b) The secretary shall appoint a district administrator for each of the service districts. Each district administrator shall serve at the pleasure of the secretary and shall be directly responsible to the assistant secretary for operations. Each district administrator shall have direct line authority over all departmental programs assigned to the district. In addition to those responsibilities assigned by law, the district administrator shall carry out those duties delegated to him by the assistant secretary for operations. The salary of this position shall be comparable to that of a division director of a state agency.

(c) The duties of the district administrator shall include, but not be limited to:

1. Ensuring that the administration of all service programs is carried out in conformity with statewide service plans and any other policies, procedures, and guidelines established by the secretary.

2. Administering the offices of the department within the district and directing and coordinating all personnel, facilities, and programs of the department located in that district, except as otherwise provided herein.

3. Applying standard information, referral, intake, diagnostic and evaluation, and case management procedures established by the secretary. Such procedures shall include a single intake system for delinquency and dependency juvenile programs.

4. Centralizing to the greatest extent possible the administrative functions associated with the provision of services of the department within the district.

5. Coordinating the services provided by the department in the district with those of other public and private agencies which provide health, social,

educational, or rehabilitative services within the district.

6. Appointing district program managers, program supervisors, and the superintendent of each institution within the district and approving all other personnel appointments within the district.

7. Establishing such policies and procedures as may be required to discharge his duties and implement and conform the policies, procedures, and guidelines established by the secretary to the needs of the district.

8. Transferring up to 10 percent of the total district budget, with the approval of the secretary, to maximize effective program delivery, the provisions of ss. 216.292 and 216.351 notwithstanding.

(d) To assist him in the discharge of his duties, each district administrator may appoint a district program manager for health services and a district program manager for social services. Each district administrator shall appoint a district manager for administrative services. Each district program manager and the district manager for administrative services shall serve at the pleasure of the district administrator.

(e) There may be program supervisors in each district who shall serve in a line capacity to the district administrator and report directly to the district administrator or his designee. Program supervisors shall be appointed by the district administrator in conformity with qualifications established through state personnel system procedures. Program supervisors may be employed on a full-time, part-time, or fee-for-service contractual basis. The duties of a program supervisor shall include, but not be limited to:

1. Administering district service programs in conformity with statewide policies, procedures, and guidelines established by the secretary.

2. Recommending changes in district program policy.

3. Identifying and developing community resources.

4. Identifying district needs.

5. Serving as program spokesman in educating the public as to the availability of programs and the needs of clients.

6. Serving as primary staff development advisor in assessing the needs of staff and developing training and staff development programs.

(f) There shall be programs at the district level in the following areas: Aging and adult services, children's medical services, health, mental health, retardation, social and economic services, vocational rehabilitation, and youth services. There may be a program supervisor for each program, or the district administrator may combine any two or more programs under a program manager or program supervisor, if such arrangement is approved by the secretary.

(g) The district manager for administrative services shall provide the following administrative and management support services to the district in accordance with the uniform policies, procedures, and guidelines established by the assistant secretary for administrative services:

1. Finance and accounting.

2. Grants management and disbursement.

3. Personnel administration.

4. Purchasing and procurement.

5. General services, including housekeeping and maintenance of facilities.

6. Assisting the district administrator in preparation of the district budget request and administration of the approved operating budget.

7. Other administrative duties as assigned by the district administrator.

[1](5) DISTRICT ADVISORY COUNCILS.—

(a) Within each service district there is created a district advisory council. Each district advisory council shall assist in the coordination and integration of the health, social, and rehabilitative services provided by the department with those provided in the district by other public and private agencies and shall afford citizen input into departmental policy development. The duties of each district advisory council shall include, but not be limited to:

1. Advising the district administrator with respect to the administration of the department's service programs within the district and the improvement of coordination and integration of the department's programs and services with those provided within the district by other public and private agencies.

2. Advising the Assistant Secretary for Program Planning and Development and the staff directors of the program offices with respect to client needs within the district.

3. Assisting the department in the evaluation of its operations.

4. Interpreting to the community, through the personal contacts and involvements of its members, the various services provided by the department.

5. Providing a forum for receiving citizen complaints on general problems relating to the department.

6. Advising on the coordination of service delivery within the district.

(b) Each district advisory council shall consist of 12 members. The district administrator shall be a nonvoting ex officio member, and the remaining 11 members shall be appointed by the Governor, as follows:

1. One licensed physician or osteopathic physician who practices medicine or osteopathic medicine within the district.

2. One member of a board of county commissioners of a county within the district.

3. One member of a district school board of a school district within the district.

4. One attorney who practices law within the district.

5. Five local representatives of public and private agencies or organizations which provide health, social, rehabilitative, or legal services within the district.

6. Two persons who are either clients of the department within the district or who have been such clients during the year previous to appointment.

Each member of a district advisory council shall be appointed for a term of 2 years, except that six of the initial members of each council shall be appointed for terms of 1 year each.

(c) Each district advisory council shall elect a chairman, a vice chairman, and a secretary, each of whose terms shall be for 1 year. The district administrator shall not be eligible to serve as chairman.

(d) Each district advisory council shall hold quarterly meetings. Additional meetings shall be held upon the call of the chairman or upon the petition of a majority of the members to the chairman.

(e) Each district advisory council shall designate a subcouncil from its membership for each subdistrict within the district.

(f) Before November 1 of each year, the secretary shall hold a meeting to which each district advisory council shall send three of its members to discuss the department's budget request and recommendations to the Legislature and to provide the secretary with an analysis of client needs in the districts. Each member attending such meeting shall be entitled to reimbursement for travel expenses pursuant to s. 112.061. In addition, the secretary or the deputy secretary shall attend at least one meeting of each district advisory council during each fiscal year.

[1](6) STATEWIDE HUMAN RIGHTS ADVOCACY COMMITTEE.—

(a) There is hereby created within the department a statewide Human Rights Advocacy Committee consisting of eight citizens who broadly represent the interests of the public and the clients of the department, to be appointed by the Governor. The members shall be representative of four groups of citizens as follows: Two elected public officials, including one county commissioner; two representatives of agencies or civic groups which are not designated as "federal" or "state"; two representatives from the health and rehabilitative services consumer groups which are currently receiving, or have received, services from the department within the past 2 years; and two residents of the state who do not represent any of the foregoing groups or the department.

(b) All members of the Human Rights Advocacy Committee shall serve terms of 4 years, except that at the time of the initial appointment two members shall be appointed for terms of 1 year, two members shall be appointed for terms of 2 years, two members shall be appointed for terms of 3 years, and two members shall be appointed for terms of 4 years.

(c) The Governor shall fill each vacancy on the Human Rights Advocacy Committee for the balance of the unexpired term.

(d) Members of the Human Rights Advocacy Committee shall receive no compensation, but shall be reimbursed for per diem and travel expenses by the department in accordance with the provisions of s. 112.061.

(e) The members of the Human Rights Advocacy Committee shall elect a chairperson. The term of the chairperson shall be for 1 year, and no chairperson shall serve as chairperson for more than two consecutive terms. In no case shall a person who is employed by the department, or who operates or is employed in a program or facility which is funded or regulated by the department, be elected as a member of the committee.

(f) The responsibilities of the committee shall include, but not be limited to:

1. Serving as a third-party mechanism for protecting the constitutional and human rights of any client within a program or facility operated, funded, or regulated by the department.

2. Receiving, investigating, and resolving reports of abuse or deprivation of constitutional and human rights referred to the Human Rights Advocacy Committee by a district human rights advocacy committee. For the purposes of such investigation, the committee shall have access to all client files and reports when such clients are receiving services in facilities operated directly by the Department of Health and Rehabilitative Services. In all other cases the Human Rights Advocacy Committee shall have standing to petition the circuit court for access to client records which are confidential as specified by law. The petition shall state the specific reasons that the committee is seeking access and the intended use of such information. The court may authorize committee access to such records upon a finding that such access is directly related to an investigation regarding the possible deprivation of human or constitutional rights or the abuse of a client. Upon completion of a general investigation of practices and procedures of the department, the committee may report its findings to the department. All information obtained through examination of such reports shall remain confidential. Client files, records, and reports, or copies thereof, shall not be removed from the department or agency facilities. All matters before the committee concerning abuse or deprivation of rights of an individual client or group of clients of the department subject to the protections of this section shall be closed to the public and exempt from the provisions of s. 119.07(1). All other matters before the committee shall be open to the public and subject to chapter 119. Any person who knowingly and willfully discloses any such confidential information shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This section shall not be interpreted to allow committee access to confidential adoption records in accordance with the provisions of ss. 39.11, 63.022, and 63.162.

3. Reviewing existing programs or services and new or revised programs of the department and making recommendations as to how the rights of clients are affected.

4. Submitting an annual report to the Legislature, no later than November 30 of each calendar year, concerning activities, recommendations, and complaints reviewed or developed by the committee during the year.

5. Conducting meetings at least six times a year at the call of the chairperson and at other times at the call of the Governor or by written request of four members of the committee.

6. Developing policies and procedures to carry out the purposes of this subsection, including procedures for appeal. An appeal to the state committee is made by a district human rights advocacy committee when a valid complaint is not resolved at the district level. The statewide committee may appeal an unresolved complaint to the secretary. If, after exhausting all remedies, the statewide committee is not satisfied that the complaint can be resolved with-

in the department, the appeal may be referred to the Governor.

[1](7) DISTRICT HUMAN RIGHTS ADVOCACY COMMITTEES.—At least one district human rights advocacy committee is created in each district.

(a) The number and areas of responsibility of the district human rights advocacy committees shall be determined by the majority vote of district committee members, except that any existing human rights advocacy committee created by administrative agreement or legislative mandate may continue functioning if the committee so determines.

(b) Each district human rights advocacy committee shall have no fewer than 7 and no more than 11 members who shall include at least two consumers, two providers, and two representatives of professional organizations. Priority consideration shall be given to the appointment of at least one medical or osteopathic physician as defined in chapters 458 and 459. In no case shall a person who is employed by the department be selected as a member of a committee.

(c)1. With respect to existing committees, each member shall serve a term of 2 years. Upon expiration of a term and in the case of any other vacancy, the district committee shall appoint a replacement, subject to approval of the Governor. A member may serve two terms.

2. With respect to all district committees created after July 1, 1978, the Governor shall appoint the first four members of the committee, and those four members shall select the remaining seven members. Members shall serve for no more than two terms of 2 years, except that at the time of initial appointment, terms shall be staggered so that six members serve for terms of 1 year and five members serve for terms of 2 years. Vacancies shall be filled as provided in subparagraph 1.

3. If no action is taken by the Governor to approve or disapprove a replacement of a member pursuant to this paragraph within 30 days after the district committee has notified the Governor of the appointment, then the appointment of said replacement shall be considered approved.

4. The provisions of s. 20.19(7)(c), as amended in chapter 79-287, Laws of Florida, to the contrary notwithstanding, members currently, [3]as of October 1, 1979, serving upon existing district human rights advocacy committees shall be permitted to complete the terms to which they were appointed.

(d) Each committee shall elect a chairperson for a term of 1 year. No person shall serve as chairperson for more than two consecutive terms, and in no case shall a person who is employed by the department, or who operates or is employed in a program or facility which is funded by the department, be elected as chairperson.

(e) In the event that a committee member fails to attend two-thirds of the regular committee meetings during the course of a year, it shall be the responsibility of the committee to replace such member. In addition, each committee shall have provisions in its bylaws for defining misfeasance and malfeasance of duty.

(f) A member of a district committee shall receive no compensation but shall receive per diem and shall be reimbursed for travel expenses as provided in s. 112.061. The department is authorized to provide reimbursement to a member for long-distance telephone calls if such calls were necessary to an investigation of an abuse or deprivation of human rights.

(g) Each district human rights advocacy committee shall comply with appeal procedures established by the statewide Human Rights Advocacy Committee. The duties, actions, and procedures of both new and existing district or regional human rights advocacy committees shall conform to the provisions of this act. The duties of each district human rights advocacy committee shall include, but are not limited to:

1. Serving as a third-party mechanism for protecting the constitutional and human rights of any client within a program or facility operated, funded, or regulated by the department.

2. Receiving, investigating, and resolving reports of abuse or deprivation of constitutional and human rights within the committee's area of jurisdiction. For the purposes of such investigation, the committee shall have access to all client files and reports when such clients are receiving services in facilities operated directly by the Department of Health and Rehabilitative Services. In all other cases the Human Rights Advocacy Committee shall have standing to petition the circuit court for access to client records which are confidential as specified by law. The petition shall state the specific reasons that the committee is seeking access and the intended use of such information. The court may authorize committee access to such records upon a finding that such access is directly related to an investigation regarding the possible deprivation of human or constitutional rights or the abuse of a client. Upon completion of a general investigation of practices and procedures of the department, the committee may make a report of its findings to the department. All information obtained through an examination of such reports shall remain confidential. Client files, records, and reports, or copies thereof, shall not be removed from the department or agency facilities. All matters before a district human rights advocacy committee concerning abuse or deprivation of rights of an individual client or group of clients of the department subject to the protections of this section shall be closed to the public and exempt from the provisions of s. 119.07(1). All other matters before the committee shall be open to the public and subject to chapter 119. Any person who knowingly and willfully discloses any such confidential information shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This section shall not be interpreted to allow committee access to confidential adoption records in accordance with the provisions of ss. 63.162, 63.022, and 39.11.

3. Reviewing, and making recommendation with respect to, the involvement by departmental clients as subjects for research projects, prior to implementation, insofar as their human rights are affected.

4. Reviewing existing programs or services and new or revised programs of the department and making recommendations as to how the rights of clients are affected.

5. Appealing to the state committee any complaint unresolved at the district level.

6. Submitting an annual report by September 30 to the statewide Human Rights Advocacy Committee concerning activities, recommendations, and complaints reviewed or developed by the committee during the year.

7. Conducting meetings at least six times a year at the call of the chairperson and at other times at the call of the Governor or by written request of four members of the committee.

(8) DEPARTMENTAL BUDGET.—

(a) The secretary shall develop and submit annually to the Legislature a comprehensive departmental summary budget document which shall array district budget requests along program lines. This summary document shall, for the purpose of legislative appropriation, consist of four distinct budget entities:

1. Office of the Secretary;
2. Office of the Assistant Secretary for Administrative Services;
3. Office of the Assistant Secretary for Program Planning and Development; and
4. Office of the Assistant Secretary for Operations.

The various district budget requests shall be included in the comprehensive departmental summary budget document.

(b) To fulfill this responsibility, the secretary shall have the authority to review, amend, and approve the annual budget request of all departmental activities. In addition, the provisions of ss. 216.292 and 216.351 notwithstanding, the secretary, whenever deemed necessary by reason of significantly changed conditions, may transfer funds between the approved operating budgets of the districts. The total of such transfers may not exceed 5 percent of the operating budget of an individual district during any fiscal year.

(c) It is the responsibility of the assistant secretary for administrative services to promulgate the necessary budget time-tables, formats, and data requirements for all departmental budget requests. This shall be done in accordance with the statewide budget requirements of the Executive Office of the Governor.

(d) It is the responsibility of the district administrator to develop an annual budget request to be reviewed, amended, and approved by the secretary. Upon appropriation of an approved district budget, the district administrator shall be responsible for the execution of this operating budget during the fiscal year. The provisions of ss. 216.292 and 216.351 notwithstanding, whenever deemed necessary by reason of significantly changed conditions, the district administrator may transfer funds between the various programs in the district, with approval of the secretary. The total of such transfer may not exceed 10 percent of the approved operating budget of a district during any fiscal year.

(9) CONFORMITY WITH FEDERAL STATUTES AND REGULATIONS.—It is the intent of the Legislature that this act shall not conflict with any federal statute or implementing regulation governing federal grant-in-aid programs administered by the department. Whenever such a conflict is asserted by the applicable agency of the Federal Government, the secretary of the department shall submit to the United States Department of Health, Education and Welfare, or other applicable federal agency, a request for a favorable policy response or a waiver of the conflicting portions. If such request is denied, as certified in writing by the Secretary of the United States Department of Health, Education and Welfare or head of other applicable federal agency, the secretary of the department is authorized to make the adjustments in the organization and state service plan prescribed by this act which are necessary for conformity to federal statutes and regulations. Prior to making such adjustments, the secretary shall provide to the Speaker of the House of Representatives and the President of the Senate an explanation and justification of the department's position and shall outline all feasible alternatives consistent with the provisions of this section. These alternatives may include the state supervision of local service agencies by the Department of Health and Rehabilitative Services if such agencies are designated by the Governor. The Governor is hereby authorized to designate local agencies of county governments to provide services pursuant to federally required state plans administered by the Department of Health and Rehabilitative Services. These local agencies shall provide services for and on behalf of the county governments included within the geographic boundaries of the local agency. The board of commissioners of each county within the local agency shall annually approve the service plan to be provided by the local service agency. In order to assure coordination with other health and rehabilitation services provided to citizens within each county, local service agencies designated by the Governor pursuant to this section shall correspond to the service districts created pursuant to subsection (4). The district administrator of each service district shall be designated the head of the local service agency. As head of the local service agency, the district administrator shall administer the service programs in conformity with statewide policies, procedures, and guidelines established by the Department of Health and Rehabilitative Services. The local agency shall administer its program pursuant to a written agreement with the Department of Health and Rehabilitative Services. The written agreement will:

(a) Indicate that the local agency will conduct its program under the supervision of the Department of Health and Rehabilitative Services in accordance with the state plan and in compliance with statewide standards as established by the department, including standards of organization and administration.

(b) Set forth the methods to be followed by the department in its supervision of the local agency, including an evaluation of the effectiveness of the local agency's program.

(c) Set forth the basis on which the department participates financially in its locally administered programs.

(d) Indicate whether the local agency will utilize another local public or nonprofit agency in the provision of services and the arrangements for such utili-

zation.

The local agency shall be responsible for the administration of all aspects of the program within the political subdivisions which it serves. In order to assure uniformity of personnel standards, the local agency shall utilize the state personnel rules and regulations, including provisions related to tenure, selection, appointment, and qualifications of personnel.

(10) PROGRAM EVALUATION.—A comprehensive program evaluation system shall be established which shall encompass all major programs of the department. The department shall establish measurable program objectives and performance criteria for each program it operates. Such system of evaluation shall require all programs to develop identifiable goals which are quantifiable wherever practicable and to estimate the cost of attaining such goals in advance. Studies of the relative cost and effectiveness of departmental and alternative programs shall be conducted. The department shall develop a program evaluation schedule and shall evaluate at least 20 percent of its programs annually. The department shall submit these evaluation schedules and reports to the secretary, who, within 30 days of receipt, shall transmit copies of the schedules and reports to the appropriate substantive committees of both houses of the Legislature for review. When possible, the department's management information system shall provide the basic information for program evaluation studies.

(11) INFORMATION SYSTEMS.—

(a) The secretary of the department shall implement a priority program aimed at the design, testing, and integration of automated information systems necessary for effective and efficient management of the department. These systems shall contain, minimally, management data, client data, and program data deemed essential for the ongoing administration of service delivery, as well as for the purpose of management decisions. It is the intent of the Legislature that these systems be developed with the idea of providing maximum administrative support to service delivery. It is also essential that these systems comply with federal program requirements and ensure confidentiality of individual client information.

(b) For the purpose of funding this effort, the department shall include in its annual budget request a comprehensive summary of costs involved, as well as manpower saved, in the establishment of these automated systems. Such budget request shall also include a complete inventory of current staff, equipment, and facility resources available for completion of the desired systems. The department shall review all forms for duplicative content and, to the maximum extent possible, reduce, consolidate, and eliminate such duplication to provide for a uniform and concise management information collection system.

(12) ELIGIBILITY REQUIREMENTS.—The department shall review the eligibility requirements of its various programs and, to the maximum extent possible, consolidate them into a single eligibility system.

(13) PURCHASE OF SERVICES.—Whenever possible, the department, in accordance with the established program objectives and performance criteria, shall contract for the provision of services by counties, municipalities, nonprofit corporations, and other entities capable of providing needed services, if services so provided are more cost efficient than those provided by the department.

(14)(a) The department shall maintain its headquarters and all offices above the district office level in Tallahassee.

(b) Within each of its service districts, the department shall locate its service facilities in the same place when it is possible to do so without removing service facilities from proximity to the clients they serve. The department shall implement a plan by which all or substantially all services within a district are moved, as existing leases expire, to centers located close to prospective users or clients. These centers may be shared with other public users and may be designated as community service centers.

(15) PROGRESS REPORTS.—The department shall make an annual report to the Governor and the Legislature reflecting its activities and making recommendations for the improvement of the services to be performed by the department. Such report shall be on the basis of a fiscal year. Notwithstanding the provisions of other statutes, such reports shall be the only annual report required by law to be submitted by the department. However, the department shall continue to make such other reports as are provided for in this act or are specifically requested by the Governor or any officer or committee of the Legislature.

(16) No legal or administrative proceeding pending as of the effective date of this act shall be abated because of any assignment made in this act, but the unit of the Department of Health and Rehabilitative Services to which the function relating to the pending proceeding is reassigned shall be substituted as a party in interest in such proceeding.

(17) FELLOWS PROGRAM.—

(a) It is the intent of the Legislature to provide a program whereby the Department of Health and Rehabilitative Services may identify, train, and promote employees with high levels of administrative and management potential in order to meet the department's need for broad-based administrative skills in key positions within the department.

(b) The department is authorized to establish a Management Fellows Program in order to provide highly qualified career candidates for key administrative positions in the department. Such program shall include, but not be limited to:

1. The identification annually by the assistant secretary for administrative services, the assistant secretary for operations, the assistant secretary for program planning and development, and the district administrator in each district of one high-potential career service employee each, to be designated a health and rehabilitative services management fellow.

2. The design and development of a 2-year placement program for each respective fellow in various units of the department.

3. The participation of each fellow in on-the-job training and inservice training, supplemented by pe-

riodic seminars and courses within and outside the department.

(c) The department shall develop and implement the Management Fellows Program provided by this act within existing resources.

History.—s. 19, ch. 69-106; ss. 1, 2, ch. 70-441; ss. 1, 4, ch. 71-213; s. 1, ch. 73-99; s. 1, ch. 73-114; s. 1, ch. 74-107; ss. 2, 3, 5-10, 12, 29, 31, 32, 34, ch. 75-48; ss. 1, 2, ch. 76-115; s. 1, ch. 77-174; ss. 1-3, ch. 77-212; s. 4, ch. 78-323; s. 2, ch. 79-10; s. 1, ch. 79-26; s. 63, ch. 79-190; s. 1, ch. 79-265; ss. 1, 2, 5, ch. 79-287.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subsection prior to that date. Section 5, ch. 79-287, provides that "If subsections (6) and (7) of section 20.19, Florida Statutes, are repealed in accordance with the intent expressed in the Sundown Act, it is the intent of the Legislature that this act shall also be repealed on the same date as is therein provided."

[2]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subparagraph prior to that date.

[3]**Note.**—The words "as of October 1, 1979" were inserted by the editors.

20.201 Department of Law Enforcement.—

(1) There is created a Department of Law Enforcement. The head of the department is the Governor and Cabinet. The executive director of the department shall be appointed by the Governor with the approval of three members of the Cabinet and subject to confirmation by the Senate. The executive director shall serve at the pleasure of the Governor and Cabinet.

(2) The following divisions, and bureaus within these divisions, of the Department of Law Enforcement are established:

(a) Division of Criminal Investigation.

1. Field Investigation Bureau.
2. Criminal Intelligence Bureau.
3. Strategic Investigations Bureau.

(b) Division of Local Law Enforcement Assistance.

(c) Division of Criminal Justice Information Systems.

1. Uniform Crime Reports and Statistics Bureau.
2. Law Enforcement Data Center Bureau.
3. Crime Information Bureau.

(d) Division of Standards and Training.

1. Bureau of Standards.
2. Bureau of Training.
3. Bureau of Planning and Administration.

(e) Division of Staff Services.

1. Administrative Services Bureau.
2. Crime Laboratory Bureau.
3. Operational Services Bureau.

(3) The department is authorized to establish such bureaus within any division as shall be deemed necessary to carry out the provisions of chapter 74-386, Laws of Florida.

History.—ss. 3, 4, 5, 7, 12, ch. 74-386; s. 11, ch. 77-104; s. 2, ch. 77-111; s. 1, ch. 78-347.

20.21 Department of Revenue.—There is created a Department of Revenue.

(1) The head of the Department of Revenue is the Governor and Cabinet.

(2) The following divisions are established within the Department of Revenue:

(a) Division of Administration.

(b) Division of Ad Valorem Tax.

(c) Division of Audits.

(d) Division of Collection and Enforcement.

(3)(a) The responsibilities of the Division of Administration shall be to plan, organize, and control the administrative support services for the department. The functions of this division shall include, but not be limited to, finance and accounting, personnel, and office services.

(b) The responsibilities of the Division of Ad Valorem Tax shall be to carry out the relevant provisions of ad valorem tax law and other department responsibilities involving local governments. The functions of this division shall include, but not be limited to, ad valorem administration, assessment standards and review, central property valuation, and field operations.

(c) The responsibilities of the Division of Audits shall be to plan, organize, administer, and control tax auditing activities. The functions of this division shall include, but not be limited to, audit selection and standards development for those taxes collected by the department. The standards development function shall include development of standard audit criteria, training of auditors, and provision of functional direction and technical assistance to field audit staff.

(d) The responsibilities of the Division of Collection and Enforcement shall include tax collection and enforcement activities. The functions of this division shall include, but not be limited to, receipts processing, license registration, returns processing, investigations, and field operations.

(e) The following functions shall be under the assistant executive director: Tax research, planning and policy development, information systems, legal services, and internal audit.

History.—s. 21, ch. 69-106; s. 1, ch. 72-266; s. 1, ch. 75-211; s. 1, ch. 77-102; ss. 1, 2, ch. 78-390; s. 3, ch. 79-10.

20.22 Department of General Services.—There is created a Department of General Services.

(1) The head of the Department of General Services is the Governor and Cabinet.

(2) The following divisions and bureaus within the Department of General Services are established:

(a) Division of Purchasing;

(b) Division of Electronic Data Processing;

(c) Division of Building Construction and Property Management;

(d) Division of Motor Pool;

1. Bureau of Motor Vehicles;
2. Bureau of Aircraft;

(e) Division of Communications;

(f) Division of Bond Finance;

(g) Division of Surplus Property;

(h) Division of Administration; and

(i) Division of Security.

History.—s. 22, ch. 69-106; ss. 1, 2, ch. 70-146; s. 1, ch. 71-43; s. 2, ch. 71-286; s. 1, ch. 74-256; ss. 1, 2, ch. 75-70; s. 1, ch. 76-247; ss. 1-3, ch. 77-112.

20.23 Department of Transportation.—There is created a Department of Transportation.

(1) The head of the Department of Transportation is the Secretary of Transportation. The secretary shall serve full time and be a professional engineer or other person qualified by education and experience in the development, regulation, or operation of transportation systems. The secretary shall be appointed by the Governor subject to confirmation by the Senate. The secretary shall serve at the pleasure of the Governor.

(2) The following divisions of the Department of Transportation are established:

(a) Division of Administration;
(b) Division of Planning and Programming;
(c) Division of Road Operations; and
(d) Division of Public Transportation Operations.

(3) The operations of the department shall, effective July 1, 1979, be organized into a minimum of six districts.

History.—s. 23, ch. 69-106; ss. 1, 2, 4, 5, ch. 72-186; s. 1, ch. 77-44; s. 1, ch. 77-273; s. 1, ch. 78-90; s. 4, ch. 79-10.

20.24 Department of Highway Safety and Motor Vehicles.—There is created a Department of Highway Safety and Motor Vehicles.

(1) The head of the Department of Highway Safety and Motor Vehicles is the Governor and Cabinet.

(2) The following divisions, and bureaus within the divisions, of the Department of Highway Safety and Motor Vehicles are established:

(a) Division of the Florida Highway Patrol;
(b) Division of Driver Licenses; and
(c) Division of Motor Vehicles.
1. Bureau of Motor Vehicle Inspection.

History.—s. 24, ch. 69-106; s. 1, ch. 76-281; s. 5, ch. 79-10; s. 64, ch. 79-190; s. 1, ch. 79-324.

20.25 Department of Natural Resources.—There is created a Department of Natural Resources.

(1) The head of the Department of Natural Resources is the Governor and Cabinet.

(2) The following shall be the divisions of the Department of Natural Resources:

(a) Division of Administration.
(b) Division of Marine Resources.
(c) Division of Recreation and Parks.
(d) Division of Resource Management.
(e) Division of Law Enforcement.
(f) Division of State Lands, the director of which shall be appointed by the executive director of the department, subject to confirmation by the Governor and Cabinet sitting as the head of the department.

(3) Within the Department of Natural Resources, there is created the position of assistant executive director, who shall aid in the overall management of the department.

History.—s. 25, ch. 69-106; s. 3, ch. 70-810; s. 2, ch. 71-319; s. 1, ch. 73-223; ss. 13-18, ch. 75-22; ss. 1-3, ch. 77-113; s. 2, ch. 77-204; s. 7, ch. 77-306; s. 2, ch. 79-255.

20.261 Department of Environmental Regulation.—There is created a Department of Environmental Regulation.

(1) The head of the department is the Secretary of Environmental Regulation, who shall be appointed by the Governor subject to confirmation by the Senate. The secretary shall serve at the pleasure of the Governor. There shall be an assistant secretary appointed by and serving at the pleasure of the secretary.

(2) The following divisions of the Department of Environmental Regulation are established:

(a) Division of Administrative Services.
(b) Division of Environmental Programs.
(c) Division of Environmental Permitting.

(3) There is created as a part of the Department of Environmental Regulation an Environmental Regulation Commission. The commission shall be composed of seven citizens of this state appointed by the Governor, subject to confirmation by the Senate. The commission shall include one, but not more than two, members from each water management district who have resided in the district for at least 1 year, and the remainder shall be selected from the state at large. Membership shall be representative of, but not limited to, interested groups including agriculture, real estate, environmentalists, the construction industry, and lay citizens. The Governor shall appoint the chairman, and the vice chairman shall be elected from among the membership. Four members shall be appointed on July 1, 1975, for terms ending July 1, 1979; three members shall be appointed on July 1, 1975, for terms ending on July 1, 1977. All appointments thereafter shall be for 4-year terms. The Governor may at any time fill a vacancy for the unexpired term. The members of the commission shall serve without compensation, but shall be paid travel and per diem as provided in s. 112.061 while in the performance of their official duties. Administrative, personnel, and other support services necessary for the commission shall be furnished by the department.

History.—ss. 4, 5, 8-12, ch. 75-22; ss. 1-4, ch. 77-114; s. 1, ch. 77-174; s. 4, ch. 77-306; s. 6, ch. 79-10.

20.28 State Board of Administration.—The State Board of Administration, continued by s. 9, Art. XII of the State Constitution, retains all of its powers, duties, and functions as prescribed by law.

History.—s. 28, ch. 69-106; s. 7, ch. 79-10.

20.29 Department of Citrus.—The State Citrus Commission, created under chapter 601, is continued and renamed the Department of Citrus.

(1) The head of the Department of Citrus is the board, established by s. 601.04, and said board is hereby named the "Florida Citrus Commission."

(2) All of the powers, duties, and functions of the Florida Citrus Commission are continued in the board, as head of the department. The board shall derive all of its powers, duties, and functions from chapter 601.

(3) All of the personnel, records, property, and unexpended balances of appropriations and other funds are continued with the Department of Citrus as presently held.

History.—s. 29, ch. 69-106; s. 8, ch. 79-10.

20.30 Department of Professional Regulation.—There is created a Department of Professional Regulation.

(1) The head of the Department of Professional Regulation is the Secretary of Professional Regulation. The secretary shall be appointed by the Governor subject to confirmation by the Senate. The secretary shall serve at the pleasure of the Governor.

(2) The following divisions of the Department of Professional Regulation are established:

(a) Division of Administrative Services;
(b) Division of Professions; and
(c) Division of Legal Services.

(3) There shall be a director of the Division of Professions, a director of the Division of Administrative Services, and a General Counsel, who shall be the director of the Division of Legal Services. Each division director shall directly administer his divi-

sion and shall be responsible to the secretary of the department.

(4) The following boards are established within the Department of Professional Regulation, Division of Professions:

(a) Board of Accountancy, created under chapter 473;

[1](b) Board of Architecture, created under chapter 467;

[2](c) Board of Chiropractic Examiners, created under chapter 460;

(d) Board of Dentistry, created under chapter 466;

(e) Board of Engineers, created under chapter 79-243, Laws of Florida;

[3](f) Board of Registration for Foresters, created under chapter 492;

(g) Board of Funeral Directors and Embalmers, created under chapter 470;

[4](h) Board of Landscape Architects, created under chapter 481;

(i) Board of Medical Examiners, created under chapter 458;

(j) Board of Nursing, created under chapter 464;

(k) Board of Optometry, created under chapter 463;

(l) Board of Osteopathic Medical Examiners, created under chapter 459;

(m) Board of Pharmacy, created under chapter 465;

[5](n) Board of Podiatry Examiners, created under chapter 461;

[6](o) Board of Examiners of Psychology, created under chapter 490;

(p) Board of Veterinary Medicine, created under chapter 474;

(q) Board of Pilot Commissioners, created under chapter 310;

(r) Barbers' Board, created under chapter 476;

[7](s) Construction Industry Licensing Board, created under part II of chapter 468;

(t) Board of Cosmetology, created under chapter 477;

(u) Board of Massage, created under chapter 480;

(v) Board of Naturopathic Examiners, created under chapter 462;

[8](w) Board of Dispensing Opticians, created under chapter 484;

(x) Board of Real Estate, created under chapter 475;

[9](y) Board of Nursing Home Administrators;

[10](z) Electrical Contractors' Licensing Board, created under part VII of chapter 468; and

(aa) Board of Land Surveyors, created under chapter 79-243, Laws of Florida.

(5) The members of each board shall be appointed by the Governor, subject to confirmation by the Senate. Lay members on the board shall be appointed pursuant to subsection (6). Members shall be appointed for 4-year terms. A vacancy on the board shall be filled for the unexpired portion of the term in the same manner as the original appointment. No member shall serve more than two consecutive terms on the board.

(6) Each board with five or more members shall have at least two lay members who are not, and have never been, members or practitioners of the profession regulated by such board or of any closely related profession. Each board with fewer than five members shall have at least one lay member who is not, and has never been, a member or practitioner of the profession regulated by such board or of any closely related profession.

(7) No board, with the exception of joint coordinatorships, shall be transferred from its location on July 1, 1979, without legislative authorization.

(8) Chapter 79-36, Laws of Florida, shall not be construed to supersede the abolition of any board within the Department of Professional Regulation, pursuant to the Regulatory Reform Act of 1976, as amended by chapter 77-457, Laws of Florida, or as subsequently amended.

(9) No judicial or administrative proceeding pending on July 1, 1979, will be abated because of any assignment or transfer made in chapter 79-36, Laws of Florida, but the unit of the Department of Professional Regulation to which the function relating to the pending proceeding is reassigned or transferred shall be substituted as a party in interest in such proceeding.

History.—s. 30, ch. 69-106; s. 2, ch. 72-304; s. 1, ch. 73-97; ss. 7, 8, ch. 75-201; ss. 1-3, ch. 77-115; s. 1, ch. 78-431; ss. 2, 5-7, 9, ch. 79-36; s. 5, ch. 79-164; s. 40, ch. 79-239; s. 41, ch. 79-243.

[1]**Note.**—See ch. 79-273, which repealed provisions relating to the Florida State Board of Architecture and created the Board of Architecture, the provisions relating to which appear in part I of ch. 481.

[2]**Note.**—See ch. 79-211, which repealed provisions relating to the Florida State Board of Chiropractic Examiners and created the Board of Chiropractic.

[3]**Note.**—Chapter 492, which provided for the State Board of Registration for Foresters, was repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

[4]**Note.**—See ch. 79-407, which repealed provisions relating to the Florida Board of Landscape Architects and created the Board of Landscape Architecture, the provisions relating to which appear in part II of ch. 481.

[5]**Note.**—See ch. 79-229, which repealed provisions relating to the Board of Podiatry Examiners and created the Board of Podiatry.

[6]**Note.**—Chapter 490, which provided for the Florida State Board of Examiners of Psychology, was repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1979.

[7]**Note.**—See ch. 79-200, which repealed part II of ch. 468 and created a new Construction Industry Licensing Board, the provisions relating to which appear in part I of ch. 489.

[8]**Note.**—See ch. 79-275, which repealed provisions relating to the State Board of Dispensing Opticians and created the Board of Opticianry.

[9]**Note.**—See ch. 79-227, which repealed provisions relating to the Florida State Board of Examiners of Nursing Home Administrators and created the Board of Nursing Home Administrators, the provisions relating to which appear in part V of ch. 468.

[10]**Note.**—See ch. 79-272, which repealed part VII of ch. 468 and created a new Electrical Contractors' Licensing Board, the provisions relating to which appear in part II of ch. 489.

20.31 Department of Administration.—There is created a Department of Administration.

(1) The head of the Department of Administration is the Secretary of Administration. The secretary shall be appointed by the Governor subject to confirmation by the Senate. The secretary shall serve at the pleasure of the Governor.

(2) The following divisions of the Department of Administration are established:

(a) Division of Human Resource Management.

(b) Division of Personnel.

(c) Division of Retirement.

(d) Division of Administrative Hearings.

(3) There is created within the office of Secretary of Administration an Office of Labor Relations. The duties of the office shall be determined by the secretary and shall include, but not be limited to, the representation of the Governor as a public employer

in collective bargaining negotiations pursuant to the provisions of chapter 447.

History.—s. 31, ch. 69-106; s. 4, ch. 71-355; s. 2, ch. 72-295; s. 3, ch. 72-345; s. 1, ch. 75-256; s. 12, ch. 77-104; ss. 1-3, ch. 77-124; s. 10, ch. 78-420; s. 19, ch. 79-190.

cf.—s. 121.22 State Retirement Commission; creation; membership; compensation.
s. 23.164 Commission on Human Relations.

20.315 Department of Corrections.—There is created a Department of Corrections.

(1) PURPOSE.—The purpose of the Department of Corrections is to integrate the delivery of all offender rehabilitation and incarceration services that are deemed necessary for the rehabilitation of offenders and protection of society. The goals of the department shall be:

(a) To protect society by providing incarceration as an appropriate deterrent to the commission of crime.

(b) To protect society by substituting for retributive punishment methods of training and treatment which correct and rehabilitate offenders who violate laws.

(c) To provide an environment for incarcerated persons in which rehabilitation is possible. This should include the protection of the offender from victimization within the institution and the development of a system of due process and internal legality in institutions.

(d) To provide meaningful community supervision for offenders on parole and probation and to develop community alternatives to traditional incarceration which could be safely used.

(e) To provide rehabilitative programs, which may include both academic and vocational education, to incarcerated offenders and offenders being supervised in the community.

(f) To provide judges with effective evaluative tools and information for use in the sentencing decision.

(g) To provide the necessary level of security in institutions.

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature that:

(a) Recognition be given to the inescapable interrelationship between the various needs of departmental clients. Therefore, the Legislature intends that the newly organized department focus its attention on the total spectrum of needs of the offender. To this end, the Legislature reaffirms its commitment to a "whole person" approach to rehabilitation and problem solving.

(b) The department develop a comprehensive program for the treatment of youthful offenders committed to the department. This program shall include provisions for separate facilities and programs for the treatment of youthful offenders.

(3) REGIONS.—The department shall plan and administer its programs of correctional services through service regions composed of the following counties:

Region 1.—Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun, Gulf, Gadsden, Liberty, Franklin, Leon, Wakulla, and Jefferson Counties.

Region 2.—Madison, Taylor, Hamilton, Suwannee, Lafayette, Dixie, Columbia, Gilchrist, Levy, Alachua, Union, Bradford, Baker, Nassau, Duval, Clay, St. Johns, Putnam, Flagler, and Volusia Counties.

Region 3.—Marion, Citrus, Hernando, Sumter, Lake, Orange, Osceola, Seminole, and Brevard Counties.

Region 4.—Indian River, Okeechobee, St. Lucie, Martin, Palm Beach, Broward, Monroe, and Dade Counties.

Region 5.—Pasco, Pinellas, Hillsborough, Polk, Hardee, Highlands, Manatee, Sarasota, DeSoto, Charlotte, Glades, Lee, Hendry, and Collier Counties.

To effect the orderly provision of services within a region, the secretary may, by rule, designate service areas within the region. These service areas shall conform to judicial circuits.

(4) SECRETARY OF CORRECTIONS; DEPUTY SECRETARY.—The head of the Department of Corrections is the Secretary of Corrections. The secretary shall be appointed by the Governor, subject to confirmation by the Senate, and shall serve at the pleasure of the Governor.

(a) The secretary is the chief administrative officer of the department and shall have the authority and responsibility to plan, direct, coordinate, and execute the powers, duties, and responsibilities assigned to the department. The responsibilities of the secretary shall include, but not be limited to:

1. Setting departmental priorities.
2. Appointing the Assistant Secretary for Operations, the Assistant Secretary for Management and Budget, the Assistant Secretary for Programs, program directors, and regional directors.
3. Directing the management, planning, and budgeting processes.
4. Supervising and directing the promulgation of all departmental rules.

(b) The secretary shall appoint a deputy secretary who shall act in the absence of the secretary. The deputy secretary shall be directly responsible to the secretary, shall perform those duties that are assigned to him by the secretary, and shall be fully authorized to act on behalf of the secretary in all matters affecting the department. The deputy secretary shall serve at the pleasure of the secretary.

(5) ASSISTANT SECRETARY FOR OPERATIONS.—The Assistant Secretary for Operations shall exercise statewide supervision over all service programs of the department, including the coordination and provision of all services in parole and probation supervision, intake, case management, diagnosis and evaluation, classification, and the management of all institutional and noninstitutional community residential and community nonresidential programs of the department.

(6) ASSISTANT SECRETARY FOR PROGRAMS.—The Assistant Secretary for Programs shall have the responsibility for coordinating and integrating the operations of the program offices and such other program development and planning duties as are assigned by the secretary. The Assistant Secretary for Programs shall be responsible for service program development and planning; program research; identifying client needs and recommend-

ing solutions and priorities; developing client service programs, including the policies and standards therefor; providing technical assistance to the district administrators; reviewing and monitoring regional-level program operations; assuring uniform program quality among regions; developing funding sources external to state government; and obtaining, approving, monitoring, and coordinating research and program development grants; but his duties shall not involve line authority over any service program operations of the department, including the management of institutions, residential treatment programs, and the supervision of probationers and parolees.

(7) PROGRAM OFFICES.—

(a) Program offices shall be designed to operate in a staff capacity to the Assistant Secretary for Programs. Each program office shall be headed by a program office director who is appointed by the secretary and reports directly to the Assistant Secretary for Programs. Program offices shall not have any line authority over regional operations. In no case shall the total professional staff of all of the program offices and the office of the Assistant Secretary for Programs exceed 200 persons. The Assistant Secretary for Programs shall delegate to the program offices the following responsibilities which shall include, but not be limited to:

1. Aiding in the identification of client needs.
2. Developing program policies.
3. Setting, monitoring, and controlling the quality of program standards.
4. Developing staff development, training, and technical assistance programs.
5. Developing state program plans and implementing directives, rules, and procedures for the secretary.
6. Other duties as assigned by the secretary.

(b) The following program offices are established:

1. Adult Services Program Office.—The responsibilities of this office shall relate directly to the custody, care, treatment, and rehabilitation of adult offenders committed to the Department of Corrections.

2. Youth Offender Program Office.—The responsibilities of this office shall relate directly to the development of a comprehensive youthful offender program sufficient to meet the needs of youths committed to the Department of Corrections. This program shall include, but not be limited to, the custody, care, treatment, and rehabilitation of youthful offenders.

3. Community Services Program Office.—The responsibilities of this office shall relate directly to community supervision, intake, investigation, and initial classification of offenders.

4. Health and Education Services Program Office.—The responsibilities of this office shall relate directly to both the development of a comprehensive department-wide health delivery system and an education and rehabilitation program.

(c) The Governor may appoint an advisory council for the purpose of acting as an advisory body to the program offices. Members shall serve staggered terms not to exceed 4 years, although they may be appointed to one subsequent term. Members shall receive no compensation, but shall be reimbursed for per diem and travel expenses in accordance with the provisions of s. 112.061.

(d) The salary of a program office director shall be set at a level equal to that of a division director.

(8) OFFICE OF MANAGEMENT AND BUDGET.—

(a) There is created within the department an Office of Management and Budget. The head of the Office of Management and Budget is the Assistant Secretary for Management and Budget, who shall be appointed by the secretary. The Assistant Secretary for the Office of Management and Budget shall report directly to the secretary. All management, evaluation, and administrative functions heretofore carried out by the various line divisions of the department are assigned to the Office of Management and Budget.

(b) The Office of Management and Budget shall be responsible for all department-wide functions in the areas of management services, financial services, and management analysis. Further responsibilities shall include, but not be limited to:

1. Program evaluation.
2. Budget preparation and aggregation.
3. Grants management and disbursement.
4. Accounting.
5. Internal audit.
6. Facilities housekeeping, maintenance, and management, including design, construction, and leases.
7. Personnel.
8. Information systems development.
9. Legal services.
10. Purchasing.

(c) The Office of Management and Budget shall also be responsible for the development of uniform implementation and monitoring procedures for all administrative support services at the regional level as well as for the review of the effectiveness and efficiency of these support services.

(9) REGIONAL DIRECTORS.—

(a) The chief administrative officer of each region is the regional director. The regional director shall be appointed by the secretary and shall be directly responsible to the Assistant Secretary for Operations. The position of regional director shall be classified at a level equal to a division director.

(b) The duties and responsibilities of the regional director shall include, but not be limited to:

1. Administration and coordination of all planning, evaluation, administrative support, and direct program operation functions within the region.
2. Applying standard information, referral, diagnostic and evaluation, classification, and case management procedures for the provision of services within the region.
3. Appointment of program supervisors in conformity with qualifications established by the department.
4. Notwithstanding the provisions of ss. 216.292 and 216.351, authority to transfer up to 10 percent of the total regional budget, subject to the approval of the secretary, to maximize effective program operations.

5. Meeting regularly with other regional directors to make recommendations for modifications in program policies to state program directors and to the secretary.

[1](10) REGIONAL ADVISORY COUNCILS.—

(a) In each region there shall be a regional advisory council. Each regional advisory council shall elect a chairman, a vice chairman, and a secretary, each of whose terms shall be for 1 year. The regional director shall be a nonvoting ex officio member. The council shall be composed of:

1. One representative of the state attorneys in the region.
2. One representative of the public defenders in the region.
3. One sheriff of a county in the region.
4. Four citizen representatives from the region.
5. One member of a district school board of a school district within the region.
6. One circuit judge exercising juvenile jurisdiction within the region.
7. One circuit judge exercising criminal jurisdiction within the region.
8. One member of a board of county commissioners of a county within the region.
9. One representative of the Florida State Employment Service of the Department of Labor and Employment Security.

(b) The council shall be advisory in nature. It shall communicate the ideas of the community and the local criminal justice system to the regional administration of the Department of Corrections. The duties and responsibilities of the regional advisory council shall include, but not be limited to:

1. Recommending to the regional director modifications in state program policy.
2. Providing a forum for receiving citizen complaints and holding hearings on general problems relating to the department.
3. Providing advice on program coordination within the region.

(c) The citizen members and representatives of the criminal justice system shall be appointed by the Governor. All appointed members of the regional advisory council shall serve for terms of 4 years, except that at the time of the first appointment, three members shall serve for 1 year, three members shall serve for 2 years, three members shall serve for 3 years, and three members shall serve for 4 years.

(d) The Governor shall fill all appointive vacancies on the regional advisory council for the balance of the unexpired terms.

(e) Before November 1 of each year, the secretary shall hold a meeting to which each district advisory council shall send three of its members to discuss the department's budget request and recommendations to the Legislature and to provide the secretary with an analysis of needs within the districts. The council shall meet quarterly or at the call of the chairman or upon petition of a majority of the members.

(f) Members of the regional advisory council shall receive no compensation, but shall be reimbursed for per diem and travel expenses by the department in accordance with the provisions of s. 112.061.

(g) Each regional advisory council shall designate a subcouncil from its membership for each service area designated by the secretary.

(11) REGIONAL OFFICE OF MANAGEMENT AND BUDGET.—

(a) There shall be an office of management and budget in each region which shall provide the following administrative support functions to the regional office:

1. Management evaluation and monitoring.
2. Regional management planning.
3. Accounting.
4. Grants management and disbursement.
5. Personnel.
6. Legal services for program support.
7. Purchasing.
8. Facilities housekeeping and maintenance.
9. Preparation of the regional budget request and administration of the approved operating budget.
10. Other responsibilities as assigned by the regional director.

(b) The director of the regional office of management and budget shall be appointed by the regional director in conformity with qualifications established by the department. The regional office of management and budget shall carry out its duties and responsibilities in accordance with departmental policy.

(12) PROGRAM OPERATIONS.—

(a) The regional office shall provide direct management and supervision of departmental programs within the region. All superintendents of correctional facilities and supervisors of program operations in the region shall report to the regional director.

(b) In each region, in accordance with state program policy, there shall be developed a regional correctional program which shall include at least the following components:

1. Major correctional institutions in regions where they are located.
2. Intake programs.
3. Community residential programs.
4. Community services which shall include, at least, parole and probation supervision, classification, and investigation. Classification, investigation, and parole and probation supervision may be organized in such a fashion so as to permit the separation of youthful offenders and adults. The department may deploy its counselors in youthful offender and adult specialties. However, there shall be a single administrative and supervisory structure.

(c) All intake and community service programs shall be organized in accordance with boundaries of judicial circuits.

(d) All institutions and program operations, working with the regional office of management and budget, shall purchase specialized services when available and appropriate rather than develop a service capability within the institution or program.

(e) In order to efficiently direct departmental programs in the region, the regional director may appoint local program supervisors. The program supervisor shall have the following duties:

1. Direct all local program operations under his supervision in accordance with the policy guidelines

and program direction provided by state program offices.

2. Make recommendations on budget priorities and resource allocations to the regional director.

3. Identify and develop community resources and needs.

(13) DEPARTMENTAL BUDGETS.—

(a) The secretary shall develop and submit annually to the Legislature a comprehensive departmental summary budget document which shall array regional budget requests along program lines. This summary document shall, for the purpose of legislative appropriation, consist of three distinct budget entities:

1. Office of the Secretary and Office of Management and Budget.

2. The Assistant Secretary for Programs and all program offices.

3. The Assistant Secretary for Operations and all regional services.

(b) To fulfill this responsibility, the secretary shall have the authority to review, amend, and approve the annual budget requests of all departmental activities. Recommendations on departmental budget priorities shall be furnished to the secretary by the Assistant Secretary for Operations, the Assistant Secretary for Management and Budget, and the Assistant Secretary for Programs. In addition, the secretary, notwithstanding the provisions of ss. 216.292 and 216.351, may, whenever deemed necessary by reason of significantly changed conditions, transfer funds between the approved operating budgets of the regions. The total of such transfers may not exceed 5 percent of the operating budget of an individual region during any fiscal year.

(c) It is the responsibility of the Office of Management and Budget to promulgate the necessary budget timetables, formats, and data requirements for all departmental budget requests. This shall be done in accordance with statewide budget requirements of the Executive Office of the Governor.

(d) It is the responsibility of the regional director to develop an annual budget request to be reviewed, amended, and approved by the secretary. Upon appropriation of an approved regional budget, the regional director shall be responsible for the execution of the operating budget during the fiscal year. Notwithstanding the provisions of ss. 216.292 and 216.351, whenever deemed necessary by reason of significantly changed conditions, the regional director may, subject to approval of the secretary, transfer funds between the various programs in the region. The total of such transfers may not exceed 10 percent of the approved operating budget of a region during any fiscal year.

(14) INFORMATION SYSTEMS.—

(a) The secretary shall implement a priority program aimed at the design, testing, and integration of automated information systems necessary for effective and efficient management of the department. These systems shall contain, as a minimum, management data, offender data, and program data deemed essential for the ongoing administration of programs, as well as for the purpose of management decisions. It is the intent of the Legislature that these systems be developed with the idea of providing maximum administrative support to program operations. It is also essential that these systems comply with federal program requirements and insure confidentiality of client information.

(b) For the purpose of funding this effort, the department shall include in its annual budget request a comprehensive summary of costs involved, as well as manpower saved, in the establishment of these automated systems. This budget request shall also include a complete inventory of current staff, equipment, and facility resources available for completion of the desired systems. The department shall review all forms for duplicative content and, to the maximum extent possible, reduce, consolidate, and eliminate such duplication to provide for a uniform and concise information collection system.

(15) PROGRAM EVALUATION.—A comprehensive program evaluation system shall be established which shall encompass all major programs of the department. The department shall establish measurable program objectives and performance criteria for each program it operates. The system of evaluation to be established shall require all programs to develop quantifiable goals and to estimate the cost of attaining the goals in advance. Studies of the relative cost and effectiveness of departmental and alternative programs shall be conducted. The department shall develop a program evaluation schedule and shall evaluate at least 20 percent of its programs annually. The department shall submit these evaluation schedules and reports to the appropriate substantive committees of both houses of the Legislature for review. Where possible, the departmental management information system shall provide the basic information for program evaluation studies for the department and the Parole and Probation Commission.

(16) PROGRESS REPORTS.—After July 1, 1976, the department shall make an annual report to the Governor and the Legislature reflecting its activities and making recommendations for improvement of the services to be performed by the department. Such report shall be on the basis of a fiscal year. Notwithstanding the provisions of other statutes, such report shall be the only annual report required by law to be submitted by the department. However, the department shall continue to make such other reports as are provided for in this act or specifically requested by the Governor or any officer, member, or committee of the Legislature.

(17) PLACEMENT OF OFFENDERS.—The department shall classify its programs according to the character and range of services available for its clients. The department shall place each offender in the program or facility most appropriate to the offender's needs, subject to budgetary limitations and the availability of space.

(18) DISCHARGE FROM COMMITMENT.—When the law grants to an agent, officer, or administrator of the Department of Corrections the authority to make a discharge from commitment, such authority shall be vested in the Secretary of Corrections or in any agent who, in his discretion, the secretary may authorize.

(19) All commitments shall state the statutory authority therefor. The Secretary of Corrections

shall have the authority to prescribe the form to be used for commitments. Nothing in this act shall be construed to abridge the authority and responsibility of the Parole and Probation Commission with respect to the granting and revocation of parole. The Department of Corrections shall notify the Parole and Probation Commission of all violations of parole conditions and provide reports connected thereto as may be requested by the commission. The commission shall have the authority to issue orders dealing with supervision of specific parolees, and such orders shall be binding on all parties.

(20) The Department of Corrections shall perform statistical analysis, research, and program evaluation for the Parole and Probation Commission. There shall be only one offender-based information and records system maintained by the Department of Corrections for the joint use of the Department of Corrections and the Parole and Probation Commission. The Department of Corrections shall develop, in consultation with the Parole and Probation Commission, such offender-based information system designed to serve the needs of both agencies. The department shall notify the commission of all violations of parole and the circumstances thereof.

(21) TRANSFER OF AUTHORITY.—All statutory functions of the department not otherwise herein assigned to a specific unit of the department are assigned generally to the department and may be allocated and reallocated by the secretary to an authorized unit of the department.

History.—ss. 2, 4, 7, 9-11, ch. 75-49; s. 1, ch. 77-174; s. 1, ch. 78-53; s. 4, ch. 78-323; s. 6, ch. 79-7; s. 65, ch. 79-190.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subsection prior to that date.

20.32 Parole and Probation Commission.—

(1) The Parole and Probation Commission, authorized by s. 8(c), Art. IV, State Constitution of 1968, is continued and retains its powers, duties, and functions.

(2) All powers, duties, and functions of the Board of Commissioners of State Institutions relating to the appointment of the Parole and Probation Commission as provided in s. 947.02, shall be exercised and performed by the Governor and the Cabinet. Each appointment shall be made from among the first three eligible persons on the list of the persons eligible for said position.

History.—s. 33, ch. 69-106.

20.325 Game and Fresh Water Fish Commission.—The Legislature, recognizing the Game and Fresh Water Fish Commission as being specifically provided for and authorized by the State Constitution under s. 9, Art. IV, grants rights and privileges to the commission, as contemplated by s. 6, Art. IV, State Constitution, equal to those of departments established under this chapter, while preserving its constitutional designation and title as a commission.

(1) The head of the Game and Fresh Water Fish Commission is the commission appointed by the Governor as provided for in s. 9, Art. IV of the State Constitution.

(2) The following divisions are established within the commission:

(a) Division of Administrative Services;
(b) Division of Law Enforcement;
(c) Division of Fisheries; and
(d) Division of Wildlife.

(3) The powers, duties, and functions of the commission shall be as prescribed by law.

History.—s. 1, ch. 77-204.

20.33 Conflicts provision.—All statutory law which names units of organization in the various agencies of the executive branch in a manner in conflict with the nomenclature used herein are amended so as to be consistent with the nomenclature used in this chapter. If any agency, program, activity or function transferred herein is changed in name or substance by another act of the Legislature during the 1969 session, the agency, program, activity or function, as amended, is transferred in a manner consistent with the intent expressed by this chapter.

History.—s. 35, ch. 69-106.

20.34 Rules and regulations.—Except when it is inconsistent with the other provisions of this chapter, all rules and regulations of the agencies involved in this reorganization that are in effect on June 30, 1969, shall remain in effect until they are specifically altered, amended or revoked in the manner provided by law.

History.—s. 36, ch. 69-106.

CHAPTER 22

EMERGENCY CONTINUITY OF GOVERNMENT

22.01 Short title.—Sections 22.01-22.10 shall be known and may be cited as the "Emergency Interim Executive and Judicial Succession Act."

History.—s. 1, ch. 59-447.

22.02 Declaration of policy.—Because of the existing possibility of attack upon the United States of unprecedented size and destructiveness, and in order, in the event of such an attack, to assure continuity of government through legally constituted leadership, authority and responsibility in offices of the government of the state and its political subdivisions; to provide for the effective operation of governments during an emergency; and to facilitate the early resumption of functions temporarily suspended, it is found and declared to be necessary to provide for additional officers who can exercise the powers and discharge the duties of governor; to provide for emergency interim succession to governmental offices of its political subdivisions, in the event the incumbents thereof are unavailable to perform the duties and functions of such offices.

History.—s. 2, ch. 59-447.

22.03 Definitions.—Unless otherwise clearly required by the context, as used in ss. 22.01-22.10:

(1) "Unavailable" means either that a vacancy in office exists or that the lawful incumbent of the office is absent or unable to exercise the powers and discharge the duties of the office.

(2) "Emergency interim successor" means a person designated pursuant to ss. 22.01-22.10, in the event the officer is unavailable, to exercise the powers and discharge the duties of an office until a successor is appointed or elected and qualified as may be provided by the constitution, statutes, charters and ordinances or until the lawful incumbent is able to resume the exercise of the powers and discharge the duties of the office.

(3) "Office" includes all state and local offices, the powers and duties of which are defined by the constitution, statutes, charters, and ordinances, except the office of governor and the legislature.

(4) "Attack" means any attack or series of attacks by an enemy of the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by the use of bombs, missiles, shellfire, or atomic, radiological, chemical, bacteriological, or biological means or other weapons or processes.

(5) "Political subdivision" includes counties, cities, towns, villages, townships, districts, authorities, and other public corporations and entities whether organized and existing under charter or general law.

History.—s. 3, ch. 59-447.

22.05 Enabling authority for emergency interim successors for local offices.—With respect to local offices, for which the legislative bodies of cities, towns, villages, townships, and counties may enact resolutions or ordinances relative to the manner in which vacancies will be filled or temporary appointments to office made, such legislative bodies are hereby authorized to enact resolutions or ordinances providing for emergency interim successors to offices of the aforementioned governmental units. Such resolutions and ordinances shall not be inconsistent with the provisions of ss. 22.01-22.10.

History.—s. 5, ch. 59-447.

22.06 Emergency interim successors for local officers.—The provisions of this section shall be applicable to officers of political subdivisions (including, but not limited to, cities, towns, villages, townships, and counties, as well as school, fire, power and drainage districts) not included in s. 22.05. Such officers, subject to such regulations as the executive head of the political subdivision may issue, shall upon approval of ss. 22.01-22.10, designate by title (if feasible) or by named person, emergency interim successors and specify their order of succession. The officer shall review and revise, as necessary, designations made pursuant to ss. 22.01-22.10 to insure their current status. The officer will designate a sufficient number of persons so that there will be not less than three, nor more than seven, emergency interim successors or any combination thereof at any time. In the event that any officer of any political subdivision is unavailable, the powers of the office shall be exercised and duties shall be discharged by his designated emergency interim successors in the order specified. The emergency interim successor shall exercise the powers and discharge the duties of the office to which designated until such time as a vacancy which may exist shall be filled in accordance with the constitution or statutes or until the officer (or a preceding emergency interim successor) again becomes available to exercise the powers and discharge the duties of his office.

History.—s. 6, ch. 59-447.

22.07 Formalities of taking office.—At the time of their designation, emergency interim successors and special emergency judges shall take such oath as may be required for them to exercise the powers and discharge the duties of the office to which they may succeed. Notwithstanding any other provision of law, no person, as a prerequisite to the exercise of the powers or discharge of the duties of

an office to which he succeeds, shall be required to comply with any other provision of law relative to taking office.

History.—s. 7, ch. 59-447.

22.08 Period in which authority may be exercised.—Officials authorized to act as governor pursuant to ss. 22.01-22.10, emergency interim successors and special emergency judges are empowered to exercise the powers and discharge the duties of an office as herein authorized only after an attack upon the United States, as defined herein, has occurred. The legislature, by concurrent resolution, may at any time terminate the authority of said emergency interim successors and special emergency judges to exercise the powers and discharge the duties of office as herein provided.

History.—s. 8, ch. 59-447.

22.09 Removal of designees.—Until such time as the persons designated as emergency interim successors or special emergency judges are authorized to exercise the powers and discharge the duties of an office in accordance with ss. 22.01-22.10, said persons shall serve in their designated capacities at the pleasure of the designating authority and may be removed or replaced by said designating authority at any time, with or without cause.

History.—s. 9, ch. 59-447.

22.10 Disputes.—Any dispute concerning a question of fact arising under ss. 22.01-22.09 with respect to an office in the executive branch of the state government (except a dispute of fact relative to the office of governor) shall be adjudicated by the governor (or other official authorized under the constitution or ss. 22.01-22.09 to exercise the powers and discharge the duties of the office of governor) and his decision shall be final.

History.—s. 10, ch. 59-447.

22.15 Seat of government; emergency temporary location.—

(1) Whenever, due to an emergency resulting from the effects of enemy attack, or the anticipated effects of a threatened enemy attack, it becomes imprudent, inexpedient or impossible to conduct the affairs of state government at the normal location of the seat thereof in the City of Tallahassee, Leon County, the governor shall, as often as the exigencies of the situation require, by proclamation, declare an emergency temporary location, or locations, for the seat of government at such place, or places, within or without this state as he may deem advisable under the circumstances, and shall take such action and issue such orders as may be necessary for an orderly transition of the affairs of state government to such emergency temporary location, or locations. Such emergency temporary location, or locations, shall remain as the seat of government until the legislature shall by law establish a new location, or locations, or until the emergency is declared to be ended by the governor and the seat of government is returned to its normal location.

(2) During such time as the seat of government remains at such emergency temporary location, or locations, all official acts now or hereafter required by law to be performed at the seat of government by any officer, agency, department or authority of this state, including the convening and meeting of the legislature in regular, extraordinary or emergency session, shall be as valid and binding when performed at such emergency temporary location, or locations, as if performed at the normal location of the seat of government.

(3) The provisions of this section shall control and be supreme in the event it shall be employed notwithstanding the provisions of any other law to the contrary or in conflict herewith.

History.—ss. 1-3, ch. 59-498.

22.20 Emergency continuity of government; political subdivision.—

(1) Whenever, due to an emergency resulting from the effects of enemy attack, or the anticipated effects of a threatened enemy attack, it becomes imprudent, inexpedient or impossible to conduct the affairs of the government of a political subdivision of the state at the normal location of the seat thereof, the governing body of such political subdivision shall, as often as the exigencies of the situation require, by proclamation, declare an emergency temporary location, or locations, for the seat of government at such place, or places within or without the territorial limits of its political jurisdiction, as deemed advisable under the circumstances, and shall take such action and issue such orders as may be necessary for an orderly transition of the affairs of the government of the political subdivision to such emergency temporary location, or locations. Such emergency temporary location, or locations, shall remain as the seat of such government until a new seat of government is established by due processes of the law, or until the emergency is declared to be ended by the governor and the seat of government is returned to its normal location.

(2) During such time as the seat of government remains at such emergency temporary location, or locations, all official acts now or hereafter required by law to be performed at the seat of government by any officer, agency, department or authority of the political subdivision, including the convening of the governing body thereof in regular, extraordinary or emergency session, shall be as valid and binding when performed at such emergency temporary location, or locations, as if performed at the normal location of the seat of government.

(3) The provisions of this section shall control and be supreme in the event it shall be employed, notwithstanding the provisions of any other law to the contrary or in conflict herewith.

History.—ss. 1-3, ch. 61-352.

CHAPTER 23

MISCELLANEOUS EXECUTIVE FUNCTIONS

PART I STATE COMPREHENSIVE PLANNING (ss. 23.011-23.0193)

PART II ELECTRONIC DATA PROCESSING MANAGEMENT (ss. 23.021-23.032)

PART III TRANSPORTATION (ss. 23.041-23.055)

PART IV FLORIDA MUTUAL AID ACT (ss. 23.12-23.128)

PART V EARLY CHILDHOOD AND FAMILY DEVELOPMENT ACT (ss. 23.13-23.137)

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PART VII FLORIDA RESEARCH AND DEVELOPMENT COMMISSION (ss. 23.145-23.1491)

PART VIII FLORIDA CRIMINAL JUSTICE COUNCIL (ss. 23.15-23.156)

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PART I

STATE COMPREHENSIVE PLANNING

23.011 Governor; chief planning officer of the state.—The governor shall be the chief planning officer of the state.

History.—s. 1, ch. 67-157; s. 7, ch. 71-377; s. 4, ch. 72-295.

23.0111 Short title.—This part shall be known and may be cited as the "Florida State Comprehensive Planning Act of 1972."

History.—s. 1, ch. 72-295.

23.0112 Definitions.—As used in this part:

(1) "Regional planning agency" means the agency designated by the Executive Office of the Governor to exercise responsibilities under this part in a particular region of the state.

(2) "State comprehensive plan" means the goals, objectives, and policies contained within the state comprehensive plan prepared by the [1]division.

History.—s. 3, ch. 72-295; s. 1, ch. 78-287; s. 66, ch. 79-190.

[1]**Note.**—See s. 2, ch. 79-190, which abolished the Division of State Planning of the Department of Administration and transferred all powers, duties, functions, records, property, and funds of the Bureau of Comprehensive Planning and, except for the State-Local Relations Section, the Bureau of Intergovernmental Relations of the Division, and the related graphics and administrative services functions of the Office of the Director of State Planning, (under this section) to the Executive Office of the Governor.

23.0113 Designation of departmental planning officer.—

(1) On or before September 29, 1972, the head of each executive department and the Public Service Commission, Game and Fresh Water Fish Commission, Parole and Probation Commission, and the Department of Military Affairs shall select from within such agency a person to be designated as the planning officer for such agency. The planning officer shall be responsible for coordinating with the [1]division and with the planning officers of other agencies all activities and responsibilities of such agency relating to planning.

(2) The head of each agency shall notify the Executive Office of the Governor in writing of the person initially designated as the planning officer for such agency and of any changes in persons so designated thereafter.

History.—s. 5, ch. 72-295; s. 67, ch. 79-190.

[1]**Note.**—See s. 2, ch. 79-190, which abolished the Division of State Planning of the Department of Administration and transferred all powers, duties, functions, records, property, and funds of the Bureau of Comprehensive Planning and, except for the State-Local Relations Section, the Bureau of Intergovernmental Relations of the Division, and the related graphics and administrative services functions of the Office of the Director of State Planning, (under this

section) to the Executive Office of the Governor.

23.0114 State comprehensive plan; preparation; revision.—

(1) The state comprehensive plan shall be advisory only, except as specifically authorized by law; shall be based on the best available data; and shall provide long-range guidance for the orderly social, economic, and physical growth of the state by setting forth goals, objectives, and policies. To the extent feasible, the Executive Office of the Governor shall utilize the services and plans of local governments and regional planning agencies when preparing and revising the provisions of the state comprehensive plan.

(2) In preparing and revising the state comprehensive plan, the Executive Office of the Governor shall, to the extent feasible, consider studies, reports, and plans of each department, agency, and institution of state and local government, each regional planning agency, and the Federal Government and shall take into account the existing and prospective resources, capabilities, and needs of state and local levels of government.

(3) The revision of the state comprehensive plan shall be a continuing process. Each section of the plan shall be reviewed and analyzed yearly by personnel of the Executive Office of the Governor in conjunction with the planning officers of other state agencies significantly affected by the provisions of the particular section under review.

(4)(a) The Legislature finds that the coastal zone is rich in variety of natural, commercial, recreational, ecological, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the residents of this state which will be irretrievably lost or damaged if not properly managed. Participation by Florida citizens will be an important factor in developing a plan for management of the coastal zone, and management of the state's coastal zone will require a highly coordinated effort among state, regional, and local officials and agencies.

(b) The state coastal zone management plan shall be a part of the state comprehensive plan. It shall contain a boundary, policies, goals, and programs necessary to comply with the requirements of the Federal Coastal Zone Management Act of 1972, as amended (16 U.S.C. ss. 1451-1464), specifically delineating the role of state, regional, and local agencies in implementing the plan, and it shall provide that the appeal of any regulatory decision, other than those provided for by existing law, shall be to the Governor and Cabinet.

History.—s. 7, ch. 72-295; ss. 3, 5, ch. 77-306; s. 2, ch. 78-287; s. 68, ch. 79-190.

23.0115 Specification of data and projections.—

(1) For the purpose of establishing consistency and uniformity in the planning process, the Executive Office of the Governor may by rule adopted under chapter 120 specify particular data, geographic boundaries, comprehensive planning districts, projections, or forecasts that agencies shall use in preparing studies, reports, and plans.

(2) If an agency chooses to use data, projections, or forecasts contrary to those specified by the Executive Office of the Governor, it shall include in or append to the plan or report a statement of any difference in conclusions or recommendations that would result if the office's data, projections, or forecasts had been used, and of its reasons for not following the rule.

History.—s. 9, ch. 72-295; s. 69, ch. 79-190.

23.012 General powers and duties.—The Executive Office of the Governor shall:

(1) Prepare and revise from time to time as necessary the state comprehensive plan.

(2) Assist in the preparation of the annual executive budget and legislative program of the Governor.

(3) Coordinate planning among federal, state, and local levels of government and between the State of Florida and other states.

(4) Coordinate all state agency planning and programming activities, including, but not limited to, the following areas: economy, employment, education, social welfare, agriculture, industrial development, commerce and trade, transportation and safety, oceanic and water resources, pollution and environmental health, fish and wildlife, housing and urban development, crime and corrections, parks, recreation and cultural development, physical and mental health, and public utilities and services.

(5) Prepare or cause to be prepared any studies and reports or interim and functional plans necessary or useful in the preparation and revision of the state comprehensive plan.

(6) Serve as the state planning and development clearinghouse and designate regional and areawide clearinghouses.

(7) Make basic demographic, geographic, and economic data and projections available to all public and private agencies concerned with development within the state.

History.—s. 2, ch. 67-157; ss. 2, 3, ch. 67-371; ss. 31, 35, ch. 69-106; s. 6, ch. 72-295; s. 70, ch. 79-190.

23.0125 Data development by Departments of Environmental Regulation and Natural Resources.—Except for the coordination of governmental planning and programming activities, as provided in s. 23.012, the powers, duties, and functions prescribed in this part which relate to the development of the data for the environmental quality portions of the State Comprehensive Plan are vested in the Department of Environmental Regulation for those environmental programs which fall under its jurisdiction. Those powers, duties, and functions relating to the development of data for the natural resources portions of the State Comprehensive Plan are vested in the Department of Natural Resources for those natural resource programs which fall under its jurisdiction.

History.—s. 3, ch. 77-114.

23.013 State comprehensive plan; adoption; implementation.—

(1) The proposed state comprehensive plan or parts or revisions thereof shall be transmitted to the Governor for his consideration and action. The plan or parts or revisions thereof, when approved by the Governor, shall be transmitted to the Secretary of the Senate and the Clerk of the House of Representa-

tives no later than 90 days prior to the beginning of the next regular legislative session. Copies shall also be transmitted to each state department, regional planning agency, county, municipality, and to any other governmental agency requesting a copy of the plan.

(2) Except as specifically authorized by law, no part of the state comprehensive plan, or the policies set forth therein, or any revision thereto shall be implemented or enforced by any executive agency. The chief planning officer may, from time to time, in bill form, present to the Legislature specific proposals to implement goals, objectives, and policies of the state comprehensive plan. Nothing contained in the plan or parts or revisions thereof shall have the force or effect of law or authorize the implementation of any programs not otherwise authorized pursuant to law. It is the further intent of the Legislature that enactment of this legislation shall not amend existing statutes, other than as provided herein, or provide additional regulatory authority.

History.—s. 3, ch. 67-157; ss. 31, 35, ch. 69-106; s. 8, ch. 72-295; s. 1, ch. 77-306; s. 3, ch. 78-287.

23.014 Annual development program preparation, procedure, content.—

(1) The annual development program shall cover at a minimum the forthcoming 6 years and may consist of the following general sections and present the following information:

(a) A section analyzing the current posture of state development in terms of long-range needs and opportunities of development together with a review of present factors and activities affecting the development of the state. This section will highlight past accomplishments and the current status of programs and activities, and will review such factors as the overall economic posture of the state, the major problems confronting or anticipated to confront the state, the activities of the private sector, local governments and federal activities as well as state operations designed to meet the responsibilities of overall state development and activities.

(b) A section on specific policies to be undertaken, which will describe the content and emphasis of policies for at least each of the following general functional areas of development: Economic development, social development, natural resource development, transportation, regional and local development, other areas of development as appropriate.

(c) A section detailing the programs and the quantified annual accomplishments to be achieved by each program over the forthcoming 6 years. Analysis of the relationship of these programs to accomplishing policies enunciated in the previous section will be described in detail. New programs, elimination or modification of existing programs and the anticipated performance or accomplishment of current, new or modified programs will be described in detail in this section.

(d) A section dealing with the methods and requirements for effectuating and implementing the proposed annual development program. Resources required, in terms of funds, manpower, capital facilities and other resources for each year of the annual development program as well as any administrative changes or new legislation required will be described in this section.

(2) Upon request of the Executive Office of the Governor, each state agency shall annually file with the office its plan for each program under its jurisdiction to be undertaken or executed for the next 6 years. The plan shall include as full an explanation of the need and justification for each program, its relationship to other similar programs being carried out by state, local, federal, or private agencies, and the annual anticipated accomplishment of each program over the prior 6 years as is feasible. The Judiciary and the Legislature are specifically excluded from this requirement. The Executive Office of the Governor shall submit to the Governor recommendations for the annual development programs based on the information submitted by each state agency and its analysis of developmental needs and requirements.

History.—s. 4, ch. 67-157; ss. 31, 35, ch. 69-106; s. 6, ch. 73-333; s. 71, ch. 79-190.

23.015 Annual economic report.—The Governor as chief planning and budget officer shall annually render unto the people and to the Legislature of this state an economic report appraising the economic situation of the state, reviewing the extent to which economic growth and development have provided employment and income, and such other economic factors and indicators as are appropriate. This report shall contain timely and authoritative information concerning economic growth and development in the state both current and prospective, an analysis and interpretation of such information in the light of existing state economic policies, and an appraisal of the various programs and activities of the state in effectuating these policies. Such report shall be related to and developed in close conjunction with the preparation of the annual development program.

History.—s. 5, ch. 67-157; ss. 31, 35, ch. 69-106; s. 72, ch. 79-190.

23.016 Special reports.—

(1) The Executive Office of the Governor shall also submit special reports upon the request of the Governor, the President of the Senate, or the Speaker of the House on those aspects of state planning and budgeting which may be deemed of current interest. Special reports on major research and planning projects, as distinguished from compilations of current data, shall be made available as soon as practicable after completion.

(2) The Executive Office of the Governor may make copies of special reports available for general distribution or sale. The price of special reports shall be determined by the nature of the special report and the cost involved in compiling and publishing those special reports made available.

History.—s. 6, ch. 67-157; ss. 31, 35, ch. 69-106; s. 73, ch. 79-190.

23.0161 Annual progress report on state and regional planning.—

(1) The Executive Office of the Governor shall prepare annually a report on the progress made by the office, other state agencies, and regional planning agencies in achieving the purposes of this part. Such report shall describe the progress made in de-

veloping the state comprehensive plan, functional plans, and planning studies and reports during the preceding fiscal year.

(2) The annual progress report on state and regional planning shall be transmitted by the Governor to each member of the Legislature not later than December 31 of each year.

History.—s. 10, ch. 72-295; s. 74, ch. 79-190.

23.017 Authorization to contract.—Whenever the preparation and revision of the state comprehensive plan becomes too specialized or professionally demanding or requires research facilities not available to the Executive Office of the Governor, the office may use federal, state, local, or private funds for the purpose of contracting with public agencies or private firms or consultants for the utilization of the planning or research capabilities and facilities of such agencies, firms, or consultants to assist in meeting the planning needs of the state.

History.—s. 7, ch. 67-157; ss. 31, 35, ch. 69-106; s. 11, ch. 72-295; s. 75, ch. 79-190.

23.019 Population census determination.—

(1) The Executive Office of the Governor, either through its own resources or by contract, shall produce population estimates of local governmental units as of April 1 of each year, utilizing accepted statistical practices. The population of local governments, as determined by the Executive Office of the Governor, shall apply to any revenue-sharing formula with local governments under the provisions of ss. 218.20-218.26, part II of chapter 218. For municipal annexations or consolidations occurring during the period April 1 through February 28, the Executive Office of the Governor shall determine the population count of the annexed areas as of April 1 and include such in its certification to the Department of Revenue for the annual revenue-sharing calculation.

(2)(a) Population shall be computed as the number of residents, employing the same general guidelines used by the United States Bureau of the Census.

(b) For the purpose of revenue-sharing distribution formulas, inmates and patients residing in institutions operated by the federal government or by the Department of Health and Rehabilitative Services shall not be considered to be residents of the governmental unit in which the institutions are located.

(c) Nothing herein shall be construed to prohibit the separate determination of any categories of persons, whether resident or nonresident.

(3) In cases of annexation or consolidation, local governments shall be required to submit to the Executive Office of the Governor, within 30 days following annexation or consolidation, a statement as to the population census effect of the action.

History.—s. 3, ch. 72-360; s. 1, ch. 75-93; s. 1, ch. 77-174; s. 1, ch. 78-209; s. 76, ch. 79-190.

23.0191 Ten-year site plans.—

(1) Beginning January 1, 1974, each electric utility shall submit to the Department of Community Affairs a 10-year site plan which shall estimate its power-generating needs and the general location of its proposed power plant sites. The 10-year plan shall be reviewed and submitted not less frequently than every 2 years.

(2) Within 9 months of the receipt of the proposed plan, the department shall make a preliminary study of such plan and classify it as "suitable" or "unsuitable." The department may suggest alternatives to the plan. All findings of the department shall be made available to the Department of Environmental Regulation for its consideration at any subsequent electrical power plant site certification proceedings. It is recognized that 10-year site plans submitted by an electric utility are tentative information for planning purposes only and may be amended at any time at the discretion of the utility upon written notification to the department. A complete application for certification of an electrical power plant site under chapter 403, when such site is not designated in the current 10-year site plan of the applicant, shall constitute an amendment to the 10-year site plan. In its preliminary study of each 10-year site plan, the department shall consider such plan as a planning document and shall review:

(a) The need, including the need as determined by the Public Service Commission, for electrical power in the area to be served.

(b) The anticipated environmental impact of each proposed electrical power plant site.

(c) Possible alternatives to the proposed plan.

(d) The views of appropriate local, state, and federal agencies, including the views of the appropriate water management district as to the availability of water and its recommendation as to the use by the proposed plant of saltwater or freshwater for cooling purposes.

(e) The extent to which the plan is consistent with the state comprehensive plan.

(f) The plan with respect to the information of the state on energy availability and consumption.

(3) In order to enable it to carry out its duties under this section, the department may, after hearing, establish a study fee which shall not exceed $1,000 for each proposed plan studied.

(4) The department may adopt rules governing the method of submitting, processing, and studying the 10-year plans as required by this section.

History.—s. 1, ch 73-33; s. 2, ch. 76-76; s. 77, ch. 79-190.
Note.—Former s. 403.505.

23.0193 Data Bank on Older Floridians.—

(1) It is the intent of the Legislature to provide for the development, implementation, and maintenance of a Data Bank on Older Floridians in order to assure that accurate data is available for sound planning and decisionmaking by state legislative committees and by local and state agencies when considering matters related to the health, financial conditions, housing, education, transportation, and service needs of the elderly citizens of Florida.

(2) The Data Bank on Older Floridians shall be operated and maintained by one or more of the private or public institutions of higher education in Florida that operates a program for the study of aging or a center on gerontology. After an assessment of the capacity of the institutions of higher education in the state to operate and maintain the data bank, the Board of Regents, Division of Universities, Department of Education, shall contract for

the operation and maintenance of the data bank with the institution or institutions that it determines to be most qualified to perform the functions outlined in this act. In awarding the contract for operating and maintaining the data bank, the board shall consider private as well as public institutions. The initial phase in the establishment of the data bank shall be the development of the planning and evaluation components. Such components shall be formulated consistently with federal and state plans on aging. The functions of the data bank shall include, but not be limited to:

(a) Making an inventory of information and data about the elderly in Florida, whether available from federal, state, or local sources; obtaining copies of such data; and evaluating the appropriateness and usefulness of the data.

(b) Determining what additional types of data about the elderly are necessary for state and local program planning and decisionmaking throughout Florida; formulating plans for the acquisition and generation of such data; coordinating with state and local agencies, including the institutions of the State University System, in the acquisition of available information and data; ensuring that state agencies cooperate in providing data; giving special attention to minimizing or eliminating duplication of effort in the collection of data; and providing for the maintenance of all data obtained.

(c) Providing for the wide dissemination and publication of demographic, economic, health, educational, and social information and data about the elderly in Florida.

(d) Publishing, at least annually, a report on the changing health, economic, and social status of the elderly in Florida.

(e) Periodically organizing and conducting conferences to review the planning and policy requirements and the adequacy and implications of information and data assembled and available in the Data Bank on Older Floridians.

History.—ss. 1, 2, ch. 78-293.

PART II

ELECTRONIC DATA PROCESSING MANAGEMENT

23.021 Short title.—This act may be cited as the "Florida Electronic Data Processing Management Act."

History.—s. 1, ch. 67-253.

23.022 Definitions.—For the purposes of this act:

(1) "Division" means the Division of Electronic Data Processing of the Department of General Services.

(2) "Agency" means any state officer, department, division, board, bureau, commission, or agency of the executive branch.

History.—s. 2, ch. 67-253; ss. 22, 35, ch. 69-106; s. 8, ch. 71-377; s. 53, ch. 79-190.

23.026 Rules and regulations.—The division shall adopt such rules and regulations deemed necessary to carry out its duties and responsibilities under this act which rules shall be binding on all agencies and persons affected thereby.

History.—s. 6, ch. 67-253; ss. 22, 35, ch. 69-106.

23.027 Powers and duties.—The division shall be authorized to:

(1) Establish and supervise the administration of data processing centers deemed necessary to best serve the data processing needs of all agencies. It may designate an existing agency as a data processing center.

(2) Arrange for and effect the centralization, consolidation and community use of equipment and services deemed necessary to obtain maximum utilization and efficiency in data processing operations.

(3) Transfer to any data processing center the data processing activities of any agency.

(4) Transfer to, or utilize in, any data processing center the data processing equipment presently in use on the effective date of this act or to be subsequently acquired by any agency whose data processing activities are assigned to a data processing center.

(5) Direct and coordinate the efforts of data processing systems and operating personnel employed by the various agencies as deemed necessary to achieve effective and economical data processing services.

(6) Arrange for the transfer of data processing systems and operating personnel employed by any agency to any data processing center as such personnel are required in the operation of any such data processing center.

(7) Cooperate with the Division of Personnel and other interested agencies in acquiring the retention and reassignment of any state employee whose employment might be terminated as a direct result of the consolidation or extension of data processing services as herein provided.

(8) Conduct data processing systems studies prior to the acquisition of data processing equipment. The division may make and enter into all contracts and agreements with other agencies, organizations, associations, corporations, and individuals, or federal agencies as it may determine are necessary, expedient, or incidental to the performance of its duties or the execution of its powers under this act.

(9) Approve specifications for data processing or teleprocessing systems and equipment, coordinating with the Auditor General all system development involving auditing, accounting and financial reporting in accordance with an overall plan for accounting as provided by ss. 11.43, 11.45-11.47.

(10) Acquire by purchase, lease or otherwise, any

data processing, data transmission or teleprocessing equipment, communication lines, devices or instruments necessary for the operation of any data processing center; provided, however, that any such acquisition shall be subject to the provisions of chapter 287.

(11) Notwithstanding any provision of this act to the contrary the division shall designate one data processing center for the exclusive use of law enforcement agencies and shall establish and adopt such rules and regulations concerning its administration so as to permit participation in similar communication and data processing systems maintained by other agencies, agencies of other states, and federal agencies.

History.—s. 7, ch. 67-253; s. 1, ch. 69-355; s. 8, ch. 69-82; ss. 22, 31, 35, ch. 69-106; s. 1, ch. 73-326.

23.028 Electronic equipment; purchase by agencies; restrictions.—No agency shall be authorized to acquire by purchase, lease or otherwise, any electronic data processing, electronic data transmission or teleprocessing equipment or related communication lines, devices and instruments without the prior approval of the division.

History.—s. 8, ch. 67-253; ss. 22, 35, ch. 69-106.

23.029 Working capital fund.—

(1) There is hereby created a working capital fund to be established by the Executive Office of the Governor for the purpose of providing sufficient funds for the operation of data processing centers. Such funds shall be created from moneys budgeted for data processing services and equipment by those agencies to be served by the data processing center.

(2) The funds so allocated shall be in an amount sufficient to finance the center's operation; however, each agency served by the center shall contribute an amount equal to its proportionate share of cost of operating such data processing center. Each agency utilizing the services of the data processing center shall pay such moneys into the working capital fund on a quarterly basis or such other basis as may be determined by the Executive Office of the Governor.

History.—s. 9, ch. 67-253; ss. 2, 3, ch. 67-371; ss. 22, 31, 35, ch. 69-106; s. 78, ch. 79-190.

[1]23.030 Advisory committee, duties, etc.—

(1) There is hereby created a data processing advisory committee for each central data processing center created pursuant to the provisions of this act. Such advisory committees shall consist of a representative of each state agency served by the data processing center. A designee of the director of the division shall serve as the secretary to each committee so created.

(2) It shall be the responsibility of each data processing advisory committee to make periodic reviews of the data processing center's operation with particular emphasis on the services being performed, work priorities, schedules and operating policies and procedures. The committee shall make such recommendations to the division as deemed necessary for the efficient operation of each data processing center.

History.—s. 10, ch. 67-253; ss. 22, 35, ch. 69-106; s. 4, ch. 78-323.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

23.031 Auditor General to serve as consultant; duties.—The Auditor General shall serve as consultant to the division and its director in the planning of data processing or teleprocessing systems, and shall coordinate such planning with the overall development of state accounting and financial reporting as provided by ss. 11.43, 11.45-11.47. The Auditor General shall conduct semiannual management audits of all data processing activities, reporting to the division and expressly to the Legislature, concerning his findings and recommendations in such audits.

History.—s. 11, ch. 67-253; s. 8, ch. 69-82; ss. 22, 35, ch. 69-106.

23.032 Exceptions.—The provisions of this part shall not be applied to:

(1) The electronic data processing equipment, communication services, and data processing activities employed exclusively for research or experimental purposes by any state university.

(2) Electronic computerized systems used solely for the purpose of motor vehicle traffic control and surveillance.

History.—s. 12, ch. 67-253; s. 1, ch. 72-389.

PART III

TRANSPORTATION

23.041 Short title.—This act may be cited as the "Transportation Act."

History.—s. 1, ch. 67-240.

23.042 Definitions.—For the purpose of this act the following words shall have the meaning defined as follows:

(1) "Department" shall mean the Department of Transportation.

(2) "Mass transportation of people" shall mean all forms of transportation whether located on land, water or air.

History.—s. 2, ch. 67-240; ss. 23, 35, ch. 69-106; s. 12, ch. 71-377.

23.043 Purposes.—It shall be the purpose and intent of this act to establish the means whereby the full resources of the state can be used and applied in a coordinated and integrated manner to solve or assist in the solution of the problems of transportation, to plan, program and promote an efficient, integrated and balanced transportation system for the state; to prepare and implement comprehensive plans and programs for transportation development in the state; and to coordinate the transportation

activities of existing state agencies, commissions and boards in the state.

History.—s. 3, ch. 67-240.

23.050 Functions and duties of secretary.—The secretary of the Department of Transportation shall have the following powers, functions and duties:

(1) Develop and from time to time revise and maintain a comprehensive master plan for transportation development.

(2) Develop programs designed to foster efficient and economical public transportation services in the state.

(3) Prepare plans for the development of a commuter system which may include the appointment of a commuter advisory committee.

(4) Develop plans, in cooperation with the Public Service Commission, for a more efficient public transportation service by motor bus operators which shall include; development of statistics, analysis and other data useful to bus operators in the provision of public transportation service; development of more effective coordination between bus service and other forms of public transportation.

(5) Coordinate the transportation activities of the Department of Transportation with those of other public agencies and authorities.

(6) Cooperate with interstate commissions and authorities, state departments, councils, commissions, and other state agencies with appropriate federal agencies and with interested private individuals and organizations in the coordination of plans and policies, for the development of all forms of transportation.

(7) The secretary may adopt such rules and regulations as may be necessary to enable him to perform the duties and functions conferred or imposed upon him by this act, provided, however, that the secretary shall not be empowered to make any rules or regulations which shall in any way limit the power or authority of counties or municipalities to directly or indirectly receive federal aid for local transportation projects; or which shall affect the revenues of any established transit system, not presently regulated by the Public Service Commission, without first receiving the approval of the affected transit system; or which shall limit the power or authority under existing law of counties or municipalities to franchise, establish, or operate transit systems to meet local needs.

History.—s. 10, ch. 67-240; ss. 23, 35, ch. 69-106; s. 19, ch. 71-377.

23.0515 Expressway system; duty of Division of Planning and Programming.—It is the duty of the Division of Planning and Programming of the Department of Transportation to coordinate and assist the activities of all public bodies, authorities, agencies and special districts charged with the development of expressway systems within the state or any of its counties, whether such bodies, authorities, agencies or special districts now exist or may hereafter be created by general or special act of the legislature.

History.—s. 23, ch. 69-106; s. 2, ch. 73-326.

23.052 Assistance from other agencies.—All departments, divisions, boards, authorities and commissions of the state or any political subdivisions are authorized and directed to provide such assistance and data to the Department of Transportation as will enable it to carry out its functions, powers and duties.

History.—s. 12, ch. 67-240.

23.053 Inspections; investigations and hearings; witnesses; books and documents.—The Department of Transportation, at reasonable times, may inspect the property and examine the books and papers dealing with the type and adequacy of services of any person, firm or corporation engaged in operating a public mass transportation facility or system in whole or in part within the state and may hold investigations and hearings within or without the state.

History.—s. 13, ch. 67-240.

23.054 Exception; Florida Public Service Commission.—Nothing in this act shall be construed in any way to include, duplicate, conflict with or amend any authority or responsibility of the Florida Public Service Commission to exercise the regulatory powers of the state with respect to rates, service, safety and certification of convenience and necessity.

History.—s. 14, ch. 67-240.

23.055 Multi-Mode Transportation Corridor Advisory Board; state participation.—

(1) It is the intent of the Legislature that Florida shall continue to participate as a member of the Multi-Mode Transportation Corridor Advisory Board.

(2) The Governor shall appoint Florida residents to serve as Florida's representatives on the board.

History.—ss. 1, 2, ch. 75-285; s. 1, ch. 79-260.

PART IV

FLORIDA MUTUAL AID ACT

23.12 Short title.—This part shall be the "Florida Mutual Aid Act."

History.—s. 1, ch. 69-112.

23.121 Policy and purpose.—

(1) Because of the existing and continuing possibility of the occurrence of riots, civil disturbances, and other major law enforcement problems, and in order to insure that preparations of this state will be adequate to deal with such activity, protect the public peace and safety, and preserve the lives and property of the people of the state, it is found and declared to be necessary:

(a) To create a state law enforcement mutual aid

plan which provides for the coordination of law enforcement planning, operations, and mutual aid on statewide, regional, operational area, county, and city bases;

(b) To provide for the coordination of the dispatch and use of law enforcement personnel and equipment whenever, because of riot, civil disturbance, or other major law enforcement problems, a local law enforcement agency requires the dispatch to it of law enforcement assistance from any other jurisdiction;

(c) To provide for a system for the receipt and dissemination of information, data, and directives pertaining to the law enforcement activities between local agencies;

(d) To prescribe a procedure for the inventory of all law enforcement personnel, facilities, and equipment in the state;

(e) To collect and disseminate information and intelligence relating to riots and civil disturbances, either existing or pending; and

(f) To preplan distribution and allocation of state resources in support of the overall law enforcement mission.

(2) It is further declared to be the purpose of this part to authorize the establishment of such organization and the development and employment of such measures as are necessary and appropriate to carry out the provisions of this part.

History.—s. 2, ch. 69-112.

23.122 Definitions.—As used in this part:

(1) "State of extreme emergency" means the duly proclaimed existence of conditions of extreme peril to the safety of persons and property within the state, which conditions by reasons of their magnitude are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city, and require the combined forces of a "mutual aid region or regions" to combat "state of extreme emergency," but does not include, nor does any provision of this chapter apply to, any condition resulting from a labor controversy.

(2) "State of disaster" means the duly proclaimed existence of conditions of extreme peril to the safety of persons and property within the state caused by such conditions, which by reason of their magnitude, are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city, and require the combined forces of a mutual aid region or regions to combat "state of disaster," but does not include, nor does any provision of this part apply to, any condition resulting from a labor controversy.

(3) "Local peril" or "local emergency" means the existence of conditions within the territorial limits of a local agency, in the absence of a duly proclaimed state of extreme emergency or state of disaster, which conditions are a result of an emergency created by great public calamity which is, or is likely to be, beyond the control of the services, personnel, equipment and facilities of that agency and require combined forces of other local agencies to combat.

(4) "Operational area" means a city and county or a county and the municipal jurisdiction therein.

(5) "Operational area law enforcement coordinator" means the sheriff of each respective county.

(6) "Regional law enforcement coordinator" means that sheriff selected to act in such capacity in any region of the state by the operational area law enforcement coordinator of a region.

(7) "State law enforcement coordinator" means the executive director of the Department of Law Enforcement.

(8) "Political subdivision" means any county or incorporated municipality.

(9) "Northwest region" means the mutual aid region composed of all municipalities within the following counties: Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun, Gulf, Gadsden, Liberty, Franklin, Leon, Wakulla, and Jefferson.

(10) "Northeast region" means the mutual aid region composed of all municipalities within the following counties: Madison, Taylor, Hamilton, Suwannee, Lafayette, Dixie, Columbia, Gilchrist, Levy, Baker, Union, Bradford, Alachua, Nassau, Duval, and Clay.

(11) "Central region" means the mutual aid region composed of all municipalities within the following counties: Citrus, Marion, Sumter, Putnam, St. Johns, Flagler, Volusia, Lake, Seminole, Orange, Brevard, and Osceola.

(12) "West coast region" means the mutual aid region composed of all municipalities within the following counties: Hernando, Pasco, Pinellas, Hillsborough, Polk, Manatee, Hardee, Sarasota, DeSoto, Highlands, Charlotte, Glades, Lee, and Hendry.

(13) "Southern region" means the mutual aid region composed of all municipalities within the following counties: Collier, Indian River, St. Lucie, Martin, Palm Beach, Broward, Dade, Monroe, and Okeechobee.

History.—s. 3, ch. 69-112; ss. 20, 35, ch. 69-106; s. 10, ch. 74-386; s. 1, ch. 77-174; s. 2, ch. 79-8.

23.124 Organizational structure.—

(1) CITIES AND COUNTIES.—

(a) The basis of organization at the city and county level is the police department and sheriff's office which is charged with the maintenance of law and order and protection of life and property within the respective jurisdiction.

(b) The Division of the Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles will coordinate and control all traffic on the highways over which it has traffic control jurisdiction.

(2) OPERATIONAL AREA.—In each operational area there shall be a law enforcement coordinator selected in accordance with procedure established by the operational area officials concerned. He shall be the sheriff of the operational area.

(3) REGION.—

(a) The state shall be divided into five regions which shall be known as the northwest region, northeast region, central region, west coast region, and southern region.

(b) In each region there shall be a law enforcement coordinator who shall be a sheriff. He shall be selected by a majority vote of the sheriffs in each region and shall be known as the operational area law enforcement coordinator within the region.

(c) In each region there shall be a law enforcement coordinating center within the state's regional center. It shall be equipped to perform its emergency function.

(4) STATE.—

(a) Prior to a "state of extreme emergency," the director of the Florida Mutual Aid Plan will be responsible for administrative action and coordination necessary to develop the mutual aid law enforcement program.

(b) Upon the existence of a "state of extreme emergency" proclaimed by the Governor, the Governor is responsible for state law enforcement coordination.

History.—s. 5, ch. 69-112; ss. 24, 35, ch. 69-106.

23.125 Local operations.—

(1) Chiefs of police shall:

(a) Establish and maintain liaison with the operational area law enforcement coordinator, and through him with the regional law enforcement coordinator, in order to relate local plans to state plans for law enforcement mutual aid and disaster services;

(b) Develop and implement local plans and procedures to facilitate effective law enforcement participation in law enforcement problems of major consequences;

(c) Establish liaison with local commanders of the Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles for the purpose of coordination and the development of law enforcement assistance plans;

(d) Assist the director of the Florida Mutual Aid Plan in compiling and maintaining lists of special law enforcement equipment and specially trained personnel, to include strength of regular and auxiliary as reserve personnel. Copies of these lists will be sent by the director of the Florida Mutual Aid Plan to chiefs of police and sheriffs as soon as compiled and at least annually as corrected thereafter;

(e) Request law enforcement mutual aid from other jurisdictions and agencies in accordance with established procedures;

(f) Establish liaison with local units of the Florida National Guard to facilitate use of military resources in emergency situations; and

(g) Establish procedures to insure the rapid flow of information concerning riots, civil disturbances, or other law enforcement problems of major consequence to the law enforcement operational area coordinator.

(2) Chiefs of police and sheriffs should integrate special emergency functions into the normal functions of their respective departments.

History.—s. 6, ch. 69-112; ss. 24, 35, ch. 69-106.

23.126 Operational areas.—

(1) Operational area law enforcement coordinators should:

(a) Establish and maintain an effective law enforcement coordinating center and such alternate centers as are deemed necessary.

(b) Maintain list of special law enforcement equipment and specially trained personnel and the number of regular and auxiliary as reserve personnel within the operational area.

(c) Ensure that full and complete information relating to riots, civil disturbances, and other major law enforcement problems is gathered from within the operational area and furnished to the regional law enforcement coordinator.

(d) During a "state of extreme emergency," perform assigned law enforcement functions.

(2) Regional law enforcement coordinators should:

(a) Establish and maintain an effective law enforcement coordinating center and such alternate centers as are deemed necessary.

(b) Maintain list of special law enforcement equipment and specially trained personnel and the strength of regular and auxiliary or reserve personnel of the law enforcement agencies within the region.

(c) Initiate contact with law enforcement administrators within the region to assist in collection of intelligence and information relating to riots, civil disturbance, and other major law enforcement problems, utilize the information to assist in planning for use of regional law enforcement resources, and furnish the information and planning to the director of the Florida Mutual Aid Plan.

(d) During a "state of extreme emergency," "disaster," or "local peril":

1. Perform assigned law enforcement functions.

2. Provide the necessary law enforcement representation at the regional emergency operating center, if the latter is in a facility separate from the law enforcement coordinating center.

(3) On the state level the director of the State Mutual Aid Plan shall:

(a) Coordinate, integrate, and implement law enforcement planning and activities for the use of mutual aid and state resources;

(b) Maintain lists of special law enforcement equipment, specially trained personnel, and all regular and auxiliary or reserve law enforcement personnel and equipment within the state;

(c) Organize, direct, and supervise the law enforcement services of the Florida Mutual Aid Plan.

(d) Coordinate and implement the gathering and collection of information and intelligence relating to possible requirements for law enforcement mutual aid or for assistance from state agencies to support local law enforcement agencies in local peril, disaster, or emergency which may arise out of civil disturbances, demonstrations, or riots and provide this information to the State Mutual Aid Council;

(e) Maintain liaison with the Division of the Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles in order to coordinate and integrate plans for traffic control and the participation of the department in the law enforcement operation;

(f) Maintain liaison with the Governor, federal and state departments and agencies, and local law enforcement officials in order to achieve close coordination and cooperation in planning and operations in trouble areas;

(g) Facilitate the flow of law enforcement information from federal and state organizations to regional, operational area, and local law enforcement officials;

(h) Maintain law enforcement emergency equipment vans, and provide equipment, upon request, to departments in need of specialized equipment;

(i) Maintain law enforcement communications vans and facilitate their availability to jurisdictions requiring supplemented law enforcement mutual aid communications; and

(j) Maintain liaison with the Attorney General in order to keep him informed of changes in law enforcement plans and regulations, mutual aid agreements, and current developments in all situations from a legal standpoint.

History.—s. 7, ch. 69-112; ss. 24, 35, ch. 69-106.

23.127 Powers, privileges, and immunities.—(1) Whenever the employees of any political subdivision are rendering aid outside and pursuant to the authority contained in this part, such employees shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the political subdivision in which they are normally employed.

(2) The political subdivision which furnishes any equipment pursuant to this part shall bear the loss or damage to such equipment and shall pay any expense incurred in the operation and maintenance thereof. The political subdivision furnishing aid pursuant to this part shall compensate its employees during the time of the rendering of such aid and shall defray the actual travel and maintenance expenses of such employees while they are rendering such aid. Such compensation shall include any amounts paid or due for compensation due to personal injury or death while such employees are engaged in rendering such aid.

(3) All of the privileges and immunities from liability, exemption from laws, ordinances and rules, and all pension, insurance, relief, disability, workers' compensation, salary, death and other benefits which apply to the activity of such officers, agents, or employees of any such agency when performing their respective functions within the territorial limits of their respective public agencies shall apply to them to the same degree, manner, and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this mutual aid agreement. The provisions of this section shall apply with equal effect to paid, volunteer, and auxiliary employees.

History.—s. 8, ch. 69-112; s. 48, ch. 79-40.

23.128 Penalties.—Any person who violates any of the provisions of this part or who refuses or willfully neglects to obey any lawful rule, regulation, or order promulgated or issued as provided in this part shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 10, ch. 69-112; s. 12, ch. 71-136.

PART V

EARLY CHILDHOOD AND FAMILY DEVELOPMENT ACT

23.13 Short title.—This part shall be known and may be cited as the "Early Childhood and Family Development Act of 1972."

History.—s. 1, ch. 72-285.

23.131 Legislative finding.—The legislature finds and declares that the early childhood years are crucial to the mental, physical, and emotional development of children, and that the experiences of the early childhood years are highly significant with respect to later development, including educational and vocational success. The legislature further recognizes the primary role and responsibility of the family for the development of children and the importance of strengthening the family members' abilities to foster the development of young children. It shall be the policy of the state to cooperate with private groups and governmental agencies to encourage and assist families in the provision of an environment for young children suitable to their full development.

History.—s. 2, ch. 72-285.

23.132 Definitions.—As used in this part:

(1) "Early childhood" means that period of life in which a child's intellectual, social, emotional, physical, and mental qualities are in the formative stage and in which the foundation for his future development is made. Within this definition, principal emphasis shall be given to the years between 3 and 8.

(2) "Office" means the office of early childhood development.

(3) "Commissioner" means the state commissioner of education.

(4) "School board" means the governing body of each school district.

(5) "Councils" means advisory councils for early childhood development authorized by this part.

(6) "District" means school district.

(7) "Client" means anyone who will directly benefit from or receive early childhood services authorized under this part.

History.—s. 3, ch. 72-285.

23.133 Responsibility for early childhood development programs.—

(1) LEGISLATIVE INTENT.—The legislature finds that there are numerous state and federal programs for young children. This myriad of programs cuts across several state and local agencies, which results in overlapping programs, duplication of effort, confusion, and reduced benefits to children. These uncoordinated programs fail to give adequate attention to the role of other family members in the development of young children. Under this system the needs of young children are not given the atten-

tion or priority they require and deserve. Therefore, the legislature finds that responsibility for the promotion, planning, coordination, and administration of early childhood programs should be placed in an office of early childhood development.

(2) CREATION OF AN OFFICE OF EARLY CHILDHOOD DEVELOPMENT.—An office of early childhood development shall be established within the office of the Governor. The Governor shall appoint a director of the office of early childhood development. The duties of the office shall be:

(a) To formulate a long-range, comprehensive plan for early childhood and family development;

(b) To establish priorities for implementation of the comprehensive plan;

(c) To take responsibility for the administration of all programs so as to take maximum advantage of all federal funds;

(d) To promote, develop, establish, coordinate, and conduct, through the office or any approved agency, public or private, unified programs relating to early childhood development;

(e) To submit all applications to federal or state agencies for funds, services, or commodities relating to early childhood development;

(f) To evaluate all programs receiving federal or state funds, services, or commodities as to their effectiveness in terms of the results achieved;

(g) To conduct, sponsor, or promote research in the field of early childhood development, with emphasis on the early diagnosis, treatment, or prevention of later disabilities;

(h) To promulgate rules and regulations for implementation of the authority and responsibilities within this section.

(3) ADVISORY COUNCILS.—Advisory councils for early childhood development programs shall be established, and their memberships designated, by the office in accordance with the requirements of federal law or administrative regulations or state law or administrative regulations, as the case may be. Members of advisory councils shall be entitled to receive per diem and expenses for travel while carrying out official business of the council. Such expenses shall be paid in accordance with the provisions of s. 112.061.

History.—s. 4, ch. 72-285.

23.134 Early childhood development personnel training program.—

(1) Pursuant to such policies and regulations as the Department of Education may adopt, any school board, college, community college, vocational-technical school, or group whose program of early childhood development has been approved by the office may submit a proposal to the Department of Education for a program for the training of personnel in early childhood development. Such proposal shall contain:

(a) An itemized estimate of cost;

(b) The estimated membership and type of participants;

(c) A description of the course of training or study and the methods and materials to be used;

(d) Program goal or goals and a method of assessment of program success;

(e) A method of financial support, including sources of funding;

(f) A definition of the sponsor's role and duties, supported by resolution or other document indicating intent to support such a program of training; and

(g) Such other items as the Department of Education may prescribe.

(2) After review of such proposals by the office, the Department of Education may make grants under such procedures as it may prescribe in support of such proposals.

(3) Upon request of any body competent to make proposals under subsection (1), the Department of Education may provide such technical advice as is necessary to enable the body to develop a suitable proposal.

(4) In cooperation with the office, the Department of Education shall develop or obtain training materials, curriculum, and teaching formats for training persons in early childhood development. Such courses will be designed for:

(a) Professionals in childhood development to train them in early childhood education;

(b) Para-professionals, including members of the community who volunteer to work with early childhood development, who are to work with programs in early childhood development but are not full time, or lack professional training and skills or lack experience with early childhood education; and

(c) Members of a family with young children.

(5) The Department of Education shall make such materials available to persons wishing to conduct training programs under this part.

(6) The courses and materials referred to in subsections (1), (2), and (4) shall take a comprehensive view of child development, including educational, social, health, nutritional, psychological and community involvement training.

(7) The policies and regulations adopted by the Department of Education pursuant to this section shall be coordinated with the office.

History.—s. 70, ch. 72-221; s. 5, ch. 72-285.

23.135 Educational broadcasting for early childhood development.—

(1) It shall be the responsibility of the Department of Education to encourage public broadcasting programming in the areas of early childhood development. Such programming shall be directed to include both the child and his family members. Materials in these areas may be produced or acquired by lease or purchase.

(2) It shall be the responsibility of the Department of Education to encourage commercial television broadcasting to offer such programming in areas of the state where public television broadcasting is not available.

(3) The Department of Education shall encourage public and private television broadcasting to offer such programs at a time which will attract the largest audience of those for whom the program has been developed.

(4) The Department of Education shall coordinate such programs with the office.

History.—s. 6, ch. 72-285.

23.136 Reports appraising early childhood development programs.—The office, as a part of the early childhood program established in s. 23.133, shall make an annual report to the President of the Senate, the Speaker of the House, and the chairmen of the senate and house committees so designated by the President of the Senate and the Speaker of the House. The report shall contain an appraisal of all programs in early childhood development as to their effectiveness, efficiency, and utilization of resources. The office shall make recommendations as it deems appropriate, including recommendations for improved coordination. When another state agency is required to report on a program of early childhood development, the report of such agency shall be included in the report of the office.

History.—s. 8, ch. 72-285.

23.137 Transfer of funds to early childhood development office.—The Executive Office of the Governor is authorized to transfer such appropriations and related positions as are necessary to effectuate the purposes of this part to the office of early childhood development from any department under the direct supervision of the Governor. Upon approval of the administration commission, the Executive Office of the Governor may transfer such appropriations and related positions as are necessary to effectuate the purposes of this part to the office of early childhood development from any other department.

History.—s. 10, ch. 72-285; s. 79, ch. 79-190.

PART VI

SOUTHERN GROWTH POLICIES AGREEMENT

23.140 Southern Growth Policies Agreement.—The Southern Growth Policies Agreement is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

SOUTHERN GROWTH POLICIES AGREEMENT

ARTICLE I

FINDINGS AND PURPOSES.—

(a) The party states find that the South has a sense of community based on common social, cultural and economic needs and fostered by a regional tradition. There are vast potentialities for mutual improvement of each state in the region by cooperative planning for the development, conservation and efficient utilization of human and natural resources in a geographic area large enough to afford a high degree of flexibility in identifying and taking maximum advantage of opportunities for healthy and beneficial growth. The independence of each state and the special needs of subregions are recognized and are to be safeguarded. Accordingly, the cooperation resulting from this Agreement is intended to assist the states in meeting their own problems by enhancing their abilities to recognize and analyze regional opportunities and take account of regional influences in planning and implementing their public policies.

(b) The purposes of this Agreement are to provide:

1. Improved facilities and procedures for study, analysis and planning of governmental policies, programs and activities of regional significance.
2. Assistance in the prevention of interstate conflicts and the promotion of regional cooperation.
3. Mechanisms for the coordination of state and local interests on a regional basis.
4. An agency to assist the states in accomplishing the foregoing.

ARTICLE II

THE BOARD.—

(a) There is hereby created the Southern Growth Policies Board, hereinafter called "the Board."

(b) The Board shall consist of five members from each party state, as follows:

1. The Governor.
2. Two members of the State Legislature, one appointed by the presiding officer of each house of the Legislature or in such other manner as the Legislature may provide.
3. Two residents of the state who shall be appointed by the Governor to serve at his pleasure.

(c) In making appointments pursuant to paragraph (b)3., a Governor shall, to the greatest extent practicable, select persons who, along with the other members serving pursuant to paragraph (b), will make the state's representation on the Board broadly representative of the several socio-economic elements within his state.

(d)1. A Governor may be represented by an alternate with power to act in his place and stead, if notice of the designation of such alternate is given to the Board in such manner as its Bylaws may provide.

2. A legislative member of the Board may be represented by an alternate with power to act in his place and stead, unless the laws of his state prohibit such representation and if notice of the designation of such alternate is given to the Board in such manner as its Bylaws may provide. An alternate for a legislative member of the Board shall be selected by the member from among the members of the legislative house in which he serves.

3. A member of the Board serving pursuant to paragraph (b)3. of this Article may be represented by another resident of his state who may participate in his place and stead, except that he shall not vote; provided that notice of the identity and designation of the representative selected by the member is given to the Board in such manner as its Bylaws may provide.

ARTICLE III

POWERS.—

(a) The Board shall prepare and keep current a Statement of Regional Objectives, including recommended approaches to regional problems. The Statement may also identify projects deemed by the Board to be of regional significance. The Statement shall be available in its initial form two years from the effective date of this Agreement and shall be amended or revised no less frequently than once every six years.

The Statement shall be in such detail as the Board may prescribe. Amendments, revisions, supplements, or evaluations may be transmitted at any time. An annual Commentary on the Statement shall be submitted at a regular time to be determined by the Board.

(b) In addition to powers conferred on the Board elsewhere in this Agreement, the Board shall have the power to make or commission studies, investigations and recommendations with respect to:

1. The planning and programming of projects of interstate or regional significance.
2. Planning and scheduling of governmental services and programs which would be of assistance to the orderly growth and prosperity of the region, and to the well-being of its population.
3. Effective utilization of such federal assistance as may be available on a regional basis or as may have an interstate or regional impact.
4. Measures for influencing population distribution, land use, development of new communities and redevelopment of existing ones.
5. Transportation patterns and systems of interstate and regional significance.
6. Improved utilization of human and natural resources for the advancement of the region as a whole.
7. Any other matters of a planning, data collection or informational character that the Board may determine to be of value to the party states.

ARTICLE IV

AVOIDANCE OF DUPLICATION.—

(a) To avoid duplication of effort and in the interest of economy, the Board shall make use of existing studies, surveys, plans and data and other materials in the possession of the governmental agencies of the party states and their respective subdivisions or in the possession of other interstate agencies. Each such agency, within available appropriations and if not expressly prevented or limited by law, is hereby authorized to make such materials available to the Board and to otherwise assist it in the performance of its functions. At the request of the Board, each such agency is further authorized to provide information regarding plans and programs affecting the region, or any subarea thereof, so that the Board may have available to it current information with respect thereto.

(b) The Board shall use qualified public and private agencies to make investigations and conduct research, but if it is unable to secure the undertaking of such investigations or original research by a qualified public or private agency, it shall have the power to make its own investigations and conduct its own research. The Board may make contracts with any public or private agencies or private persons or entities for the undertaking of such investigations or original research within its purview.

(c) In general, the policy of paragraph (b) of this Article shall apply to the activities of the Board relating to its Statement of Regional Objectives, but nothing herein shall be construed to require the Board to rely on the services of other persons or agencies in developing the Statement of Regional Objectives or any amendment, supplement or revision thereof.

ARTICLE V

ADVISORY COMMITTEES.—

The Board shall establish a Local Governments Advisory Committee. In addition, the Board may establish advisory committees representative of subregions of the South, civic and community interests, industry, agriculture, labor or other categories or any combinations thereof. Unless the laws of a party state contain a contrary requirement, any public official of the party state or a subdivision thereof may serve on an advisory committee established pursuant hereto and such service may be considered as a duty of his regular office or employment.

ARTICLE VI

INTERNAL MANAGEMENT OF THE BOARD.—

(a) The members of the Board shall be entitled to one vote each. No action of the Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Board are cast in favor thereof. Action of the Board shall be only at a meeting at which a majority of the members or their alternates are present. The Board shall meet at least once a year. In its Bylaws, and subject to such directions and limitations as may be contained therein, the Board may delegate the exercise of any of its powers relating to internal administration and management to an Executive Committee or the Executive Director. In no event shall any such delegation include final approval of:

1. A budget or appropriation request.
2. The Statement of Regional Objectives or any amendment, supplement or revision thereof.
3. Official comments on or recommendations with respect to projects of interstate or regional significance.
4. The annual report.

(b) To assist in the expeditious conduct of its business when the full Board is not meeting, the Board shall elect an Executive Committee of not to exceed 23 members including at least one member from each party state. The Executive Committee, subject to the provisions of this Agreement and consistent with the policies of the Board, shall be constituted and function as provided in the Bylaws of the Board. One-half of the membership of the Executive Committee shall consist of Governors, and the remainder shall consist of other members of the Board, except that at any time when there is an odd number of members on the Executive Committee, the number of Governors shall be one less than half of the total membership. The members of the Executive Committee shall serve for terms of 2 years, except that members elected to the first Executive Committee shall be elected as follows: one less than half of the membership for 2 years and the remainder for 1 year. The Chairman, Chairman-Elect, Vice Chairman and Treasurer of the Board shall be members of the Executive Committee and anything in this paragraph to the contrary notwithstanding shall serve during their continuance in these offices. Vacancies in the Executive Committee shall not affect

its authority to act, but the Board at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term.

(c) The Board shall have a seal.

(d) The Board shall elect, from among its members, a Chairman, a Chairman-Elect, a Vice Chairman and a Treasurer. Elections shall be annual. The Chairman-Elect shall succeed to the office of Chairman for the year following his service as Chairman-Elect. For purposes of the election and service of officers of the Board, the year shall be deemed to commence at the conclusion of the annual meeting of the Board and terminate at the conclusion of the next annual meeting thereof. The Board shall provide for the appointment of an Executive Director. Such Executive Director shall serve at the pleasure of the Board, and together with the Treasurer and such other personnel as the Board may deem appropriate shall be bonded in such amounts as the Board shall determine. The Executive Director shall be Secretary.

(e) The Executive Director, subject to the policy set forth in this Agreement and any applicable directions given by the Board, may make contracts on behalf of the Board.

(f) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the Executive Director, subject to the approval of the Board, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Board, and shall fix the duties and compensation of such personnel. The Board in its Bylaws shall provide for the personnel policies and programs of the Board.

(g) The Board may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

(h) The Board may accept for any of its purposes and functions under this Agreement any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the Board pursuant to this paragraph or services borrowed pursuant to paragraph (g) of this Article shall be reported in the annual report of the Board. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

(i) The Board may establish and maintain such facilities as may be necessary for the transacting of its business. The Board may acquire, hold, and convey real and personal property and any interest therein.

(j) The Board shall adopt Bylaws for the conduct of its business and shall have the power to amend and rescind these Bylaws. The Board shall publish its Bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(k) The Board annually shall make to the Governor and Legislature of each party state a report covering the activities of the Board for the preceding year. The Board at any time may make such additional reports and transmit such studies as it may deem desirable.

(l) The Board may do any other or additional things appropriate to implement powers conferred upon it by this Agreement.

ARTICLE VII

FINANCE.—

(a) The Board shall advise the Governor or designated officer or officers of each party state of its budget of estimated expenditures for such period as may be required by the laws of that party state. Each of the Board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

(b) The total amount of appropriation requests under any budget shall be apportioned among the party states. Such apportionment shall be in accordance with the following formula:

1. One-third in equal shares,
2. One-third in the proportion that the population of a party state bears to the population of all party states, and
3. One-third in the proportion that the per capita income in a party state bears to the per capita income in all party states.

In implementing this formula, the Board shall employ the most recent authoritative sources of information and shall specify the sources used.

(c) The Board shall not pledge the credit of any party state. The Board may meet any of its obligations in whole or in part with funds available to it pursuant to Article VI (h) of this Agreement, provided that the Board takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the Board makes use of funds available to it pursuant to Article VI (h), or borrows pursuant to this paragraph, the Board shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same. The Board may borrow against anticipated revenues for terms not to exceed two years, but in any such event the credit pledged shall be that of the Board and not of a party state.

(d) The Board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Board shall be subject to the audit and accounting procedures established by its Bylaws. However, all receipts and disbursements of funds handled by the Board shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Board.

(e) The accounts of the Board shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the Board.

(f) Nothing contained herein shall be construed

to prevent Board compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Board.

ARTICLE VIII

COOPERATION WITH THE FEDERAL GOVERNMENT AND OTHER GOVERNMENTAL ENTITIES.—

Each party state is hereby authorized to participate in cooperative or joint planning undertakings with the Federal Government, and any appropriate agency or agencies thereof, or with any interstate agency or agencies. Such participation shall be at the instance of the Governor or in such manner as state law may provide or authorize. The Board may facilitate the work of state representatives in any joint interstate or cooperative federal-state undertaking authorized by this Article, and each such state shall keep the Board advised of its activities in respect of such undertakings, to the extent that they have interstate or regional significance.

ARTICLE IX

SUBREGIONAL ACTIVITIES.—

The Board may undertake studies or investigations centering on the problems of one or more selected subareas within the region: provided that in its judgment, such studies or investigations will have value as demonstrations for similar or other areas within the region. If a study or investigation that would be of primary benefit to a given state, unit of local government, or intrastate or interstate area is proposed, and if the Board finds that it is not justified in undertaking the work for its regional value as a demonstration, the Board may undertake the study or investigation as a special project. In any such event, it shall be a condition precedent that satisfactory financing and personnel arrangements be concluded to assure that the party or parties benefited bear all costs which the Board determines that it would be inequitable for it to assume. Prior to undertaking any study or investigation pursuant to this Article as a special project, the Board shall make reasonable efforts to secure the undertaking of the work by another responsible public or private entity in accordance with the policy set forth in Article IV (b).

ARTICLE X

COMPREHENSIVE LAND USE PLANNING.—

If any two or more contiguous party states desire to prepare a single or consolidated comprehensive land use plan, or a land use plan for any interstate area lying partly within each such state, the Governors of the states involved may designate the Board as their joint agency for the purpose. The Board shall accept such designation and carry out such responsibility; provided that the states involved make arrangements satisfactory to the Board to reimburse it or otherwise provide the resources with which the land use plan is to be prepared. Nothing contained in this Article shall be construed to deny the availability for use in the preparation of any such plan of data and information already in the possession of the Board or to require payment on account of the use thereof in addition to payments otherwise required to be made pursuant to other provisions of this Agreement.

ARTICLE XI

COMPACTS AND AGENCIES UNAFFECTED.—

Nothing in this Agreement shall be construed to:

1. Affect the powers or jurisdiction of any agency of a party state or any subdivision thereof.

2. Affect the rights or obligations of any governmental units, agencies or officials, or of any private persons or entities conferred or imposed by any interstate or interstate-federal compacts to which any one or more states participating herein are parties.

3. Impinge on the jurisdiction of any existing interstate-federal mechanism for regional planning or development.

ARTICLE XII

ELIGIBLE PARTIES; ENTRY INTO AND WITHDRAWAL.—

(a) This Agreement shall have as eligible parties the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, the Commonwealth of Puerto Rico, and the Territory of the Virgin Islands, hereinafter referred to as party states.

(b) Any eligible state may enter into this Agreement and it shall become binding thereon when it has adopted the same; provided that in order to enter into initial effect, adoption by at least five states shall be required.

(c) Adoption of the Agreement may be either by enactment thereof or by adherence thereto by the Governor; provided that in the absence of enactment, adherence by the Governor shall be sufficient to make his state a party only until December 31, 1973. During any period when a state is participating in this Agreement through gubernatorial action, the Governor may provide to the Board an equitable share of the financial support of the Board from any source available to him. Nothing in this paragraph shall be construed to require a Governor to take action contrary to the constitution or laws of his state.

(d) Except for a withdrawal effective on December 31, 1973, in accordance with paragraph (c) of this Article, any party state may withdraw from this Agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing state has given notice in writing of the withdrawal to the Governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE XIII

CONSTRUCTION AND SEVERABILITY.—

This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the constitution of any

state or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution of any state participating therein, the Agreement shall remain in full force and effect as to the state affected as to all severable matters.

History.—s. 1, ch. 73-351; s. 1, ch. 79-19.

PART VII

FLORIDA RESEARCH AND DEVELOPMENT COMMISSION

23.145 Purpose.—The purpose of this part is to encourage and promote the establishment of centers of research and development activity combining the resources of public or private in-state institutions of higher learning, private-sector enterprise involved in pure or applied research, and state or federal governmental agency research.

History.—s. 1, ch. 78-402; s. 1, ch. 79-101.

23.146 Definitions.—As used in this part, unless the context otherwise requires:

(1) "Commission" means the Florida Research and Development Commission created pursuant to s. 23.147.

(2) "Authority" or "research and development authority" means any of the public corporations created pursuant to ss. 159.701-159.7095.

(3) "Board" means the board of county commissioners or other body charged with governing the county.

(4) "Designated" means a term of recognition by the Florida Research and Development Commission that a research and development authority has met all of the requirements of this part and is empowered to transact any business and exercise all powers authorized pursuant to ss. 159.701-159.7095 for the purposes of development, operation, management, and financing of a research and development park.

History.—s. 2, ch. 78-402; s. 1, ch. 79-101; s. 6, ch. 79-164.

23.147 Florida Research and Development Commission; creation; membership.—

(1) There is created within the Department of Commerce the Florida Research and Development Commission. The commission shall consist of seven persons who are resident citizens of the state, each of whom is, and has been, actively engaged in the category for which he is named.

(a) One member shall be designated a State University System member and shall be the Chancellor of the State University System.

(b) One member shall be designated a private university member and shall be primarily engaged as the chief executive officer of a private college or university.

(c) Two members shall be designated state government members and shall be the Secretary of the Department of Commerce and the Commissioner of Agriculture as a trustee of the Internal Improvement Trust Fund.

(d) Three members shall be designated at-large members and shall be actively engaged in the area of research and development, industrial development, or banking and finance.

(2) The members of the commission shall possess the qualifications herein provided. The Governor shall appoint four members to 4-year terms and three members to 3-year terms. Members shall serve until their respective successors are appointed and qualified. The regular term shall begin on July 1 and shall end on June 30 of the fourth or third year, depending on the length of appointment. The qualifications of each member of the commission shall continue throughout the respective term of his office, and, in the event a member should, after appointment, fail to meet the qualifications or classification which he possessed at the time of his appointment, said member shall resign or be removed and replaced with a member possessing the proper qualifications and classification.

History.—s. 3, ch. 78-402; s. 1, ch. 79-101.

23.148 Commission; organization; meetings.—

(1) A majority of the members of the commission shall constitute a quorum for the transaction of all business and the carrying out of the duties of the commission.

(2) The commission shall elect one of its members as chairman, who shall be responsible for the administrative functions of the commission.

(3) The commission may meet at such times and places as it may designate, but shall hold regular meetings at least quarterly. The chairman or any four members may call a special meeting of the commission.

(4) No member of the commission shall receive any salary or other compensation, except necessary per diem and traveling expenses, as provided in s. 112.061, incurred in connection with his official duties as a commission member.

(5) The commission, in the performance of its powers and duties enumerated under this part, shall not be subject to control, supervision, or direction by the Department of Commerce.

(6) The commission shall have a seal for authentication of its orders and proceedings, upon which shall be inscribed the words "State of Florida—Research and Development Commission—Seal," and it shall be judicially noticed.

History.—s. 4, ch. 78-402; s. 1, ch. 79-101.

23.1491 Commission; powers and duties.—

(1) The commission shall, in accordance with chapter 120, adopt, promulgate, amend, or rescind such rules as it deems necessary to carry out the provisions of this part.

(2) The commission shall designate a research and development authority, pursuant to petition by an authority, upon a determination that the petition

contains, but is not limited to:

(a) The resolution of the board constituting the authority.

(b) A concept of operation of the proposed research and development park consistent with the purposes of this part.

(c) A statement of affiliation with one or more state-based, accredited, public or private institutions of higher learning with research and development capabilities. The commission may accept the statement of affiliation provided the institution is not affiliated with or providing resources to more than one other research and development park. However, two or more institutions, whether public or private, may affiliate with the same research and development park and enter into cooperative agreements to further the purposes of this part.

(d) Evidence of availability of a site suitable for the projected scope of operations.

(e) Evidence of the economic feasibility of the proposed research and development park.

(f) A plan for funding the development of the proposed research and development park, including a minimum financial commitment by the authority of $50,000 in liquid assets for development purposes.

(3) The commission shall not approve or designate more than one authority for each county or group of counties.

(4) The commission shall provide by rule a procedure for filing and prompt disposition of petitions for declaratory statements as to the applicability of any statutory provision or any rule or order of the commission. Commission disposition of such petitions shall be final agency action.

History.—s. 1, ch. 79-101.

PART VIII

FLORIDA CRIMINAL JUSTICE COUNCIL

23.15 Short title.—This act shall be known and may be cited as the "Florida Criminal Justice Council Act."

History.—s. 1, ch. 78-420.

23.151 Definitions.—As used in this act:

(1) "Bureau" means the Bureau of Criminal Justice Assistance of the Department of Community Affairs.

(2) "Comprehensive statewide action plan" means a plan that conforms with the purposes and requirements of this act, addresses itself to all facets of law enforcement and criminal justice problems in areas characterized by both high crime incidence and high law enforcement and criminal justice activity, and includes a total and complete program for the improvement of criminal and juvenile justice.

(3) "Criminal justice system" includes all activities pertaining to crime prevention and enforcement of the criminal law, including, but not limited to, the police, the courts, and the correction system as well as general programs for crime prevention and citizen action; the problems of victims of crime; the prevention, detection, and investigation of crime; the apprehension of offenders; the prosecution and defense of criminal cases; the trial, conviction, and sentencing of offenders; and correction and rehabilitation, which includes probation, imprisonment, treatment, and parole.

(4) "Juvenile justice system" includes all activities pertaining to juvenile delinquency prevention or reduction and enforcement of the criminal law; prevention, detection, investigation, and control of acts of juvenile delinquency; the apprehension of offenders; the adjudication and disposition of juvenile delinquency cases and offenders; and correction and rehabilitation which includes probation, treatment, and incarceration.

(5) "LEAA" means the Law Enforcement Assistance Administration, created by the Omnibus Crime Control and Safe Streets Act of 1968.

(6) "Local elected official" means the elected and legislative officials of a county, municipality, or consolidated city-county government.

History.—s. 2, ch. 78-420; s. 80, ch. 79-190.

23.152 Florida Council on Criminal Justice; membership; staff.—

(1) There is created within the executive branch the Florida Council on Criminal Justice, which shall be under the jurisdiction of the Governor.

(2) The composition of the membership of the council shall be consistent with federal requirements governing state planning agencies eligible to receive federal funds for the improvement of state law enforcement activities and the administration of criminal and juvenile justice systems.

(3) The council shall consist of the following members:

(a) The Governor or his appointee, the Attorney General, the Executive Director of the Department of Law Enforcement, the Secretary of Corrections, and the Director of the Youth Services Program Office of the Department of Health and Rehabilitative Services.

(b) The Chief Justice of the Supreme Court and the State Court Administrator.

(c) Three state senators appointed by the President of the Senate and three state representatives appointed by the Speaker of the House of Representatives.

(d) The Secretary of Community Affairs.

(e) One state attorney appointed by the president of the State Attorneys' Association and one public defender appointed by the president of the Public Defenders' Association.

(f) The current chairperson of the Florida Crimes Compensation Commission.

(g) Other representation, which shall be appointed by the Governor as follows:

1. Representatives of local law enforcement agencies, including one sheriff appointed by the president of the Florida Sheriffs Association.

2. Representatives of state and local adult cor-

rections and rehabilitation agencies and related organizations.

3. Representatives of state and local juvenile justice agencies and related organizations.

4. Local elected officials and a circuit judge.

5. Private citizens.

(4) Members shall serve a 4-year term and may be reappointed for no more than one additional consecutive term, except that the terms of those members who serve by virtue of the office they hold, pursuant to paragraphs (3)(a)-(f), shall be concurrent with their service in the office from which they derive their membership.

(5) Should any member cease to be an officer or employee of the unit or agency he is appointed to represent, his membership on the council shall terminate immediately and the new officer or employee shall take office in the same manner as his predecessor to fill the unexpired term. Other vacancies occurring, except those by the expiration of a term, shall be filled for the balance of the unexpired term in the same manner as the original appointment within 30 days of the vacancy.

(6) The Governor or his appointee shall serve as chairperson. A vice-chairperson shall be elected by the council and shall serve as chairperson in the event of the chairperson's absence.

(7) A member of the council is not entitled to a salary for duties performed as a member of the council. Each member is entitled to reimbursement for travel and other necessary expenses incurred in the performance of official council duties, as provided in s. 112.061.

(8)(a) Members of the newly formed Florida Council on Criminal Justice shall not be appointed until February 15, 1979. The current Governor's Commission on Criminal Justice Standards and Goals shall be renamed the Florida Council on Criminal Justice on October 1, 1978, and shall serve in an advisory capacity to the Governor regarding the activities of the renamed bureau until the appointment of the new council.

(b) Of the members appointed to the newly formed council on February 15, 1979, one-third shall serve for a term of 2 years, one-third shall serve for a term of 3 years, and one-third shall serve for a term of 4 years, except that a member appointed to succeed another member whose term has not expired shall be appointed for the period of the unexpired term and subsequently may be appointed for a 4-year term. This does not apply to designated members under paragraphs (3)(a)-(f).

History.—ss. 3, 8, ch. 78-420; s. 2, ch. 79-3; s. 4, ch. 79-8; ss. 1, 2, ch. 79-129; s. 81, ch. 79-190.

23.153 Council meetings; quorum; committees; bylaws.—

(1) The council shall meet quarterly and at such other times designated by the chairperson.

(2) A majority of the membership shall constitute a quorum.

(3) The council shall appoint an executive committee from among its members to act in place of the full council and to perform duties assigned to it by the full council. The chairperson may appoint such committees, subcommittees, advisory panels, and task forces as may be desirable and delegate to them such duties and functions as are appropriate.

(4) All meetings of the council at which public business is discussed or formal action is taken shall conform to the Administrative Procedure Act for public notice requirements.

(5) The council and any other committee or organization for the purposes of this act shall provide for public access to all records relating to its functions under this act, except such records as are required to be kept confidential by any other provision of state, federal, or local law.

(6) The council shall promulgate rules of procedure governing its operations, provided they are in accordance with the provisions of the Administrative Procedure Act.

(7) The council shall act in an advisory capacity to the Governor, Legislature, Florida Supreme Court, and the Bureau of Criminal Justice Assistance in the performance of its stated responsibilities set forth in s. 23.154.

History.—s. 4, ch. 78-420.

23.154 Bureau of Criminal Justice Assistance.—

(1) The Bureau of Criminal Justice Assistance of the Department of Community Affairs shall:

(a) Serve as the state planning agency pursuant to the Omnibus Crime Control and Safe Streets Act of 1968 and the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, and other related federal acts.

(b) Advise and assist the Governor in developing policies, plans, and programs for improving the coordination, administration, and effectiveness of the criminal justice system in the state.

(c) Prepare a state comprehensive criminal justice plan on behalf of the Governor. Such plan, and any substantial modifications thereto, shall be submitted to the Legislature each year for its advisory review of the goals, priorities, and policies contained therein, 60 days prior to submission to the United States Department of Justice. Such plan, to be periodically updated, shall be based on an analysis of the state's criminal justice needs and problems and shall be in conformance with state and other appropriate regulations.

(d) Establish and implement goals, priorities, and standards for the reduction of crime and the improvement of the administration of justice in the state.

(e) Provide staff support for the development of a comprehensive plan to reduce crimes against Florida's elderly.

(f) Recommend legislation to the Governor and Legislature in the criminal justice field and provide appropriate testimony and assistance on criminal justice-related legislation.

(g) Encourage local and regional comprehensive criminal justice planning efforts.

(h) Monitor and evaluate programs and projects, funded in whole or in part by state government, aimed at reducing crime and delinquency and improving the administration of justice.

(i) Cooperate with and render technical assistance to state agencies, units of general local government, and public or private agencies relating to the criminal justice system.

(j) Provide for the receipt, review, award, and subsequent adjustment as necessary of LEAA grants.

(k) Provide audit review and audit resolution responsibilities for LEAA grants in Florida.

(l) Have the authority to collect from any state or local governmental entity information, data, reports, statistics, or such other material which is necessary to carry out the Governor's or council's functions.

(m) Perform such other duties as may be necessary to carry out the purposes of this act.

(2) The chief of the bureau shall, additionally, be responsible for implementing the policies of the council and shall be its chief administrative officer.

History.—s. 5, ch. 78-420; s. 82, ch. 79-190.

23.155 Reports.—

(1) The council shall submit an annual report to the Governor and to the Legislature concerning its work during the preceding fiscal year. Such report shall be submitted by December 31 annually.

(2) Other studies, evaluations, crime data analyses, and reports shall be submitted to the Governor or the Legislature as deemed appropriate or as requested.

History.—s. 6, ch. 78-420.

23.156 Legislative review and involvement.—

(1) The Speaker of the House of Representatives and the President of the Senate shall appoint or designate appropriate committees to review and comment on the state comprehensive plan, and any substantial modifications thereto, within 45 days from the receipt of such plan from the Governor.

(2) Individual legislators and legislative staff should be utilized to the maximum extent possible on advisory committees in the performance of the duties of the bureau.

History.—s. 7, ch. 78-420.

PART IX

HUMAN RIGHTS

23.161 Purposes; construction; title.—

(1) Part IX of this chapter shall be cited as the Human Rights Act of 1977.

(2) The general purposes of part IX are to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights and privileges of individuals within the state.

(3) This part shall be construed according to the fair import of its terms and shall be liberally construed to further the general purposes stated in this section and the special purposes of the particular provision involved.

History.—s. 1, ch. 69-287; s. 1, ch. 72-48; s. 1, ch. 77-341.
Note.—Former s. 13.201.

23.162 Definitions.—For the purposes of this part:

(1) "Commission" means the Commission on Human Relations created by this part.

(2) "Commissioner" or "member" means a member of the commission.

(3) "Discriminatory practice" means any practice made unlawful by this part.

(4) "National origin" includes ancestry.

(5) "Person" includes an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization; any other legal or commercial entity, the state, or any governmental entity or agency.

(6) "Employer" means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

(7) "Employment agency" means any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such a person.

(8) "Labor organization" means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in connection with employment.

History.—s. 2, ch. 69-287; s. 2, ch. 72-48; s. 2, ch. 77-341; s. 3, ch. 79-400.
Note.—Former s. 13.211.

23.163 Commission on Human Relations; staff.—

(1) There is hereby created the Florida Commission on Human Relations, comprised of 12 members appointed by the Governor, subject to confirmation by the Senate. The commission shall select one of its members to serve as chairperson for terms of 2 years.

(2) The members of the commission shall be broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups within the state.

(3) Commissioners shall serve for terms of 4 years; however, of those members first appointed, three shall be appointed for terms to expire September 30, 1981; three shall be appointed for terms to expire September 30, 1980; three shall be appointed for terms to expire September 30, 1979; and three shall be appointed for terms to expire September 30, 1978. A member chosen to fill a vacancy otherwise than by expiration of term shall be appointed for the unexpired term of the member whom such appointee is to succeed. A member of the commission shall be

eligible for reappointment. A vacancy in the commission shall not impair the right of the remaining members to exercise the powers of the commission.

(4) The Governor may suspend a member of the commission only for cause, subject to removal or reinstatement by the Senate.

(5) Seven members shall constitute a quorum for the conduct of business; however, the commission may establish panels of not less than three of its members to exercise its powers under s. 23.166(5), subject to such procedures and limitations as the commission may provide by rule.

(6) Each commissioner shall be entitled to receive per diem and travel expenses as provided by s. 112.061.

(7) The commission shall appoint, and may remove, an executive director who, with the consent of the commission, may employ a deputy, attorneys, investigators, clerks, and such other personnel as may be necessary adequately to perform the functions of the commission, within budgetary limitations.

History.—s. 3, ch. 69-287; s. 1, ch. 70-438; s. 3, ch. 77-341.
Note.—Former s. 13.221.

23.164 Commission on Human Relations, assigned to Department of Administration.—The commission created by this part is assigned to the Department of Administration. The commission, in the performance of its duties under part IX of this chapter, shall not be subject to control, supervision, or direction by the Department of Administration.

History.—s. 7, ch. 69-287; ss. 45, 56, ch. 79-190.
Note.—Former s. 13.231.

23.165 Functions of the commission.—The commission shall promote and encourage fair treatment and equal opportunity for all persons regardless of race, color, religion, sex, national origin, age, handicap, or marital status and mutual understanding and respect among all members of all economic, social, racial, religious, and ethnic groups; and shall endeavor to eliminate discrimination against, and antagonism between, religious, racial, and ethnic groups and their members.

History.—s. 4, ch. 69-287; s. 4, ch. 77-341; s. 4, ch. 79-400.
Note.—Former s. 13.241.

23.166 Powers of the commission.—Within the limitations provided by law, the commission shall have the following powers:

(1) To maintain an office in the City of Tallahassee.

(2) To meet and exercise its powers at any place within the state.

(3) To promote the creation of, and to provide continuing technical assistance to, local commissions on human relations and to cooperate with individuals and state, local, and other agencies, both public and private, including agencies of the federal government and of other states.

(4) To accept gifts, bequests, grants, or other payments, public or private, to help finance its activities.

(5) To receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice, as defined by this part.

(6) To hold hearings to determine the facts about instances of discrimination or intergroup tensions.

(7) To administer oaths, subpoena witnesses, and compel production of evidence pertaining to any hearing convened pursuant to subsection (5). The authority granted by this subsection may be delegated by the commission, for investigations or hearings, to a commissioner, a panel of commissioners established under s. 23.163(5), or the executive director. In the case of a refusal to obey a subpoena issued to any person, the commission may make application to any circuit court of this state, which shall have jurisdiction to order the witness to appear before the commission and to produce evidence, if so ordered, or to give testimony concerning the matter in question. Failure to obey the order may be punished by the court as contempt.

(8) To recommend methods for elimination of discrimination and intergroup tensions and to use its best efforts to secure compliance with its recommendations.

(9) To furnish technical assistance requested by persons to facilitate progress in human relations.

(10) To make or arrange for studies appropriate to effectuate the purposes and policies of this part and to make the results thereof available to the public.

(11) To become a deferral agency for the Federal Government and to comply with the necessary federal regulations to effect this part.

(12) To render, at least annually, a comprehensive written report to the Governor and the Legislature. The report may contain recommendations of the commission for legislation or other action to effectuate the purposes and policies of this part.

(13) To adopt, promulgate, amend, and rescind rules to effectuate the purposes and policies of this part and govern the proceedings of the commission, in accordance with chapter 120.

History.—s. 5, ch. 69-287; s. 3, ch. 72-48; s. 1, ch. 75-232; s. 5, ch. 77-341.
Note.—Former s. 13.251.

23.167 Unlawful employment practices; remedies; construction.—

(1) It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

(b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

(2) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of race, color, religion, sex, national origin, age, handicap, or marital status or to classify or refer for employment any individual on the basis of race, color, religion, sex, national origin, age, handicap, or marital status.

(3) It is an unlawful employment practice for a labor organization:

(a) To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of race, color, religion, sex, national origin, age, handicap, or marital status.

(b) To limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

(c) To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(4) It is an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of race, color, religion, sex, national origin, age, handicap, or marital status in admission to, or employment in, any program established to provide apprenticeship or other training.

(5) Whenever, in order to engage in a profession, occupation, or trade, it is required that a person receive a license, certification, or other credential, become a member or an associate of any club, association, or other organization, or pass any examination, it is an unlawful employment practice for any person to discriminate against any other person seeking such license, certification, or other credential, seeking to become a member or associate of such club, association, or other organization, or seeking to take or pass such examination, because of such other person's race, color, religion, sex, national origin, age, handicap, or marital status.

(6) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee to print, or cause to be printed or published, any notice or advertisement relating to employment, membership, classification, referral for employment, or apprenticeship or other training, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, national origin, age, absence of handicap, or marital status.

(7) It is an unlawful employment practice for an employer, an employment agency, a joint labor-management committee, or a labor organization to discriminate against any person because that person has opposed any practice which is an unlawful employment practice under this section, or because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section.

(8) Notwithstanding any other provision of this section, it is not an unlawful employment practice under this part for an employer, employment agency, labor organization, or joint labor-management committee to:

(a) Take or fail to take any action on the basis of religion, sex, national origin, age, handicap, or marital status in those certain instances in which religion, sex, national origin, age, absence of a particular handicap, or marital status is a bona fide occupational qualification reasonably necessary for the performance of the particular employment to which such action or inaction is related.

(b) Observe the terms of a bona fide seniority system, a bona fide employee benefit plan such as a retirement, pension, or insurance plan, or a system which measures earnings by quantity or quality of production, which is not designed, intended, or used to evade the purposes of this part. However, no such employee benefit plan or system which measures earnings shall excuse the failure to hire, and no such seniority system, employee benefit plan, or system which measures earnings shall excuse the involuntary retirement of, any individual on the basis of any factor not related to the ability of such individual to perform the particular employment for which such individual has applied or in which such individual is engaged; except that, with respect to employees who are not protected by s. 112.044, it is not unlawful under this part to involuntarily retire an employee, on the basis of age, pursuant to the terms of such a bona fide employee benefit plan, to the extent that such involuntary retirement is otherwise permitted by the federal Age Discrimination in Employment Act of 1967, as amended by the Age Discrimination in Employment Act Amendments of 1978 (Pub. L. No. 95-256). In the application of the preceding sentence, the definitions established by s. 23.162 shall be substituted in the place of conflicting definitions established by s. 11 of the federal Age Discrimination in Employment Act of 1967, as amended.

(c) Take or fail to take any action on the basis of age, pursuant to law or regulation governing any employment or training program designed to benefit persons of a particular age group.

(9) Each employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice provided by the commission setting forth such information as the commission deems appropriate to effectuate the purposes of this part.

(10) Any person aggrieved by a violation of this section may file a complaint with the commission within 180 days of the alleged violation, naming the employer, employment agency, labor organization, or joint labor-management committee, or, in the case of an alleged violation of subsection (5), the person, responsible for the violation and describing the violation. The commission, a commissioner, or the Attorney General may in like manner file such a complaint.

(11)(a) In the event that any other agency of the state or of any other unit of government of the state has jurisdiction of the subject matter of any complaint filed with the commission and has legal authority to investigate or act upon the complaint, the commission may refer such complaint to such agency. Referral of such a complaint by the commission shall not constitute agency action within the meaning of s. 120.52(2). In the event of any referral under this subsection, the commission shall accord substantial weight to final findings and orders of any such agency.

(b) If any such agency has legal authority to investigate such a complaint and to provide relief substantially identical to that available under this section, the commission may provide by rule, in accordance with criteria established by rule, that all such complaints shall be deferred to such agency. In the event that such agency, within 20 days of deferral of such a complaint, gives notice to the commission that the agency accepts jurisdiction of the complaint, the commission shall cease to have jurisdiction of the complaint.

(12) In the event that the commission fails to conciliate or take final action on any complaint under this section within 180 days of filing, an aggrieved person may bring a civil action against the named employer, employment agency, labor organization, or joint labor-management committee, or, in the case of an alleged violation of subsection (5), the person, in any court of competent jurisdiction. The commencement of such action shall divest the commission of jurisdiction of such complaint, except that the commission may intervene as a matter of right.

(13) In the event that the commission, in the case of a complaint under subsection (10), or the court, in the case of a civil action under subsection (12), finds that an unlawful employment practice has occurred, it shall issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including reasonable attorney's fees. Upon such notice as the commission or the court, as appropriate, may require, such order, or any subsequent order upon the same complaint or action, may provide relief for all individuals aggrieved by any such unlawful employment practice. No liability for back pay shall accrue from a date more than 2 years prior to the filing of a complaint with the commission.

(14) All complaints filed with the commission under this part, and all records and documents in the custody of the commission, which relate to and identify a particular complainant, employer, employment agency, labor organization, or joint labor-management committee shall be confidential and shall not be disclosed by the commission, except to the parties or in the course of a hearing or proceeding under this part. The restriction of this subsection shall not apply to any record or document which is part of the record of any hearing or court proceeding.

History.—s. 6, ch. 77-341; s. 2, ch. 78-49; s. 5, ch. 79-400.
Note.—Former s. 13.261.

TITLE V

JUDICIAL BRANCH

CHAPTER 25

SUPREME COURT

25.021 Terms of office.—The term of office of each of the Justices of the Supreme Court, when elected for a full term, shall commence on the first Tuesday after the first Monday in January next succeeding the election.

History.—s. 1, ch. 57-274.

25.031 Supreme Court authorized to receive and answer certificates as to state law from Federal Appellate Courts.—The Supreme Court of this state may, by rule of court, provide that, when it shall appear to the Supreme Court of the United States, to any Circuit Court of Appeals of the United States, or to the Court of Appeals of the District of Columbia, that there are involved in any proceeding before it questions or propositions of the laws of this state, which are determinative of the said cause, and there are no clear controlling precedents in the decisions of the Supreme Court of this state, such Federal Appellate Court may certify such questions or propositions of the laws of this state to the Supreme Court of this state for instructions concerning such questions or propositions of state law, which certificate the Supreme Court of this state, by written opinion, may answer.

History.—s. 1, ch. 23098, 1945; s. 1, ch. 57-274.

25.032 Same; rules and regulations.—The Supreme Court of this state is hereby authorized and empowered to collaborate with any and all other courts of last resort, of other states and of the United States, in the preparation and approval of uniform rules of court to make effective this and similar laws.

History.—s. 2, ch. 23098, 1945; s. 1, ch. 57-274.

25.041 Power to execute its decrees, etc.—

(1) The Supreme Court is vested with all the power and authority necessary for carrying into complete execution all its judgments, decrees and determinations in the matters before it, agreeable to the usage and principles of law.

(2) No judgment of the Supreme Court shall take effect until the decision of the court in such case shall be filed with the clerk of said court.

History.—s. 1, ch. 57-274; (2) formerly s. 6, Art. XVI of the Constitution of 1885, as amended; converted to Statutory Law by s. 10, Art. XII of the Consti-

tution as revised in 1968.

25.051 Regular terms.—The Supreme Court shall hold two terms in each year, in the supreme court building, commencing respectively on the first day of January and July, providing, that if such day be a Sunday or legal holiday, then on the first subsequent day which is not a Sunday or legal holiday.

History.—s. 1, ch. 57-274.

25.073 Retired justices or judges assigned to active judicial service; additional compensation; appropriation.—Any retired justice of the Supreme Court or retired judge of a district court of appeal or circuit or county court assigned to active judicial service in any of said courts, pursuant to Art. V of the State Constitution, shall be compensated as follows:

(1) Any such justice or judge shall be paid $100 for each day or portion of a day that such justice or judge is assigned to active judicial service.

(2) Necessary travel expense incident to the performance of duties required by assignment of such justices or judges to active judicial service shall be paid by the state in accordance with the provisions of s. 112.061.

(3) No retired justice or judge shall serve for more than 125 calendar days per year on temporary assignment, except that, if any judge becomes 70 during his term of office, the Chief Justice may appoint that judge to a temporary position for the remainder of that term at full salary, which salary shall be funded from the circuit judges' salary account.

(4) Payments required under this section shall be made from moneys to be appropriated for this purpose.

History.—s. 1, ch. 63-538; s. 1, ch. 77-282; s. 1, ch. 78-169; s. 3, ch. 79-377.

25.074 Assignment of judges to geographical areas.—In addition to powers granted by s. 20(c)(9) of revised Art. V, State Constitution, the Supreme Court may, by rule, require a circuit or county court judge regularly to perform his services in a certain county or geographical area within the territorial jurisdiction of his court. Until repealed by Supreme Court rule, the statutory residence requirements in existence on April 26, 1972 shall control.

History.—s. 6, ch. 72-406.

25.075 Uniform case reporting system.—

(1) The Supreme Court shall develop a uniform case reporting system, including a uniform means of reporting categories of cases, time required in the disposition of cases, and manner of disposition of cases.

(2) If any clerk shall willfully fail to report to the Supreme Court as directed by the court, he shall be guilty of misfeasance in office.

(3) The Auditor General shall audit the reports made to the Supreme Court in accordance with the uniform system established by the Supreme Court.

History.—s. 5, ch. 72-406.

25.081 Seal.—The seal of the supreme court shall be provided by rules of that court.

History.—s. 1, ch. 57-274.

25.101 Retirement of justices with pay.—Whenever any Justice of the Supreme Court of Florida has attained the age of 65 years or more, and has been a Justice of said Supreme Court under commission as such justice for a period of 20 years or more consecutively, such justice may voluntarily resign and retire from his office as such justice with the right to be paid, and he shall be paid on his own requisition, during the remainder of his natural life, the full amount of the annual or monthly salary then, or from time to time, provided by law to be paid to the other justices of said court in office; and sufficient money to meet the requirements of this section is hereby appropriated out of any moneys in the state treasury not otherwise appropriated.

History.—s. 1, ch. 57-274.

cf.—Ch. 123 Justices, Circuit and Appeal Judges Retirement System.

25.112 Right to retire; retirement pay.—Any Justice of the Supreme Court of Florida who shall have served as a circuit judge of the state and as a Justice of said Supreme Court for an aggregate period of 20 years or more and shall have elected to take the benefits of this law in accordance with the terms and provisions hereof, may resign and retire, or either, from his office as such justice with the right to be paid, and he shall be paid, on his own requisition, during the remainder of his natural life, from the Supreme Court Justices' Retirement Trust Fund herein established, two-thirds of the annual or monthly salary then, or from time to time thereafter, provided by law to be paid to the other justices of said court in office.

History.—s. 1, ch. 57-274; s. 2, ch. 61-119.

cf.—s. 123.13 Optional retirement benefits; Justices, circuit and appeal judges.

25.122 Notice by justice taking advantage of act; deductions from salary.—Any Justice of the Supreme Court who may decide to take advantage of this law shall, within 90 days after this law takes effect, notify the State Comptroller and the State Treasurer to that effect, and thenceforward, so long as such justice shall hold office, 2 per centum shall be deducted from each installment of salary of such justice, and said amount so deducted shall be deposited into a special fund hereby established in the state treasury to be known as the Supreme Court Justices' Retirement Trust Fund. Any person who may hereafter qualify as Justice of the Supreme Court shall be entitled to the benefits of this law upon giving notice to the State Comptroller and the State Treasurer within 90 days after taking office; and after the giving of such notice, so long as such justice shall hold office, 2 per centum shall be deducted from each installment of salary of such justice, and said amount so deducted shall be deposited into said Supreme Court Justices' Retirement Trust Fund.

History.—s. 2, ch. 23645, 1947; s. 1, ch. 57-274; s. 2, ch. 61-119.

cf.—Ch. 123 Justices, Circuit and Appeal Judges Retirement System.
ss. 123.17 and 123.18 Judicial retirement for disability; transfer of

amounts contributed under other retirement laws.

25.131 Annual appropriations.—There is hereby appropriated annually and shall be paid into said Supreme Court Justices' Retirement Trust Fund out of any funds in the State Treasury not otherwise appropriated sufficient money to meet the requirements of this law, taking into account the sum paid into said Supreme Court Justices' Retirement Trust Fund under s. 25.122.

History.—s. 1, ch. 57-274; s. 2, ch. 61-119.
cf.—Ch. 123 Justices, Circuit and Appeal Judges Retirement System.

25.141 Rights under law for retirement of circuit judges.—Nothing in this law shall affect any rights that a circuit judge subsequently becoming a Justice of the Supreme Court may have theretofore acquired or may thereafter acquire under provisions of law, or any reenactments thereof or amendments thereto, prior to the time that he retires from the Supreme Court; provided, however, that no person while accepting retirement compensation under the terms and provisions hereof shall at the same time receive retirement compensation under any other law.

History.—s. 1, ch. 57-274.
cf.—ss. 38.14-38.17, 38.19 Retirement of circuit judges.
Ch. 123 Justices, Circuit and Appeal Judges Retirement System.

25.151 Practice of law.—No Justice of the Supreme Court of Florida drawing retirement compensation as provided by any law shall engage in the practice of law.

History.—s. 1, ch. 57-274.

25.161 Rights under other laws.—Nothing herein contained shall affect the rights or status of any person under any other law who has heretofore resigned or retired or may hereafter resign or retire from the Supreme Court of Florida; and the provisions of s. 25.101 shall be preserved and remain in full force and effect.

History.—s. 1, ch. 57-274.

25.181 Record of territorial court of appeals.—The files, rolls and books of record of the courts of appeals of the late Territory of Florida, so far as the same, by the concurrence of the Congress and of the Legislature of this state, may relate to matters of appropriate state authority and jurisdiction, are placed in the custody and under the control of the Supreme Court of this state, and are files, rolls and records of the said Supreme Court; and the said court may lawfully have and exercise such judicial cognizance and power over them as it may lawfully have and exercise over its own files, rolls and records.

History.—s. 1, ch. 57-274.

25.191 Clerk of Supreme Court.—The Supreme Court shall appoint a Clerk of the Supreme Court, who shall hold his office during the pleasure of the court. The said clerk, before entering upon the discharge of his duties, shall give bond in the sum of $2,000, payable to the Governor, or his successors in office, to be approved by a majority of the Justices of the Supreme Court conditioned upon the faithful discharge of the duties of his office, which bond shall be filed in the Department of State.

History.—s. 1, ch. 57-274; ss. 10, 35, ch. 69-106.
cf.—s. 113.07 Bonds of state officials.

25.201 Deputy clerk of Supreme Court.—The clerk may appoint a deputy, who, being duly sworn, may discharge all the duties of the office of clerk during his absence. The clerk shall in all cases be responsible for the acts of such deputy.

History.—s. 1, ch. 57-274.

25.211 Location of clerk's office.—The clerk shall have his office in the Supreme Court Building.

History.—s. 1, ch. 57-274.

25.221 Custody of books, records, etc.—All books, papers, records, files and the seal of the supreme court shall be kept in the office of the clerk of said court and in his custody.

History.—s. 1, ch. 57-274.

25.231 Duties of clerk.—The Clerk of the Supreme Court shall perform such duties as may be directed by the court.

History.—s. 1, ch. 57-274.

25.241 Clerk of Supreme Court; compensation; assistants; filing fees, etc.—

(1) The Clerk of the Supreme Court shall be paid an annual salary, provided by law.

(2) The Clerk of the Supreme Court is authorized to employ such deputies and clerical assistants as may be necessary. Their number and compensation shall be approved by the court. The compensation of such employees shall be paid from the annual appropriation for the Supreme Court.

(3) The Clerk of the Supreme Court is hereby required to collect, upon the filing of a certified copy of a notice of appeal or petition, $75 for each case docketed, and for copying, certifying, or furnishing opinions, records, papers, or other instruments except as otherwise herein provided, the same fees that are allowed clerks of the circuit court; however, no fee shall be less than $1.

(4) The Clerk of the Supreme Court is hereby authorized, immediately after a case is disposed of, to supply the judge who tried the case and from whose order, judgment or decree, appeal or other review is taken and any court which reviewed it, a copy of all opinions, orders or judgments filed in such case. Copies of opinions, orders and decrees shall be furnished in all cases to each attorney of record and copies for publication in Florida reports shall be without charge and copies furnished to the law book publishers shall be at one-half the regular statutory fee.

(5) The Clerk of the Supreme Court is hereby required to prepare a statement of all fees collected in duplicate each month and remit one copy of said statement, together with all fees collected by him, to the State Treasurer who shall place the same to the credit of the General Revenue Fund.

History.—s. 1, ch. 57-274; s. 1, ch. 73-305; s. 3, ch. 75-124.
cf.—s. 28.24 Fees of clerk of circuit court.
s. 696.05 Photographic recording authorized; clerk of circuit court.

25.251 Marshal of Supreme Court, appointment.—The Supreme Court shall appoint a marshal who shall hold office during the pleasure of the court. The said marshal shall execute to the Governor of the state a bond in the penalty of $2,000, with sureties to be approved by the Supreme Court, and conditioned that he shall faithfully discharge such duties as the court directs.

History.—s. 1, ch. 57-274.

25.262 Duties of marshal, process.—The marshal shall have the power to execute the process of the court throughout the state, and in any county he may deputize the sheriff or a deputy sheriff for such purpose.

History.—s. 1, ch. 57-274.

25.271 Custody of Supreme Court Building and grounds.—The said marshal shall, under the direction of the Supreme Court, be custodian of the Supreme Court Building and grounds and shall keep the same clean, sanitary and free of trespassers and marauders and shall maintain the same in good state of repair and cause the grounds to be beautified and preserved against depredations and trespasses.

History.—s. 1, ch. 57-274.

25.281 Compensation of marshal.—The compensation of the said marshal shall be provided by law.

History.—s. 1, ch. 57-274.

25.291 Fines for contempt.—The unexpended balance of moneys derived from the imposition of fines for contempt of the Supreme Court of the state and all moneys hereafter derived from the imposition of such fines shall be deposited in the State Treasury into the General Revenue Fund unallocated.

History.—s. 1, ch. 57-274; s. 1, ch. 69-353.

25.301 Decisions to be filed; copies to be furnished.—All decisions and opinions delivered by said court or any justice thereof in relation to any action or proceeding pending in said court shall be filed and remain in the office of the clerk, and shall not be taken out except by order of the court; but said clerk shall at all times be required to furnish to any person who may desire the same certified copies of such opinions and decisions, upon receiving his fees therefor.

History.—s. 1, ch. 57-274.

25.311 Distribution of volumes.—Copies of the reports of the decisions of the Supreme Court and of the district courts of appeal shall be distributed as follows: to the Governor, and to each cabinet officer, except to the Attorney General, to each of the Justices of the Supreme Court, to each Judge of the District Courts of Appeal, to each Circuit Judge, to each Judge of County Courts, to each State Attorney, to each Public Defender, to each state university and legal depository, and two bound copies thereof to the Attorney General. A bound copy thereof shall be transmitted by mail or express to the Governor of each state and territory which sends the reports of its courts to this state. A bound copy thereof shall be transmitted to the clerks of the United States District Courts, for the use of the judges of said courts, in the Northern and Southern Districts of Florida, in each city in the state where sessions of said courts are now appointed by law to be held, and three bound volumes to the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

History.—s. 1, ch. 57-274; s. 2, ch. 63-570; s. 1, ch. 65-478; s. 1, ch. 72-404.

25.321 Volumes to be resupplied.—A copy of reports of decisions of the Supreme Court and District Courts of Appeal shall be supplied or resupplied to all public officers entitled to be furnished a copy thereof by law, where such copy has never been furnished to such officers, or any predecessors in office, or where the same shall have been lost or destroyed without the fault of the officer, provided that the fact that such officer or his predecessors have never been supplied with such copy, or the loss or destruction thereof be made to appear by an affidavit filed with the proper officer of this state.

History.—s. 1, ch. 57-274.

25.331 Reports to remain the property of the state.—All Supreme Court reports heretofore furnished to public officers of this state, or that may hereafter be supplied to them, shall continue to remain the public property of the state, and shall belong to the public office of the officer to whom they are supplied for the official use of their successors in office in perpetuam.

History.—s. 1, ch. 57-274.

25.341 Library of Supreme Court, custodian.—The library of the Supreme Court shall be in custody of the librarian appointed by the court, who shall be subject to its direction.

History.—s. 1, ch. 57-274.

25.351 Acquisition of books.—Books for the library of the Supreme Court may be acquired:

(1) BY PURCHASE.—As the Supreme Court shall direct.

(2) BY EXCHANGE.—Such number of reports, statutes and journals as shall be obtained by the Chief Justice upon his request from the Secretary of State shall be exchanged by the librarian with appropriate authorities of the United States and other states and territories for corresponding numbers of their reports.

History.—s. 1, ch. 57-274.

25.361 Obtaining state publications for exchange purposes.—The Supreme Court is hereby authorized, for the purpose of making exchanges, to obtain copies of the report of the decisions of the Supreme Court and District Courts of Appeal, any of the Florida Session Laws, the Florida Statutes, or any other publication of the state available for distribution and exchange for any book or publication needed for use in the Supreme Court library.

History.—s. 1, ch. 57-274.

25.371 Rules, effect of.—When a rule is adopted by the Supreme Court concerning practice and pro-

cedure, and such rule conflicts with a statute, the rule supersedes the statutory provision.

History.—s. 1, ch. 57-274.

25.381 Reports; publication; purchase and distribution.—The reports of the opinions of the Supreme Court and the District Courts of appeal shall be known as Florida Cases. In July, 1963, and every second year thereafter until otherwise provided by law, the Supreme Court and the Attorney General shall jointly enter into a contract with West Publishing Company, St. Paul, Minnesota, providing for the publication and distribution of such volumes of Florida Cases as necessary to furnish copies thereof to the officers and institutions as required or authorized by law. The volumes of such reports purchased by the state under such contract shall be paid for from moneys appropriated for this purpose.

History.—s. 1, ch. 57-274; s. 1, ch. 63-570; s. 1, ch. 65-420.

25.382 State courts system.—

(1) As used in this section, "state courts system" means all officers, employees, and divisions of the Supreme Court, district courts of appeal, circuit courts, and county courts.

(2) It is declared and determined that the officers, employees, committees, and divisions of the state courts system of the judicial branch are and shall continue to be officers, employees, committees, and divisions of the state courts system to perform such services as may be provided by the State Constitution, by law, by rules of practice and procedure adopted by the Supreme Court, or by administrative order of the Chief Justice, whichever is applicable.

(3) The manner of selection of employees, the determination of qualifications and compensation, and the establishment of policies relating to the work of such employees, including hours of work, leave, and other matters, shall be determined by rule of the Supreme Court as provided in s. 2(a), Art. V of the State Constitution.

(4) The state courts system is exempt from the provisions of part II, chapter 23.

History.—s. 13, ch. 79-190.

CHAPTER 26

CIRCUIT COURTS

26.01 Number of judicial circuits.—The state is divided into 20 judicial circuits, and the county or counties composing each of said circuits are as set forth in s. 26.021.

History.—s. 1, ch. 5120, 1903; GS 1796; ss. 1, chs. 6197, 6198, 1911; RGS 3026; CGL 4769; ss. 1, 5A, ch. 17085, 1935; s. 10, ch. 27991, 1953; ss. 2, 5, ch. 63-470; s. 1, ch. 67-195; ss. 2, 4, 5, ch. 69-220; s. 2, ch. 72-404.

26.011 Census commission, judicial circuits.—

(1) APPOINTMENT OF COMMISSIONERS.—When it shall be deemed advisable by the Legislature that the population of any judicial circuit be determined, it may from time to time provide for the appointment by the Governor of three commissioners from such judicial circuit who shall obtain from the United States Census Bureau an outline of proper criteria other than by the actual counting of individuals, to be used by the commissioners for the purpose of determining the population of a circuit, and the commissioners shall proceed in accordance with the criteria to determine the number of inhabitants of such circuit. In making their determination the commissioners shall also, after public notice, hold a public hearing or hearings at such place or places in the circuit as they deem advisable to receive such further proof needed to assist them in determining the number of inhabitants. After the conclusion of their study and after the public hearings to be held, as aforesaid, the commissioners shall make proof to the Governor, first, of the establishment of criteria by the United States Census Bureau and second, their findings based thereon. They shall also forward to the Governor a certified transcript of the record taken at the public hearings to be held as aforesaid.

(2) PROCLAMATION BY GOVERNOR.—The findings by any such commission or commissioners as to the number of inhabitants or the population of any judicial circuit when proclaimed by the Governor shall have the same force and effect in law as if according to a census taken pursuant to either federal or state law insofar as a census affects the number of circuit judges permitted by law but such determination shall not otherwise be effective for any purpose.

(3) The commissioners shall not be paid any compensation but shall be reimbursed for traveling expenses as provided in s. 112.061.

History.—ss. 1-3, ch. 31395, 1956; s. 19, ch. 63-400; s. 1, ch. 65-265; s. 7, ch. 79-164.

26.012 Jurisdiction of circuit court.—

(1) Circuit courts shall have jurisdiction of appeals from county courts except those appeals which may be taken directly to the Supreme Court.

(2) They shall have exclusive original jurisdiction:

(a) In all actions at law not cognizable by the county courts;

(b) Of proceedings relating to the settlement of the estates of decedents and minors, the granting of letters testamentary, guardianship, involuntary hospitalization, the determination of incompetency, and other jurisdiction usually pertaining to courts of probate;

(c) In all cases in equity including all cases relating to juveniles except traffic offenses as provided in chapters 39 and 316;

(d) Of all felonies and of all misdemeanors arising out of the same circumstances as a felony which is also charged;

(e) In all cases involving legality of any tax assessment or toll;

(f) In the action of ejectment; and

(g) In all actions involving the title and boundaries of real property.

(3) The circuit court may issue injunctions.

(4) The chief judge of a circuit may authorize a county court judge to order emergency hospitaliza-

tions pursuant to chapter 394, part I and s. 744.31, in the absence from the county of the circuit judge, and the county court judge shall have the power to issue all temporary orders and temporary injunctions necessary or proper to the complete exercise of such jurisdiction.

History.—s. 3, ch. 72-404; s. 1, ch. 74-209; s. 1, ch. 77-119.
cf.—s. 5, Art. V, State Const.

26.021 Judicial circuits; judges.—

(1) The first circuit is composed of Escambia, Okaloosa, Santa Rosa, and Walton Counties.

(2) The second circuit is composed of Leon, Gadsden, Jefferson, Wakulla, Liberty, and Franklin Counties.

(3) The third circuit is composed of Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, and Taylor Counties.

(4) The fourth circuit is composed of Clay, Duval, and Nassau Counties.

(5) The fifth circuit is composed of Citrus, Hernando, Lake, Marion, and Sumter Counties. Two of the circuit judges authorized for the fifth circuit shall reside in either Citrus, Hernando, or Sumter County and neither of such two judges shall reside in the same county.

(6) The sixth circuit is composed of Pasco and Pinellas Counties.

(7) The seventh circuit is composed of Flagler, Putnam, St. Johns, and Volusia Counties. No four judges shall reside in the same county unless the total number of judges in the circuit shall exceed five in number, in which case one judge shall reside in Flagler County, one judge shall reside in Putnam County, one judge shall reside in St. Johns County and three judges shall reside in Volusia County. There shall be no residence requirement for any other judges in the circuit.

(8) The eighth circuit is composed of Alachua, Baker, Bradford, Gilchrist, Levy, and Union Counties.

(9) The ninth circuit is composed of Orange and Osceola Counties.

(10) The tenth circuit is composed of Hardee, Highlands, and Polk Counties.

(11) The eleventh circuit is composed of Dade County.

(12) The twelfth circuit is composed of Manatee, Sarasota, and DeSoto Counties.

(13) The thirteenth circuit is composed of Hillsborough County.

(14) The fourteenth circuit is composed of Bay, Calhoun, Gulf, Holmes, Jackson, and Washington Counties.

(15) The fifteenth circuit is composed of Palm Beach County.

(16) The sixteenth circuit is composed of Monroe County.

(17) The seventeenth circuit is composed of Broward County.

(18) The eighteenth circuit is composed of Brevard and Seminole Counties.

(19) The nineteenth circuit is composed of Indian River, Martin, Okeechobee, and St. Lucie Counties.

(20) The twentieth circuit is composed of Charlotte, Collier, Glades, Hendry, and Lee Counties.

History.—s. 4, ch. 72-404.
Note.—Former ss. 26.02, 26.03, 26.04, 26.05, 26.06, 26.07, 26.08-26.16, and 26.161-26.165.

26.031 Judicial circuits; number of judges, salaries.—

(1) The number of circuit judges in each circuit shall be as follows:

	JUDICIAL CIRCUIT	TOTAL
(a)	First	14
(b)	Second	8
(c)	Third	4
(d)	Fourth	23
(e)	Fifth	9
(f)	Sixth	26
(g)	Seventh	11
(h)	Eighth	7
(i)	Ninth	16
(j)	Tenth	11
(k)	Eleventh	51
(l)	Twelfth	9
(m)	Thirteenth	24
(n)	Fourteenth	5
(o)	Fifteenth	18
(p)	Sixteenth	3
(q)	Seventeenth	33
(r)	Eighteenth	14
(s)	Nineteenth	7
(t)	Twentieth	9

(2) Circuit judges shall receive a salary of $32,000 per annum.

History.—ss. 1, 3, ch. 72-402; s. 1, ch. 73-329; s. 1, ch. 75-124; s. 1, ch. 76-175; s. 1, ch. 77-368; s. 1, ch. 78-168; s. 5, ch. 79-413.

26.19 Abatement of actions because of change of judge, etc.—No civil or criminal cases, suits in equity, actions at law, statutory or otherwise; and no writs, process, pleading, motion, information, presentment, indictment or other proceedings, order, finding, decree, judgment or sentence, shall abate, be quashed, set aside, reversed, qualified, dismissed, defeated, or held to be in error because of the changes in any circuit or circuits, or judge or judges, state attorneys, or other prosecuting officers.

History.—s. 5, ch. 17085, 1935; CGL 1936 Supp. 4738(5).

26.20 Availability of judge for hearings in chambers.—In circuits having more than one circuit judge, at least one of said judges shall be available as nearly as possible at all times to hold and conduct hearings in chambers.

History.—s. 4, ch. 17085, 1935; CGL 1936 Supp. 4738(4).

26.21 Terms of circuit courts.—At least two regular terms of the circuit court shall be held in each county each year, as hereinafter provided, also such special term or terms that may be necessary from time to time. Regular and special terms of court may be held and be in session, in the same or different counties of any circuit, simultaneously; provided, that separate minutes of each term, whether reg-

ular or special, shall be kept by the clerk. The time for holding the terms of the circuit court in the several judicial circuits shall be as set forth in ss. 26.22-26.365.

History.—s. 1, ch. 1561, 1866; RS 1373; s. 1, ch. 5121, 1903; GS 1805, 1813; s. 1, ch. 6173, 1911; RGS 3041, 3056; CGL 4808, 4837; ss. 4, 4A, ch. 17085, 1935; s. 7, ch. 69-220.

26.22 First judicial circuit.—

SPRING TERMS.

Escambia County, second Monday in June.
Okaloosa County, last Monday in April.
Santa Rosa County, second Monday after the second Monday in May.
Walton County, second Monday in May.

FALL TERMS.

Escambia County, second Monday in October.
Okaloosa County, last Monday in August.
Santa Rosa County, second Monday after the second Monday in September.
Walton County, second Monday in September.

WINTER TERMS.

Escambia County, second Monday in February.
Okaloosa County, second Monday in December.
Santa Rosa County, second Monday after the second Monday in January.
Walton County, second Monday in January.

History.—RS 1366; s. 1, ch. 5121, 1903; GS 1805; s. 2, ch. 6173, 1911; s. 2, ch. 6937, 1915; s. 1, ch. 7400, 1917; RGS 3042; s. 1, ch. 8522, 1921; ss. 1, chs. 9342, 9364½, 1923; s. 1, ch. 10078, 1925; CGL 4809.

26.23 Second judicial circuit.—

SPRING TERMS.

Wakulla County, first Monday in March.
Franklin County, third Monday in March.
Gadsden County, first Monday in April.
Jefferson County, fourth Monday in April.
Liberty County, second Monday in May.
Leon County, first Monday in June.

FALL TERMS.

Wakulla County, second Monday in September.
Franklin County, fourth Monday in September.
Gadsden County, second Monday in October.
Jefferson County, first Monday in November.
Liberty County, third Monday in November.
Leon County, first Monday in December.

History.—RS 1367; s. 2, ch. 5121, 1903; GS 1806; s. 3, ch. 6173, 1911; s. 1, ch. 6459, 1913; s. 1, ch. 7848, 1919; RGS 3043; s. 1, ch. 8484, 1921; s. 1, ch. 9165, 1923; s. 1, ch. 11885, 1927; CGL 4810; s. 1, ch. 14695, 1931; s. 1, ch. 20230, 1941; s. 7, ch. 22858, 1945; s. 1, ch. 26988, 1951.

26.24 Third judicial circuit.—

SPRING TERMS.

Lafayette County, second Monday in January.
Dixie County, fourth Monday in January.
Hamilton County, second Monday in February.
Taylor County, first Monday in March.
Madison County, fourth Monday in March.
Suwannee County, third Monday in April.
Columbia County, second Monday in May.

FALL TERMS.

Lafayette County, third Monday in July.
Dixie County, first Monday in August.
Hamilton County, third Monday in August.
Taylor County, second Monday in September.
Madison County, first Monday in October.
Suwannee County, fourth Monday in October.
Columbia County, third Monday in November.

History.—RS 1368; s. 3, ch. 5121, 1903; GS 1807; s. 4, ch. 6173, 1911; s. 1, ch. 7844, 1919; RGS 3044; s. 22, ch. 8514, 1921; CGL 4811; s. 1, ch. 13582, 1929; s. 1, ch. 15912, 1933; s. 1, ch. 29631, 1955.

26.25 Fourth judicial circuit.—

SPRING TERMS.

Clay County, first Monday in April.
Duval County, first Monday in May.
Nassau County, third Monday in April.

FALL TERMS.

Clay County, first Monday in October.
Duval County, first Monday in November.
Nassau County, third Monday in October.

History.—RS 1369; s. 4, ch. 5121, 1903; GS 1808; s. 5, ch. 6173, 1911; ss. 1-4, ch. 7348, 1917; RGS 3045; s. 1, ch. 9282, 1923; s. 4, ch. 12437, 1927; CGL 4812; ss. 1, 2, ch. 26326, 1949.

26.26 Fifth judicial circuit.—

SPRING TERMS.

Sumter County, second Tuesday in January.
Citrus County, first Tuesday in February.
Hernando County, first Tuesday in March.
Marion County, first Tuesday in April.
Lake County, first Tuesday in May.

FALL TERMS.

Sumter County, second Tuesday in July.
Citrus County, first Tuesday in August.
Hernando County, first Tuesday in September.
Marion County, first Tuesday in October.
Lake County, first Tuesday in October.

History.—RS 1370; s. 5, ch. 5121, 1903; GS 1809; s. 6, ch. 6173, 1911; ss. 3, 4, ch. 7847, 1919; RGS 3046; s. 1, ch. 8485, 1921; ss. 3, 4, ch. 9164, 1923; s. 1, ch. 10077, 1925; ss. 1, chs. 11879, 12435, ss. 1-3, ch. 12436, 1927; CGL 4813, 4824, 4832; ss. 1, 2, ch. 17765, 1937; s. 1, ch. 19059, 1939; s. 1, ch. 29632, 1955; s. 1, ch. 57-814.

26.27 Sixth judicial circuit.—

SPRING TERMS.

Pasco County, first Tuesday in April.
Pinellas County, first Monday in May.

FALL TERMS.

Pasco County, first Tuesday in October.
Pinellas County, first Monday in December.

History.—s. 6, ch. 5121, 1903; GS 1810; s. 7, ch. 6173, 1911; s. 1, ch. 6975, 1915; RGS 3047; ss. 1, chs. 9162, 9277, 1923; CGL 4814.

26.28 Seventh judicial circuit.—

SPRING TERMS.

Flagler County, third Monday in May.
Putnam County, second Monday in March.
St. Johns County, second Monday in May.
Volusia County, second Monday in April.

FALL TERMS.

Flagler County, second Monday in December.
Putnam County, second Monday in October.
St. Johns County, second Monday in November.
Volusia County, third Monday in October.

History.—RS 1372; s. 7, ch. 5121, 1903; GS 1811; s. 8, ch. 6173, 1911; ss. 1-3, ch. 6462, s. 19, ch. 6511, 1913; s. 2, ch. 6901, 1915; ss. 2, 3, ch. 7348, s. 2, ch. 7351, 1917; s. 1, ch. 7846, s. 2, ch. 7847, 1919; RGS 3045, 3048, 3049; s. 2, ch. 8486, s. 1, ch. 8487, 1921; ss. 1, chs. 9282, 9343, 1923; s. 2, ch. 10080, 1925; s. 1, ch. 12434, ss. 2, 4, ch. 12437, s. 1, ch. 12438, 1927; CGL 4815, 4833; s. 1, ch. 15913, 1933; s. 1, ch. 17766, 1937; s. 1, ch. 75-163.

26.29 Eighth judicial circuit.—

SPRING TERMS.

Alachua County, second Monday in April.
Baker County, second Monday in January.
Bradford County, second Monday in May.
Gilchrist County, first Monday in March.
Levy County, second Monday in March.
Union County, fourth Monday in May.

FALL TERMS.

Alachua County, second Monday in October.
Baker County, second Monday in July.
Bradford County, second Monday in November.
Gilchrist County, first Tuesday after the first Monday in September.
Levy County, second Monday in September.
Union County, fourth Monday in November.

History.—s. 8, ch. 5121, 1903; GS 1812; s. 9, ch. 6173, 1911; ss. 1-3, ch. 6462, 1913; ss. 1, 2, ch. 6901, 1915; s. 1, ch. 7846, ss. 1, 2, ch. 7945, 1919; RGS 3049; s. 2, ch. 8486, s. 25, ch. 8516, 1921; s. 1, ch. 9343, 1923; ss. 1, 2, ch. 10080, s. 18, ch. 11371, 1925; ss. 1, 2, ch. 12014, ss. 1-3, ch. 12438, s. 1, ch. 12439, 1927; CGL 4816, 4834; s. 1, ch. 14497, 1929; s. 1, ch. 14699, 1931; ss. 1-3, ch. 15914, 1933; ss. 1, 2, ch. 16849, 1935; ss. 1, 2, ch. 17767, 1937; s. 2, ch. 26977, 1951; s. 1, ch. 57-45.

26.30 Ninth judicial circuit.—Two regular terms of the circuit court in the ninth judicial circuit shall be held in each of said counties to be known as the spring and fall terms. The terms of court for the ninth judicial circuit shall begin on the following dates:

SPRING TERMS.

Orange County—first Monday in April.
Osceola County—third Monday in March.

FALL TERMS.

Orange County—third Monday in October.
Osceola County—third Monday in September.

History.—s. 10, ch. 6173, 1911; s. 19, ch. 6511, 1913; ss. 2, 4, ch. 7351, 1917; ss. 2, 4, ch. 7847, 1919; RGS 3048, 3055; ss. 1, chs. 8485, 8487, 1921; s. 2, ch. 9164, 1923; ss. 2, 3, ch. 10079, ss. 1, 2, ch. 10089, s. 22, ch. 10148, s. 22, ch. 10180, 1925; ss. 1, 2, ch. 11880, s. 1, ch. 11883, s. 1, ch. 11884, s. 1, ch. 12432, s. 3, ch. 12434, 1927; CGL 4825, 4829, 4831; s. 1, ch. 17768, 1937; s. 1, ch. 19080, 1939; s. 1, ch. 22056, 1943; s. 1, ch. 24165, 1947; s. 11, ch. 25035, s. 1, ch. 25439, 1949; s. 1, ch. 57-59; s. 4, ch. 67-195.

26.31 Tenth judicial circuit.—

SPRING TERMS.

Hardee County, first Tuesday after the second Monday in February.
Highlands County, first Tuesday after the first Monday in April.
Polk County, first Tuesday after the second Monday in March.

FALL TERMS.

Hardee County, first Tuesday after the second Monday in September.
Highlands County, first Tuesday after the first Monday in November.
Polk County, first Tuesday after the second Monday in October.

History.—s. 11, ch. 6173, 1911; s. 1, ch. 6902, 1915; s. 2, ch. 7349, 1917; s. 1, ch. 7845, 1919; RGS 3051; ss. 1-3, ch. 8476, 1921; s. 3, ch. 10082, 1925; CGL 4818, 4827; ss. 1-3, ch. 17769, 1937.

26.32 Eleventh judicial circuit.—

SPRING TERM.

Dade County, second Tuesday in May.

FALL TERM.

Dade County, second Tuesday in November.

History.—s. 12, ch. 6173, 1911; s. 1, ch. 6461, 1913; s. 3, ch. 7351, 1917; RGS 3052; s. 4, ch. 10084, 1925; CGL 4819, 4828; s. 1, ch. 26517, s. 3, ch. 26952, 1951.

26.33 Twelfth judicial circuit.—The terms of court for the twelfth judicial circuit shall begin on the following dates:

SPRING TERMS.

DeSoto County—second Monday in January.
Manatee County—second Monday in January.
Sarasota County—third Monday in January.

FALL TERMS.

DeSoto County—second Monday in June.
Manatee County—second Monday in June.
Sarasota County—third Monday in June.

History.—s. 11, ch. 6173, 1911; ss. 1, chs. 6902, 6975, 1915; s. 2, ch. 7349, 1917; s. 3, ch. 7845, 1919; RGS 3047, 3051; ss. 1-3, ch. 8476, RGS 3047, 3051; ss. 2, 20, ch. 8515, 1921; s. 3, ch. 9162, s. 1, ch. 9277, s. 22, ch. 9360, s. 22, ch. 9362, 1923; ss. 1, 3, ch. 10082, 1925; ss. 1, 3, ch. 12440, 1927; CGL 4820, 4826, 4827, 4835; ss. 1, 2, ch. 17770, 1937; s. 1, ch. 21817, 1943; s. 1, ch. 61-211; s. 6, ch. 69-220.

26.34 Thirteenth judicial circuit.—

SPRING TERM.

Hillsborough County, first Tuesday in April.

FALL TERM.

Hillsborough County, first Tuesday in October.

History.—s. 7, ch. 6173, 1911; s. 3, ch. 6975, 1915; RGS 3053; CGL 4821; s. 1, ch. 16850, 1935.

26.35 Fourteenth judicial circuit.—

SPRING TERMS.

Bay County—fourth Monday in February.
Calhoun County—fourth Monday in April.
Gulf County—second Monday in February.
Holmes County—second Monday in April.
Jackson County—second Monday in May.
Washington County—fourth Monday in March.

FALL TERMS.

Bay County—fourth Monday in August.
Calhoun County—fourth Monday in September.
Gulf County—second Monday in August.
Holmes County—second Monday in October.
Jackson County—second Monday in November.
Washington County—fourth Monday in October.

History.—ss. 3, 4, ch. 6976, 1915; ss. 1, 2, ch. 7350, 1917; ss. 1, 4, ch. 7847, ss. 1, 2, ch. 7946, 1919; RGS 3050, 3054; s. 2, ch. 10076, s. 22, ch. 10132, 1925; ss. 3, 4, ch. 12441, 1927; CGL 4817, 4822, 4836; ss. 1, 2, ch. 17771, 1937; s. 1, ch.

21901, 1943.

26.36 Fifteenth judicial circuit.—The terms of court for the fifteenth judicial circuit shall be as follows:

SPRING TERM.
Palm Beach County—first Monday in June.

FALL TERM.
Palm Beach County—first Monday in October.

WINTER TERM.
Palm Beach County—first Monday in February.

History.—s. 3, ch. 7351, 1917; RGS 3055; s. 1, ch. 10079, 1925; s. 1, ch. 11882, ss. 1-3, ch. 12433, 1927; CGL 4823, 4830; s. 1, ch. 25426, 1949; ss. 1, chs. 57-138, 57-1994; s. 1, ch. 63-435, s. 3, ch. 63-470.

26.361 Sixteenth judicial circuit.—

SPRING TERM.
Monroe County—third Monday in April.

FALL TERM.
Monroe County—third Monday in October.

History.—s. 4, ch. 26952, 1951.

26.362 Seventeenth judicial circuit.—The terms of court for the seventeenth judicial circuit shall be as follows:

SPRING TERM.
Broward County—second Tuesday in March.

FALL TERM.
Broward County—second Tuesday in October.

History.—s. 4, ch. 63-470.

26.363 Eighteenth judicial circuit.—The regular spring and fall terms of the circuit court of the eighteenth judicial circuit of the state shall be held semiannually at the times hereinafter specified, to wit:

SPRING TERMS.
Brevard County—fourth Tuesday in March.
Seminole County—third Tuesday in April.

FALL TERMS.
Brevard County—second Tuesday in October.
Seminole County—first Tuesday in November.

History.—s. 5, ch. 67-195.

26.364 Nineteenth judicial circuit.—The regular spring and fall terms of the circuit court of the nineteenth judicial circuit of the state shall be held semiannually at the times hereinafter specified, to wit:

SPRING TERMS.
Okeechobee County—second Tuesday in April.
St. Lucie County—second Tuesday in February.
Martin County—second Tuesday in June.
Indian River County—second Tuesday in March.

FALL TERMS.
Okeechobee County—second Tuesday in November.
St. Lucie County—second Tuesday in September.
Martin County—second Tuesday in January.
Indian River County—second Tuesday in October.

History.—s. 7, ch. 67-195.

26.365 Twentieth judicial circuit.—The terms of court for the twentieth judicial circuit shall be as follows:

SPRING TERMS.
Charlotte County—third Monday in January.
Collier County—second Monday in January.
Glades County—fourth Monday in January.
Hendry County—third Monday in January.
Lee County—second Monday in January.

FALL TERMS.
Charlotte County—third Monday in June.
Collier County—second Monday in June.
Glades County—fourth Monday in June.
Hendry County—third Monday in June.
Lee County—second Monday in June.

History.—s. 7, ch. 69-220.

26.37 Judge to attend first day of term.—Each judge of a circuit court is required, unless prevented by sickness or other providential causes, to attend on the first day of each term of the circuit court required by law to be held, and upon failure to do so, shall be subject to a deduction of $100 from his salary for each and every such default.

History.—s. 1, ch. 252, 1849; RS 1377; GS 1817; RGS 3062; CGL 4843.

26.38 Judge to state reason for nonattendance.—Whenever any judge as aforesaid shall make default as aforesaid in consequence of sickness or providential interposition, it shall be the duty of such judge to state the reasons of such failure, in writing, over his official signature, to be handed to the clerk of the court, who shall enter the same at length on the records of the court.

History.—s. 2, ch. 252, 1849; RS 1378; GS 1818; RGS 3063; CGL 4844.

26.39 Penalty for nonattendance of judge.—Whenever such default shall occur, the clerk of the court (unless such judge shall file his reasons for such default as hereinbefore provided) shall certify the fact, under his official signature and seal, to the Comptroller of the state, who shall deduct from the warrants on the treasurer, thereafter to be issued in favor of the judge making such default, the sum of $100 as aforesaid for every such default.

History.—s. 3, ch. 252, 1849; RS 1379; GS 1819; RGS 3064; CGL 4845.

26.40 Adjournment of court upon nonattendance.—Whenever any judge shall not attend on the first day of any term, the court shall stand adjourned until 12 o'clock on the second day; and if said judge shall not then attend, the clerk at that time shall continue all causes, and adjourn the court to such time as the judge may appoint, or to the next regular term, by law established.

History.—s. 3, Nov. 23, 1828; RS 1380; GS 1820; RGS 3065; CGL 4846.

26.42 Calling docket at end of term.—The judge, at each term of the court, after other business of the term shall have been disposed of, shall call over all the causes standing upon the dockets, and make such orders and entries therein as shall be found necessary in relation thereto.

History.—s. 19, Nov. 23, 1828; RS 1343; GS 1778; RGS 3002; CGL 4736.

26.46 Jurisdiction of resident judge after assignment.—When a circuit judge is assigned to another circuit, none of the circuit judges in such other circuit shall, because of such assignment, be deprived of or affected in his jurisdiction other than to the extent essential so as not to conflict with the authority of the temporarily assigned circuit judge as to the particular case or cases or class of cases, or in presiding at the particular term or part of term named or specified in the assignment.

History.—s. 2, ch. 6900, 1915; RGS 3061; CGL 4842.

26.49 Executive officer of circuit court.—The sheriff of the county shall be the executive officer of the circuit court of the county.

History.—s. 14, ch. 4, 1845; RS 1396; GS 1841; RGS 3086; CGL 4869.

26.50 Sheriff to purchase articles for court.—The judge of the circuit court, at each term thereof, shall make a written requisition upon the sheriff attending upon said court for such stationery or other articles as he may deem necessary for the use of the court, and the sheriff shall procure the same, and in no other way shall the sheriff or other officer of the court be authorized to purchase articles at the expense of the state; the said requisition shall be a sufficient voucher to sustain the claim of any person furnishing articles as aforesaid against the state.

History.—s. 3, ch. 219, 1849; RS 1398; GS 1843; RGS 3088; CGL 4871.

26.51 Salaries of circuit judges; payment.—The salaries of circuit judges to be paid by the state shall be paid in equal monthly installments.

History.—s. 1, ch. 6912, 1915; RGS 3003; s. 1, ch. 8480, 1921; s. 1, ch. 11335, 1925; s. 1, ch. 11888, 1927; CGL 4737; s. 1, ch. 15720, 1931; s. 1, ch. 15859, 1933; ss. 1, 2, ch. 21760, 1943; ss. 1, 2, ch. 22546, 1945; s. 2, ch. 26818, 1951; s. 7, ch. 29615, 1955; s. 2, ch. 69-353; s. 13, ch. 77-104.

26.52 Traveling expenses, circuit judges.—Each circuit judge shall be reimbursed for traveling expenses as provided in s. 112.061.

History.—s. 4, ch. 6912, 1915; RGS 3004; s. 2, ch. 8480, 1921; CGL 4738, s. 19, ch. 63-400.

26.55 Conference of circuit judges; report of attorney general to legislature.—

(1) There is created and established the Conference of Circuit Judges of Florida. The conference shall consist of the active and retired circuit judges of the several judicial circuits of the state. The conference shall elect annually a chairman, whose duty it shall be to call all meetings and to appoint committees to effectuate the purposes of the conference. It is hereby declared to be an official function of each circuit judge to attend the meetings of such conference. It is also an official function of each circuit judge to participate in the activity of each committee to the membership of which such judge may be appointed. Not less than 30 days next before the convening of the regular session of the Legislature the chairman of the conference shall report to the Attorney General and also to the President of the Senate and Speaker of the House such recommendations as the conference may have concerning defects in the laws of Florida and such amendments or additional legislation as the conference may deem necessary. It is declared to be the responsibility of the conference to consider and make recommendations concerning:

(a) The betterment of the judicial system of the state and its various parts;

(b) The improvement of rules and methods of procedure and practice in the several courts; and

(c) To report to the Attorney General and to the Supreme Court such findings and recommendations as the conference may have with reference thereto.

(2) The Attorney General shall cause to be prepared copies of the findings and recommendations of the conference, and furnish a copy thereof to each member of the Legislature upon the convening of each regular session of the Legislature.

History.—s. 1, ch. 59-273; s. 1, ch. 72-49; s. 1, ch. 73-299.

26.56 Residual jurisdiction for abolished courts.—

(1) If any court is abolished and a proceeding had in it is not transferred to another court, the circuit court for the county where the court formerly existed shall have jurisdiction over any further proceedings in the same manner as though the proceeding had been originally pending in the circuit court.

(2) Additional proceedings in the circuit court shall be commenced by filing the appropriate motion, pleading, or paper that would have been filed in the abolished court. The circuit court may require the custodian of the records of the abolished court to make the records of any proceedings available to the circuit court. The clerk of the circuit court shall charge no additional filing fee for proceedings under this section.

(3) This section shall apply to all courts that have heretofore been abolished and to all courts that may hereafter be abolished under the circumstances prescribed in this section.

History.—s. 1, ch. 71-7.

26.57 Temporary designation of county court judge to preside over circuit court cases.—In each county where there is no resident circuit judge and the county court judge has been a member of the bar for at least 5 years and is qualified to be a circuit judge, the county court judge may be designated on a temporary basis to preside over circuit court cases by the chief justice of the supreme court upon recommendation of the chief judge of the circuit, and the judge so designated shall receive the same salary as a duly elected circuit judge for the time periods that the county judge is actually presiding over circuit court cases. He may be assigned to exercise all county and circuit court jurisdiction in the county, except appeals from the county court. In addition, he may be required to perform the duties of circuit judge in other counties of the circuit as his time may permit and as the need arises, as determined by the chief judge of the circuit.

History.—s. 1, ch. 74-217.

CHAPTER 27

STATE ATTORNEYS AND PUBLIC DEFENDERS

PART I STATE ATTORNEYS (ss. 27.01-27.37)

PART II PUBLIC DEFENDERS (ss. 27.50-27.59)

PART I

STATE ATTORNEYS

27.01 State attorneys; number, election, terms.—There shall be a state attorney for each of the judicial circuits, who shall be elected at the general election by the qualified electors of their respective judicial circuits as other state officials are elected, and who shall serve for a term of 4 years.

History.—s. 1, ch. 5120, 1903; GS 1796; ss. 1, chs. 6197, 6198, 1911; RGS 3026; CGL 4769; ss. 1, 5-A, ch. 17085, 1935; s. 1, ch. 26761, 1951.

27.015 Private practice prohibited.—All state attorneys elected to said office after November 1, 1970, shall be so elected on a full-time basis and shall be prohibited from the private practice of law while holding said office.

History.—s. 1, ch. 70-79.

27.02 Duties before court.—The state attorney shall appear in the circuit and county courts within his judicial circuit and prosecute or defend on behalf of the state all suits, applications, or motions, civil or criminal, in which the state is a party, except as provided in chapters 39 and 959. The intake procedures of chapters 39 and 959 shall apply as provided in those chapters.

History.—s. 3, ch. 1661, 1868; RS 1344; GS 1779; RGS 3005; CGL 4739; s. 5, ch. 72-404.

27.03 Duties before grand jury.—Whenever required by the grand jury, the state attorney shall attend them for the purpose of examining witnesses in their presence, or of giving legal advice in any matter before them; and he shall prepare bills of indictment.

History.—s. 4, ch. 1661, 1868; RS 1345; GS 1780; RGS 3006; CGL 4740. cf.—ss. 905.16, 905.185, 905.19, 905.22.

27.04 Summoning and examining witnesses for state.—The state attorney shall have summoned all witnesses required on behalf of the state; and he is allowed the process of his court to summon witnesses from throughout the state to appear before him in or out of term time at such convenient places in the state attorney's judicial circuit and at such convenient times as may be designated in the summons, to testify before him as to any violation of the criminal law upon which they may be interrogated, and he is empowered to administer oaths to all witnesses summoned to testify by the process of his court or who may voluntarily appear before him to testify as to any violation or violations of the criminal law.

History.—s. 2, ch. 2094, 1877; RS 1346; GS 1781; s. 10, ch. 7838, 1919; RGS 3007; CGL 4741; s. 1, ch. 22634, 1945; s. 1, ch. 57-290.

27.05 Assisting attorney general.—In addition to the duties now imposed upon the several state attorneys of this state, by statute, they shall assist the attorney general in the preparation and presentation of all appeals to the supreme court, from the circuit court of their respective circuits, of all cases, civil or criminal, in which the state is a party.

History.—s. 1, ch. 5399, 1905; RGS 3008; CGL 4742.

27.06 Habeas corpus and preliminary trials.—The several state attorneys of this state shall represent the state in all cases of habeas corpus arising in their respective circuits, and shall also represent the state, either in person or by assistant, in cases of preliminary trials of persons charged with capital offenses in all cases where the committing magistrate shall have given due and timely notice of the time and place of such trial. Notice of the application for the writ of habeas corpus shall be given to the prosecuting officer of the court wherein the statute

under attack is being applied, the criminal law proceeding is being maintained, or the conviction has occurred.

History.—s. 3, ch. 5399, 1905; RGS 3010; CGL 4746; s. 4, ch. 29737, 1955; s. 4, ch. 73-334.

27.08 Surrender of papers, etc. to successor.—Upon the qualification of the successor of any state attorney, the state attorney going out of office shall deliver to his successor a statement of all cases for the collection of money in favor of the state under his control and the papers connected with the same, and take his receipt for the same, which receipt, when filed with the Department of Banking and Finance, shall release such state attorney from any further liability to the state upon the claims receipted for; and the state attorney receiving the claims shall be liable in all respects for the same, as provided against state attorneys in s. 17.20.

History.—s. 4, ch. 1413, 1863; RS 1353; GS 1782; RGS 3018; CGL 4754; s. 11, ch. 25035, 1949; ss. 12, 35, ch. 69-106.

27.10 Obligation as to claims, how discharged.—The charges mentioned in s. 17.20, shall be evidence of indebtedness on the part of any state attorney against whom any charge is made for the full amount of such claim to the state until the same shall be collected and paid into the treasury or sued to insolvency, which fact of insolvency shall be certified by the circuit judge of his circuit, unless said state attorney shall make it fully appear to the Department of Banking and Finance that the failure to collect the same did not result from his neglect.

History.—s. 2, ch. 1413, 1863; RS 1348; GS 1783; RGS 3013; CGL 4749; s. 11, ch. 25035, 1949; ss. 12, 35, ch. 69-106.

27.11 Report upon claims committed to state attorney.—The state attorney shall make a report to the comptroller on the first Monday in January and July in each and every year of the condition of all claims placed in his hands or which he may have been required to prosecute and collect, whether the same is in suit or in judgment, or collected, and the probable solvency or insolvency of claims not collected, and shall at the same time pay over all moneys which he may have collected belonging to the state; and the comptroller shall not audit or allow any claim which any state attorney may have against the state for services until he makes the report herein required.

History.—s. 3, ch. 1413, 1863; RS 1349; GS 1784; RGS 3014; CGL 4750. cf.—s. 17.21 State attorney's report necessary prior to compensation.

27.12 Power to compromise.—

(1) The state attorney may, with the approval of the Department of Banking and Finance, compromise and settle all judgments, claims and demands in favor of the state in his circuit against defaulting collectors of revenue, sheriffs and other officers, and the sureties on their bonds, on such terms as he may deem equitable and proper.

(2) Any such compromise or settlement may be made with any of the sureties of such defaulting officer as to his individual liability, and a receipt to such surety shall be a discharge of his obligation; but the discharge of one or more of the sureties so compromised and settled with shall not operate as a discharge of the principal or other sureties from the judgment, claim or demand in favor of the state.

History.—s. 1, ch. 3236, 1881; RS 1351; GS 1786; RGS 3016; CGL 4752; ss. 12, 35, ch. 69-106.

27.13 Completion of compromise.—The state attorney shall, on agreeing to any compromise or settlement, report the same to the Department of Banking and Finance for its approval; and, on its approving such compromise or settlement, the said state attorney, on a compliance with the terms of such compromise or settlement shall give a receipt to the collector of revenue, sheriff or other officer, or the sureties on their bonds, or to the legal representatives, which receipt shall be a discharge from all judgments, claims or demands of the state against such collector of revenue or other officer, or the sureties on their bonds.

History.—s. 2, ch. 3236, 1881; RS 1352; GS 1787; RGS 3017; CGL 4753; ss. 12, 35, ch. 69-106.

27.14 Assigning state attorneys to other circuits.—

(1) If any state attorney shall be disqualified to represent the state in any investigation, case, or matter pending in the courts of his circuit, or if, for any other good and sufficient reason, the Governor of the state determines that the ends of justice would be best served, the Governor may, by executive order filed with the Department of State, either order an exchange of circuits or of courts between such state attorney and any other state attorney of the state or order an assignment of any state attorney of the state to discharge the duties of the state attorney with respect to one or more specified investigations, cases, or matters, which investigations, cases, or matters shall be specified in general in the executive order of the Governor. Any exchange or assignment of any state attorney hereunder to a particular circuit shall expire 6 months from the date of issuance unless approved by order of the Supreme Court upon application of the Governor, showing good and sufficient cause to extend such exchange or assignment.

(2) Whenever a state attorney is exchanged or assigned, he may designate one or more of his assistant state attorneys and state attorney investigators to accompany and assist him in the performance of duties under the executive order.

History.—s. 2, ch. 5399, 1905; RGS 3009; CGL 4743; s. 1, ch. 69-1736; s. 4, ch. 73-334; s. 1, ch. 74-627; s. 1, ch. 75-193.

27.15 State attorneys to assist in other circuits.—

(1) The governor of the state may for good and sufficient reasons require any state attorney in the state to proceed to any place in the state and assist the state attorney holding office in the circuit where such place is located in the discharge of any of the duties of such state attorney. Any state attorney in this state who shall be so directed by the governor to go and assist any other state attorney in the discharge of his duties shall immediately proceed to the place designated and assist the state attorney of the circuit in which such place is located in the performance of his duties.

(2) When any state attorney is required to go be-

yond the limits of the circuit in which he holds office to comply with this section or on other official business performed at the direction of the governor, the expenses incurred shall be borne by the state and shall be paid from the appropriation provided by the state for circuit courts.

History.—ss. 1, 2, ch. 8571, 1921; CGL 4744, 4745; s. 24, ch. 57-1; s. 1, ch. 67-324; s. 2, ch. 69-1736.

27.151 Confidentiality; report to Legislature.—

(1) If the Governor provides in an executive order issued pursuant to s. 27.14 or s. 27.15 that the order or a portion thereof is confidential, the order or portion so designated, the application of the Governor to the Supreme Court and all proceedings thereon, and the order of the Supreme Court shall be confidential and exempt from the provisions of s. 119.07.

(2) The Governor shall submit to the President of the Senate and the Speaker of the House of Representatives before February 1 of each year a report specifying the state attorneys assigned or exchanged during the preceding calendar year and the dates of, and the reasons for, such assignments or exchanges. If the Governor designates all or any portion of this report as confidential, the portions so designated shall be confidential and exempt from s. 119.07 and other laws and rules requiring public access or disclosure.

History.—s. 2, ch. 75-193.

27.16 Appointment of acting state attorney.—Whenever there shall be a vacancy in the office of the state attorney in any of the judicial circuits of this state, either by nonappointment or otherwise, or if a state attorney shall not be present at any regular or special term of the courts of his circuit or, being present, shall from any cause be unable to perform the duties of his office or shall be disqualified to act in any particular case, the circuit judge of his judicial circuit shall have full power to appoint a prosecuting officer from among the members of the bar, with the consent of the member so appointed, to whom shall be administered an oath to faithfully discharge the duties of state attorney, and who shall have as full and complete authority, and whose acts shall be in all respects as valid as a regularly appointed state attorney. He shall sign all indictments and other documents as "acting state attorney." The power of the appointee shall cease upon the cessation of the inability or disqualification of the state attorney or the completion of the appointee's duties in any particular case.

History.—s. 1, ch. 1726, 1869; s. 2, ch. 1996, 1874; RS 1354; s. 1, ch. 4899, 1901; GS 1789; RGS 3019; CGL 4755; s. 1, ch. 69-212; s. 4, ch. 73-334.

27.18 Assistant to state attorney.—The state attorney, by and with the consent of court, may procure the assistance of any member of the bar when the amount of the state business renders it necessary, either in the grand jury room to advise them upon legal points and framing indictments, or in court to prosecute criminals; but, such assistant shall not be authorized to sign any indictments or administer any oaths, or to perform any other duty except the giving of legal advice, drawing up of indictments, and the prosecuting of criminals in open court. His compensation shall be paid by the state attorney and not by the state.

History.—s. 1, ch. 2099, 1877; RS 1355; GS 1791; RGS 3021; CGL 4757.

27.181 Assistant state attorneys; appointment, term; powers and duties; compensation.—

(1) Upon the expiration of the term of office being served by each assistant state attorney who holds such office on the date this act becomes effective, such office shall stand abolished. Also, each office of assistant state attorney not held by an incumbent on the date this act becomes effective shall stand abolished on the effective date hereof. Upon the abolition of any office of assistant state attorney under the provisions of this act, there shall thereupon be a position of assistant state attorney in lieu of such office. The state attorney of the judicial circuit in which any such position is created shall appoint an assistant state attorney to hold such position and shall thereafter fill by appointment such vacancies in such position as may from time to time occur. For the purposes of this act, the term of office being served by an assistant state attorney on the effective date of this act shall be deemed to have expired if it expires by reason of the passage of time or if he should die or resign or be removed from office during such term. In the event that any position of assistant state attorney, with a salary to be paid from state funds, shall hereafter be created by law in addition to the positions provided for by this act, the state attorney of the judicial circuit for which such additional position is created shall fill the same, and all vacancies therein, by appointment.

(2) Each assistant state attorney appointed by a state attorney under the authorization of this act shall serve during the pleasure of the state attorney appointing him. Each such appointment shall be in writing and shall be recorded in the office of the clerk of the circuit court of the county in which the appointing state attorney resides. No such appointee shall perform any of the duties of assistant state attorney until he shall have taken and subscribed to a written oath that he will faithfully perform the duties of assistant state attorney and shall have caused the same to be recorded in the office of the clerk of the circuit court of the county in which the appointing state attorney resides. Upon the recordation of such appointment and oath, the appointing state attorney shall promptly cause certified copies thereof to be transmitted to the state comptroller. When any such appointment shall be revoked, the revocation thereof shall be made in writing and shall be recorded in the office of the clerk of the circuit court of the county in which the appointment is recorded, and the state attorney executing the same shall forthwith cause a certified copy thereof to be transmitted to the state comptroller. If any such appointee dies or resigns, the appointing state attorney shall promptly give written notice of such death or resignation to the state comptroller.

(3) Each assistant state attorney appointed by a state attorney under the authorization of this act shall have all of the powers and discharge all of the duties of the state attorney appointing him, under the direction of said state attorney, except, however, that due to constitutional limitations, no such assis-

tant may sign informations. He shall sign indictments and other official documents, except informations, as assistant state attorney, and, when so signed, the same shall have the same force and effect as if signed by the state attorney.

(4) Until otherwise provided by law, each assistant state attorney appointed by a state attorney under the authorization of this section shall receive the allowances for expenses provided by law at the time of his appointment, to be paid in accordance with such law. The salary for each assistant state attorney shall be set by the state attorney of the same judicial circuit in an amount not to exceed 90 percent of that state attorney's salary and shall be paid from funds appropriated for that purpose. However, the assistant state attorneys who serve in less than a full-time capacity shall be compensated for services performed in an amount in proportion to the salary allowed for full-time services.

History.—ss. 1-4, 6, ch. 67-188; s. 1, ch. 72-326; s. 14, ch. 73-299.

27.25 State attorney authorized to employ personnel; funding formula.—

(1) The state attorney of each judicial circuit is hereby authorized to employ and establish in such number as he shall determine assistant state attorneys, investigators, and clerical, secretarial, and other personnel, who shall be paid from funds appropriated for that purpose, up to the maximum salary provided by law.

(2) The state attorney of each judicial circuit is authorized to employ an executive director. The salary of the executive director shall be set by the state attorney in an amount which shall not exceed 60 percent of the state attorney's salary, and it shall be paid from funds appropriated for that purpose. The duties of the executive director shall be as prescribed by the state attorney.

(3) In any judicial circuit where a court reporter is not available, any stenographer employed by a state attorney is authorized and may be required to perform the services of a court reporter and shall be entitled to receive the per diem and fees provided by law for such services.

(4) All payments for the salary of the state attorney and the necessary expenses of his office, including salaries of his deputies, assistants, and staff, shall be considered as being for a valid public purpose.

(5) The appropriations for the offices of state attorneys shall be determined by a funding formula based on population and such other factors as may be deemed appropriate in a manner to be determined by this subsection and any subsequent appropriations act.

History.—ss. 1, 2, ch. 17261, 1935; CGL 1936 Supp. 4759(9); s. 1, ch. 18147, 1937; s. 1, ch. 18148, 1937; s. 1, ch. 22188, 1943; s. 1, ch. 22905, 1945; ss. 2, 3, ch. 25243, 1949; s. 1, ch. 29952, 1955; s. 1, ch. 57-301; s. 5, ch. 67-324; s. 4, ch. 69-212; s. 1, ch. 69-257; s. 2, ch. 72-326; s. 1, ch. 73-215; s. 2, ch. 79-344.

cf.—ss. 29.03, 29.04 Compensation of court reporters.

27.251 Special organized crime investigators.—

(1) The state attorney of each judicial circuit is authorized to employ any municipal or county police officer or sheriff's deputy on a full-time basis as an investigator for the state attorney's office with full powers of arrest throughout his judicial circuit provided such investigator serves on a special task force to investigate matters involving organized crime, and, provided further, that the salary of such municipal or county police officer or sheriff's deputy shall be paid by the city, county, or sheriff by which the investigator is principally employed, and with the consent of the county, sheriff, or municipality. The arrest powers granted herein shall be exercised only in the furtherance of the conduct of the business of the special task force to which such municipal or county police officer or sheriff's deputy is assigned by the said state attorney.

(2) Each state attorney shall, on or before January 1 of each year, submit a report to the President of the Senate and Speaker of the House, which report shall specify the number of municipal police officers and sheriff's deputies which have been employed by him during the preceding fiscal year pursuant to this section and an estimate of the number of such officers and deputies which will be employed by him during the current fiscal year.

History.—ss. 1, 4, ch. 78-227.

27.255 Investigators; authority to arrest, qualifications, rights, immunities, bond, and oath.—

(1) Each investigator employed on a full-time basis by a state attorney and each special investigator appointed by the state attorney pursuant to the provisions of s. 27.251 is hereby declared to be a law enforcement officer of the state and a conservator of the peace, under the direction and control of the state attorney who employs him, with full powers of arrest, in accordance with the laws of this state. Such investigator may arrest any person for violation of state law or applicable county or city ordinances when such violation occurs within the boundaries of the judicial circuit served by the state attorney employing the investigator, except that arrests may be made out of said judicial circuit when hot pursuit originates within said judicial circuit. Such investigator shall, within the boundaries of the judicial circuit served by such state attorney, have full authority to serve any arrest warrant, search warrant, witness subpoena, capias, or court order issued by any court or judge within such judicial circuit in a criminal case, or in connection with a criminal investigation, when the same is directed to him. He may carry weapons on or about his person in the same manner as other law enforcement officers.

(2) All investigators employed by a state attorney or appointed pursuant to the provisions of s. 27.251 shall meet the minimum standards established by the Police Standards and Training Commission of the Department of Law Enforcement for the employment and training of police officers under chapter 943, except that investigators employed by a state attorney on July 1, 1974, shall not be required to meet such standards.

(3) In the performance of any of the powers, duties, and functions authorized by law or this section, investigators employed by a state attorney or appointed pursuant to the provisions of s. 27.251 shall have the same rights, protections, and immunities afforded other peace or law enforcement officers.

(4) Any full-time investigator employed by the state attorney and any special investigator appoint-

ed by the state attorney pursuant to the provisions of s. 27.251 shall, before entering into the performance of his duties, take and file the oath as prescribed in s. 5, Art. II of the State Constitution and enter into a good and sufficient bond with a surety company authorized to do business in this state as surety thereon, conditioned on the faithful performance of his duties and payable to the Governor and his successors in the penal sum of $5,000.

History.—s. 1, ch. 70-275; s. 1, ch. 74-260; s. 2, ch. 78-227; s. 5, ch. 79-8.

27.271 Per diem and mileage, state attorneys and assistant state attorneys.—

(1) Each state attorney and assistant state attorney shall be entitled to receive per diem and mileage as provided in s. 112.061, for travel on official business within or outside the state.

(2) This section shall not be construed to allow mileage or per diem for travel by any state attorney or assistant state attorney between his home and the courthouse designated as the travel headquarters of said state attorney or assistant state attorney or for time spent at the county seat of the county in which he resides.

History.—ss. 1-4, ch. 29951, 1955; s. 19, ch. 63-400; ss. 6, 7, ch. 67-324; s. 3, ch. 73-215.

27.33 Submission of annual budget.—

(1) On or before November 15, annually, prior to the meeting of the Legislature, each state attorney shall submit to the Executive Office of the Governor a written report containing an estimate in itemized form showing the amount needed for operational expenses for the year beginning July 1, thereafter. Each such estimate shall itemize the expenditures required for the state attorney submitting it and for his assistants, as follows:

(a) Salary of state attorney.

(b) Salaries of assistant state attorneys.

(c) Salaries of stenographers.

(d) Salaries and travel expenses of investigators.

(e) Travel expenses of state attorney and assistant state attorneys.

(f) Office equipment.

(g) Stationery, stamps, telephone and telegraph service, and the printing of necessary legal forms.

(h) Other necessary expenses of state attorney and his assistants.

(i) Reserve for contingencies.

(2) The form of such reports shall be prescribed by the Executive Office of the Governor and shall be as nearly uniform as may be.

(3) No such report shall include any amount for any expense which is required by statute to be paid from county funds.

(4) After this act takes effect as law, all of the provisions of chapter 216, which relate to the budgets and expenses of state officers shall be applicable to state attorneys and their budgets and expenses.

History.—ss. 1-3, ch. 63-440; ss. 2, 3, ch. 67-371; ss. 31, 35, ch. 69-106; s. 1, ch. 73-305; s. 14, ch. 73-333; s. 83, ch. 79-190.

27.34 Salaries and other related costs of state attorneys' offices; limitations.—

(1) No county or municipality shall appropriate or contribute funds to the operation of the various state attorneys, except that a county or municipality may appropriate or contribute funds to pay the salary of one assistant state attorney whose sole function shall be to prosecute violations of special laws or ordinances of the county or municipality and may provide persons employed by the county or municipality to the state attorney to serve as special investigators pursuant to the provisions of s. 27.251. However, any county or municipality may contract with the state attorney of the judicial circuit in which such county or municipality is located for the prosecution of violations of county or municipal ordinances.

(2) The state attorney shall be provided by the counties within their judicial circuits with such office space, utilities, telephone service, custodial services, library services, transportation services, and communication services as may be necessary for the proper and efficient functioning of these offices. The office space to be provided by the counties shall not be less than the standards for space allotment promulgated by the Department of General Services nor shall these services and office space be less than were provided in fiscal year 1972-1973.

(3) It is hereby prohibited for any state attorney to receive from any county or municipality any supplemental salary. However in judicial circuits with a population of 1 million or more, state attorneys presently holding office and now receiving a county supplement may continue to receive a county salary supplement at the discretion of the counties for the remainder of their term of office.

History.—s. 3, ch. 72-326; s. 1, ch. 72-734; s. 2, ch. 73-215; s. 1, ch. 77-164; s. 3, ch. 78-227; s. 3, ch. 79-344.

27.35 Salaries of state attorneys.—

(1) Each state attorney shall receive as salary the amount provided in subsection (2) and subsequent appropriations acts.

(2) The annual salaries for state attorneys shall be as follows:

(a) In those circuits having a population of 100,000 or less $28,000

(b) In those circuits having a population of more than 100,000 but less than 200,000 30,000

(c) In those circuits having a population of more than 200,000 ..... 32,000.

History.—ss. 3, 6, ch. 72-326.

cf.—s. 11.031 Official census.

27.36 Office of Prosecution Coordination.—

(1) There is created in the office of the Governor the Office of Prosecution Coordination.

(2) The office shall coordinate and provide information, assistance, and staff support to the Council for the Prosecution of Organized Crime, the statewide grand jury, and the various state attorneys.

(3) There shall be an executive director of the Office of Prosecution Coordination who shall be appointed and serve at the pleasure of the Governor.

(4) The executive director shall employ such other personnel as may be necessary in the performance of office functions.

(5) The operation of the Office of Prosecution Coordination shall be funded from the General Revenue Fund. The office may, with the approval of the Governor, seek and accept grants, funds, or gifts

from any source, public or private, federal, state, or local, to supplement its operation and defray the expenses incurred in the operation and implementation of this act.

History.—s. 1, ch. 77-403; s. 8, ch. 79-400.

27.37 Council for the Prosecution of Organized Crime.—

(1) There is created in the office of the Governor a council to be known as the Council for the Prosecution of Organized Crime. The council shall be composed of five state attorneys appointed by and serving at the pleasure of the Governor. The Governor shall designate one member to serve as chairman.

(2) Members of the council shall be entitled to reimbursement for per diem and travel expenses as provided in s. 112.061.

(3) The Governor shall designate one member of the council who shall act as legal advisor and direct the operation of the statewide grand jury as provided in s. 905.36. The remaining members of the council may assist the legal advisor and attend sessions of the statewide grand jury.

(4) The council shall provide adequate staff support to the legal advisor designated by the Governor to direct the operation of the statewide grand jury.

(5) The council shall report to the Legislature on or before March 1, 1978, on the advances made in carrying out the objectives of this act.

(6)(a) All documents pertaining to criminal intelligence or investigations in the possession or control of the Council for the Prosecution of Organized Crime shall be exempt from the provisions of s. 119.07.

(b) The Council for the Prosecution of Organized Crime shall not be considered an "agency" within the definition of s. 120.52.

(c) If the council meets primarily to further any criminal investigation, that meeting shall be exempt from the requirements of s. 286.011.

(7) The chairman of the council or the legal advisor to the statewide grand jury may issue subpoenas and other necessary process to compel attendance of witnesses and take testimony before the council. The chairman or any member of the council may administer oaths or affirmations to witnesses who appear before the council to testify on any matter which the council may desire evidence.

(8) Any attorney employed by the council to provide staff support to the council shall be an assistant state attorney assistant to the legal advisor and the other members of the council consistent with the appointment, term, powers, duties, and compensation established in s. 27.181.

History.—s. 2, ch. 77-403; s. 9, ch. 79-400.

PART II

PUBLIC DEFENDERS

27.50 Public defender; qualifications; election.—There shall be a public defender, who shall be a member of The Florida Bar in good standing, for each of the judicial circuits. The public defender shall be elected at the general election by the qualified electors of their respective judicial circuits as other state officials are elected and shall serve for a term of 4 years.

History.—s. 1, ch. 63-409; s. 15, ch. 73-333.

27.51 Duties of public defender.—

(1) The public defender shall represent, without additional compensation as provided in s. 925.035, any person who is determined to be insolvent, as provided in this act, who is under arrest for, or is charged with, a felony. The public defender may represent any person who is determined to be insolvent, as provided in this act, who is under arrest for, or is charged with, a misdemeanor or violation of a municipal or county ordinance in the county court. In any juvenile proceeding in a court in any county of this state having a population in excess of 390,000 according to the latest official decennial census, where a child is alleged to be a delinquent child pursuant to a petition filed therein and the said child is determined to be insolvent, and if such child requests or the court on its own motion appoints, the public defender or assistant public defenders shall represent said child. In any juvenile proceeding in a court in any remaining county of this state where a child is alleged to be a delinquent child pursuant to a petition filed therein and the said child is determined to be insolvent, and if such child requests, and the court on its own motion appoints, the Department of Health and Rehabilitative Services shall appoint counsel to represent said child from the legal staff available to the department. If legal counsel is not available from the department, the court may appoint the public defender, assistant public defender, or private counsel to represent the alleged delinquent indigent child. Nothing herein contained shall prevent the trial court from appointing private counsel in capital cases as provided in s. 925.035. The clerk of the court conducting such proceedings is directed to make such proceedings a matter of record.

(2) The public defender may, with the consent of the trial court, but without compensation by the state, accept the voluntary services of members of The Florida Bar in good standing in the defense of an insolvent person.

(3) All public defenders elected to office on or after November 1, 1972, shall be elected on a full-time basis and shall be prohibited from the private practice of law while holding office. Assistant public

defenders shall give priority and preference to their duties under the provisions of this act and may engage in private practice of law only to the extent that it will not interfere with or prevent performance of their duties as assistant public defenders and shall not otherwise engage in the practice of criminal law.

(4) The public defenders for the judicial circuits enumerated below may, if requested by any public defender within the appellate district shown, handle all appeals to the state and federal courts required of the official making such request:

(a) Public defender of the second judicial circuit, on behalf of any public defender within the district comprising the First District Court of Appeal.

(b) Public defender of the twelfth judicial circuit, on behalf of any public defender within the district comprising the Second District Court of Appeal.

(c) Public defender of the eleventh judicial circuit, on behalf of any public defender within the district comprising the Third District Court of Appeal.

(d) Public defender of the fifteenth judicial circuit, on behalf of any public defender within the district comprising the Fourth District Court of Appeal.

A sum shall be appropriated annually to the public defender of those judicial circuits enumerated in paragraphs (a)-(d) for the employment of attorneys as part-time public defenders, clerical employees, and expenses, including those incurred in cases on appeal.

History.—s. 2, ch. 63-409; s. 1, ch. 67-539; ss. 19, 35, ch. 69-106; s. 1, ch. 71-28; s. 1, ch. 72-327; s. 1, ch. 72-722; s. 1, ch. 73-216; s. 4, ch. 73-334; s. 3, ch. 77-147.

27.52 Determination of insolvency.—

(1) The determination of insolvency of any accused person shall be made by the court and may be done at any stage of the proceedings. Any accused person claiming insolvency shall file with the court an affidavit, the form for which shall be promulgated by the Department of Legal Affairs, and such affidavit shall supply and be consistent with the information required in subsection (2). The public defender shall be allowed process of the court to summon witnesses to testify before the court concerning the financial ability of any accused person to employ counsel for his own defense.

(2)(a) In proceedings for the determination of insolvency, there shall be a presumption of solvency, and the defendant shall have the burden of rebutting the presumption by competent proof.

(b) The following facts shall be prima facie evidence of solvency:

1. The defendant has been released on bail in the amount of $1500 or more.

2. The defendant has no dependents and his gross income exceeds $75 per week; the income limit shall be increased by $10 per week for each of the first two dependents of the defendant and by $5 per week for each dependent beyond the first two.

3. The defendant owns cash in excess of $300.

(c) The court shall also consider the following additional circumstances in determining insolvency:

1. The probable expense and burden of defending the case;

2. The ownership of, or equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property by the defendant; and

3. The amount of debts owed by defendant or debts that might be incurred by the defendant because of illness or other misfortunes within his family.

(d) When the public defender, or a special assistant public defender appointed pursuant to s. 27.53(2), is appointed to represent a minor in any proceeding in circuit court or in a criminal proceeding in any other court, the parents of the minor child shall be liable for the costs of such representation in an amount not to exceed $750. Liability for the costs of such representation may be imposed in the form of a lien against the parents, which lien shall be enforceable by contempt proceedings. The court shall determine the amount of the obligation, and in determining the amount of the obligation the court shall follow the procedure outlined by this section.

(3) If the trial court shall determine and adjudge, within 1 year after the determination of insolvency, that any accused was erroneously or improperly determined to be insolvent the state attorney may, in the name of the state, proceed against such accused for the reasonable value of the services rendered to the accused and including all costs paid by the state or county in his behalf. Any amount recovered shall be deposited in the General Revenue Fund to the account from which the expenses of the office of public defender are paid.

History.—s. 3, ch. 63-409; s. 1, ch. 70-57; s. 4, ch. 73-334; s. 1, ch. 77-99; s. 1, ch. 77-378; s. 8, ch. 79-164.

27.53 Appointment of assistants and other staff; method of payment.—

(1) The public defender of each judicial circuit is hereby authorized to employ and establish, in such numbers as he shall determine, assistant public defenders, investigators, and clerical personnel who shall be paid from funds appropriated for that purpose, up to the maximum salary provided by law.

(2) In addition, any member of the bar in good standing may be appointed by the court to, or may register his or her availability to the public defender of each judicial circuit for acceptance of, special assignments without salary to represent insolvent defendants. Such persons shall be listed and referred to as special assistant public defenders and be paid a fee and costs and expenses. Such fee and costs and expenses shall be fixed by the trial judge and shall be paid in the same manner and amount as counsel fees are paid in capital cases or as otherwise provided by law. In addition, defense counsel may be assigned and paid pursuant to any existing or future local act or general act of local application.

(3) If at any time during the representation of two or more indigents the public defender shall determine that the interests of those accused are so adverse or hostile that they cannot all be counseled by the public defender or his staff without conflict of interest, or that none can be counseled by the public defender or his staff because of conflict of interest, it shall be his duty to move the court to appoint one or more members of The Florida Bar who are in no way affiliated with the public defender in his capacity as such, or in his private practice, to represent those

accused. However, the trial court shall appoint such other counsel upon its own motion when the facts developed upon the face of the record and files in the cause disclose such conflict, and said attorney may, in the discretion of the court, be paid a fee and costs and expenses as is provided in subsection (2).

(4) The appropriations for the offices of public defender shall be determined by a funding formula based on population and such other factors as may be deemed appropriate in a manner to be determined by this subsection and any subsequent appropriations act.

History.—s. 4, ch. 63-409; s. 1, ch. 65-527; s. 1, ch. 67-192; s. 2, ch. 67-539; s. 2, ch. 72-327; s. 2, ch. 73-216; s. 1, ch. 76-287; s. 1, ch. 78-344.
cf.—s. 925.036. Appointed counsel; compensation.

27.5301 Salaries of public defenders and assistant public defenders.—

(1)(a) The salaries of public defenders shall be fixed in paragraph (b) and any subsequent appropriation act based on population categories of the various judicial circuits.

(b) The annual salaries of the public defenders shall be as follows:

1. In those circuits having a population of 100,000 or less $25,000
2. In those circuits having a population of more than 100,000 but less than 200,000 27,000
3. In those circuits having a population of more than 200,000 ..... 29,000.

(2) The salary for each assistant public defender shall be set by the public defender of the same judicial circuit in an amount not to exceed 90 percent of that public defender's salary and shall be paid from funds appropriated for that purpose. Assistant public defenders who serve in less than a full-time capacity shall be compensated for services performed in an amount to be in proportion to the salary allowed for full-time services.

History.—ss. 3, 7, ch. 72-327.
cf.—s. 11.031 Official census.

27.54 Expenditures for public defender's office.—

(1) All payments for the salary of the public defender and the necessary expenses of his office, including salaries of his deputies, assistants, and staff, shall be considered as being for a valid public purpose. Travel expenses shall be paid in accordance with the provisions of s. 112.061.

(2) No county or municipality shall appropriate or contribute funds to the operation of the offices of the various public defenders.

(3) The public defenders shall be provided by the counties within their judicial circuits with such office space, utilities, telephone services, and custodial services as may be necessary for the proper and efficient functioning of these offices. The office space and utilities to be provided by the counties shall not be less than the standards for space allotment promulgated by the Department of General Services. The counties shall not provide less of these services than were provided in fiscal year 1972-1973.

(4) It is hereby prohibited for any public defender to receive from any county or municipality any supplemental salary.

History.—s. 5, ch. 63-409; s. 3, ch. 67-539; s. 4, ch. 72-327; s. 2, ch. 72-722; s. 3, ch. 73-216.

27.55 Compensation of public defender and expenditures for office in newly created circuit.—

(1) In the event new judicial circuits are created, the Executive Office of the Governor is authorized to release the necessary moneys for the payment of the salary of the public defender in such newly created circuit in an amount not to exceed the annual salary paid to the public defender in the judicial circuit of which the new circuit was formerly a part.

(2) In the event new judicial circuits are created, the Executive Office of the Governor is authorized to release necessary moneys to operate the public defender's office in the newly created judicial circuit in accordance with the formula provided in the General Appropriations Act of 1967.

History.—s. 2, ch. 63-410; s. 1, ch. 67-333; s. 4, ch. 67-539; ss. 2, 3, ch. 67-371; ss. 31, 35, ch. 69-106; s. 84, ch. 79-190.

27.56 Assistance; lien for payment of attorney's fees or costs.—

(1)(a) The court having jurisdiction over any defendant who has been determined to be guilty of a criminal act by a court or jury or through a plea of guilty or nolo contendere and has received the assistance of the public defender's office or the services of a private attorney appointed pursuant to the Florida Statutes or the Florida Rules of Criminal Procedure shall assess against the defendant attorney's fees and costs. Such costs may include the cost of depositions, investigative costs, witness fees, the cost of psychiatric examinations, or other reasonable costs specially incurred by the county for the defense of the defendant in criminal prosecutions within the county. Costs shall not include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.

(b) Upon entering a judgment of conviction, the trial court may order the defendant to pay the costs assessed by the court in full, or within a time certain as set by the court, after the judgment of conviction becomes final.

(c) After assessment of the attorney's fees and costs, the court may order the defendant to pay the attorney's fees in full or in installments, at the time or times specified. The court may order payment of the assessed attorney's fees as a condition of probation, of suspension of sentence, or of withholding the imposition of sentence.

(2)(a) When payment of attorney's fees or costs has been ordered by the court, there is hereby created in the name of the county in which such assistance was rendered a lien, enforceable as hereinafter provided, upon all the property, both real and personal, of any person who:

1. Has received any assistance from any public defender of the state or from any appointed private legal counsel; or
2. Is a parent of a minor child who is being, or has

been, represented by any public defender of the state or by any special assistant public defender.

Such lien shall constitute a claim against the defendant-recipient or parent and his estate, enforceable according to law, in an amount to be determined by the court in which such assistance was rendered.

(b) Immediately after the issuance of an order for the payment of attorney's fees or costs, a judgment showing the name and residence of the defendant-recipient or parent of said minor child shall be filed for record in the office of the clerk of the circuit court in the county where the defendant-recipient or parent of said minor child resides and in each county in which such defendant-recipient or parent of said minor child then owns or later acquires any property. Said judgments shall be enforced on behalf of the county by the board of county commissions of the county in which assistance was rendered.

(3) In lieu of the procedure above described, the court is authorized to require that the defendant-recipient of the services of the public defender or appointed private legal counsel, or the parent of a minor child who has received such services, execute a lien upon his real or personal property, presently owned or after-acquired, as security for the debt created hereby. Such lien shall be recorded in the public records of the county at no charge by the clerk of the circuit court and shall be enforceable in the same manner as mortgages.

(4) The board of county commissioners of the county wherein the defendant-recipient was tried or received the services of a public defender or special assistant public defender is authorized to enforce, satisfy, compromise, settle, subordinate, release, or otherwise dispose of any debt or lien hereby imposed. A defendant-recipient who has been ordered to pay attorney's fees or costs and who is not in willful default in the payment thereof may, at any time, petition the court which entered the order for remission of the payment of attorney's fees or costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant-recipient or his immediate family, the court may remit all or part of the amount due in attorney's fees or costs, or modify the method of payment.

(5) The board of county commissioners of the county claiming such lien is authorized to contract with a collection agency for collection of such debts or liens, provided the fee for such collection shall be on a contingent basis not to exceed 50 percent of the recovery. However, no fee shall be paid to any collection agency by reason of foreclosure proceedings against real property or from the proceeds from the sale or other disposition of real property.

(6) No lien thus created shall be foreclosed upon the homestead of such defendant-recipient or such parent of a minor child, nor shall any defendant-recipient or parent of a minor child who is ordered to pay attorney's fees or costs be denied any of the protections afforded any other civil judgment debtor.

(7) The court having jurisdiction of the defendant-recipient may, at such stage of the proceedings as the court may deem appropriate, determine the value of the services of the public defender or appointed private legal counsel, and costs, at which time the defendant-recipient, after adequate notice thereof, shall have opportunity to be heard and offer objection to the determination, and to be represented by counsel, with due opportunity to exercise and be accorded the procedures and rights provided in the laws and court rules pertaining to civil cases at law.

History.—s. 3, ch. 63-410; s. 7, ch. 67-539; s. 1, ch. 72-41; s. 1, ch. 77-264; s. 2, ch. 77-378; s. 10, ch. 79-400.

27.561 Effect of nonpayment.—

(1) Whenever a defendant-recipient shall be ordered to pay attorney's fees or costs, default in the payment thereof shall be cause for finding the defendant-recipient in contempt of court, and the court may issue a show cause citation or a warrant of arrest for the defendant-recipient's appearance.

(2) Unless the defendant-recipient shows that his fault was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes contempt and order him committed until the attorney's fees or costs, or a specified part thereof, are paid or take any other action appropriate under the circumstances, including revocation of probation.

(3) If it appears to the satisfaction of the court that the default in the payment of the attorney's fees or costs is not contempt, the court may enter an order allowing the defendant-recipient additional time for, or reducing the amount of, payment or revoking the assessed attorney's fees or costs, or the unpaid portion thereof, in whole or in part.

History.—s. 2, ch. 77-264.

27.562 Disposition of funds.—All funds collected pursuant to s. 27.56 shall be remitted to the board of county commissioners of the county wherein the defendant-recipient was tried. Such funds shall be placed in the fine and forfeiture fund of that county to be used to defray the expenses incurred by the county in defense of criminal prosecutions. All judgments entered pursuant to the provisions of this act shall be in the name of the county in which the judgment was rendered.

History.—s. 3, ch. 77-264; s. 11, ch. 79-400.

27.57 Reports.—The public defender shall file with the Judicial Administrative Commission quarterly reports of the activities of his office.

History.—s. 6, ch. 63-409; s. 5, ch. 67-539.

27.58 Existing laws.—This act shall not repeal but shall be supplementary to any local law or ordinance heretofore providing for a public defender or assigned defense counsel in any county or counties of the state, and the public defender in such county or counties may continue to operate under such prior act or ordinance to the extent determined by the board of county commissioners thereof; provided, however, that the public defender of each judicial circuit of the state shall be the chief administrator of all public defender services within the circuit

whether such services are rendered by the state or county public defenders.

History.—s. 7, ch. 63-409.

27.59 Access to prisoners.—The public defenders and assistant public defenders shall be empowered to inquire of all persons who are incarcerated for 48 hours or longer in lieu of bond and to tender them advice and counsel at any time following the expiration of such period, provided that the provisions of this section shall not apply to persons who have engaged private counsel.

History.—s. 6, ch. 67-539.

CHAPTER 28

CLERKS OF THE CIRCUIT COURTS

28.01 Bond of circuit court clerks, small counties.—In each county of the state, having a population of 150,000 or less according to the last state census, the clerk of the circuit court shall, before being commissioned, give bond in a penalty which shall not be less than $1,000 nor more than $5,000 to be fixed by the board of county commissioners of his county, payable to the Governor of the state and his successors in office, with two or more good and sufficient sureties to be approved by the board of county commissioners and the Department of Banking and Finance, and to be filed with the Department of State, which said bond shall be conditioned upon the faithful discharge of the duties of his office.

History.—ss. 1, 3, ch. 3724, 1887; RS 1381; GS 1821; RGS 3066; CGL 4847; s. 1, ch. 20719, 1941; ss. 10, 12, 35, ch. 69-106.

28.02 Bond of circuit court clerks, large counties.—In each county of the state, having a population in excess of 150,000 according to the last state census, the clerk of the circuit court shall, before being commissioned, give bond in a penalty which shall not be less than $5,000 nor more than $100,000 to be fixed by the board of county commissioners of his county, payable to the Governor of the state and his successors in office, with two or more good and sufficient sureties to be approved by the board of county commissioners and the Department of Banking and Finance, and to be filed with the Department of State, which said bond shall be conditioned upon the faithful discharge of the duties of his office.

History.—ss. 1, 3, ch. 3724, 1887; RS 1381; GS 1821; RGS 3066; CGL 4847; s. 1, ch. 17754, 1937; ss. 10, 12, 35, ch. 69-106.

28.03 Obligation of sureties.—Each surety upon such bond may bind himself for a specified sum, but the aggregate amount for which the sureties shall bind themselves shall not be less than the penalty of the bond.

History.—s. 9, ch. 3724, 1887; RS 1382; GS 1822; RGS 3067; CGL 4848; s. 2, ch. 17754, 1937; s. 1, ch. 20719, 1941.

28.04 Justification of sureties.—Each surety upon such bond shall make affidavit that he is a resident of the county for which the clerk is to be commissioned, and that he has sufficient visible property therein unencumbered and not exempt from sale under legal process to make good his bond.

History.—s. 10, ch. 3724, 1887; RS 1892; GS 1823; RGS 3068; CGL 4849; s. 3, ch. 17754, 1937; s. 1, ch. 20719, 1941.

28.05 Surety companies.—The provisions of ss. 28.01-28.04 as to number of sureties, affidavits of residence and justification of same, shall not apply to solvent surety companies authorized to do business and execute bonds in this state.

History.—GS 1824; RGS 3069; CGL 4850; s. 4, ch. 17754, 1937; s. 1, ch. 20719, 1941.

28.06 Power of clerk to appoint deputies.—The clerk of the circuit court may appoint a deputy or deputies, for whose acts he shall be liable, and the said deputies shall have and exercise each and every power of whatsoever nature and kind as the clerk himself may exercise, excepting the power to appoint a deputy or deputies.

History.—s. 1, Feb. 12, 1834; s. 1, ch. 254, 1849; RS 1384; GS 1825; RGS 3070; CGL 4851; s. 1, ch. 21956, 1943.

28.07 Place of office.—The clerk of the circuit court shall keep his office at the county seat of the county; however, in those counties in which the clerk feels such offices to be necessary, he may establish branch offices in other places than the county seat and may provide such offices with a deputy clerk authorized to issue process; provided, that all permanent official books and records shall be kept at the county seat of the county.

History.—s. 3, Feb. 12, 1834; RS 1385; GS 1826; RGS 3071; CGL 4852; s. 1, ch. 57-281.

28.071 Clerk's seal.—Each clerk shall provide a seal which shall have inscribed thereon substantially the words:

"Circuit Court"

"Clerk," "(Name of county)"

which shall be the official seal of the clerk of the circuit court in that county for authentication of all documents or instruments. It may be an imprint or impression type seal and shall be registered with the Department of State.

History.—s. 1, ch. 70-134; s. 1, ch. 70-439.

28.08 Place of residence.—The clerk of the circuit court, or a deputy, shall reside at the county seat or within 2 miles thereof.

History.—s. 1, ch. 1851, 1871; RS 1386; GS 1827; RGS 3072; CGL 4853.

28.09 Clerk ad interim.—In the case of vacancy occurring in the office of a clerk of the circuit court by death, resignation or other cause, the judge of that court shall appoint a clerk ad interim, who shall assume all the responsibilities, perform all the duties and receive the same compensation for the time being as if he had been duly appointed to fill the office; and he shall give such bond and security for the faithful performance of his duties as is prescribed by law.

History.—s. 1, ch. 722, 1855; RS 1393; GS 1838; RGS 3083; CGL 4866.

28.091 Clerks of abolished courts as affected by revised Article V, State Constitution.—Any provision of any civil service law or regulation to the contrary notwithstanding, clerks of courts having countywide territorial jurisdiction but which are being abolished by the revision of Art. V, State Constitution, shall become deputy clerks of the circuit court of their respective counties and serve as such for the remainder of the terms for which they were elected or appointed, at a rate of compensation not less than that received immediately before January 1, 1973.

History.—s. 8, ch. 72-404.

28.101 Records of dissolution of marriage; additional charges.—Upon receipt of a final judgment of dissolution of marriage for filing, and in addition to the filing charges in s. 28.241, the clerk shall collect and receive a service charge of $3 for the recording and reporting of such final judgment of dissolution of marriage to the Bureau of Vital Statistics of the [1]Division of Health.

History.—s. 2, ch. 67-520; s. 2, ch. 70-134; s. 1, ch. 70-439; s. 1, ch. 73-300.
[1]Note.—The Division of Health was abolished by s. 3, ch. 75-48, and its functions were assigned to the Department of Health and Rehabilitative Services.

28.12 Clerk of the board of county commissioners.—The clerk of the circuit court shall be clerk and accountant of the board of county commissioners. He shall keep the minutes and accounts and perform such other duties as provided by law. He shall have custody of the seal and affix the same to any paper or instrument as required by law.

History.—RS 1392; GS 1836; RGS 3081; CGL 4864; s. 3, ch. 70-134.

28.13 To keep papers.—The clerk of the circuit court shall keep all papers filed in his office with the utmost care and security, arranged in appropriate files (endorsing upon each the time when the same was filed), and all the pleadings in such cause shall be attached together with tape or ribbon, and kept distinct from other papers in the cause; and papers of different kinds shall not be mixed up and folded loosely together, but each description of papers shall be kept on file with other papers of the same class; and he shall not permit any attorney, or other person, to take papers once filed out of the office of the clerk without leave of the court, except as is hereinafter provided by law.

History.—s. 59, Nov. 18, 1828; RS 1389; GS 1830; RGS 3075; CGL 4856.

28.14 Judgments, decrees, orders, etc., prior to circuit courts.—All the records, judgments, orders and decrees of the several circuit courts, in the respective counties, made and entered before July 28th, 1868, shall be taken and held to be the records, judgments, orders and decrees of the circuit courts as established in said counties July 28th, 1868, and may be amended and enforced according to law and the practice of said courts.

History.—s. 9, ch. 1629, 1869; RS 1402; GS 1853; RGS 3098; CGL 4882.

28.15 Records from superior courts.—The files, rolls and books of record of the superior courts of the several districts of the Territory of Florida remaining in the clerk's offices of the respective counties, so far as the same, by the concurrence of the Congress and the Legislature of this state, may relate to matters of appropriate state authority and jurisdiction, are placed in the custody and under the control of the circuit courts of this state in the respective counties thereof, where the said superior courts were held and the records kept, and shall be deemed, held and taken to be files, rolls and records of the said circuit courts; and the said circuit courts may lawfully have and exercise such judicial cognizance and power over them as the said courts may lawfully have and exercise over their own files, rolls and records.

History.—s. 2, ch. 520, 1853; RS 1403; GS 1854; RGS 3099; CGL 4883.

28.16 Certain records from prior county courts.—All the records, judgments and orders in the several county courts, in the respective counties, made and entered prior to May 4th, 1875, where the amount sued upon exceeded the sum of $100, shall be held, deemed and taken to be files, rolls and records of the circuit court and the said circuit court may lawfully have and exercise such cognizance and power over them as said courts may lawfully have and exercise over its own files, rolls and records.

History.—s. 1, ch. 3004, 1877; RS 1404-1406; s. 1, ch. 4725, 1899; GS 1855-1858; RGS 3100-3103; CGL 4884-4887.

28.17 Verification.—Clerks of the circuit court, judges of probate, and all other officers charged with the duty of recording deeds and other instruments of writing in this state, shall carefully compare the originals of such deeds, mortgages and other instruments of writing with the record of same as made by them on the record books under their charge, in order that any errors committed in such record may be

corrected; and after such comparison and correction of the record the said officer shall endorse upon such original document the words, "Record verified," and sign his name thereto.

History.—s. 1, ch. 4139, 1893; GS 1834; RGS 3079; CGL 4862.

28.19 Service charges.—

(1) The service charges for recording any instrument of writing entitled to record under the laws of this state shall not be payable to any officer who may have recorded the same until he has verified the record and endorsed the original instrument as aforesaid.

(2) Such records shall always be open to the public, under the supervision of the clerk, for the purpose of inspection thereof and of making extracts therefrom; but the clerk shall not be required to perform any service in connection with such inspection or making of extracts without payment of service charges as provided in s. 28.24.

History.—s. 2, ch. 4139, 1893; GS 1835; RGS 3080; CGL 4863; s. 4, ch. 70-134.

28.211 Clerk to keep docket.—The clerk of the circuit court shall keep a progress docket in which he shall note the filing of each pleading, motion, or other paper and any step taken by him in connection with each action, appeal, or other proceeding before the court. The clerk may keep separate progress dockets for civil and criminal matters. The clerk shall keep an alphabetical index, direct and inverse, for the docket.

History.—s. 1, ch. 71-4.

28.212 Minutes of court proceedings.—The clerk may keep minutes of court proceedings. The action of the court shall be noted in the minutes, but orders and judgments shall not be recorded in the minutes.

History.—s. 1, ch. 72-320.

28.222 Clerk to be county recorder.—

(1) The clerk of the circuit court shall be the recorder of all instruments that he may be required or authorized by law to record in the county where he is clerk.

(2) He shall record all instruments in one general series of books called "Official Records." He shall keep a register in which he shall enter at the time of filing the filing number of each instrument filed for record, the date and hour of filing, the kind of instrument, and the names of the parties to the instrument. He shall maintain a general alphabetical index, direct and inverse, of all instruments filed for record.

(3) The clerk of the circuit court shall record the following kinds of instruments presented to him for recording, upon payment of the service charges prescribed by law:

(a) Deeds, leases, bills of sale, agreements, mortgages, notices or claims of lien, notices of levy, tax warrants, tax executions, and other instruments relating to the ownership, transfer, or encumbrance of or claims against real or personal property or any interest in it; extensions, assignments, releases, cancellations, or satisfactions of mortgages and liens; and powers of attorney relating to any of the instruments;

(b) Notices of lis pendens, including notices of an action pending in a United States court having jurisdiction in this state;

(c) Judgments, including certified copies of judgments, entered by any court of this state or by a United States court having jurisdiction in this state and assignments, releases, and satisfactions of the judgments;

(d) Certificates of discharge, separation, or service of all citizens of this state with respect to the military, air, or naval forces of the United States. Each certificate shall be recorded without cost to the veteran, but the clerk shall receive from the board of county commissioners or other governing body of the county the service charge prescribed by law for the recording;

(e) Notices of liens for taxes payable to the United States, and certificates discharging, partially discharging, or releasing the liens, in accordance with the laws of the United States;

(f) Certified copies of petitions, with schedules omitted, commencing proceedings under the Bankruptcy Act of the United States, decrees of adjudication in the proceedings, and orders approving the bonds of trustees appointed in the proceedings; and

(g) Any other instruments required or authorized by law to be recorded.

(4) Any reference in these statutes to the filing of instruments affecting title to real or personal property with the clerk of the circuit court shall mean recording of the instruments.

(5) The clerk of the circuit court may maintain a separate book for maps, plats, and drawings recorded pursuant to chapters 177, 253, and 337.

(6) On January 1, 1972, any clerk of the circuit court who has not heretofore adopted "Official Records" instead of separate books for the recording of instruments shall change to "Official Records" and otherwise conform with this section.

History.—ss. 2, 4, ch. 71-4.

28.223 Probate records; recordation.—

(1) The clerk of the circuit shall record all wills and codicils admitted to probate, orders revoking the probate of any wills and codicils, letters of administration, orders affecting or describing real property, final orders, and orders of final discharge filed in his office. No other petitions, pleadings, papers, or other orders relating to probate matters shall be recorded except on the written direction of the court. The direction may be by incorporation in the order of the words "To be recorded," or words to that effect. Failure to record an order or a judgment shall not affect its validity.

(2) The clerk shall record all instruments under this section in Official Records and index them in the same manner as prescribed in s. 28.222.

(3) All records of a court of this state heretofore exercising probate jurisdiction shall be placed, and remain, in the custody of the clerk and shall be the records of the circuit court. The circuit court may exercise judicial cognizance and power over them as it may over its own records.

(4) Certified transcripts of the whole or any part of probate or administration proceedings in any court of this state or of any foreign state or country may be recorded. If the certified copy is not a part of

a pending probate proceeding in the court, the person causing it to be recorded shall pay the costs of recordation.

(5) The recording of any instrument required or permitted to be recorded under this section in a pending probate or administration proceeding in the county shall be included in the fees prescribed in s. 28.2401.

History.—s. 2, ch. 74-106; s. 1, ch. 77-174.

28.231 Service charges by clerks of courts.—The clerk of any state appellate or county or state trial court shall receive as compensation for similar services the same charges as provided in this chapter for the clerk of the circuit court.

History.—s. 39, ch. 70-134.

28.24 Service charges by clerk of the circuit court.—The clerk of the circuit court shall make the following charges for services rendered by his office in recording documents and instruments and in performing the duties enumerated. However, in those counties where the clerk's office operates as a fiscal unit of the county pursuant to s. 145.022(1), the clerk shall not charge the county for such services.

	Charges
(1) For court attendance by each clerk or deputy clerk, per day	$40.00
(2) For court minutes, per page	5.00
(3) For examining, comparing, correcting, verifying, and certifying transcripts of record in appellate proceedings, prepared by attorney for appellant or someone else other than clerk, per page	2.00
(4) For preparing, numbering, and indexing an original record of appellate proceedings, per instrument	1.00
(5) For making transcripts of record in appellate or other proceedings, per page	1.00
(6) For certifying copies of any instrument in the public records	1.00
(7) For verifying any instrument presented for certification prepared by someone other than clerk, per page	2.00
(8) For making and reporting payrolls of jurors to state comptroller, per page, per copy	5.00
(9)(a) For making copies by photographic process of any instrument in the public records consisting of pages of not more than 14 inches by 8½ inches, per page	1.00
(b) For making copies by photographic process of any instrument in the public records of more than 14 inches by 8½ inches, per page	5.00
(10) For making microfilm copies of any public records:	
(a) 16 mm 100' microfilm roll	25.00
(b) 35 mm 100' microfilm roll	35.00
(c) Micro fiche, per fiche	2.00
(11) For copying any instrument in the public records by other than photographic process, per page	4.00
(12) For writing any paper other than herein specifically mentioned, same as for copying, including signing and sealing	4.00
(13) For indexing each entry not recorded	1.00
(14) For receiving money into the registry of court:	
(a) First $500, percent	1
(b) Each subsequent $100, percent	½
(15) For examining, certifying, and recording plats:	
(a) First page	$25.00
(b) Each additional page	10.00
(16) For recording, indexing, and filing any instrument not more than 14 inches by 8½ inches, including required notice to property appraiser where applicable:	
(a) First page or fraction thereof	4.00
(b) Each additional page or fraction thereof	3.00
(c) For indexing instruments recorded in the official records which contain more than four names, per additional name	.50
(17) Oath, administering, attesting, and sealing, not otherwise provided for herein	1.00
(18) For affixing the seal to any paper other than those herein specifically mentioned	1.00
(19) For validating certificates, any authorized bonds, each	1.00
(20) For preparing affidavit of domicile	4.00
(a) Exemplified certificates, including signing and sealing	4.00
(b) Authenticated certificates, including signing and sealing	4.00
(21) For issuing and filing a subpoena for a witness, not otherwise provided for herein (includes writing, preparing, signing, and sealing)	4.00
(22) For issuing venire facias (includes writing, preparing, signing, and sealing)	5.00
(23) For paying of witnesses and making and reporting payroll to state comptroller, per copy, per page	5.00
(24) For approving bond	5.00
(25) For receiving and disbursing domestic support payments, per payment, unless otherwise provided by county ordinance or special or general law	2.00
(26) For searching of records, for each year's search	1.00
(27) For processing an application for a tax deed sale (includes application, sale, issuance, and preparation of tax deed, and disbursement of proceeds of sale), other than excess proceeds	25.00
(28) For disbursement of excess proceeds of tax deed sale, each $100 or fraction thereof	1.00
(29) Upon receipt of an application for a marriage license, for preparing and administering of oath; issuing, sealing, and recording of the marriage license; and providing a certified copy	10.00
(30) For solemnizing matrimony	10.00

History.—s. 1, ch. 3106, 1879; RS 1394; GS 1839; RGS 3084; ss. 1, 2, ch. 11893, 1927; CGL 4867; s. 2, ch. 29749, 1955; s. 1, ch. 63-45; s. 5, ch. 70-134; s. 1, ch. 77-284; s. 1, ch. 78-367; s. 1, ch. 79-266; s. 12, ch. 79-400.

cf.—ss. 382.25, 703.01 Additional fees.

28.2401 Service charges in probate matters.—

(1) Except when otherwise provided, the service charges for the following services shall be:

(a) For the opening of any estate of one document or more, including, but not limited to, petitions and orders to approve settlement of minor's claims; to open a safe deposit box; to enter rooms and places; for the determination of heirs, if not formal administration; and for a foreign guardian to manage property of a nonresident; but not to include issuance of letters or order of summary and family administration $5.00

(b) Caveat 10.00

(c) Petition and order to admit foreign wills, authenticated copies, exemplified copies, or transcript to record..... 25.00

(d) For disposition of personal property without administration 10.00

(e) Summary administration 25.00

(f) Family administration..... 35.00

(g) Formal administration, guardianship, ancillary, curatorship, or conservatorship proceedings, with an inventory below $60,000 ..... 60.00

(h) Formal administration, guardianship, ancillary, curatorship, or conservatorship proceedings, with an inventory of $60,000 but less than $100,000 ..... 75.00

(i) Formal administration, guardianship, ancillary, curatorship, or conservatorship proceedings, with an inventory of $100,000 or more 100.00

(j) Guardianship proceedings of person only 10.00

(k) Veterans administration guardianship pursuant to chapters 293 and 294..... 10.00

(l) Exemplified certificates..... 4.00

(m) Petition for determination of incompetency 15.00

(2) Upon application by the clerk and a showing of extraordinary circumstances, the service charges set forth in this section may be increased in an individual matter by order of the circuit court before which the matter is pending, to more adequately compensate for the services performed.

(3) Service charges in excess of those fixed in this section may be imposed by the governing authority of the county by ordinance, or by special or local law, to provide and maintain facilities, including a law library, or to provide or maintain a legal aid program. Service charges other than those fixed in this section shall be governed by s. 28.24.

(4) Recording shall be required for all petitions opening and closing an estate; petitions regarding real estate; and orders, letters, bonds, oaths, wills, proofs of wills, returns, and such other papers as the judge shall deem advisable to record or that shall be required to be recorded under the Florida Probate Law.

History.—s. 5, ch. 1981, 1874; s. 2, ch. 3888, 1889; RS 1592, 1596; GS 2056, 2060; RGS 3347, 3351; CGL 5200, 5204; s. 1, ch. 19174, 1939; CGL 1940 Supp. 2877(115); s. 1, ch. 21960, 1943; s. 1, ch. 28152, 1953; s. 1, ch. 65-430; s. 1, ch. 72-397; s. 16, ch. 73-333; s. 2, ch. 77-284; s. 2, ch. 78-367; s. 13, ch. 79-400.

Note.—Former s. 36.17.

28.241 Filing charges for trial and appellate proceedings.—

(1) The party instituting any civil action, suit, or proceeding in the circuit court shall pay to the clerk of said court a service charge of $20 in all cases in which there are not more than five defendants, and an additional service charge of $1 for each defendant in excess of five. An additional service charge of $5 shall be paid by the party seeking each severance that is granted. An additional service charge of $2 shall be paid to the clerk for each civil action filed, such charge to be remitted by the clerk to the State Treasurer for deposit into the General Revenue Fund unallocated. Service charges in excess of those herein fixed may be imposed by the governing authority of the county by ordinance, or by special or local law, and such excess shall be expended as provided by such ordinance or any special or local law, now or hereafter in force, in providing and maintaining facilities, including a law library, for the use of the courts of the county wherein the service charges are collected or for a legal aid program in such county. Postal charges incurred by the clerk of the circuit court in making service by certified or registered mail on defendants or other parties shall be paid by the party at whose instance service is made. That part of the within fixed or allowable service charges which is not by local or special law applied to the special purposes shall constitute the total service charges of the clerk of said court for all services performed by him in civil actions, suits, or proceedings.

(2) The clerk of the circuit court of any county in the state who operates his office from fees and service charges collected, as opposed to budgeted allocations from county general revenue, shall be paid by the county as service charges for all services to be performed by him in any criminal or juvenile action or proceeding in said court, in lieu of all other service charges heretofore charged, except as hereinafter provided, the sum of $20 for each defendant or juvenile. However, in cases involving capital punishment the charge shall be $25. In any county where a law creates a law library fund or other special fund, this charge may be increased for that purpose by a special or local law or an ordinance.

(3) Upon the institution of any appellate proceeding from any inferior court to the circuit court of any such county or from the circuit court to an appellate court of the state, the clerk shall charge and collect from the party or parties instituting such appellate proceedings a service charge of $25 for filing a notice of appeal from an inferior court and $10 for filing a notice of appeal to a higher court.

(4) Nothing in this section shall be construed to include the service charges required by law for the clerk as provided in s. 28.24 and other sections of the Florida Statutes.

(5) This section shall not apply to any suit or proceeding pending on July 1, 1970.

History.—ss. 3-8, ch. 26931, 1951; ss. 3-5, ch. 29749, 1955; ss. 1, 2, ch. 57-322; s. 1, ch. 63-47; s. 1, ch. 63-43; s. 6, ch. 70-134; s. 1, ch. 74-154; s. 4, ch. 75-124; s. 1, ch. 77-174; s. 3, ch. 77-284.

28.242 Service charges retained when case laid in wrong venue.—The service charge paid by law to the clerk or judge of the court wherein a case is laid in the wrong venue shall be retained by him on the transfer thereof. The charge received by the clerk or judge upon the filing of the case is earned as of the time of filing, and another service charge shall be required of the person filing the action in another venue in accordance with the statutes applicable in the county or district to which transferred. If the service charge is not paid within 30 days from transfer, the action may be dismissed without prejudice.
History.—s. 1, ch. 59-300; s. 43, ch. 67-254; s. 7, ch. 70-134.
Note.—Former s. 53.17(3).

28.243 Personal liability for accepting checks.—A check received by the office of a clerk of a court or comptroller which is tendered to him in payment for any services, collection of fines and forfeitures, sale of documentary stamps, recording of documents and instruments, collection of legal fees, or any other duties relating to his office and which is returned by the bank upon which the check is drawn shall be the personal liability of the clerk or comptroller unless the clerk or comptroller, after due diligence to collect the returned check, forwards the returned check to the state attorney of the circuit where the check was drawn for prosecution.
History.—s. 1, ch. 75-176.

28.29 Recording of orders and judgments.—Orders of dismissal and final judgments of the courts in civil actions shall be recorded in official records. Other orders shall be recorded only on written direction of the court. The direction may be by incorporation in the order of the words "To be recorded" or words to that effect. Failure to record an order or judgment shall not affect its validity. The certified copy of a judgment, required under s. 55.10 to become a lien on real property, shall be recorded only when presented for recording with the statutory service charge.
History.—ss. 1-3, ch. 23825, 1947; s. 3, ch. 71-4; s. 2, ch. 72-320.

28.30 Destruction, photographing, etc., certain records.—
(1) The purpose of this section and s. 28.31 is to make available for the use of the clerks of the circuit court of the several counties of the state sufficient space to enable them to efficiently administer the affairs of office.
(2) The clerk of the circuit court of each county of the state is hereby authorized to destroy all vouchers and canceled warrants as hereinafter provided.
(3) The clerk of the circuit court of each county of the state is hereby authorized, in his discretion, to destroy all vouchers and canceled warrants which are over 5 years old and after audit of his office by the auditor general has been completed for the period embracing the dates of said instruments.
(4) Each clerk of the circuit court is authorized to photograph, microphotograph or reproduce on film such of the vouchers and canceled warrants as he, in his discretion, may select, and photographs, microphotographs or other reproductions on film shall be admissible in evidence with the same force and effect as the originals. Duly certified or authenticated reproductions of such photographs, microphotographs or other reproduction on film shall be admitted in evidence equally with the original photographs, microphotographs or other reproductions on film.
History.—ss. 1-4, ch. 25433, 1949; s. 8, ch. 69-82.

28.31 Notice to county commissioners of intent to destroy; approval of board.—The clerk of the circuit court shall notify the board of county commissioners of his county in writing a reasonable time in advance of his intention to destroy such records and if for any reason the board of county commissioners of such county shall request the clerk to withhold destruction of such records the clerk shall refrain until such time as he obtains approval of such board.
History.—s. 5, ch. 25433, 1949.

28.32 Destruction of certain instruments.—After the expiration of 20 years from the date of the execution of any bond or other instrument held by the clerk of the circuit court or a sheriff of any of the several counties of the state, which said instrument was executed to secure the performance or nonperformance of any act or matter and no proceeding of any type is pending involving said instrument any of the several clerks of the circuit courts or sheriffs of the state are hereby authorized, empowered and directed to cancel said instruments and to destroy the same upon making appropriate notation of the destruction and disposition thereof upon any remaining records pertaining thereto.
History.—s. 1, ch. 25502, 1949.
cf.—Ch. 30 Sheriffs.

28.33 Investment of county funds.—The clerk of the circuit court in each county shall make an estimate of his projected financial needs for the county and shall invest any funds in designated depository banks in interest-bearing certificates or in any direct obligations of the United States in compliance with federal laws relating to receipt of and withdrawal of deposits. All investments shall be open for bid to all qualified depositories in the county. The clerk shall select the highest and best bid for deposit. All bids received by the clerk shall include, but not be limited to, the interest rate to be earned and the total amount of dollar return to be paid to the clerk. In the event of a like bid between two or more banks, the moneys shall be divided and deposited in each bank, so long as the total interest income from the divided deposits will not be less than the total interest income had the deposits not been divided. If at the time of bid the dollar return on direct obligations of the Federal Government is greater than the highest bank return, then the clerk shall invest in the higher return security. Moneys deposited in the registry of the court shall be deposited in interest-bearing certificates at the discretion of the clerk, subject to the above guidelines. No clerk investing such funds shall be liable for the loss of any interest when circumstances require the withdrawal of funds placed in a time deposit and needed for immediate payment of county obligations. In any county where local banks refuse to bid on securing such money on interest-bearing certificates, the clerk may request and receive bids from banks in

other counties within the state and make such deposits to the successful bidder. All interest accruing from moneys deposited shall be deemed income of the office of the clerk of the circuit court investing such moneys and shall be deposited in the same accounts as are other fees and commissions of the clerk's office. Each clerk shall, as soon as is practicable after the end of the fiscal year, report to the county governing authority the total interest earned on all investments during the preceding year.

History.—s. 1, ch. 73-282.

CHAPTER 29

OFFICIAL COURT REPORTERS

29.01 Official court reporters.—

(1) The chief judge, subject to the approval of the supreme court, shall determine the number of official court reporters and deputy court reporters necessary for the circuit and county courts in each circuit.

(2) The chief judge with the approval of a majority of the circuit judges in each circuit shall appoint the official court reporters and deputy court reporters for the circuit court.

(3) The chief judge with the approval of a majority of the county court judges shall appoint official court reporters for the county court.

(4) All official court reporters and deputy court reporters shall serve at the pleasure of the chief judge and the majority of judges of the court in which the reporter is serving.

History.—s. 1, ch. 5122, 1903; GS 1844; RGS 3089; s. 1, ch. 11976, 1927; CGL 4872; s. 6, ch. 72-404.

29.02 Duties of court reporter.—The official court reporter shall, upon the request of the presiding judge, or that of the state attorney or defendant, report the testimony and proceedings, with objections made, the ruling of the court, the exceptions taken, and oral or written charges of the court in the trial of any criminal case in the circuit court, and the testimony in any preliminary hearing when so requested by the circuit judge or state attorney of that circuit, and shall report the testimony and proceedings with objections made, the rulings of the court, the exceptions taken, and oral or written charges of the court in the trial of any civil case in said court upon the demand or request of the attorney for either party.

History.—s. 2, ch. 5122, 1903; GS 1845; RGS 3090; s. 2, ch. 11976, 1927; CGL 4873.

29.03 Compensation for services.—The official circuit court reporter shall be entitled to receive for each day or fraction of a day in which such reporter shall be engaged in reporting testimony and proceedings in any civil case not less than $10 a day, nor less than $10 in any one case, for each day or fraction of a day in which such reporter shall be engaged; and said reporter shall also, when ordered by either party in a criminal case or by the presiding judge report the arguments of counsel arguing the facts to the jury, and shall receive as compensation therefor not less than $10 for reporting each such argument. Such reporter shall receive for each typewritten transcript of his notes of the testimony and proceedings taken at the trial of any civil or criminal cause, and furnished on demand of either party to the suit for which the testimony and proceedings are taken, the amount of 50 cents per page for the original and the amount of 25 cents per page for each carbon copy thereof; and each such transcript page shall consist of not less than 25 lines of double-spaced pica typing. Such reporter shall receive the same fees as provided in this section when rendering similar service in criminal or other courts of this state. There shall be no more official circuit court reporters in each judicial circuit than there are circuit judges therein.

History.—s. 3, ch. 5122, 1903; GS 1846; RGS 3091; s. 3, ch. 11976, 1927; CGL 4874; s. 1, ch. 28275, 1953.

29.04 Salaries, expenses, etc., of official circuit court reporters.—

(1) Each official circuit court reporter shall receive an annual salary of $5,400, unless otherwise provided for in the annual appropriations act, payable in 12 equal monthly installments by the state treasurer upon requisition of such court reporter. The reporter, when in attendance upon the trial of any cause in any county of his circuit, shall be reimbursed for traveling expenses as provided in s. 112.061. Said reporter shall at all times be subject to the call and order of the circuit judge to perform any service required by this chapter. No reporter shall report for more than one judicial circuit except in cases in which the reporter of a circuit is incapacitated.

(2) The provisions of this section and s. 29.03 shall not apply to the court reporter in Volusia County.

(3) The funds necessary to pay the cost of reporting in criminal proceedings shall be supplemented by the respective counties as necessary to provide competent reporters in such proceedings.

History.—s. 4, ch. 5122, 1903; GS 1847; RGS 3092; s. 4, ch. 11976, 1927; CGL 4875; s. 1, ch. 15720, 1931; s. 1, ch. 15859, 1933; s. 1, ch. 19218, 1939; CGL 1940 Supp. 4875(1); s. 1, ch. 22853, 1945; ss. 2, 3, ch. 28275, 1953; s. 19, ch. 63-400; s. 1, ch. 72-351; s. 7, ch. 72-404; s. 4, ch. 73-334.

cf.—s. 27.25 Stenographers authorized to perform court reporter service.

29.05 Transcripts in criminal cases.—Upon the demand of the state attorney, or the presiding judge in any criminal case, or the defendant within the time allowed for taking an appeal and for the purpose of taking an appeal in a criminal case, such reporter shall furnish with reasonable diligence a typewritten transcript of the testimony and proceedings, together with the charges of the court, and shall receive therefor the same fees for such transcript as provided in s. 29.03, and the costs for same shall be taxed as costs in the case.

History.—s. 4, ch. 5122, 1903; RGS 3092; s. 5, ch. 11976, 1927; CGL 4876; s. 1, ch. 57-223.

29.06 Transcript prima facie evidence.—The report of such official stenographer, when written out in longhand writing or printed in type and certified to by him as being a correct transcript of the testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and

proceedings; provided, that his signature to such certificate be duly acknowledged by him before a notary public or some judicial official of this state.

History.—s. 5, ch. 5122, 1903; GS 1848; RGS 3093; CGL 4877.

29.07 Special court reporter.—In case any official reporter shall not have been appointed in any circuit, or where the official reporter is disqualified or unable to perform his duties, it shall be within the discretion of the judge to appoint a special reporter in any case, civil or criminal, upon demand of any of the parties therefor; said special reporter shall perform the same services and receive the same pay in the same manner as the official reporter.

History.—GS 1850; RGS 3095; CGL 4879.

29.10 Assistant court reporters, first judicial circuit.—

(1) In the first judicial circuit there shall be seven assistant court reporters and one official court reporter to be appointed by the governor upon the recommendation of the circuit judge or judges of the county in which there is a vacancy in the office of court reporter or assistant court reporter and when appointed such reporters shall hold office during the pleasure of the governor.

(2) Whenever the official court reporter shall reside in the largest county of the circuit one assistant court reporter shall also reside in such county. Whenever the official court reporter shall not reside in the largest county of the circuit two assistant court reporters shall reside in the largest county of the circuit. The official court reporter when residing in the largest county of the circuit shall be a secretary of the circuit judge or judges residing in said county. The assistant court reporters shall work under the supervision of the official court reporter and the direction of the circuit judge or judges. When the official court reporter shall not reside in the largest county in the circuit the assistant court reporter having the longest period of continuous service in the circuit and residing in the largest county shall be a secretary of such circuit judge or judges residing in said county. Of the court reporters hereinabove provided for, there shall be a court reporter resident in each of the remaining three counties of said circuit who shall also serve as a secretary to the circuit judge or judges residing in each such county. The compensation of the assistant court reporters and the official court reporter shall be the same and shall be paid at the same time and in the same manner.

History.—s. 1, ch. 29697, 1955; s. 1, ch. 57-69; s. 1, ch. 59-71; s. 1, ch. 63-394; s. 1, ch. 67-486; s. 1, ch. 71-231.

CHAPTER 30

SHERIFFS

30.01 Bond of sheriffs; small counties.—In each county of the state, having a population of 150,000 or less according to the last state census, the sheriff shall, before being commissioned, give bond in a penalty which shall not be less than $200 nor more than $10,000, to be fixed by the board of county commissioners of his county, payable to the governor of the state and his successors in office, with two or more good and sufficient sureties to be approved by the board of county commissioners and the Department of Banking and Finance, and to be filed with the Department of State, which said bond shall be conditioned upon the faithful discharge of the duties of his office.

History.—ss. 1, 4, ch. 3724, 1887; RS 1237; GS 1666; RGS 2871; CGL 4568; s. 1, ch. 17754, 1937; s. 1, ch. 20719, 1941; ss. 10, 12, 35, ch. 69-106.

30.02 Bond of sheriffs; large counties.—In each county in the state, having a population in excess of 150,000 according to the last state census, the sheriff shall, before being commissioned, give bond in a penalty which shall not be less than $10,000 nor more than $25,000 to be fixed by the board of county commissioners of his county, payable to the governor of the state and his successors in office, with two or more good and sufficient sureties to be approved by the board of county commissioners and the Department of Banking and Finance, and to be filed with the Department of State, which bond shall be conditioned upon the faithful discharge of the duties of his office.

History.—ss. 1, 4, ch. 3724, 1887; RS 1237; GS 1666; RGS 2871; CGL 4568; s. 1, ch. 17754, 1937; ss. 10, 12, 35, ch. 69-106.

30.03 Obligation of sureties.—Each surety upon such bond may bind himself for a specified sum, but the aggregate amount for which the sureties may bind themselves shall not be less than the penalty of the bond.

History.—s. 9, ch. 3724, 1887; RS 1238; GS 1667; RGS 2872; CGL 4569; s. 2, ch. 17754, 1937; s. 1, ch. 20719, 1941.

30.04 Justification of sureties.—Each surety upon such bond shall make an affidavit that he is a resident of the county for which the officer is to be commissioned, and that he has sufficient visible property therein, unencumbered and not exempt from sale under legal process, to make good his bond.

History.—s. 10, ch. 3724, 1887; RS 1239; GS 1668; RGS 2873; CGL 4570; s. 3, ch. 17754, 1937; s. 1, ch. 20719, 1941.

30.05 Surety companies.—The provisions of ss. 30.01-30.04, as to number of sureties, affidavits of residence and justification of same shall not apply to solvent surety companies authorized to do business and execute bonds in this state.

History.—s. 4, ch. 3724, 1887; RS 1237; GS 1666; RGS 2871; CGL 4568; s. 4, ch. 17754, 1937; s. 1, ch. 20719, 1941.

30.06 Liability of sureties.—The sureties shall be liable for all fines and amercements imposed upon the principal, or sheriff.

History.—s. 4, ch. 987, 1859; RS 1240; GS 1669; RGS 2874; CGL 4571; s. 1, ch. 20719, 1941.

30.07 Deputy sheriffs.—Sheriffs may appoint deputies to act under them who shall have the same power as the sheriff appointing them, and for the neglect and default of whom in the execution of their office the sheriff shall be responsible.

History.—s. 4, ch. 1659, 1868; RS 1247; GS 1675; RGS 2881; CGL 4578.

30.08 Name and address of deputy to be filed.—The name and number of the voting precinct of each deputy sheriff, appointed by the sheriff, shall be filed with the board of county commissioners, at their first regular meeting after such appointment, and the same shall become a part of the minutes of said board of county commissioners.

History.—s. 1, ch. 6209, 1911; RGS 2882; CGL 4579; s. 1, ch. 22790, 1945.

30.09 Qualification of deputies; special deputies.—

(1) BOND, SURETIES, PERFORMANCE OF SERVICES.—

(a) Each deputy sheriff, appointed as aforesaid, shall be required to give bond in the penal sum of $1,000, payable to the Governor of Florida and his successors in office, with two or more good and sufficient sureties, to be approved by the board of county commissioners and filed with the clerk of the circuit court, which bond shall be conditioned upon the faithful performance of the duties of his office. No deputy sheriff shall be allowed to perform any services as such deputy until he shall subscribe to the oath now prescribed for sheriffs and until the approval of his bond. The aforesaid sureties shall be liable for all fines and amercements imposed upon their principal.

(b) The board of county commissioners of any county is authorized to accept a blanket surety bond issued by a solvent surety company authorized to do business in this state, conditioned upon the faithful performance of the duties of the deputy sheriffs appointed by a sheriff, in the penal sum of not less than $1,000 payable to the Governor and his successors in office. If such a blanket surety bond shall be accepted, individual surety bonds for each deputy sheriff shall no longer be necessary. The cost of the blanket bond shall be borne by the appropriate sheriff's department. The aforesaid sureties shall be liable for all fines and amercements imposed upon their principals under the provisions of the blanket bond.

(2) SURETY COMPANIES.—The requisite of two sureties and justification of same shall not apply where surety is by a solvent surety company authorized to do business in this state.

(3) LIABILITY OF SHERIFF.—The giving of said bond by said deputy shall not in any manner relieve the sheriff of the liability for the acts of his deputies.

(4) EXCEPTIONS.—The provisions of this section, and of s. 30.08, shall not apply to the appointment of special deputy sheriffs when appointed by the sheriff, under the following circumstances:

(a) On election days, to attend elections.

(b) To perform undercover investigative work.

(c) For specific guard or police duties in connection with public sporting or entertainment events, not to exceed 30 days; or, for watchman or guard duties, when serving in such capacity at specified locations or areas only.

(d) For special and temporary duties, without power of arrest, in connection with guarding or transporting prisoners.

(e) To aid in preserving law and order, or to render necessary assistance in the event of any threatened or actual hurricane, fire, flood, or other natural disaster, or in the event of any major tragedy such as an airplane crash, train or automobile wreck, or similar accident.

(f) To raise the power of the county, by calling bystanders or others, to assist in quelling a riot or any breach of the peace, when ordered by the sheriff or an authorized general deputy.

(g) To serve as a parking enforcement specialist pursuant to s. 316.640(2).

The appointment of any such special deputy sheriff in any such circumstance, except with respect to paragraph (g), may be made with full powers of arrest whenever the sheriff shall deem such appointment reasonable and necessary in the execution of the duties of his office. Except under circumstances described in paragraphs (a), (e), (f), and (g), the appointees shall possess at least the minimum requirements established for police and law enforcement officers by the Police Standards and Training Commission. The appointment of any such special deputy sheriff shall be recorded in a register maintained for such purpose in the sheriff's office, showing the terms and circumstances of such appointment.

(5) REMOVAL FOR VIOLATION.—A violation of this section shall subject the offender to removal by the Governor.

History.—ss. 1-4, 6, ch. 6478, 1913; RGS 2883; CGL 4580; s. 2, ch. 22790, 1945; s. 1, ch. 57-93; s. 1, ch. 72-307; s. 1, ch. 75-100; s. 1, ch. 79-246; s. 14, ch. 79-400.

30.10 Place of office.—The place of office of every sheriff shall be at the county seat of the county.

History.—s. 3, Feb. 12, 1834; RS 1248; GS 1676; RGS 2884; CGL 4581.

30.11 Place of residence.—The sheriff, or his deputy, shall reside at the county seat or within 2 miles thereof.

History.—s. 1, ch. 1851, 1871; RS 1249; GS 1677; RGS 2885; CGL 4582.

30.12 Power to appoint sheriff, etc.—Whenever any sheriff in the state shall fail to attend, in person or by deputy, any term of the circuit court or county court of his county, from sickness, death or other cause, the judge attending said court may appoint a sheriff, who shall assume all the responsibilities, perform all the duties, and receive the same compensation as if he had been duly appointed sheriff, for said term of court and no longer.

History.—s. 1, ch. 1394, 1863; RS 1243; GS 1672; RGS 2877; CGL 4574; s. 3, ch. 22790, 1945; s. 4, ch. 73-334.

cf.—s. 48.021 Process; by whom served.

30.13 Disposition of papers, etc., of deceased sheriff.—Whenever any sheriff shall die, his executors, administrators or other representatives shall hand over to his successor in office, taking a receipt for the same, all the papers in the possession of and belonging to such decedent as sheriff; and if in any case, a successor should not be qualified in due time to serve or execute the process of the court, the deputy of such deceased sheriff, if there should be one, or some other person, shall be employed by an order from the judge of the circuit court to receive from the representatives of the decedent and execute all process which remained in his possession at the time of his decease.

History.—s. 15, Nov. 23, 1828; RS 1253; GS 1681; RGS 2889; CGL 4586.

cf.—s. 28.32 Destruction of certain instruments.

30.14 Expiration of term.—The sheriff shall, at the expiration of his term of office, turn over to his successor by schedule (taking a receipt for the same) all such writs and processes as shall remain in his hands unexecuted, and his successor in office shall duly execute and return the same; and in case any sheriff shall neglect or refuse to turn over such process in manner aforesaid, every such sheriff so neglecting or refusing, and his sureties, shall be liable to make such satisfaction by damage and costs to the party aggrieved as he shall sustain by reason of such neglect or refusal; and the succeeding sheriff shall sell and carry into effect any levy made by any predecessor in office in like manner as the former sheriff could have done had he continued therein, and shall make titles to the purchaser for all the property sold under execution or other process and not conveyed by any predecessor.

History.—s. 16, Nov. 23, 1828; RS 1254; GS 1682; RGS 2890; CGL 4587; s. 7, ch. 22858, 1945.

30.15 Powers, duties and obligations.—Sheriffs, in their respective counties, in person or by deputy, shall:

(1) Execute all process of the supreme court, circuit courts, county courts, and boards of county commissioners of this state, to be executed in their counties;

(2) Execute such other writs, processes, warrants, and other papers directed to them, as may come to their hands to be executed in their counties;

(3) Attend all terms of the circuit court and county court held in their counties;

(4) Attend all meetings, and execute all orders, of the boards of county commissioners of their counties; for which services they shall receive such compensation, out of the county treasury, as said boards may deem proper;

(5) Be conservators of the peace in their counties;

(6) Suppress tumults, riots, and unlawful assemblies in their counties with force and strong hand when necessary;

(7) Apprehend, without warrant, any person disturbing the peace, and carry him before the proper judicial officer, that further proceedings may be had against him according to law;

(8) Have authority to raise the power of the county and command any person to assist them, when necessary, in the execution of the duties of their office; and, whoever, not being physically incompetent, refuses or neglects to render such assistance, shall be punished by imprisonment in jail not exceeding 1 year, or by fine not exceeding $500;

(9) Be, ex officio, timber agents for their counties; and

(10) Perform such other duties as may be imposed upon them by law.

History.—s. 14, ch. 4, 1845; ss. 1, 4, ch. 157, 1848; s. 9, ch. 1626, 1868; ss. 1, 2, ch. 1659, 1868; RS 650, 651, 653, 1241, 1242, 2583; GS 991, 992, 994, 1670, 1671, 3503; RGS 1804, 1805, 1807, 2875, 2876, 5388; CGL 2856, 2857, 2859, 4572, 4573, 7527; s. 4, ch. 22790, 1945; s. 4, ch. 73-334.

Note.—Formerly ss. 144.01-144.03, 30.16.

cf.—Execution of process; ss. 34.07, 48.021, 350.60.

Executive officer; ss. 26.49, 34.07.

30.17 To keep an execution docket.—

(1) The sheriff shall keep an execution docket, which shall contain a list of all executions, orders and decrees directed to him, in relation to the collection of moneys, and a statement of all moneys credited on such orders, executions and decrees, and when and to whom and by whom paid.

(2) Said docket shall be subject to the inspection of all parties interested.

(3) His failure to keep said docket, or to allow inspection of the same, shall be considered a contempt of court and subject him to a fine not exceeding $100, at the discretion of the court.

History.—ss. 1-3, ch. 1553, 1866; RS 1245; GS 1673; RGS 2878; CGL 4575; s. 1, ch. 79-396.

30.19 Failure to execute process.—Every sheriff or deputy failing to execute any writ or other process, civil or criminal, to him legally issued and directed within his county and make due return thereof, where such process shall be delivered to him in time for execution, shall forfeit $100 for each neglect, to be paid to the party aggrieved, by the order of the court, upon motion and proof of such delivery, unless such sheriff or deputy can show sufficient cause for such failure or neglect to the court.

History.—s. 1, ch. 997, 1859; RS 1250; GS 1678; RGS 2886; CGL 4583.

30.20 False return.—For every false return, the sheriff shall forfeit and pay $500, one moiety thereof to the party aggrieved, and the other moiety to him who will sue for the same, to be recovered with costs by action of debt; and the said sheriff shall be further liable to an action of the party aggrieved.

History.—s. 2, ch. 997, 1859; RS 1251; GS 1679; RGS 2887; CGL 4584.

30.21 Failure to pay over money.—If any sheriff shall fail to collect or pay over fines, fees, costs or other moneys adjudged to the state which he shall have been by proper process directed to collect, he shall forfeit his commissions and also be liable to a fine of $50, to be recovered by motion before the circuit court, after 10 days' notice, and his sureties shall also be liable for the amount of such moneys upon his bond as sheriff.

History.—s. 9, ch. 217, 1849; RS 1252; GS 1680; RGS 2888; CGL 4585.

30.22 When sheriff may accept service.—Sheriffs, when sued in their official capacity, may accept service, and when so sued with others may serve their codefendants and receive the fees allowed by law, except no fees shall be allowed for acceptance of service.

History.—s. 1, ch. 4411, 1895; GS 1674; RGS 2879; CGL 4576; s. 6, ch. 22790, 1945.

30.231 Sheriffs' fees for service of summons, subpoenas, and executions.—

(1) The sheriffs of all counties of the state in civil cases shall charge fixed, nonrefundable fees for docketing and service of process, according to the following schedule:

(a) All summons or writs except subpoenas and executions: $12 for each summons or writ to be served, except when more than one summons or writ is issued at the same time out of the same cause of action to be served upon one person or defendant at the same time, in which case the sheriff shall be entitled to one fee.

(b) All writs except executions requiring a levy or seizure of property: $10 in addition to the $12 fee as stated in paragraph (a).

(c) Witness subpoenas: $7 for each witness to be served.

(d) Executions:

1. $10 for docketing and indexing each writ of execution, regardless of the number of persons involved;
2. $10 for each levy;
3. $3 for advertisement of sale under process;
4. $5 for sale under process;
5. $5 for deed or bill of sale.

They shall be allowed actual expenses for the levying, safekeeping, and sale of property under levy.

(2) A reasonable cost deposit to cover said fees and expenses in connection with the requested services shall be deposited in advance with the officer requested to perform the service. It shall be the responsibility of the party requesting service of process to furnish to the sheriff an original copy of the process and sufficient copies to be served on the parties receiving the service of process.

(3) All fees collected under paragraphs (a), (b), (c), and (d) of subsection (1) shall be nonrefundable and shall be earned when each original request or service of process is made, and no additional fees shall be required for alias and pluries documents when service was not effected on the original document.

(4) All fees collected under the provisions of this section shall be paid monthly into the fine and forfeiture fund of the county.

History.—ss. 1, 2, ch. 63-41; s. 2, ch. 72-92; s. 4, ch. 79-396.

30.24 Mileage and necessary expenses when required to go out of state.—The sheriffs of the several counties, when required to go beyond the limits of this state to bring back a prisoner charged with any offense or who has been convicted of any crime in this state and has escaped, shall charge the sum of 7 cents per mile for the actual distance traveled beyond the limits of this state, together with the same mileage for his prisoner, and in addition thereto he shall receive the actual and necessary expense on account of returning the prisoner to the state. Travel under this section is exempt from the provisions of s. 112.061.

History.—s. 1, ch. 5407, 1905; ss. 2, 5, ch. 7886, 1919; RGS 2893; s. 2, ch. 10091, 1925; CGL 4591; s. 2, ch. 20943, 1941; s. 1, ch. 77-154.

30.25 Compensation for feeding prisoners.—For feeding prisoners the sheriff shall receive $1.25 per day for each prisoner fed.

History.—s. 1, ch. 3253, 1881; RS 3031; s. 9, ch. 4323, s. 5, ch. 4389, 1895; ss. 1, 2, ch. 4527, 1897; GS 976, 4108; s. 1, ch. 6898, 1915; s. 1, ch. 7745, 1918; ss. 3, 6, ch. 7886, 1919; RGS 1787, 6212; ss. 1, 3, ch. 10091, 1925; CGL 2838, 8544; s. 2, ch. 22587, 1945; s. 2, ch. 26821, 1951.

30.26 Fees for services in lunacy proceedings.—The sheriffs of the several counties of the state shall receive the same fees for services in lunacy proceedings as are prescribed for like services in criminal cases.

History.—s. 1, ch. 5457, 1905; RGS 2892; CGL 4590.

30.27 Constructive mileage not to be charged.—No sheriff or coroner shall charge constructive mileage. The mileage charged for must be actually traveled by the nearest and most direct route by the public highway.

History.—s. 2, ch. 3106, 1879; RS 1256; GS 1684; RGS 2894; CGL 4592; s. 4, ch. 73-334.

cf.—ss. 939.09, 939.10, Sheriffs' mileage; duty of county commissioners.

30.28 To deliver prisoners to successor.—Every sheriff at the expiration of his term shall deliver up to his successor the bodies of all persons whom he holds in confinement by legal process, with the precepts, warrants, or causes of such confinement.

History.—s. 16, Nov. 23, 1829; RS 2801; GS 3850; RGS 5945; CGL 8211.

30.29 Sheriffs may furnish guard service against sabotage, etc.—

(1) The sheriffs of the respective counties of the state be and they are hereby authorized and empowered to furnish adequate guard service to vital war industries if requested to so do by such industries; provided, such industries reimburse said sheriffs the actual cost of such guard service; that the furnishing of guard service by said sheriffs to vital war industries is and shall be an official act of the various sheriffs and said guards shall be deemed to be in the employ of the various sheriffs as an instrumentality of the state.

(2) Such guards shall be regular or special deputy sheriffs, residents of the state, citizens of the United States, and bonded, with no prior criminal record, and shall be always under the control of the respective sheriffs who employ said guards. All orders to said guards shall emanate from the respective sheriffs; provided, however, that industry shall have the right to supervise said guards and make recommendations in connection with the guarding of its property to said sheriffs.

(3) The term "industry," as used in this section, shall be construed to include any person, firm or corporation engaged, directly or indirectly, in the manufacture or furnishing of any materials, equipment, commodities or services which contribute to the prosecution of the war effort.

(4) The said guards employed by the various sheriffs hereunder shall be acceptable to the particular industry involved at all times and shall receive such pay as is agreeable to the sheriff, industry, and the guard to be employed.

(5) All guards heretofore employed by sheriffs and used in connection with the guarding of industry, shall be deemed to have been employed according to the terms and conditions of this section and the employment by the various sheriffs in this connection is hereby ratified, confirmed and held to be employment in their official capacities as an instrumentality of the state.

(6) The powers given to the various sheriffs of the various counties of this state herein shall not be deemed to be limiting the powers of the sheriffs already existing but shall be deemed to be cumulative.

History.—ss. 1-5, 7, ch. 21798, 1943.

30.291 Closing of public facilities upon threat of violence.—

(1) The sheriff of any county of the state is hereby authorized to temporarily close any public beach, park or other public recreation facility within his jurisdiction when in his discretion conditions exist

which present a clear and present or probable threat of violence, danger or disorder, or at any time a disorderly situation exists which in his opinion warrants such action.

(2) The power of the sheriff in exercising the authority conferred herein shall be full, complete and plenary.

(3) Any public recreation facility closed pursuant to the provisions of this section shall be reopened by the sheriff when the conditions upon which such closing was predicated have abated.

History.—ss. 1, 2, ch. 59-377.

30.30 Writs, process, etc.; duties and liabilities in levying.—

(1) Whenever any writ, issuing out of any court of this state, shall be delivered to a sheriff, commanding him to levy upon property specifically described therein, it shall be his duty to levy upon such property. If no property is specifically described, then he shall levy upon any property in the possession of the defendant which is described in instructions for levy upon the request of the plaintiff or the plaintiff's attorney listing such property or upon any property assessed against the defendant on the current tax rolls of the county or registered in his name under any law of the United States or of the state.

(2) No sheriff shall be liable in damages to anyone whomsoever for making a wrongful levy whenever the same has been made as required under subsection (1).

(3) If the sheriff, in attempting to execute any writ describing specific property, shall find it in the possession of anyone, other than the defendant, who is claiming the ownership or the right to the possession thereof, the sheriff, in his discretion, may require the plaintiff suing out the writ to furnish a bond, payable to such sheriff, in a sum not exceeding the reasonable value of the described property, as fixed by such sheriff, with sureties satisfactory to him conditioned to hold him harmless against liability for any loss or damage that might be sustained by anyone whomsoever by reason of his levying upon such described property, and indemnifying him for any expense (including reasonable attorney's fees) incurred by reason of any such claim.

(4) If the sheriff, in attempting to execute any writ not describing specific property, shall be requested to levy upon any property other than that described in subsection (1), he may require the plaintiff suing out the writ to furnish a bond upon the terms and conditions prescribed in subsection (3).

(5) Whenever a party suing out any writ shall demand that the sheriff levy upon specific property and anyone, other than the defendant, shall claim the ownership or right of possession thereof, the sheriff, at his option, may file a petition in the court out of which the writ issued and procure a rule to issue to the plaintiff and to the party so claiming the property or the right to possession thereof, to show cause why the levy should or should not be made; provided, that if the issue shall involve the titles or boundaries of real estate, the petition shall be filed in the circuit court. The judge of such court, after due notice to all parties in interest, shall determine whether or not such property is subject to levy under the writ. Any party aggrieved by such ruling, including the sheriff, may appeal therefrom, as from a final decree in a chancery cause, and may have a supersedeas upon such terms and conditions as the judge shall fix. In the event the property is ultimately held to be subject to the writ, the plaintiff's writ shall have priority over any writs levied subsequent to the date upon which the plaintiff's writ was delivered to the sheriff.

(6) No sheriff shall be liable for making any levy pursuant to the specific order of a court of competent jurisdiction.

History.—ss. 1-6, ch. 22019, 1943; s. 3, ch. 77-234.

30.31 Fingerprinting persons charged with crime.—

(1) It is the duty of the sheriffs of the state to fingerprint all persons hereafter charged with or convicted of a felony upon so being charged or convicted and to submit such prints to the Federal Bureau of Investigation and the Department of Law Enforcement. The sheriffs of the state may fingerprint all persons charged with or convicted of any criminal offense when in their opinion it is necessary for the protection of the public.

(2) The sheriffs of the respective counties are hereby required to furnish a copy of all fingerprints made by them to the Federal Bureau of Investigation.

History.—ss. 1, 2, ch. 22047, 1943; s. 10, ch. 26484, 1951; s. 1, ch. 63-170; s. 3, ch. 67-2207; ss. 20, 35, ch. 69-106; s. 1, ch. 77-174; s. 6, ch. 79-8.
cf.—s. 901.33 Arrest records; expunging; exceptions.

30.32 Duties as timber agent.—The sheriff, as timber agent, shall inquire diligently into all cases of trespass upon the public lands that come to his knowledge, and make complaint thereof before the court or any officer having jurisdiction, that the parties offending may be arrested and dealt with according to law; and may, in his county, arrest any person trespassing upon public lands, and seize all timber that shall have been cut upon the public land of the state, or removed therefrom, and sell the same at such places within the district as he may deem most convenient, after giving 30 days' notice by one publication in the newspaper published nearest the place of sale, and posting the notice at three public places in the county where the sale is to take place.

History.—s. 4, ch. 3020, 1877; RS 655; GS 996; RGS 1809; CGL 2861; s. 7, ch. 22790, 1945.
Note.—Former s. 144.05.

30.33 Proceedings on claim to timber.—When timber shall be seized by a timber agent, under the provisions of s. 30.32, and any person shall claim the same, and that said timber was not cut upon or removed from the public lands of the state, such claimant may file his petition under oath, in the office of the clerk of the circuit court of the county in which the timber is lying, and, upon motion, the judge of the circuit court shall appoint three proper persons to appraise such timber. On return of such appraisement, if the claimant shall, with one or more sureties, to be approved by the judge, execute a bond to the governor and his successors in office, for the payment of a sum equal to the sum at which the timber was appraised, the judge shall order the timber delivered to the claimant, and the bond shall be lodged with the proper officer of the court. At the next term

of the circuit court the evidence shall be heard, and if judgment shall pass in favor of the claimant, the court shall order said bond canceled, but if judgment shall pass against the claimant as to the whole or any part of such timber, and the claimant shall not at once pay into the court the amount of the appraised value of such timber, with the costs, judgment shall be granted upon the bond, on motion, in open court, without further delay.

History.—s. 6, ch. 3020, 1877; RS 656; GS 997; RGS 1810; CGL 2862; s. 8, ch. 22790, 1945.
Note.—Former s. 144.06.

30.34 Certificate of reasonable cause for seizure.—When any claim, on account of the seizure of timber, shall be tried, and judgment shall be given for the claimant, if it shall appear to the court that there was a reasonable cause of seizure, the court shall cause a proper certificate of entry to be made thereof, and in such case the agent who made the seizure shall not be liable to action, suit or judgment, on account of such seizure.

History.—s. 7, ch. 3020, 1877; RS 657; GS 998; RGS 1811; CGL 2863; s. 9, ch. 22790, 1945.
Note.—Former s. 144.07.

30.35 Compensation as timber agent.—The sheriff, as timber agent for his county, shall receive, as pay for his services, one-fourth of the net proceeds arising from all seizures, and of all net amounts recovered from trespassers reported by him upon the lands of the state or of any fund of the state.

History.—s. 3, ch. 3020, 1877; RS 654; GS 995; RGS 1808; CGL 2860; s. 10, ch. 22790, 1945.
Note.—Former s. 144.04.

30.46 Sheriffs; motor vehicles color combination; badges; simulation prohibited; penalties.—

(1) The color combination of forest green and white is adopted as the official color for use on the motor vehicles and motorcycles used by the various sheriffs of Florida and their deputies.

(2) For purposes of uniformity and in aid of the recognition of their official identity by the public, a badge in the shape of a five-pointed star with a replica of the great seal of Florida with the map of Florida superimposed thereon inscribed in the center is designated as the official badge to be worn by the sheriffs and deputy sheriffs of all counties of the state.

(3) It shall be unlawful for any person other than the sheriffs of Florida and their deputies, to color or cause to be colored any motor vehicle or motorcycle the same or similar color combination prescribed herein; provided, however, that any municipal police department or other law enforcement agency or any private person or concern using the same or similar color combination as of the date of this act shall be permitted to continue to use such colors until such time as new colors are adopted by such agencies, or private person or concern.

(4) It shall be unlawful for any person other than sheriffs and deputy sheriffs to wear an official sheriff's badge as prescribed herein, or to wear a badge or insignia of such similarity to the official sheriff's badge as to be indistinguishable therefrom at a distance of 20 feet; provided, nothing therein shall be construed to prevent members of any military, fraternal, or similar organization or any other law enforcement officer from wearing any insignia officially adopted or worn prior to the effective date of this section.

(5) Violation of any of the provisions of this act shall be a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-5, ch. 57-8; s. 13, ch. 71-136.

30.48 Salaries.—On and after October 1, 1957, each sheriff shall receive for the performance of his official duties as sheriff an annual salary, which shall be due and payable on the first day of the month after the month in which it accrued; provided, that compensation for service in office for a part of a calendar month shall be paid in the proportion that the days served bear to the number of days in that month.

History.—s. 2, ch. 57-368; s. 1, ch. 59-216; s. 16, ch. 77-104.

30.49 Budgets.—

(1) At the time fixed by law for preparation of the county budget, each sheriff shall certify to the board of county commissioners a proposed budget of expenditures for the carrying out of the powers, duties, and operations of his office for the ensuing fiscal year of the county. The fiscal year of the sheriff shall henceforth commence on October 1 and end on September 30 of each year.

(2) The sheriff shall submit with the proposed budget his sworn certificate, stating that the proposed expenditures are reasonable and necessary for the proper and efficient operation of the office for the ensuing year. Each proposed budget shall show the estimated amounts of all proposed expenditures for operating and equipping the sheriff's office and jail other than construction, repair, or capital improvement of county buildings during the said fiscal year. The expenditures shall be itemized as follows:

(a) Salary of the sheriff.
(b) Salaries of deputies and assistants.
(c) Expenses, other than salaries.
(d) Equipment.
(e) Investigations.
(f) Reserve for contingencies.

(3) The sheriff shall furnish to the board of county commissioners or the budget commission, if there is a budget commission in the county, all relevant and pertinent information concerning expenditures made in previous years and to the proposed expenditures which said board or commission shall deem necessary except that the board or commission may not require confidential information concerning details of investigations.

(4) The board of county commissioners or the budget commission, as the case may be, may require the sheriff to correct mathematical, mechanical, factual and clerical errors and errors as to form in the proposed budget. No later than August 1 of each year, the said board or commission, as the case may be, may amend, modify, increase, or reduce any or all items of expenditure in the proposed budget and, as amended, modified, increased, or reduced, shall approve said budget, giving written notice of their action to the sheriff, specifying in such notice the specific items so amended, modified, increased, or reduced. The budget shall include the salaries and expenses of the sheriff's office, cost of operation of the county jail, purchase, maintenance and opera-

tion of equipment, including patrol cars, radio systems, transporting prisoners, court duties, and all other salaries, expenses, equipment, and investigation expenditures of the entire sheriff's office for the previous year. The sheriff, within 30 days after receiving written notice of such action by the board or commission, either in person or in his office, may file an appeal to the Administration Commission. Such appeal shall be by petition to the Administration Commission, which petition shall set forth the budget proposed by the sheriff in the form and manner prescribed by the Executive Office of the Governor and approved by the Administration Commission and the budget as approved by the board of county commissioners or the budget commission, as the case may be, and shall contain the reasons or grounds for the appeal. Such petition shall be filed with the Executive Office of the Governor, and a copy of said petition shall be served upon the board or commission from whose decision appeal is taken by delivering the same to the chairman or president thereof or to the clerk of the circuit court. The board of county commissioners or the budget commission, as the case may be, shall have 5 days from delivery of a copy of any such petition to file with the Executive Office of the Governor a reply thereto and shall deliver a copy of such reply to the sheriff.

(5) Upon receipt of the petition, the Executive Office of the Governor shall provide for a budget hearing at which the matters presented in the petition and the reply shall be considered. A report of the findings and recommendations of the Executive Office of the Governor thereon shall be promptly submitted to the Administration Commission, which, within 30 days, shall either approve the action of the board or commission as to each separate item, or approve the budget as proposed by the sheriff as to each separate item, or amend or modify said budget as to each separate item within the limits of the proposed board of expenditures and the expenditures as approved by the board of county commissioners or the budget commission, as the case may be. The budget as approved, amended, or modified by the Administration Commission shall be final.

(6) The board of county commissioners and the budget commission, if there is a budget commission within the county, shall include in the county budget the items of proposed expenditures as set forth in the budget required by this section to be submitted, after the said budget has been reviewed and approved as provided herein; and the said board or commission, as the case may be, shall include the reserve for contingencies provided herein for each budget of the sheriff in the reserve for contingencies in the budget of the appropriate county fund.

(7) The reserve for contingencies in the budget of a sheriff shall be governed by the same provisions governing the amount and use of the reserve for contingencies appropriated in the county budget, except that the reserve for contingency in the budget of the sheriff shall be appropriated upon written request of the sheriff.

(8) The items placed in the budget of the board of county commissioners pursuant to this law shall be subject to the same provisions of law as the county annual budget; provided, that no amendments may be made to the appropriations for the sheriff's office except as requested by the sheriff.

(9) The proposed expenditures in the budget shall be submitted to the board of county commissioners or budget commission, if there is a budget commission within the county, by July 1 each year, and the said budget shall be included by the said board or commission, as the case may be, in the budget of either the general fund or the fine and forfeiture fund, or in part of each.

(10) If in the judgment of the sheriff an emergency should arise by reason of which the sheriff would be unable to perform his duties without the expenditure of larger amounts than those provided in the budget, he may apply to the board of county commissioners for the appropriation of additional amounts. If the board of county commissioners approves the sheriff's request, no further action is required on either party. If the board of county commissioners disapproves a portion or all of the sheriff's request, the sheriff may apply to the Administration Commission for the appropriation of additional amounts. The sheriff shall at the same time deliver a copy of the application to the Administration Commission, the board of county commissioners, and the budget commission, if there is a budget commission within the county. The Administration Commission may require a budget hearing on the application, after due notice to the sheriff and to the boards, and may grant or deny an increase or increases in the appropriations for the sheriff's offices. If any increase is granted, the board of county commissioners, and the budget commission, if there is a budget commission in the county, shall amend accordingly the budget of the appropriate county fund or funds. Such budget shall be brought into balance, if possible, by application of excess receipts in the said county fund or funds. If such excess receipts are not available in sufficient amount, the county fund budget or budgets shall be brought into balance by adding an item of "Vouchers unpaid" in the appropriate amount to the receipts side of the budget, and provision for paying such vouchers shall be made in the budget of the county fund for the next fiscal year.

(11) The Administration Commission shall file, before February 1 of each year, an annual report as to the appeals made pursuant to this section and its rulings thereon. The report shall be submitted to the presiding officers and the chairmen of the appropriations committees of both houses of the legislature.

History.—s. 3, ch. 57-368; ss. 3, 4, ch. 59-216; ss. 12, 28, 35, ch. 69-106; s. 7, ch. 71-355; s. 7, ch. 73-349; s. 1, ch. 74-103; s. 17, ch. 77-104; s. 85, ch. 79-190.

30.50 Payment of salaries and expenses.—

(1) The sheriff shall requisition and the board of county commissioners shall pay him, at the first meeting in October of each year, and each month thereafter, one-twelfth of the total amount budgeted for the office; provided, that at the first meeting in January of each year, the board shall, at the request of the sheriff, pay one-sixth of the total appropriated, and one-twelfth each month thereafter, which payments shall be not more than the total appropriation. Provided further that any part of the amount budgeted for equipment shall be paid at any time during the year upon the request of the sheriff.

(2) The sheriff shall deposit the county warrant

or warrants in his official bank account as provided in s. 30.51 (3) and draw his own checks thereon in payment of the salaries of himself and his deputies, clerks and employees and the expenses of his office. All salaries paid shall be supported by payrolls, and all expenses paid shall be supported by approved bills; provided, that the sheriff may draw a check to himself for the expense of an investigation, and may note on the voucher only the information that he may consider proper to divulge.

(3) The sheriff may set up a revolving fund for payment in cash of small items. The revolving fund shall be reimbursed from time to time by payment of the vouchers representing the cash payments.

(4) The sheriff shall keep necessary budget accounts and records, and shall charge all paid bills and payrolls to the proper budget accounts. The reserve for contingencies, or any part thereof, may be transferred to any of the budget appropriations, in the discretion of the sheriff. With the approval of the board of county commissioners, or of the budget commission if there is a budget commission in the county, the budget may be amended as provided for county budgets in s. 129.06(2).

(5) All expenses incurred in the fiscal year for which the budget is made shall be vouchered and charged to the budget for that year, and to carry out this purpose the books may be held open for 30 days after the end of the year.

(6) All unexpended balances at the end of each fiscal year shall be refunded to the board of county commissioners, and deposited to the county fund or funds from which payment was originally made.

History.—s. 4, ch. 57-368.

30.51 Fees and commissions.—

(1) No bills shall be rendered to the county for any services, nor shall any fees, commissions, or other remuneration for official services as sheriff be paid by the board of county commissioners of any county to the sheriff of the county except as provided by this section. All fees, commissions and other remuneration provided by law for services other than criminal shall be charged by the said sheriff to other authorities and parties doing business with their offices, and shall be paid over to the county as provided in this section.

(2) The fees authorized, or a deposit sufficient to cover them, shall be collected in advance from the party who requests the service; provided, that services may be performed for any governmental agency or unit without advance payment, and the officer shall bill and collect the fees earned from such agency after the service is performed or when the amount due is determined.

(3) Deposits for fees shall be placed in a depository trust account. The officer who receives the deposit shall keep an account with the depositor, and shall withdraw monthly from the deposits the fees earned and shall remit them to the county fund or funds as provided by this section.

(4) Fees or commissions commingled when received with other official collections may be deposited with such other collections in the trust account or accounts and distributed to the county fund or funds at the time that the other collections, with which they were received, are distributed.

(5) All fees, commissions, or other funds collected by the sheriff for services rendered or performed by his office shall be remitted monthly to the county, in the manner prescribed by the auditor general.

(6) No sheriff shall render to another county a bill for service of process in any criminal matter.

History.—s. 5, ch. 57-368; s. 1, ch. 59-365; s. 8, ch. 69-82.

30.52 Handling of public funds.—The sheriff shall keep public funds in his custody, either in his office in an amount not in excess of the burglary, theft, and robbery insurance provided, the cost of which is hereby authorized as an expense of the office, or in a depository in an amount not in excess of the security provided pursuant to s. 659.24, and the regulations of the Department of Banking and Finance. The title of the depository accounts shall include the word "sheriff" and the name of the county, and withdrawals from the accounts shall be made by checks signed by the duly qualified and acting sheriff of the county, or his designated deputy or agent.

History.—s. 6, ch. 57-368; ss. 12, 35, ch. 69-106.

30.53 Independence of constitutional officials.—The independence of the sheriffs shall be preserved concerning the purchase of supplies and equipment, selection of personnel, and the hiring, firing, and setting of salaries of such personnel; provided that nothing herein contained shall restrict the establishment or operation of any civil service system or civil service board created pursuant to s. 14, Art. III, of the Constitution of Florida, provided, further that nothing contained in ss. 30.48-30.53 shall be construed to alter, modify or change in any manner any civil service system or board, state or local, now in existence or hereafter established.

History.—s. 7, ch. 57-368; s. 36, ch. 69-216.

30.55 Liability insurance.—

(1) The sheriffs of the counties are hereby authorized in their discretion to secure and provide for insurance to cover liability for damages arising out of claims for false arrests, false imprisonment, false or improper service of process, or other claims growing out of the performance of the duties of the sheriffs or their deputies, or their employees; and to pay the premiums therefor from the funds appropriated and made available for the necessary and regular expenses of the offices without the necessity of specific appropriation or specification of expenses with respect thereto.

(2) In consideration for the premiums for such insurance, it shall be the part of any insurance contract providing such coverage that the insured shall not be entitled to the benefit defense of government immunity in any suit resulting against the sheriff, his deputies or employees, or in any suit brought against the insurers to enforce collection under such contract.

History.—ss. 1, 2, ch. 61-337.

30.56 Release of traffic violator on recognizance or bond; penalty for failure to appear.—In all cases of arrest for traffic violations, by a sheriff or a deputy sheriff, the person arrested may in the discretion of such officer be released upon his own recognizance or upon bond provided said officer shall

obtain from such person arrested a recognizance or, if deemed necessary, a cash bond or other sufficient security conditioned for his appearance before the proper tribunal of such county to answer the charge for which he has been arrested. Any person so arrested and released on his own recognizance by an officer and given a written summons to appear before the proper tribunal of such county to answer the charge for which he has been arrested, and who shall fail to appear or respond to such summons shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 59-97; s. 14, ch. 71-136; s. 1, ch. 72-244.
Note.—Former s. 146.08.

CHAPTER 34

COUNTY COURTS

34.01 Jurisdiction of county court.—

(1) County courts shall have original jurisdiction in all misdemeanor cases not cognizable by the circuit courts, of all violations of municipal and county ordinances, and of all actions at law in which the matter in controversy does not exceed the sum of $2,500, exclusive of interest, costs, and attorney's fees, except those within the exclusive jurisdiction of the circuit courts.

(2) The county courts shall have jurisdiction previously exercised by county judges' courts other than that vested in the circuit court by s. 26.012 and the jurisdiction previously exercised by county courts, the claims court, small claims courts, small claims magistrates courts, magistrates courts, justice of the peace courts, municipal courts, and courts of chartered counties, including but not limited to the counties referred to in ss. 9, 10, 11 and 24 of Art. VIII of the State Constitution, 1885.

(3) Judges of county courts shall be committing magistrates. Judges of county courts shall be coroners unless otherwise provided by law or by rule of the Supreme Court.

History.—s. 6, ch. 3730, 1887; RS 1572, 2833; GS 2034, 3890; s. 1, ch. 6463, 1913; RGS 3325, 3326, 5985; CGL 5169, 5170, 8278; s. 3, ch. 63-559; s. 9, ch. 72-404; s. 1, ch. 77-135.
cf.—ss. 6, 20(c)(4), Art. V, State Const.

34.011 Jurisdiction in landlord and tenant cases.—

(1) The county court shall have jurisdiction concurrent with the circuit court to consider landlord and tenant cases involving claims in amounts which are within its jurisdictional limitations.

(2) The county court shall have exclusive jurisdiction of proceedings relating to the right of possession of real property and to the forcible or unlawful detention of lands and tenements, except as provided in s. 26.012. In cases transferred to the circuit court pursuant to Rule 1.170(j), Florida Rules of Civil Procedure, or Rule 7.100(a), Florida Rules of Summary Procedure, the demands of all parties shall be resolved by the circuit court.

History.—s. 7, ch. 72-406; s. 2, ch. 74-209; s. 2, ch. 77-135.

34.021 Qualifications of county court judges.—

(1) No person shall be eligible for election or appointment to the office of county court judge unless said person shall be a member in good standing of the Bar of Florida prior to qualifying for election to said office or submitting his or her name to the appropriate judicial nominating commission for appointment.

(2) A county court judge is eligible to seek reelection, notwithstanding the provisions of subsection (1), if, on the first day of the qualification period for election to such office, such judge is actively serving in such office and is not under suspension or disqualification.

(3) Any person who was a county court judge prior to July 1, 1978, in any county having a population of 40,000 or less, according to the last decennial census, and who has successfully completed a 3-year law training program approved by the Supreme Court for the training of county court judges who are not members of The Florida Bar shall be entitled to such election and to serve as a county court judge in any county having a population of 40,000 or less, the provisions of subsection (1) to the contrary notwithstanding.

History.—s. 10, ch. 72-404; s. 1, ch. 78-346; s. 1, ch. 79-411.
cf.—s. 20, Art. V. State Const.

34.022 Number of county court judges for each county.—The number of county court judges in each county shall be as follows:

	COUNTY	TOTAL
(1)	Alachua	4
(2)	Baker	1
(3)	Bay	3
(4)	Bradford	1
(5)	Brevard	4
(6)	Broward	15
(7)	Calhoun	1
(8)	Charlotte	1
(9)	Citrus	1
(10)	Clay	1
(11)	Collier	2
(12)	Columbia	1
(13)	Dade	31
(14)	DeSoto	1
(15)	Dixie	1
(16)	Duval	12
(17)	Escambia	5
(18)	Flagler	1
(19)	Franklin	1
(20)	Gadsden	1
(21)	Gilchrist	1
(22)	Glades	1
(23)	Gulf	1
(24)	Hamilton	1

(25)	Hardee	1
(26)	Hendry	1
(27)	Hernando	1
(28)	Highlands	1
(29)	Hillsborough	9
(30)	Holmes	1
(31)	Indian River	1
(32)	Jackson	1
(33)	Jefferson	1
(34)	Lafayette	1
(35)	Lake	2
(36)	Lee	3
(37)	Leon	3
(38)	Levy	1
(39)	Liberty	1
(40)	Madison	1
(41)	Manatee	2
(42)	Marion	2
(43)	Martin	2
(44)	Monroe	3
(45)	Nassau	1
(46)	Okaloosa	2
(47)	Okeechobee	1
(48)	Orange	10
(49)	Osceola	2
(50)	Palm Beach	9
(51)	Pasco	2
(52)	Pinellas	11
(53)	Polk	6
(54)	Putnam	1
(55)	St. Johns	2
(56)	St. Lucie	2
(57)	Santa Rosa	1
(58)	Sarasota	3
(59)	Seminole	3
(60)	Sumter	1
(61)	Suwannee	1
(62)	Taylor	1
(63)	Union	1
(64)	Volusia	5
(65)	Wakulla	1
(66)	Walton	1
(67)	Washington	1

History.—s. 1, ch. 72-406; s. 2, ch. 73-329; s. 19, ch. 73-333; s. 1, ch. 74-306; s. 2, ch. 76-175; s. 2, ch. 77-368; s. 2, ch. 78-168; s. 6, ch. 79-413.

34.023 Temporary tenure of certain judges.—In all counties in which there is created only one county court judge, in addition to that one position, the judges holding elective office in courts abolished by the revision of Art. V, State Constitution, who are not elevated to circuit court and whose terms do not expire in 1973 shall serve as judges of the county court for the remainder of the term to which they were elected. At the end of the term of such offices or upon a vacancy in such office, whichever occurs sooner, the office shall stand abolished. Compensation for these offices shall be paid by the county in amount to be determined by the county.

History.—s. 4, ch. 72-406.

34.024 Salaries of county court judges.—County court judges shall receive the following salaries, to be paid by the state:

(1) In counties having a population of 40,000 or less according to the last decennial census ..... $24,000.

(2) In counties having a population of more than 40,000 according to the last decennial census ..... 28,000.

History.—s. 3, ch. 72-406.

34.031 Clerk.—The clerk of the circuit court shall be clerk of the county court unless otherwise provided by law.

History.—s. 11, ch. 72-404.

34.032 Power of clerk to appoint deputies.—

(1) With the concurrence of the chief circuit judge of the circuit, the clerk of the circuit court, in his capacity as clerk of the county court, may appoint a deputy clerk or clerks of the county court, for whose acts he shall be liable, and the said deputies shall have and exercise each and every power of whatsoever nature and kind as the clerk himself may exercise as clerk of the county court, except the power to appoint a deputy or deputies.

(2) Any deputy county court clerk appointed for the sole purpose of issuing arrest warrants for violation of chapter 316 or county or municipal ordinances triable in the county courts shall have and exercise only those powers of the clerk which are required to achieve such limited purpose.

(3) Any municipal clerk or deputy municipal clerk appointed as a deputy clerk of the county court shall receive no additional compensation from the state or from any county but may be compensated for such warrant-issuing duties by his employing municipality. The limited appointment of any municipal clerk or deputy municipal clerk as a deputy clerk of the county court under this section shall not constitute any appointment to a new office, but rather shall be the conferring of additional powers and duties upon a municipal officer in order to implement revised Art. V of the State Constitution wherein the jurisdiction of municipal courts is transferred to the county courts. It is the expressed intent of the Legislature that the designation of any deputy clerk of the county court herein shall not create any new office but rather shall enlarge the duties and powers of municipal clerks and deputy municipal clerks as provided herein.

(4) Nothing in this section shall limit the power to appoint under s. 28.06.

History.—s. 1, ch. 73-297.

34.041 Service charges and costs.—

(1) Upon the institution of any civil action or proceeding in county court, the plaintiff, when filing his action or proceeding, shall pay the following service charges:

(a) For all claims less than $100 ..... $6.00.

(b) For all claims of $100 or more but less than $1,000 ..... 15.00.

(c) For all claims of $1,000 or more ..... 20.00.

(d) In addition, for all proceedings of garnishment, attachment, replevin, and distress ..... 10.00.

(e) For removal of tenant action ..... 25.00.

Postal charges incurred by the clerk of the county court in making service by mail on defendants or other parties shall be paid by the party at whose instance service is made. Except as provided herein, service charges for performing duties of the clerk

relating to the county court shall be as provided in ss. 28.24 and 28.241. Service charges in excess of those herein fixed may be imposed by the governing authority of the county by ordinance or by special or local law, and such excess shall be expended as provided by such ordinance or any special or local law now or hereafter in force in providing and maintaining facilities, including a law library, for the use of the county court in the county in which the charge is collected or for a legal aid program. All filing fees shall be remitted monthly to the county in the manner prescribed by the auditor general.

(2) The judge shall have full discretionary power to waive the prepayment of costs or the payment of costs accruing during the action upon the sworn written statement of the plaintiff and upon other satisfactory evidence of his inability to pay such costs. When costs are so waived, the notation to be made on the records shall be "Prepayment of costs waived," or "Costs waived." The term "pauper" or "in forma pauperis" shall not be employed. If a party shall fail to pay accrued costs, though able to do so, the judge shall have power to deny said party the right to file any new case while such costs remain unpaid and, likewise, to deny such litigant the right to proceed further in any case pending. The award of other court costs shall be according to the discretion of the judge who may include therein the reasonable costs of bonds and undertakings and other reasonable court costs incident to the suit incurred by either party.

(3) In criminal proceedings in county courts, costs shall be taxed against a person in county court upon conviction or estreature pursuant to chapter 939. The provisions of s. 28.241(2) shall not apply to criminal proceedings in county court.

(4) Upon the institution of any appellate proceeding from the county court to the circuit court, there shall be charged and collected from the party or parties instituting such appellate proceedings a service charge as provided in chapter 28.

History.—ss. 1, 2, 6, 7, 9, ch. 26931, 1951; s. 4, ch. 63-559; s. 12, ch. 70-134; s. 12, ch. 72-404; s. 2, ch. 74-154; s. 4, ch. 77-284; s. 15, ch. 79-400.

34.07 Sheriff to be executive officer.—The sheriff of the county shall serve and execute all civil and criminal processes of said court and do and perform all duties in and about said court, which are required to be performed by an executive officer.

History.—s. 12, ch. 3730, 1887; RS 1575, 2838; GS 2037, 3896; RGS 3329, 5993; CGL 5173, 8287.
cf.—s. 30.15 Execution of process.

34.08 Compensation of sheriff.—The compensation of the sheriff for serving processes in cases in the county court, and for other services in connection therewith, shall be the same as that for like services in the circuit court.

History.—RS 2839; GS 3897; RGS 5994; CGL 8288.
cf.—s. 30.231 Fees of sheriffs.

34.13 Method of prosecution.—

(1) All persons tried in the county court on any criminal charge shall be tried upon indictment by the grand jury, upon information filed by the prosecuting attorney, or upon affidavit or complaint.

(2) Upon the finding of indictments by the grand jury for crimes cognizable by the county court, the clerk of the court, without any order therefor, shall docket the same on the trial docket of the county court on or before the first day of its next succeeding term.

(3) The state attorney is authorized to sign affidavits before the judge of the county court when the state attorney has evidence to support such affidavit for a criminal charge over which such court has jurisdiction. The judge shall issue arrest warrants upon such affidavit as is done in all other cases. This procedure shall be cumulative to all other practice and procedure before such courts.

(4) Upon complaint made on affidavit to any county court that any misdemeanor has been committed, the county court judge may issue a warrant on the usual form, making it returnable before himself or another county court judge.

(5) Municipal prosecutors may prosecute violations of municipal ordinances.

(6) Any circuit court clerk acting as clerk of the county court, or any deputy county court clerk appointed for the sole purpose of issuing arrest warrants, or any county court clerk, may administer an oath to and take affidavit of any person charging another person with a violation of a municipal ordinance and may issue a warrant on the usual form, making it returnable to the appropriate county court judge. The authority granted to a clerk or deputy clerk under this section shall be subordinate to that of any state judge.

History.—s. 9, ch. 3730, 1887; RS 2837; GS 3894; RGS 5989; CGL 8283; s. 13, ch. 72-404; s. 2, ch. 73-297.

34.131 To be open for voluntary pleas of guilty.—All county courts in this state, in addition to their regular trial terms as now provided by law, shall, at all times, Sundays excepted, be considered open for the reception of voluntary pleas of guilty in all criminal cases pending therein on information, indictment, affidavit, or complaint and for the rendition of judgments and passing of sentences, the same to be entered of record by the clerks of said courts as directed by said judges. And the judges of said courts, at all times, Sundays excepted, may receive such pleas of guilty, when voluntarily offered by the accused, and thereupon at once pronounce judgment of conviction and sentence upon such pleas and direct the entry of the same of record by the clerks of said courts.

History.—s. 2, ch. 4398, 1895; GS 3872; RGS 5967; CGL 8234; s. 1, ch. 24107, 1947; s. 17, ch. 73-333.
Note.—Former s. 32.08.

34.161 Persons convicted in county court allowed 48 hours to pay fine before being worked.—Any person convicted of crime in the county court who shall have a pecuniary fine or sum of money assessed or adjudged against him as punishment may, on being taken into custody by the proper officer of the court or prior to such arrest at any time within 48 hours from the time he is sentenced, pay the said find and cost or give the bail for the payment of such fine and cost of prosecution, as provided in s. 921.15; and such person convicted in the county court shall not be transferred or turned over to persons working the county prisoners until the expira-

tion of 48 hours from the time such person was sentenced by the court.

History.—s. 14, ch. 72-404.

34.171 Salaries and expenses.—Unless the state shall pay such expenses, the county shall pay all reasonable salaries of bailiffs, secretaries, and assistants of the circuit and county courts and all reasonable expenses of the offices of circuit and county court judges.

History.—s. 15, ch. 72-404.

34.181 Branch courts.—

(1) Any municipality or county may apply to the chief judge of the circuit in which the municipality or county is situated for the county court to sit in a location suitable to the municipality or county and convenient in time and place to its citizens and police officers, and upon such application said chief judge shall direct the court to sit in the location unless he shall determine the request is not justified. If the chief judge does not authorize the county court to sit in the location requested, the county or municipality may apply to the Supreme Court for an order directing the county court to sit in such location.

(2) Any municipality or county which so applies shall be required to provide the appropriate physical facilities in which the county court may hold court.

History.—s. 16, ch. 72-404.

34.191 Fines, forfeitures, and costs.—

(1) All fines and forfeitures arising from offenses tried in the county court shall be collected and accounted for by clerk of the court and deposited in a special trust account. All fines and forfeitures received from violations of ordinances or misdemeanors committed within a county, or municipal ordinances committed within a municipality within the territorial jurisdiction of the county court, shall be paid monthly to the county or municipality respectively except as provided in s. 23.103.

(2) All court costs assessed in county court shall be paid to and retained by the county except as provided in ss. 23.103 and 23.105 and subsection (3) of this section.

(3) If a municipality incurs any cost of operation of the county court, including any cost of prosecution, it may apply to the chief judge of the circuit for an order directing the county to distribute reasonable court costs to the municipality. If not satisfied with the order of the chief judge, the municipality may apply to the supreme court for an order apportioning the costs.

History.—ss. 1, 2, ch. 72-70; s. 17, ch. 72-404.

CHAPTER 35

DISTRICT COURTS OF APPEAL

35.01 District courts of appeal; districts.—Five district courts of appeal are created and the state is divided into five appellate districts of contiguous circuits.

History.—s. 1, ch. 57-248; s. 1, ch. 65-294; s. 1, ch. 79-413.

35.02 First Appellate District.—The First Appellate District is composed of the First, Second, Third, Fourth, Eighth, and Fourteenth Judicial Circuits.

History.—s. 1, ch. 57-248; s. 1, ch. 65-294; s. 1, ch. 79-413.

35.03 Second Appellate District.—The Second Appellate District is composed of the Sixth, Tenth, Twelfth, Thirteenth, and Twentieth Judicial Circuits.

History.—s. 1, ch. 57-248; s. 1, ch. 65-294; s. 1, ch. 79-413.

35.04 Third Appellate District.—The Third Appellate District is composed of the Eleventh and Sixteenth Judicial Circuits.

History.—s. 1, ch. 57-248; s. 1, ch. 65-294; s. 1, ch. 79-413.

35.042 Fourth Appellate District.—The Fourth Appellate District is composed of the Fifteenth, Seventeenth, and Nineteenth Judicial Circuits.

History.—s. 2, ch. 65-294; s. 1, ch. 79-413.

35.043 Fifth Appellate District.—The Fifth Appellate District is composed of the Fifth, Seventh, Ninth, and Eighteenth Judicial Circuits.

History.—s. 2, ch. 79-413.

35.05 Headquarters.—The headquarters of the First Appellate District shall be in the Second Judicial Circuit, Tallahassee, Leon County; of the Second Appellate District in the Tenth Judicial Circuit, Lakeland, Polk County; of the Third Appellate District in the Eleventh Judicial Circuit, Dade County; of the Fourth Appellate District in the Fifteenth Judicial Circuit, Palm Beach County; and the Fifth Appellate District in the Seventh Judicial Circuit, Daytona Beach, Volusia County.

History.—s. 1, ch. 57-248; s. 1, ch. 65-294; ss. 1-4, ch. 67-29; s. 8, ch. 71-355; s. 3, ch. 79-413.

35.06 Organization of district courts of appeal.—A district court of appeal shall be organized in each of the five appellate districts to be named District Court of Appeal, ... District. The number of judges of each district court of appeal shall be as follows:

(1) In the first district there shall be nine judges.

(2) In the second district there shall be eight judges.

(3) In the third district there shall be eight judges.

(4) In the fourth district there shall be eight judges.

(5) In the fifth district there shall be six judges.

The successors of the original and additional judges of the district courts of appeal shall be elected at the general election next preceding the expiration of their respective terms of office to serve for a full term of 6 years.

History.—s. 1, ch. 57-248; s. 1, ch. 65-294; s. 1, ch. 67-11; s. 9, ch. 71-355; s. 3, ch. 76-175; s. 3, ch. 77-368; s. 3, ch. 79-312; s. 3, ch. 79-413.
cf.—s. 4, Art. V, State Const.

35.07 Power to make rules and regulations.—Subject to the power of the Supreme Court to make rules of practice and procedure, the district courts of appeal may make such regulations as necessary for the internal government of the court.

History.—s. 1, ch. 57-248.

35.08 Power to execute its judgments.—Each district court of appeal is vested with all the power and authority necessary for carrying into complete execution all of its judgments, decrees, orders and determinations in the matters before it agreeable to the usage and principles of law.

History.—s. 1, ch. 57-248.

35.09 Seal of the court.—Each district court of appeal shall have an official identifying seal as prescribed by the Supreme Court.

History.—s. 1, ch. 57-248.

35.10 Regular terms.—The district court of appeal shall hold two regular terms each year at its headquarters, commencing respectively on the second Tuesday in January and July. The court may

adjourn from time to time as may be deemed necessary for the dispatch of business.
History.—s. 1, ch. 57-248.

35.11 Special terms.—The district court in each district may hold special terms at such times and places as may be deemed necessary for the public interest, provided that each district court of appeal shall hold at least one special term every year in each judicial circuit wherein there is ready business to be transacted. Each district court of appeal shall have the power to hear and decide at any regular or special term, causes arising anywhere within the district.
History.—s. 1, ch. 57-248.

35.12 Chief judge.—There shall be a chief judge of each of the district courts of appeal to be selected by the members of the court.
History.—s. 1, ch. 57-248.

35.13 Quorum.—Three judges shall consider each case and the concurrence of a majority shall be necessary to a decision.
History.—s. 1, ch. 57-248.

35.15 Decisions to be filed; copies to be furnished.—All decisions and opinions delivered by the district courts of appeal or any judge thereof in relation to any action or proceeding pending in said court shall be filed and remain in the office of the clerk, and shall not be taken therefrom except by order of the court; but said clerk shall at all times be required to furnish to any person who may desire the same certified copies of such opinions and decisions, upon receiving his fees therefor.
History.—s. 1, ch. 57-248.

35.19 Compensation of district judges.—The salary of the judges of the district courts of appeal shall be as provided by law.
History.—s. 1, ch. 57-248.

35.20 Retirement of district court of appeal judge.—Retirement of a district court of appeal judge shall be as provided by law.
History.—s. 1, ch. 57-248.
cf.—s. 121.046 Merger of judicial retirement system into Florida retirement system.
s. 121.052 Membership class of certain elected state officers.
Ch. 123 Justices, circuit, and appeal judges retirement system.

35.21 Clerk of district court.—Each district court of appeal shall appoint a clerk of such district court who shall hold his office during the pleasure of the court. The said clerk before entering upon the discharge of his duties, shall give bond in the sum of $2,000 payable to the Governor, or his successors in office, to be approved by a majority of the judges of the court conditioned upon the faithful discharge of the duties of his office, which bond shall be filed in the office of the Secretary of State.
History.—s. 1, ch. 57-248.

35.22 Clerk of district court; appointment; compensation; assistants; filing fees.—
(1) The clerk of each of the district courts of appeal shall be appointed, and clerks of the district courts of appeal shall be paid an annual salary, as fixed by law, which shall be $4,000 less than the annual salary provided for the Clerk of the Supreme Court.
(2) The clerk is authorized to employ such deputies and clerical assistants as may be necessary. Their number and compensation shall be approved by the court, and paid from the annual appropriation for the district courts of appeal.
(3) The clerk, upon the filing of a certified copy of a notice of appeal or petition, shall charge and collect a service charge of $50 for each case docketed, and for copying, certifying or furnishing opinions, records, papers or other instruments and for other services the same service charges as provided in s. 28.24.
(4) The opinions of the district court of appeal shall not be recorded, but the original as filed shall be preserved with the record in each case.
(5) The clerk is authorized immediately after a case is disposed of, to supply the judge who tried the case and from whose order, judgment, or decree, appeal or other review is taken, a copy of all opinions, orders, or judgments filed in such case. Copies of opinions, orders, and decrees shall be furnished in all cases to each attorney of record and for publication in Florida reports to the authorized publisher without charge, and copies furnished to other law book publishers at one-half the regular statutory fee.
(6) The clerk of the district court of appeal is required to prepare a statement of all fees collected in duplicate each month and remit one copy of said statement, together with all fees collected by him, to the State Comptroller who shall place the same to the credit of the general revenue fund.
History.—s. 1, ch. 57-248; s. 1, ch. 73-305; s. 4, ch. 75-124; s. 1, ch. 78-349.

35.23 Location of clerk's office.—Each clerk shall keep his records at the headquarters of the district court of appeal.
History.—s. 1, ch. 57-248.

35.24 Custody of books, records, etc.—All books, papers, records, files and the seal of each district court of appeal shall be kept in the office of the clerk of said court.
History.—s. 1, ch. 57-248.

35.25 Duties of clerk.—Duties of clerk shall be as prescribed by the rules of the court.
History.—s. 1, ch. 57-248.

35.26 Marshal of district court; appointment; duties.—
(1) Each of the district courts of appeal shall appoint a marshal who shall hold office during the pleasure of the court. The said marshal shall execute to the Governor of the state a bond in the sum of $2,000, with sureties to be approved by the district court of appeal and conditioned that he shall faithfully discharge such duties as the court directs.
(2) He shall have the power to execute the process of the court throughout the state, and in any county may deputize the sheriff or a deputy sheriff for such purpose.

(3) The marshal shall, under the direction of the district court of appeal be custodian of the headquarters occupied by the court and shall perform such other duties as directed by the court.

History.—s. 1, ch. 57-248.

35.27 Compensation of marshal.—The compensation of the said marshal shall be as provided by law.

History.—s. 1, ch. 57-248.

35.28 District courts of appeal libraries.—The library of each of the district courts of appeal and its custodian shall be provided for by rule of the Supreme Court. Payment for books, equipment, supplies, and quarters as provided for in such rules shall be paid from funds appropriated for the district courts, on requisition drawn as provided by law.

History.—s. 1, ch. 57-248.

CHAPTER 38

JUDGES; GENERAL PROVISIONS

38.01 Disqualification when judge party; effect of attempted judicial acts.—Every judge of this state who appears of record as a party to any cause before him shall be disqualified to act therein, and shall forthwith enter an order declaring himself to be disqualified in said cause. Any and all attempted judicial acts by any judge so disqualified in a cause, whether done inadvertently or otherwise, shall be utterly null and void and of no effect. No judge shall be disqualified from sitting in the trial of any suit in which any county or municipal corporation is a party by reason that such judge is a resident or taxpayer within such county or municipal corporation.

History.—s. 2, ch. 16053, 1933; CGL 1936 Supp. 4155(1); s. 1, ch. 59-43.

38.02 Suggestion of disqualification; grounds; proceedings on suggestion and effect.—In any cause in any of the courts of this state any party to said cause, or any person or corporation interested in the subject matter of such litigation, may at any time before final judgment, if the case be one at law, and at any time before final decree, if the case be one in chancery, show by a suggestion filed in the cause that the judge before whom the cause is pending, or some person related to said judge by consanguinity or affinity within the third degree, is a party thereto, or is interested in the result thereof, or that said judge is related to an attorney or counselor of record in said cause by consanguinity or affinity within the third degree, or that said judge is a material witness for or against one of the parties to said cause, but such an order shall not be subject to collateral attack. Such suggestions shall be filed in the cause within 30 days after the party filing the suggestion, or his attorney, or attorneys, of record, or either of them, learned of such disqualification, otherwise the ground, or grounds, of disqualification shall be taken and considered as waived. If the truth of any suggestion appear from the record in said cause, the said judge shall forthwith enter an order reciting the filing of the suggestion, the grounds of his disqualification, and declaring himself to be disqualified in said cause. If the truth of any such suggestion does not appear from the record in said cause, the judge may by order entered therein require the filing in the cause of affidavits touching the truth or falsity of such suggestion. If the judge finds that the suggestion is true, he shall forthwith enter an order reciting the ground of his disqualification and declaring himself disqualified in the cause; if he finds that the suggestion is false, he shall forthwith enter his order so reciting and declaring himself to be qualified in the cause. Any such order declaring a judge to be disqualified shall not be subject to collateral attack nor shall it be subject to review. Any such order declaring a judge qualified shall not be subject to collateral attack but shall be subject to review by the court having appellate jurisdiction of the cause in connection with which the order was entered.

History.—s. 3, ch. 16053, 1933; CGL 1936 Supp. 4155(2); s. 1, ch. 26890, 1951; s. 6, ch. 63-559.

38.03 Waiver of grounds of disqualification by parties.—The parties to any cause, or their attorneys of record, may, by written stipulation filed in the cause, waive any of the grounds of disqualification named in s. 38.02 and such waiver shall be valid and binding as to orders previously entered as well as to future acts of the judge therein; provided, however, that nothing herein shall prevent a judge from disqualifying himself of his own motion under s. 38.05.

History.—s. 4, ch. 16053, 1933; CGL 1936 Supp. 4155(3).

38.04 Sworn statement by judge holding himself qualified.—Whenever any judge shall enter an order under s. 38.02 declaring himself qualified to act in said cause, he shall contemporaneously therewith file therein a sworn statement that to the best of his knowledge and belief the ground or grounds of the disqualification named in the suggestion do not exist.

History.—s. 5, ch. 16053, 1933; CGL 1936 Supp. 4155(4).

38.05 Disqualification of judge on own motion.—Any judge may of his own motion disqualify himself where, to his own knowledge, any of the grounds for a suggestion of disqualification, as named in s. 38.02, exist. The failure of a judge to so disqualify himself under this section shall not be assignable as error or subject to review.

History.—s. 6, ch. 16053, 1933; CGL 1936 Supp. 4155(5); s. 6, ch. 63-559.

38.06 Effect of acts where judge fails to disqualify himself.—In any cause where the grounds for a suggestion of disqualification, as set forth in s. 38.02, appear of record in the cause, but no suggestion of disqualification is filed therein, the orders, judgments and decrees entered therein by the judge shall be valid. Where, on a suggestion of disqualification the judge enters an order declaring himself qualified, the orders, judgments and decrees entered therein by the said judge shall not be void and shall not be subject to collateral attack.

History.—s. 7, ch. 16053, 1933; CGL 1936 Supp. 4155(6).

38.07 Effect of orders, etc., entered prior to disqualification; petition for reconsideration.—Where orders have been entered in any cause by a judge prior to the entry of any order of disqualification under s. 38.02 or s. 38.05, and party to the cause may, within 30 days after the filing in the cause of the order of the Chief Justice of the Supreme Court, as provided for in s. 38.09, petition the judge so designated by said chief justice for a reconsideration of the orders entered by the disqualified judge prior to the date of the entry of the order of disqualification. Such a petition shall set forth with particularity the matters of law or fact to be relied upon as grounds for the modification or vacation of the said orders. Such a petition shall be granted as a matter of right. Upon the granting of the petition, notice of the time and place of the hearing thereon, together with a copy of the petition, shall be mailed by the attorney, or attorneys, of record for the petitioners to the other attorney, or attorneys of record, or to the party or parties if they have no attorneys of record. This notice shall be mailed at least 8 days prior to the date fixed by the judge for the said hearing. The judge before whom the cause is then pending may, after hearing had, affirm, approve, confirm, reenter, modify or vacate said orders.

History.—s. 8, ch. 16053, 1933; CGL 1936 Supp. 4155(7); s. 10, ch. 63-572.

38.08 Effect of orders where petition for reconsideration not filed.—If no petition for reconsideration is filed, as provided for in s. 38.07, all orders entered by the disqualified judge prior to the entry of the order of disqualification shall be as binding and valid as if said orders had been duly entered by a qualified judge authorized to act in the cause. The fact that an order was entered by a judge who is subsequently disqualified under s. 38.02 or s. 38.05, shall not be assignable as error subject to review by the appropriate appellate court unless a petition for reconsideration as provided for in s. 38.07, was filed by the party urging the matter as error, and the judge before whom the cause was then pending refused to vacate or modify said order.

History.—s. 9, ch. 16053, 1933; CGL 1936 Supp. 4155(8); s. 6, ch. 63-559.

38.09 Designation of judge to hear cause when order of disqualification entered.—Every judge of this state shall upon the entry of an order of disqualification advise the Chief Justice of the Supreme Court of the entry of said order who shall enter an order of assignment as provided by the Florida Appellate Rules. In the event any judge shall be disqualified as herein provided, upon application for any temporary writ of injunction or habeas corpus, he shall immediately enter an order of disqualification, whereupon said cause may be presented to any other judge of a court of the same jurisdiction as the court in which said cause is pending, and it shall be the duty of any such judge to hear and determine such matters until such substitute judge is so designated.

History.—s. 10, ch. 16053, 1933; CGL 1936 Supp. 4155(9); s. 11, ch. 63-572; s. 20, ch. 73-333.

38.10 Disqualification of judge for prejudice; application; affidavits; etc.—Whenever a party to any action or proceeding, shall make and file an affidavit that he fears that he will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of said court against the applicant, or in favor of the adverse party, such judge shall proceed no further therein, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes where the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists, and such affidavit shall be filed not less than 10 days before the beginning of the term of court, or good cause shown for the failure to so file same within such time. Any such affidavit so filed shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith, and the facts stated as a basis for making the said affidavit shall be supported in substance by affidavit of at least two reputable citizens of the county not of kin to defendant or counsel for the defendant; provided, however, that when any party to any action shall have suggested the disqualification of a trial judge and an order shall have been made admitting the disqualification of such judge and another judge shall have been assigned and transferred to act in lieu of the judge so held to be disqualified the judge so assigned and transferred shall not be disqualified on account of alleged prejudice against the party making the suggestion in the first instance, or in favor of the adverse party, unless such judge shall admit and hold that it is then a fact that he, the said judge, does not stand fair and impartial between the parties, and if such judge shall hold, rule, and adjudge that he does stand fair and impartial as between the parties and their respective interests he shall cause such ruling to be entered on the minutes of the court and shall proceed to preside as judge in the pending cause. The ruling of such judge may be assigned as error, and be reviewed as are other rulings of the trial court.

History.—s. 4, ch. 7852, 1919; RGS 2674; s. 1, ch. 9276, 1923; CGL 4341.

38.12 Resignation, death, or removal of judges; disposition of pending matters and papers.—Upon the resignation, death, or impeachment of any judge, all matters pending before him shall be heard and determined by his successor, and parties making any motion before such judge shall suffer no detriment by reason of his resignation, death, or impeachment. All judges, upon resignation or impeachment, shall file all papers pending before them with the clerk of the court in which the cause is pending; and the executor or administrator of any judge who dies pending any matter before him shall

file all papers found among the papers of his intestate or testator with the said clerk.

History.—ss. 1, 2, ch. 3007, 1877; RS 971, 972; GS 1341, 1342; RGS 2529, 2530; CGL 4156, 4157; s. 4, ch. 73-334.

38.13 Judge ad litem; when may be selected in the circuit or county court.—When, from any cause, the judge of a circuit or county court is disqualified from presiding in any civil case, the parties may agree upon an attorney-at-law, which agreement shall be entered upon the record of said cause, who shall be judge ad litem and shall preside over the trial of, and make orders in, said case as if he were the judge of the court. Nothing in this section shall prevent the parties from transferring the cause to another circuit or county court, as the case may be.

History.—s. 1, ch. 3713, 1887; RS 974; GS 1344; RGS 2533; CGL 4160; s. 7, ch. 22858, 1945; s. 4, ch. 73-334.

38.14 Voluntary retirement of circuit judges.—Whenever any circuit judge has elected to take the benefits of this law in accordance with the terms hereof, and has served as such judge for 12 years or more or who is serving the 12th continuous year as such judge, continuously or otherwise, and has attained the age of 60 years or more, or has served as such judge for 20 years or more, continuously or otherwise, such judge may voluntarily resign and retire from his office, and upon such retirement he shall be paid, during the remainder of his natural life, on his own monthly requisition, from the circuit judges' retirement trust fund hereinafter established, two-thirds of the compensation being paid to such judge at the time of his resignation and retirement; and there is hereby appropriated annually out of said circuit judges' retirement trust fund sufficient money to meet the requirements of this section.

History.—ss. 1, 3, ch. 19000, 1939; CGL 1940 Supp. 4779 (1), (3); s. 7, ch. 22000, 1943; s. 2, ch. 61-119.

cf.—ss. 25.101, 25.112, 25.122, 25.131, 25.141, 121.046, and 121.052.

Ch. 123, Retirement system of justices and judges of higher courts.

38.15 Retirement of disabled judges.—

(1) Whenever any circuit judge has elected to take the benefits of this law in accordance with the terms hereof and has served as such circuit judge for 10 years or more, continuously or otherwise, and shall, while holding such office, become totally and permanently disabled, physically or mentally, or both, from further rendering useful and efficient service as such judge, such judge may voluntarily resign and retire from his office, and upon such retirement he shall be paid, during the remainder of his natural life, on his own monthly requisition, from the Circuit Judges' Retirement Trust Fund hereinafter established one-half of the compensation being paid to such judge at the time of his resignation and retirement; and there is hereby appropriated annually out of said Circuit Judges' Retirement Trust Fund sufficient money to meet the requirements of this section.

(2) No such judge shall be permitted to retire and resign under the provisions of this section until examined by a duly qualified physician or surgeon, or board of physicians or surgeons, to be selected by the Governor for that purpose, and found to be disabled in the degree and in the manner specified herein.

History.—s. 2, ch. 19000, 1939; CGL 1940 Supp. 4779(2); s. 7, ch. 22000, 1943; s. 2, ch. 61-119.

38.16 Retired judge prohibited from practicing law.—No judge drawing retirement compensation as provided in ss. 38.14-38.17 shall engage in the practice of law.

History.—s. 4, ch. 19000, 1939; CGL 1940 Supp. 4779(4).

38.17 Deductions from salary; election.—Two percent shall be deducted from each installment of the salary of each circuit judge heretofore electing to come under the retirement provision of chapter 19000, Acts of 1939, as provided in s. 5 thereof, and said amount so deducted shall be deposited in the special fund established in the State Treasury, which is and shall be known as the "Circuit Judges' Retirement Trust Fund." Any person who may hereafter qualify as circuit judge shall be entitled to the benefits of these retirement provisions upon giving notice to the State Comptroller and the State Treasurer within 90 days after taking office, and, after the giving of such notice, so long as such circuit judge shall hold office, 2 percent shall be deducted from each installment of salary of such circuit judge and the said amount so deducted shall be deposited into said Circuit Judges' Retirement Trust Fund. The word "salary" shall be deemed to mean the total salary received by any circuit judge including therein all amounts paid by any county of this state.

History.—s. 5, ch. 19000, 1939; CGL 1940 Supp. 4779(5); s. 2, ch. 61-119.

38.19 Appropriation.—There is hereby appropriated annually and shall be paid into said Circuit Judges' Retirement Trust Fund out of any funds in the State Treasury, not otherwise appropriated, sufficient moneys to meet the requirements of these retirement provisions, taking into account the sum paid into the Circuit Judges' Retirement Trust Fund aforesaid.

History.—s. 7, ch. 19000, 1939; CGL 1940 Supp. 4779(7); s. 2, ch. 61-119.

38.22 Power to punish contempts.—Every court may punish contempts against it whether such contempts be direct, indirect, or constructive, and in any such proceeding the court shall proceed to hear and determine all questions of law and fact.

History.—s. 1, Nov. 23, 1828; RS 975; GS 1345; RGS 2534; CGL 4161; s. 1, ch. 23004, 1945; s. 4, ch. 73-334.

38.23 Contempts defined.—A refusal to obey any legal order, mandate or decree, made or given by any judge either in term time or in vacation relative to any of the business of said court, after due notice thereof, shall be considered a contempt, and punished accordingly. But nothing said or written, or published, in vacation, to or of any judge, or of any decision made by a judge, shall in any case be construed to be a contempt.

History.—s. 2, Nov. 23, 1828; RS 976; GS 1346; RGS 2535; CGL 4162.

CHAPTER 39

PROCEEDINGS RELATING TO JUVENILES

PART I GENERAL PROVISIONS (ss. 39.001-39.01)

PART II DELINQUENCY CASES (ss. 39.02-39.337)

PART III DEPENDENCY CASES (ss. 39.40-39.414)

PART IV INTERSTATE COMPACT ON JUVENILES (ss. 39.51-39.516)

PART I

GENERAL PROVISIONS

39.001 Short title, purposes, and intent.—

(1) This chapter shall be known and may be cited as the "Florida Juvenile Justice Act."

(2) The purposes of this chapter are:

(a) To protect society more effectively by substituting for retributive punishment, whenever possible, methods of offender rehabilitation and rehabilitative restitution, recognizing that the application of sanctions which are consistent with the seriousness of the offense is appropriate in all cases.

(b) To assure to all children brought to the attention of the courts, either as a result of their misconduct or because of neglect or mistreatment by those responsible for their care, the care, guidance, and control, preferably in each child's own home, which will best serve the moral, emotional, mental, and physical welfare of the child and the best interests of the state.

(c) To preserve and strengthen the child's family ties whenever possible, removing him from the custody of his parents only when his welfare or the safety and protection of the public cannot be adequately safeguarded without such removal; and, when the child is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents; and to assure, in all cases in which a child must be permanently removed from the custody of his parents, that the child be placed in an approved family home and be made a member of the family by adoption.

(d) To provide procedures by which the provisions of the law are executed and enforced as will assure the parties fair hearings at which their rights as citizens are recognized and protected.

(e) To assure that the prosecution and disposition of a child charged and found to have committed a violation of Florida law be exercised with appropriate discretion and in keeping with the seriousness of the offense and that all findings made under this chapter be based upon facts presented at a hearing that meets the constitutional standard of fundamental fairness.

(3) It is the intent of the Legislature that this chapter be liberally interpreted and construed in conformity with its declared purposes.

History.—s. 1, ch. 26880, 1951; s. 1, ch. 73-231; s. 1, ch. 78-414.
Note.—Former s. 39.20.

39.01 Definitions.—When used in this chapter:

(1) "Abandoned" means a situation in which a parent who, while being able, makes no provision for the child's support and makes no effort to communicate with the child for a period of 6 months or longer. If a parent's efforts to support and communicate with the child during such a 6-month period are, in the opinion of the court, only marginal efforts that do not evince a settled purpose to assume all parental duties, the court may declare the child to be abandoned.

(2) "Abuse" means any willful act that results in any physical, mental, or sexual injury that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired.

(3) "Adjudicatory hearing" means a hearing provided for under s. 39.09(1), in delinquency cases, or s. 39.408(1), in dependency cases.

(4) "Adult" means any natural person other than a child.

(5) "Authorized agent of the department" means a person assigned or designated by the department to perform duties or exercise powers pursuant to this chapter.

(6) "Caretaker/homemaker" means an authorized agent of the department who shall remain in the child's home with the child until a parent, legal guardian, or relative of the child enters the home and is capable of assuming and agrees to assume charge of the child.

(7) "Child" means any unmarried person under the age of 18 alleged to be dependent or any married or unmarried person who is charged with a violation of law occurring prior to the time that person reached the age of 18 years.

(8) "Child who has committed a delinquent act" means a child who, pursuant to the provisions of this chapter, is found by a court to have committed a felony, a misdemeanor, contempt of court, or a violation of a local penal ordinance, other than a juvenile traffic offense, and whose case has not been prosecuted as an adult case.

(9) "Child who is found to be dependent" means a child who, pursuant to this chapter, is found by the court:

(a) To have been abandoned, abused, or neglected

by his parents or other custodians.

(b) To have been surrendered to the department or a licensed child-placing agency for purpose of adoption.

(c) To have persistently run away from his parents or legal guardian.

(d) To be habitually truant from school while being subject to compulsory school attendance.

(e) To have persistently disobeyed the reasonable and lawful demands of his parents or other legal custodians and to be beyond their control.

(10) "Community control" means the legal status of probation created by law and court order in cases involving a child who has been found to have committed a delinquent act. Community control is an individualized program where the freedom of the child is limited and the child is restricted to noninstitutional quarters or restricted to the child's home in lieu of commitment to the custody of the department in a training school, halfway house, or other residential program of the department.

(11) "Court," unless otherwise expressly stated, means the circuit court.

(12) "Crisis home" means a homelike facility authorized by the department and approved by the court for the temporary placement and care of a child who does not require detention or shelter care but who is not able to remain in his own home. A crisis home need not be a licensed facility.

(13) "Department" means the Department of Health and Rehabilitative Services.

(14) "Detention care" means the temporary care of a child in a detention home or nonsecure detention program, including home detention and attention homes as authorized by chapter 959, pending court disposition or execution of a court order.

(15) "Detention hearing" means a hearing provided for under s. 39.032, in delinquency cases, or s. 39.402, in dependency cases.

(16) "Detention home" means a facility used pending court disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention home may provide secure or nonsecure custody. A facility used for the commitment of adjudicated delinquents shall not be considered a detention home.

(17) "Disposition hearing" means a hearing provided for under s. 39.09(3), in delinquency cases, or s. 39.408(2), in dependency cases.

(18) "Intake" means the acceptance of a law enforcement report or complaint and the screening thereof to determine whether action by the court is warranted, the disposition of the report or complaint without court or public agency action when appropriate, the referral of the child to another public or private agency when appropriate, and the recommendation by the intake officer of court action when appropriate.

(19) "Intake officer" means the authorized agent of the department performing the intake function for a child alleged to be delinquent or dependent.

(20) "Judge" means the circuit judge exercising jurisdiction pursuant to this chapter.

(21) "Juvenile traffic offense" means a violation by a child of a state law or local ordinance pertaining to the operation of a motor vehicle; however, the following offenses shall not be considered juvenile traffic offenses but shall be considered delinquent acts for the purposes of this chapter:

(a) Fleeing or attempting to elude a law enforcement officer or failing or refusing to comply with any lawful order or direction of any police officer or member of the fire department, in violation of s. 316.072(3).

(b) Leaving the scene of a collision or an accident involving death or personal injuries or with an unattended vehicle.

(c) Driving while under the influence of alcoholic beverages, narcotic drugs, barbiturates, or other stimulants in violation of s. 316.193.

(d) Driving without a restricted operator's license if under the age of 16 years.

(e) Driving without a valid operator's license or while the license is suspended or revoked.

(22) "Legal custody" means a legal status created by court order or letter of guardianship which vests in a custodian of the person or guardian, whether an agency or an individual, the right to have physical custody of the child and the right and duty to protect, train, and discipline him and to provide him with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.

(23) "Licensed child-caring agency" means a person, society, association, or agency licensed by the department to care for, receive, and board children.

(24) "Licensed child-placing agency" means a person, society, association, or institution licensed by the department to care for, receive, or board children and to place children in a licensed child-caring institution or a foster or adoptive home.

(25) "Likely to injure oneself" means that, as evidenced by violent or other actively self-destructive behavior, it is more likely than not that within a 24-hour period the child will attempt to commit suicide or inflict serious bodily harm on himself.

(26) "Likely to injure others" means that it is more likely than not that within a 24-hour period the child will inflict serious and unjustified bodily harm on another person.

(27) "Neglect" occurs when a parent or other legal custodian, though financially able, deprives a child of, or allows a child to be deprived of, necessary food, clothing, shelter, or medical treatment or permits a child to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. A parent or guardian legitimately practicing his religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child shall not, for that reason alone, be considered a negligent parent or guardian; however, such an exception shall not preclude a court from ordering, when the health of the child requires it, the provision of medical services by a physician as defined herein or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

(28) "Nonsecure shelter" means a place for the temporary care of a child alleged to be, or found to

be, dependent pending court disposition, which may be before or after adjudication, or execution of a court order.

(29) "Parent" means the natural father or natural mother of a child. If a child has been legally adopted, the term "parent" means the adoptive mother or father of the child.

(30) "Protective supervision" means a legal status created by court order in dependency cases which permits the child to remain in his own home or other placement under the supervision of an agent of the department, subject to being returned to the court during the period of supervision.

(31) "Secure shelter" means a physically restricting facility which provides 24-hour continual supervision for the temporary care of a child who is a runaway likely to injure himself or others or in need of care and treatment and who lacks sufficient capacity to determine what course of action is in his own best interest.

(32) "Shelter" includes both nonsecure and secure shelter.

(33) "Taken into custody" means the status of a child immediately when temporary physical control over the child is attained by a person authorized by law, pending the child's release, detention, placement, or other disposition as authorized by law.

(34) "Violation of law" means a violation of any law of the United States or of the state or of an ordinance which would be an infraction, a misdemeanor, or a felony if the violation were committed by an adult.

(35) "Waiver hearing" means a hearing provided for under s. 39.09(2).

History.—s. 1, ch. 26880, 1951; ss. 1, 2, ch. 67-585; s. 3, ch. 69-353; s. 4, ch. 69-365; ss. 19, 35, ch. 69-106; s. 1, ch. 71-117; s. 1, ch. 71-130; s. 10, ch. 71-355; ss. 4, 5, ch. 72-179; ss. 19, 30, ch. 72-404; ss. 2, 23, ch. 73-231; s. 1, ch. 74-368; ss. 15, 27, 28, ch. 75-48; s. 4, ch. 77-147; s. 2, ch. 78-414; s. 9, ch. 79-164; s. 2, ch. 79-203.

PART II

DELINQUENCY CASES

39.02 Jurisdiction.—

(1) The circuit court shall have exclusive original jurisdiction of proceedings in which a child is alleged to have committed a delinquent act or violation of law. The circuit court shall have jurisdiction in cases involving offenses described in s. 39.01(21)(a)-(e) and may have jurisdiction in those cases where the child has been found guilty of two or more previous juvenile traffic offenses within 6 months only if the court having jurisdiction over traffic offenses waives jurisdiction and certifies the case to the circuit court. In such case, a petition of delinquency, which may include or consist of the uniform traffic complaint, shall be filed in the circuit court, and the case shall be heard de novo as a delinquency proceeding.

(2) During the prosecution of any violation of law, except for a juvenile traffic offense, against any person who has been presumed to be an adult, if it is shown that the person was a child at the time the offense was committed, then the court shall forthwith transfer the case, together with the physical custody of the child and all physical evidence, papers, documents, and testimony, original and duplicate, connected therewith, to the appropriate court for proceeding under this chapter. The circuit court is exclusively authorized to assume jurisdiction over any delinquent child arrested and charged with violating a federal law or a law of the District of Columbia, who is found or living or domiciled in a county in which the circuit court is established, when the child is surrendered to the circuit court as provided in 18 U.S.C. s. 5001.

(3)(a) Petitions filed under this chapter shall be filed in the county where the delinquent act or violation of law occurred, but the circuit court for that county may, prior to or after adjudication, transfer the case to the circuit court of the circuit in which the child resides or will reside at the time of detention or placement. If the child has been detained, he shall be transferred to the appropriate detention home, crisis home, or other placement directed by the receiving court.

(b) The jurisdiction to be exercised by the court when a child is taken into custody before the filing of a petition under s. 39.06(7) shall be exercised by the circuit court for the county in which the child is taken into custody. This court shall have personal jurisdiction of the child. Upon the filing of a petition in the appropriate circuit court, the court which is exercising such initial jurisdiction of the person of the child shall, if the child has been detained or placed in a crisis home, forthwith cause the child to be transferred to the detention home or other placement as ordered by the court having subject matter jurisdiction of the case.

(4) Notwithstanding the provisions of s. 743.07, when the jurisdiction of any child who is alleged to have committed a delinquent act is obtained, the court shall retain jurisdiction, unless relinquished

by its order, until the child reaches 19 years of age, with the same power over the child that the court had prior to the child becoming an adult. This subsection shall not be construed to prevent the exercise of jurisdiction by any other court having jurisdiction of the child if the child, after becoming an adult, commits a violation of law.

(5)(a) If the court finds, after a waiver hearing, that a child who was 14 years of age or older at the time the alleged violation was committed and who is alleged to have committed a violation of Florida law should be charged and tried as an adult, then the court may enter an order transferring the case and certifying the case for trial as if the child were an adult. The child shall thereafter be subject to prosecution, trial, and sentencing as if the child were an adult but subject to the provisions of s. 39.111(6).

(b) The court shall transfer and certify the case for trial as if the child were an adult if the child is alleged to have committed a violation of law and, prior to the commencement of an adjudicatory hearing, the child, joined by a parent or, in the absence of a parent, by his guardian or guardian ad litem, demands in writing to be tried as an adult.

(c) A child of any age charged with a violation of Florida law punishable by death or by life imprisonment shall be subject to the jurisdiction of the court as set forth in s. 39.06(7) unless and until an indictment on such charge is returned by the grand jury. When an indictment is returned, the petition for delinquency, if any, shall be dismissed and the child shall be tried and handled in every respect as if he were an adult. No adjudicatory hearing shall be held within 21 days from the date that the child is taken into custody and charged with having committed a capital or life felony unless the state attorney advises the court in writing that he does not intend to present the case to the grand jury or that he has presented the case to the grand jury and that the grand jury has returned a no true bill. If the court receives such a notice from the state attorney, or if the grand jury fails to act within the 21-day period, the court may proceed as otherwise authorized under this chapter.

(d) Once a child has been transferred for criminal prosecution pursuant to a waiver hearing, indictment, or information and has been found to have committed the offense for which he is transferred or a lesser-included offense, the child shall thereafter be handled in every respect as if he were an adult for any subsequent violation of Florida law.

(6) When a child has been transferred for criminal prosecution as an adult and the child has been found to have committed a violation of Florida law, the disposition of the case shall be made pursuant to s. 39.111(6).

(7) Nothing in this chapter shall be deemed to take away from the court any jurisdiction or duties conferred upon the court by general law.

History.—s. 1, ch. 26880, 1951; s. 1, ch. 28172, 1953; ss. 1, 2, ch. 29900, 1955; s. 1, ch. 63-12; s. 1, ch. 65-219; s. 1, ch. 67-71; s. 1, ch. 69-146; s. 6, ch. 72-179; s. 3, ch. 73-231; s. 5, ch. 73-334; s. 2, ch. 74-368; s. 16, ch. 75-48; s. 3, ch. 78-414.

39.03 Taking a child into custody; detention.—

(1) A child may be taken into custody:

(a) Pursuant to an order of the circuit court issued pursuant to the provisions of this chapter, based upon sworn testimony, either before or after a petition is filed.

(b) For a delinquent act or violation of law, pursuant to Florida law pertaining to arrest.

(c) By an authorized agent of the department when he has reasonable grounds to believe a child in a community control program has violated in a material way a condition or term of the program imposed by the court or otherwise required by law. Any child taken into custody for a violation of the terms or conditions of the community control program shall not be detained longer than 48 hours without an order by the court directing such detention.

(2) Unless otherwise ordered by the court, if the child is not detained or placed in a crisis home pursuant to s. 39.032(2), the person taking the child into custody shall release the child to a parent, a responsible adult relative, a responsible agent of an approved crisis home, or an adult approved by the court upon agreement of the person to whom the child is released to produce the child in court at such time as the court may direct. When a child is released to an adult who is not a parent or responsible adult relative of the child, the adult may be selected by the department from a list of persons previously approved by the court as authorized agents of the department to receive children for temporary placement. Unless otherwise accomplished pursuant to subsection (4), the person taking the child into custody and detaining the child shall, within 3 days, make a written report to the appropriate intake officer, stating the facts by reason of which the child was taken into custody. The report shall:

(a) Identify the child, his parents, and the person to whom he was released.

(b) Contain sufficient information to establish the jurisdiction of the court and to make a prima facie showing that the child has committed a violation of law or delinquent act.

(3) If the person taking the child into custody determines, pursuant to s. 39.032(2), that the child should be detained or placed in a crisis home, that person shall make a reasonable effort to immediately notify the parents or legal custodians of the child and shall, without unreasonable delay, deliver the child to the appropriate intake officer or, if the court has so ordered, to a detention home or crisis home. Upon delivery of the child to such place, the person taking the child into custody shall make a report in writing to the appropriate intake officer. The report shall:

(a) Identify the child and, if known, his parents and legal custodians.

(b) Show that the child was legally taken into custody pursuant to subsection (1).

(4)(a) A copy of a sworn complaint by a law enforcement agency shall be filed by the law enforcement agency making the complaint with the clerk of the circuit court for the county in which the child was taken into custody or in which the complaint is made within 24 hours after the child is taken into custody if the child is detained, and within 1 week after the child is taken into custody and released or after the complaint is made, excluding Saturdays, Sundays, and legal holidays. Such complaint shall be

a case for the purpose of this section.

(b) Upon the filing of a copy of a sworn complaint by a law enforcement agency with the clerk of the circuit court, the clerk shall forthwith assign a uniform case number to the complaint, forward a copy to the state attorney, and forward a copy to the intake office of the department which serves the county in which the case arose.

(c) Each letter of recommendation, written notice, report, or other paper pertaining to the case shall bear the uniform case number of the case, and a copy shall be filed with the clerk of the circuit court by the issuing agency. The issuing agency shall furnish copies to the intake officer and state attorney.

(d) Upon the filing of a petition based on the allegations of a previously filed complaint, the agency filing the petition shall include the appropriate uniform case number on said petition.

(5) Nothing in this section shall prohibit the proper use of police diversion programs.

History.—s. 1, ch. 26880, 1951; ss. 3, 4, ch. 29900, 1955; s. 1, ch. 59-441; s. 1, ch. 61-54; s. 1, ch. 67-116; s. 3, ch. 67-2207; s. 1, ch. 69-113; ss. 20, 35, ch. 69-106; s. 4, ch. 69-365; s. 1, ch. 70-353; s. 2, ch. 71-130; s. 10, ch. 71-355; ss. 4-9, ch. 73-231; s. 17, ch. 75-48; s. 1, ch. 75-198; s. 8, ch. 76-236; s. 1, ch. 77-174; ss. 4, 5, ch. 78-414; s. 10, ch. 79-164.

39.031 Fingerprinting and photographing.—

(1) Any law enforcement agency may fingerprint and photograph a child taken into custody upon probable cause that such child has committed a violation of law. The fingerprint records and photographs so taken shall be retained by the law enforcement agency in a separate file maintained only for that purpose. These records including all copies thereof shall be marked "Juvenile Confidential." These records shall not be available for public disclosure and inspection under s. 119.07, but such records shall be available to other law enforcement agencies, state attorneys, the courts, the child, the parents or legal custodians of the child, their attorneys, or any other person authorized by the court to have access to such records. These records may, in the discretion of the court, be opened to inspection by anyone upon a showing of good cause. The fingerprint and photograph records shall be produced in the court whenever directed by the court. Any photograph taken pursuant to this section may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime.

(2) If the child is not referred to the court, or if the child is found not to have committed an offense or delinquent act, the court may, after notice to the law enforcement agency involved, order the originals and copies of the fingerprints and photographs destroyed. Unless otherwise ordered by the court, if the child is found to have committed an offense which would be a felony if it had been committed by an adult, then the law enforcement agency having custody of the fingerprint and photograph records shall retain the originals and immediately thereafter forward adequate duplicate copies to the court along with the written offense report relating to the matter for which the child was taken into custody. Except as otherwise provided by this subsection, the court, after the disposition hearing on the case, shall forward duplicate copies of the fingerprints and photographs, together with the child's name, address, date of birth, age, and sex, to the following agencies:

(a) The Department of Law Enforcement.

(b) The sheriff of the county in which the child was taken into custody, in order to maintain a central child identification file in that county.

(c) The law enforcement agency of each municipality having a population in excess of 50,000 persons and located in the county of arrest, if so requested specifically or by a general request by that agency.

(3) All law enforcement agencies and the Department of Law Enforcement shall use these fingerprint and photograph records only for identification purposes. If an identification is made, the Department of Law Enforcement shall advise the forwarding law enforcement agency of this fact and of the name and last known address of the child. Fingerprint and photograph records received pursuant to this section by the Department of Law Enforcement shall be retained, used, stored, disseminated, and purged in the same manner as other criminal history information.

(4) Nothing contained in this section shall prohibit the fingerprinting or photographing of child traffic violators. All records of juvenile traffic violations shall be kept in the full name of the violator and shall be open to inspection and publication in the same manner as adult traffic violations. Nothing contained in this section shall apply to photographing of children by the department.

History.—s. 6, ch. 78-414; s. 7, ch. 79-8; s. 11, ch. 79-164.

39.032 Detention.—

(1) The intake officer shall review the facts in the law enforcement report or complaint and make such further inquiry as necessary to determine the need for detention or shelter care of the child. Unless detention care or a crisis home is required under subsection (2), the child shall be released by the intake officer in accordance with s. 39.03(2). If the child cannot be released, the intake officer shall authorize detention care for any child alleged to have committed a violation of law, except as provided in paragraph (2)(b). If the child is alleged to be both dependent and to have committed a violation of law, the intake officer may authorize either detention care or shelter care. Under no circumstances shall the intake officer authorize the detention of any child in a jail or other facility intended or used for the detention of adults. When a child is charged with a felony pursuant to s. 39.04(2)(e)4. or 5., the court may order detention of such child in a jail or other facility intended or used for the detention of adults; however, no child shall be placed in the same cell with any adult or other child alleged to have committed, or who has been adjudged to have committed, a crime.

(2) Unless ordered by the court, a child taken into custody shall not be placed or retained in detention care prior to the court's disposition unless detention or a crisis home is required:

(a) To protect the person or property of others or of the child;

(b) Because the child has no parent, guardian, responsible adult relative, or other adult approved by the court able to provide supervision and care for him. If a child is to be detained pursuant to this

paragraph alone, a crisis home only may be used;

(c) To secure his presence at the next hearing;

(d) Because the child has been twice previously adjudicated to have committed a delinquent act and has been charged with a third subsequent delinquent act which would constitute a felony if the child were an adult; or

(e) To hold for another jurisdiction a delinquent child escapee or an absconder from probation, a community control program, or parole supervision or a child who is wanted by another jurisdiction for an offense which, if committed by an adult, would be a violation of law.

A child who is charged with a violation of law and is detained under this subsection shall be given a detention hearing within 48 hours of his being taken into custody, excluding Sundays and legal holidays, to determine the need for continued detention. The circuit court, or the county court if previously designated by order of the chief judge of the circuit court, shall hold the detention hearing. The criteria for placement in detention care or a crisis home given above shall govern the decision of all persons responsible for determining whether detention care or a crisis home is warranted prior to the court's disposition.

(3) Except in emergency situations, a child shall not be placed or transported in any police car or other similar vehicle which at the same time contains an adult under arrest unless the adult is alleged or believed to be involved in the same offense or transaction as the child.

(4)(a) The court shall order the delivery of a child to a jail or other facility intended or used for the detention of adults:

1. When the child has been transferred for criminal prosecution as an adult pursuant to this chapter, or

2. When the court determines, upon the recommendation of the superintendent of the detention home, that the child would be beyond the control of the detention home staff.

The receiving facility shall contain a separate section for juvenile offenders and have an adequate staff to supervise and monitor the child's activities at all times.

(b) The chief judge, or, where a specialized juvenile division exists, the presiding or supervising judge of that division, shall, at monthly intervals, inform the board of county commissioners or other governing body of the county, in writing, of the number of, and the reasons for, deliveries of children to jail in that county, identifying children only by initials and court case numbers.

(5)(a) No child shall be held in detention or shelter care longer than 48 hours, excluding Sundays or legal holidays, unless an order is entered by the court after a detention hearing finding that detention care or a crisis home is required based on the criteria in subsection (2). The order shall state the reasons for such findings of the court. The order shall be reviewable by appeal pursuant to s. 39.14 and the Florida Appellate Rules.

(b) Unless otherwise specifically ordered by the court having jurisdiction of the case, during the period of time from the taking of the child into custody to the date of the detention hearing held pursuant to paragraph (a), the decision as to the detention, continued detention, or release from detention of the child shall be made by the intake officer in accordance with subsection (2) and any administrative order of court, after consultation with the state attorney.

(c) No child shall be held in detention care or a crisis home under a special detention order for more than 21 days unless an adjudicatory hearing for the case has been commenced by the court.

(d) No child shall be held in detention care or a crisis home for more than 15 days following the entry of an order of adjudication unless an order of disposition pursuant to s. 39.11 has been entered by the court or unless a continuance, which shall not exceed 15 days, has been granted for good cause. After notifying the court, the detention home superintendent shall release any child held beyond 15 days without a grant of continuance.

(e) The time limitations in paragraphs (c) and (d) shall not include:

1. Periods of delay resulting from a continuance granted at the request or with the consent of the child and his counsel.

2. Periods of delay resulting from a continuance granted at the request of the state attorney if the continuance is granted:

a. Because of an unavailability of evidence material to his case, if the state attorney has exercised due diligence to obtain such evidence and there are substantial grounds to believe that such evidence will be available within 30 days; or

b. To allow the state attorney additional time to prepare his case and additional time is justified because of the exceptional circumstances of the case.

History.—s. 6, ch. 78-414.

39.04 Intake.—

(1) Intake shall be performed by the department. A report or complaint alleging that a child has committed a delinquent act shall be made to the intake office operating in the county in which the child is found or in which the delinquent act occurred. Any person or agency having knowledge of the facts may make a complaint. If not required otherwise by s. 39.03(4), the complainant shall furnish the intake office facts sufficient to establish the jurisdiction of the court and to support a finding by the court that the child has committed a delinquent act.

(2) The intake officer shall make a preliminary determination as to whether the report or complaint is complete, consulting with the state attorney or assistant state attorney as may be necessary. In any case where the intake officer or the state attorney finds that the report or complaint is incomplete, the intake officer or state attorney shall return the report or complaint, without delay, to the person or agency originating the report or complaint or having knowledge of the facts, or to the appropriate law enforcement agency having investigative jurisdiction of the offense, and request, and the agency shall promptly thereafter furnish, additional information in order to complete the report or complaint.

(a) If the intake officer determines that the re-

port or complaint is complete, he may in the case of a child who is alleged to have committed a delinquent act, recommend that the state attorney file a petition of delinquency or an information or seek an indictment by the grand jury.

(b) If the intake officer determines that the report or complaint is complete, but that in his judgment the interest of the child and the public will be best served by providing the child care, a diversionary or mediation program, or other treatment voluntarily accepted by the child and his parents or legal custodians, the intake officer with the approval of the state attorney may refer the child for such care, diversionary or mediation program, or other treatment.

(c) If the intake officer determines that the report or complaint is complete and in his judgment the interest of the child and the public will be best served, he may recommend that a delinquency petition not be filed. If such a recommendation is made, the intake officer shall advise in writing the complainant, the victim, if any, and the law enforcement agency having investigative jurisdiction of the offense of the recommendation and the reasons therefor; and that person or agency may submit, within 10 days from the receipt of such notice, the complaint to the state attorney for special review. The state attorney, upon receiving a request for special review, shall consider the facts presented by the complainant or agency and by the intake officer who made the recommendation that no petition or information be filed before such attorney makes a final decision as to whether a petition or information should or should not be filed.

(d) In all cases in which the child is alleged to have committed a delinquent act and is not detained, the intake officer shall submit a written report to the state attorney, including the original report or complaint or a copy thereof, within 20 days from the date the child is taken into custody or the report or complaint is made to the intake office, whichever date shall last occur. In cases where the child is in detention, the intake office report shall be submitted within 48 hours of the detention. The intake office report shall recommend that a petition or information be filed or that no petition or information be filed, and it shall set forth reasons for such recommendation.

(e) The state attorney shall in all such cases, after receiving and considering the recommendation of the intake officer, have the right to take action, regardless of the action or lack of action of the intake officer, and shall determine the action which is in the best interest of the public. The state attorney may:

1. File a petition for dependency;
2. File a petition for delinquency;
3. File a petition for delinquency with a motion to transfer and certify the child pursuant to s. 39.02(5) and s. 39.09(2) for prosecution as an adult;
4. With respect to any child who at the time of commission of the alleged offense was 16 or 17 years of age, file an information when in his judgment and discretion the public interest requires that adult sanctions be considered or imposed. Upon motion of the child, the case shall be transferred for adjudicatory proceedings as a child pursuant to s. 39.09(1) if it is shown by the child that he had not previously been found to have committed two delinquent acts, one of which involved an offense classified under Florida law as a felony;
5. Refer the case to a grand jury;
6. Refer the child to a diversionary, pretrial intervention, or mediation program or to some other treatment or care program if such program commitment is voluntarily accepted by the child or his parents or legal guardians; or
7. Dismiss the case.

(f) In cases in which a delinquency complaint is filed by a law enforcement agency and the state attorney determines not to file a petition, the state attorney shall advise the clerk of the circuit court in writing that no petition will be filed on the complaint.

History.—s. 1, ch. 26880, 1951; s. 3, ch. 71-130; s. 10, ch. 73-231; s. 18, ch. 75-48; s. 1, ch. 77-174; s. 7, ch. 78-414.

39.05 Petition.—

(1) All proceedings seeking a finding that a child has committed a delinquent act shall be initiated by the state by the filing of a petition for delinquency by the state attorney.

(2) The petition shall be in writing and shall be signed by the state attorney under oath. The petition may be signed and proceedings initiated by the state attorney or by an assistant state attorney.

(3) The state attorney shall represent the state in all proceedings in which a petition alleges delinquency.

(4) When a petition has been filed and the child or his counsel has advised the state attorney that the truth of the allegations is admitted and that no contest is to be made of the allegations in the petition, the state attorney may request that the case be set for an adjudicatory hearing. At this hearing, should there be a change in the plea by the child, the court shall continue the hearing to permit the state attorney to prepare and present the case for the state.

(5) The form of the petition and its contents shall be determined by rules of procedure adopted by the Supreme Court.

(6) On motions by or in behalf of a child, a petition alleging delinquency shall be dismissed with prejudice if it was not filed within 45 days from the date the complaint was referred to the intake office. However, the court may grant an extension of time not to exceed an additional 15 days upon such motion by the state attorney when, in the opinion of the court, such additional time is justified because of exceptional circumstances.

(7)(a) If a petition has been filed alleging a child to be delinquent, the adjudicatory hearing on the petition shall be commenced within 90 days of the earliest of the following dates:

1. The date the child was taken into custody.
2. The date the petition was filed.

(b) If the adjudicatory hearing is not begun within 90 days or an extension thereof as hereinafter provided, the petition shall be dismissed with prejudice.

(c) The court may extend the period of time prescribed in paragraph (a) on motion of any party, after hearing, on a finding of good cause or that the interest of the child will be served by such extension. The

order extending such period shall recite the reasons for such extension. The general congestion of the court's docket, lack of diligent preparation, failure to obtain available witnesses, or other avoidable or foreseeable delays shall not constitute good cause for such extension.

History.—s. 1, ch. 26880, 1951; s. 4, ch. 71-130; s. 11, ch. 73-231; s. 19, ch. 75-48; s. 6, ch. 77-147; s. 8, ch. 78-414.

39.06 Process and service.—

(1) Personal appearance of any person in a hearing before the court shall obviate the necessity of serving process on that person.

(2) Upon the filing of a petition containing allegations of facts which, if true, would constitute the child therein named as having committed a delinquent act, and upon the request of the petitioner, the clerk or deputy clerk shall issue a summons.

(3) The summons shall require the person on whom it is served to appear for a hearing at a time and place specified. Except in cases of medical emergency, the time shall not be less than 24 hours after service of the summons. If the child is not detained by an order of the court, the summons shall require the custodian to produce the child at the said time and place. A copy of the petition shall be attached to the summons.

(4) The summons shall be directed to, and shall be served upon, the following persons:

(a) The child, in the same manner as if he were an adult, when the petition alleges delinquency;

(b) The parents; and

(c) The legal custodians, actual custodians, and guardians ad litem, if there be any other than the parents.

(5) If the petition alleges that the child has committed a violation of law and the judge deems it advisable to do so, the judge may, by endorsement upon the summons and after the entry of an order in which valid reasons are specified, order the child to be taken into custody immediately, and in such case the person serving the summons shall forthwith take the child into custody.

(6) It shall not be necessary to the validity of a proceeding covered by this chapter that the parents or legal custodians be present if their identity or residence is unknown after a diligent search and inquiry have been made, if they are residents of a state other than Florida, or if they evade service or ignore a summons, but in this event the person who made the search and inquiry shall file in the case a certificate of those facts, and the court shall appoint a guardian ad litem for the child.

(7) The jurisdiction of the court shall attach to the child and the case when the summons is served upon the child, a parent, or legal or actual custodian of the child or when the child is taken into custody with or without service of summons and before or after filing of a petition, whichever first occurs, and thereafter the court may control the child and case in accordance with this chapter.

(8) Upon the application of the child or the state attorney, the clerk or deputy clerk shall issue, and the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents, or other tangible objects at any hearing.

(9) All process and orders issued by the court shall be served or executed as other process and orders of the circuit court, and, in addition, may be served or executed by authorized agents of the department at the department's discretion.

(10) Subpoenas may be served within the state by any person over 18 years of age who is not a party to the proceeding.

(11) No fee shall be paid for service of any process or other papers by an agent of the department. If any process, orders, or any other papers are served or executed by any sheriff, the sheriff's fees shall be paid by the county.

History.—s. 1, ch. 26880, 1951; s. 10, ch. 27991, 1953; ss. 19, 35, ch. 69-106; s. 4, ch. 69-365; s. 5, ch. 71-130; s. 12, ch. 73-231; s. 5, ch. 73-334; s. 20, ch. 75-48; s. 2, ch. 77-121; s. 7, ch. 77-147; s. 25, ch. 77-433; s. 9, ch. 78-414.

39.07 No answer required.—No answer to the petition for delinquency need be filed by any child, parent, or legal custodian, but any matters which might be set forth in an answer or other pleading may be pleaded orally before the court. An answer admitting the allegations of the petition may be filed by the child joined by a parent or the child's counsel. The answer must acknowledge that the child has been advised of his right to counsel, of his right to remain silent, and of the possible dispositions available to the court. It shall provide for a waiver of the adjudicatory hearing, a statement of consent to an order of adjudication, and an authorization for the court to proceed with a dispositional hearing. Upon the filing of such an order, a dispositional hearing shall be set at the earliest practicable time that will allow for the completion of a predisposition study.

History.—s. 1, ch. 26880, 1951; s. 13, ch. 73-231; s. 10, ch. 78-414.

39.071 Right to counsel.—A child shall be entitled to representation by legal counsel at all stages of any proceedings under this part. If the child and his parents or other legal custodians are insolvent and are unable to employ counsel for the child, or if the parents of an insolvent child are solvent but refuse to employ counsel, the court shall appoint counsel for him pursuant to s. 27.52. Costs of representation shall be assessed as provided by s. 27.52 and s. 27.56. If a child appears without counsel, the court shall advise him of his rights with respect to representation of court-appointed counsel.

History.—s. 11, ch. 78-414.

39.08 Medical, psychiatric, and psychological examination and treatment.—

(1) After a petition for delinquency has been filed, the court may order the child named in the petition to be examined by a physician willing to do so. The court may also order the child to be evaluated by a psychiatrist, a psychologist, or the department's developmental disabilities diagnostic and evaluation team. If it is necessary to place a child in a residential facility for such evaluation, then the criteria and procedures established in s. 394.463(2) or chapter 393 shall be used, whichever is applicable.

(2) After a child has been adjudicated to be delinquent, or before such adjudication with the consent of any parent or legal custodian of the child, the court may order the child to be treated by a physician willing to do so. The court may also order the

child to receive mental health or retardation services from a psychiatrist, psychologist, or other appropriate service provider. If it is necessary to place the child in a residential facility for such services, then the procedures and criteria established in s. 394.467 or chapter 393 shall be used, whichever is applicable.

(3) For the purpose of either examination or treatment, the court may order the child to be detained in a suitable place. When any child is detained pending a hearing, the person in charge of the detention facility or his designated representative may authorize a triage examination as a preliminary screening device to determine if the child is in need of medical care or isolation or provide or cause to be provided such medical or surgical services as may be deemed necessary by a physician.

(4) Whenever a child who is found to be delinquent is placed by order of the court within the care and custody or under the supervision of a youth services counselor for the state in which such child resides and it appears to the court that there is no parent, guardian, or person standing in loco parentis who is capable of authorizing or willing to authorize medical, surgical, dental, or other remedial care or treatment for the child, the court may, after due notice to the parent, guardian, or person standing in loco parentis, if any, order that a representative of the department may authorize such medical, surgical, dental, or other remedial care for the child by licensed practitioners as may from time to time appear necessary.

(5) A physician shall be immediately notified by the person taking the juvenile into custody or the person having custody if there are indications of physical injury or illness, or the child shall be taken to the nearest available hospital for emergency care. A child may be provided mental health or retardation services, in emergency situations, pursuant to the procedures and criteria contained in s. 394.463(1) or chapter 393, whichever is applicable. After a hearing, the court may order the custodial parent or parents, guardian, or other custodian, if found able to do so, to reimburse the county or state for the expense involved in such emergency medical or surgical treatment or care.

(6) Nothing in this section shall be deemed to eliminate the right of the parents or the child to consent to examination or treatment for the child, except that consent of a parent shall not be required if the physician determines there is an injury or illness requiring immediate treatment and the child consents to such treatment or an ex parte court order is obtained authorizing said treatment.

(7) Nothing in this section shall be construed to authorize the permanent sterilization of the child unless such sterilization is the result of or incidental to medically necessary treatment to protect or preserve the life of the child.

(8) Except as provided in this section, nothing in this section shall be deemed to alter the provisions of s. 458.21 or to preclude a court from ordering services or treatment to be provided to the child by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a church or religious organization when his health requires it and when requested by the child.

History.—s. 1, ch. 26880, 1951; s. 14, ch. 73-231; s. 21, ch. 75-48; s. 12, ch. 78-414.

39.09 Hearings.—

(1) ADJUDICATORY HEARING.—

(a) The adjudicatory hearing shall be held as soon as practicable after the petition for delinquency is filed and in accordance with the Florida Rules of Juvenile Procedure, but reasonable delay for the purpose of investigation, discovery, or procuring counsel or witnesses shall be granted. If the child is being detained, the time limitations provided for in s. 39.032(5)(c) and (d) shall apply. The right to a speedy trial shall be governed by the provisions of s. 39.05(7), but such right may be voluntarily waived by the child in accordance with the Florida Rules of Juvenile Procedure.

(b) Adjudicatory hearings shall be conducted by the court without a jury applying in delinquency cases the rules of evidence in use in this state in criminal cases; adjourning the hearings from time to time as necessary; and conducting a fundamentally fair hearing in language understandable, to the fullest extent practicable, to the child before the court.

1. In a hearing on a petition in which it is alleged that the child has committed a delinquent act, the evidence must establish such findings beyond a reasonable doubt.

2. The child is entitled to the opportunity to introduce evidence and otherwise be heard in his own behalf and to cross-examine witnesses.

3. A child charged with a delinquent act need not be a witness against or otherwise incriminate himself. Evidence illegally seized or obtained shall not be received to establish the allegations made against him.

(c) All hearings, except as hereinafter provided, shall be open to the public, and no person shall be excluded therefrom except on special order of the court. The court, in its discretion, may close any hearing to the public when the public interest and the welfare of the child is best served by so doing. Hearings involving more than one child may be held simultaneously when the several children involved were involved in the same transactions.

(2) WAIVER HEARING.—

(a) Within 7 days, excluding Saturdays, Sundays, or legal holidays, of the date a delinquency petition has been filed and before an adjudicatory hearing, and after considering the recommendation of the intake officer, the state attorney may file a motion requesting the court to transfer the child for criminal prosecution if the child was 14 or more years of age at the alleged time of commission of the violation of law for which he is charged. If the child has been previously adjudicated delinquent for a violent crime against a person, to wit: Murder, sexual battery, armed or strong-armed robbery, aggravated battery, or aggravated assault, and is currently charged with a second or subsequent such offense, the state attorney shall file a motion requesting the court to transfer the child for criminal prosecution or shall file an information pursuant to s. 39.04(2)(e)4., if applicable.

(b) Following the filing of the motion of the state

attorney, summonses shall be issued and served in conformity with the provision of s. 39.06. A copy of the motion and a copy of the delinquency petition, if not already served, shall be attached to each summons.

(c) The court shall conduct a hearing on all such motions for the purpose of determining whether a child should be transferred. In making its determination the court shall consider:

1. The seriousness of the alleged offense to the community and whether the protection of the community is best served by transferring the child for adult sanctions.

2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.

3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.

4. The prosecutive merit of the complaint.

5. The desirability of trial and disposition of the entire offense in one court when the child's associates in the alleged crime are adults or children who are to be tried as adults who will be or have been charged with a crime.

6. The sophistication and maturity of the child, as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living.

7. The record and previous history of the child, including:

a. Previous contacts with the department, other law enforcement agencies, and courts;

b. Prior periods of probation or community control;

c. Prior adjudications that the child committed a delinquent act or violation of law, greater weight being given if the child had previously been found by a court to have committed a delinquent act involving an offense classified as a felony or had twice previously been found to have committed a delinquent act involving an offense classified as a misdemeanor; and

d. Prior commitments to institutions.

8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child, if he is found to have committed the alleged offenses, by the use of procedures, services, and facilities currently available to the court.

(d) Prior to a hearing, on the motion by the state attorney, a study and report to the court, in writing, relevant to the factors in paragraph (c) shall be made by an authorized agent of the department. The child or his parents, guardians, or counsel and the state attorney shall have the right to examine these reports and to question the parties responsible for them at the hearing.

(e) Any decision to transfer for criminal prosecution shall be in writing and shall include consideration of, and findings of fact with respect to, each of the foregoing criteria. The court shall render an order including a specific finding of fact and the reasons for a decision to impose adult sanctions. The order shall be reviewable on appeal pursuant to s. 39.14 and the Florida Appellate Rules.

(3) DISPOSITION HEARING FOR DELINQUENCY CASES.—When a child has been found to have committed a delinquent act, the following procedures shall be applicable to the disposition of the case:

(a) At the disposition hearing the court shall consider a predisposition report, prepared and presented by the department, regarding the suitability of the child for disposition other than by adjudication and commitment to the department. The report shall be submitted to the court prior to the disposition hearing.

(b) The court shall consider the child's entire predispositional report and review the records of earlier judicial proceedings prior to making a final disposition of the case. The court may, by order, require additional evaluations and studies to be performed by the department, by the county school system, or by any other social, psychological, or psychiatric agencies of the state.

(c) Before the court determines and announces the disposition to be imposed, it shall:

1. State clearly, and in nonlegal terms, the purpose of the hearing and the right of certain of those present to comment at the appropriate time on the issues before the court;

2. Discuss with the child his compliance with any home release plan or other similar plan that had been imposed since the date of the offense;

3. Discuss with the child his feeling about the offense he has committed, the harm caused to the victim or others, and what penalty he should be required to pay for such transgression; and

4. Give all parties present at the hearing an opportunity to comment on the issue of disposition and any proposed rehabilitative plan. These parties shall include, if present: The parents or guardians of the child, the child's counsel, the state attorney or assistant state attorney, representatives of the department, the victim or his representative, if any, representatives of the school system, and the law enforcement officers involved in the case.

(d) The first determination to be made by the court shall be a determination of the suitability or nonsuitability for adjudication and commitment of the child to the department. This determination shall be made based upon the following criteria:

1. The seriousness of the offense to the community.

2. Whether the protection of the community requires adjudication and commitment to the department.

3. Whether the offense was committed in an aggressive, violent, premeditated, or willful manner.

4. Whether the offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.

5. The sophistication and maturity of the child, as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living.

6. The child record and previous criminal history of the child, including without limitations:

a. Previous contacts with the department, the

Department of Corrections, other law enforcement agencies, and courts,

b. Prior periods of probation or community control,

c. Prior adjudications of delinquency, and

d. Prior commitments to institutions.

7. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child if he is committed to a community services program or facility.

(e) If the court determines that the child should be adjudicated as having committed a delinquent act and that he should be committed to the department, such determination shall be in writing or on the record of the hearing. The determination shall include a specific finding on reasons for the decision to adjudicate and to commit the child to the department.

(f) If the court determines not to adjudicate and commit to the department, then the court shall determine what community-based penal sanctions it will impose in a community control program for the child. Community-based penal sanctions may include, but are not limited to, rehabilitative restitution, curfew, revocation or suspension of the child's driver's license, community service, the deprivation from the child of nonessential activities or privileges, or other appropriate restraints of the child's liberty.

(g) After appropriate sanctions for the offense are determined, the court shall develop, approve, and order a plan of community control which will contain rules, requirements, conditions, and programs that are designed to encourage noncriminal and functional behavior and that will promote the rehabilitation of the child and the protection of the community.

(h) The court may receive and consider any other relevant and material evidence, including other written or oral reports or statements, in its effort to determine the appropriate disposition to be made with regard to the child. The court may rely upon such evidence to the extent of its probative value, even though such evidence may not be technically competent in an adjudicatory hearing.

(i) The court shall notify the victim of the offense, if such person is known and within the jurisdiction of the court, of the hearing and shall notify and summon or subpoena, if necessary, the parents or legal custodians of the child to attend the disposition hearing if they reside in the state.

(j) The predisposition report shall be made available to the child's legal counsel and the state attorney upon completion of the report and at a reasonable time prior to the disposition hearing.

(k) It is the intent of the Legislature that the criteria set forth in paragraph (d) are intended as general guidelines to be followed at the discretion of the court. These criteria shall not be mandatory requirements of procedure. It is not the intent of the Legislature to provide for the appeal of the disposition made pursuant to this subsection.

(4) Except as provided in paragraph (1)(c), nothing in this section shall prohibit the publication of proceedings in a hearing.

History.—s. 1, ch. 26880, 1951; s. 1, ch. 57-257; s. 1, ch. 67-509; s. 15, ch. 73-231; s. 22, ch. 75-48; s. 13, ch. 78-414; s. 3, ch. 79-3.

39.10 Adjudication.—

(1) If the court finds that the child named in a petition has not committed a delinquent act, it shall enter an order so finding and dismissing the case.

(2) If the court finds that the child named in the petition has committed a delinquent act, it may, in its discretion, enter an order briefly stating the facts upon which its finding is based but withholding adjudication of a delinquent act and placing the child in a community control program under the supervision of the department. The court may, as a condition of the program, impose a curfew, require restitution or public service, or revoke or suspend the child's driver's license. If the court later finds that the child has not complied with the rules, restrictions, or conditions of the community-based program, the court may, after a hearing to establish the lack of compliance, but without further evidence of the state of delinquency, enter an adjudication and shall thereafter have full authority under this chapter to deal with the child as adjudicated.

(3) If the court finds that the child named in a petition has committed a delinquent act, but shall elect not to proceed under subsection (2), it shall incorporate that finding in an order of adjudication entered in the case, briefly stating the facts upon which the finding is made, and the court shall thereafter have full authority under this chapter to deal with the child as adjudicated.

(4) Except for use in a subsequent proceeding under this chapter, an adjudication by a court that a child has committed a delinquent act shall not be deemed a conviction, nor shall the child be deemed to have been found guilty or to be a criminal by reason of that adjudication, nor shall that adjudication operate to impose upon the child any of the civil disabilities ordinarily imposed by or resulting from conviction or disqualify or prejudice the child in any civil service application or appointment.

History.—s. 1, ch. 26880, 1951; s. 16, ch. 73-231; s. 23, ch. 75-48; s. 8, ch. 77-147; s. 14, ch. 78-414.

39.11 Powers of disposition.—

(1) When any child shall be adjudicated by the court to have committed a delinquent act, the court having jurisdiction of the child shall have the power, by order in which is stated the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing, to:

(a) Place a child in a community control program under the supervision of an authorized agent of the department, either in the child's own home or, the prospective custodian being willing, in the home of a relative of the child or in some other suitable place under such reasonable conditions as the court may direct. A community control program is as defined in s. 39.01(10) and shall include a penalty such as restitution, curfew, revocation or suspension of the child's driver's license, or other noninstitutional punishment appropriate to the offense and a rehabilitative program.

1. Community control programs for children

shall be supervised by the department or by any other person or agency specifically authorized by the court. These programs shall include, but shall not be limited to, structured or restricted activities designed to encourage acceptable and functional social behavior, restitution in money or in kind, or public service.

2. There shall be established in each judicial circuit a community control program advisory council which shall periodically advise the court of the diversion programs and dispositional alternatives for children available within that circuit. The presiding judge of the circuit may appoint seven members to constitute the council. The council shall include as ex officio members the state attorney, superintendents of schools within the circuit, and an intake officer of the department or their designees.

Should the conditions of the program be violated, the agent supervising his community control program or the state attorney may bring the child before the court on a petition alleging a violation of the program. If the child denies that he has violated the conditions of his program, the court shall give him an opportunity to be fully heard in person or through counsel, or both. Upon his admission or after such hearing, the court shall enter an order revoking, modifying, or continuing the program. In all cases after a revocation, the court shall enter a new disposition order and shall have full power at that time to make any disposition it might have made at the original disposition hearing. Notwithstanding the provisions of s. 743.07, the term of any order placing a child in a community control program shall be until his 19th birthday unless he is sooner released upon the recommendation of the department or by the court on the motion of an interested party or on its own motion.

(b) Commit the child to a licensed child-caring agency willing to receive the child, but the court shall not commit the child to a jail or to a facility used primarily as a detention home or shelter.

(c) Commit the child to the department. Said commitment shall be for the purpose of exercising active control, including, but not limited to, custody, care, training, treatment, and furlough into the community. Notwithstanding the provisions of s. 743.07, the term of said commitment shall be until said child is discharged by the department or until he reaches the age of 19.

(d) Order the natural or adoptive parents of such child, the natural father of a child born out of wedlock who has acknowledged his paternity in writing before the court or whose paternity has been proven in court, or the guardian of such child's estate, if possessed of assets which under law may be disbursed for the care, support, and maintenance of the child, to pay the person or institution having custody of the child reasonable sums of money at such intervals as the court may consider adequate and proper for the care, support, maintenance, training, and education of the child. The court, in making such order, shall consider the circumstances and ability of the parents to pay and the value of assets of the guardianship estate of the child, and when the order affects the guardianship estate, a certified copy of the order shall be delivered to the judge having jurisdiction of the guardianship estate.

(e) Revoke or suspend the child's driver's license.

(f) In the case of a traffic offense:

1. Reprimand the child or counsel the child with his parents or guardian;

2. Upon notifying the Department of Highway Safety and Motor Vehicles of such action, suspend the child's privilege to drive or restrict the child's privilege to drive under stated conditions and limitations for a period not to exceed that authorized for an adult for the same offense;

3. Require the child to attend and successfully complete a driver improvement school conducted by a public agency; or

4. Order the child to remit to the fine and forfeiture fund of the county in which the offense was committed an amount of money not to exceed the maximum amount applicable to an adult for the same offense. Fines and forfeitures remitted under this subparagraph shall be subject to the provisions of s. 316.660.

(g) Require the child to render a public service in a public service program.

(h) Order, as part of the community sanction and rehabilitative program to be implemented by the department counselor, the child to make restitution for the damage or loss caused by his offense in a reasonable amount or manner to be determined by the court. The court may require the clerk of the circuit court to be the receiving and dispensing agent.

(i) Order the child to participate in a community work project, either as an alternative to monetary restitution or as part of the rehabilitative or community control program.

(2) Any order made pursuant to subsection (1) may thereafter be modified or set aside by the court.

(3) Any commitment of a delinquent child to the department shall be for an indeterminate period of time, but the time shall not exceed the maximum term of imprisonment which an adult may serve for the same offense. Any child so committed may be discharged from institutional confinement or a program upon the direction of the department. Notwithstanding the provisions of s. 743.07, no child shall be held under a commitment from a court pursuant to this section after becoming 19 years of age. The department shall give the court which committed the child to the department reasonable notice, in writing, prior to discharging the child from a commitment to the department. The court which committed the child may thereafter resume personal jurisdiction of the child and make such orders for the aftercare supervision of the child as will be in the best interest of the child and for the protection of society.

(4) In carrying out the provisions of this chapter, the court may order the natural parents or legal guardian of a child who is found to have committed a delinquent act to participate in family counseling and other professional counseling activities deemed necessary for the rehabilitation of the child.

(5) The court may at any time enter an order ending its jurisdiction over any child.

(6) Whenever a child is required by the court to participate in any work program under the provisions of this chapter, or volunteers to work in a speci-

fied state, county, municipal, or community service organization supervised work program for the purpose of making restitution, such child shall be considered an employee of said state, county, municipal, or community service organization for the purposes of chapter 440. However, in determining the child's average weekly wage unless otherwise determined by a specific funding program, all remuneration received from the employer shall be considered a gratuity, and the child shall not be entitled to any benefits otherwise payable under s. 440.15, regardless of whether the child may be receiving wages and remuneration from other employment with another employer and regardless of his future wage-earning capacity.

(7) The court upon motion of the child, or upon its own motion, may within 60 days after imposition of a disposition of commitment suspend the further execution of the disposition and place the child on probation in a community control program upon such terms as the court may require. The department shall forward to the court all relevant material on the child's progress while in custody not later than 3 working days prior to the hearing on the motion.

(8) The nonconsent of the child to commitment or treatment in a drug control program shall in no way preclude the court from ordering such commitment or treatment.

History.—s. 1, ch. 26880, 1951; s. 5, ch. 29900, 1955; s. 7, ch. 63-449; s. 1, ch. 65-462; s. 3, ch. 67-585; s. 1, ch. 67-61; ss. 5, 6, ch. 69-365; ss. 19, 35, ch. 69-106; s. 6, ch. 71-130; s. 17, ch. 73-231; ss. 3-6, ch. 74-368; s. 24, ch. 75-48; s. 1, ch. 75-114; s. 1, ch. 75-135; s. 1, ch. 75-159; s. 1, ch. 75-166; s. 18, ch. 77-104; s. 9, ch. 77-147; s. 1, ch. 77-313; s. 15, ch. 78-414; s. 12, ch. 79-164.

39.111 Community control or commitment of children prosecuted as adults.—

(1) A child who is found to have committed a criminal offense may, as an alternative to other dispositions, be committed to the department for treatment in a youth program outside the correctional system as defined in s. 944.02, be placed in a community control program, or be classified as a youthful offender.

(2) Upon a plea of guilty or a finding of guilt, the court may refer the case to the department for investigation and recommendation as to the suitability of its programs for the child.

(3) In order to utilize this section, the court shall stay and withhold adjudication of guilt and instead shall adjudge the defendant to have committed a delinquent act. Such adjudication shall not be deemed a conviction, nor shall it operate to impose any of the civil disabilities ordinarily resulting from a conviction.

(4) The court shall have the power by order to:

(a) Place the child in a community control program under the supervision of the department for an indeterminate period of time until the child is 19 or until sooner discharged by order of the court.

(b) Commit the child to the department for treatment in a youth program for an indeterminate period of time until the child is 19 or until sooner discharged by the department.

(5)(a) If a child proves not to be suitable to treatment or the program is not suitable for the child under the provisions of paragraph (4)(a), the court shall have the power to commit the child to the department as described in paragraph (4)(b).

(b) If a child proves not to be suitable to treatment or the program is not suitable for the child under the provisions of paragraph (4)(b), the court shall have the power to revoke the previous adjudication, impose an adjudication of guilt, classifying the child as a youthful offender when appropriate, and impose any sentence which it may lawfully impose, giving credit for all time in the department.

(6) When a child has been transferred for criminal prosecution and the child has been found to have committed a violation of Florida law, the following procedure shall govern the disposition of the case:

(a) At the disposition hearing the court shall receive and consider a predisposition report by the department regarding the suitability of the child for disposition as a child.

(b) After considering the predisposition report, the court, in order to determine suitability, shall give all parties present at the hearing an opportunity to comment on the issue of sentence and any proposed rehabilitative plan. These parties shall include, if present: The parents or guardians of the child, the child's counsel, the state attorney or assistant state attorney, representatives of the department, the victim or his representative, if any, representatives of the school system, and the law enforcement officers involved in the case.

(c) Suitability or nonsuitability for adult sanctions shall be determined by the court before any other determination of disposition. The suitability determination shall be made by reference to the following criteria:

1. The seriousness of the offense to the community and whether the protection of the community requires adult disposition.

2. Whether the offense was committed in an aggressive, violent, premeditated, or willful manner.

3. Whether the offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.

4. The sophistication and maturity of the child, as determined by consideration of his home, environmental situation, emotional attitude, and pattern of living.

5. The record and previous history of the child, including:

a. Previous contacts with the department, the Department of Corrections, other law enforcement agencies, and courts,

b. Prior periods of probation or community control,

c. Prior adjudications that the child committed a violation of law, and

d. Prior commitments to institutions.

6. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child if he is assigned to juvenile services and facilities.

(d) Any decision to impose adult sanctions shall be in writing, and it shall be in conformity with each of the above criteria. The court shall render a specific finding of fact and the reasons for the decision to impose adult sanctions. Such order shall be reviewable on appeal by the child pursuant to s. 39.14.

(e) If the court determines not to impose adult sanctions, then the court must next determine what juvenile sanctions it will impose. If the court determines not to adjudicate and commit to the department, the court shall then determine what community-based penal sanctions it will impose in a community control program. Community-based penal sanctions may include, but are not limited to, rehabilitative restitution, curfew, revocation or suspension of the child's driver's license, community or public service, the deprivation from the child of nonessential activities or privileges, or other appropriate restraints on the child's liberty.

(f) After appropriate sanctions for the offense are determined, the court shall develop, approve, and order a plan of community control which will contain rules, requirements, conditions, and programs that are designed to encourage noncriminal and functional behavior and that will promote the rehabilitation of the child and the protection of the community.

(g) The court may receive and consider any other relevant and material evidence, including other written or oral reports, in its effort to determine the action to be taken with regard to the child, and may rely upon such evidence to the extent of its probative value, even though not competent in an adjudicatory hearing.

(h) The court shall notify the victim of the offense of the hearing and shall notify, or subpoena if necessary, the parents or legal custodians of the child to attend the disposition hearing if they reside in the state.

(i) The predisposition report shall be made available to the child's counsel and the state attorney by the department upon completion of the report and prior to the disposition hearing.

(j) It is the intent of the Legislature that the foregoing criteria and guidelines shall be deemed mandatory and that a determination of disposition pursuant to this subsection is subject to the right of the child to appellate review pursuant to s. 39.14.

History.—s. 6, ch. 70-353; s. 1, ch. 70-439; s. 12, ch. 72-179; s. 8, ch. 73-241; s. 44, ch. 73-334; s. 16, ch. 78-84; s. 16, ch. 78-414; s. 4, ch. 79-3.
Note.—Former s. 959.115.

39.112 Escapes from a juvenile facility.—An escape from any training school or secure detention facility maintained for the treatment, rehabilitation, or detention of children who are alleged or found to have committed delinquent acts or violations of law constitutes escape within the intent and meaning of s. 944.40 and is a felony in the third degree.

History.—s. 17, ch. 78-414.

39.12 Oaths; records; confidential information.—

(1) Authorized agents of the department shall each have power to administer oaths and affirmations.

(2) The court shall make and keep records of all cases brought before it pursuant to this chapter. The court shall preserve the records pertaining to a child charged with committing a delinquent act until he reaches 19 years of age or until 5 years after the last entry was made, whichever date is last reached, and may then destroy them, except that records made of traffic offenses in which there is no allegation of delinquency may be destroyed as soon as this can be reasonably accomplished. The court shall make official records, consisting of all petitions and orders filed in a case arising pursuant to this chapter and any other pleadings, certificates, proofs of publication, summonses, warrants, and writs which may be filed therein.

(3) The clerk shall keep all official records required by this statute separate from other records of the circuit court, except those records pertaining to any and all motor vehicle violations, including those listed in s. 39.01(21), which shall be forwarded to the Department of Highway Safety and Motor Vehicles. All official records required by this act shall not be open to inspection by the public. All records shall be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that a child and the parents or legal custodians of the child and their attorneys, law enforcement agencies, the department and its designees, and the Department of Corrections shall always have the right to inspect and copy any official record pertaining to the child. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records under whatever conditions upon their use and disposition the court may deem proper and may punish by contempt proceedings any violation of those conditions.

(4) All information obtained pursuant to this chapter in the discharge of official duty by any judge, any employee of the court, any authorized agent of the department, the Department of Corrections, or any law enforcement agent shall be confidential and shall not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, the Department of Corrections, law enforcement, and others entitled under this chapter to receive that information, except upon order of the court.

(5) All orders of the court entered pursuant to this chapter shall be in writing and signed by the judge, except that the clerk or deputy clerk may sign a summons or notice to appear.

(6) No court record of proceedings under this chapter shall be admissible in evidence in any other civil or criminal proceeding, except that:

(a) Orders transferring a child for trial as an adult shall be admissible in evidence in the court in which he is tried, but shall create no presumption as to the guilt of the child, nor shall the same be read to, or commented upon in the presence of, the jury in any trial.

(b) Orders binding an adult over for trial on a criminal charge, made by the judge as a committing magistrate, shall be admissible in evidence in the court to which the adult is bound over.

(c) Records of proceedings under this chapter forming a part of the record on appeal shall be used in the appellate court in the manner hereinafter provided.

(d) Records necessary therefor shall be admissible in evidence in any case in which a person is being tried upon a charge of having committed perjury.

(7) The provisions of this chapter shall not be construed to prohibit the publication of the name and address of a child who is alleged to have committed a violation of law.

History.—s. 1, ch. 26880, 1951; s. 6, ch. 29900, 1955; s. 2, ch. 61-54; s. 7, ch. 63-449; s. 1, ch. 67-60; ss. 19, 35, ch. 69-106; s. 7, ch. 71-130; ss. 8, 9, ch. 72-179; s. 20, ch. 72-404; s. 18, ch. 73-231; s. 3, ch. 77-121; s. 10, ch. 77-147; s. 18, ch. 78-414; s. 5, ch. 79-3; s. 13, ch. 79-164.

39.13 Contempt.—The court may punish for contempt any person interfering with the administration of or violating any provision of this chapter or order of the court relative thereto.

History.—s. 1, ch. 26880, 1951; s. 19, ch. 73-231.

39.14 Appeal.—

(1) Any child, and any parent or legal custodian of any child, affected by an order of the court may appeal to the appropriate district court of appeal within the time and in the manner prescribed by the Florida Appellate Rules.

(2) The Department of Legal Affairs shall represent the state upon appeal. The Department of Legal Affairs shall be notified of the appeal by the clerk when the notice of appeal is filed in the circuit court.

(3) The taking of an appeal shall not operate as a supersedeas in any case unless pursuant to an order of the court.

(4) The case on appeal shall be docketed, and any papers filed in the appellate court shall be entitled, with the initials but not the name of the child and the court case number, and the papers shall remain sealed in the office of the clerk of the appellate court when not in use by the appellate court and shall not be open to public inspection. The decision of the appellate court shall be likewise entitled and shall refer to the child only by initials and court case number.

(5) The original order of the appellate court, with all papers filed in the case on appeal, shall remain in the office of the clerk of the said court, sealed and not open to inspection except by order of the appellate court. The clerk of the appellate court shall return to the circuit court all papers transmitted to the appellate court from the circuit court, together with a certified copy of the order of the appellate court.

History.—s. 1, ch. 26880, 1951; s. 7, chs. 63-449, 63-559; s. 4, ch. 69-353; ss. 11, 19, 35, ch. 69-106; s. 20, ch. 73-231; s. 11, ch. 77-147; s. 19, ch. 78-414.

39.19 Court and witness fees.—In all proceedings under this chapter no court fees shall be charged against, and no witness fees shall be allowed to, any party to a petition or any parent or legal custodian or child named in a summons. Other witnesses shall be paid the witness fees fixed by law.

History.—s. 1, ch. 26880, 1951; s. 22, ch. 73-231.

39.33 Purpose.—The purpose of this act is to provide a system by which children who commit certain minor offenses may be dealt with in a speedy and informal manner at the community or neighborhood level, in an attempt to reduce the ever-increasing instances of juvenile crime and permit the judicial system to deal effectively with cases which are more serious in nature.

History.—s. 1, ch. 77-435.

39.331 Community arbitration program.—

(1) Any county may establish a community arbitration program designed to complement the juvenile intake process provided in this chapter. The program shall provide one or more community juvenile arbitrators or community juvenile arbitration panels to hear cases informally involving alleged commissions of certain offenses by children.

(2) Cases which may be heard by a community juvenile arbitrator or arbitration panel shall be limited to those involving misdemeanors and violations of local ordinances which have been agreed upon, in writing, as being subject to community arbitration by the state attorney, senior circuit court judge assigned to juvenile cases in the circuit, and the Department of Health and Rehabilitative Services.

History.—s. 1, ch. 77-435.

39.332 Community juvenile arbitrators.—

(1) Each community juvenile arbitrator or member of a community arbitration panel shall be selected by the chief judge of the circuit, the senior circuit court judge assigned to juvenile cases in the circuit, and the state attorney.

(2) A community juvenile arbitrator or member of a community arbitration panel may be a person specially trained or experienced in juvenile causes and the problems of persons likely to appear before him, but shall be:

(a) Either a graduate of an accredited law school or of an accredited school with a degree in behavioral social work or trained in conflict resolution techniques; and

(b) A person of the temperament necessary to deal properly with the cases and persons likely to appear before him.

History.—s. 1, ch. 77-435.

39.333 Procedure for initiating cases for arbitration.—

(1) Any law enforcement officer or other person authorized under the program may issue a complaint, along with a recommendation for arbitration against any child whom such officer or person has reason to believe has committed any offense that is eligible for arbitration. The complaint shall specify the offense and the reasons why the law enforcement officer or authorized person feels that the offense should be handled by arbitration. A copy of the complaint shall be forwarded to the appropriate intake officer and the parent or legal guardian of the child. In addition to the complaint, the child's parent or legal guardian shall be informed of the objectives of the arbitration process, the conditions and procedures under which it will be conducted, and the fact that it is not obligatory. The intake officer shall contact the child's parent or legal guardian within 3 days after the date on which the complaint was forwarded. At this time, the child's parent or legal guardian shall inform the intake officer of the decision to approve or reject the handling of the complaint through arbitration.

(2) If the child's parent or legal guardian rejects the handling of the complaint through arbitration, the intake officer shall consult with the state attorney or assistant state attorney for the possible filing of formal juvenile proceedings.

(3) If the child's parent or legal guardian accepts the handling of the complaint through arbitration, the intake officer shall provide copies of the complaint to the arbitrator or panel within 24 hours.

(4) The arbitrator or panel shall, upon receipt of the complaint, set a time and date for a hearing within 7 days and shall inform the child's parent or legal guardian, the complaining witness, and any victims of the time, date, and place of the hearing.

History.—s. 1, ch. 77-435.

39.334 Arbitration hearings.—

(1) The law enforcement officer or authorized person who issued the complaint need not appear at the scheduled hearing. However, prior to the hearing, he shall file with the community arbitrator or the community arbitration panel a comprehensive report setting forth the facts and circumstances surrounding the allegation.

(2) Records and reports submitted by interested agencies and parties, including, but not limited to, complaining witnesses and victims, may be received in evidence before the community arbitrator or the community arbitration panel without the necessity of formal proof.

(3) The testimony of the complaining witness and any alleged victim may be received when available, and these individuals may be present during the entire course of the proceedings.

(4) Any statement or admission made by the child appearing before the community arbitrator or the community arbitration panel relating to the offense for which he was cited is privileged and may not be used as evidence against him either in a subsequent juvenile proceeding or in any subsequent civil or criminal action.

(5) If a child fails to appear on the original hearing date, the matter shall be referred back to the intake officer who shall consult with the state attorney or an assistant state attorney regarding possible filing of formal juvenile proceedings.

History.—s. 1, ch. 77-435.

39.335 Disposition of cases.—

(1) Subsequent to any hearing held as provided in s. 39.334, the community arbitrator or community arbitration panel may:

(a) Dismiss the case.

(b) Dismiss the case with a warning to the child.

(c) Refer the child for placement in a community-based program.

(d) Refer the child to community counseling.

(e) Refer the child to a safety and education program related to juvenile offenders.

(f) Refer the child to a work program related to juvenile offenders.

(g) Refer the child to a nonprofit organization for volunteer work in the community.

(h) Order restitution in case of property damage.

(i) Continue the case for further investigation.

(j) Impose any other restrictions or sanctions that are designed to encourage noncriminal behavior and are agreed upon by the participants of the arbitration proceedings.

(2) Any person or agency to whom a child is referred pursuant to this section shall periodically report the progress of the child to the referring arbitrator or panel in the manner prescribed by such arbitrator or panel.

(3) If a child consents to an informal adjustment and, with his parent or legal guardian and the community arbitrator or community arbitration panel, agrees to comply with any disposition suggested or ordered by the arbitrator or panel and subsequently fails to abide by the terms of such agreement, the arbitrator or panel may, after a careful review of the circumstances, forward the case back to the intake officer who shall consult with the state attorney or the assistant state attorney regarding the possible filing of formal juvenile proceedings.

History.—s. 1, ch. 77-435.

39.336 Review.—Any interested agency or party, including, but not limited to, the complaining witness and victim, who is dissatisfied with the disposition provided by the community arbitrator or the community arbitration panel may request a review of the disposition to the appropriate intake officer within 15 days of the community arbitration hearing. Upon receipt of the request for review, the intake officer shall consult with the state attorney or assistant state attorney who shall consider the request for review and may file formal juvenile proceedings or take such other action as may be warranted.

History.—s. 1, ch. 77-435.

39.337 Funding.—Funding for the provisions of this act shall be provided through federal grant or through any appropriations as authorized by the county participating in the community arbitration program.

History.—s. 1, ch. 77-435.

PART III

DEPENDENCY CASES

39.40 Procedures and jurisdiction.—

(1) All procedures, including petitions, pleadings, subpoenas, summonses, and hearings, in dependency cases shall be according to the Florida Rules of Juvenile Procedure unless otherwise provided by law.

(2) The circuit court shall have exclusive original

jurisdiction of proceedings in which a child is alleged to be dependent. When the jurisdiction of any child who has been found to be dependent is obtained, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 18 years of age.

History.—s. 20, ch. 78-414.

39.401 Taking a child alleged to be dependent into custody.—

(1) A child may be taken into custody:

(a) Pursuant to an order of the circuit court issued pursuant to the provisions of this part, based upon sworn testimony, either before or after a petition is filed.

(b) By a law enforcement officer, or an authorized agent of the department, if the officer or agent has reasonable grounds to believe that the child has been abandoned, abused, or neglected, is suffering from illness or injury, or is in immediate danger from his surroundings and that his removal is necessary to protect the child.

(c) By a law enforcement officer when the officer has reasonable grounds to believe that the child has run away from his parents, guardian, or other legal custodian.

(d) By an authorized agent of the department when he has reasonable grounds to believe the custodian of a child under protective supervision has violated in a material way a condition of the placement imposed by the court.

(e) By a law enforcement officer, when he has reasonable grounds to believe that the child is absent from school without authorization, for the purpose of delivering the child without unreasonable delay to the school system.

(2) If the person taking the child into custody is not an intake officer, he shall:

(a) Release the child to a parent, guardian, legal custodian, responsible adult approved by the court when limited to temporary emergency situations, responsible adult relative, responsible adult approved by the department, or court-approved runaway shelter if the person taking the child into custody has reasonable grounds to believe the child has run away from a parent, guardian, or legal custodian; following such release, the person taking the child into custody shall make a full written report to the intake office of the department within 3 days; or

(b) Deliver the child to an intake officer of the department, stating the facts by reason of which the child was taken into custody and sufficient information to establish probable cause that the child is dependent, and make a full written report to the intake office of the department within 3 days.

(3) If the child is taken into custody by, or is delivered to, an intake officer, the intake officer shall review the facts and make such further inquiry as necessary to determine whether the child should remain in custody or be released. Unless shelter is required as provided in s. 39.402(1), the intake officer shall:

(a) Release the child to his parent, guardian, or legal custodian, a responsible adult relative, a responsible adult approved by the department, or a court-approved runaway shelter; or

(b) Authorize placement of a caretaker/homemaker in the home of a child alleged to be dependent until the parent or legal custodian assumes care of the child.

History.—s. 20, ch. 78-414.

39.402 Placement in a shelter.—

(1) Unless ordered by the court pursuant to the provisions of this chapter, a child taken into custody shall not be placed in a shelter prior to a court hearing unless such placement is required:

(a) To protect the child; or

(b) Because he has no parent, legal custodian, or responsible adult relative to provide supervision and care for him.

(2) If the intake officer determines that placement in a shelter is necessary according to the provisions of subsection (1), the intake officer shall authorize placement of the child in a shelter and shall immediately notify the parents or legal custodians that the child was taken into custody.

(3) If the child is alleged to be both dependent and delinquent, the intake officer may authorize either detention or placement in a shelter.

(4) Any child who is a runaway and who is likely to injure himself or others or who is in need of care and treatment and lacks sufficient capacity to determine what course of action is in his own best interest may be placed in a secure shelter or in a detention home for a period of time not to exceed 24 hours. If neither a secure shelter nor a detention home is available to receive the child, the child may be placed in a jail for a period of time not to exceed 24 hours. However, no child in a detention home or jail shall be placed in a cell with any child or adult alleged to have committed, or who has been adjudged to have committed, a crime.

(5) The circuit court, or the county court, if previously designated by the chief judge of the circuit court for such purpose, shall hold the detention hearing. When the county judge is not an attorney, the chief judge may designate a member of the bar to hold the detention hearing. The reasons for placement in a shelter provided in subsection (1) shall govern the decision of all persons responsible for determining whether placement in a shelter is warranted prior to the court's disposition.

(6)(a) No child shall be held in a shelter longer than 24 hours, excluding Sundays or legal holidays, unless an order so directing is made by the court after a detention hearing finding that placement in a shelter is necessary based on the criteria in subsection (1), that placement in a shelter is in the best interest of the child, and that there is probable cause that the child is dependent.

(b) In the interval until the detention hearing is held pursuant to paragraph (a), the decision as to placement in a shelter or release of the child from a shelter shall lie with the intake officer in accordance with subsection (2).

(7) No child shall be held in a shelter under an order so directing for more than 14 days unless an order of adjudication for the case has been entered by the court.

(8) No child shall be held in a shelter for more than 30 days following the entry of an order of adjudication unless an order of disposition pursuant to s. 39.41 has been entered by the court.

(9) The time limitations in subsections (6) and (7) shall not include:

(a) Periods of delay resulting from a continuance granted at the request or with the consent of the child's counsel or, if the child is of sufficient capacity to express reasonable consent, at the request or with the consent of the child's attorney and the child.

(b) Periods of delay resulting from a continuance granted at the request of the state attorney, or the attorney designated by the state attorney, if the continuance is granted:

1. Because of an unavailability of evidence material to his case when the state attorney, or the attorney designated by the state attorney, has exercised due diligence to obtain such evidence and there are substantial grounds to believe that such evidence will be available within 30 days; or

2. To allow the state attorney, or the attorney designated by the state attorney, additional time to prepare his case and additional time is justified because of the exceptional circumstances of the case.

History.—s. 20, ch. 78-414.

39.403 Intake.—

(1) Intake shall be performed by the department. A report or complaint alleging that a child is dependent shall be made to the intake office operating in the county in which the child is found or in which the case arose. Any person or agency having knowledge of the facts may make a report or complaint. The complainant shall furnish the intake office facts sufficient to establish the jurisdiction of the court and to support a finding by the court that the child is dependent.

(2) The intake officer shall make a preliminary determination as to whether the report or complaint is complete, consulting with the state attorney or assistant state attorney when necessary. In any case in which the intake officer or the state attorney finds that the report or complaint is incomplete, the intake officer or state attorney shall return the report or complaint without delay to the person or agency originating the report or complaint or having knowledge of the facts or to the appropriate law enforcement agency having investigative jurisdiction and request additional information in order to complete the report or complaint; however, the confidentiality of any report filed in accordance with s. 827.07 shall not be violated.

(a) If the intake officer determines that the report or complaint is complete, he may, after determining that such action would be in the best interests of the child, file a petition for dependency.

(b) If the intake officer determines that the report or complaint is complete, but that in his judgment the interest of the child and the public will be best served by providing the child care or other treatment voluntarily accepted by the child and his parents or legal custodians, the intake officer may refer the child for such care or other treatment.

(c) If the intake officer refuses to file a petition for dependency, the complainant shall be advised of his right to file a petition pursuant to this part.

History.—s. 20, ch. 78-414.

39.404 Petition for dependency.—

(1) All proceedings seeking an adjudication that a child is dependent shall be initiated by the filing of a petition by the state attorney, an authorized agent of the department, or any other person who has knowledge of the facts alleged or is informed of them and believes that they are true.

(2) The petition shall be in writing and shall be signed by the petitioner under oath stating his good faith in filing the petition. When the petition is filed by the state attorney, it may be signed by the state attorney or by an assistant state attorney.

(3) The state attorney or the attorney designated by the state attorney shall represent the state in any proceeding in which the petition alleges dependency whenever a party denies the allegations of the petition and contests the adjudication.

(4) When a petition for dependency has been filed and the parents or custodians of the child have advised the intake office that the truth of the allegations is acknowledged and that no contest is to be made of the adjudication, the intake officer may set the case before the court for an adjudicatory hearing. Neither the state attorney nor an assistant state attorney shall be required to be present at the adjudicatory hearing. Should there be a change in the plea at this hearing, the court shall continue the hearing to permit the state attorney to prepare and present the case for the state.

(5) The form of the petition and its contents shall be determined by rules of procedure adopted by the Supreme Court.

History.—s. 20, ch. 78-414.

39.405 Process and service.—

(1) Personal appearance of any person in a hearing before the court shall obviate the necessity of serving process on that person.

(2) Upon the filing of a petition containing allegations of facts which, if true, would constitute the child therein named as a dependent child, and upon the request of the petitioner, the clerk or deputy clerk shall issue a summons.

(3) The summons shall require the person on whom it is served to appear for a hearing at a time and place specified. Except in cases of medical emergency, the time shall not be less than 24 hours after service of the summons. The summons may require the custodian to bring the child to court if the court determines that the child's presence is necessary. A copy of the petition shall be attached to the summons.

(4) The summons shall be directed to, and shall be served upon, the following persons:

(a) The parents; and

(b) The legal custodians, actual custodians, and guardians ad litem, if there be any other than the parents.

(5) If it appears from the petition that the child named therein is suffering from illness or injury or that he is in immediate danger from his surroundings and that his removal is necessary, the judge shall issue an order stating the reasons why the child is being taken into custody. Upon the issuance of the summons, the person serving the summons shall forthwith take the child into custody.

(6) It shall not be necessary to the validity of a

proceeding covered by this part that the parents or legal custodians be present if their identity or residence is unknown after a diligent search and inquiry have been made, if they are residents of a state other than Florida, or if they evade service or ignore a summons, but in this event the person who made the search and inquiry shall file in the case a certificate of those facts, and the court may appoint a guardian ad litem for the child. This subsection shall not apply to a proceeding permanently to commit a child to a licensed child-placing agency or to the department for adoption placement nor to a proceeding under the Uniform Child Custody Jurisdiction Act.

(7) The jurisdiction of the court shall attach to the child and the case when the summons is served upon the child, a parent, or legal or actual custodian of the child or when the child is taken into custody with or without service of summons and before or after filing of a petition for dependency, whichever first occurs, and thereafter the court may control the child and case in accordance with this chapter.

(8) Upon the application of a party, the state attorney, or the petitioner, the clerk or deputy clerk shall issue, and the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents, or other tangible objects at any hearing.

(9) All process and orders issued by the court shall be served or executed as other process and orders of the circuit court and, in addition, may be served or executed by authorized agents of the department.

(10) Subpoenas may be served within the state by any person over 18 years of age who is not a party to the proceeding.

(11) No fee shall be paid for service of any process or other papers by an agent of the department. If any process, orders, or any other papers are served or executed by any sheriff, the sheriff's fees shall be paid by the county.

History.—s. 20, ch. 78-414.

39.406 No answer required.—No answer to the petition or any other pleading need be filed by any child, parent, or legal custodian, but any matters which might be set forth in an answer or other pleading may be pleaded orally before the court or filed in writing as any such person may choose. Notwithstanding the filing of an answer or any pleading, the child or parent shall, prior to an adjudicatory hearing, be advised by the court of his right to counsel and shall be given an opportunity to deny the allegations in the petition for dependency or to enter a plea to allegations in the petition before the court.

History.—s. 20, ch. 78-414.

39.407 Medical, psychiatric, and psychological examination and treatment.—After a petition for dependency has been filed, the judge may order the child named in the petition to be examined by a physician. The judge may also order such child to be evaluated by a psychiatrist, a psychologist, or the department's developmental disability diagnostic and evaluation team. If it is necessary to place a child in a residential facility for such evaluation, then the criteria and procedure established in s. 394.463(2) or chapter 393 shall be used, whichever is applicable. After a child has been adjudicated to be a dependent child, or before such adjudication with the consent of any parent or legal custodian of the child, the judge may order the child to be treated by a physician. The judge may also order such child to receive mental health or retardation services from a psychiatrist, psychologist, or other appropriate service provider. If it is necessary to place the child in a residential facility for such services, then the procedures and criteria established in s. 394.467 or chapter 393 shall be used, whichever is applicable. For the purpose of either examination or treatment, the judge may order the child to be placed for treatment. When any child is placed in a shelter pending a hearing, the person in charge of the shelter or his designated representative may provide or cause to be provided such medical or surgical services as may be deemed necessary by a physician. A physician shall be immediately called if there are indications of physical injury or illness, or the child shall be taken to the nearest available hospital for emergency care. A child may be provided mental health or retardation services, in emergency situations, pursuant to the procedures and criteria contained in s. 394.463(1) or chapter 393, whichever is applicable. After a hearing, the court may order the parents, guardian, or custodian, if found able to do so, to reimburse the county for the expense involved in such emergency medical or surgical treatment. Nothing in this section shall be deemed to eliminate the right of the parents or the child to consent to examination or treatment for the child, except that consent of a parent shall not be required if the physician determines there is a serious injury or illness requiring immediate treatment and the child consents to such treatment or an ex parte court order is obtained authorizing said treatment. Nothing in this section shall be construed to authorize the permanent sterilization of the child unless such sterilization is the result of or incidental to medically necessary treatment to protect or preserve the life of the child. Except as provided in this section, nothing in this section shall be deemed to alter the provisions of s. 458.21 to eliminate the right of the juvenile or his parents, guardian, or legal custodian to consent to diagnostic examination and medical or surgical treatment or care; nor shall it preclude a court from ordering services or treatment to be provided to the juvenile by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a church or religious organization when his health requires it and when requested by the juvenile.

History.—s. 20, ch. 78-414.

39.408 Hearings for dependency cases.—

(1) ADJUDICATORY HEARING.—

(a) The adjudicatory hearing shall be held as soon as practicable after the petition for dependency is filed and in accordance with the Florida Rules of Juvenile Procedure, but reasonable delay for the purpose of investigation, discovery, or procuring counsel or witnesses shall, whenever practicable, be granted.

(b) Adjudicatory hearings shall be conducted by the judge without a jury, applying the rules of evidence in use in civil cases and adjourning the hear-

ings from time to time as necessary. In a hearing on a petition in which it is alleged that the child is dependent, a preponderance of evidence will be required to establish the state of dependency.

(c) All hearings, except as hereinafter provided, shall be open to the public, and no person shall be excluded therefrom except on special order of the judge, who, in his discretion, may close any hearing to the public when the public interest or the welfare of the child, in his opinion, is best served by so doing. All hearings involving unwed mothers, custody, sexual abuse, or permanent placement of children shall remain confidential and closed to the public. Hearings involving more than one child may be held simultaneously when the several children involved are related to each other or were involved in the same case. The child and the parents or legal custodians of the child may be examined separately and apart from each other.

(2) DISPOSITION HEARING.—The court finds that the facts alleged in the petition for dependency are proven in the adjudicatory hearing. At the disposition hearing, the court shall receive and consider a predisposition study, which shall be in writing and be presented by an authorized agent of the department. The predisposition study shall cover for any dependent child all factors specified in s. 61.13(3). A copy of this report will be furnished to the person having custody of the child at the time such person is notified of the disposition hearing. If placement of the child with anyone other than the child's parent or custodian is being considered, the study shall include the designation of a specific length of time as to when custody by the parent or custodian will be reconsidered. This study shall not be made prior to the adjudication of dependency unless the parents or custodians of the child consent thereto. Any other relevant and material evidence, including other written or oral reports, may be received by the court in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of its probative value, even though not competent in an adjudicatory hearing.

(3) Except as provided in paragraph (1)(c), nothing in this section shall prohibit the publication of proceedings in a hearing.

History.—s. 20, ch. 78-414.

39.409 Orders of adjudication.—

(1) If the court finds that the child named in a petition is not dependent, it shall enter an order so finding and dismissing the case.

(2) If the court finds that the child named in the petition is dependent, but finds that no action other than supervision in his own home is required, it may enter an order briefly stating the facts upon which its finding is based, but withholding an order of adjudication and placing the child's home under the supervision of the department. If the court later finds that the custodians of the child have not complied with the conditions of supervision imposed, the court may, after a hearing to establish the noncompliance, but without further evidence of the state of dependency, enter an order of adjudication and shall thereafter have full authority under this chapter to provide for the child as adjudicated.

(3) If the court finds that the child named in a petition is dependent, but shall elect not to proceed under subsection (2), it shall incorporate that finding in an order of adjudication entered in the case, briefly stating the facts upon which the finding is made, and the court shall thereafter have full authority under this chapter to provide for the child as adjudicated.

(4) An order of adjudication by a court that a child is dependent shall not be deemed a conviction, nor shall the child be deemed to have been found guilty or to be a criminal by reason of that adjudication, nor shall that adjudication operate to impose upon the child any of the civil disabilities ordinarily imposed by or resulting from conviction or disqualify or prejudice the child in any civil service application or appointment.

History.—s. 20, ch. 78-414.

39.41 Powers of disposition.—

(1) When any child is adjudicated by a court to be dependent, the court having jurisdiction of the child shall have the power, by order, to:

(a) Place a child under the protective supervision of an authorized agent of a department, either in the child's own home or, the prospective custodian being willing, in the home of a relative of the child or in some other suitable place under such reasonable conditions as the court may direct. A child who has been placed in his own home under the protective supervision of an authorized agent of the department, in the home of a relative, or in some other place may be brought before the court by the agent of the department supervising the placement or by any other interested person on a petition alleging a need for a change in the placement. If the parents or other custodians deny the need for a change, the court shall hear all parties in person or by counsel, or both. Upon the admission of a need for change or after such hearing, the court shall enter an order changing the placement, modifying the condition of it, or continuing it as ordered.

(b) Commit the child to a licensed child-caring agency willing to receive the child.

(c) Commit the child to the temporary legal custody of the department. Such commitment shall invest in the department all rights and responsibilities of a legal custodian. The department shall not return any child to the physical care and custody of the person from whom he was removed, except for short visitation periods, without the approval of the court. The term of said commitment shall continue until terminated by the court or until the child reaches the age of 18.

(d)1. Permanently commit the child to the department or a licensed child-placing agency willing to receive the child for subsequent adoption:

a.(I) If the court finds that the parent has abandoned, abused, or neglected the child;

(II) If the persons served with notice under subsection (3) fail to respond to the notice as provided in paragraph (3)(d); or

(III) If the parent or parents have voluntarily executed a written surrender of the child before two witnesses and a notary public or other officer authorized to take acknowledgments; and

b. If the court finds that it is manifestly to the best interest of the child to do so.

2. The department shall prescribe a written surrender form which shall be written in layman's terms in the principal language of the surrendering party and which shall clearly and unambiguously advise the surrendering party of the consequences of the surrender.

(e) Order the natural or adoptive parents of such child or the natural father of a child born out of wedlock who has acknowledged his paternity in writing before the court, or the guardian of such child's estate, if possessed of assets which under law may be disbursed for the care, support, and maintenance of such child, to pay the person or institution having custody of such child reasonable sums of money at such intervals as the court may consider adequate and proper for the care, support, maintenance, training, and education of such child. The court, in making such order, shall consider the circumstances and ability of such parents, or the natural father of a child born out of wedlock, to pay and the value of assets of the guardianship estate of such child, and when such order affects the guardianship estate, a certified copy of such order shall be delivered to the judge having jurisdiction of such guardianship estate. The court may from time to time, after considering the financial resources of the persons financially responsible for the child's care, order them, or any of them, to pay a reasonable amount for attorney's fees and the cost of the party maintaining any proceeding under this paragraph or for the care, support, and maintenance of such child, including enforcement and modification proceedings. The court may order the amount to be paid directly to the attorney, who may enforce the order in his name.

(2) An agency granted legal custody shall have the right to determine where and with whom the child shall live, but an individual granted legal custody shall exercise all rights and duties personally unless otherwise ordered by the court.

(3) Before the court may permanently commit a child who is dependent to a licensed child-placing agency or the department for subsequent adoption, in addition to the other requirements set forth in this part, the following requirements shall be met:

(a) Notice and a copy of the petition shall be personally served upon the following persons, or forwarded to their addresses by registered mail, specifically notifying them that a petition has been filed:

1. The mother of the child.

2. The father of the child, if:

a. The child was conceived or born while the father was married to the mother;

b. The child is his by adoption;

c. The child has been established by a court proceeding to be his child;

d. He has acknowledged in writing, signed in the presence of a competent witness, that he is the father of the child and has filed such acknowledgment with the Office of Vital Statistics of the Department of Health and Rehabilitative Services; or

e. He has provided the child with support in a repetitive, customary manner.

3. The legal custodians or guardian of the child.

4. If the natural parents who would be entitled to notice are dead or unknown, a living relative of such child, unless upon diligent search and inquiry no such relative can be found.

(b) In the event a person required to be served with notice in the manner prescribed in paragraph (a) cannot be served, notice of hearings shall be given as prescribed by the rules of civil procedure, and service of process shall be made as specified by law for civil actions.

(c) Notice as prescribed by this section may be waived in the discretion of the judge, with regard to any person to whom notice must be given pursuant to subsection [1](2), if said person executes, before two witnesses and a notary public or other officer authorized to take acknowledgments, a written surrender of the child to a licensed child-placing agency or the department.

(d) If the person served with notice under this section fails to respond within the time prescribed by the rules of civil procedure, the failure to respond shall constitute consent to permanent commitment on the part of the person given notice.

(4) A licensed child-placing agency or the department to which a child is permanently committed for subsequent adoption in accordance with this chapter may place the child in a family home for prospective subsequent adoption and may thereafter become a party to any proceeding for the legal adoption of the child and appear in any court where the adoption proceeding is pending and consent to the adoption, and that consent alone shall in all cases be sufficient. A permanent order of commitment, whether pursuant to consent or after notice served as herein prescribed, shall permanently deprive the parents and legal guardian of any right to the child. In any subsequent adoption proceedings, the parents and legal guardian shall not be entitled to any notice thereof, nor shall they be entitled to knowledge at any time after the permanent order of commitment is entered of the whereabouts of the child or of the identity or location of any person having the custody of or having adopted the child, and in any habeas corpus or other proceeding involving the child brought by any parent or legal guardian of the child, no agent of the licensed child-placing agency or department shall be compelled to divulge that information, but may be compelled to produce the child before a court of competent jurisdiction if the child is still subject to the guardianship of the licensed child-placing agency or department. The entry of the permanent order of commitment shall not entitle the licensed child-placing agency or department to guardianship of the estate or property of the child, but the licensed child-placing agency or department shall be the guardian of the person of the child, and the court shall no longer exercise jurisdiction over the child after entry of such order.

(5) In carrying out the provisions of this chapter, the court may order the natural parents or legal guardian of a child who is found to be dependent to participate in family counseling and other professional counseling activities deemed necessary for the rehabilitation of the child.

(6) The court may at any time enter an order ending its jurisdiction over any child.

History.—s. 20, ch. 78-414; s. 14, ch. 79-164.

[1]**Note.**—As a result of a Conference Committee amendment to C.S. for C.S. for S.B 119, subsection (2) was renumbered as subsection (3). Reference to

subsection (2) will be corrected in a subsequent reviser's bill.

39.411 Oaths, records, and confidential information.—

(1) The judge, clerks or deputy clerks, or authorized agents of the department shall each have the power to administer oaths and affirmations.

(2) The court shall make and keep records of all cases brought before it pursuant to this chapter and shall preserve the records pertaining to a dependent child until 10 years after the last entry was made, or until the child is 18 years of age, whichever date is first reached, and may then destroy them, except that records of cases where orders were entered permanently depriving a parent of the custody of a juvenile shall be preserved permanently. The court shall make official records, consisting of all petitions and orders filed in a case arising pursuant to this part and any other pleadings, certificates, proofs of publication, summonses, warrants, and other writs which may be filed therein.

(3) The clerk shall keep all court records required by this part separate from other records of the circuit court. All court records required by this part shall not be open to inspection by the public. All records shall be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that, subject to the provisions of s. 63.162, a child and the parents or legal custodians of the child and their attorneys, law enforcement agencies, and the department and its designees shall always have the right to inspect and copy any official record pertaining to the child. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper, and may punish by contempt proceedings any violation of those conditions.

(4) All information obtained pursuant to this part in the discharge of official duty by any judge, employee of the court, authorized agent of the department, or law enforcement agent shall be confidential and shall not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, law enforcement agents, and others entitled under this chapter to receive that information, except upon order of the court.

(5) All orders of the court entered pursuant to this chapter shall be in writing and signed by the judge, except that the clerk or deputy clerk may sign a summons or notice to appear.

(6) No court record of proceedings under this chapter shall be admissible in evidence in any other civil or criminal proceeding, except that:

(a) Orders permanently terminating the rights of a parent and committing the child to a licensed child-placing agency or the department for adoption shall be admissible in evidence in subsequent adoption proceedings relating to the child.

(b) Records of proceedings under this part forming a part of the record on appeal shall be used in the appellate court in the manner hereinafter provided.

(c) Records necessary therefor shall be admissible in evidence in any case in which a person is being tried upon a charge of having committed perjury.

History.—s. 20, ch. 78-414; s. 15, ch. 79-164.

39.412 Contempt.—The court may punish for contempt any person interfering with the administration of or violating any provision of this part or order of the court relative thereto.

History.—s. 20, ch. 78-414.

39.413 Appeal.—

(1) Any child, and any parent or legal custodian of any child, affected by an order of the court may appeal to the appropriate district court of appeal within the time and in the manner prescribed by the Florida Appellate Rules.

(2) The Department of Legal Affairs or an attorney designated by the Department of Legal Affairs shall represent the state and the court upon appeal and shall be notified of the appeal by the clerk when the notice of appeal is filed in the circuit court.

(3) The taking of an appeal shall not operate as a supersedeas in any case unless pursuant to an order of the court, except that a permanent order of commitment to a licensed child-placing agency or the department for subsequent adoption shall be suspended while the appeal is pending, but the child shall continue in custody under the order until the appeal is decided.

(4) The case on appeal shall be docketed, and any papers filed in the appellate court shall be entitled, with the initials but not the name of the child and the court case number, and the papers shall remain sealed in the office of the clerk of the appellate court when not in use by the appellate court and shall not be open to public inspection. The decision of the appellate court shall be likewise entitled and shall refer to the child only by initials and court case number.

(5) The original order of the appellate court, with all papers filed in the case on appeal, shall remain in the office of the clerk of the said court, sealed and not open to inspection except by order of the appellate court. The clerk of the appellate court shall return to the circuit court all papers transmitted to the appellate court from the circuit court, together with a certified copy of the order of the appellate court.

History.—s. 20, ch. 78-414.

39.414 Court and witness fees.—In all proceedings under this chapter, no court fees shall be charged against, and no witness fees shall be allowed to, any party to a petition or any parent or legal custodian or child named in a summons. Other witnesses shall be paid the witness fees fixed by law.

History.—s. 20, ch. 78-414.

PART IV

INTERSTATE COMPACT ON JUVENILES

39.51 Interstate compact on juveniles; implementing legislation; legislative findings and policy.—

(1) It is hereby found and declared:

(a) That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals, and welfare, and the health, morals, and welfare of others;

(b) That the cooperation of this state with other states is necessary to provide for the welfare and protection of juveniles and of the people of this state.

(2) It shall therefore be the policy of this state, in adopting the Interstate Compact on Juveniles, to cooperate fully with other states:

(a) In returning juveniles to such other states whenever their return is sought; and

(b) In accepting the return of juveniles whenever a juvenile residing in this state is found or apprehended in another state and in taking all measures to initiate proceedings for the return of such juveniles.

History.—s. 1, ch. 57-298; s. 26, ch. 78-414.
Note.—Former s. 39.25.

39.511 Execution of compact.—The governor is hereby authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows:

INTERSTATE COMPACT ON JUVENILES

ARTICLE I

FINDINGS AND PURPOSES.—Juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

ARTICLE II

EXISTING RIGHTS AND REMEDIES.—All remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III

DEFINITIONS.—For the purposes of this compact, "delinquent juveniles" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

ARTICLE IV

RETURN OF RUNAWAYS.—

(1) The parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away

without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he is returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(2) The state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

(3) "Juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

ARTICLE V

RETURN OF ESCAPEES AND ABSCONDERS.—

(1) The appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding 90 days, as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(2) The state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

ARTICLE VI

VOLUNTARY RETURN PROCEDURE.—Any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of article IV(1) or of article V(1), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

ARTICLE VII

COOPERATIVE SUPERVISION OF PROBATIONERS AND PAROLEES.—

(1) The duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(2) Each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(3) After consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding

to have him adjudicated a delinquent juvenile for any act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned, without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(4) The sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

ARTICLE VIII

RESPONSIBILITY FOR COSTS.—

(1) The provisions of articles IV(2), V(2) and VII(4) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(2) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to articles IV(2), V(2) or VII(4) of this compact.

ARTICLE IX

DETENTION PRACTICES.—To every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

ARTICLE X

SUPPLEMENTARY AGREEMENTS.—The duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

ARTICLE XI

ACCEPTANCE OF FEDERAL AND OTHER AID.—Any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

ARTICLE XII

COMPACT ADMINISTRATORS.—The governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XIII

EXECUTION OF COMPACT.—This compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

ARTICLE XIV

RENUNCIATION.—This compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the 6 months' renunciation notice of the present article.

ARTICLE XV

SEVERABILITY.—The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be

affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

ARTICLE XVI

ADDITIONAL ARTICLE.—This article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

For the purposes of this article, "child," as used herein, means any minor within the jurisdictional age limits of any court in the home state.

When any child is brought before a court of a state of which such child is not a resident, and such state is willing to permit such child's return to the home state of such child, such home state, upon being so advised by the state in which such proceeding is pending, shall immediately institute proceedings to determine the residence and jurisdictional facts as to such child in such home state, and upon finding that such child is in fact a resident of said state and subject to the jurisdiction of the court thereof, shall within 5 days authorize the return of such child to the home state, and to the parent or custodial agency legally authorized to accept such custody in such home state, and at the expense of such home state, to be paid from such funds as such home state may procure, designate, or provide, prompt action being of the essence.

ARTICLE XVII

ADDITIONAL ARTICLE.—

(1) This amendment shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

(2) All provisions and procedures of articles V and VI of the interstate compact on juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile, charged with being a delinquent by reason of violating any criminal law, shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in article V of the compact shall be forwarded by the judge of the court in which the petition has been filed.

ARTICLE XVIII

OUT-OF-STATE CONFINEMENT AMENDMENT.—

(1)(a) Whenever the duly constituted judicial or administrative authorities in a sending state shall determine that confinement of a probationer or reconfinement of a parolee is necessary or desirable, said officials may direct that the confinement or reconfinement be in an appropriate institution for delinquent juveniles within the territory of the receiving state, such receiving state to act in that regard solely as agent for the sending state.

(b) Escapees and absconders who would otherwise be returned pursuant to Article V of the compact may be confined or reconfined in the receiving state pursuant to this amendment. In any such case the information and allegations required to be made and furnished in a requisition pursuant to such article shall be made and furnished, but in place of the demand pursuant to Article V, the sending state shall request confinement or reconfinement in the receiving state. Whenever applicable, detention orders as provided in Article V may be employed pursuant to this paragraph preliminary to disposition of the escapee or absconder.

(c) The confinement or reconfinement of a parolee, probationer, escapee, or absconder pursuant to this amendment shall require the concurrence of the appropriate judicial or administrative authorities of the receiving state.

(d) As used in this amendment:

1. "Sending state" means sending state as that term is used in Article VII of the compact or the state from which a delinquent juvenile has escaped or absconded within the meaning of Article V of the compact;

2. "Receiving state" means any state, other than the sending state, in which a parolee, probationer, escapee, or absconder may be found, provided that said state is a party to this amendment.

(e) Every state which adopts this amendment shall designate at least one of its institutions for delinquent juveniles as a "compact institution" and shall confine persons therein as provided in paragraph (a) hereof unless the sending and receiving state in question shall make specific contractual arrangements to the contrary. All states party to this amendment shall have access to "compact institutions" at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of said state's delinquents as may be confined in the institution.

(f) Persons confined in "compact institutions" pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from said "compact institution" for transfer to an appropriate institution within the sending state, for return to probation or parole, for discharge, or for any purpose permitted by the laws of the sending state.

(g) All persons who may be confined in a "compact institution" pursuant to the provisions of this amendment shall be treated in a reasonable and humane manner. The fact of confinement or reconfinement in a receiving state shall not deprive any person so confined or reconfined of any rights which said person would have had if confined or reconfined in an appropriate institution of the sending state; nor shall any agreement to submit to confinement or reconfinement pursuant to the terms of this amendment be construed as a waiver of any rights which the delinquent would have had if he had been confined or reconfined in any appropriate institution of the sending state, except that the hearing or hearings, if any, to which a parolee, probationer, escapee,

or absconder may be entitled (prior to confinement or reconfinement) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.

(h) Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of such costs or other expenses by the sending state unless the states concerned shall specifically otherwise agree. Any two or more states party to this amendment may enter into supplementary agreements determining a different allocation of costs as among themselves.

(i) This amendment shall take initial effect when entered into by any two or more states party to the compact and shall be effective as to those states which have specifically enacted this amendment. Rules and regulations necessary to effectuate the terms of this amendment may be promulgated by the appropriate officers of those states which have enacted this amendment.

(2) In addition to any institution in which the authorities of this state may otherwise confine or order the confinement of a dependent or delinquent juvenile, such authorities may, pursuant to the out-of-state confinement amendment to the interstate compact on juveniles, confine or order the confinement of a delinquent or dependent juvenile in a compact institution within another party state.

History.—s. 2, ch. 57-298; s. 1, ch. 74-22; s. 26, ch. 78-414.
Note.—Former s. 39.26.

39.512 Juvenile compact administrator.—Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the governor. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

History.—s. 3, ch. 57-298; s. 26, ch. 78-414.
Note.—Former s. 39.27.

39.513 Supplementary agreements.—The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

History.—s. 4, ch. 57-298; s. 26, ch. 78-414.
Note.—Former s. 39.28.

39.514 Financial arrangements.—The compact administrator, subject to the approval of the chief state fiscal officer, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

History.—s. 5, ch. 57-298; s. 26, ch. 78-414.
Note.—Former s. 39.29.

39.515 Responsibilities of state departments, agencies and officers.—The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

History.—s. 6, ch. 57-298; s. 26, ch. 78-414.
Note.—Former s. 39.30.

39.516 Additional procedures not precluded.—In addition to any procedure provided in articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts, or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this state and the other respective party states for the return of any such runaway juvenile.

History.—s. 7, ch. 57-298; s. 26, ch. 78-414.
Note.—Former s. 39.31.

CHAPTER 40

JURORS AND PAYMENT OF JURORS AND WITNESSES

[1]40.01 Qualifications of jurors.—Jurors shall be taken from the male and female persons at least 18 years of age who are citizens of this state and who are registered electors of their respective counties.

History.—s. 2, ch. 4015, 1891; ss. 1, 2, ch. 4122, 1893; GS 1570, 1571; s. 1, ch. 6531, 1913; RGS 2771, 2772; ss. 1, 2, ch. 12068, 1927; CGL 4443, 4444; s. 1, ch. 25126, 1949; ss. 1, chs. 26514, 26581, 26848, 1951; ss. 1, 2, ch. 67-154; s. 1, ch. 75-78; s. 1, ch. 79-235.
[1]Note.—As amended, effective January 1, 1980.

[1]40.013 Persons disqualified or excused from jury service.—

(1) No person who is under prosecution for any crime, or who has been convicted in this state, any federal court, or any other state, territory, or country of bribery, forgery, perjury, larceny, or any other offense that is a felony in this state or which if it had been committed in this state would be a felony, unless restored to civil rights, shall be qualified to serve as a juror.

(2) Neither the Governor, nor any Cabinet officer, nor any sheriff or his deputy, municipal police officer, clerk of court, or judge shall be qualified to be a juror.

(3) No person interested in any issue to be tried therein shall be a juror in any cause; but no person shall be disqualified from sitting in the trial of any suit in which the state or any county or municipal corporation is a party by reason of the fact that such person is a resident or taxpayer within the state or such county or municipal corporation.

(4) Expectant mothers and mothers who are not employed fulltime with children under 15 years of age, upon request, shall be excused from jury service.

(5) A presiding judge may, in his discretion, excuse a practicing attorney, a practicing physician, or a person who is physically infirm from jury service.

(6) A person may be excused from jury service upon a showing of hardship, extreme inconvenience, or public necessity.

(7) A person who has served as a juror in any court in his county of residence within 2 years of the first day of January in the calendar year for which he is being considered may, upon request and submission of a sworn affidavit that such service has been rendered, be excused from jury service.

History.—s. 3, ch. 3010, 1877; s. 1, ch. 4015, 1891; RS 1149; GS 1572; RGS 2774; CGL 4451; s. 2, ch. 26848, 1951; s. 7, ch. 73-334; s. 1, ch. 77-102; s. 1, ch. 77-431; s. 4, ch. 79-235.
[1]Note.—As amended, effective January 1, 1980.
Note.—Former s. 40.07.

40.015 Jury districts; counties exceeding 50,000.—

[1](1) In any county having a population exceeding 50,000 according to the last preceding decennial census and one or more locations in addition to the county seat at which the county or circuit court sits and holds jury trials, the chief judge, with the approval of a majority of the circuit court judges of the circuit, is authorized to create a jury district for each court house location, from which jury lists shall be selected in the manner presently provided by law.

(2) In determining the boundaries of a jury district to serve the court located within the district, the board shall seek to avoid any exclusion of any cognizable group. Each jury district shall include at least 6,000 registered voters.

History.—s. 1, ch. 76-114; s. 2, ch. 79-235.
[1]Note.—As amended, effective January 1, 1980.

[1]40.02 Selection of jury lists.—

(1) The chief judge of each circuit, or a circuit judge in each county within the circuit who is designated by the chief judge, shall request the selection of a jury list in each county within the circuit during the first week of January of each year, or as soon thereafter as practicable. The chief judge or his des-

ignee shall direct the clerk of the court to select at random a sufficient number of names, with their addresses, from the list of persons who are qualified to serve as jurors under the provisions of s. 40.01 and to generate a list of not fewer than 250 persons to serve as jurors, which list shall be signed and verified by the clerk of the court as having been selected as aforesaid. A circuit judge in a county to which he has been assigned may request additional jury lists as necessary to prevent the jury list from becoming exhausted. When the annual jury list is prepared pursuant to the request of a chief judge or his designee, the lists prepared the previous year shall be withdrawn from further use. If, notwithstanding this provision, some names are not withdrawn, such error or irregularity shall not invalidate any subsequent proceeding or jury. The fact that any person so selected had been on a former jury list or had served as a juror in any court at any time shall not be grounds for challenge of such person as a juror. If any person so selected shall be ascertained to be disqualified or incompetent to serve as a juror, such disqualification shall not affect the legality of such list or be cause of challenge to the array of any jury chosen from such list, but any person ascertained to be disqualified to serve as a juror shall be subject to challenge for cause, as defined by law. The lists, although they may be defective or irregular in form or other formal requirement, or in the number or qualification of the persons so named, shall be the lists from which the names of persons for jury service are to be drawn as prescribed by law.

(2) The clerk of the court shall be responsible for preserving the security of the jury lists.

(3) The chief judge may designate the court administrator to perform the duties set forth in this section and in ss. 40.221, 40.23, and 40.231 in counties having an approved, computerized jury selection system, the provisions of any special law or general law of local application to the contrary notwithstanding.

History.—s. 2, ch. 4015, 1891; s. 2, ch. 4122, 1893; GS 1571; s. 1, ch. 6531, 1913; RGS 2772; s. 2, ch. 12068, 1927; CGL 4444; s. 1, ch. 28281, 1953; s. 3, ch. 67-154; s. 6, ch. 73-334; s. 3, ch. 79-235.

[1]**Note.**—As amended, effective January 1, 1980.

[1]40.03 Selection of jury lists in large counties.—In each county, except those counties having a jury commission, which has or may have a population exceeding 85,000, according to the last preceding state or federal census, the county commissioners, in selecting and making up the lists of persons to serve as jurors as provided by law, shall select and make out a list of not less than 1,000 nor more than 2,000 persons qualified to serve as jurors.

History.—s. 1, ch. 7753, 1918; RGS 2773; s. 3, ch. 12068, 1927; CGL 4445; s. 1, ch. 21740, 1943; s. 21, ch. 79-235.

[1]**Note.**—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

[1]40.04 Selection of jury lists in small counties.—In each county which has a population of less than 6,000 inhabitants, according to the last preceding state census, the board of county commissioners at the time and in the manner provided by law shall select and make out a list of not less than 200 nor more than 250 persons properly qualified to serve as jurors.

History.—s. 1, ch. 7840, 1919; CGL 4446; s. 21, ch. 79-235.

[1]**Note.**—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

[1]40.05 Selection of jury lists in new counties.—The county commissioners of any new county hereafter created, at the first meeting of such board of county commissioners provided for in the act creating such new county or as soon thereafter as practicable, shall select from the list of persons who are qualified to serve as jurors under the provisions of ss. 40.01 and 40.02, and shall make a list as provided by s. 40.02, which list shall be signed and recorded as provided by s. 40.02. The clerk of the circuit court shall write the said names on pieces of paper and place such pieces of paper in a box and shall close and seal such box as provided by s. 40.06, and shall otherwise comply with all the provisions of s. 40.06.

History.—ss. 1, 2, ch. 8519, 1921; CGL 4447, 4454; s. 7, ch. 22858, 1945; s. 4, ch. 67-154; s. 21, ch. 79-235.

[1]**Note.**—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

[1]40.06 Transcription and preservation of lists.—On receiving the list of persons selected as qualified to serve as jurors, as provided for in s. 40.02, the clerk of the circuit court, in the presence of the county court judge, or a circuit judge in the absence, sickness or disability of the county court judge, and the sheriff, shall write the names of the persons contained in said list on separate pieces of paper or cards and shall roll or fold such pieces of paper or cards so that the names written thereon will not be visible and shall deposit such pieces of paper or cards in a box so constructed that it may be tightly closed; said box shall then and immediately after the drawing of the jury, as hereinafter provided, be closed and securely locked and across the opening thereof shall be placed a label or seal containing the signature of the clerk and the date of the closing of such box. The clerk shall keep such box in his custody but the key thereof shall be delivered to and kept by the sheriff.

History.—s. 4, ch. 4122, 1893; GS 1574; RGS 2776; s. 4, ch. 12068, 1927; CGL 4453; s. 1, ch. 59-89; s. 1, ch. 71-67; s. 7, ch. 73-334; s. 21, ch. 79-235.

[1]**Note.**—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

[1]40.061 Addresses of persons on jury lists.—In the preparation, selection, transcription, preservation, certification, and issuance of jury lists and the venire of jurors, as prescribed by this chapter, all persons responsible for administering such duties and functions shall, in addition to including the names of qualified persons on such lists and jury slips, also cause to be included thereon the last known addresses of all such persons.

History.—s. 1, ch. 59-78; s. 21, ch. 79-235.

[1]**Note.**—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

[1]40.08 Persons exempt from jury duty.—Practicing attorneys shall be exempt from jury duty, and a presiding judge may, in his discretion, grant an exemption to any practicing physician.

History.—RS 1150; ss. 1-3, ch. 4574, 1897; GS 1573; RGS 2775; CGL 4452; s. 1, ch. 20904, 1941; s. 1, ch. 57-95; s. 5, ch. 67-154; ss. 1, 2, ch. 70-138; s. 1, ch. 74-38; s. 21, ch. 79-235.

[1]**Note.**—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

[1]40.09 Jury commissions, counties exceeding 120,000.—There shall be a jury commission, in each county having a population exceeding 120,000 by the

last federal census, consisting of two members, appointed by the Governor for terms of 2 years, each of whom shall be a resident of such county. This provision shall become effective in all counties hereafter attaining the above population on January 1 next following the publication of the census showing such population and as early as practicable after becoming effective in such counties, the Governor shall appoint a jury commission for such county, one for a term of 1 year from the effective date of this provision and one for a term of 2 years from said effective date. All successor commissioners shall be appointed by the Governor and shall hold their offices for terms of 2 years each. Counties having an approved computerized jury selection system may elect to abolish said commission and empower the court administrator to perform said duties, the provisions of any special law or general law of local application to the contrary notwithstanding.

History.—s. 1, ch. 16058, 1933; CGL 1936 Supp. 4450(4); s. 1, ch. 18001, 1937; s. 1, ch. 29973, 1955; s. 1, ch. 73-210; s. 2, ch. 77-359; s. 2, ch. 77-431; s. 21, ch. 79-235.

[1]**Note.**—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

[1]40.10 Duties of commissioners; jury lists.—The jury commissioners in counties described in s. 40.09, shall select and list not more than 10,000 inhabitants of such county known or believed to be qualified under the law to be jurors who, even if exempt, have not filed a written claim of exemption from jury duty as hereinafter provided, the exact number to be determined by the presiding circuit judge of the circuit; provided, however, that when no number is fixed by the circuit judge the commission shall select a list of 10,000 jurors. In making the selections and preparation of said lists, the jury commissioners may confer with the judge or one or more of the judges of the circuit court of such county, and shall have the power, without charge or cost, to examine at any reasonable time all documents and records in the office of the clerk of the circuit court and of any other county officials as to persons who have been listed, summoned, not found, served or excused as jurors, and all books, records, and lists in the office of the supervisor of elections or other county official containing the names of electors of such county. The clerk of the circuit court shall furnish or cause to be furnished the necessary clerical aid to the commission.

History.—s. 2, ch. 16058, 1933; CGL 1936 Supp. 4450(5); s. 1, ch. 28042, 1953; s. 1, ch. 29696, 1955; s. 1, ch. 57-321; s. 2, ch. 65-60; s. 5, ch. 69-353; s. 21, ch. 79-235.

[1]**Note.**—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

[1]40.101 Use of mailed questionnaires.—

(1) In order to gather essential information concerning prospective jurors in advance of the actual impaneling of grand or petit juries, jury commissioners, or county commissioners in those counties not having jury commissioners, are authorized and directed to require the return of mailed questionnaires and to provide self-addressed and ready-stamped envelopes for the purpose. The Judicial Council of Florida shall devise and promulgate an appropriate questionnaire to be used as provided herein.

(2) All information gathered by the mailed questionnaires authorized in subsection (1) shall be treated as confidential; provided that questionnaires returned by the persons whose names finally appear on the jury list may be made available to the court and to counsel for use during the voir dire examination.

History.—s. 1, ch. 67-2199; s. 21, ch. 79-235.

[1]**Note.**—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

[1]40.11 Certification of jury lists.—Such list of jurors in each county shall be completed by the jury commissioners and certified by them before the end of June of each year, and at such other period or periods during the year as may be ordered by a judge of the circuit court of such county; provided, that when so ordered by such judge at a time other than the end of June, the jury commissioners need not select and list 10,000 such inhabitants, but shall select and list such number of such inhabitants not less than 1,000 as shall be specified by such judge in such order. Every such list shall be submitted to and approved by the circuit judge or one of said circuit judges, such approval to be evidenced by his signature thereon. Said list so certified and approved, although it may be defective or irregular in form, certification, approval or other formal requirement, or in the number or qualification of the persons so named, shall be the basis for copying the listed names on separate pieces of paper or cards to be deposited and preserved in the box whence the names of persons for jury duty are to be drawn as prescribed by law. It shall not affect the validity of such list or any listed or copied name if there should be any error or irregularity in either, each person so procured or listed as a juror being presumed to be the one intended to be listed as a juror. When the annual jury list or special jury list prepared pursuant to the order of a circuit judge is certified and approved the box containing the names of jurors previously listed shall be emptied and all names removed therefrom before such newly listed names are placed in such jury box. If, notwithstanding this provision, some names or papers or cards containing names remain in the jury box, such error or irregularity shall not invalidate the contents of the box or the procurement of any jurors by drawing names therefrom or any subsequent proceeding or jury.

History.—s. 3, ch. 16058, 1933; CGL 1936 Supp. 4450(6); s. 2, ch. 29973, 1955; s. 1, ch. 57-320; s. 1, ch. 61-148; s. 1, ch. 63-217; s. 2, ch. 71-67; s. 21, ch. 79-235.

[1]**Note.**—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

[1]40.13 Compensation of jury commissioners.—Each jury commissioner shall be paid out of the general fund of the county an annual salary of at least $100 and shall be reimbursed for traveling expenses as provided in s. 112.061 upon his requisition therefor which shall be approved by one of the judges of the circuit court of such county before being entitled to payment. Provided however, that in all counties having a population of over 900,000, according to the latest official decennial census, the jury commissioner shall be paid an annual salary of $1200 to be paid out of the county general fund in 12 equal monthly installments. The provisions of this section shall not be construed to prohibit any county from paying a jury commissioner more than the amount required herein.

History.—s. 5, ch. 16058, 1933; CGL 1936 Supp. 4450(8); s. 19, ch. 63-400; s. 1, ch. 65-252; s. 1, ch. 77-359; s. 21, ch. 79-235.

[1]**Note.**—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

[1]40.20 Deficiency in county.—Whenever it shall appear that there is not a sufficient number of qualified jurors to form a grand and petit jury, the judge of the circuit court, upon ascertaining such, may order all cases pending for trial in the circuit court of any such county transferred to some other county within his circuit for trial, and indictments may be obtained (against persons charged with crimes committed in any county not having a sufficient number of qualified jurors to form a grand and petit jury) in any county within the circuit to which such county is attached or belongs.

History.—s. 1, ch. 1857, 1871; RS 1159; GS 1583; RGS 2785; CGL 4462; s. 21, ch. 79-235.
[1]Note.—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

[1]40.22 Issuance of venire.—The clerk of the circuit court or the clerk of the county court shall, at least 10 days before the first day of court, issue and deliver to the sheriff a venire for the petit jury, under the seal of the court, commanding him to summon the persons named in the venire.

History.—s. 6, ch. 1628, 1868; RS 1154; GS 1584; RGS 2786; CGL 4463; s. 1, ch. 16410, 1933; s. 1, ch. 68-7; s. 8, ch. 73-334; s. 21, ch. 79-235.
[1]Note.—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

[1]40.221 Drawing jury venire.—A clerk of the court, under supervision of a judge of any court of record, shall randomly select from the jury list such number of persons as he deems necessary or expedient for a jury venire, to be returnable at such time as the judge shall specify, from which such venire or venires any jury may be organized, including a grand jury when drawn by or upon order of a judge of the circuit court. The clerk of the court shall keep the list in a secure place.

History.—s. 5, ch. 79-235.
[1]Note.—Effective January 1, 1980.

[1]40.225 Drawing jury venire; alternative method.—

(1) Whenever a majority of the judges authorized to conduct jury trials in a county consents, the names of prospective jurors and other data pertinent thereto may be fed into a mechanical, electronic, or electrical device and drawn therefrom as an alternative to other methods authorized by law for obtaining jury venires, if such drawing is by lot and at random and is approved by the Supreme Court as hereinafter provided.

(2) When a majority of the trial judges authorizes the alternative method of drawing a jury venire as provided in subsection (1), the chief judge of the judicial circuit in which the county is located shall make a certificate to that effect and transmit the same to the Chief Justice of the Supreme Court, together with a description of the equipment, methods, and mode of operation to be used.

(3) The Chief Justice shall cause the certificate and data accompanying it to be presented to the Justices of the Supreme Court. If the court finds that the proposed method will produce venires selected by lot and at random, is in compliance with all constitutional requirements of jury selection, and is otherwise feasible and practicable, an order of approval of same shall be made and filed. Thereafter, the alternative method so approved may be used in the county so authorized.

(4) The chief judge of the judicial circuit in which the county is located shall supervise the use of such alternative method whenever approval of same has been made by order of the Supreme Court.

(5) Nothing herein shall be construed as requiring uniform equipment or methods throughout the state.

History.—s. 1, ch. 71-52; s. 6, ch. 79-235.
[1]Note.—As amended, effective January 1, 1980.
Note.—Former s. 40.371.

[1]40.23 Summoning jurors.—

(1) The clerk of the court shall generate a venire as prescribed in s. 40.221 and shall summon the persons named in such venire to attend court as jurors at least 14 days prior to the sitting of such court by mailing to each person so named in the venire a written notice, addressed to his place of residence, and placing such notice in the United States mail with sufficient postage to carry the same. Upon order of the court, jurors may be summoned with less than 14 days' notice.

(2) The jury service of any person who has been summoned may be postponed for a period not to exceed 6 months upon written or oral request. The request may specify a date or period of time to which service is to be postponed and, if so, shall be given consideration when the assignment of the postponed date of jury service is made.

(3) Any person who is duly summoned to attend as a juror in any court and who fails to attend without any sufficient excuse shall pay a fine not to exceed $100, which fine shall be imposed by the court to which the juror was summoned, and, in addition, such failure may be considered a contempt of court.

History.—s. 8, ch. 1628, 1868; RS 1155; GS 1585; RGS 2787; s. 1, ch. 9167, 1923; CGL 4464; s. 2, ch. 16410, 1933; s. 1, ch. 22766, 1945; s. 3, ch. 71-67; s. 7, ch. 79-235.
[1]Note.—As amended, effective January 1, 1980.

[1]40.231 Jury pools.—When persons named in a jury venire generated by the clerk are summoned to attend a court as jurors, they may be placed in a jury pool from which the court may draw persons to serve as jurors. Persons placed in said jury pool may, when authorized by the court as an alternative to attending court, list a telephone number with the clerk of the court to which summoned, to be on call on an hour's notice.

History.—s. 2, ch. 72-308; s. 1, ch. 76-118; s. 8, ch. 79-235.
[1]Note.—As amended, effective January 1, 1980.

[1]40.235 Juror accommodations.—Whenever jurors are required by law or by order of court to be kept together during the conduct of a trial or while considering their verdict, or whenever by order of court lodging is required to be furnished juries, separate lodging and rest room facilities shall be provided for jurors of different sexes; and, under contemplation of law, jurors shall be deemed to have been kept together whenever the jurors of different sexes occupy the accommodations provided for their respective sexes.

History.—s. 9, ch. 79-235.
[1]Note.—Effective January 1, 1980.

[1]40.24 Pay of jurors.—Jurors shall receive $10 for each day of active attendance upon the court. A fractional part of a day shall be counted as a day. In

addition, each juror shall receive 14 cents per mile for each mile necessarily traveled each day en route to and returning from court by the nearest practicable route. Any juror who attends on any of the days when the presiding judge is absent or, being present, does not hold the session of the court shall be entitled to receive the same compensation as if the court were in session. A juror who elects to be on call as provided in s. 40.231 shall receive the compensation provided in this section for only those days such juror actually attends court and not for those days he remains on call. Any juror who is excused from jury service at his own request shall not be entitled to receive any compensation either for travel or for attendance upon the court.

History.—s. 1, ch. 3853, 1889; RS 1161; s. 1, ch. 4385, 1895; GS 1586; s. 1, ch. 5647, 1907; s. 1, ch. 5900, 1909; s. 1, ch. 6219, 1911; RGS 2788; CGL 4473; s. 7, ch. 22858, 1945; s. 1, ch. 26868, 1951; s. 1, ch. 28247, 1953; s. 1, ch. 72-308; s. 1, ch. 73-264; s. 1, ch. 76-118; s. 3, ch. 77-431; s. 10, ch. 79-235.

[1]**Note.**—As amended, effective January 1, 1980.

[1]**40.25 Pay of jurors in vacation.**—The mileage and per diem of jurors summoned specially to try any issue of facts arising in a civil cause under the laws of this state, before any court or judge in vacation, shall be taxed as costs, and paid by the party to the cause as other costs are paid; and before such jury is summoned, the party demanding the same may be required by the court or judge to deposit an amount sufficient to cover the cost of such jury trial.

History.—s. 1, ch. 4127, 1893; GS 1588; RGS 2790; CGL 4476; s. 21, ch. 79-235.

[1]**Note.**—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

40.26 Meals for jurors.—The sheriff, when required by order of the court, shall provide juries with meals and lodging, the expense to be taxed against and paid by the state.

History.—s. 1, ch. 3860, 1889; RS 1162; GS 1587; s. 10, ch. 7838, 1919; RGS 2789; CGL 4475.

[1]**40.27 Failure of jurors to attend; penalty.**—If any person, duly drawn and summoned to attend as a juror in any court, shall neglect to attend without any sufficient excuse, he shall pay a fine not exceeding $20, which shall be imposed by the court to which the jury was summoned, and shall be paid into the county treasury.

History.—s. 8, ch. 1628, 1868; RS 1164; GS 1590; RGS 2792; CGL 4478; s. 21, ch. 79-235.

[1]**Note.**—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

40.271 Jury service.—

(1) No person summoned to serve on any grand or petit jury in this state, or accepted to serve on any grand or petit jury in this state, shall be dismissed from employment for any cause because of the nature or length of service upon such jury.

[1](2) Threats of dismissal from employment for any cause, by an employer or his agent to any person summoned for jury service in this state, because of the nature or length of service upon such jury may be deemed a contempt of the court from which the summons issued.

(3) A civil action by the individual who has been dismissed may be brought in the courts of this state for any violation of this section, and said individual shall be entitled to collect not only compensatory damages, but, in addition thereto, punitive damages and reasonable attorney fees for violation of this act.

History.—s. 2, ch. 74-379; s. 11, ch. 79-235.

[1]**Note.**—Effective January 1, 1980.

[1]**40.28 Failure to draw or summon jurors; punishment.**—When, by neglect of any of the duties required by this chapter to be performed by any of the officers or persons herein mentioned, the jurors to be returned shall be not duly drawn and summoned to attend court, every person guilty of such neglect shall pay a fine not exceeding $20 (to be imposed by the court) into the treasury of the county in which the offense is committed.

History.—s. 29, ch. 1628, 1868; RS 1163; GS 1589; RGS 2791; CGL 4477; s. 21, ch. 79-235.

[1]**Note.**—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

[1]**40.29 Clerks to estimate amount for pay of jurors and witnesses and make requisition.**—The clerk of the court in and for any county shall make an estimate of the amount necessary during any quarterly fiscal period beginning July 1 and during each succeeding quarterly fiscal period for the payment by the state of jurors in the circuit court and the county court, of witnesses before the grand jury, and of witnesses summoned to appear before the state attorney with respect to any investigation prior to an indictment being returned or information being filed as a result of such investigation and shall forward each such estimate to the Comptroller no later than the date scheduled by the Comptroller. At the time of any forwarding of such estimate, the clerk of said court shall make his requisition upon the Comptroller for the amount of such estimate, and the Comptroller may reduce the amount if in his judgment the requisition is excessive.

History.—s. 1, ch. 4121, 1893; GS 1591; s. 1, ch. 7262, 1917; RGS 2793; CGL 4479; s. 1, ch. 65-483; s. 2, ch. 68-7; s. 6, ch. 69-353; s. 9, ch. 73-334; s. 12, ch. 79-235.

[1]**Note.**—As amended, effective January 1, 1980.

[1]**40.30 Requisition endorsed by Comptroller and countersigned by Governor.**—Upon receipt of such estimate and the requisition from the clerk of the court, the Comptroller shall endorse the amount that he may deem necessary for the pay of jurors and witnesses during the quarterly fiscal period, which endorsement shall be countersigned by the Governor, and shall transmit that amount by state warrant to the clerk making such requisition.

History.—s. 2, ch. 4121, 1893; GS 1592; s. 2, ch. 7262, 1917; RGS 2794; CGL 4480; s. 7, ch. 57-1; s. 8, ch. 59-1; s. 2, ch. 65-483; s. 3, ch. 68-7; s. 9, ch. 73-334; s. 13, ch. 79-235.

[1]**Note.**—As amended, effective January 1, 1980.

[1]**40.31 Comptroller may apportion appropriation.**—If the Comptroller shall have reason to believe that the amount appropriated by the Legislature is insufficient to meet the expenses of jurors and witnesses during the remaining part of the state fiscal year, he may apportion the money in the treasury for that purpose among the several counties, basing such apportionment upon the amount expended for the payment of jurors and witnesses in each county during the prior fiscal year. In such case, the Comptroller shall remit only the amount so apportioned to each county, and, when the amount so apportioned is insufficient to pay in full all the

jurors and witnesses during a quarterly fiscal period, the clerk of the court shall apportion the money received by him pro rata among the jurors and witnesses entitled to pay and shall give to each juror or witness a certificate of the amount of compensation still due, which certificate shall be held by the Comptroller as other demands against the state.

History.—s. 3, ch. 4121, 1893; GS 1593; s. 3, ch. 7262, 1917; RGS 2795; CGL 4481; s. 3, ch. 65-483; s. 4, ch. 68-7; s. 9, ch. 73-334; s. 14, ch. 79-235.
[1]Note.—As amended, effective January 1, 1980.

[1]**40.32 Clerks to disburse money.**—All moneys drawn from the treasury under the provisions of this chapter by the clerk of the court shall be disbursed by the clerk of the court as far as needed in payment of jurors and witnesses for the legal compensation for service during the quarterly fiscal period for which said moneys were drawn and for no other purposes. Jurors and witnesses shall be paid by the clerk of the court either in cash or by warrant within 10 days of completion of jury service or of completion of service as a witness. Whenever the clerk of the court pays a juror or witness by cash, said juror or witness shall sign the payroll in the presence of the clerk, a deputy clerk, or some other person designated by the clerk. Whenever the clerk pays a juror or witness by warrant, he shall endorse on the payroll opposite the juror's or witness's name the words "Paid by warrant," giving the number and date of the warrant.

History.—s. 4, ch. 4121, 1893; GS 1594; s. 4, ch. 7262, 1917; RGS 2796; CGL 4482; s. 1, ch. 59-88; s. 1, ch. 61-494; s. 4, ch. 65-483; s. 5, ch. 68-7; s. 9, ch. 73-334; s. 15, ch. 79-235.
[1]Note.—As amended, effective January 1, 1980.

[1]**40.33 Deficiency.**—If the compensation of jurors and witnesses during a quarterly fiscal period exceeds the amount estimated by the clerk of the court and therefore is insufficient to pay in full the jurors and witnesses, the clerk of the court shall make his further requisition upon the Comptroller for the amount necessary to pay such default, and the amount required shall be transmitted to the clerk or the court in the same manner as the original requisition or order.

History.—s. 5, ch. 4121, 1893; GS 1595; s 5, ch. 7262, 1917; RGS 2797; CGL 4483; s. 5, ch. 65-483; s. 6, ch. 68-7; s. 9, ch. 73-334; s. 16, ch. 79-235.
[1]Note.—As amended, effective January 1, 1980.

[1]**40.34 Clerks to make triplicate payroll.**—

(1) The clerk of the court shall make out a payroll in triplicate for the payment of jurors and witnesses, which payroll shall contain:

(a) The name of each juror and witness entitled to be paid with state funds;

(b) The number of days for which such jurors and witnesses are entitled to be paid;

(c) The number of miles traveled by each; and

(d) The total compensation each such juror or witness is entitled to receive.

(2) The form of such payroll shall be prescribed by the Comptroller.

(3) Compensation paid a witness or juror shall be attested as provided in s. 40.32. The payroll shall be approved by the signature of the clerk, or his deputy, except for the payroll as to witnesses appearing before the state attorney, which payroll shall be approved by the signature of the state attorney or an assistant state attorney.

(4) The clerks of the courts shall forward two copies of such payrolls to the Comptroller, within 2 weeks after the last day of the quarterly fiscal period, and the Comptroller shall audit such payrolls.

History.—s. 6, ch. 4121, 1893; GS 1596; s. 6, ch. 7262, 1917; RGS 2798; CGL 4484; s. 1, ch. 25091, 1949; s. 1, ch. 61-494; s. 17, ch. 79-235.
[1]Note.—As amended, effective January 1, 1980.

[1]**40.35 Accounting and payment to the Comptroller.**—

(1) The clerk of the court shall, within 2 weeks after the last day of the quarterly fiscal period, render to the Comptroller a full statement of his accounts for moneys received and disbursed by him under the provisions of this chapter and refund to the Comptroller any balance in the clerk's hands. If, upon audit, the payrolls are found correct and reconcile to the statement of account, the Comptroller shall draw his warrant on the State Treasury for the amount due thereon and shall deliver the same to the Treasurer, together with all amounts returned by the clerk of the court, taking up the requisition of the clerk of the court given the Treasurer. If upon audit the Comptroller shall determine a balance due the clerk of the court, the Comptroller shall draw his warrant on the State Treasury for the balance due thereon and shall deliver the same to the clerk of the court.

(2) If any such clerk of the court fails to account for and pay over promptly the balance of all moneys so paid him, the sureties on his official bond shall be held liable and responsible for same; and the Comptroller shall report to the Governor any failure on the part of the clerk of the court to report and faithfully account for any such moneys.

History.—s. 8, ch. 3108, 1879; RS 1170; GS 1597; s. 7, ch. 7262, 1917; RGS 2799; CGL 4485; s. 7, ch. 22858, 1945; s. 18, ch. 79-235.
[1]Note.—As amended, effective January 1, 1980.

[1]**40.36 Drawing jury venire; petit and grand; term and vacation.**—A judge of any court of record in the presence of the sheriff or any deputy sheriff and the clerk or any deputy clerk of the court of which he is judge, in term time or in vacation, shall draw from the jury box the names of such number of persons as he shall deem necessary or expedient for a jury venire, to be returnable at such time as he shall specify, from which such venire or venires so drawn any jury may be organized, including a grand jury when drawn by or upon order of a judge of the circuit court. All such drawings shall be done publicly and in the courtroom where the trials of such court are usually had, and a list of such jurors so drawn shall be made by the judge or the clerk, or a deputy clerk of such court, and signed by the judge drawing same, which list of names of persons so drawn, together with the slips containing the names drawn from the jury box, shall be delivered to the clerk, who shall keep same in some secure place throughout the term.

History.—s. 1, ch. 21973, 1943; s. 21, ch. 79-235.
[1]Note.—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

[1]**40.39 Clerk of court; duty.**—It shall be the duty of the clerk of such court of record to make a list of said names and issue to the sheriff of the county wherein said term of court is to be held, a venire commanding him to summon the persons so drawn,

to appear at the time specified before said court to serve as jurors therein.

History.—s. 4, ch. 21973, 1943; s. 21, ch. 79-235.
[1]**Note.**—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

[1]**40.40 Drawing grand jurors.**—

(1) Whenever a grand jury is to be organized it shall be the duty of the judge to place the names of so many of said persons as shall appear and qualify in response to said summons, in a box or hat and draw therefrom the names of 18 persons, who shall serve as grand jurors for said regular or special term, and the persons whose names shall remain in said box or hat shall serve as petit jurors.

(2) If at any time sufficient qualified persons are found not available to serve as jurors, additional venires may issue for additional persons and any jury, including a grand jury, may be impaneled and organized from such persons as are available.

History.—s. 5, ch. 21973, 1943; s. 21, ch. 79-235.
[1]**Note.**—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

40.41 Petit jurors; length of service.—Petit jurors shall serve for 1 week only, unless the circumstances, in the opinion of the judge, require such jurors to serve for a longer time.

History.—s. 6, ch. 21973, 1943.

[1]**40.42 Deficiency of jurors.**—When the venire is exhausted and when the names in the jury box become exhausted during a term of court, then the court may direct the sheriff to summon from the body of the county a sufficient number of qualified jurors to complete the panel.

History.—s. 7, ch. 21973, 1943; s. 21, ch. 79-235.
[1]**Note.**—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

[1]**40.43 Deficiency or excess in jury box; omissions, etc.**—Any deficiency or excess of names placed in a jury box by the county commissioners, jury commission or other authorized body, or the omission of any clerical duty, or the commission of any other error in the selection, serving, drawing or impaneling of grand or petit jurors, shall not affect the legality of the organization of any jury, unless it shall appear that such error has resulted in a miscarriage of justice.

History.—s. 8, ch. 21973, 1943; s. 21, ch. 79-235.
[1]**Note.**—Repealed by s. 21, ch. 79-235, effective January 1, 1980.

CHAPTER 43

COURTS: GENERAL PROVISIONS

43.15 Judicial Council created; powers, duties; members, terms.—

(1) There is hereby created a Judicial Council to be known as the Judicial Council of Florida. The council shall have the powers and shall be charged with the following duties:

(a) To make a continuous survey and study of the organization, procedure, practice, rules, and methods of administration and operation of each and all of the courts of this state, the volume and condition of business in said courts, the work accomplished and the results obtained.

(b) To collect, compile, analyze and publish statistics showing the work of the courts. The judges, clerks of the various courts, and other officials thereof, shall make to the council such reports, from time to time, as the council may prescribe.

(c) To receive, consider, and in its discretion, investigate criticisms and suggestions from any source pertaining to the administration of justice and to make recommendations in reference thereto.

(d) To recommend, from time to time, to the Legislature any changes in the organization, jurisdiction, operation, procedure and methods of conducting the business of the courts which might be put in effect only by legislative action, and to recommend to the courts any changes in the rules and practice or methods of administering judicial business therein, which, in the judgment of the council, would simplify and expedite or otherwise improve the administration of justice. The council shall file with the Governor an annual report of its proceedings and recommendations and the results thereof.

(2) The Judicial Council of Florida shall be composed of a justice or a retired justice of the Supreme Court of Florida, who shall be the presiding officer of the council; a judge of a circuit court; a county court judge; the Attorney General or one of his assistants; four members of The Bar of the State; and nine laymen; all to be appointed by the Governor. Five members shall be appointed to the council for a period of 1 year, six members for a period of 2 years, six members for a period of 3 years; and all appointments made thereafter shall be for a period of 3 years, except that in the case of vacancy the appointment shall be made to fill the unexpired term.

History.—ss. 1, 2, ch. 28062, 1953; s. 22, ch. 72-404.

43.16 Judicial Administrative Commission; membership, powers and duties.—

(1) There is hereby created a Judicial Administrative Commission of the Judicial Department of Florida, with headquarters located in the state capital. The necessary office space for use of the commission shall be furnished by the proper state agency in charge of state buildings.

(2) Members of the Judicial Administrative Commission shall serve for a period of 2 years, with the terms of each dating from July 1, 1965, and will be selected in the following manner:

(a) The Chief Justice of the Supreme Court of Florida, or a Justice of the Supreme Court of Florida designated by him, shall be a member.

(b) One judge of the district courts of appeal, to be appointed by the chairman of the Conference of Appellate Judges.

(c) One judge of the circuit courts, to be appointed by the chairman of the Conference of Circuit Judges.

(d) One judge of the county courts, to be appointed by the president of the Conference of County Court Judges.

(e) One state attorney, to be appointed by the chairman of the Florida Prosecuting Attorneys Association.

(f) One public defender, to be appointed by the president of the Florida Public Defenders Association.

(3) The members of the Judicial Administrative Commission are authorized to perform necessary travel incident to official business of the commission and shall be reimbursed therefor in accordance with the provisions of s. 112.061.

(4) The Judicial Administrative Commission shall employ an executive director and fix his salary. The executive director shall employ any necessary clerical help for the efficient performance of the commission.

(5) The duties of the commission shall include, but not be limited to, the following:

(a) The maintenance of a central state office for administrative services and assistance when possible to and on behalf of:

1. The Supreme Court of Florida.
2. The district courts of appeal of Florida.
3. The circuit courts of Florida.
4. The county courts of Florida.
5. The state attorneys of Florida.
6. The public defenders of Florida.
7. The official court reporters of Florida.

(b) Unless otherwise provided herein, each enumerated court or official may continue to prepare necessary budgets, vouchers which represent valid claims for reimbursement by the state for authorized expenses, and other things incidental to the proper

administrative operation of the court or office, such as revenue transmittals to the treasurer, etc., but will forward same to the commission for recording and submission to the proper state officer. However, when requested by an enumerated court or official, the commission will either assist in the preparation of budget requests, voucher schedules, and other forms and reports, or accomplish the entire project involved.

(c) All operating or legislative budget requests received by the commission from the Supreme Court, district courts of appeal, state attorneys, and public defenders, will be combined with the budgets of the circuit courts, county courts, and official court reporters, but segregated by divisions, and will be presented by the commission as one legislative budget request, or operating budget request.

(6) The provisions contained in this section shall be supplemental to those of chapter 27, relating to state attorneys and public defenders, or to other laws pertaining hereto.

History.—ss. 1-6, ch. 65-328; s. 1, ch. 78-174.

43.18 Money paid into court; withdrawal.—No moneys deposited as provided in s. 43.17, shall be withdrawn except on the voucher or check signed by the clerk of the court if the court has an authorized clerk and if not, by the judge. Every voucher or check shall state the cause in or on account of which it is drawn.

History.—s. 2, ch. 15996, 1933; CGL 1936 Supp. 4355(2); s. 1, ch. 29655, 1955; s. 44, ch. 67-254.
Note.—Former s. 54.05.

43.19 Money paid into court; unclaimed funds.—

(1) In every case in which the right to withdraw money deposited as hereinbefore provided has been adjudicated or is not in dispute and the money has remained so deposited for 5 years or more unclaimed by the person, firm or corporation entitled thereto, on or before December 1 of each year the judge, or one of the judges of the court shall direct that the money be deposited with the State Treasurer to the credit of the State School Trust Fund, to become a part of that fund, subject to the right of the person, firm or corporation entitled thereto to receive the money as provided in subsection (3).

(2) The direction that the money be deposited as provided in subsection (1) shall be by written order. A copy of the order shall be filed in the action in which the money was originally deposited. The order shall also be noted in the progress docket in the action, if a docket is maintained by the court.

(3) Any person, firm or corporation entitled to any of the money may obtain an order directing the payment of the money to the claimant on written petition to the court from which the money was deposited or its successor, and written notice to the state attorney of the circuit wherein the court is situate, whether or not the court is a circuit court, and proof of right thereto, and the money deposited shall constitute and be a permanent appropriation for payments by the Treasurer of the state in obedience of such orders.

(4) All interest and income that accrue from the money while on deposit with the State Treasurer to the credit of the State School Trust Fund belongs to that fund.

History.—s. 3, ch. 15996, 1933; CGL 1936 Supp. 4355(3); s. 1, ch. 21993, 1943; s. 1, ch. 24351, 1947; s. 2, ch. 61-119; s. 44, ch. 67-254.
Note.—Former s. 54.06.

43.195 Disposal of physical evidence filed as exhibits.—The clerk of any circuit court or county court may dispose of items of physical evidence which have been held as exhibits in excess of 10 years in cases on which no appeal is pending or can be made. Items of evidence having no monetary value which are designated by the clerk for removal shall be disposed of as unusable refuse. Items of evidence having a monetary value which are designated for removal by the clerk shall be sold and the revenue placed in the clerk's general revenue fund.

History.—s. 1, ch. 72-7; s. 21, ch. 73-333.

43.20 Judicial Qualifications Commission.—

(1) PURPOSE.—The purpose of this section is to implement s. 12(b), Art. V of the State Constitution which provides for a Judicial Qualifications Commission.

(2) MEMBERSHIP; TERMS.—The commission shall consist of 13 members, including 9 carryover members authorized by s. 17A, Art. V, State Constitution of 1885, as amended. The members of the commission shall serve for terms of 6 years, except that the terms of members authorized as of January 1, 1973, shall expire as follows:

(a) *Group I.*—The terms of five members, consisting of the following, shall expire on June 30, 1975:

1. Three carryover members serving terms commencing in 1969;

2. One elector, to be appointed by the Governor in 1973; and

3. One county court judge, to be appointed in 1973.

(b) *Group II.*—The terms of four members, consisting of the following, shall expire on June 30, 1977:

1. Three carryover members serving terms commencing in 1971; and

2. One county court judge, to be appointed in 1973.

(c) *Group III.*—The terms of four members, consisting of the following, shall expire on June 30, 1979:

1. Three members to be appointed in 1973 to succeed three carryover members serving terms commencing in 1967; and

2. One elector, to be appointed by the Governor in 1973.

(3) VACANCIES.—An appointment to fill a vacancy shall be for the remainder of the term.

(4) SELECTION OF MEMBERS BY DISTRICT COURTS OF APPEAL JUDGES, CIRCUIT COURT JUDGES, COUNTY COURT JUDGES AND BOARD OF GOVERNORS OF THE FLORIDA BAR.—The members appointed by the judges of the district courts of appeal, the circuit judges, the county court judges, and the Board of Governors of The Florida Bar shall be selected by not less than a majority of the membership of the respective appointing groups.

(5) EXPENSES.—The compensation of members

and referees shall be the travel expense or transportation and per diem allowance provided by s. 112.061.

History.—ss. 1-4, ch. 67-163; s. 1, ch. 73-306.

43.26 Presiding judge of circuit; selection; powers.—

(1) The presiding judge of each judicial circuit, who shall be a circuit judge, shall exercise administrative supervision over all the trial courts within the judicial circuit and over the judges and other officers of such courts.

(2) The presiding judge of the circuit shall have the power:

(a) To assign judges to the trial of civil or criminal cases, to preliminary hearings, or to divisions and to determine the length of the assignment;

(b) To assign clerks and bailiffs;

(c) To regulate use of courtrooms;

(d) To supervise dockets and calendars;

(e) To require attendance of prosecutors and public defenders; and

(f) To do everything necessary to promote the prompt and efficient administration of justice in the courts over which he presides.

(3) The presiding judge shall be responsible to the Chief Justice of the Supreme Court for such information as may be required by the chief justice, including, but not limited to, caseload, status of dockets, and disposition of cases in the courts over which he presides.

(4) The presiding judge of the circuit shall be selected by a majority of the judges subject to this section in that circuit for a term of 2 years. The presiding judge may succeed himself for successive terms.

(5) Failure of any judge, clerk, prosecutor, public defender, or other officer of the court to comply with an order or directive of the presiding judge under this section shall constitute neglect of duty for which such officer may be suspended from office as provided by law.

(6) There may be an executive assistant to the presiding judge who shall perform such duties as the presiding judge may direct.

History.—s. 1, ch. 71-214; s. 1, ch. 77-119.

43.27 Office hours of clerks of court.—The clerks of the courts of the several counties may establish the hours during which the office of clerk may be open to the public. The hours should conform as nearly as possible to the customary weekday hours of business prevailing in the county. The clerk may prescribe that his office be open such additional hours as public needs require.

History.—s. 1, ch. 72-238.

43.28 Court facilities.—The counties shall provide appropriate courtrooms, facilities, equipment, and, unless provided by the state, personnel necessary to operate the circuit and county courts.

History.—s. 23, ch. 72-404; s. 1, ch. 77-119.

43.29 Judicial Nominating Commissions.—

(1) Each Judicial Nominating Commission shall be composed of the following:

(a) Three members appointed by the Board of Governors of The Florida Bar from among The Florida Bar members who are actively engaged in the practice of law with offices within the territorial jurisdiction of the affected court, or in the district or circuit; and

(b) Three electors who reside in the territorial jurisdiction of the court or in the circuit appointed by the Governor; and

(c) Three electors who reside in the territorial jurisdiction of the court or in the circuit and who are not members of The Bar of Florida, selected and appointed by a majority vote of the other six members of the commission.

(2) No justice or judge shall be a member of a Judicial Nominating Commission. A member of a Judicial Nominating Commission may hold public office other than judicial office. No member shall be eligible for appointment to state judicial office so long as he is a member of a Judicial Nominating Commission and for a period of 2 years thereafter. All acts of a Judicial Nominating Commission shall be made with a concurrence of a majority of its members.

(3) A member of a Judicial Nominating Commission shall serve a term of 4 years and shall not be eligible for consecutive reappointment, except that the terms of the initial members of the Judicial Nominating Commissions shall expire as follows:

(a) The terms of one member of each category as described in paragraphs (a), (b), and (c) in subsection (1) shall expire on July 1, 1974;

(b) The terms of one member of each category as described in paragraphs (a), (b), and (c) in subsection (1) shall expire on July 1, 1975;

(c) The terms of one member of each category as described in paragraphs (a), (b), and (c) in subsection (1) shall expire on July 1, 1976.

History.—s. 24, ch. 72-404; s. 22, ch. 73-333; s. 1, ch. 77-20.
cf.—s. 20(c)(5)-(7), Art V, State Const.

43.30 Divisions of court.—All courts except the Supreme Court may sit in divisions as may be established by local rule approved by the Supreme Court.

History.—s. 25, ch. 72-404.

43.41 Report of judicial disposition.—Within 10 days after final judicial disposition of each traffic violation, including parking on a roadway outside the limits of a municipality, or other offense reported on the uniform traffic citation, as prescribed by s. 316.650, the clerk of the court in which the case was tried shall report the judicial disposition of such case to the Department of Highway Safety and Motor Vehicles on a copy of the uniform traffic citation, which form shall be consistent with the Florida Traffic Court rules. The clerks of the courts may submit judicial disposition data to the department in an automated fashion, in a form prescribed by the department, which form shall be consistent with the Florida Traffic Court rules and procedures established by the department. Those courts submitting data in an automated fashion will submit a copy of the uniform traffic citation in a manner prescribed by the department.

History.—s. 1, ch. 74-335; s. 1, ch. 79-99.
cf.—Ch. 316 State Uniform Traffic Control Law.

TITLE VI

CIVIL PRACTICE AND PROCEDURE

CHAPTER 45

CIVIL PROCEDURE: GENERAL PROVISIONS

45.011 Definitions.—In all statutes about practice and procedure "plaintiff" means any party seeking affirmative relief whether plaintiff, counterclaimant, crossclaimant; or third-party plaintiff, counterclaimant or crossclaimant; "defendant" means any party against whom such relief is sought; "bond with surety" means a bond with two good and sufficient sureties, each with unencumbered property not subject to any exemption afforded by law equal in value to the penal sum of the bond or a bond with a licensed surety company as surety or a cash deposit conditioned as for a bond.

History.—s. 1, ch. 67-254.

45.021 Applicability.—Chapters 45-51, 55-57, 68 and 69 apply to all actions, whether heretofore at law or in chancery, unless specifically provided otherwise in such chapters or parts thereof.

History.—s. 1, ch. 67-254.

45.031 Judicial sales procedure.—In any sale of real or personal property under an order or judgment, the following procedure may be followed as an alternative to any other sale procedure if so ordered by the court:

(1) SALE BY CLERK.—In the order or final judgment, the court shall direct the clerk to sell the property at public sale on a specified day that shall be not less than 20 days after the date thereof, on terms and conditions specified in the order or judgment. In cases when a person has an equity of redemption, the court shall not specify a time for the redemption, but the person may redeem the property at any time before the sale. Notice of sale shall be published once a week for 2 consecutive weeks in a newspaper of general circulation, as defined in chapter 50, published in the county where the sale is to be held. The second publication shall be at least 5 days before the sale. The notice shall contain:

(a) A description of the property to be sold.

(b) The time and place of sale.

(c) A statement that the sale will be made pursuant to the order or final judgment.

(d) The caption of the action.

(e) The name of the clerk making the sale.

The clerk shall receive a service charge of $25 for his services in making, recording, and certifying the sale and title that shall be assessed as costs. The court may enlarge the time of the sale. Notice of the changed time of sale shall be published as provided herein.

(2) CERTIFICATION OF SALE.—After a sale of the property the clerk shall promptly file a certificate of sale and serve a copy of it on each party not in default in substantially the following form:

(Caption of Action)

CERTIFICATE OF SALE

The undersigned clerk of the court certifies that notice of public sale of the property described in the order or final judgment was published in ....., a newspaper circulated in ..... County, Florida, in the manner shown by the proof of publication attached, and on ....., 19....., the property was offered for public sale to the highest and best bidder for cash. The highest and best bid received for the property was submitted by ....., to whom the property was sold. The proceeds of the sale are retained for distribution in accordance with the order or final judgment. WITNESS my hand and the seal of this court on ....., 19.....

(Clerk)

By (Deputy Clerk)

(3) CERTIFICATE OF TITLE.—If no objections to the sale are filed within 10 days after filing the certificate of sale, the clerk shall file a certificate of title and serve a copy of it on each party not in default in substantially the following form:

(Caption of Action)

CERTIFICATE OF TITLE

The undersigned clerk of the court certifies that he executed and filed a certificate of sale in this action on ....., 19....., for the property described herein and that no objections to the sale have been filed within the time allowed for filing objections.

The following property in ..... County, Florida:

(description)

was sold to .....

WITNESS my hand and the seal of the court on ....., 19.....

(Clerk)

By (Deputy Clerk)

(4) CONFIRMATION.—When the certificate of title is filed the sale shall stand confirmed, and title to the property shall pass to the purchaser named in the certificate without the necessity of any further proceedings or instruments.

(5) RECORDING.—The certificate of title shall be recorded by the clerk.

(6) DISBURSEMENTS OF PROCEEDS.—On filing a certificate of title the clerk shall disburse the proceeds of the sale in accordance with the order or final judgment, and shall file a report of the disbursements and serve a copy of it on each party not in default in substantially the following form:

(Caption of Action)

CERTIFICATE OF DISBURSEMENTS

The undersigned clerk of the court certifies that he disbursed the proceeds received from the sale of the property as provided in the order or final judgment to the persons and in the amounts as follows:

Name	Amount
Total	

WITNESS my hand and the seal of the court on ....., 19.....

(Clerk)

By (Deputy Clerk)

If no objections to the report are served within 10 days after it is filed, the disbursements by the clerk shall stand approved as reported. If timely objections to the report are served, they shall be heard by the court. Service of objections to the report does not affect or cloud the title of the purchaser of the property in any manner.

(7) VALUE OF PROPERTY.—The amount of the bid for the property at the sale shall be conclusively presumed to be sufficient consideration for the sale. Any party may serve an objection to the amount of the bid within 10 days after the clerk files the certificate of sale. If timely objections to the bid are served, the objections shall be heard by the court. Service of objections to the amount of the bid does not affect or cloud the title of the purchaser in any manner. If the case is one in which a deficiency judgment may be sought and application is made for a deficiency, the amount bid at the sale may be considered by the court as one of the factors in determining a deficiency under the usual equitable principles.

(8) EXECUTION SALES.—This section shall not apply to property sold under executions.

History.—s. 1, ch. 67-254; s. 13, ch. 70-134; ss. 1-3, ch. 71-5; s. 1, ch. 77-354; s. 1, ch. 78-68.

45.041 Amendment of bonds.—When any bond required or authorized in any action is defective in form or substance, the party giving the bond may give a new bond which is sufficient in form and substance and the new bond is as sufficient as though given in the first instance. The new bond may be given at any time before a motion attacking the sufficiency of the bond is served. Thereafter the new bond may be given by leave of court and on such terms as the court fixes. Leave to file an amended bond shall be freely given when justice so requires. If any amendment is made to a bond, the amended bond relates back to the commencement of the action and affords protection to the person in whose favor it is given from commencement although it was not theretofore binding on the surety.

History.—s. 1, ch. 67-254.

45.051 Execution of supersedeas bond when required of the state or its political subdivisions.—When a supersedeas bond is required by the appellate court under Florida Appellate Rule 5.12(2) or an appeal or other proceeding is taken in any court and there is no court rule or statute exempting the parties from giving supersedeas, cost, or other required bond, the parties are authorized to make and execute the required bond with a corporate surety thereon duly licensed to do business in this state. The premium or other cost for the bond may be paid from the general necessary and regular appropriation of the party taking the appeal, in the case of the state or any of its officers, boards, commissioners or other agencies, and from the county general fund, district school general fund, or otherwise as the case may be, in the case of a political subdivision of the state or any of its officers, boards, commissions or other agencies. The officers of the state and its political subdivisions and the executive officers of their boards, commissions, and other agencies aforesaid, are authorized to make and execute the bonds on behalf of the parties.

History.—s. 14, ch. 22854, 1945; s. 4, ch. 71-316.
Note.—Former s. 59.14(3).

CHAPTER 46

PARTIES

46.011 Parties for contribution.—When a person executes any bond, note, draft or bill of exchange and two or more persons execute it jointly with him, merely as his sureties, or endorse any note or draft or bill of exchange as sureties for the maker or drawer for his accommodation and without consideration, said persons are bound to each other for a proportional contribution of the amount of said bond, note, draft or bill of exchange. If any person is compelled to pay any part of said bond, note, draft or bill of exchange, he may sue his cosurety for contribution separately or jointly. Defendants, whether sureties, accommodation joint makers or accommodation endorsers may be sued separately or jointly.

History.—s. 1, Feb. 14, 1835; RS 983; GS 1369; s. 1, ch. 6210, 1911; RGS 2565; CGL 4205; s. 2, ch. 67-254.
Note.—Former s. 45.05.

46.021 Actions; surviving death of party.—No cause of action dies with the person. All causes of action survive and may be commenced, prosecuted and defended in the name of the person prescribed by law.

History.—s. 30, Nov. 23, 1828; RS 989; GS 1375; RGS 2571; CGL 4211; s. 1, ch. 26541, 1951; s. 2, ch. 67-254.
Note.—Former s. 45.11.

46.031 Actions by husband and wife, parent or guardian and child.—In any action brought by a man and his wife, parent or guardian and child for an injury done to the wife or child, in which the wife or child is necessarily joined as coplaintiff, the husband, parent or guardian may join claims of any nature in his own right.

History.—s. 11, ch. 1096, 1861; RS 1005; GS 1390; RGS 2586; CGL 4226; s. 1, ch. 21886, 1943; s. 1, ch. 28283, 1953; s. 2, ch. 67-254.
Note.—Former s. 46.09.

46.041 Joinder of certain makers, endorsers, etc., of negotiable instruments.—

(1) The makers of negotiable instruments and all other persons who, at or before the execution and delivery thereof, endorsed, guaranteed, or became surety for payment thereof, or are otherwise secondarily liable for payment, may be sued in the same action.

(2) In such action the final judgment shall specify the defendants who are liable for payment only as endorser, surety, guarantor or otherwise secondarily.

(3) When a final judgment authorized by this section is paid by one or more defendants who are liable only as endorser, surety, guarantor, or otherwise secondarily, the holder of such judgment shall, on request, assign such judgment to the defendants paying it. Such defendants are entitled to all the rights and remedies of the original plaintiff to enforce collection from the other defendants who are liable.

History.—ss. 1-3, ch. 6486, 1913; RGS 4733-4735; CGL 6819-6821; s. 2, ch. 67-254.
Note.—Former s. 46.11.

46.051 Joinder of products liability insurers.—

(1) No products liability insurer shall be joined as a party defendant in an action to determine the insured's liability. However, each insurer which does or may provide products liability insurance coverage to pay all or a portion of any judgment which might be entered in the action shall file with the court, under oath, a statement by a corporate officer setting forth the following information with regard to each known policy of insurance:

(a) The name of the insurer;
(b) The name of each insured;
(c) The limits of liability coverage; and
(d) A statement of any policy or coverage defense which said insurer reasonably believes is available to the insurer filing the statement at the time of filing.

(2) The statement required by subsection (1) shall be amended immediately upon discovery of facts calling for an amendment to such statement.

(3) If the statement or any amendment thereto indicates that a policy or coverage defense has been or will be asserted, then the insurer may be joined as a party.

(4) After the rendition of a verdict, or final judgment by the court if the case is tried without a jury, the insurer may be joined as a party and judgment may be entered by the court based upon the statement or statements herein required.

(5) The rules of discovery shall be available to discover the existence of liability insurance coverage and its provisions.

(6)(a) This act is applicable to products liability actions based on either tort or contract causes of action.

(b) This act is applicable only to causes of action accruing on or after October 1, 1978.

History.—ss. 2, 3, ch. 78-418.

CHAPTER 47

VENUE

47.011 Where actions may be begun.—Actions shall be brought only in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located. This section shall not apply to actions against nonresidents.

History.—s. 7, Nov. 21, 1829; s. 1, ch. 3721, 1887; RS 998; GS 1383; RGS 2579; CGL 4219; s. 24, ch. 57-1; s. 12, ch. 63-572; s. 6, ch. 65-1; s. 3, ch. 67-254; s. 11, ch. 73-334.
Note.—Former s. 46.01.

47.021 Actions against defendants residing in different counties.—Actions against two or more defendants residing in different counties may be brought in any county in which any defendant resides.

History.—s. 10, Nov. 23, 1828; RS 999; GS 1384; RGS 2580; CGL 4220; s. 3, ch. 67-254; s. 11, ch. 73-334.
Note.—Former s. 46.02.

47.031 Venue of receiverships when property in more than one circuit.—When an application is made for a receiver of property and it is located in more than one judicial circuit, the court appointing the receiver has jurisdiction over the entire property for the purposes of that action but the application for the receiver must be made to the circuit court in which the principal place of business, residence or office of defendant is located.

History.—s. 1, ch. 4986, 1901; GS 1861; RGS 3106; CGL 4890; s. 3, ch. 67-254.
Note.—Former s. 62.03.

47.041 Actions on several causes of action.—Actions on several causes of action may be brought in any county where any of the causes of action arose. When two or more causes of action joined arose in different counties, venue may be laid in any of such counties, but the court may order separate trials if expedient.

History.—s. 12, ch. 1096, 1851; RS 1000, 1004; GS 1385, 1389; RGS 2581, 2585; CGL 4221, 4225; s. 3, ch. 67-254; s. 11, ch. 73-334.
Note.—Former ss. 46.03, 46.08.

47.051 Actions against corporations.—Actions against domestic corporations shall be brought only in the county where such corporation has, or usually keeps, an office for transaction of its customary business, where the cause of action accrued, or where the property in litigation is located. Actions against foreign corporations doing business in this state shall be brought in a county where such corporation has an agent or other representative, where the cause of action accrued, or where the property in litigation is located.

History.—s. 24, ch. 1639, 1869; RS 1001; s. 1, ch. 5221, 1903; GS 1386; RGS 2582; CGL 4222; s. 3, ch. 67-254; s. 11, ch. 73-334.
Note.—Former s. 46.04.

47.061 Action on promissory notes, etc.—Actions on unsecured negotiable or nonnegotiable promissory notes shall be brought only in the county in which such notes were signed by the maker or one of the makers or in which the maker or one of the makers resides. When any such note was signed by the makers in more than one county, action may be brought thereon in any such county. This section shall be liberally construed in favor of the makers of such notes.

History.—ss. 1, 2, ch. 17134, 1935; CGL 1936 Supp. 4223(1); s. 3, ch. 67-254; s. 11, ch. 73-334.
Note.—Former s. 46.05.

47.071 Jurisdiction over navigable waters.—When the territorial jurisdiction of a court extends to one bank of any navigable water, such court has jurisdiction across such navigable water from shore to shore. If the territorial jurisdiction of different courts, whether of the same county or not, extends to the opposite bank of any navigable water, such courts have concurrent jurisdiction across said navigable water from shore to shore.

History.—RS 1002; GS 1387; RGS 2583; CGL 4223; s. 3, ch. 67-254.
Note.—Former s. 46.06.

47.081 Military, naval or other service as residence.—Any person in any branch of service of the United States, including military and naval service, and the husband or the wife of any such person, if he or she is living within the borders of the state, shall be prima facie a resident of the state for the purpose of maintaining any action.

History.—s. 1, ch. 21966, 1943; s. 3, ch. 67-254.
Note.—Former s. 46.12.

47.091 Change of venue; power to grant.—All courts have power and it is their duty to grant changes of venue as hereinafter provided.

History.—s. 1, ch. 373, 1851; RS 1077; GS 1469; RGS 2668; CGL 4335; s. 3, ch. 67-254.
Note.—Former s. 53.01.

47.101 Change of venue; application.—
(1) If a party desires a change of venue he may move therefor stating that he believes he will not receive a fair trial in the court where the action is pending:
(a) Because the adverse party has an undue influence over the minds of the inhabitants of the county.
(b) Because movant is so odious to the inhabitants of the county that he could not receive a fair trial.
(2) Such motion shall be verified and filed not less than 10 days after the action is at issue unless good cause is shown for failure to so file. It shall set forth the facts on which the motion is based and be supported by affidavits of at least two reputable citizens of the county not of kin to the defendant or his attorney.

History.—s. 37, Nov. 23, 1828; RS 1079; GS 1471; s. 10, ch. 7838; s. 2, ch. 7852, 1919; RGS 2670; CGL 4337; s. 3, ch. 67-254; s. 11, ch. 73-334.
Note.—Former s. 53.03.

47.111 Change of venue; denial of motion.— The adverse party has the right to deny the allegations of the motion. The court shall hear the evidence on the motion.

History.—GS 1474; s. 3, ch. 7852, 1919; RGS 2673; CGL 4340; s. 3, ch. 67-254.
Note.—Former s. 53.04.

47.121 Change of venue; when unable to obtain jury.— A change of venue shall be granted when it appears impracticable to obtain a qualified jury in the county where the action is pending.

History.—s. 1, ch. 4137, 1893; GS 1472; RGS 2671; CGL 4338; s. 3, ch. 67-254.
Note.—Former s. 53.05.

47.122 Change of venue; convenience of parties or witnesses or in the interest of justice.— For the convenience of the parties or witnesses or in the interest of justice, any court of record may transfer any civil action to any other court of record in which it might have been brought.

History.—s. 1, ch. 69-83.

47.131 Change of venue; second change, when permitted.— When it appears to the court to which an action has been transferred by a change of venue that any of the grounds for change of venue exist in the county to which the action has been transferred, the court may order a second change of venue, but it shall not be made to the county from which it was originally transferred.

History.—s. 2, ch. 4394, 1895; GS 1473; RGS 2672; CGL 4339; s. 3, ch. 67-254; s. 11, ch. 73-334.
Note.—Former s. 53.06.

47.141 Change of venue; to what jurisdiction.— The order granting change of venue shall transfer the action to a court of the same jurisdiction in another county. If the judge of such court is disqualified, some other court shall be selected.

History.—RS 1077; s. 1, ch. 4724, 1899; GS 1475; RGS 2675; CGL 4342; s. 12, ch. 17171, 1935; s. 3, ch. 67-254; s. 11, ch. 73-334.
Note.—Former s. 53.07.
cf.—s. 298.04 Change of venue in water control district proceedings.

47.151 Change of venue; to another county of circuit.— If a change of venue is granted on grounds other than the disqualification or prejudice of a judge of the circuit court, the action may be removed to any other county in the same circuit.

History.—s. 1, ch. 4394, 1895; GS 1476; RGS 2676; CGL 4343; s. 3, ch. 67-254.
Note.—Former s. 53.08.

47.172 Change of venue; transfer of papers, etc.— On a change of venue the clerk of the court in which such action was pending shall transmit all papers filed in said action, a certified copy of all entries of record in the progress docket and a copy of the order of transfer to the court to which the action is transferred, which court has full power to hear and determine the action.

History.—s. 3, ch. 373, 1851; RS 1077; GS 1479; RGS 2679; CGL 4346; s. 3, ch. 67-254.
Note.—Former s. 53.10.

47.181 Change of venue; testimony of witnesses.— After a change of venue, testimony of witnesses residing in the county from which the action is removed may be taken in the manner provided for taking testimony of witnesses residing out of the county in which any action is pending.

History.—s. 2, ch. 373, 1851; RS 1077; GS 1480; RGS 2680; CGL 4347; s. 3, ch. 67-254.
Note.—Former s. 53.11.

47.191 Change of venue; payment of costs.— No change of venue shall be granted except on condition that the movant shall pay all costs that have accrued in the action. No change is effective until the costs are paid.

History.—s. 3, ch. 373, 1851; RS 1077; GS 1478; RGS 2678; CGL 4345; s. 3, ch. 67-254.
Note.—Former s. 53.12.

CHAPTER 48

PROCESS AND SERVICE OF PROCESS

48.011 Process; how directed.—Summons, subpoenas and other process in civil actions run throughout the state. All process except subpoenas shall be directed to all and singular the sheriffs of the state.

History.—s. 1, ch. 4397, 1895; GS 1397; RGS 2594; CGL 4234; s. 2, ch. 29737, 1955; s. 4, ch. 67-254.
Note.—Former s. 47.08.

48.021 Process; by whom served.—

(1) All process shall be served by the sheriff of the county where the person to be served is found or by a special process server as provided for in this section, but witness subpoenas may also be served by any person authorized by rules of procedure.

(2) The sheriff of each county shall appoint as many process servers as he in good faith deems necessary and who meet the requirements herein, each of whom shall be at least 18 years of age and a permanent resident of the state. The sheriff shall prescribe an appropriate form for application for appointment, which form shall require the signatures of two character witnesses who personally know the applicant and will vouch for his or her good moral character. The application shall be accompanied by a fee of $15. The sheriff shall have the discretion to revoke an appointment at any time that he determines a special process server is not fully and properly discharging the duties of the office.

(3) A special process server appointed in accordance with this section shall serve for renewable terms of 4 years, shall be authorized to serve process in any county, and may charge a reasonable fee for his or her services. Every special process server shall, prior to exercising the duties of office, execute a bond in the amount of $1,000 with a surety company authorized to do business in Florida, conditioned upon the faithful discharge of the duties of said office, and shall take an oath that he or she will honestly, diligently, and faithfully exercise the duties of said office.

(4) Any special process server shall be disinterested in any process he serves, and if he willfully and knowingly executes a false return of service or otherwise violates the oath of office shall be guilty of a felony of the third degree, punishable as provided for in s. 775.082, s. 775.083, or s. 775.084, and shall be permanently barred from serving process in Florida.

History.—s. 16, July 22, 1845; s. 1, ch. 3721, 1887; RS 1014, 1246; GS 1401; RGS 2598; s. 1, ch. 9318, 1923; CGL 4238; s. 4, ch. 67-254; s. 12, ch. 73-334; s. 1, ch. 76-263; s. 2, ch. 79-396.
Note.—Former s. 47.12.

48.031 Service of process generally.—

(1) Service of original process is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents. Minors who are or have been married shall be served as provided in this section.

(2) The service of process of witness subpoenas, whether in felony cases or civil actions, shall be made as provided in subsection (1), and service of a subpoena on a witness in a criminal case that involves only a misdemeanor shall be made by delivering a copy to the witness. Such delivery shall be made by personal service on the witness by a person authorized by law; by registered United States mail directed to the witness at his last known address; or by delivery, by a person authorized by law, at the witness' usual place of abode to a member of his family who is 15 years of age or older and who is informed of the contents thereof.

History.—s. 5, Nov. 23, 1828; RS 1015; GS 1402; RGS 2599; CGL 4246; s. 6, ch. 29737, 1955; s. 4, ch. 67-254; s. 1, ch. 75-34; s. 3, ch. 79-396.
Note.—Former s. 47.13.

48.041 Service on incompetents.—Process against a minor who has never been married or other incompetent shall be served:

(1) By reading the process to the minor or incompetent to be served and to the person in whose care or custody the minor or incompetent is and by delivery of a copy thereof to such person in whose care or custody the minor or incompetent is and by further serving said process on the guardian ad litem or other person, if one is appointed by the court to represent the minor or incompetent. Service on the guard-

ian ad litem is unnecessary when the guardian ad litem appears voluntarily or when the court orders him to appear without service of process on him.

(2) When there is a legal guardian appointed for the minor or incompetent, by serving the guardian as provided in s. 48.031.

(3) In all cases heretofore adjudicated when process has been served on a minor as prescribed by any law heretofore existing, the service is lawfully made and no proceeding shall be declared irregular or illegal when a guardian ad litem has appeared for the minor.

History.—ss. 1, 2, ch. 7853, 1919; CGL 4273, 4274; s. 1, ch. 19175, 1939; CGL 1940 Supp. 4274(13); s. 2, ch. 29737, 1955; s. 4, ch. 67-254.
Note.—Former ss. 47.23-47.25.

48.051 Service on state prisoners.—Process against a state prisoner shall be served on the prisoner.

History.—s. 30, ch. 3883, 1889; RS 3043; GS 4124; RGS 6243; CGL 8580; s. 1, ch. 21992, 1943; s. 1, ch. 25041, 1949; s. 44, ch. 57-121; s. 4, ch. 67-254; ss. 19, 35, ch. 69-106; s. 13, ch. 71-355.
Note.—Former s. 47.26.

48.061 Service on partnerships.—

(1) Process against a partnership shall be served on any member thereof and is as valid as if served on each individual member. After service on any member, plaintiff may proceed to judgment and execution against all members of the partnership.

(2) Process against a domestic limited partnership shall be served on any general partner and is as valid as if served on each individual member thereof. After service on any general partner, plaintiff may proceed to judgment and execution against the limited partnership and all of the general partners individually. Service of process may be made under ss. 48.071 and 48.21 on limited partnerships.

(3) Process against a foreign limited partnership shall be served on any general partner found in the state and is as valid as if served on each individual member of the partnership. If no general partner is found in Florida, process may be served as provided in ss. 48.071 and 48.21.

History.—s. 13, Nov. 23, 1828; RS 1017; GS 1404; RGS 2601; CGL 4248; s. 4, ch. 67-254.
Note.—Former s. 47.15.

48.071 Service on agents of nonresidents doing business in the state.—When any natural person or partnership not residing or having his or their principal place of business in this state engages in business in this state, process may be served on the person who is in charge of any business in which the defendant is engaged within this state at the time of service, including agents soliciting orders for goods, wares, merchandise or services. Any process so served is as valid as if served personally on the nonresident person or partnership engaging in business in this state in any action against the person or partnership arising out of such business. A copy of such process with a notice of service on the person in charge of such business shall be sent forthwith to the nonresident person or partnership by registered or certified mail, return receipt requested. An affidavit of compliance with this section shall be filed before the return day or within such further time as the court may allow.

History.—s. 1, ch. 59-280; s. 4, ch. 67-254.
Note.—Former s. 47.161.

48.081 Service on corporations.—

(1) Process against any private corporation, domestic or foreign, may be served:

(a) On the president or vice president, or other head of the corporation; and in his absence:

(b) On the cashier, treasurer, secretary, or general manager; and in the absence of all of the above:

(c) On any director; and in the absence of all of the above:

(d) On any officer or business agent residing in the state.

(2) If a foreign corporation has none of the foregoing officers or agents in this state, service may be made on any agent transacting business for it in this state.

(3) As an alternative to all of the foregoing, process may be served on the agent designated by the corporation under s. 48.091. However, if service cannot be made on a registered agent because of failure to comply with s. 48.091, service of process shall be permitted on any employee at the corporation's place of business.

(4) This section does not apply to service of process on insurance companies.

(5) Where a corporation has a business office within the state and is actually engaged in the transaction of business therefrom, service upon any officer or business agent, resident in the state, may personally be made, pursuant to this section, and it is not necessary in such case, that the action, suit or proceeding against the corporation shall have arisen out of any transaction or operation connected with or incidental to the business being transacted within the state.

History.—s. 8, Nov. 21, 1829; s. 2, Feb. 11, 1834; s. 1, ch. 3590, 1885; RS 1019; GS 1406; s. 1, ch. 6908, 1915; s. 1, ch. 7752, 1918; RGS 2604; CGL 4251; s. 1, ch. 57-97; ss. 1-3, ch. 59-46; s. 4, ch. 67-254; s. 1, ch. 67-399; s. 6, ch. 79-396.
Note.—Former s. 47.17.

48.091 Corporations; designation of registered agent and registered office.—

(1) Every Florida corporation and every foreign corporation now qualified or hereafter qualifying to transact business in this state shall designate a registered agent and registered office in accordance with chapter 607.

(2) Every corporation shall keep the registered office open from 10 a.m. to 12 noon each day except Saturdays, Sundays, and legal holidays, and shall keep one or more registered agents on whom process may be served at the office during these hours. The corporation shall keep a sign posted in the office in some conspicuous place designating the name of the corporation and the name of its registered agent on whom process may be served.

History.—ss. 1, 2, 11, 13, 14, ch. 11829, 1927; CGL 4257, 4258, 4267, 4269, 4270; ss. 1, 2, ch. 20842, 1941; s. 1, ch. 29873, 1955; s. 24, ch. 57-1; s. 1, ch. 63-241; s. 1, ch. 65-32; s. 4, ch. 67-254; s. 2, ch. 67-562; ss. 10, 35, ch. 69-106; s. 3, ch. 71-114; s. 1, ch. 71-269; s. 28, ch. 71-377; s. 1, ch. 76-209.
Note.—Former ss. 47.34, 47.35, 47.42, 47.43, 47.45, 47.50.

48.101 Service on dissolved corporations.—Process against the directors of any corporation which is dissolved as trustees of the dissolved corpo-

ration shall be served on one or more of the directors of the dissolved corporation as trustees thereof and binds all of the directors of the dissolved corporation as trustees thereof.

History.—s. 1, ch. 19064, 1939; CGL 1940 Supp. 4251(1); s. 4, ch. 67-254.
Note.—Former s. 47.22.

48.111 Service on public agencies and officers.—

(1) Process against any municipal corporation, agency, board or commission, department, or subdivision of the state or any county which has a governing board, council or commission or which is a body corporate shall be served:

(a) On the president, mayor, chairman or other head thereof; and in his absence;

(b) On the vice president, vice mayor or vice chairman, or in the absence of all of the above;

(c) On any member of the governing board, council or commission.

(2) Process against any public agency, board, commission, or department not a body corporate or having a governing board or commission shall be served on the public officer being sued or the chief executive officer of the agency, board, commission, or department.

(3) As an alternative to all of the foregoing, process may be served on the person designated pursuant to s. 120.071.

(4) In any suit in which the Department of Revenue or its successor is a party, process against the department shall be served on the executive director of the department. This procedure is to be in lieu of any other provision of general law, and shall designate said department to be the only state agency or department to be so served.

History.—ss. 1, 2, ch. 3242, 1881; RS 581, 1021, 1022; GS 774, 1408, 1409; RGS 1494, 2606, 2607; CGL 2203, 4253, 4254; s. 4, ch. 67-254; s. 1, ch. 73-73.
Note.—Former ss. 47.20, 47.21.

48.121 Service on the state.—When the state has consented to be sued, process against the state shall be served on the State Attorney or an assistant state attorney for the judicial circuit within which the action is brought and by sending two copies of the process by registered or certified mail to the Attorney General. The state may serve motions or pleadings within 40 days after service is made.

History.—s. 2, ch. 29724, 1955; s. 4, ch. 67-254.
Note.—Former s. 69.18.
cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

48.131 Service on alien property custodian.— In every action or proceeding in any court or before any administrative board involving real, personal, or mixed property, or any interest therein, when service of process or notice is required or directed to be made upon any person, firm or corporation located, or believed to be located, within any country or territory in the possession of or under the control of any country between which and the United States a state war exists, in addition to the giving of the notice or service of process, a copy of the notice or process shall be sent by registered or certified mail to the alien property custodian, addressed to him at Washington, District of Columbia; but failure to mail a copy of the notice or process to the alien property custodian does not invalidate the action or proceeding.

History.—s. 1, ch. 22074, 1943; s. 4, ch. 67-254.
Note.—Former s. 47.51.
cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

48.141 Service on labor unions.—Process against labor organizations shall be served on the president or other officer, business agent, manager or person in charge of the business of such labor organization.

History.—s. 4, ch. 67-254.
cf.—s. 447.11 Labor organizations.

48.151 Service on statutory agents for certain persons.—

(1) When any law designates a public officer, board, agency or commission as the agent for service of process on any person, firm or corporation, service of process thereunder shall be made by leaving two copies of the process with the public officer, board, agency or commission or in the office thereof, or by mailing said copies to the public officer, board, agency, or commission. The public officer, board, agency, or commission so served shall file one copy in his or its records and promptly send the other copy, by registered or certified mail, to the person to be served as shown by his or its records. Proof of service on the public officer, board, agency, or commission shall be by a notice accepting the process which shall be issued by the public officer, board, agency, or commission promptly after service and filed in the court issuing the process. The notice accepting service shall state the date upon which the copy of the process was mailed by the public officer, board, agency, or commission to the person being served and the time for pleading prescribed by the rules of procedure shall run from this date. The service is valid service for all purposes on the person for whom the public officer, board, agency or commission is statutory agent for service of process.

(2) This section does not apply to substituted service of process on nonresidents.

(3) The Insurance Commissioner and Treasurer or his assistant or deputy or another person in charge of his office is the agent for service of process on all insurers applying for authority to transact insurance in this state, all licensed nonresident insurance agents, all nonresident disability insurance agents licensed by the Department of Insurance pursuant to s. 626.835, any unauthorized insurer under s. 626.906 or s. 626.937, domestic reciprocal insurers, fraternal benefit societies under chapter 632, automobile inspection and warranty associations, ambulance service associations, and persons required to file statements under s. 628.461.

(4) The Comptroller is the agent for service of process for any issuer as defined in s. 517.02 for any violation of any provision of chapter 517.

(5) The Secretary of State is the agent for service of process for any retailer, dealer or vendor who has failed to designate an agent for service of process as

required under s. 212.151 for violations of chapter 212.

History.—s. 4, ch. 67-254; ss. 10, 12, 13, 35, ch. 69-106; s. 14, ch. 71-355; s. 29, ch. 71-377; s. 2, ch. 76-100; s. 16, ch. 79-164.

48.161 Method of substituted service on nonresident.—

(1) When authorized by law, substituted service of process on a nonresident or a person who conceals his whereabouts by serving a public officer designated by law shall be made by leaving a copy of the process with a fee of $5 with the public officer or in his office or by mailing the copies by certified mail to the public officer with the fee. The service is sufficient service on a defendant who has appointed a public officer as his agent for the service of process. Notice of service and a copy of the process shall be sent forthwith by registered or certified mail by the plaintiff or his attorney to the defendant, and the defendant's return receipt and the affidavit of the plaintiff or his attorney of compliance shall be filed on or before the return day of the process or within such time as the court allows, or the notice and copy shall be served on the defendant, if found within the state, by an officer authorized to serve legal process, or if found without the state, by a sheriff or a deputy sheriff of any county of this state or any duly constituted public officer qualified to serve like process in the state or jurisdiction where the defendant is found. The officer's return showing service shall be filed on or before the return day of the process or within such time as the court allows. The fee paid by the plaintiff to the public officer shall be taxed as cost if he prevails in the action. The public officer shall keep a record of all process served on him showing the day and hour of service.

(2) If any person on whom service of process is authorized under subsection (1) dies, service may be made on his administrator, executor, curator or personal representative in the same manner.

(3) This section does not apply to persons on whom service is authorized under s. 48.151.

(4) The public officer may designate some other person in his office to accept service.

History.—ss. 2, 4, ch. 17254, 1935; CGL 1936 Supp. 4274 (8), (10); s. 1, ch. 59-382; s. 4, ch. 67-254; s. 4, ch. 71-114; s. 1, ch. 71-308.

Note.—Former ss. 47.30, 47.32.

cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

48.171 Service on nonresident motor vehicle owners, etc.—Any nonresident of this state, being the operator or owner of any motor vehicle, who accepts the privilege extended by the laws of this state to nonresident operators and owners, of operating a motor vehicle or of having it operated, or of permitting any motor vehicle owned, or leased, or controlled by him to be operated with his knowledge, permission, acquiescence or consent, within the state, or any resident of this state, being the licensed operator or owner of or the lessee, or otherwise entitled to control any motor vehicle under the laws of this state, who becomes a nonresident or conceals his whereabouts, by the acceptance or licensure and by the operation of the motor vehicle, either in person, or by or through his servants, agents, or employees, or by persons with his knowledge, acquiescence and consent within the state constitutes the Secretary of State his agent for the service of process in any civil action begun in the courts of the state against such operator or owner, lessee or other person entitled to control of the motor vehicle, arising out of or by reason of any accident or collision occurring within the state in which the motor vehicle is involved.

History.—s. 1, ch. 17254, 1935; CGL 1936 Supp. 4274(7); ss. 1, 2, ch. 25003, 1949; s. 4, ch. 67-254.

Note.—Former s. 47.29.

cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

48.181 Service on nonresident engaging in business in state.—

(1) The acceptance by any person or persons, individually, or associated together as a copartnership or any other form or type of association, who are residents of any other state or country, and all foreign corporations, and any person who is a resident of the state and who subsequently becomes a nonresident of the state or conceals his whereabouts, of the privilege extended by law to nonresidents and others to operate, conduct, engage in, or carry on a business or business venture in the state, or to have an office or agency in the state, constitutes an appointment by the persons and foreign corporations of the secretary of state of the state as their agent on whom all process in any action or proceeding against them, or any of them, arising out of any transaction or operation connected with or incidental to the business or business venture may be served. The acceptance of the privilege is signification of the agreement of the persons and foreign corporations that the process against them which is so served is of the same validity as if served personally on the persons or foreign corporations.

(2) If a foreign corporation has a resident agent or officer in the state, process shall be served on the resident agent or officer.

(3) Any person, firm or corporation which sells, consigns, or leases by any means whatsoever tangible or intangible personal property, through brokers, jobbers, wholesalers, or distributors to any person, firm, or corporation in this state shall be conclusively presumed to be operating, conducting, engaging in or carrying on a business venture in this state.

History.—s. 1, ch. 6224, 1911; RGS 2602; CGL 4249; s. 1, ch. 26657, 1951; s. 1, ch. 57-747; s. 4, ch. 67-254.

Note.—Former s. 47.16.

cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

s. 620.30 Service of process on limited partnerships.

48.183 Service of process in action for possession of residential premises.—In an action for possession of residential premises under s. 83.59, if neither the tenant nor a person of the tenant's family 15 years of age or older can be found at the usual place of residence of the tenant, summons may be served by attaching a copy to a conspicuous place on the property described in the complaint or summons.

History.—s. 4, ch. 73-330; s. 1, ch. 75-34.

48.19 Service on nonresidents operating aircraft or watercraft in the state.—The operation, navigation or maintenance by a nonresident of an aircraft or a boat, ship, barge or other watercraft in the state, either in person or through others, and the acceptance thereby by the nonresident of the protection of the laws of this state for the aircraft or water-

craft, or the operation, navigation, or maintenance by a nonresident of an aircraft or a boat, ship, barge or other watercraft in the state, either in person or through others, other than under the laws of the state, or any person who is a resident of the state and who subsequently becomes a nonresident or conceals his whereabouts, constitutes an appointment by the nonresident of the Secretary of State as the agent of the nonresident or concealed person on whom all process may be served in any action or proceeding against the nonresident or concealed person growing out of any accident or collision in which the nonresident or concealed person may be involved while, either in person or through others, operating, navigating, or maintaining an aircraft or a boat, ship, barge, or other watercraft in the state. The acceptance by operation, navigation or maintenance in the state of the aircraft or watercraft is signification of the nonresident's or concealed person's agreement that process against him so served shall be of the same effect as if served on him personally.

History.—s. 1, ch. 59-148; s. 1, ch. 65-118; s. 4, ch. 67-254; s. 2, ch. 70-90.
Note.—Former s. 47.162.

48.193 Acts subjecting persons to jurisdiction of courts of state.—

(1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits that person and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following:

(a) Operates, conducts, engages in, or carries on a business or business venture in this state or has an office or agency in this state.

(b) Commits a tortious act within this state.

(c) Owns, uses, or possesses any real property within this state.

(d) Contracts to insure any person, property, or risk located within this state at the time of contracting.

(e) With respect to proceedings for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintains a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.

(f) Causes injury to persons or property within this state arising out of an act or omission outside of this state by the defendant, provided that at the time of the injury either:

1. The defendant was engaged in solicitation or service activities within this state which resulted in such injury; or

2. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use, and the use or consumption resulted in the injury.

(g) Breaches a contract in this state by failing to perform acts required by the contract to be performed in this state.

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this state as provided in this section may be made by personally serving the process upon the defendant outside this state, as provided in s. 48.194. The service shall have the same effect as if it had been personally served within this state.

(3) Only causes of action arising from acts or omissions enumerated in this section may be asserted against a defendant in an action in which jurisdiction over him is based upon this section, unless the defendant in his pleadings demands affirmative relief on other causes of action, in which event the plaintiff may assert any cause of action against the defendant, regardless of its basis, by amended pleadings pursuant to the rules of civil procedure.

(4) Nothing contained in this section shall limit or affect the right to serve any process in any other manner now or hereinafter provided by law.

History.—s. 1, ch. 73-179.

48.194 Personal service outside state.—Service of process on persons outside of this state shall be made in the same manner as service within this state by any officer authorized to serve process in the state where the person is served. No order of court is required. An affidavit of the officer shall be filed, stating the time, manner, and place of service. The court may consider the affidavit, or any other competent evidence, in determining whether service has been properly made.

History.—s. 1, ch. 73-179.

48.195 Service of foreign process.—

(1) The service of process issued by a foreign court of a state other than Florida may be made by the sheriffs of this state in the same manner as service of process issued by Florida courts. The provisions of this section shall not be interpreted to permit a sheriff to take any action against personal property, real property, or persons.

(2) An officer serving such foreign process shall be deemed as acting in the performance of his duties for the purposes of ss. 843.01, [1]843.02, 30.01, and 30.02, but shall not be held liable as provided in ss. 30.19 and 839.19 for failure to execute any process delivered to him for service.

(3) The sheriffs shall be entitled to charge fees for the service of foreign, out-of-state process, and the fees shall be the same as fees for the service of comparable process for the Florida courts. When the service of foreign process requires duties to be performed in addition to those required by Florida courts, the sheriff may perform the additional duties and may collect reasonable additional compensation for the additional duties performed.

History.—s. 7, ch. 79-396.
[1]**Note.**—Reference to s. 843.02 substituted by the editors for "842.03" as an obvious typographical error; there is no s. 842.03.

48.20 Service of process on Sunday.—Service or execution on Sunday of any writ, process, warrant, order or judgment is void and the person serving or executing, or causing it to be served or executed, is liable to the party aggrieved for damages for so

doing as if he had done it without any process, writ, warrant, order or judgment. If affidavit is made by the person requesting service or execution that he has good reason to believe that any person liable to have any such writ, process, warrant, order or judgment served on him intends to escape from this state under protection of Sunday, any officer furnished with an order authorizing service or execution by the judge or magistrate of any incorporated town may serve or execute such writ, process, warrant, order, or judgment on Sunday, and it is as valid as if it had been done on any other day.

History.—s. 44, Nov. 23, 1828; RS 1025; GS 1413; RGS 2611; CGL 4275; s. 4, ch. 67-254; s. 12, ch. 73-334.
Note.—Former s. 47.46.

48.21 Return of execution of process.—All officers to whom process is directed shall note on it the time when it comes to hand, the time when it is executed, the manner of execution, the name of the person on whom it was executed and if such person is served in a representative capacity, the position occupied by him. A failure to state the foregoing facts invalidates the service, but the return is amendable to state the truth at any time on application to the court from which the process issued. On amendment, service is as effective as if the return had originally stated the omitted facts. A failure to state all the facts in the return shall subject the officer so failing to a fine not exceeding $10, in the court's discretion.

History.—s. 18, Nov. 23, 1828; RS 1026; GS 1414; RGS 2612; CGL 4276; s. 4, ch. 67-254.
Note.—Former s. 47.47.

48.22 Cumulative to other laws.—All provisions of this chapter are cumulative to other provisions of law or rules of court about service of process, and all other provisions about service of process are cumulative to this chapter.

History.—s. 9, ch. 11829, 1927; CGL 4265; s. 7, ch. 22858, 1945; s. 4, ch. 67-254.
Note.—Former ss. 47.33, 47.44.

48.23 Lis pendens.—

(1)(a) No action in any of the state or federal courts in this state operates as a lis pendens on any real or personal property involved therein or to be affected thereby until a notice of the commencement of the action is recorded in the office of the clerk of the circuit court of the county where the property is, containing the names of the parties, the time of institution of the action, the name of the court in which it is pending, a description of the property involved or to be affected and a statement of the relief sought as to the property.

(b) The filing for record of such notice of lis pendens shall constitute a bar to the enforcement against the property described in said notice of lis pendens of all liens including but not limited to federal tax liens and levies, unrecorded at the time of filing for record such notice of lis pendens unless the holder of any such unrecorded lien shall intervene in such proceedings within 20 days after the filing and recording of said notice of lis pendens, and if the holder of any such unrecorded lien does not intervene in the proceedings, and if such proceedings are prosecuted to a judicial sale of the property described in said notice of lis pendens, the said property shall be forever discharged from all such unrecorded liens. In the event said notice of lis pendens is discharged by order of the court, the same shall not in any way affect the validity of any unrecorded lien.

(2) No notice of lis pendens is effectual for any purpose beyond 1 year from the commencement of the action unless the relief sought is disclosed by the initial pleading to be founded on a duly recorded instrument, or on a mechanic's lien claimed against the property involved except when the court extends the time on reasonable notice and for good cause. The court may impose such terms for the extension of time as justice requires.

(3) When the initial pleading does not show that the action is founded on a duly recorded instrument, or on a mechanic's lien, the court may control and discharge the notice of lis pendens as the court may grant and dissolve injunctions.

(4) This section applies to all actions now or hereafter pending in any state or federal courts in this state, but the period of time above-mentioned does not include the period of pendency of any action in an appellate court.

History.—RS 1220; GS 1649; RGS 2853; ss. 1-3, ch. 12081, 1927; CGL 4550; s. 1, ch. 24336, 1947; s. 4, ch. 67-254; s. 1, ch. 67-567.
Note.—Former s. 47.49.

CHAPTER 49

CONSTRUCTIVE SERVICE OF PROCESS

49.011 Service of process by publication, in what cases.—Service of process by publication may be made in any court on any person mentioned in s. 49.021, in any action or proceeding:

(1) To enforce any legal or equitable lien or claim to any title or interest in real or personal property within the jurisdiction of the court or any fund held or debt owing by any party on whom process can be served within this state;

(2) To quiet title or remove any encumbrance, lien or cloud on the title to any real or personal property within the jurisdiction of the court or any fund held or debt owing by any party on whom process can be served within this state;

(3) To partition real or personal property within the jurisdiction of the court;

(4) For dissolution or annulment of marriage;

(5) For the construction of any will, deed, contract or other written instrument and for a judicial declaration or enforcement of any legal or equitable right, title, claim, lien or interest thereunder;

(6) To reestablish lost instruments or records which have or should have their situs within the jurisdiction of the court;

(7) In which a writ of replevin, garnishment or attachment has been issued and executed;

(8) In which any other writ or process has been issued and executed which places any property, fund or debt in the custody of a court;

(9) To revive a judgment by motion or scire facias;

(10) For adoption;

(11) Wherein personal service of process or notice is not required by the statutes or constitution of this state or by the Constitution of the United States;

(12) In probate or guardianship proceedings wherein personal service of process or notice is not required by the statutes or Constitution of this state or by the constitution of the United States.

History.—s. 1, ch. 20452, 1941; s. 5, ch. 67-254; s. 15, ch. 71-355; s. 1, ch. 73-5; s. 1, ch. 73-300.

Note.—Former s. 48.01.

49.021 Service of process by publication, upon whom.—Where personal service of process cannot be had, service of process by publication may be had upon any party, natural or corporate, known or unknown, including:

(1) Any known or unknown natural person, and, when described as such, the unknown spouse, heirs, devisees, grantees, creditors or other parties claiming by, through, under or against any known or unknown person who is known to be dead or is not known to be either dead or alive;

(2) Any corporation or other legal entity, whether its domicile be foreign, domestic or unknown, and whether dissolved or existing, including corporations or other legal entities not known to be dissolved or existing, and, when described as such, the unknown assigns, successors in interest, trustees, or any other party claiming by, through, under or against any named corporation or legal entity;

(3) Any group, firm, entity or persons who operate or do business, or have operated or done business, in this state, under a name or title which includes the word "corporation," "company," "incorporated," "inc." or any combination thereof, or under a name or title which indicates, tends to indicate or leads one to think that the same may be a corporation or other legal entity; and,

(4) All claimants under any of such parties.

Unknown parties may be proceeded against exclusively or together with other parties.

History.—s. 2, ch. 20452, 1941; s. 7, ch. 22858, 1945; s. 5, ch. 67-254.

Note.—Former s. 48.02.

49.031 Sworn statement as condition precedent.—

(1) As a condition precedent to service by publication, a statement shall be filed in the action executed by the plaintiff, his agent or attorney, setting forth substantially the matters hereafter required, which statement may be contained in a verified pleading, or in an affidavit or other sworn statement.

(2) As used in this chapter:

(a) The word "plaintiff" means any party in the action who is entitled to service of original process on any other party to the action or any person who may be brought in or allowed to come in as a party by any lawful means.

(b) The word "defendant" means any party on whom service by publication is authorized by this chapter, without regard to his designation in the pleadings or position in the action.

(c) The word "publication" includes the posting of the notice of action as provided for in ss. 49.10(1)(b) and 49.11.

(3) After the entry of a final judgment or decree in any action no sworn statement shall ever be held

defective for failure to state a required fact if the fact otherwise appears from the record in the action.

History.—s. 3, ch. 20452, 1941; s. 2, ch. 28301, 1953; s. 5, ch. 67-254; s. 1, ch. 74-152.
Note.—Former s. 48.03.

49.041 Sworn statement, natural person as defendant.—The sworn statement of the plaintiff, his agent or attorney, for service of process by publication against a natural person, shall show:

(1) That diligent search and inquiry have been made to discover the name and residence of such person, and that the same is set forth in said sworn statement as particularly as is known to the affiant; and

(2) Whether such person is over or under the age of 18 years, if his age is known, or that his age is unknown; and

(3) In addition to the above, that the residence of such person is, either:

(a) Unknown to the affiant; or

(b) In some state or country other than this state, stating said residence if known; or

(c) In the state, but that he has been absent from the state for more than 60 days next preceding the making of the sworn statement, or conceals himself so that process cannot be personally served upon him, and that affiant believes that there is no person in the state upon whom service of process would bind said absent or concealed defendant.

History.—s. 4, ch. 20452, 1941; s. 5, ch. 67-254; s. 4, ch. 77-121.
Note.—Former s. 48.04.

49.051 Sworn statement, corporation as defendant.—The sworn statement of the plaintiff, his agent or attorney, for service of process by publication against a corporation, shall show:

(1) That diligent search and inquiry have been made to discover the true name, domicile, principal place of business and status (that is, whether foreign, domestic or dissolved) of the corporate defendant, and that the same is set forth in said sworn statement as particularly as is known to the affiant, and that diligent search and inquiry have also been made, to discover the names and whereabouts of all persons upon whom the service of process would bind the said corporation and that the same is specified as particularly as is known to the affiant; and

(2) Whether or not the corporation has ever qualified to do business in this state, unless shown to be a Florida corporation; and

(3) That all officers, directors, general managers, cashiers, resident agents and business agents of the corporation, either:

(a) Are absent from the state; or

(b) Cannot be found within the state; or

(c) Conceal themselves so that process cannot be served upon them so as to bind the said corporation; or

(d) That their whereabouts are unknown to the affiant; or

(e) That said officers, directors, general managers, cashiers, resident agents and business agents of the corporation are unknown to affiant.

History.—s. 5, ch. 20452, 1941; s. 5, ch. 67-254.
Note.—Former s. 48.05.

49.061 Sworn statement, parties doing business under a corporate name as defendants.—The sworn statement of the plaintiff, his agent or attorney, for service of process by publication against parties who have or may have done business under a corporate name, shall show:

(1) The name under which said parties have operated or done business; and

(2) That, after diligent search and inquiry, he has been unable to ascertain whether or not the organization operating under said name was a corporation, either domestic or foreign; and

(3) The names, and places of residence if known, of all persons known to have been interested in such organization, and whether or not other or unknown persons may have been interested in such organization; or that, after diligent search and inquiry, all persons interested in such organization are unknown to the affiant, and, unless all such persons are unknown to the affiant,

(4) That the known persons interested in such organization, either:

(a) Are absent from this state; or

(b) Cannot be found within this state; or

(c) Conceal themselves so that process cannot be personally served upon them; or

(d) That their whereabouts are unknown to the affiant.

History.—s. 6, ch. 20452, 1941; s. 5, ch. 67-254.
Note.—Former s. 48.06.

49.071 Sworn statement, unknown parties as defendants.—

(1) If relief is demanded against unknown parties, the sworn statement for service of process by publication against them shall show:

(a) That affiant believes that there are persons who are or may be interested in the subject matter of the action or proceedings whose names, after diligent search and inquiry, are unknown to the affiant; and

(b) Whether said unknown parties claim as heirs, devisees, grantees, assignees, lienors, creditors, trustees, or other claimants:

1. By, through, under or against a known person who is dead or not known to be dead or alive; or

2. By, through, under or against some corporation, domestic or foreign, that has been dissolved or which is not known to be existing or dissolved; or

3. By, through, under or against some organization which operated or did business under a name indicating a corporation; or

4. Otherwise as the case may be.

(2) In any case alleged against a named defendant, natural or corporate, who is stated, either in the pleadings or in the sworn statement, to be either dead or dissolved, or not known to be dead or alive, or dissolved or existing, any judgment, decree or order rendered against such defendant shall be as good, valid and effectual as if it had not been so stated.

History.—s. 7, ch. 20452, 1941; s. 5, ch. 67-254.
Note.—Former s. 48.07.

49.08 Notice of action, form.—On filing the sworn statement, and otherwise complying with the foregoing requirements, the plaintiff is entitled to

have issued by the clerk or judge, not later than 60 days after filing the sworn statement, a notice of action which notice shall set forth:

(1) The names of the known natural defendants; the names, status and description of the corporate defendants; a description of the unknown defendants who claim by, through, under or against a known party which may be described as "all parties claiming interests by, through, under or against (name of known party)" and a description of all unknown defendants which may be described as "all parties having or claiming to have any right, title or interest in the property herein described";

(2) The nature of the action or proceeding in short and simple terms (but neglect to do so is not jurisdictional);

(3) The name of the court in which the action or proceeding was instituted and an abbreviated title of the case;

(4) The description of real property, if any, proceeded against.

History.—s. 8, ch. 20452, 1941; s. 3, ch. 28301, 1953; s. 2, ch. 29737, 1955; s. 5, ch. 67-254.
Note.—Former s. 48.08.

49.09 Notice of action, return day.—The notice of action shall require defendant to file his written defenses with the clerk of the court and to serve a copy not later than the date fixed in said notice, which date shall be not less than 28 nor more than 60 days after the first publication of the notice on plaintiff or his attorney whose name and address shall appear in, or be annexed to, said notice.

History.—s. 9, ch. 20452, 1941; s. 4, ch. 28301, 1953; s. 2, ch. 29737, 1955; s. 5, ch. 67-254.
Note.—Former s. 48.09.

49.10 Notice of action, publication, proof.—

(1)(a) All notices of action, except those referred to in paragraph (b), shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in some newspaper published in the county where the court is located. The newspaper shall meet such requirements as are prescribed by law for such purpose.

(b) In proceedings described in subsections 49.011(4), (10), and (11), except in those counties where, pursuant to subsection 50.071(3), notices are by law required to be published by designated record newspaper, the clerk of the court shall post notices of action in the manner prescribed by s. 49.11 when such notices are required of persons authorized to proceed as insolvent and poverty-stricken persons under s. 57.081.

(2) Proof of publication shall be made by affidavit of the owner, publisher, proprietor, editor, business manager, foreman or other officer or employee of the newspaper having knowledge of such publication. The affidavit shall set forth or have attached a copy of the notice, shall set forth the dates of each publication and otherwise comply with the requirements of law.

History.—s. 10, ch. 20452, 1941; s. 5, ch. 28301, 1953; s. 2, ch. 29737, 1955; s. 5, ch. 67-254; s. 2, ch. 74-152; s. 1, ch. 75-205.
Note.—Former s. 48.10.

49.11 Notice of action, posting, proof.—If there is no newspaper published in the county, three copies of the notice shall be posted at least 28 days before the return day thereof in three different and conspicuous places in such county, one of which shall be at the front door of the courthouse in said county. Proof of posting shall be by affidavit of the person posting the notices, which affidavit shall include a copy of the notice posted and the date and places of its posting.

History.—s. 11, ch. 20452, 1941; s. 2, ch. 29737, 1955; s. 5, ch. 67-254.
Note.—Former s. 48.11.

49.12 Notice of action, mailing of.—If the residence of any party to be served by publication is stated in the sworn statement with more particularity than the name of the state or country in which the defendant resides, the clerk or the judge shall mail a copy of the notice by United States mail, with postage prepaid, to each defendant within 10 days after making or posting the notice, the date of mailing to be noted on the docket with a copy of the pleading for which the notice was issued.

History.—s. 13, ch. 20452, 1941; s. 7, ch. 29737, 1955; s. 5, ch. 67-254; s. 3, ch. 74-152.
Note.—Former s. 48.13.

CHAPTER 50

LEGAL AND OFFICIAL ADVERTISEMENTS

50.011 Where and in what language legal notices to be published.—Whenever by statute an official or legal advertisement or a publication, or notice in a newspaper has been or is directed or permitted in the nature of or in lieu of process, or for constructive service, or in initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, or for any purpose, including all legal notices and advertisements of sheriffs and tax collectors, the contemporaneous and continuous intent and meaning of such legislation all and singular, existing or repealed, is and has been and is hereby declared to be and to have been, and the rule of interpretation is and has been, a publication in a newspaper printed and published periodically once a week or oftener, containing at least 25 percent of its words in the English language, entered or qualified to be admitted and entered as second-class matter at a post office in the county where published, for sale to the public generally, available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public.

History.—s. 2, ch. 3022, 1877; RS 1296; GS 1727; s. 1, ch. 5610, 1907; RGS 2942; s. 1, ch. 12104, 1927; CGL 4666, 4901; s. 1, ch. 63-387; s. 6, ch. 67-254.
Note.—Former s. 49.01.

50.021 Publication when no newspaper in county.—When any law, or order or decree of court, shall direct advertisements to be made in any county and there be no newspaper published in the said county, the advertisement may be made by posting three copies thereof in three different places in said county, one of which shall be at the front door of the courthouse, and by publication in the nearest county in which a newspaper is published.

History.—RS 1297; GS 1728; RGS 2943; CGL 4667; s. 6, ch. 67-254.
Note.—Former s. 49.02.

50.031 Newspapers in which legal notices and process may be published.—No notice or publication required to be published in a newspaper in the nature of or in lieu of process of any kind, nature, character or description provided for under any law of the state, whether heretofore or hereafter enacted, and whether pertaining to constructive service, or the initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, by any court in this state, or any notice of sale of property, real or personal, for taxes, state, county or municipal, or sheriff's, guardian's or administrator's or any sale made pursuant to any judicial order, decree or statute or any other publication or notice pertaining to any affairs of the state, or any county, municipality or other political subdivision thereof, shall be deemed to have been published in accordance with the statutes providing for such publication, unless the same shall have been published for the prescribed period of time required for such publication, in a newspaper which at the time of such publication shall have been in existence for 1 year and shall have been entered as second-class mail matter at a post office in the county where published, or in a newspaper which is a direct successor of a newspaper which together have been so published; provided, however, that nothing herein contained shall apply where in any county there shall be no newspaper in existence which shall have been published for the length of time above prescribed. No legal publication of any kind, nature or description, as herein defined, shall be valid or binding or held to be in compliance with the statutes providing for such publication unless the same shall have been published in accordance with the provisions of this section. Proof of such publication shall be made by uniform affidavit.

History.—ss. 1-3, ch. 14830, 1931; CGL 1936 Supp. 4274(1); s. 7, ch. 22858, 1945; s. 6, ch. 67-254; s. 1, ch. 74-221.
Note.—Former s. 49.03.

50.041 Proof of publication; uniform affidavits required.—

(1) All affidavits of publishers of newspapers (or their official representatives) made for the purpose of establishing proof of publication of public notices or legal advertisements shall be uniform throughout the state.

(2) Each such affidavit shall be printed upon white bond paper containing at least 25 percent rag material and shall be 8½ inches in width and of convenient length, not less than 5½ inches. A white margin of not less than 2½ inches shall be left at the right side of each affidavit form and upon or in this space shall be substantially pasted a clipping which shall be a true copy of the public notice or legal advertisement for which proof is executed.

(3) In all counties having a population in excess of 450,000 according to the latest official decennial census, in addition to the charges which are now or may hereafter be established by law for the publication of every official notice or legal advertisement, there may be a charge not to exceed $2 for the preparation and execution of each such proof of publication or publisher's affidavit.

History.—s. 1, ch. 19290, 1939; CGL 1940 Supp. 4668(1); s. 1, ch. 63-49; s. 26, ch. 67-254; s. 1, ch. 76-58.
Note.—Former s. 49.04.

50.051 Proof of publication; form of uniform affidavit.—The printed form upon which all such affidavits establishing proof of publication are to be executed shall be substantially as follows:

NAME OF NEWSPAPER
Published (Weekly or Daily)

(Town or City) (County) FLORIDA
STATE OF FLORIDA
COUNTY OF .....:

Before the undersigned authority personally appeared ....., who on oath says that he is ..... of the ....., a ..... newspaper published at ..... in ..... County, Florida; that the attached copy of advertisement, being a ..... in the matter of ..... in the ..... Court, was published in said newspaper in the issues of .....

Affiant further says that the said ..... is a newspaper published at ....., in said ..... County, Florida, and that the said newspaper has heretofore been continuously published in said ..... County, Florida, each ..... and has been entered as second-class mail matter at the post office in ....., in said ..... County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and subscribed before me this ..... day of ....., A. D. 19.....

(Notary Public)
(SEAL)

History.—s. 2, ch. 19290, 1939; CGL 1940 Supp. 4668(2); s. 6, ch. 67-254.
Note.—Former s. 49.05.

50.061 Amounts chargeable.—

(1) The publisher of any newspaper publishing any and all official public notices or legal advertisements shall charge therefor the rates specified in this section without discount, rebate, commission or refund.

(2) The charge for publishing each such official public notice or legal advertisement shall be 70 cents per square inch for the first insertion and 40 cents per square inch for each subsequent insertion, except that:

(a) In all counties having a population of more than 304,000 according to the latest official decennial census, the charge for publishing each such official public notice or legal advertisement shall be 80 cents per square inch for the first insertion and 60 cents per square inch for each subsequent insertion.

(b) In all counties having a population of more than 450,000 according to the latest official decennial census, the charge for publishing each such official public notice or legal advertisement shall be 95 cents per square inch for the first insertion and 75 cents per square inch for each subsequent insertion.

(3) Where the regular established minimum commercial rate per square inch of the newspaper publishing such official public notices or legal advertisements is in excess of the rate herein stipulated, said minimum commercial rate per square inch may be charged for all such legal advertisements or official public notices for each insertion, including notices of all governmental bodies or agencies.

(4) Any person violating a provision of this section, either by allowing or accepting any discount, rebate, commission, or refund, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) All official public notices and legal advertisements shall be charged and paid for on the basis of 6-point type on 6-point body.

(6) Failure to charge the rates prescribed by this section shall in no way affect the validity of any official public notice or legal advertisement and shall not subject same to legal attack upon such grounds.

History.—s. 3, ch. 3022, 1877; RS 1298; GS 1729; RGS 2944; s. 1, ch. 12215, 1927; CGL 4668; ss. 1-2B, ch. 20264, 1941; s. 1, ch. 23663, 1947; s. 1, ch. 57-160; s. 1, ch. 63-50; s. 1, ch. 65-569; s. 6, ch. 67-254; s. 15, ch. 71-136; s. 35, ch. 73-332.
Note.—Former s. 49.06.

50.071 Publication costs; court docket fund.—

(1) There is established in Broward, Dade, and Duval Counties a court docket fund for the purpose of paying the cost of the publication of the fact of the filing of any civil case in the circuit court in those counties by their counties by their style and of the calendar relating to such cases. A newspaper qualified under the terms of s. 50.011 shall be designated as the record newspaper for such publication by an order of a majority of the judges in the judicial circuit in which the subject county is located and such order shall be filed and recorded with the Clerk of the Circuit Court for the subject county. The court docket fund shall be funded by a service charge of $1 added to the filing fee for all civil actions, suits, or proceedings filed in the circuit court of the subject county. The Clerk of the Circuit Court shall maintain such funds separate and apart, and the aforesaid fee shall not be diverted to any other fund or for any purpose other than that established herein. The Clerk of the Circuit Court shall dispense the fund to the designated record newspaper in the county on a quarterly basis. The designated record newspaper may be changed at the end of any fiscal year of the county by a majority vote of the judges of the judicial circuit of the county so ordering 30 days prior to the end of the fiscal year, notice of which order shall be given to the previously designated record newspaper.

(2) The board of county commissioners or comparable or substituted authority of any county in which a court docket fund is not specifically established in subsection (1) may, by local ordinance, create such a court docket fund on the same terms and conditions as established in subsection (1).

(3) The publishers of any designated record newspapers receiving the court docket fund established in subsection (1) shall, without charge, accept legal advertisement for the purpose of service of process by publication under subsections 49.011(4), (10), and (11) when such publication is required of persons authorized to proceed as insolvent and poverty stricken persons under s. 57.081.

History.—s. 1, ch. 75-206.

CHAPTER 51

SUMMARY PROCEDURE

51.011 Summary procedure.

51.011 Summary procedure.—The procedure in this section applies only to those actions specified by statute or rule. Rules of procedure apply to this section except when this section or the statute or rule prescribing this section provides a different procedure. If there is a difference between the time period prescribed in a rule and in this section, this section governs.

(1) PLEADINGS.—Plaintiff's initial pleading shall contain the matters required by the statute or rule prescribing this section or if none are so required, shall state a cause of action. All defenses of law or fact shall be contained in defendant's answer which shall be served within 5 days after service of process. If the answer incorporates a counterclaim, plaintiff shall include all defenses of law or fact in his answer to the counterclaim and shall serve it within 5 days after service of the counterclaim. No other pleadings are permitted. All defensive motions, including motions to quash, shall be heard by the court prior to trial.

(2) DISCOVERY.—Depositions on oral examination may be taken by any party at any time. Other discovery and admissions may be had only on order of court setting the time for compliance. No discovery postpones the time for trial except for good cause shown or by stipulation of the parties.

(3) JURY.—If a jury trial is authorized by law, any party may demand it in any pleading or by a separate paper served not later than 5 days after the action comes to issue. When a jury is in attendance at the close of pleading or the time of demand for jury trial, the action may be tried immediately; otherwise, the court shall order a special venire to be summoned immediately. If a special venire be summoned, the party demanding the jury shall deposit sufficient money with the clerk to pay the jury fees which shall be taxed as costs if he prevails.

(4) NEW TRIAL.—Motion for new trial shall be filed and served within 5 days after verdict, if a jury trial was had, or after entry of judgment, if trial was by the court. A reserved motion for directed verdict shall be renewed within the period for moving for a new trial.

(5) APPEAL.—Notice of appeal shall be filed and served within 30 days from the rendition of the judgment appealed from.

History.—s. 7, ch. 67-254; s. 23, ch. 73-333.

CHAPTER 55

JUDGMENTS

55.01 Judgments; general form.—

(1) In all actions where either party recovers a sum of money, the amount to which he is entitled may be awarded to him by the judgment generally, without any distinction being therein made as to whether such sum is recovered by way of debt or damages.

(2) Each final judgment shall contain thereon the address, if known to the prevailing party, of each person against whom judgment is rendered. Errors in names or addresses or failure to include same shall in no way affect the validity or finality of a final judgment.

History.—s. 40, ch. 1096, 1861; RS 1171; GS 1598; RGS 2800; CGL 4486; s. 9, ch. 67-254; s. 1, ch. 79-387.

55.03 Judgments; rate of interest, generally.—

(1) All judgments and decrees bear interest at the rate of 6 percent a year, except that judgments or decrees rendered in circuit court shall bear interest at the rate of 8 percent a year unless the judgment or decree is rendered on a written contract or obligation providing for interest at a lesser rate, in which case the judgment or decree bears interest at the rate specified in such written contract or obligation.

(2) Any process, writ, judgment, or decree which is directed to the sheriffs of the state to be dealt with as execution shall bear, on the face of the [1]process, writ, judgment, or decree, the rate of interest which it shall accrue from date of judgment until payment.

History.—s. 1, ch. 1562, 1866; RS 1176; GS 1604; RGS 2806; CGL 4493; s. 1, ch. 16051, 1933; s. 9, ch. 67-254; s. 7, ch. 77-354; s. 8, ch. 79-396.

[1]**Note.**—The word "process" was inserted by the editors for consistency of terminology with the first part of this sentence.

55.04 Judgments; rate of interest, bonds of county, etc.—All judgments and decrees rendered on any bonds or other written evidence of debt of any county, special road and bridge districts or any county for the use and benefit of any special road and bridge districts or incorporated city or town or taxing district bear interest at the rate of 5 percent a year. When a judgment or decree is rendered on a bond or other written evidence of debt providing for a lesser rate of interest, the judgment or decree bears interest at the rate specified in such bond or other written evidence of debt.

History.—s. 1, ch. 16835, 1935; CGL 1936 Supp. 4493(1); s. 9, ch. 67-254.

55.05 Judgments; power of attorney to confess invalid.—All powers of attorney for confessing or suffering judgment to pass by default or otherwise, and all general releases of error, heretofore made or to be made hereafter by any person whatsoever within or without this state, before such action brought, shall be absolutely null and void.

History.—s. 67, Nov. 23, 1828; RS 1178; GS 1606; RGS 2808; CGL 4495; s. 1, ch. 59-321; s. 9, ch. 67-254.

55.07 Judgments; effect of failure to record.—The failure to record any order, judgment or decree shall not affect the validity of any proceedings had thereon when collaterally attacked; provided, rendition of such order, judgment or decree is shown by the progress docket in the cause. This section shall apply to all proceedings heretofore had as well as to those hereafter had.

History.—ss. 1, 2, ch. 12114, 1927; CGL 4496; s. 9, ch. 67-254.

55.071 Judgments; effect of invalid affidavit or oath.—No order, judgment or decree heretofore or hereafter entered (including decrees pro confesso, defaults and judgments by default) which was or shall be predicated on a sworn statement, affidavit or oath shall be set aside or held void or voidable because the officer before whom such sworn statement or affidavit was or shall be made or such oath was or shall be administered was the attorney of record or otherwise the attorney for the person making such sworn statement, affidavit or oath.

History.—s. 1, ch. 22843, 1945; s. 9, ch. 67-254.

55.08 Judgments entered prior to June 5, 1939; liens.—Every judgment at law and decree in equity, which was entered in any circuit court of this state prior to June 5, 1939, created a lien and became binding upon the real estate of the defendant in the county where rendered. Such judgments and decrees shall create a lien upon real estate of the defendant situated in counties, other than where rendered, when a certified transcript of the said judgment or decree shall have been recorded in the county in which the real estate sought to be bound is situated.

History.—ss. 1, 2, Feb. 12, 1834; RS 1173, 1174; GS 1600, 1601; RGS 2802, 2803; CGL 4488, 4489; s. 9, ch. 67-254.

55.081 Statute of limitations, lien of judgment.—No judgment, order or decree of any court shall be a lien upon real or personal property within

the state after the expiration of 20 years from the date of the entry of such judgment, order or decree.

History.—s. 1, ch. 29954, 1955; s. 9, ch. 67-254.

55.09 Judgments of inferior courts entered prior to June 5, 1939; lien.—Judgments of county courts, county judges' courts and justices of the peace, entered prior to June 5, 1939, shall become a lien on the real estate of the defendant situated in any county, from the time of the filing in the office of the clerk of the circuit court for said county of a transcript of such judgment and the entry thereof by the clerk in a book to be kept by him for such purpose.

History.—s. 43, ch. 2040, 1875; RS 1175; GS 1602; RGS 2804; CGL 4490; s. 9, ch. 67-254.

55.10 Judgments and decrees; lien of all, generally; transfer of liens of security.—

(1) A judgment or decree becomes a lien on real estate in any county when a certified copy of it is recorded in the official records or judgment lien record of the county, whichever is maintained at the time of recordation.

(2) Any lien claimed under subsection (1) may be transferred, by any person having an interest in the real property upon which the lien is imposed or the contract under which the lien is claimed, from such real property to other security by either depositing in the clerk's office a sum of money or filing in the clerk's office a bond executed as surety by a surety insurer licensed to do business in this state. Such deposit or bond shall be in an amount equal to the amount demanded in such claim of lien plus interest thereon at 6 percent per year for 3 years and plus $100 to apply on any court costs which may be taxed in any proceeding to enforce said lien. Such deposit or bond shall be conditioned to pay any judgment or decree which may be rendered for the satisfaction of the lien for which such claim of lien was recorded and costs not to exceed $100. Upon such deposit being made or such bond being filed, the clerk shall make and record a certificate showing the transfer of the lien from the real property to the security and mail a copy thereof by registered or certified mail to the lienor named in the claim of lien so transferred, at the address stated therein. Upon the filing of the certificate of transfer, the real property shall thereupon be released from the lien claimed, and such lien shall be transferred to said security. The clerk shall be entitled to a fee of $2 for making and serving the certificate. Any number of liens may be transferred to one such security.

(3) Any excess of the security over the aggregate amount of any judgments or decrees rendered, plus costs actually taxed, shall be repaid to the party filing the same or his successor in interest. Any deposit of money shall be considered as paid into court and shall be subject to the provisions of law relative to payments of money into court and the disposition of same.

(4) Any party having an interest in such security or the property from which the lien was transferred may at any time, and any number of times, file a complaint in chancery in the circuit court of the county where such security is deposited for an order:

(a) To require additional security;

(b) To require reduction of security;

(c) To require change or substitution of sureties;

(d) To require payment or discharge thereof; or

(e) Relating to any other matter affecting said security.

History.—s. 1, ch. 10166, 1925; s. 1, ch. 14749, 1931; ss. 1-3, ch. 17998, 1937; s. 2, ch. 19270, 1939; CGL 1940 Supp. 4865(3); s. 9, ch. 67-254; s. 1, ch. 71-56; s. 1, ch. 77-462.

cf.—s. 28.29 Recording of orders and judgments.

55.101 Same; validation; limitations.—

(1) Recordation of all judgments and decrees heretofore made under and in accordance with former s. 28.21(11) or former s. 28.221 is validated, and the judgments and decrees are declared to be liens on real estate in the counties where certified copies thereof are recorded from the date of recordation.

(2) All judgments and decrees recorded subsequent to June 26, 1967, other than in accordance with former s. 28.21(11) or former s. 28.221, shall not constitute liens on real estate until certified copies are recorded as provided in s. 55.10.

History.—s. 2, ch. 71-56.

55.11 Judgments; no lien against municipalities.—No money judgment or decree against a municipal corporation is a lien on its property nor shall any execution or any writ in the nature of an execution based on the judgment or decree be issued or levied.

History.—s. 1, ch. 17125, 1935; CGL 1936 Supp. 4492(4); s. 9, ch. 67-254.

55.13 Judgments; rights of sureties, etc.—Any person paying money as surety for the principal in any bond or note, which he has signed as surety, upon which judgment has been obtained, shall have the same right to control the said judgment and collect the same, with principal, interest and costs, as the plaintiff creditor would have had if the debt had not been paid. Such judgment, and execution thereon, shall have the same lien on property of the principal as though the surety were the original plaintiff.

History.—ss. 1, 2, ch. 765, 1855; RS 1177; GS 1605; RGS 2807; CGL 4494; s. 9, ch. 67-254.

55.141 Satisfaction of judgments and decrees; duties of clerk and judge.—

(1) All judgments and decrees for the payment of money rendered in the courts of this state and which have become final, may be satisfied at any time prior to the actual levy of execution issued thereon by payment of the full amount of such judgment or decree, with interest thereon, plus the costs of the issuance, if any, of execution thereon into the registry of the court where rendered.

(2) Upon such payment, the clerk, or the judge if there be no clerk, shall issue his receipt therefor and shall record a satisfaction of judgment, provided by the judgment holder, upon payment of the recording charge prescribed in s. 28.24(16) plus the necessary costs of mailing to the clerk or judge. The clerk or judge shall formally notify the owner of record of such judgment or decree, if such person and his address are known to the clerk or judge receiving such payment, and, upon request therefor, shall pay over to the person entitled, or to his order, the full amount of the payment so received, less his fees for issuing execution on such judgment or decree, if any

has been issued, and less his fees for receiving into and paying out of the registry of the court such payment, together with the fees of the clerk for receiving into and paying such money out of the registry of the court.

(3) Full payment of judgments and decrees as in the preceding subsections of this section provided shall constitute full payment and satisfaction thereof and any lien created by such judgment or decree shall thereupon be satisfied and discharged.

History.—ss. 1-3, ch. 22672, 1945; s. 9, ch. 67-254; s. 2, ch. 77-354.
Note.—Former s. 55.62.

55.145 Discharge of judgments in bankruptcy.—At any time after 1 year has elapsed since a bankrupt or debtor was discharged from his debts, pursuant to the act of congress relating to bankruptcy, the bankrupt or debtor, his receiver or trustee, or any interested party may petition the court in which the judgment was rendered against such bankrupt or debtor for an order to cancel and discharge such judgment. The petition shall be accompanied by a certified copy of the discharge of said bankrupt or by a certified copy of the order of confirmation of the arrangement filed by said debtor. The petition, accompanied by copies of the papers upon which it is made, shall be served upon the judgment creditor in the manner prescribed for service of process in a civil action. If it appears upon the hearing that the bankrupt or debtor has been discharged from the payment of that judgment or of the debt upon which it was recovered, the court shall enter an order canceling and discharging said judgment. The order of cancellation and discharge shall have the same effect as a satisfaction of judgment, and a certified copy thereof may be recorded in the same manner as a satisfaction of judgment. This section shall apply only to liens under judgments or obligations duly scheduled in the bankruptcy proceedings.

History.—s. 1, ch. 70-12.

CHAPTER 56

FINAL PROCESS

56.011 Executions; capias ad satisfaciendum abolished.—In no case shall a capias ad satisfaciendum be issued upon a judgment, nor shall the body of any defendant be subject to arrest or confinement for the payment of money, except it be for fines imposed by lawful authority.

History.—s. 53, Nov. 23, 1828; RS 1184; GS 1612; RGS 2816; CGL 4503; s. 11, ch. 67-254.

Note.—Former s. 55.14.

56.021 Executions; issuance and return, alias, etc.—When issued, an execution is valid and effective during the life of the judgment or decree on which it is issued. When fully paid, the officer executing it shall make his return and file it in the court which issued the execution. If the execution is lost or destroyed, the party entitled thereto may have an alias, pluries or other copies on making proof of such loss or destruction by affidavit and filing it in the court issuing the execution.

History.—RS 1187; GS 1615; RGS 2819; CGL 4506; ss. 1, 2, ch. 17904, 1937; CGL 1940 Supp. 4505(1); s. 11, ch. 67-254.

Note.—Former s. 55.16.

56.031 Executions; form.—All executions shall be dated on the day on which they are issued, shall be directed to all and singular the sheriffs of the state and shall be in full force throughout the state.

History.—s. 1, Feb. 17, 1833; RS 1186; GS 1614; RGS 2818; CGL 4505; s. 11, ch. 67-254.

Note.—Former s. 55.17.

56.041 Executions; collection and return.—All executions shall be returnable when satisfied and the officers to whom they are delivered shall collect the amounts thereof as soon as possible. All receipts shall be endorsed on the execution.

History.—s. 2, Mar. 15, 1844; RS 1188; GS 1616; RGS 2820; CGL 4507; s. 11, ch. 67-254.

Note.—Former s. 55.18.

56.051 Executions; collection when against principal and sureties.—Where there are executions against principals and sureties, or an execution against a principal and surety or sureties, it shall be the duty of the sheriff or other officer to make the money out of the property of the principal, unless he be insolvent or has no property, in which case the execution may proceed against the property of the sureties.

History.—s. 7, Mar. 15, 1844; RS 1189; GS 1617; RGS 2821; CGL 4508; s. 11, ch. 67-254.

Note.—Former s. 55.19.

56.061 Property subject to execution.—Lands and tenements, goods and chattels, equities of redemption in real and personal property, and stock in corporations, shall be subject to levy and sale under execution. Likewise, the interest in personal property in possession of a vendee under a retained title contract or conditional sale contract shall be subject to levy and sale under execution to satisfy a judgment against the vendee. This shall be done by making the levy on such personal property.

History.—s. 1, Mar. 15, 1844; s. 1, ch. 44, 1845; s. 1, ch. 3917, 1889; RS 1190; GS 1618; RGS 2822; CGL 4509; s. 1, ch. 61-199; s. 11, ch. 67-254.

Note.—Former s. 55.20.

56.071 Executions on equities of redemption; discovery of value.—On motion made by the party causing a levy to be made on an equity of redemption the court from which the execution issued shall order the mortgagor, mortgagee and all other persons interested in the mortgaged property levied on to appear and be examined about the amount remaining due on the mortgage, the amount that has been paid, to whom and when paid so that the value of the equity of redemption may be ascertained before it is sold. The court may appoint a master to conduct the examination. This section shall also apply to the interest of and personal property in possession of a

vendee under a retained title contract or conditional sales contract.

History.—s. 2, ch. 44, 1845; RS 1208; GS 1638; RGS 2842; CGL 4529; s. 1, ch. 61-191; s. 11, ch. 67-254; s. 13, ch. 73-334.
Note.—Former s. 55.21.

56.09 Executions against corporations; generally.—On any judgment against a corporation plaintiff may have an execution levied on the current money as well as on the goods and chattels, lands and tenements of said corporation.

History.—s. 4, Feb. 11, 1834; RS 1210; GS 1640; RGS 2844; CGL 4531; s. 11, ch. 67-254.
Note.—Former s. 55.23.

56.10 Executions against corporations; receivership.—If an execution cannot be satisfied in whole or in part for lack of property of the defendant corporation subject to levy and sale, on motion of the judgment creditor the circuit court in chancery within whose circuit such corporation is or has been doing business, or in which any of its effects are found, may sequestrate the property, things in action, goods and chattels of the corporation for the purpose of enforcing the judgment, and may appoint a receiver for the corporation. A receiver so appointed is subject to the rules prescribed by law for receivers of the property of other judgment debtors. His power shall extend throughout the state.

History.—s. 1, ch. 1870, 1872; RS 1211; GS 1641; RGS 2845; CGL 4532; s. 11, ch. 67-254.
Note.—Former s. 55.24.

56.11 Executions; levy, substitution of property.—The defendant in execution, his agent or attorney, shall at all times have it in his power to release any property which may have been levied on by surrendering other property of a value equivalent, in the opinion of the officer levying the execution, to that released.

History.—RS 1191; GS 1620; RGS 2824; CGL 4511; s. 11, ch. 67-254.
Note.—Former s. 55.33.

56.12 Executions; levy, forthcoming bond.—If a defendant in execution wants to retake possession of any property levied on, he may do so by executing a bond with surety to be approved by the officer in favor of the plaintiff in a sum double the value of the property retaken as fixed by the officer holding the execution and conditioned that the property will be forthcoming on the day of sale stated in the bond.

History.—RS 1192; GS 1621; RGS 2825; CGL 4512; s. 11, ch. 67-254.
Note.—Former s. 55.34.

56.13 Executions; forfeiture of forthcoming bond.—Should the execution remain unpaid, and the parties to the bond fail to produce such property by the day specified, said bond shall be returned to the court from which the execution issued, as forfeited; and the clerk, or the court if it has no clerk, shall enter up judgment forthwith against the sureties for the value fixed as aforesaid of the property so bonded, or if the value of the property exceed the amount of the execution, then for the amount of the execution, and execution shall issue therefor. Such proceedings shall not affect the liability of the principal upon the original judgment.

History.—RS 1193; GS 1622; RGS 2826; CGL 4513; s. 11, ch. 67-254.
Note.—Former s. 55.35.

56.14 Executions upon forthcoming bond; levy.—No bonds, as hereinbefore provided, shall be allowed to be given for property seized upon the execution on the judgment upon the forfeited bond.

History.—s. 1, ch. 727, 1855; RS 1194; GS 1623; RGS 2827; CGL 4514; s. 11, ch. 67-254.
Note.—Former s. 55.36.

56.15 Executions; stay of illegal writs.—If any execution issues illegally, the defendant in execution may obtain a stay by making and delivering an affidavit to the officer having the execution, stating the illegality and whether any part of the execution is due, with a bond with surety payable to plaintiff in double the amount of the execution or the part of which a stay is sought conditioned to pay the execution or part claimed to be illegal and any damages for delay if the affidavit is not well founded. On receipt of such affidavit and bond the officer shall stay proceedings on the execution and return the bond and affidavit to the court from which the execution issued. The court shall pass on the question of illegality as soon as possible. If the execution is adjudged illegal in any part, the court shall stay it as to the part but if it is adjudged legal in whole or in part, the court shall enter judgment against the principal and surety on such bond for the amount of so much of the execution as is adjudged to be legal and execution shall issue thereon.

History.—ss. 2, 3, Feb. 15, 1834; RS 1195; GS 1624; RGS 2828; CGL 4515; s. 11, ch. 67-254.
Note.—Former s. 55.37.

56.16 Executions; claims of third parties to property levied on.—If any person other than the defendant in execution claims any property levied on, he may obtain possession of the property by filing with the officer having the execution an affidavit by himself, his agent or attorney, that the property claimed by him belongs to him and by furnishing the officer a bond with surety to be approved by the officer in favor of plaintiff in double the value of the goods claimed as the value is fixed by the officer and conditioned to deliver said property on demand of said officer if it is adjudged to be the property of the defendant in execution and to pay plaintiff all damages found against him if it appears that the claim was interposed for the purpose of delay.

History.—s. 9, Feb. 17, 1833; s. 1, Mar. 16, 1844; RS 1197; GS 1626; RGS 2830; CGL 4517; s. 11, ch. 67-254.
Note.—Former s. 55.39.

56.17 Executions; duty of officer on claim of third person being filed.—On receipt of the bond and affidavit the officer shall deliver the property to the claimant and desist from any further proceedings under the execution until the right of property is tried. He shall return the execution to the court from which it issued with the affidavit and bond.

History.—ss. 9, 10, Feb. 17, 1833; RS 1198; GS 1627; RGS 2831; CGL 4518; s. 11, ch. 67-254.

Note.—Former s. 55.40.

56.18 Executions; trial of claims of third persons.—As soon as possible after the return a jury, if not waived, shall be empaneled to try the right of property. If the verdict is in favor of plaintiff and it appears that the claim was interposed for delay, plaintiff may be awarded reasonable damages, not exceeding 20 percent of the value of the property claimed. If the claimant denies in writing under oath filed at least 3 days before the trial, the correctness of the appraisement of the value of the property by the officer levying the execution, and the verdict is in favor of plaintiff, the jury if not waived, shall fix the value of each item thereof, or of the items covered by such denial.

History.—s. 10, Feb. 17, 1833; RS 1199; GS 1628; RGS 2832; CGL 4519; s. 11, ch. 67-254.
Note.—Former s. 55.41.

56.19 Judgments upon claims of third persons.—Upon the verdict of the jury, the court shall enter judgment deciding the right of property, and if the verdict is for plaintiff, awarding a recovery by the plaintiff from the defendant and his sureties, of the value (as fixed by the officer, or as fixed by the jury if fixed by it) of such parts of the property as the jury may have found subject to execution, and awarding separately such damages as the jury may have awarded, and of all costs attending the presentation and trial of the claim.

History.—RS 1200; GS 1629; RGS 2833; CGL 4520; s. 11, ch. 67-254.
Note.—Former s. 55.42.

56.20 Executions on judgments against third person claimants.—If the execution issued on the judgment is not paid, it shall be satisfied in the usual manner unless on demand of the officer holding it, the principal and surety in the claim bond deliver the property released under the claim bond to the officer and pay him the damages and costs awarded to plaintiff. If the property is returned to the officer but damages and costs are not paid, execution shall be enforced for the damages and costs. If part of the property is returned to him, the execution shall be enforced for the value, fixed as aforesaid, of that not returned. All property returned shall be sold under the original execution against the original defendant.

History.—RS 1201; GS 1630; RGS 2834; CGL 4521; s. 11, ch. 67-254.
Note.—Former s. 55.43.

56.21 Execution sales; notice.—Notice of all sales under execution shall be given by advertisement once each week for 4 successive weeks in a newspaper published in the county in which the sale is to take place or, if there is no newspaper published in the county, by posting notices at the door of the courthouse of the county and at three other public places in the county for 30 days; but the time of such notice may be shortened in the discretion of the court from which the execution issued, upon affidavit that the property to be sold is subject to decay and will not sell for its full value if held for a period of 30 days. On or before the date of the first publication or posting of the notice of sale, a copy of the notice of sale shall be furnished by certified mail to the attorney of record of the judgment debtor, or to the judgment debtor at the judgment debtor's last known address if the judgment debtor does not have an attorney of record. Such copy of the notice of sale shall be mailed even though a default judgment was entered.

History.—s. 3, Feb. 17, 1833; RS 1202; GS 1631; RGS 2835; CGL 4522; s. 11, ch. 67-254; s. 2, ch. 77-462.
Note.—Former s. 55.44.

56.22 Execution sales; time of sale.—All sales of property under legal process shall take place between the hours of 11 a.m. and 2 p.m. of any day of the week except Saturday and Sunday, and shall continue from day to day until such property be disposed of.

History.—s. 2, ch. 3256, 1881; RS 1203; GS 1632; RGS 2836; CGL 4523; s. 1, ch. 61-104; s. 11, ch. 67-254.
Note.—Former s. 55.45.

56.23 Execution sales; place of sale, generally.—All real and personal property levied upon under execution shall be exposed to sale at the courthouse door of the county in which the real estate shall be situated or the personal property shall have been seized. If, however, the property to be sold shall consist of merchandise or other property not easily movable, or movable at great relative expense, as determined by the sheriff, the sale may take place where the property is stored or located under the levy.

History.—s. 3, Feb. 17, 1833; RS 1204; GS 1633; RGS 2837; CGL 4524; s. 11, ch. 67-254; s. 5, ch. 79-396.
Note.—Former s. 55.46.

56.24 Execution sales; place of sale where no courthouse.—In any county where, by reason of sale or destruction of the courthouse, county officials are occupying temporary quarters, all sales required to be at the courthouse door shall be made at the door of the building occupied by the clerk of the circuit court, and all notices required to be posted at the door of the courthouse of the county shall be posted at the door of the building occupied by the clerk of the circuit court. Sales so made and notices so posted shall be deemed to be as valid and effectual as if the building occupied by the clerk of the circuit court is in fact the courthouse of the particular county.

History.—s. 1, ch. 18009, 1937; CGL 1940 Supp. 4524(1); s. 11, ch. 67-254.
Note.—Former s. 55.47.

56.25 Execution sale; bill of sale or deed.—When a sale is made under an execution, the officer making the sale shall execute and deliver to the purchaser a deed or bill of sale to the property on payment of the purchase money and the cost of the deed or bill of sale.

History.—s. 6, Feb. 17, 1833; RS 1205; GS 1634; RGS 2838; CGL 4525; s. 11, ch. 67-254.
Note.—Former s. 55.48.

56.26 Executions; mandamus to force levy and sale.—When an officer holds an unsatisfied execution and refuses to levy on property liable thereunder and on which it is his duty to levy or having levied, refuses to advertise and sell the property levied on, plaintiff in execution is entitled to an alternative writ of mandamus requiring the officer to levy

such execution or advertise and sell the property levied on, or both, as the case may be.

History.—s. 1, ch. 4914, 1901; GS 1635; RGS 2839; CGL 4526; s. 1, ch. 61-330; s. 11, ch. 67-254.
Note.—Former s. 55.49.

56.27 Executions; payment to execution creditor of money collected.—All money received under executions shall be paid to the party in whose favor the execution was issued or his attorney. The receipt of the attorney shall be a release of the officer paying the money to him. When the name of more than one attorney appears in the court file, the money shall be paid to the attorney who originally commenced the action or who made the original defense unless the file shows that another attorney has been substituted. When property sold under execution brings more than the amount of the execution, the surplus shall be paid to defendant without delay.

History.—s. 57, Nov. 23, 1828; RS 1206; GS 1636; RGS 2840; CGL 4527; s. 11, ch. 67-254.
Note.—Former s. 55.50.

56.275 Disposition of unclaimed proceeds of sales; notice; claims procedure.—

(1) The sheriffs of the various counties of the state are hereby authorized, at their discretion, on or before September 25 of each and every year hereafter, to pay into the fine and forfeiture funds of their respective counties any or all unclaimed proceeds from sheriffs' sales held under writs of execution and for which moneys claims have not been made prior to January 1 of the preceding year.

(2) The sheriffs of the respective counties may, during the month of July of each year, hereafter make and compile lists of any or all unclaimed moneys which came into their hands as provided in subsection (1). Such compilations shall list, in addition to the name of the defendants, the names of such lienholders, claimants, and interested parties who may have valid claims, if known, and shall specify the respective amounts of such unclaimed moneys. Each such list or compilation shall be published one time during the month of July in a newspaper of general circulation in the county served by the sheriff, and said notice shall specify that, unless such moneys are claimed on or before September 1 after such publication, same shall be declared forfeited to such county. Proof of such publication shall be made by the publisher of such newspaper and shall be filed and recorded in the minutes of the county commission of such county.

(3) A person having or claiming any interest in said funds or any portion of them shall file his written claim with the sheriff of the county having custody of such funds within the time specified by said notice and shall make sufficient proof to said sheriff of his ownership and upon so doing shall be entitled to receive any part of the moneys so claimed. Unless claim is filed within such time as aforesaid, all claims in reference thereto are forever barred.

(4) The cost of publishing the notices as required by subsection (2) shall be paid by the county commissioners, and the sheriff shall receive as compensation the regular fee allowed by statute for the collection of fines, fees, and costs adjudged to the state upon the amounts remitted to the fine and forfeiture fund.

(5) Upon such payment to the fine and forfeiture fund, the sheriff shall be released and discharged from any and all further responsibility or liability in connection therewith.

History.—s. 9, ch. 79-396.

56.28 Executions; failure of officer to pay over moneys collected.—If any officer collecting money under execution shall fail or refuse to pay it over within 30 days after it shall have been received by him, or within 10 days after demand made by the plaintiff or his attorney of record, he shall be liable to pay the same and 20 percent damages, to be recovered by motion in court.

History.—s. 7, Feb. 17, 1853; RS 1207; GS 1637; RGS 2841; CGL 4528; s. 11, ch. 67-254.
Note.—Former s. 55.51.

56.29 Proceedings supplementary.—

(1) When any sheriff holds an unsatisfied execution, the plaintiff in execution may file an affidavit so stating and that the execution is valid and outstanding and thereupon is entitled to these proceedings supplementary to execution.

(2) On such plaintiff's motion the court shall require the defendant in execution to appear before it or a master at a time and place specified by the order in the county of the defendant's residence to be examined concerning his property.

(3) The order shall be served in a reasonable time before the date of the examination in the manner provided for service of summons or may be served on such defendant or his attorney as provided for service of papers in the rules of civil procedure.

(4) Testimony shall be under oath, shall be comprehensive and cover all matters and things pertaining to the business and financial interests of defendant which may tend to show what property he has and its location. Any testimony tending directly or indirectly to aid in satisfying the execution is admissible. A corporation must attend and answer by an officer who may be specified in the order. Examination of witnesses shall be as at trial and any party may call other witnesses.

(5) The judge may order any property of the judgment debtor, not exempt from execution, in the hands of any person or due to the judgment debtor to be applied toward the satisfaction of the judgment debt.

(6)(a) When, within 1 year before the service of process on him, defendant has had title to, or paid the purchase price of, any personal property to which his wife, any relative, or any person on confidential terms with defendant claims title and right of possession at the time of examination, the defendant has the burden of proof to establish that such transfer or gift from him was not made to delay, hinder, or defraud creditors.

(b) When any gift, transfer, assignment or other conveyance of personal property has been made or contrived by defendant to delay, hinder or defraud creditors, the court shall order the gift, transfer, assignment or other conveyance to be void and direct the sheriff to take the property to satisfy the execution. This does not authorize seizure of property exempted from levy and sale under execution or property which has passed to a bona fide purchaser for

value and without notice. Any person aggrieved by the levy may proceed under ss. 56.16-56.20.

(7) At any time the court may refer the proceeding to a master who may be directed to report findings of law or fact, or both. The master has all the powers thereof, including the power to issue subpoena, and shall be paid the fees provided by law.

(8) A party or a witness examined under these provisions is not excused from answering a question on the ground that his answer will tend to show him guilty of the commission of a fraud, or prove that he has been a party or privy to, or knowing of a conveyance, assignment, transfer, or other disposition of property for any purpose, or that he or another person claims to have title as against the defendant or to hold property derived from or through the defendant, or to be discharged from the payment of a debt which was due to the defendant or to a person in his behalf. An answer cannot be used as evidence against the person so answering in any criminal proceeding.

(9) The court may enter any orders required to carry out the purpose of this section to subject property or property rights of any defendant to execution.

(10) Any person failing to obey any order issued under this section by a judge or master or to attend in response to a subpoena served on him may be held in contempt.

(11) Costs for proceedings supplementary shall be taxed against the defendant as well as all other incidental costs determined to be reasonable and just by the court including, but not limited to, docketing the execution, sheriff's service fees, and court reporter's fees.

History.—ss. 1-10, ch. 7842, 1919; CGL 4540-4549; s. 1, ch. 63-144; s. 11, ch. 67-254; s. 1, ch. 72-12; s. 13, ch. 73-334.

Note.—Former ss. 55.52-55.611.

CHAPTER 57

COURT COSTS

57.011 Costs; security by nonresidents.—When a nonresident plaintiff begins an action or when a plaintiff after beginning an action removes himself or his effects from the state, he shall file a bond with surety to be approved by the clerk of $100, conditioned to pay all costs which may be adjudged against him in said action in the court in which the action is brought. On failure to file such bond within 30 days after such commencement or such removal, the defendant may, after 20 days' notice to plaintiff (during which the plaintiff may file such bond), move to dismiss the action or may hold the attorney bringing or prosecuting the action liable for said costs and if they are adjudged against plaintiff, an execution shall issue against said attorney.

History.—s. 8, Nov. 23, 1828; s. 4, Nov. 21, 1829; RS 1301; GS 1733; RGS 2948; CGL 4672; s. 13, ch. 67-254.
Note.—Former s. 58.01.

57.021 Costs; taxing.—The clerk or the judge shall tax the costs accruing in each action when it is determined and shall keep a duplicate of the costs bill on file among the original papers in the action. Each item of costs shall be enumerated in the bill.

History.—ss. 5, 6, ch. 78, 1847; RS 1302; GS 1734; RGS 2949; CGL 4673; s. 13, ch. 67-254.
Note.—Former s. 58.02.

57.031 Costs; record.—All officers who are allowed to charge fees and costs shall keep a book in which they shall record an itemized account of all the costs and fees which they charge against parties having business with them. The book shall be open at all times for inspection of parties wishing to examine the costs charged for any service rendered by the officers.

History.—ss. 1, 2, ch. 3252, 1881; RS 1303; GS 1735; RGS 2950; CGL 4674; s. 13, ch. 67-254.
Note.—Former s. 58.03.

57.041 Costs; recovery from losing party.—
(1) The party recovering judgment shall recover all his legal costs and charges which shall be included in the judgment; but this section does not apply to executors or administrators in actions when they are not liable for costs.

(2) Costs may be collected by execution on the judgment or order assessing costs.

History.—s. 71, Nov. 23, 1828; s. 7, ch. 73, 1847; RS 1304; GS 1736; RGS 2951; CGL 4675; s. 13, ch. 67-254.
Note.—Former s. 58.04.

57.051 Costs; prohibition against unlawful exaction.—
(1) PROHIBITION.—No officer shall make two charges for the same official act or service, nor charge for any constructive service. No fee shall be charged for any official service performed or claimed to be performed by any officer unless the fee is specifically authorized and its amount is specified by law.

(2) PENALTY.—When any officer willfully charges or levies more than he is entitled to, he shall forfeit and pay to the party injured four times the amount unjustly claimed which may be recovered on motion in the court where the services were rendered.

History.—ss. 2, 8, ch. 73, 1847; ss. 3, 4, ch. 1535, 1866; RS 1305; GS 1737; RGS 2952; CGL 4676; s. 13, ch. 67-254.
Note.—Former s. 58.05.
cf.—s. 28.24 Fees of clerks of circuit court.
s. 839.11 Extortion and malpractice generally.

57.061 Costs; recovery of illegally exacted; procedure.—
(1) SUMMARY PROCEEDINGS.—Any person aggrieved by any charge for costs by any officer may have its correctness determined by a court and jury by giving 5 days' notice to the officer making the charge, stating in the notice the time and place of trial. The judge shall enter the action for trial on the day specified in the notice unless he extends the time.

(2) VERDICT AND JUDGMENT.—If the jury finds for plaintiff, it shall find the amount which has been improperly collected and the court shall enter judgment for four times the amount on which execution shall issue.

History.—ss. 4-6, Mar. 10, 1843; s. 2, ch. 73, 1847; RS 1305; GS 1737; RGS 2952; CGL 4676; s. 13, ch. 67-254.
Note.—Former s. 58.06.

57.071 Costs; what taxable.—If costs are awarded to any party the following shall also be allowed:

(1) The reasonable premiums or expenses paid on all bonds or other security furnished by such party.

(2) The expense of the court reporter for per diem, transcribing proceedings and depositions, including opening statements and arguments by counsel.

History.—s. 1, ch. 16246, 1933; CGL 1936 Supp. 4680(1); s. 13, ch. 67-254.
Note.—Former s. 58.08.

57.081 Costs; right to proceed where prepayment of costs waived.—
(1) Insolvent and poverty-stricken persons having actionable claims or demands shall receive the services of the courts, sheriffs, and clerks of the county in which they reside without charge. No prepayment of costs to any judge, clerk, or sheriff in the county is required in any action when the party has

obtained a certification of insolvency from the clerk in each action, based on affidavits filed with him that the applicant is insolvent and unable to pay the charges otherwise payable by law to any of such officers. The affidavits shall be supported by a written certificate signed by a member of the bar of the county that he has made an investigation to ascertain the truth of applicant's affidavit and that he believes it to be true; that he has investigated the nature of plaintiff's claim and that in his opinion it is meritorious as a matter of law; and that he has not been paid or promised payment of any remuneration for his service and intends to act as attorney for applicant without compensation. On the failure or refusal of the clerk to issue a certificate of insolvency, applicant is entitled to a review of his application for the certificate by the court having jurisdiction of the cause of action.

(2) Any sheriff who, in complying with the terms of this section, expends his personal funds for automotive fuel or ordinary carfare in serving the process of those qualifying under this section may requisition the board of county commissioners of the county for the actual expense, and on the submission to the board of county commissioners of appropriate proof of any such expenditure, the board of county commissioners shall pay the amount of the actual expense from the general fund of the county to the requisitioning officer.

(3) If plaintiff recovers in the action, costs shall be taxed in his favor as provided by law and when collected, shall be applied to pay costs which otherwise would have been required and which have not been paid.

History.—ss. 1-3, ch. 17883, 1937; CGL 1940 Supp. 4680(2); s. 15, ch. 29615, 1955; s. 1, ch. 57-251; s. 13, ch. 67-254; s. 14, ch. 73-334.
Note.—Former s. 58.09.

57.091 Costs; refunded to counties in certain proceedings relating to state prisoners.—All lawful fees, costs, and expenses hereafter adjudged against, and paid by, any county in all competency proceedings and all criminal prosecutions against state prisoners imprisoned in a state correctional institution, and in all habeas corpus cases brought to test the legality of the imprisonment of state prisoners of such correctional institutions, shall be refunded to the county paying the sum from the General Revenue Fund in the state treasury in the manner and to the extent herein provided, to wit: between the 1st and 15th of the month next succeeding the month in which the fees, costs, and expenses have been allowed and paid by the county, the clerk of the court shall make requisition on the Comptroller for the fees, costs, and expenses so allowed and paid during the preceding month, giving the style of the cases in which fees, costs, and expenses were incurred and the amount and items of cost in each case; providing a certified copy of the judgment adjudging the fees, costs, and expenses against the county and showing that the amount represented thereby has been approved by the presiding judge, paid by the county, and verified by the clerk; and attaching a certified copy of the bill as approved and allowed by the board of county commissioners of the county. If the Comptroller finds the bills legal and adjudged against and paid by the county, he shall draw his warrant in the amount thereof, or in the amount he finds legal and adjudged against and paid by the county, in favor of the county paying the fees, costs, and expenses, which shall be paid by the State Treasurer from the General Revenue Funds of the state.

History.—s. 1, ch. 19272, 1939; CGL 1940 Supp. 8489(1); s. 13, ch. 67-254; s. 3, ch. 76-287; s. 17, ch. 79-164.
Note.—Former s. 58.10.

57.101 Costs in supreme court; certain not taxable.—The costs of copies of the record of any paper on file in the supreme court shall not be taxed as costs against the losing party unless the copies have been ordered by him or his attorney.

History.—s. 5, ch. 1137, 1861; RS 1340; GS 1775; RGS 2999; CGL 4733; s. 13, ch. 67-254.
Note.—Former s. 58.11.

57.105 Attorney's fee.—The court shall award a reasonable attorney's fee to the prevailing party in any civil action in which the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party.

History.—s. 1, ch. 78-275.

CHAPTER 59

APPELLATE PROCEEDINGS; GENERAL PROVISIONS

(See Art. V, State Constitution for jurisdiction of various Appellate Courts.)

59.04 Appeal from order granting new trial.—Upon the entry of an order granting a new trial, the party aggrieved may prosecute an appeal to the proper appellate court without waiting for final judgment. If the judgment is reversed, the appellate court may direct that final judgment be entered in the trial court for the party obtaining the verdict unless a motion in arrest of judgment or for a judgment notwithstanding the verdict be made and prevail.

History.—RS 1267; GS 1695; RGS 2905; CGL 4615; s. 4, ch. 22854, 1945; s. 1, ch. 71-316.

59.041 Harmless error; effect.—No judgment shall be set aside or reversed, or new trial granted by any court of the state in any cause, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence or for error as to any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire case it shall appear that the error complained of has resulted in a miscarriage of justice. This section shall be liberally construed.

History.—s. 1, ch. 6223, 1911; RGS 2812; CGL 4499; s. 14, ch. 67-254.
Note.—Former s. 54.23.

59.06 Matters reviewable on appeal.—

(1) WHAT MAY BE ASSIGNED AS ERROR.—All judgments and orders made in any action wherein the trial court:

(a) May allow or refuse to allow any motion:

1. For a new trial or rehearing,
2. For leave to amend pleadings,
3. For leave to file new or additional pleadings,
4. To amend the record, or
5. For continuance of the action; or

(b) Shall sustain or overrule any motion to dismiss the action

may be assigned as error upon any appeal from the final judgment or order in the action. The appellate court shall hear and determine the matter so assigned under like rules as in other actions.

(2) EFFECT OF PLEADING OVER OR AMENDING.—Pleading over or amending pleadings after order upon motion to dismiss shall not waive the right to have the judgment or order reviewed.

History.—s. 1, ch. 521, 1853; s. 1, ch. 3430, 1883; RS 1265; GS 1693; RGS 2903; CGL 4608; s. 6, ch. 22854, 1945; s. 2, ch. 71-316.

59.081 Time for invoking appellate jurisdiction of any court.—

(1) The time within which and the method by which the jurisdiction of any court in this state possessed of power to review the action of any other court, commission, officer or bureau may be invoked by appeal, certiorari, petition for review or other process by whatever name designated, and the manner of computing such time shall be prescribed by rule of the supreme court.

(2) Failure to invoke the jurisdiction of any such court within the time prescribed by such rules shall divest such court of jurisdiction to review such cause.

History.—ss. 1-3, ch. 67-175; ss. 29, 30, ch. 69-52; s. 16, ch. 71-355.

59.13 Supersedeas on petition for certiorari.—When it appears to the trial court that a petition for certiorari has been or is about to be applied for in an appellate court, the trial court may grant a supersedeas upon petitioner giving a good and sufficient bond, conditioned that the petition shall be duly presented to the appellate court within the time prescribed by the Florida Appellate Rules and to pay all costs, damages, and expenses occasioned by reason of the stay of proceedings with such other and further conditions as may be fixed by the trial court in the event the order or judgment for which a review is sought is not quashed, modified or reversed.

History.—ss. 1, 2, Feb. 10, 11, 1832; s. 1, Feb. 12, 1836; ss. 3, 4, ch. 521, 1853; RS 1272, 1458; s. 1, ch. 4917, 1901; GS 1701, 1909; RGS 2911, 3170; CGL 4621, 4962; s. 13, ch. 22854, 1945; ss. 3, 5, ch. 71-316.

59.15 Proceedings in pais; authentication.—Proceedings in pais, not stenographically reported, may be authenticated by recitals in orders, judgments, or decrees, of the trial court, or of the judge thereof, or by a stipulation by the interested parties.

History.—s. 68, Nov. 23, 1828; s. 1, ch. 138, 1848; RS 1268; GS 1696; s. 10, ch. 7838, 1919; RGS 2906; CGL 4616; s. 15, ch. 22854, 1945; s. 5, ch. 71-316.

59.29 Amendment of appellate proceedings.—The appellate court may, at any time, in the furtherance of justice, upon such terms as may be just, permit appellate proceedings to be amended.

History.—s. 2, ch. 11890, 1927; CGL 4636; s. 29, ch. 22854, 1945.

59.33 Quashing appeals; power of appellate court.—Appellate courts shall have power to quash appeals in all cases in which appeals do not lie, or where they are taken against good faith or merely for delay, and may decree in such case damages against the appellant not exceeding 10 percent.

History.—s. 13, Feb. 10, 1832; s. 50, ch. 1096, 1861; RS 1279; GS 1709; s. 13, ch. 5898, 1909; RGS 2920; CGL 4639; s. 33, ch. 22854, 1945.

59.35 Judgment; power of appellate court to direct a new trial upon one or more issues.—An appellate court may, in reversing a judgment of a

lower court brought before it for review by appeal, by the order of reversal, if the error for which reversal is sought is such as to require a new trial, direct that a new trial be had on all the issues shown by the record or upon a part of such issues only. When a reversal is had, with direction for new trial on a part of the issues, all other issues shall be deemed settled conclusively in favor of the appellee.

History.—s. 1, ch. 6467, 1913; RGS 2921; CGL 4640; s. 35, ch. 22854, 1945.

59.45 Misconception of remedy; Supreme Court.—If an appeal be improvidently taken where the remedy might have been more properly sought by certiorari, this alone shall not be a ground for dismissal; but the notice of appeal and the record thereon shall be regarded and acted on as a petition for certiorari duly presented to the Supreme Court.

History.—s. 1, ch. 23826, 1947.

59.46 Attorney's fees.—

(1) In the absence of an expressed contrary intent, any provision of a statute or of a contract entered into after October 1, 1977, providing for the payment of attorney's fees to the prevailing party shall be construed to include the payment of attorney's fees to the prevailing party on appeal.

(2) When attorney's fees are allowable by law for services in the appellate court, the request therefor shall be presented by motion filed with the clerk of the appellate court, at or before the time of filing the party's first brief. The motion for attorney's fees shall not be incorporated in the briefs or other bound papers, but shall be filed on a separate paper. The assessment of attorney's fees may be remanded to the trial court.

History.—s. 1, ch. 73-84; s. 1, ch. 77-76.

CHAPTER 60

INJUNCTIONS

60.01 Injunction; against levy of execution issued against another than the plaintiff.—When real estate is levied on, or an attempt to sell it under any execution or other process issued is made, or an attempt to sell it as the property of another person is made, chancery courts have jurisdiction to enjoin the sale on the application of the owner in possession of the real estate.

History.—s. 1, ch. 3432, 1883; RS 1468; GS 1918; RGS 3180; CGL 4972; s. 15, ch. 67-254.
Note.—Former s. 64.07.

60.02 Injunction; against destruction of timber and removal of logs.—Chancery courts have jurisdiction of actions by any person claiming to own any timbered lands, or the timber, or the right to work for turpentine purposes the timber on any lands in this state, to enjoin trespass on the lands by the cutting of trees thereon, or the removing of logs therefrom, or by boxing or scraping the said trees for the purpose of making turpentine, or by the removal of turpentine therefrom.

History.—s. 2, ch. 3884, 1889; RS 1469, 1470; GS 1919; s. 1, ch. 5682, 1907; RGS 3181; CGL 4973; s. 15, ch. 67-254.
Note.—Former s. 64.08.

60.03 Injunction against removal of mortgaged personal property.—The removal from the state of any personal property mortgaged to secure a debt which has not matured at the time of the removal may be enjoined by any chancery court within whose territorial jurisdiction the property is located.

History.—RS 1472; GS 1920; RGS 3182; CGL 4974; s. 15, ch. 67-254.
Note.—Former s. 64.09.

60.04 Injunction; sureties on bond of fiduciaries may restrain disposition of principal's property.—When actions are commenced on the bond of any executor, administrator, guardian or trustee, or for an accounting, the surety on the bond may apply to the court in which the action is pending, if in chancery, or if the action is at law, then to any chancery court having jurisdiction, for an injunction restraining any principal in the bond from disposing of his property and from encumbering or removing it from the county in which it is located until the final disposition of the action. If it appears on the application that there is danger that the principal may dispose of his property before final judgment so that there will not be sufficient property of the principal to satisfy any judgment that is rendered against the administrator, executor, guardian or trustee, the court shall issue an injunction on such terms as are proper, enjoining such principal from disposing of his property, or so much thereof as is necessary for the protection of the surety until the final disposition of the action. It is not necessary for the surety to show that any amounts are due by said administrator, executor, guardian or trustee but the judge granting the injunction may vacate it on the executor, administrator, guardian or trustee giving adequate security, to be approved by the court, to the surety conditioned to save him harmless for all loss or damage he sustains as surety.

History.—s. 1, ch. 5406, 1905; RGS 3183; CGL 4975; s. 15, ch. 67-254.
Note.—Former s. 64.10.
cf.—s. 222.09 Injunction to prevent sale of homestead or exempt property.

60.05 Abatement of nuisances.—

(1) When any nuisance as defined in s. 823.05 exists, the Attorney General or State Attorney or any citizen of the county may sue in the name of the state on his relation to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists.

(2) The court may allow a temporary injunction without bond on proper proof being made. If it appears by evidence or affidavit that a temporary injunction should issue, the court, pending the determination on final hearing may enjoin:

(a) The maintaining of a nuisance;

(b) The operating and maintaining of the place or premises where the nuisance is maintained;

(c) The owner or agent of the building or ground upon which the nuisance exists;

(d) The conduct, operation or maintenance of any business or activity operated or maintained in the building or on the premises in connection with or incident to the maintenance of the nuisance.

The injunction shall specify the activities enjoined and shall not preclude the operation of any lawful business not conducive to the maintenance of the nuisance complained of. At least 3 days' notice in writing shall be given defendant of the time and place of application for the temporary injunction.

(3) Evidence of the general reputation of the alleged nuisance and place is admissible to prove the existence of the nuisance. No action filed by a citizen shall be dismissed unless the court is satisfied that it should be dismissed. Otherwise the action shall continue and the State Attorney notified to proceed with it. If the action is brought by a citizen and the court finds that there was no reasonable ground for the action, the costs shall be taxed against the citizen.

(4) On trial if the existence of a nuisance is shown, the court shall issue a permanent injunction and order the costs to be paid by the persons establishing or maintaining the nuisance and shall adjudge that the costs are a lien on all personal property found in the place of the nuisance and on the

failure of the property to bring enough to pay the costs, then on the real estate occupied by the nuisance. No lien shall attach to the real estate of any other than said persons unless 5 days' written notice has been given to the owner or his agent who fails to begin to abate the nuisance within said 5 days.

(5) If the action was brought by the Attorney General, a State Attorney, or any other officer or agency of state government; if the court finds either before or after trial that there was no reasonable ground for the action; and if judgment is rendered for the defendant, the costs and reasonable attorney's fees shall be taxed against the state.

History.—ss. 2-4, ch. 7367, 1917; RGS 3223-3226; CGL 5029-5032; s. 1, ch. 20467, 1941; s. 2, ch. 29737, 1955; s. 15, ch. 67-254; s. 1, ch. 71-268; s. 14, ch. 73-334; s. 1, ch. 77-268.
Note.—Former ss. 64.11-64.14.

60.06 Abatement of nuisances; enforcement.—The court shall make such orders on proper proof as will abate all nuisances mentioned in s. 823.05, and has authority to enforce injunctions by contempt but the jurisdiction hereby granted does not repeal or alter s. 823.01.

History.—s. 5, ch. 7367, 1917; RGS 3227; CGL 5033; s. 15, ch. 67-254.
Note.—Former s. 64.15.

60.07 Assessment of damages after dissolution.—In injunction actions, on dissolution, the court may hear evidence and assess damages to which a defendant may be entitled under any injunction bond, eliminating the necessity for an action on the injunction bond if no party has requested a jury trial on damages.

History.—ss. 1, 3, ch. 26916, 1951; s. 2, ch. 29737, 1955; s. 15, ch. 67-254.
Note.—Former s. 64.16.

CHAPTER 61

DISSOLUTION OF MARRIAGE

61.001 Purpose of chapter.—

(1) This chapter shall be liberally construed and applied to promote its purposes.

(2) Its purposes are:

(a) To preserve the integrity of marriage and to safeguard meaningful family relationships;

(b) To promote the amicable settlement of disputes that have arisen between parties to a marriage; and

(c) To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.

History.—s. 1, ch. 71-241.

61.011 Dissolution in chancery.—Proceedings under this chapter are in chancery.

History.—s. 1, Oct. 31, 1828; RS 1477; GS 1925; RGS 3188; CGL 4980; s. 2, ch. 29737, 1955; s. 16, ch. 67-254; s. 2, ch. 71-241.

Note.—Former s. 65.01.

61.021 Residence required.—To obtain a dissolution of marriage the party filing the proceeding must reside 6 months in the state before filing the petition, but this does not affect any suit filed before October 1, 1957.

History.—s. 1, ch. 522, 1853; RS 1478; s. 1, ch. 4726, 1899; GS 1926; RGS 3189; CGL 4981; s. 1, ch. 16009, 1933; s. 1, ch. 16975, 1935; s. 1, ch. 57-44; s. 1, ch. 57-1974; s. 16, ch. 67-254; s. 3, ch. 71-241.

Note.—Former s. 65.02.

61.031 Dissolution of marriage to be a vinculo.—No dissolution of marriage is from bed and board, but is from bonds of matrimony.

History.—s. 3, Feb. 14, 1835; RS 1479; GS 1927; RGS 3190; CGL 4982; s. 16, ch. 67-254; s. 4, ch. 71-241.

Note.—Former s. 65.03.

61.043 Commencement of a proceeding for dissolution of marriage.—A proceeding for dissolution of marriage or a proceeding under s. 61.09 shall be commenced by filing in the Circuit Court a petition entitled "In re the marriage of....., husband, and ....., wife." A copy of the petition together with a copy of a summons shall be served upon the other party to the marriage in the same manner as service of papers in civil actions generally.

History.—s. 5, ch. 71-241.

61.044 Certain existing defenses abolished.—The defenses to divorce and legal separation of condonation, collusion, recrimination, and laches are abolished.

History.—s. 6, ch. 71-241.

61.052 Dissolution of marriage.—

(1) No judgment of dissolution of marriage shall be granted unless one of the following facts appears,

which shall be pleaded generally:

(a) The marriage is irretrievably broken.

(b) Mental incompetence of one of the parties. However, no dissolution shall be allowed unless the party alleged to be incompetent shall have been adjudged incompetent according to the provisions of s. 744.31 for a preceding period of at least 3 years. Notice of the proceeding for dissolution shall be served upon one of the nearest blood relatives or guardian of such incompetent person, and such relative or guardian shall be entitled to appear and to be heard upon the issues. If the incompetent party has a general guardian or a guardian of his person other than the party bringing the proceeding, the petition and summons shall be served upon the incompetent party and such guardian and the guardian shall defend and protect the interests of the incompetent party. If the incompetent party has no general guardian or guardian of his person, the court shall appoint a guardian ad litem to defend and protect the interests of the incompetent party. However, in all dissolutions of marriage granted on the basis of incompetency, the court may require the petitioner to pay alimony pursuant to the provisions of s. 61.08.

(2) Based on the evidence at the hearing, which evidence need not be corroborated except to establish that the residence requirements of s. 61.021 are met, the court shall dispose of the petition for dissolution of marriage as follows, when the petition is based on the allegation that the marriage is irretrievably broken:

(a) If there are no minor children of the marriage and if the respondent does not, by answer to the petition for dissolution, deny that the marriage is irretrievably broken, the court shall enter a judgment of dissolution of the marriage if the court finds that the marriage is irretrievably broken.

(b) When there are minor children of the marriage, or when the respondent denies by answer to the petition for dissolution that the marriage is irretrievably broken, the court may:

1. Order either or both parties to consult with a marriage counselor, psychologist, psychiatrist, minister, priest, rabbi, or any other person deemed qualified by the court and acceptable to the party or parties ordered to seek consultation; or

2. Continue the proceedings for a reasonable length of time not to exceed 3 months, to enable the parties themselves to effect a reconciliation; or

3. Take such other action as may be in the best interest of the parties and the minor children of the marriage.

If, at any time, the court finds that the marriage is irretrievably broken, the court shall enter a judgment of dissolution of the marriage. If the court finds that the marriage is not irretrievably broken, it shall deny the petition for dissolution of marriage.

(3) During any period of continuance the court may make appropriate orders for the support and alimony of the parties; the custody, support, maintenance and education of the minor children of the marriage; attorney's fees; and the preservation of the property of the parties.

(4) A judgment of dissolution of marriage shall result in each spouse having the status of being single and unmarried. No judgment of dissolution of marriage renders the children of such marriage illegitimate.

History.—s. 7, ch. 71-241; s. 26, ch. 73-333.

61.061 Proceedings against nonresidents.—Proceedings may be brought against persons residing out of the state.

History.—RS 1482; GS 1930; RGS 3193; CGL 4985; s. 2, ch. 29737, 1955; s. 16, ch. 67-254; s. 8, ch. 71-241.

Note.—Former s. 65.06.

cf.—Ch. 49 Constructive service of process.

61.071 Alimony pendente lite.—In every proceeding for dissolution of the marriage, a party may claim alimony and suit money in the petition or by motion, and if the petition is well founded, the court shall allow a reasonable sum therefor. If a party in any proceeding for dissolution of marriage claims alimony or suit money in his answer or by motion, and the answer or motion is well founded, the court shall allow a reasonable sum therefor.

History.—ss. 1, 2, ch. 3581, 1885; RS 1483; GS 1931; RGS 3194; CGL 4986; s. 2, ch. 29737, 1955; s. 16, ch. 67-254; s. 9, ch. 71-241.

Note.—Former s. 65.07.

61.08 Alimony.—

(1) In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony may be rehabilitative or permanent in nature. In any award of alimony, the court may order periodic payments or payments in lump sum or both. The court may consider the adultery of a spouse and the circumstances thereof in determining whether alimony shall be awarded to such spouse and the amount of alimony, if any, to be awarded.

(2) In determining a proper award of alimony or maintenance, the court shall consider all relevant economic factors, including but not limited to:

(a) The standard of living established during the marriage.

(b) The duration of the marriage.

(c) The age and the physical and emotional condition of both parties.

(d) The financial resources of each party.

(e) Where applicable, the time necessary for either party to acquire sufficient education or training to enable him or her to find appropriate employment.

(f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education and career building of the other party.

The court may consider any other factor necessary to do equity and justice between the parties.

History.—ss. 7, 12, Oct. 31, 1828; RS 1484; GS 1932; RGS 3195; CGL 4987; s. 1, ch. 23894, 1947; s. 1, ch. 63-145; s. 16, ch. 67-254; s. 10, ch. 71-241; s. 1, ch. 78-339.

Note.—Former s. 65.08.

61.09 Nonsupport.—If a person having the ability to contribute to the maintenance of his or her spouse and support of his or her minor children fails to do so, the spouse who is not receiving support or who has custody of the children may petition the court for alimony and for support for minor children without petitioning for dissolution of marriage, and

the court shall enter such order as it deems just and proper.

History.—ss. 1, 2, ch. 3581, 1885; RS 1485; GS 1933; RGS 3196; CGL 4988; s. 2, ch. 29737, 1955; s. 1, ch. 65-498; s. 16, ch. 67-254; s. 11, ch. 71-241.
Note.—Former s. 65.09.

61.10 Rights of parties unconnected with dissolution.—Except when relief is afforded by some other pending civil action or proceeding, a spouse residing in this state apart from his spouse and minor children, whether or not such separation is through his fault, may obtain an adjudication of his obligation to maintain his spouse and minor children, if any. The court shall adjudicate his financial obligations to such spouse or children, or both, and fix the custody and visitation rights of the parties and enforce them. Such an action does not preclude either party from maintaining any other proceeding under this chapter for other or additional relief at any time.

History.—s. 1, ch. 61-112; s. 16, ch. 67-254; s. 12, ch. 71-241.
Note.—Former s. 65.101.

61.11 Effect of judgment of alimony.—A judgment of alimony granted under s. 61.08 or s. 61.09 releases the party receiving the alimony from the control of the other party, and the party receiving the alimony may use his alimony and acquire, use, and dispose of other property uncontrolled by the other party. When either party is about to remove himself or his property out of the state, or fraudulently convey or conceal it, the court may award a ne exeat or injunction against him or his property and make such orders as will secure alimony to the party who should receive it.

History.—s. 13, Oct. 31, 1828; RS 1487; GS 1935; RGS 3198; CGL 4990; s. 16, ch. 67-254; s. 13, ch. 71-241.
Note.—Former s. 65.11.

61.12 Attachment or garnishment of amounts due for alimony or child support.—

(1) So much as the court orders of the money or other things due to any person or public officer, state or county, whether the head of a family residing in this state or not, when the money or other thing is due for the personal labor or service of the person or otherwise, is subject to attachment or garnishment to enforce the orders of the court of this state for alimony, suit money, or child support, or other orders in proceedings for dissolution, alimony, or child support; when the money or other thing sought to be attached or garnisheed is the salary of a public officer, state or county, the writ of attachment or garnishment shall be served on the public officer whose duty it is to pay the salary, who shall obey the writ as provided by law in other cases. It is the duty of the officer to notify the public officer whose duty it is to audit or issue a warrant for the salary sought to be attached immediately upon service of the writ. A warrant for as much of the salary as is ordered held under said writ shall not issue except pursuant to court order unless the writ is dissolved. No more of the salary shall be retained by virtue of the writ than is provided for in the order.

(2) The provisions of chapter 77 or any other provision of law to the contrary notwithstanding, the court may issue a continuing writ of garnishment to an employer to enforce the order of the court for periodic payment of alimony or child support or both. The writ may provide that the salary of any person having a duty of support pursuant to said order be garnisheed on a periodic and continuing basis for so long as the court may determine or until otherwise ordered by the court or a court of competent jurisdiction in a further proceeding.

History.—s. 1, ch. 4973, 1901; GS 1937; s. 10, ch. 7838, 1919; RGS 3200; CGL 4992; s. 16, ch. 67-254; s. 14, ch. 71-241; s. 1, ch. 77-26; s. 1, ch. 78-63.
Note.—Former s. 65.13.

61.13 Custody and support of children, etc., power of court in making orders.—

(1) In a proceeding for dissolution of marriage, the court may at any time order either or both parents owing a duty of support to a child of the marriage to pay such support as from the circumstances of the parties and the nature of the case is equitable. The court initially entering an order requiring one or both parents to make child support payments shall have continuing jurisdiction after the entry of such initial order to modify the amount of the child support payments, or the terms thereof, when such is found to be necessary by the court for the best interests of the child or children, when the child or any one of the children has reached the age of 18 years, or when such is found to be necessary by the court because there has been a substantial change in the circumstances of the parties. The court initially entering a child support order shall also have continuing jurisdiction after the entry of such order to require the person or persons awarded custody of the child or children to make a report to the court on terms prescribed by the court as to the expenditure or other disposition of said child support payments.

(2)(a) In any proceeding under this chapter, the court shall have jurisdiction to determine custody, notwithstanding that the child or children are not physically present within this state at the time of filing any proceeding under this chapter, if it shall appear to the court that the child or children were removed from this state for the primary purpose of removing the said child or children from the jurisdiction of the court in an attempt to avoid a determination of custody.

(b) The court shall award custody and visitation rights of minor children of the parties as a part of proceeding for dissolution of marriage in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction Act. Upon considering all relevant factors, the father of the child shall be given the same consideration as the mother in determining custody. The court may award the grandparents visitation rights of a minor child if it is deemed by the court to be in the child's best interest. Nothing in this section shall be construed to require that grandparents be made parties or given notice of dissolution pleadings or proceedings, nor shall such grandparents have legal standing as "contestants" as defined in s. 61.1306. No court shall order that a child be kept within the state or jurisdiction of the court solely for the purpose of permitting visitation by the grandparents.

(3) For purpose of custody, the best interests of the child shall be determined by the court's consideration and evaluation of all factors affecting the best

welfare and interests of the child, including, but not limited to:

(a) The love, affection, and other emotional ties existing between the parents and the child.

(b) The capacity and disposition of the parents to give the child love, affection, and guidance and to continue the educating of the child.

(c) The capacity and disposition of the parents to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.

(d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home.

(f) The moral fitness of the parents.

(g) The mental and physical health of the parents.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

(j) Any other factor considered by the court to be relevant to a particular child custody dispute.

(4) In any proceeding under this chapter, the court, at any stage of the proceeding and after final judgment, may make such orders about what security is to be given for the care, custody, and support of the minor children of the marriage as from the circumstances of the parties and the nature of the case is equitable.

History.—s. 7, Oct. 31, 1828; RS 1489; GS 1938; RGS 3201; CGL 4993; s. 16, ch. 67-254; s. 15, ch. 71-241; s. 1, ch. 75-67; s. 1, ch. 75-99; s. 26, ch. 77-433; s. 1, ch. 78-5; s. 18, ch. 79-164.

Note.—Former s. 65.14.

61.1302 Short title.—Sections 61.1302-61.1348 may be known and shall be cited as the "Uniform Child Custody Jurisdiction Act."

History.—s. 1, ch. 77-433.

61.1304 Purposes of act; construction of provisions.—The general purposes of this act are to:

(1) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being.

(2) Promote cooperation with the courts of other states to the end that a custody decree is rendered in the state which can best decide the case in the interest of the child.

(3) Assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state.

(4) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child.

(5) Deter abductions and other unilateral removals of children undertaken to obtain custody awards.

(6) Avoid relitigation of custody decisions of other states in this state insofar as feasible.

(7) Facilitate the enforcement of custody decrees of other states.

(8) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child.

(9) Make uniform the law with respect to the subject of this act among states enacting it.

History.—s. 2, ch. 77-433; s. 16, ch. 79-400.

61.1306 Definitions.—As used in this act:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person.

(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for dissolution of marriage or separation, and includes child neglect and dependency proceedings.

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree.

(5) "Home state" means the state in which the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent for at least 6 consecutive months or, in the case of a child less than 6 months old, the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period.

(6) "Initial decree" means the first custody decree concerning a particular child.

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) "Physical custody" means actual possession and control of a child.

(9) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(10) "State" means any state, territory, or possession of the United States; the Commonwealth of Puerto Rico; or the District of Columbia.

History.—s. 3, ch. 77-433; s. 17, ch. 79-400.

61.1308 Jurisdiction.—

(1) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) This state:

1. Is the home state of the child at the time of

commencement of the proceeding, or

2. Had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state;

(b) It is in the best interest of the child that a court of this state assume jurisdiction because:

1. The child and his parents, or the child and at least one contestant, have a significant connection with this state, and

2. There is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(c) The child is physically present in this state and:

1. The child has been abandoned, or

2. It is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected; or

(d)1. It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraph (a), paragraph (b), or paragraph (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and

2. It is in the best interest of the child that a court of this state assume jurisdiction.

(2) Except under paragraph (c) or paragraph (d) of subsection (1), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

History.—s. 4, ch. 77-433.

61.131 Notice and opportunity to be heard.— Before a decree is made under this act, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given pursuant to s. 61.1312.

History.—s. 5, ch. 77-433.

61.1312 Notice to persons outside this state; submission to jurisdiction.—

(1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be:

(a) By personal delivery outside this state in the manner prescribed for service of process within this state;

(b) In the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(c) By any form of mail addressed to the person to be served and requesting a receipt; or

(d) As directed by the court, including publication, if other means of notification are ineffective.

(2) Notice under this section shall be served, mailed, delivered, or last published at least 20 days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court.

History.—s. 6, ch. 77-433.

61.1314 Simultaneous proceedings in other states.—

(1) A court of this state shall not exercise its jurisdiction under this act if, at the time the petition is filed, a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this act, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under s. 61.132 and shall consult the child custody registry established under s. 61.1334 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending, to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with ss. 61.134-61.1346. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

History.—s. 7, ch. 77-433.

61.1316 Inconvenient forum.—

(1) A court which has jurisdiction under this act to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a

party or a guardian ad litem or other representative of the child.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(a) If another state is or recently was the child's home state;

(b) If another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(c) If substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(d) If the parties have agreed on another forum which is no less appropriate; and

(e) If the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in s. 61.1304.

(4) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court, with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(6) The court may decline to exercise its jurisdiction under this act if a custody determination is incidental to an action for dissolution of marriage or another proceeding while retaining jurisdiction over the dissolution of marriage or other proceeding.

(7) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section, the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.

History.—s. 8, ch. 77-433.

61.1318 Jurisdiction declined by reason of conduct.—

(1) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(2) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(3) In appropriate cases, a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

History.—s. 9, ch. 77-433.

61.132 Information under oath to be submitted to the court.—

(1) Every party in a custody proceeding, in his first pleading or in an affidavit attached to that pleading, shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

(a) He has participated as a party or witness or in any other capacity in any other litigation concerning the custody of the same child in this or any other state;

(b) He has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) He knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

History.—s. 10, ch. 77-433.

61.1322 Additional parties.—If the court learns from information furnished by the parties pursuant to s. 61.132 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state, he shall be served with process or otherwise notified in accordance with s. 61.1312.

History.—s. 11, ch. 77-433.

61.1324 Appearance of parties and the child.—

(1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that he appear personally with the child.

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the notice given under s. 61.1312 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(3) If a party to the proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

History.—s. 12, ch. 77-433.

61.1326 Binding force and res judicata effect of custody decree.—A custody decree rendered by a court of this state which has jurisdiction under s. 61.1308 binds all parties who have been served in this state or notified in accordance with s. 61.1312 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties, the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this act.

History.—s. 13, ch. 77-433.

61.1328 Recognition of out-of-state custody decrees.—The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this act, or which decree was made under factual circumstances meeting the jurisdictional standards of the act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this act.

History.—s. 14, ch. 77-433.

61.133 Modification of custody decree of another state.—

(1) If a court of another state has made a custody decree, a court of this state shall not modify that decree unless:

(a) It appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this act or has declined to assume jurisdiction to modify the decree; and

(b) The court of this state has jurisdiction.

(2) If a court of this state is authorized under subsection (1) and s. 61.1318 to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with s. 61.1346.

History.—s. 15, ch. 77-433.

61.1332 Filing and enforcement of custody decree of another state.—

(1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any circuit court of this state. The clerk shall treat the decree in the same manner as a custody decree of a circuit court of this state. A custody decree so filed has the same effect and shall be enforced in like manner.

(2) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

History.—s. 16, ch. 77-433.

61.1334 Registry of out-of-state custody decrees and proceedings.—The clerk of each circuit court shall maintain a registry in which he shall enter the following:

(1) Certified copies of custody decrees of other states received for filing.

(2) Communications as to the pendency of custody proceedings in other states.

(3) Communications concerning a finding of inconvenient forum by a court of another state.

(4) Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

History.—s. 17, ch. 77-433.

61.1336 Certified copies of custody decree.— The clerk of the circuit court, at the request of the court of another state or at the request of any person who is affected by, or has a legitimate interest in, a custody decree, shall certify and forward a copy of the decree to that court or person.

History.—s. 18, ch. 77-433.

61.1338 Taking testimony in another state.— In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another

state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which, and the terms upon which, the testimony shall be taken.
History.—s. 19, ch. 77-433.

61.134 Hearings and studies in another state; orders to appear.—
(1) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the state.
(2) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings and, if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearances are desired will be assessed against another party or will otherwise be paid.
History.—s. 20, ch. 77-433.

61.1342 Assistance to courts of other states.—
(1) Upon request of the court of another state, the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.
(2) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.
(3) Upon request of the court of another state, a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed.
History.—s. 21, ch. 77-433.

61.1344 Preservation of documents for use in other states.—In any custody proceeding in this state, the court shall preserve the pleadings, orders, and decrees; any record that has been made of its hearings; social studies; and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of another state, the court shall forward to the other court certified copies of any or all of such documents.
History.—s. 22, ch. 77-433.

61.1346 Request for court records of another state.—If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state, upon taking jurisdiction of the case, shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in s. 61.1344.
History.—s. 23, ch. 77-433.

61.1348 International application.—The general policies of this act extend to the international area. The provisions of this act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees, and decrees involving legal institutions similar in nature to custody institutions, rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.
History.—s. 24, ch. 77-433.

61.14 Modification of alimony judgments; agreements, etc.—
(1) When the parties have entered into, or hereafter enter into, an agreement for payments for, or instead of, support, maintenance, or alimony, whether in connection with a proceeding for dissolution or separate maintenance or with any voluntary property settlement, or when a party is required by court order to make any payments, and the circumstances or the financial ability of either party has changed or the child or children who are beneficiaries of an agreement or court order as described herein have reached the age of 18 years since the execution of such agreement or the rendition of the order, either party may apply to the Circuit Court of the circuit in which the parties, or either of them, resided at the date of the execution of the agreement or reside at the date of the application, or in which the agreement was executed or in which the order was rendered, for a judgment decreasing or increasing the amount of support, maintenance, or alimony, and the court has jurisdiction to make orders as equity requires, with due regard to the changed circumstances or the financial ability of the parties or the child or children, decreasing, increasing, or confirming the amount of separate support, maintenance, or alimony provided for in the agreement or order.
(2) When an order is modified pursuant to subsection (1), the party having an obligation to pay shall pay only the amount of support, maintenance, or alimony directed in the new order, and the agreement or earlier order is modified accordingly. No person shall commence, or cause to be commenced, as party or attorney or agent or otherwise, in behalf of either party in any court, an action or proceeding otherwise than as herein provided, nor shall any court have jurisdiction to entertain any action or proceeding otherwise than as herein provided to enforce the recovery of separate support, maintenance, or alimony otherwise than pursuant to the order.
(3) This section is declaratory of existing public policy and of laws of this state which are hereby

confirmed in accordance with the provisions hereof. It is the duty of the Circuit Court to construe liberally the provisions hereof to effect the purposes hereof.

(4) If a party applies for a reduction of alimony or child support and the circumstances justify the reduction, the court may make the reduction of alimony or child support regardless of whether or not the party applying for it has fully paid the accrued obligations to the other party at the time of the application or at the time of the order of modification.

History.—ss. 1, 2, ch. 16780, 1935; CGL 1936 Supp. 4993(1); s. 16, ch. 67-254; s. 16, ch. 71-241; s. 2, ch. 75-67.
Note.—Former s. 65.15.

61.16 Attorney's fees, suit money, and costs.—The court may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending any proceeding under this chapter, including enforcement and modification proceedings. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

History.—s. 1, ch. 22676, 1945; s. 16, ch. 67-254; s. 17, ch. 71-241.
Note.—Former s. 65.17.

61.17 Alimony and child support; additional method for enforcing orders and judgments; costs, expenses.—

(1) An order or judgment for the payment of alimony or child support or either entered by any court of this state may be enforced by another chancery court in this state in the following manner:

(a) The person to whom such alimony or child support is payable or for whose benefit it is payable may procure a certified copy of the order or judgment and file it with a complaint for enforcement in the Circuit Court for the county in which the person resides or in the county where the person charged with the payment of the alimony or child support resides or is found.

(b) If the pleadings seek a change in the amount of the alimony or child support money, the court has jurisdiction to adjudicate the application and change the order or judgment. In such event the Clerk of the Circuit Court in which the order is entered changing the original order or judgment shall transmit a certified copy thereof to the court of original jurisdiction, and the new order shall be recorded and filed in the original action and become a part thereof. If the pleadings ask for a modification of the order or judgment, the court may determine that the action should be tried by the court entering the original order or judgment and shall then transfer the action to that court for determination as a part of the original action.

(2) The court in which such an action is brought has jurisdiction to award costs and expenses as are equitable, including the cost of certifying and recording the judgment entered in the action in the court of original jurisdiction and reasonable attorney's fees.

History.—ss. 1, 2, ch. 28187, 1953; s. 16, ch. 67-254; s. 18, ch. 71-241.
Note.—Former s. 65.18.

61.18 Alimony and child support; default in undertaking of bond posted to insure payment.—

(1) When there is a breach of the condition of any bond posted to insure the payment of alimony or child support, either temporary or permanent, for a party or minor children of the parties, the court in which the order was issued may order payment to the party entitled thereto of the principal of the bond or the part thereof necessary to cure the existing default without further notice from time to time where the amount is liquidated.

(2) The sureties on the bond, or the sheriff or clerk holding a cash bond, shall be ordered to pay into the registry of court, or to any party the court may direct, the sum necessary to cure the default.

(3) If the principal or sureties or sheriff or clerk fails to pay within the time and as required by the order, the court may enforce the payment by contempt against the principal or sureties on the bond or sheriff or clerk without further notice, or may issue an execution against the principal, sureties, sheriff, or clerk for the amount unpaid under any prior order or orders, but no sureties on the bond are liable for more than the penalty of the bond.

History.—ss. 1-3, ch. 28288, 1953; s. 16, ch. 67-254; s. 19, ch. 71-241.
Note.—Former s. 65.19.

61.181 Domestic relations payments and enforcement system.---

(1) The chief judge of the circuit may by administrative order authorize the creation of a central governmental depository for the circuit or county within the circuit to receive, record, and disburse all support, alimony, or maintenance payments.

(2) The chief judge shall provide for the collection of a fee for handling support, alimony, or maintenance payments, such fee to be set by administrative order of the chief judge of the circuit. Said fee shall not exceed 3 percent of such support, alimony, or maintenance payments.

(3) The chief judge of the circuit, with the approval of the governing body of the appropriate county, may, by administrative order, authorize the creation of a central governmental enforcement system for the circuit or a county within the circuit for the enforcement of support, alimony, or maintenance payments ordered by the court. The enforcement system shall be administered by an individual to be appointed by the chief judge of the circuit, who shall be a member in good standing of the bar of Florida, and serve under the direction, and at the pleasure, of the Circuit Court as the court's representative on all domestic relations enforcement matters.

(4) The administrator of the enforcement system shall have the duty:

(a) To investigate and enforce all payments ordered by the Circuit Court in domestic relations cases for alimony, support, or maintenance.

(b) When possible, to provide assistance and counseling to any payee or payor in an attempt to enforce payment or to remove or reduce any delinquency or problem by amicable agreement.

(c) To prepare all necessary notices, orders, or other documents, set hearings, present cases, make recommendations, and prepare and disseminate all

correspondence, inquiries, and complaints relating to domestic relations procedures, including delinquent support or alimony and maintenance.

(d) To subpoena witnesses, take testimony, and do all things necessary in the initiating of contempt proceedings.

(5) The enforcement system shall be provided with sufficient office space, legal and other professional, clerical, and stenographic assistance, investigators, and travel allowance, as is deemed necessary by the chief judge of the circuit and as approved by the governing body of the county.

(6) The funding required by the creation of the domestic relations depository and support enforcement system shall be appropriated from county funds and shall be considered as a valid public purpose. Any county appropriations may be supplemented by available federal financial assistance; however, the obligation shall be primarily that of the county.

History.—s. 1, ch. 73-112; s. 1, ch. 75-148.

61.19 Entry of judgment of dissolution of marriage, delay period.—No final judgment of dissolution of marriage may be entered until at least 20 days have elapsed from the date of filing the original petition for dissolution of marriage; but the court, on a showing that injustice would result from this delay, may enter a final judgment of dissolution of marriage at an earlier date.

History.—s. 1, ch. 57-258; s. 1, ch. 59-64; s. 1, ch. 61-123; s. 16, ch. 67-254; s. 20, ch. 71-241.
Note.—Former s. 65.20.

61.191 Application.—

(1) This act applies to all proceedings commenced on or after July 1, 1971. However, pending actions for divorce are deemed to have been commenced on the bases provided in s. 61.052, and evidence as to such bases for dissolution of marriage after July 1, 1971, shall be in compliance with this act.

(2) This act applies to all proceedings commenced after July 1, 1971, for the modification of a judgment or order entered prior to July 1, 1971.

(3) In any action or proceeding in which an appeal was pending or a new trial was ordered prior to July 1, 1971, the law in effect at the time of the order sustaining the appeal or the new trial governs the appeal, the new trial, and any subsequent trial or appeal.

History.—s. 21, ch. 71-241; s. 19, ch. 79-164.

61.20 Social investigation and recommendations when child custody is in issue.—In any action where the custody of a minor child is in issue, the court may request the Department of Health and Rehabilitative Services or qualified staff of the court to make an investigation and social study concerning all pertinent details relating to the child and each parent. The department or qualified staff of the court shall furnish the court with a written report with its recommendation with a written statement of facts found in its social investigations on which its recommendations are based. The court may consider the information contained in the report in making a decision on the child's custody and the technical rules of evidence do not exclude such report from consideration.

History.—s. 1, ch. 59-186; s. 16, ch. 67-254; ss. 19, 35, ch. 69-106; s. 12, ch. 77-147; s. 27, ch. 77-433.
Note.—Former s. 65.21.

CHAPTER 63

ADOPTION

63.012 Short title.—This chapter shall be known as the "Florida Adoption Act."

History.—s. 1, ch. 73-159.

63.022 Legislative intent.—

(1) It is the intent of the Legislature to protect and promote the well-being of persons being adopted and their natural and adoptive parents and to provide to all children who can benefit by it a permanent family life.

(2) The basic safeguards intended to be provided by this act are that:

(a) The child is legally free for adoption;

(b) The required persons consent to the adoption or the parent-child relationship is terminated by judgment of the court;

(c) The required social studies are completed and the court considers the reports of these studies prior to judgment on adoption petitions;

(d) All placements of minors for adoption are reported to the Department of Health and Rehabilitative Services;

(e) A sufficient period of time elapses during which the child has lived within the proposed adoptive home under the guidance of the department or a licensed child-placing agency;

(f) All expenditures by intermediaries placing, and persons independently adopting, a minor are reported to the court and become a permanent record in the file of the adoption proceedings;

(g) Social information concerning the child and the natural parents is furnished by the natural parent when available and filed with the consent to the adoption when a minor is placed by an intermediary;

(h) A new birth certificate is issued after entry of the adoption judgment;

(i) At the time of the hearing the court is authorized to order temporary substitute care when it determines that the minor is in an unsuitable home; and

(j) The records of all proceedings concerning custody and adoption of children are confidential; except that family medical histories of adoptive children shall be made available as provided in s. 63.162.

History.—s. 2, ch. 73-159; s. 2, ch. 75-226; s. 13, ch. 77-147; s. 1, ch. 78-190.

63.032 Definitions.—As used in this act, unless the context otherwise requires:

(1) "Department" means the Department of Health and Rehabilitative Services.

(2) "Child" means a son or daughter, whether by birth or adoption.

(3) "Court" means any circuit court of this state and, when the context requires, the court of any state that is empowered to grant petitions for adoption.

(4) "Minor" means a person under the age of 18 years.

(5) "Adult" means a person who is not a minor.

(6) "Person" includes a natural person, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, and any other legal entity.

(7) "Agency" means any child-placing agency licensed by the department pursuant to s. 63.202 to place minors for adoption.

(8) "Intermediary" means an attorney or physician licensed or authorized to practice in Florida or any person, other than a licensed agency, who is qualified by the department to place a child for adoption.

(9) "To place" or "placement" means the process of giving or transferring of possession or custody of a child by any person to another person for adoption.

History.—s. 3, ch. 73-159; s. 3, ch. 75-226; s. 14, ch. 77-147.

63.042 Who may be adopted; who may adopt.—

(1) Any person, a minor or an adult, may be adopted.

(2) The following persons may adopt:

(a) A husband and wife jointly;

(b) An unmarried adult, including the natural parent of the person to be adopted;

(c) The unmarried minor natural parent of the person to be adopted; or

(d) A married person without the other spouse joining as a petitioner, if the person to be adopted is not his spouse, and if:

1. The other spouse is a parent of the person to be adopted and consents to the adoption; or

2. The failure of the other spouse to join in the petition or to consent to the adoption is excused by

the court for reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

(3) No person eligible to adopt under this statute may adopt if that person is a homosexual.

History.—s. 4, ch. 73-159; s. 1, ch. 77-140.

63.043 Mandatory screening or testing for sickle-cell trait prohibited.—No person, firm, corporation, unincorporated association, state agency, unit of local government, or any public or private entity shall require screening or testing for the sickle-cell trait as a condition for employment, for admission into any state educational institution or state-chartered private educational institution, or for becoming eligible for adoption if otherwise eligible for adoption under the laws of this state.

History.—s. 4, ch. 78-35.
Note.—Also published at ss. 228.201 and 448.076.

63.052 Official guardians designated.—

(1) For minors who have been placed for adoption with, and permanently committed to, an agency, the agency is the official guardian.

(2) For minors placed for adoption with, and permanently committed to, the Department of Health and Rehabilitative Services, the department is the official guardian.

(3) For the purpose of adoption, the department is designated as the official guardian for children of this state who have no known or living natural parents or legal guardian, children who have been abandoned by their natural parents, or children whose natural parents have voluntarily surrendered their rights as parents.

(4) The recital in the written consent given by the department that the child sought to be adopted has been permanently committed to the department shall be prima facie proof of such commitment. The recital in the written consent given by a licensed child-placing agency or the declaration in an answer or recommendation filed by a licensed child-placing agency that the child has been permanently committed and the agency is duly licensed by the department shall be prima facie proof of such commitment and of such license.

History.—s. 5, ch. 73-159; s. 15, ch. 77-147.

63.062 Persons required to consent to adoption.—

(1) Unless consent is excused by the court, a petition to adopt a minor may be granted only if written consent has been executed after the birth of the minor by:

(a) The mother of the minor.

(b) The father of the minor, if:

1. The minor was conceived or born while the father was married to the mother.

2. The minor is his child by adoption.

3. The minor has been established by court proceeding to be his child.

4. He has acknowledged in writing, signed in the presence of a competent witness, that he is the father of the minor and has filed such acknowledgment with the vital statistics office of the Department of Health and Rehabilitative Services.

5. He has provided the child with support in a repetitive, customary manner.

(c) The minor, if more than 12 years of age, unless the court in the best interest of the minor dispenses with the minor's consent.

(2) The court may require that consent be executed by:

(a) Any person lawfully entitled to custody of the minor; or

(b) The court having jurisdiction to determine custody of the minor, if the person having physical custody of the minor has no authority to consent to the adoption.

(3) If the minor has previously been permanently committed to a licensed child-placing agency or the department, consent may be given by the licensed child-placing agency or the department, to which the minor has been so committed, and this consent is sufficient.

(4) A petition to adopt an adult may be granted if:

(a) Written consent to adoption has been executed by the adult and the adult's spouse, if any.

(b) Written consent to adoption has been executed by the natural parent or parents, if any, or proof of service of process has been filed, showing notice has been served on the parent or parents as provided herein.

History.—s. 6, ch. 73-159; s. 4, ch. 75-226; s. 16, ch. 77-147; s. 1, ch. 77-446.

63.072 Persons whose consent to an adoption may be waived.—The court may excuse the consent of the following individuals to an adoption:

(1) A parent who has deserted a child without affording means of identification or who has abandoned a child;

(2) A parent whose parental rights have been terminated by order of a court of competent jurisdiction;

(3) A parent judicially declared incompetent for whom restoration of competency is medically improbable;

(4) A legal guardian or lawful custodian of the person to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of 60 days or who, after examination of his written reasons for withholding consent, is found by the court to be withholding his consent unreasonably; or

(5) The spouse of the person to be adopted, if the failure of the spouse to consent to the adoption is excused by reason of prolonged, unexplained absence, unavailability, incapacity, or circumstances that are found by the court to constitute unreasonable withholding of consent.

History.—s. 7, ch. 73-159.

63.082 Execution of consent.—

(1) Consent shall be executed as follows:

(a) If by the person to be adopted, by oral or written statement in the presence of the court or by being acknowledged before a notary public.

(b) If by an agency, by affidavit from its authorized representative.

(c) If by any other person, in the presence of the court or by affidavit.

(d) If by a court, by an appropriate order or certificate of the court.

(2) A consent that does not name or otherwise identify the adopting parent is valid if the consent contains a statement by the person consenting that the consent was voluntarily executed and that identification of the adopting parent is not required for granting the consent.

(3)(a) The Department of Health and Rehabilitative Services shall provide a consent form and a family medical history form to an intermediary who intends to place a child for adoption. Said forms completed by the natural parent or parents shall be attached to the petition and shall contain such biological and sociological information, or such information as to the family medical history, regarding the child and the natural parents as is required by the department. The department shall incorporate the information into the preliminary study and the social investigation. The court may also require that the natural mother be interviewed by a representative of the department.

(b) Consent executed by the department, by a licensed child-placing agency, or by appropriate order or certificate of the court shall be attached to the petition and shall be accompanied by a family medical history which shall contain such information concerning the medical history of the child and the natural parents as is available or readily obtainable.

(4) The consent shall be executed only after the birth of the child, in the presence of two witnesses, and be acknowledged before a notary public.

(5) Consent may be withdrawn only when the court finds that the consent was obtained by fraud or duress.

History.—s. 8, ch. 73-159; s. 17, ch. 77-147; s. 2, ch. 78-190.

63.092 Report to the department of intended placement by an intermediary; preliminary study.—

(1) The intermediary shall report any intended placement of a minor for adoption with any person not related within the third degree or a stepparent if the intermediary has knowledge of, or participates in, such intention to place. The report shall be made to the Department of Health and Rehabilitative Services at least 30 days prior to placement of a minor in the home. The report shall contain:

(a) The name and address of the person with whom the minor is intended to be placed.

(b) The identification of the child proposed for placement.

(c) The intended placement date.

(d) Additional information requested by the department.

(2) A preliminary study shall be made by the department, or any other qualified agency or person designated by the department, to inquire into the suitability of the intended adoptive home. The preliminary study shall be completed within 30 days or by the intended placement date, whichever is later. When the petitioner is a stepparent, spouse of the natural parent, or relative, the preliminary study may be required by the court when good cause is shown. The department is authorized to include in the preliminary study an interview with the natural mother. A written recommendation based on the preliminary study shall be mailed to the intermediary.

(3) If the preliminary report to the intermediary is favorable, the minor may be placed in the home pending entry of the judgment of adoption. Under no circumstances may the minor be placed in the home if the preliminary report is unfavorable and found by the court to be valid.

(4) In the event of an unfavorable preliminary report, the intermediary or petitioner may petition the court for a determination as to the suitability of the home. Pending the court's determination, the child shall remain in the custody of the parent or be placed in the temporary custody of the department. A determination as to suitability under this section shall not act as a presumption of suitability at the final hearing.

(5) Upon a finding by the department that an intermediary has violated the provisions of this section, the department is authorized to obtain an injunction to prohibit said intermediary from placing a minor for adoption in the future.

History.—s. 9, ch. 73-159; s. 5, ch. 75-226; s. 18, ch. 77-147; s. 5, ch. 78-190.

63.097 Approval of fees to intermediaries.— Any fee, including those costs as set out in paragraph 63.212(1)(b), over $500 paid to an intermediary other than actual, documented medical costs, court costs, and hospital costs must be approved by the court prior to payment to the intermediary.

History.—s. 6, ch. 75-226; s. 1, ch. 77-174; s. 6, ch. 78-190.

63.102 Filing of petition; venue.—

(1) A proceeding for adoption shall be commenced by filing a petition entitled, "In the Matter of the Adoption of ....." in the circuit court. The person to be adopted shall be designated in the caption in the name by which he is to be known if the petition is granted. If the child is placed for adoption by an agency, any name by which the child was previously known shall not be disclosed in the petition, the notice of hearing, or the judgment of adoption.

(2) A petition for adoption shall be filed in the county where the petitioner or petitioners or the child resides or where the agency in which the child has been placed is located.

(3) If the filing of the petition for adoption in the county where the petitioner or child resides would tend to endanger the privacy of the petitioner or child, the petition for adoption may be filed in a different county, provided the substantive rights of any person will not thereby be affected.

History.—s. 10, ch. 73-159; s. 7, ch. 75-226.

63.112 Petition for adoption; description.—

(1) A sufficient number of copies of the petition for adoption shall be signed and verified by the petitioner and filed with the clerk of the court so that service may be made under subsection (3) of this section and shall state:

(a) The date and place of birth of the person to be adopted, if known;

(b) The name to be given to the person to be adopted;

(c) The date petitioner acquired custody of the minor and the name of the person placing the minor;

(d) The full name, age, and place and duration of

residence of the petitioner;

(e) The marital status of the petitioner, including the date and place of marriage, if married, and divorces, if any;

(f) The facilities and resources of the petitioner, including those under a subsidy agreement, available to provide for the care of the minor to be adopted;

(g) A description and estimate of the value of any property of the person to be adopted;

(h) The name and address, if known, of any person whose consent to the adoption is required, but who has not consented, and facts or circumstances that excuse the lack of consent; and

(i) The reasons why the petitioner desires to adopt the person.

(2) The following documents are required to be filed with the clerk of the court at the time the petition is filed:

(a) The required consents, unless consent is excused by the court.

(b) The favorable recommendation of the Department of Health and Rehabilitative Services or agency as to the suitability of the home in which the minor has been placed.

(3) Unless ordered by the court, no report or recommendation is required when the placement is a stepparent adoption or when the child is related to one of the adoptive parents within the third degree.

(4) The clerk of the court shall mail a copy of the petition within 24 hours after filing, and execute a certificate of mailing, to the department and the agency placing the minor, if any.

History.—s. 11, ch. 73-159; s. 8, ch. 75-226; s. 19, ch. 77-147.

63.122 Notice of hearing on petition; investigation.—

(1) After the petition to adopt a minor is filed, the court shall fix a time and place for hearing the petition. The hearing shall not be set until at least 90 days after the placing of the minor in the physical custody of the petitioner under the supervision of the Department of Health and Rehabilitative Services or an agency. When the petitioner is a spouse of the natural parent, the hearing may be held immediately after the filing of the petition.

(2) Notice of hearing shall be given as prescribed by the rules of civil procedure, and service of process shall be made as specified by law for civil actions.

(3) Upon a showing by the petitioner that the privacy of the petitioner or child may be endangered, the court may order the names of the petitioner or child, or both, to be deleted from the notice of hearing and from the copy of the petition attached thereto, provided the substantive rights of any person will not thereby be affected.

(4) Notice of the hearing shall be given by the petitioner to:

(a) The department or any agency placing the minor.

(b) The intermediary.

(c) Any person whose consent to the adoption is required by this act who has not consented, unless such person's consent is excused by the court.

(d) Any person who is seeking to withdraw consent.

(5) An investigation shall be made by the agency or by the department to ascertain whether the adoptive home is a suitable home for the minor and the proposed adoption is in the best interest of the minor. Unless directed by the court, an investigation and recommendation are not required when the petitioner is a stepparent or when the child is related to one of the adoptive parents within the third degree.

(6) A written report of the investigation shall be filed with the court and with the petitioner by the investigator within 90 days from the date of the filing of the petition.

(7) The report of the investigation shall contain an evaluation of the placement with a recommendation on the granting of the petition for adoption and any other information the court requires regarding the petitioner or the minor. When the placement has been made through the department or an agency, the report may be limited to a recommendation on the desirability of the adoption.

(8) The department or the agency making the required investigation may request other departments or agencies within or without this state to make investigations of designated parts of the inquiry and to make a written report to the department or agency.

(9) After filing the petition to adopt an adult, a notice of the time and place of the hearing shall be given to any person whose consent to the adoption is required but who has not consented. The court may order an appropriate investigation to assist in determining whether the adoption is in the best interest of the persons involved.

History.—s. 12, ch. 73-159; s. 9, ch. 75-226; s. 20. ch. 77-147.

63.132 Report of expenditures and receipts.—

(1) Before the time set for the hearing, the petitioner and any intermediary shall each file two copies of an affidavit containing a full accounting of all disbursements and receipts of anything of value, including professional fees, made or agreed to be made by or on behalf of the petitioner and any intermediary in connection with the adoption. The clerk of the court shall forward a copy of the affidavit to the Department of Health and Rehabilitative Services. The report shall show any expenses or receipts incurred in connection with:

(a) The birth of the minor.

(b) The placement of the minor with the petitioner.

(c) The medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement.

(d) The living expenses of the natural mother.

(e) The services relating to the adoption or to the placement of the minor for adoption that were received by or on behalf of the petitioner, the intermediary, either natural parent, the minor, or any other person.

(2) The court may require such additional information as is deemed necessary.

(3) This section does not apply to an adoption by a stepparent whose spouse is a natural or adoptive parent of the child.

History.—s. 13, ch. 73-159; s. 21, ch. 77-147.

63.142 Hearing; judgment of adoption.—
(1) The petitioner and the person to be adopted shall appear at the hearing on the petition, unless:
(a) The person is a minor under 12 years of age, or
(b) The presence of either is excused by the court for good cause.
(2) The court may continue the hearing from time to time to permit further observation, investigation, or consideration of any facts or circumstances affecting the granting of the petition.
(3)(a) If the petition is dismissed, the court shall determine the person that is to have custody of the minor.
(b) If the petition is dismissed, the court shall state with specificity the reasons for the dismissal.
(4) At the conclusion of the hearing, when the court determines that all necessary consents have been obtained and that the adoption is in the best interest of the person to be adopted, a judgment of adoption shall be entered.
History.—s. 14, ch. 73-159; s. 3, ch. 77-140.

63.152 Application for new birth record.— Within 30 days after entry of a judgment of adoption, the clerk of the court shall prepare a certified statement of the entry for the state registrar of vital statistics on a form provided by the registrar. A new birth record containing the necessary information supplied by the certificate shall be issued by the registrar on application of the adopting parents or the adopted person.
History.—s. 15, ch. 73-159.

63.162 Hearings and records in adoption proceedings; confidential nature.—Notwithstanding any other law concerning public hearings and records:
(1) All hearings held in proceedings under this act shall be held in closed court without admittance of any person other than essential officers of the court, the parties, witnesses, counsel, persons who have not consented to the adoption and are required to consent, and representatives of the agencies who are present to perform their official duties.
(2) All papers and records pertaining to the adoption, including the original birth certificate, whether part of the permanent record of the court or of a file in the Department of Health and Rehabilitative Services or in an agency, are subject to inspection only upon order of the court; however, the petitioner in any proceeding for adoption under this chapter may, at the option of the petitioner, make public the reasons for a denial of the petition for adoption. Such order shall specify which portion of said records are subject to inspection, and may exclude the name and identifying information concerning the natural parent or adoptee. In the case of a non-agency adoption, the department shall be permitted to present to the court a report on the advisability of disclosing or not disclosing information pertaining to the adoption. In the case of an agency adoption, the agency shall be permitted to present to the court a report on the advisability of disclosing or not disclosing information pertaining to the adoption.
(3) The court files, records, and papers in adoption of minors shall be indexed only in the name of the petitioner, and the name of the minor shall not be noted on any docket, index, or other record outside the court file.
(4) Except as authorized in writing by the adoptive parent or the adopted child, if 18 or more years of age, or upon order of the court for good cause shown in exceptional cases, no person shall disclose from the records the name or identity of either an adoptive parent or adopted child.
(5) If secured prior to or at the time of delivery, information as to the family medical history of the child and the natural parents, when available, shall be furnished to the adopting parents prior to finalization of the adoption, but is otherwise confidential; except that said information shall be furnished to the adopted person at the time he reaches majority, upon his request. The confidentiality of the natural parents shall be protected, and no specific names shall be given in family medical histories.
History.—s. 16, ch. 73-159; s. 10, ch. 75-226; s. 2, ch. 77-140; s. 22, ch. 77-147; s. 2, ch. 77-446; s. 3, ch. 78-190.

63.172 Effect of judgment of adoption.—
(1) A judgment of adoption, whether entered by a court of this state, another state, or of any other place, has the following effect:
(a) It relieves the natural parents of the adopted person, except a natural parent who is a petitioner or who is married to a petitioner, of all parental rights and responsibilities.
(b) It terminates all legal relationships between the adopted person and his relatives, including his natural parents, except a natural parent who is a petitioner or who is married to a petitioner, so that the adopted person thereafter is a stranger to his former relatives for all purposes, including inheritance and the interpretation or construction of documents, statutes, and instruments, whether executed before or after entry of the adoption judgment, that do not expressly include the adopted person by name or by some designation not based on a parent and child or blood relationship.
(c) It creates the relationship between the adopted person and the petitioner and all relatives of the petitioner that would have existed if the adopted person were a legitimate blood descendant of the petitioner. This relationship shall be created for all purposes, including inheritance and applicability of statutes, documents, and instruments, whether executed before or after entry of the adoption judgment, that do not expressly exclude an adopted person from their operation or effect.
(2) If a parent of a child dies without the relationship of parent and child having been previously terminated and a spouse of the living parent thereafter adopts the child, the child's right of inheritance from or through the deceased parent is unaffected by the adoption.
History.—s. 17, ch. 73-159; s. 11, ch. 75-226; s. 1, ch. 79-369.

63.182 Appeal and validation of judgment.— After 1 year from the entry of a judgment of adoption, any irregularity or procedural defect in the proceedings is cured, and the validity of the judgment shall not be subject to direct or collateral attack because of any irregularity or procedural defect. Any defect or irregularity of, or objection to, a consent

that could have been cured had it been made during the proceedings shall not be questioned after the time for taking an appeal has expired.

History.—s. 18, ch. 73-159.

63.192 Recognition of foreign judgment affecting adoption.—A judgment of court terminating the relationship of parent and child or establishing the relationship by adoption issued pursuant to due process of law by a court of any other jurisdiction within or without the United States shall be recognized in this state, and the rights and obligations of the parties on matters within the jurisdiction of this state shall be determined as though the judgment were issued by a court of this state.

History.—s. 19, ch. 73-159.

63.202 Authority to license.—

(1) The Department of Health and Rehabilitative Services is authorized and empowered to license child welfare agencies that it determines to be qualified to place minors for adoption.

(2) No agency shall place a minor for adoption unless such agency is licensed by the department.

History.—s. 20, ch. 73-159; s. 23, ch. 77-147; s. 7, ch. 78-190.

63.207 Out-of-state placement.—

(1) No person except an agency or the Department of Health and Rehabilitative Services shall take or send a child out of the state for purposes of placement for adoption unless the child is to be placed with a relative within the third degree or a stepparent.

(2) No intermediary shall counsel a natural mother to leave the state for the purpose of giving birth to a child outside of the state in order to secure a fee in excess of that permitted under s. 63.097, when it is the intention that the child is to be placed for adoption outside of the state.

History.—s. 12, ch. 75-226; s. 24, ch. 77-147; s. 8, ch. 78-190.

63.212 Penalties.—

(1) It is unlawful for any person:

(a) Except the Department of Health and Rehabilitative Services or an agency, to place or attempt to place without the state a child for adoption unless the child is placed with a relative within the third degree or a stepparent.

(b) To sell or surrender a child to another person for money or anything of value or to receive such minor child for such payment or thing of value; however, nothing herein shall be construed as prohibiting any person who is contemplating adopting a child from paying actual prenatal care and living expenses of the mother of the child to be adopted, nor from paying actual living and medical expenses of such mother for a reasonable time, not to exceed 30 days, after the birth of the child.

(c) Having the rights and duties of a parent with respect to the care and custody of a minor to assign or transfer such parental rights for the purpose of, incidental to, or otherwise connected with, selling or offering to sell such rights and duties.

(d) To assist in the commission of any acts prohibited in paragraphs (a), (b), or (c).

(e) To charge or accept any fee or compensation of any nature from an intermediary for making a referral for or in connection with an adoption.

(2) Nothing herein shall be construed to prohibit a licensed child-placing agency from charging fees reasonably commensurate to the services provided.

(3) It is unlawful for any intermediary to fail to report to the department, at least 30 days prior to placement, the intended placement of a child for purposes of adoption with any person not a stepparent or a relative within the third degree, if the intermediary participates in such intended placement.

(4) It is unlawful for any intermediary to charge any fee, including those costs as set out in paragraph (1)(b), over $500 other than for actual documented medical costs, court costs, and hospital costs unless such charges are approved by the court prior to payment to the intermediary.

(5) It is unlawful for any intermediary to counsel a natural mother to leave the state for the purpose of giving birth to a child outside of the state in order to secure a fee in excess of that permitted under s. 63.097 when it is the intention that the child be placed for adoption outside of the state.

(6) Whoever violates any provision of this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 21, ch. 73-159; s. 13, ch. 75-226; s. 25, ch. 77-147; s. 1, ch. 77-174; s. 9, ch. 78-190.

63.222 Effect on prior adoption proceedings.—Any adoption made before the effective date of this act shall be valid, and any proceedings pending on the effective date of this act are not affected thereby.

History.—s. 22, ch. 73-159.

63.232 Duty of person adopting.—In order to protect the rights of all the parties involved in an adoption, any person adopting or attempting to adopt another person shall comply with the procedures established by this act.

History.—s. 23, ch. 73-159.

CHAPTER 64

PARTITION OF PROPERTY

64.011 Partition of property; jurisdiction.—All actions for partition are in chancery.

History.—s. 1, Mar. 14, 1844; RS 1490; GS 1939; RGS 3202; CGL 4994; s. 2, ch. 29737, 1955; s. 19, ch. 67-254.

Note.—Former s. 66.01.

64.022 Partition of property; venue.—Partition shall be brought in any county where the lands or any part thereof lie which are the subject matter of the action.

History.—s. 1, Mar. 14, 1844; RS 1491; GS 1940; RGS 3203; CGL 4995; s. 19, ch. 67-254.

Note.—Former s. 66.02.

64.031 Partition of property; parties.—The action may be filed by any one or more of several joint tenants, tenants in common, or coparceners, against their cotenants, coparceners, or others interested in the lands to be divided.

History.—s. 2, Mar. 14, 1844; RS 1492; GS 1941; RGS 3204; CGL 4996; s. 19, ch. 67-254.

Note.—Former s. 66.03.

64.041 Partition of property; complaint.—The complaint shall allege a description of the lands of which partition is demanded, the names and places of residence of the owners, joint tenants, tenants in common, coparceners, or other persons interested in the lands according to the best knowledge and belief of plaintiff, the quantity held by each, and such other matters, if any, as are necessary to enable the court to adjudicate the rights and interests of the party. If the names, residence or quantity of interest of any owner or claimant is unknown to plaintiff, this shall be stated. If the name is unknown, the action may proceed as though such unknown persons were named in the complaint.

History.—s. 2, Mar. 14, 1844; RS 1493; GS 1942; RGS 3205; CGL 4997; s. 11, ch. 29737, 1955; s. 19, ch. 67-254.

Note.—Former s. 66.04.

64.051 Partition of property; judgment.—The court shall adjudge the rights and interests of the parties, and that partition be made if it appears that the parties are entitled to it. When the rights and interests of plaintiffs are established or are undisputed, the court may order partition to be made, and the interest of plaintiffs and such of the defendants as have established their interest to be allotted to them, leaving for future adjustment in the same action the interest of any other defendants.

History.—s. 4, Mar. 14, 1844; RS 1494; GS 1943; RGS 3206; CGL 4998; s. 19, ch. 67-254.

Note.—Former s. 66.05.

64.061 Partition of property; commissioners; master.—

(1) APPOINTMENT AND REMOVAL.—When a judgment of partition is made, the court shall appoint three suitable persons as commissioners to make the partition. They shall be selected by the court unless agreed on by the parties. They may be removed by the court for good cause and others appointed in their places.

(2) POWERS, DUTIES, COMPENSATION AND REPORT OF COMMISSIONERS.—The commissioners shall be sworn to execute the trust imposed in them faithfully and impartially before entering on their duties; have power to employ a surveyor, if necessary, for the purpose of making partition; be allowed such sum as is reasonable for their services; to make partition of the lands in question according to the court's order and report it in writing to the court without delay.

(3) EXCEPTIONS TO REPORT AND FINAL JUDGMENT.—Any party may file objections to the report of the commissioners within 10 days after it is served. If no objections are filed or if the court is satisfied on hearing any such objections that they are not well-founded, the report shall be confirmed, and a final judgment entered vesting in the parties the title to the parcels of the lands allotted to them respectively, and giving each of them the possession of and quieting title to their respective shares as against the other parties to the action or those claiming through or under them.

(4) APPOINTMENT OF MASTER WHERE PROPERTY NOT SUBJECT TO PARTITION.—On an uncontested allegation in a pleading that the property sought to be partitioned is indivisible and is not subject to partition without prejudice to the owners of it or if a judgment of partition is entered and the court is satisfied that the allegation is correct, on motion of any party and notice to the others the court may appoint a special master or the clerk to make sale of the property either at private sale or as provided by s. 64.071.

History.—ss. 5-8, Mar. 14, 1844; RS 1495; GS 1944; RGS 3207; CGL 4999; s. 1, ch. 28200, 1953; s. 1, chs. 29685, 29928, 1955; s. 19, ch. 67-254.

Note.—Former s. 66.06.

64.071 Partition of property; sale where nondivisible.—

(1) ORDER OF SALE.—If the commissioners report that the lands of which partition is directed are so situated that partition cannot be made without prejudice to the owners and if the court is satisfied that such report is correct, the court may order the land to be sold at public auction to the highest bidder by the commissioners or the clerk and the money arising from such sale paid into the court to be divided among the parties in proportion to their interest.

(2) CONDITIONS OF SALE.—For good cause

the court may order the sale made on reasonable credit for part or all of the purchase money, but at least one-third of the purchase money shall be paid down unless all parties consent to credit otherwise. The purchase money not paid down shall be secured by a mortgage on the land and such other security as the court directs.

(3) CONFIRMATION OF SALE AND CONVEYANCE.—The sale shall be reported to the court, unless sold by the clerk under s. 45.031, and the money arising therefrom paid into court and the sale approved by the court and a conveyance ordered before any conveyance pursuant to the sale is made.

History.—ss. 8-10, Mar. 14, 1844; RS 1496; GS 1945; RGS 3208; CGL 5000; s. 19, ch. 67-254.
Note.—Former s. 66.07.

64.081 Partition of property; costs; taxes; attorneys' fees, etc.—Every party shall be bound by the judgment to pay a share of the costs, including attorneys' fees to plaintiff's or defendant's attorneys or to each of them commensurate with their services rendered and of benefit to the partition, to be determined on equitable principles in proportion to his interest. Such judgment is binding on all his goods and chattels, lands or tenements. In case of sale the court may order the costs and fees to be paid or retained out of the moneys arising from the sale and due to the parties who ought to pay the same. All taxes, state, county and municipal, due thereon at the time of the sale, shall be paid out of the purchase money.

History.—s. 11, Mar. 14, 1844; RS 1497; s. 1, ch. 4545, 1897; GS 1946; RGS 3209; CGL 5001; s. 1, ch. 57-130; s. 19, ch. 67-254.
Note.—Former s. 66.08.

64.091 Partition of property; personalty.—The laws applicable to partition and sale for partition of real estate are applicable to the partition and sale for partition of personal property and the proceedings therefor, as far as the nature of the property permits.

History.—RS 1498; GS 1947; RGS 3210; CGL 5002; s. 19, ch. 67-254.
Note.—Former s. 66.09.

CHAPTER 65

QUIETING TITLE

65.011 Real estate; certain jurisdiction over.—Chancery courts have jurisdiction of actions by any person or corporation claiming to own any land or part thereof, or by two or more claiming to own the same land or part thereof under a common title against more than one person or corporation occupying or claiming title to the land or part thereof adversely to plaintiff, whether defendants claim or hold under a common title or not; and shall determine the title of plaintiff as against defendants and enter judgment quieting the title of, and awarding possession to, the plaintiff entitled thereto and may enter injunctions, temporary or perpetual, appoint receivers, and enter such orders about costs as are necessary to protect the rights of the parties.

History.—s. 1, ch. 3884, 1889; RS 1500; GS 1949; RGS 3212; CGL 5004; s. 20, ch. 67-254.

Note.—Former s. 66.10.

65.021 Real estate; removing clouds.—Chancery courts have jurisdiction of actions brought by any person or corporation, whether in actual possession or not, claiming legal or equitable title to land against any person or corporation not in actual possession, who has, appears to have or claims an adverse legal or equitable estate, interest, or claim therein to determine such estate, interest, or claim and quiet or remove clouds from the title to the land. It is no bar to relief that the title has not been litigated at law or that there is only one litigant to each side of the controversy or that the adverse claim, estate, or interest is void upon its face, or though not void on its face, requires extrinsic evidence to establish its validity.

History.—s. 1, ch. 4739, 1899; GS 1950; RGS 3213; s. 1, ch. 10223, 1925; CGL 5005; s. 2, ch. 29737, 1955; s. 20, ch. 67-254.

Note.—Former s. 66.11.

65.031 Real estate; removing clouds; plaintiffs.—An action in chancery for quieting title to, or clearing a cloud from, land may be maintained in the name of the owner or of any prior owner who warranted the title. All lands, the title to which is subject to a common defect, may be embraced in one action irrespective of the number of existing legal or equitable owners.

History.—s. 1, ch. 10221, 1925; CGL 5006; s. 20, ch. 67-254.

Note.—Former s. 66.12.

65.041 Real estate; removing clouds; defendants.—No person not a party to the action is bound by any judgment rendered adverse to his interest, but any judgment favorable to the person inures to his benefit to the extent of his legal or equitable title.

History.—s. 2, ch. 10221, 1925; CGL 5007; s. 20, ch. 67-254.

Note.—Former s. 66.13.

65.051 Real estate; removing clouds; joinder.—Two or more persons who are interested in removing a cloud from or quieting title to land as against the same clouds or adverse claims may join as plaintiffs in a single action to remove such clouds or quiet the title, although their interests relate to separate lands or parts thereof.

History.—s. 1, ch. 10222, 1925; CGL 5008; s. 2, ch. 29737, 1955; s. 20, ch. 67-254.

Note.—Former s. 66.14.

65.061 Quieting title; additional remedy.—

(1) JURISDICTION.—Chancery courts have jurisdiction of actions by any person or corporation claiming legal or equitable title to any land, or part thereof, or when any two or more persons claim to own the same land, or any part thereof under a common title against all persons or corporations claiming title to or occupying the land adversely to plaintiff, whether defendants claim or hold under a common title or not, and shall determine the title of plaintiff and may enter judgment quieting the title and awarding possession to the party entitled thereto, but if any defendant is in actual possession of any part of the land, a trial by jury may be demanded by any party, whereupon the court shall order an issue in ejectment as to such lands to be made and tried by a jury. Provision for trial by jury does not affect the action on any lands that are not claimed to be in the actual possession of any defendant. The court may enter final judgment without awaiting the determination of the ejectment action.

(2) GROUNDS.—When a person or corporation not the rightful owner of land has any conveyance or other evidence of title thereto, or asserts any claim, or pretends to have any right or title thereto, which may cast a cloud on the title of the real owner, or when any person or corporation is the true and equitable owner of land the record title to which is not in the person or corporation because of the defective execution of any deed or mortgage because of the omission of a seal thereon, the lack of witnesses, or any defect or omission in the wording of the acknowledgment of a party or parties thereto, when the person or corporation claims title thereto by the defective instrument and the defective instrument was apparently made and delivered by the grantor to convey or mortgage the real estate and was recorded in the county where the land lies, or when possession of the land has been held by any person or corporation adverse to the record owner thereof or his heirs and assigns until such adverse possession has ripened into a good title under the statutes of this state, such person or corporation may file complaint in any county in which any part of the land is situated to have the conveyance or other evidence of claim or title canceled and the cloud removed from the title and to have his title quieted, whether such real own-

er is in possession or not or is threatened to be disturbed in his possession or not, and whether defendant is a resident of this state or not, and whether the title has been litigated at law or not, and whether the adverse claim or title or interest is void on its face or not, or if not void on its face that it may require extrinsic evidence to establish its validity. A guardian ad litem shall not be appointed unless it shall affirmatively appear that the interest of minors, persons of unsound mind, or convicts are involved.

(3) DERAIGNMENT OF TITLE.—The plaintiff shall deraign his title from the original source or for a period of at least 7 years before filing the complaint unless the court otherwise directs, setting forth the book and page of the records where any instrument affecting the title is recorded, if it is recorded, unless plaintiff claims from a common source with defendant.

(4) JUDGMENT.—If it appears that plaintiff has legal title to the land or is the equitable owner thereof based on one or more of the grounds mentioned in subsection (2), or if a default is entered against defendant (in which case no evidence need be taken), the court shall enter judgment removing the alleged cloud from the title to the land and forever quieting the title in plaintiff and those claiming under him since the commencement of the action and adjudging plaintiff to have a good fee simple title to said land or the interest thereby cleared of cloud.

(5) RECORDING FINAL JUDGMENTS.—All final judgments may be recorded in the county or counties in which the land is situated and operate to vest title in like manner as though a conveyance were executed by a special master or commissioner.

(6) OPERATION.—This section is cumulative to other existing remedies.

History.—ss. 1, 2, 5, 6, 8, 9, ch. 11383, 1925; CGL 5010, 5011, 5014, 5015, 5017, 5018; s. 1, ch. 24293, 1947; s. 2, ch. 29737, 1955; s. 20, ch. 67-254; s. 1, ch. 70-278.
Note.—Former ss. 66.16, 66.17, 66.20, 66.21, 66.23, 66.24.

[1]65.071 Quieting title; deeds without joinder of wife where separated for 30 years.—An action in chancery may be brought to quiet title to land to preclude any wife from claiming dower or any heirs from claiming any interest to land when the following facts exist:

(1) When any husband and wife have not cohabited as husband and wife for 30 years or more and during this time the husband has conveyed land as a single man and the land has come into the hands of purchasers for a valuable consideration without notice that the husband was married at the time he conveyed the land, and the purchasers have relied on the acknowledgment to deeds by the husband that he was a single man, and it afterwards became known that he was a married man at the time he deeded the land and his marriage has never been dissolved and he refuses to voluntarily get a dissolution of marriage to clear the title to preclude his wife from claiming any inchoate dower therein and his heirs from claiming any interest therein and when the wife has never lived in the county where the land is located with the husband as his wife and has never asserted any inchoate right to dower in the land, the inchoate right to dower is divested and is a cloud on the title to the land and the purchaser of the land has the right to remove the cloud and to prevent the wife or heirs from claiming any dower or other interest from such purchasers and their successors in title.

(2) When these facts are proven, the court shall adjudge that the wife and heirs of the husband are forever barred and perpetually enjoined from claiming any interest in the land arising out of dower or otherwise, and that the wife did not join in the execution of the deeds by which the husband deeded the land as a single man under the facts above-stated is not effective to reserve an inchoate right of dower in the land held by such purchasers.

History.—ss. 1, 2, ch. 19116, 1939; CGL 5011(1), (2); s. 2, ch. 29737, 1955; s. 20, ch. 67-254; s. 1, ch. 73-300.
[1]Note.—Ch. 73-107, Laws of Florida, abolished the right of dower in property transferred prior to death. See also s. 732.111.
Note.—Former s. 66.25.

65.081 Tax titles; quieting title.—

(1) PARTIES.—Any grantee under any tax deed issued by the state, or any municipality or other political subdivision thereof, or any purchaser from the state, or any municipality or other political subdivision thereof, of any land the title to which has been acquired by this state or such municipality or political subdivision through any proceeding or foreclosure for the nonpayment of taxes or special assessments, or the successor in title to the grantee or purchaser, may maintain an action in chancery to quiet title to the land included in the tax deed, or so purchased against the holder of the record title to the land, and against any other person or corporation claiming any interest in the land or any lien or encumbrance thereon, before issuance of the tax deed or before the loss of title to the land in the tax proceeding or foreclosure.

(2) DERAIGNING TITLE.—Actions may be maintained hereunder whether or not plaintiff is in possession of the land involved but when defendant is in actual possession of the land a jury trial may be had as provided in other actions to quiet title. When the action is based on a tax deed, the complaint need not deraign title beyond the issuance of the tax deed. When the action is based on a conveyance by this state, or any municipality or other political subdivision thereof, of land the title to which it has acquired through a foreclosure or other proceeding for the nonpayment of taxes, the complaint need not deraign title beyond the deed or other instrument or act vesting title in the state or municipality or other political subdivision of the state.

(3) WHEN TAXES HAVE BEEN PAID.—No defense to the action or attack upon the tax deed shall be made except the defense that the taxes assessed against the property had been paid by the former owner before issuance of the tax deed.

(4) WHEN TAX DEED HAS BEEN ISSUED BEFORE CONVEYANCE BY SOVEREIGN.—No defense shall be made to the action because of assessment of the property or issuance of the tax deed before the United States or the state has parted with title to the property, and no other attack shall be made on it, except the defense that the taxes assessed against the property had been paid by the person, or a claimant under him, to whom the Unit-

ed States patent or conveyance from the state was issued before the issuance of the tax deed.

History.—ss. 1, 2, ch. 21822, 1943; s. 2, ch. 29737, 1955; s. 20, ch. 67-254; s. 29, ch. 74-382; s. 1, ch. 77-174.

Note.—Former ss. 66.26, 66.27.

CHAPTER 66

EJECTMENT

66.011 Common law ejectment abolished.—In ejectment it is not necessary to have any fictitious parties. Plaintiff may bring action directly against the party in possession or claiming adversely.

History.—s. 1, ch. 999, 1859; RS 1511; GS 1966; RGS 3234; CGL 5040; s. 21, ch. 67-254.

Note.—Former s. 70.01.

66.021 Procedure.—

(1) LANDLORD NOT A DEFENDANT.—When it appears before trial that a defendant in ejectment is in possession as a tenant and that his landlord is not a party, the landlord shall be made a party before further proceeding unless otherwise ordered by the court.

(2) DEFENSE MAY BE LIMITED.—A defendant in an action of ejectment may limit his defense to a part of the property mentioned in the complaint, describing such part with reasonable certainty.

(3) WRIT OF POSSESSION; EXECUTION TO BE JOINT OR SEVERAL.—When plaintiff recovers in ejectment, he may have one writ for possession, damages and costs or, if he elects, have separate writs for possession and damages.

(4) CHAIN OF TITLE.—Plaintiff with his complaint and defendant with his answer shall serve a statement setting forth chronologically the chain of title on which he will rely at trial. If any part of the chain of title is recorded, the statement shall set forth the names of the grantors and the grantees and the book and page of the record thereof; if an unrecorded instrument is relied on, a copy shall be attached. The court may require the original to be submitted to the opposite party for inspection. If the party relies on a claim or right without color of title, the statement shall specify how and when the claim originated and the facts on which the claim is based. If defendant and plaintiff claim under a common source, the statement need not deraign title before the common source.

(5) TESTING SUFFICIENCY.—If either party wants to test the legal sufficiency of any instrument or court proceeding in the chain of title of the opposite party, he shall do so before trial by motion setting up his objections with a copy of the instrument or court proceedings attached. The motion shall be disposed of before trial. If either party determines that he will be unable to maintain his claim by reason of the order, he may so state in the record and final judgment shall be entered for the opposite party.

History.—s. 21, ch. 67-254.

66.031 Verdict and judgment.—

(1) VERDICT.—A verdict for plaintiff shall state the quantity of the estate of plaintiff, and describe the land by metes and bounds, lot number or other certain description.

(2) JUDGMENT.—The judgment awarding possession shall state the quantity of the estate and give a description of the land recovered in like manner.

History.—ss. 1, 2, ch. 3244, 1881; RS 1515; GS 1970; RGS 3238; CGL 5046; s. 21, ch. 67-254.

Note.—Former s. 70.05.

66.041 Betterment, petition.—If a judgment of eviction is rendered against defendant, within 60 days thereafter, or if he has appealed, within 20 days after filing the mandate affirming the judgment, he may file in the court in which the judgment was rendered a petition setting forth that:

(1) Defendant had been in possession and that he or those under whom he validly derived had permanently improved the value of the property in controversy before commencement of the action in which judgment was rendered.

(2) Defendant or those under whom he validly derives held the property at the time of such improvement under an apparently good legal or equitable title derived from the English, Spanish or United States Governments or this state; or under a legal or equitable title plain and connected on the records of a public office or public offices; or under purchase at a regular sale made by an executor, administrator, guardian or other person by order of court; and

(3) When defendant made the improvements or purchased the property improved, he believed the title which he held or purchased to the land thus improved to be a good and valid title. The petition shall demand that the value of the improvements be assessed and compensation awarded to him therefor.

History.—RS 1516; GS 1971; RGS 3239; CGL 5047; s. 2, ch. 29737, 1955; s. 21, ch. 67-254.

Note.—Former s. 70.06.

66.051 Betterment, answer.—The plaintiff in the judgment of eviction may file written defenses to the petition within 20 days after service of the petition.

History.—RS 1517; GS 1972; RGS 3240; CGL 5048; s. 14, ch. 29737, 1955; s. 21, ch. 67-254.

Note.—Former s. 70.07.

66.061 Betterment, trial and verdict.—If an answer is filed, trial shall be on the issues made. If no answer is filed, trial shall be ex parte, but defendant is required to prove every allegation of the petition. If the jury (or if a jury is waived, the court) finds in favor of defendant, it shall assess:

(1) The value of the land at the time of the assessment, irrespective of the improvements put upon the land by defendant or those under whom he derives, and if any, the injury done to the land by defendant or those under whom he derives.

(2) The value of the permanent improvements at the time of the assessment.

(3) The injury, if any, done to the land by defendant or those under whom he derives.

(4) The value of the use of the land by defendant between the time of the judgment in ejectment and the time of the assessment or if defendant has been evicted from or has surrendered the premises, from the time of the judgment to the time of the surrender or eviction. The findings shall be specified separately on each of these matters.

History.—RS 1518; GS 1973; RGS 3241; CGL 5049; s. 2, ch. 29737, 1955; s. 21, ch. 67-254.
Note.—Former s. 70.08.

66.071 Betterment, judgment for plaintiff.—On rendition of the verdict the clerk shall ascertain whether the balance of the last three assessments (that is, of the value of the improvements, the extent of the injury and the value of the use of land), is in favor of plaintiff or defendant and ascertain the amount of the balance; if the verdict is in favor of plaintiff, judgment shall be rendered against defendant for costs, whether the balance of the assessments is in favor of plaintiff or defendant; but if the balance of the assessments is in favor of plaintiff, he shall have a judgment for costs in addition to the judgment for the balance.

History.—RS 1519; GS 1974; RGS 3242; CGL 5050; s. 21, ch. 67-254.
Note.—Former s. 70.09.

66.081 Betterment, judgment for defendant.—If the verdict is in favor of defendant and the balance of assessments is also in his favor, a judgment for costs shall be entered against plaintiff, and a further judgment that unless plaintiff pays or secures as hereinafter provided the amount of the balance of assessments against him within 20 days, defendant may pay or secure to plaintiff the value of the land as assessed.

History.—RS 1520; GS 1975; RGS 3243; CGL 5051; s. 21, ch. 67-254.
Note.—Former s. 70.10.

66.091 Betterment, payment by plaintiff.—The plaintiff may pay the balance in cash or may give defendant a bond with surety to be approved by the clerk, conditioned to pay said balance in two equal annual installments, with interest at 6 percent per annum to defendant. If plaintiff shall pay the sum within 20 days, or if the payment of the bond is received, satisfaction of the judgment shall be entered and all rights conferred on defendant by the judgment terminate.

History.—RS 1521; GS 1976; RGS 3244; CGL 5052; s. 21, ch. 67-254.
Note.—Former s. 70.11.

66.101 Betterment, payment by defendant.—If plaintiff does not pay or secure the sum within 20 days, within 20 days thereafter defendant may pay to plaintiff the value of the land as assessed or give plaintiff a bond with surety, to be approved by the clerk, conditioned to pay plaintiff the value in two equal annual installments, with 6 percent interest; or if plaintiff fails to pay the bond given by him when it becomes due, for 20 days after the expiration of the time fixed in the bond for payment, defendant shall again have the privilege of paying to plaintiff in cash the value of the land assessed. On the payment of the sum to plaintiff at any of the times hereinbefore mentioned, title to the land shall vest in defendant and plaintiff or those holding under him shall give defendant a deed to the land, tenements, hereditaments and appurtenances, and if defendant has been evicted from or has surrendered the property, it shall be restored to him by order of court on motion.

History.—RS 1522; GS 1977; RGS 3245; CGL 5053; s. 21, ch. 67-254.
Note.—Former s. 70.12.

CHAPTER 68

MISCELLANEOUS PROCEEDINGS

68.01 Declaring tax assessment invalid.—When an assessment is made against any person, body politic or corporate and payment is refused on an allegation of illegality of the assessment, the person, body corporate or politic may file an action in chancery setting forth the alleged illegality. The court has jurisdiction to decide the matter and if the assessment is illegal, shall declare the assessment not lawfully made.

History.—s. 4, ch. 151, 1848; RS 1542; GS 2006; RGS 3274; CGL 5082; s. 22, ch. 67-254.
Note.—Former s. 69.01.

68.02 Ne exeat.—

(1) WHEN TO ISSUE.—No writ of ne exeat shall be granted until a verified complaint is filed demanding the writ. It may issue in any case when chancery has concurrent jurisdiction with common law and the issuance is just.

(2) JUDGE TO FIX PENALTY OF BOND.—In granting the writ the court shall fix the penalty and conditions of the bond with surety to be approved by the clerk to be required of plaintiff in favor of defendant. The writ shall not issue until the bond is given.

(3) ABSENCE FROM STATE UNDER CERTAIN CONDITIONS PERMITTED.—An absence of the defendant from the state from which he returns before a personal appearance is necessary or before it is necessary to perform any order of the court is not a breach of the condition of the bond.

(4) SURRENDER OF DEFENDANT BY SURETIES.—The surety of defendant has the right personally or by attorney at any time before the bond is forfeited to take the body of the principal and surrender him in open court or deliver him to the executive officer of the court, who shall detain the principal as in cases of the surrender of the principal by special bail. At the time of delivery to the officer, the surety shall take a receipt for the body and file it with the clerk. If done before the bond is forfeited, the surrender or delivery discharges the surety from his undertaking.

History.—ss. 1-4, Nov. 7, 1828; RS 1473-1476; GS 1921-1924; RGS 3184-3187; CGL 4976-4979; s. 2, ch. 29737, 1955; s. 22, ch. 67-254.
Note.—Former ss. 62.18-62.21.

68.03 Sequestration; proceedings prescribed.—

(1) If any action is commenced in chancery against any defendant residing out of this state and any other defendant within the state has in his hands effects of, or is otherwise indebted to, the absent defendant and the absentee does not appear in the action and give security to the satisfaction of the court for performing the judgment and on affidavit that the absentee is out of the state, or that on inquiry at his usual place of abode he cannot be found to be served with process, the court may restrain the defendant in this state from paying or conveying or secreting the debts owing by him to, or the effects in his hands of, the absentee or restrain the absentee from conveying or secreting or removing the property in litigation, or may sequestrate the property which may be necessary to secure plaintiff if he prevails, and may order such debts to be paid and effects to be delivered to plaintiff on his giving bond with surety for the return thereof.

(2) The court shall require the plaintiff to give bond with surety to be approved by the clerk, to abide the future orders made for restoring the estate or effects to the absent defendant on his appearance in the action. If the plaintiff does not furnish the bond, the effects shall remain under the direction of the court or in the hands of a receiver or otherwise for so long a time and shall be disposed of in such manner as the court deems fit.

History.—ss. 1, 2, Feb. 12, 1832; RS 1499; GS 1948; RGS 3211; CGL 5003; s. 10, ch. 29737, 1955; s. 22, ch. 67-254.
Note.—Former s. 62.22.
cf.—Ch. 49 Constructive service of process.

68.04 Chancery jurisdiction over liens.—All liens of any kind, whether created by statute or the common law, and whether heretofore regarded as merely possessory or not, may be enforced in chancery.

History.—RS 1510; GS 1960; RGS 3228; CGL 5034; s. 22, ch. 67-254.
Note.—Former s. 62.36.

68.05 Creditors' bills.—Creditors' bills may be filed in chancery before the claims of indebtedness of the persons filing them have been reduced to judgment, but no such action shall be entertained unless plaintiff has first commenced a separate action at law for the collection of the claims. No final judgment shall be entered on a creditor's bill until such claims have been reduced to judgment at law.

History.—s. 1, ch. 5137, 1903; GS 1961; RGS 3229; CGL 5035; s. 1, ch. 21976, 1943; s. 22, ch. 67-254.
Note.—Former s. 62.37.

68.06 Actions upon negotiable and other instruments; consideration, etc.—All bonds, notes, covenants, deeds, bills of exchange and other written instruments not under seal have the same force and effect (so far as the rules of pleading and evidence are concerned) as bonds and instruments under seal. The assignment or endorsement of any instrument vests the assignee or endorsee with the same rights, powers and capacities as were possessed by the assignor or endorser. The assignee or endorsee may bring action thereon. It is not necessary for the plaintiff in any action on an instrument assignable by law to allege the consideration on which the instrument was given or on which the assignment or

endorsement was made nor to prove the consideration or the execution of the instrument, unless it is denied by the defendant under oath. An executor or administrator may deny the execution or consideration by answer not under oath.

History.—ss. 24, 33, 36, Nov. 23, 1828; RS 1073; GS 1465; RGS 2664; CGL 4330; s. 2, ch. 29737, 1955; s. 22, ch. 67-254.
Note.—Former s. 52.08.

68.065 Actions to collect worthless checks, etc.; attorney's fees and collection costs.—In any civil action brought for the purpose of collecting a check, draft, or order of payment, the payment of which was refused by the drawee because of the lack of funds or credit, the prevailing party in such action shall be entitled to recover from the nonprevailing party the prevailing party's reasonable attorney fees and costs of collection.

History.—s. 2, ch. 79-345.

68.07 Change of name.—

(1) Chancery courts have jurisdiction to change the name of any person residing in this state on petition of the person filed in the county in which he resides.

(2) The petition shall be verified and show:

(a) That petitioner is a bona fide resident of and domiciled in the county where the change of name is sought.

(b) If known, the date and place of birth of petitioner, petitioner's father's name, mother's maiden name and where petitioner has resided since birth.

(c) If petitioner is married, the name of petitioner's spouse and if petitioner has children, the names and ages of each and where they reside.

(d) If petitioner's name has previously been changed and when and where and by what court.

(e) Petitioner's occupation and where petitioner is employed and has been employed for 5 years next preceding filing of the petition. If petitioner owns and operates a business, the name and place of it shall be stated and petitioner's connection therewith and how long petitioner has been identified with said business. If petitioner is in a profession, his profession shall be stated, where he has practiced his profession and if a graduate of a school or schools, the name or names thereof, time of graduation and degrees received.

(f) Whether the petitioner has been generally known or called by any other names and if so, by what names and where.

(g) Whether petitioner has ever been adjudicated a bankrupt and if so, where and when.

(h) Whether petitioner has ever been convicted of a felony and if so, when and where.

(i) Whether any money judgment has ever been entered against petitioner and if so, the name of the judgment creditor, the amount and date thereof, the court by which entered, and whether the judgment has been satisfied.

(j) That the petition is filed for no ulterior or illegal purpose and granting it will not in any manner invade the property rights of others, whether partnership, patent, good will, privacy, trademark or otherwise.

(3) The hearing on the petition may be immediately after it is filed.

(4) On filing the final judgment the clerk shall send a report of the judgment to the state registrar of vital statistics on a form to be furnished by him. The form shall contain sufficient information to identify the original birth certificate of the person, the new name, and the file number of the judgment. This report shall be filed by the state registrar and become a part of the vital statistics of this state.

(5) A husband and wife and minor children may join in one petition for change of name and the petition shall show the facts required of a petitioner as to the husband and wife and the names of the minor children may be changed at the discretion of the court.

(6) When only one parent petitions for a change of name of a minor child, process shall be served on the other parent and proof of such service shall be filed in the cause; provided, however, that where the other parent is a nonresident constructive notice of the petition may be given pursuant to chapter 49, and proof of publication shall be filed in the cause without the necessity of recordation.

(7) Nothing herein applies to any change of name in proceedings for dissolution of marriage or for adoption of children.

History.—s. 1, ch. 1324, 1862; RS 1543; GS 2007; RGS 3275; CGL 5083; s. 1, ch. 28159, 1953; s. 1, ch. 29921, 1955; s. 1, ch. 61-152; s. 17, ch. 67-254; s. 1, ch. 67-475; s. 1, ch. 73-300.
Note.—Former ss. 69.02, 62.031.

68.08 Visitation rights; grandparents of minor child.—Any court of this state which is competent to decide child custody matters shall have jurisdiction to award the grandparents of a minor child or minor children visitation rights of the minor child or children upon the death of or desertion by one of the minor child's parents if it is deemed by the court to be in the minor child's best interest.

History.—s. 2, ch. 78-5.

CHAPTER 69

MISCELLANEOUS PROCEDURAL MATTERS

69.011 Supreme Court; bond not to be required of certain officers in certain original proceedings.—Constitutional officers of the state, boards of county commissioners, and school boards of the several counties of this state shall not be required to furnish any bond or other security for the procurement of or to render effective any restraining order, injunction, or other order, writ or judgment in cases of original jurisdiction in the Supreme Court of Florida.

History.—s. 1, ch. 19172, 1939; CGL 4621(1); s. 23, ch. 67-254; s. 1, ch. 69-300.
Note.—Former s. 69.03.

69.021 Bondholders' committee.—

(1) SELECTION.—In any action to foreclose the lien of any mortgage or deed of trust given to secure any issue of bonds or other obligations and encumbering real or personal property or both when the owners of the bonds or beneficiaries of the trust exceed ten in number, on motion of a party or on its own initiative, the court may appoint three persons, two of whom shall constitute a quorum for all purposes, as a committee for the protection of the holders of bonds or units or certificates of beneficial interest. The committee is vested with such powers and authority and shall discharge such duties in connection with the litigation and its subject matter as is necessary and proper in the court's discretion to protect the interest of the holders of the bonds and beneficiaries of the trust involved in, or affected by, the litigation. During the pendency of such litigation, the court may prescribe, modify, abrogate or nullify the powers and authority of the committee.

(2) QUALIFICATIONS.—No person is eligible for appointment to, nor qualified to act as a member of, the committee who is interested in the outcome of the action or in the subject matter thereof, or who is an officer, director or stockholder of any party to the actions, or who is related by blood or marriage to, or directly or indirectly associated with or employed by:

(a) Any official of the court.

(b) Any person who is interested in the outcome of the actions.

(c) Any person who is interested in the subject matter.

(d) Any person who is an officer, director or stockholder of any corporate party to the action.

(3) COMPENSATION AND EXPENSES.—The compensation and expenses of the committee shall be fixed by the court and may be taxed as costs and ordered paid by such parties in interest, and in such manner and at such time, and out of such funds or property involved in the action as the court determines. The court may remove any members of the committee and appoint a successor or successors to fill the vacancies that result from removal, resignation or death of members of the committee. The committee is subject to the supervision and control of the court at all times, and amenable to its orders until the approval of the final reports, if any, of the committee and the discharge of the committee by the court.

(4) EMPLOYMENT OF COUNSEL.—The employment of counsel by the committee shall be approved by the court and the compensation of counsel shall be fixed by the court.

(5) ONLY LEGALLY APPOINTED COMMITTEES RECOGNIZED.—Any bondholders' committee not appointed by the court in which the action is pending shall be heard in the action or permitted, directly or indirectly, to dominate or control the litigation or the action of the trustee or trustees under deed or deeds of trust under which the action is predicated, nor permitted to acquire, directly or indirectly, the property at any sale in said action.

History.—ss. 1-5, ch. 16831, 1935; CGL 1936 Supp. 5977(22)-(26); s. 23, ch. 67-254; s. 18, ch. 79-400.
Note.—Former ss. 69.09-69.13.

69.031 Designated financial institutions for assets in hands of guardians, curators, administrators, trustees, receivers, etc.—

(1) When it is expedient in the judgment of any court having jurisdiction of any estate in process of administration by any guardian, curator, executor, administrator, trustee, receiver, or other officer, because the size of the bond required of the officer is burdensome or for other cause, the court may order part or all of the personal assets of the estate placed with a bank, trust company, or savings and loan association (which savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state) designated by the court, consideration being given to any bank, trust company or savings and loan association proposed by the officer. When the assets are placed with the designated financial institution, it shall file a receipt therefor in the name of the estate and give the officer a copy. Such receipt shall acknowledge the assets received by the financial institution. All interest, dividends, principal and other debts collected by the financial institution on account thereof shall be held by the financial institution in safekeeping, subject to the instructions of the officer authorized by order of the court directed to the financial institution.

(2) Accountings shall be made to the officer at reasonably frequent intervals. After the receipt for the original assets has been filed by the financial institution, the court shall waive the bond given or to be given or reduce it so that it shall apply only to the estate remaining in the hands of the officer,

whichever the court deems proper.

(3) When the court has ordered any assets of an estate to be placed with a designated financial institution, any person or corporation having possession or control of any of the assets, or owing interest, dividends, principal or other debts on account thereof, shall pay and deliver such assets, interest, dividends, principal and other debts to the financial institution on its demand whether the officer has duly qualified or not, and the receipt of the financial institution relieves the person or corporation from further responsibility therefor.

(4) Any bank, trust company, or savings and loan association which is designated under this section, may accept or reject the designation in any instance, and shall file its acceptance or rejection with the court making the designation within 15 days after actual knowledge of the designation comes to the attention of the financial institution, and if the financial institution accepts, it shall be allowed a reasonable amount for its services and expenses which the court may allow as a charge against the assets placed with the financial institution.

History.—ss. 1-3, ch. 21980, 1943; s. 1, ch. 57-198; s. 23, ch. 67-254.
Note.—Former s. 69.15.

69.041 State named party; lien foreclosure, suit to quiet title.—

(1) Under the conditions prescribed in this section for the protection of the state, the state may be named a party to a civil action in any court of this state, or in any district court of the United States, having jurisdiction of the subject matter, either:

(a) To quiet title to real property wherein the state has or claims any adverse interest in the title to real estate; or

(b) For the foreclosure of a mortgage or other lien on real or personal property on which the state has or claims a mortgage or other lien.

(2) The complaint shall set forth with particularity the nature of the interest claimed by the state in such real property with respect to quiet title proceedings. In the case of mortgage or lien foreclosure, the complaint shall set forth with particularity the nature of the lien claimed by the state in such real property.

(3) A judicial sale in a mortgage foreclosure action shall have the same effect respecting the discharge of the property from liens and encumbrances held by the state as is provided about such matters by the law of this state. A sale to satisfy a lien inferior to one of the state shall be made subject to and without disturbing the lien of the state, unless the state consents that the property may be sold free of its liens and the proceeds divided as the parties may be entitled.

History.—ss. 1-3, ch. 29724, 1955; s. 23, ch. 67-254; s. 1, ch. 70-326.
Note.—Former ss. 69.17-69.19.

69.051 Masters in chancery; compensation.— Masters in chancery shall be allowed such compensation for any services as the court deems reasonable including time consumed in legal research required in preparing and summarizing his findings of fact and law.

History.—s. 1, ch. 28169, 1953; s. 23, ch. 67-254.
Note.—Former s. 62.071.

69.061 Loss of negotiable instrument; indemnity.—The court may order that the loss of a negotiable instrument shall not be set up in any action to recover on it if satisfactory indemnity is given against the claims of any other person on the instrument.

History.—s. 73, ch. 1096, 1861; RS 1080; GS 1486; RGS 2686; CGL 4353; s. 23, ch. 67-254.
Note.—Former s. 54.01.

69.071 Number of jurors.—In all civil actions when a jury is empaneled, a jury of six qualified jurors is sufficient.

History.—s. 1, ch. 4717, 1899; GS 1494; RGS 2694; CGL 4361; s. 8, ch. 67-254; s. 25, ch. 73-333.
Note.—Former ss. 54.14, 53.041.

CHAPTER 71

REESTABLISHMENT OF DOCUMENTS

71.011 Reestablishment of papers, records, etc.—All papers, written or printed, of any kind whatsoever, and the records and files of any official, court or public office, may be reestablished in the manner hereinafter provided.

(1) WHO MAY REESTABLISH.—Any person interested in the paper, file or record to be reestablished may reestablish it.

(2) VENUE.—If reestablishment is sought of a record or file, venue is in the county where the record or file existed before its loss or destruction. If it is a private paper, venue is in the county where any person affected thereby lives or if such persons are nonresidents of the state, then in any county in which the person seeking the reestablishment desires.

(3) REMEDY CONCURRENT.—Nothing herein shall prevent the reestablishment of lost papers, records and files at common law or in equity in the usual manner.

(4) EFFECT.—

(a) Any paper, record or file reestablished has the effect of the original. A private paper has such effect immediately on recording the judgment reestablishing it, but a reestablished record does not have that effect until recorded and a reestablished paper or file of any official, court or public officer does not have that effect until a certified copy is filed with the official or in the court or public office where the original belonged. A certified copy of any reestablished paper, the original of which is required or authorized by law to be recorded, may be recorded.

(b) When any deed forming a link in a chain of title to land in this state has been placed on the proper record without having been acknowledged or proven for record and has thereafter been lost or destroyed, certified copies of the record of the deed as so recorded may be received as evidence to reestablish the deed if the deed has been so recorded for 20 years.

(5) COMPLAINT.—A person desiring to establish any paper, record or file, except when otherwise provided, shall file a complaint in chancery setting forth that the paper, record or file has been lost or destroyed and is not in the custody or control of the petitioner, the time and manner of loss or destruction, that a copy attached is a substantial copy of that lost or destroyed, that the persons named in the complaint are the only persons known to plaintiff who are interested for or against such reestablishment.

History.—s. 5, Nov. 21, 1829; s. 12, ch. 1369, 1862; s. 2, ch. 3019, 1877; RS 1523-1527, 1533; s. 1, ch. 5162, 1903; GS 1978-1982, 1997; RGS 3246-3250, 3265; CGL 5054-5058, 5073; s. 7, ch. 22858, 1945; s. 24, ch. 67-254.

Note.—Former ss. 71.01-71.06.

71.021 Reestablishment of marks and brands.—The person desiring the reestablishment of the record of any marks or brands shall file a verified complaint in chancery describing the particular mark or brand sought to be reestablished, stating the place where it was recorded, the time of record as near as is known, that the record has been lost or destroyed, and demand reestablishment of the record of the mark or brand. On filing the complaint, the court shall order reestablishment of the mark or brand.

History.—s. 2, ch. 1369, 1862; RS 1528; GS 1983; RGS 3251; CGL 5059; s. 24, ch. 67-254.

Note.—Former s. 71.09.

71.031 Reestablishment of pleadings and process in pending actions.—Lost or destroyed proceedings and any paper or file affecting them in any actions pending and undetermined in any court may be reestablished by the person desiring reestablishment by filing a copy of the proceedings, paper or file in chancery and giving 10 days' written notice to all parties to the action of the application for reestablishment of the proceedings, paper or file. On the hearing the judge shall ascertain the facts and determine the application.

History.—s. 6, ch. 1735, 1870; RS 1532; GS 1996; RGS 3264; CGL 5072; s. 24, ch. 67-254.

Note.—Former s. 71.13.

71.041 Reestablishment of land titles destroyed by fire.—

(1) JURISDICTION.—When the records in any county or any material part thereof have been destroyed by fire so that a connected chain of title cannot be deduced therefrom, the chancery court in the county has jurisdiction to inquire into the condition of any title to or interest in any land in the county and to determine and establish the title against all persons known or unknown.

(2) PLAINTIFF.—Any person claiming a freehold estate in any land in the county who, or whose grantors, were in the actual possession of the land at the time of destruction of the records and who is in possession thereof at the time of filing the complaint may file a complaint to establish and confirm his title to an estate in such land. Tenants in common or persons owning as aforesaid an undivided interest in the lands may join in the action.

(3) COMPLAINT.—The complaint shall state the description of the lands, the character and extent of the estate claimed by the plaintiff, from whom and when and by what mode he derived his title, the names of all persons owning or claiming any estate or possessory interest in the lands or any part thereof, all persons who are in possession of the lands or any part thereof, all persons to whom any of the lands have been conveyed, and the date or dates that the conveyances were recorded since the time of the destruction of the records and before the filing of the complaint and if no such persons are known to plaintiff, he shall so state.

(4) DETERMINATION OF TITLES, ETC.—The court may determine in whom the title to any land described in the complaint is vested, whether plaintiff or any other party, but the judgment shall not affect any lien to which the land is subject, but shall leave all liens to be ascertained or established or enforced as is provided by law.

History.—ss. 1-3, 7, ch. 4952, 1901; GS 1987-1989, 1994; RGS 3255-3257, 3262; CGL 5063-5065, 5070; s. 24, ch. 67-254.

Note.—Former ss. 71.14, 71.15, 71.17, 71.21.

CHAPTER 73

EMINENT DOMAIN

73.012 Procedure.—Actions in eminent domain shall be governed by the rules of civil procedure and the appellate rules unless otherwise provided by this chapter.

History.—s. 1, ch. 65-369.

73.021 Petition; contents.—Those having the right to exercise the power of eminent domain may file a petition therefor in the circuit court of the county wherein the property lies, which petition shall set forth:

(1) The authority under which and the use for which the property is to be acquired, and that the property is necessary for that use;

(2) A description identifying the property sought to be acquired. The petitioners may join in the same action all properties involved in a planned project whether in the same or different ownership, or whether or not the property is sought for the same use;

(3) The estate or interest in the property which the petitioner intends to acquire;

(4) The names, places of residence, legal disabilities, if any, and interests in the property of all owners, lessees, mortgagees, judgment creditors, and lienholders, so far as ascertainable by diligent search, and all unknown persons having an interest in the property when the petitioner has been unable to ascertain the identity of such persons by diligent search and inquiry. If any interest in the property, or lien thereon, belongs to the unsettled estate of a decedent, the executor or administrator shall be made a defendant without joining the devisee or heir; if a trust estate, the trustee shall be made a defendant without joining the cestui que trust. The court may appoint an administrator ad litem to represent the estate of a deceased person whose estate is not being administered, and a guardian ad litem for all defendants who are infants or are under other legal disabilities; and for defendants whose names or addresses are unknown. A copy of the order of appointment shall be served on the guardian ad litem at least 10 days before trial unless he has entered an appearance;

(5) Whether any mobile home is located on the property sought to be acquired and, if so, whether the removal of that mobile home will be required. If such removal shall be required, the petition shall name the owners of each such mobile home as defendants. This subsection shall not apply to any governmental authority exercising its power of eminent domain when reasonable relocation or removal expenses must be paid to mobile home owners under other provisions of law or agency rule applicable to such exercise of power.

(6) A statement that the petitioner has surveyed and located its line or area of construction, and intends in good faith to construct the project on or over the described property;

(7) A demand for relief that the property be condemned and taken for the uses and purposes set forth in the petition, and that the interest sought be vested in the petitioner.

History.—s. 1, ch. 65-369; s. 2, ch. 77-51.

Note.—Similar provisions in former ss. 73.01, 73.02, 73.03, 73.08, 73.20, 73.21.

73.031 Process; service and publication.—

(1) Upon the filing of the petition, the clerk of the court shall issue a summons to show cause why the property should not be taken, directed "to all whom it may concern," containing the names of all the defendants named in the petition, commanding them and any other persons claiming any interest in the property described to serve written defenses to the petition on a day specified in the summons not less than 28 nor more than 60 days from the date of the summons. A copy of the summons and the petition shall be served upon all resident defendants in the manner provided by law and not less than 20 days before the return day.

(2) If any defendant is alleged to be a nonresident of the state, or if the name or residence of any defendant is alleged to be unknown, or if personal service cannot be had upon any defendant for any other reason, the clerk shall cause a notice to be published once each week for 4 consecutive weeks prior to the return day in some newspaper published in the county; provided, however, that if the petitioner be a municipality and a newspaper is published therein, the notice shall be published in such a newspaper. This notice shall contain the names of the defendants to whom it is directed, a description of the property sought to be appropriated, the nature of the action, and the name of the court in which it is pending. The clerk shall mail a copy of the summons and the petition to each out-of-state defendant at his address as set forth in the petition. The clerk shall file a certificate of mailing which, together with proof of publication, shall constitute effective service as though the

defendant had been personally served with process within this state.

(3) The failure of any party to receive notice by mail shall not invalidate the proceedings of the court or any order made pursuant to this chapter.

History.—s. 1, ch. 65-369.

73.041 Acquiring or perfecting title after appropriation.—In any instance, where the petitioner has not acquired the title to or a necessary interest in any lands which it is using, or if at any time after an attempt to acquire such title or interest, it is found to be defective, the petitioner may proceed under this chapter to acquire or perfect such title or interest; provided, however, that the compensation to be allowed the defendants shall be determined as of the date of appropriation.

History.—s. 1, ch. 65-369.

73.051 Returns; defaults.—Any person interested in or having a lien upon the property, whether named as a defendant or not, may file his written defenses to the petition, as a matter of right, on or before the return date set in the notice or thereafter by leave of court. If a defendant does not file his defenses on or before the return date, defaults may be entered against him, but nothing shall prevent any person who is shown by the record to be interested in the property from appearing before the jury to claim the amount of compensation that he conceives to be due for the property.

History.—s. 1, ch. 65-369; s. 1, ch. 70-285; s. 27, ch. 73-333.

73.061 Pretrial hearing.—

(1) Prior to the date of trial, the court may hold a hearing, in limine, to settle all disputed matters properly before it which must be determined prior to trial. Should it appear that the causes of action joined cannot be conveniently disposed of together, the court may order separate trials; provided, however, that any such actions shall be tried in the county in which the lands are located.

(2) The court in which an action in eminent domain is pending shall have jurisdiction and authority over any and all taxes and assessments encumbering the lands involved in such actions, and may stay or defer the enforcement of such taxes and assessments, including all applications for tax deeds, foreclosures and other enforcement proceedings, until final termination of such eminent domain actions. The said court may make such orders concerning such taxes and assessments as may be equitable and proper; provided, however, that ad valorem taxes levied upon any such lands shall be prorated against the owner to the date of taking.

History.—s. 1, ch. 65-369.

73.071 Jury trial; compensation; severance damages.—

(1) When the action is at issue, and only upon notice and hearing to set the cause for trial, the court shall empanel a jury of 12 persons as soon as practical considering the reasonable necessities of the court and of the parties, and giving preference to the trial of eminent domain cases over other civil actions, and submit the issue of compensation to them for determination, which issue shall be tried in the same manner as other issues of fact are tried in the circuit courts.

(2) The amount of such compensation shall be determined as of the date of trial, or the date upon which title passes, whichever shall occur first.

(3) The jury shall determine solely the amount of compensation to be paid, which compensation shall include:

(a) The value of the property sought to be appropriated;

(b) Where less than the entire property is sought to be appropriated, any damages to the remainder caused by the taking, including, when the action is by the Division of Road Operations of the Department of Transportation, county, municipality, board, district or other public body for the condemnation of a right-of-way, and the effect of the taking of the property involved may damage or destroy an established business of more than 5 years' standing, owned by the party whose lands are being so taken, located upon adjoining lands owned or held by such party, the probable damages to such business which the denial of the use of the property so taken may reasonably cause; any person claiming the right to recover such special damages shall set forth in his written defenses the nature and extent of such damages; and

(c) Where the appropriation is of property upon which a mobile home, other than a travel trailer as defined in section 320.01, is located, whether or not the owner of the mobile home is an owner or lessee of the property involved, and the effect of the taking of the property involved requires the relocation of such mobile home, the reasonable removal or relocation expenses incurred by such mobile home owner, not to exceed the replacement value of such mobile home. The compensation paid to a mobile home owner under this paragraph shall preclude an award to a mobile home park owner for such expenses of removal or relocation. Any mobile home owner claiming the right to such removal or relocation expenses shall set forth in his written defenses the nature and extent of such expenses. This paragraph shall not apply to any governmental authority exercising its power of eminent domain when reasonable removal or relocation expenses must be paid to mobile home owners under other provisions of law or agency rule applicable to such exercise of power.

(4) When the action is by the Division of Road Operations, county, municipality, board, district or other public body for the condemnation of a road, canal, levee or water control facility right-of-way, the enhancement, if any, in value of the remaining adjoining property of the defendant property owner by reason of the construction or improvement made or contemplated by the petitioner, shall be offset against the damage, if any, resulting to such remaining adjoining property of the defendant property owner by reason of the construction or improvement, but such enhancement in the value shall not be offset against the value of the property appropriated, and if such enhancement in value shall exceed the damage, if any, to the remaining adjoining property there shall be no recovery over against such property owner for such excess.

(5) The jury shall view the subject property upon

demand by any party or by order of the court.

(6) If the jury cannot agree on a verdict the court shall discharge them, empanel a new jury, and proceed with the trial.

History.—s. 1, ch. 65-369; ss. 23, 35, ch. 69-106; s. 1, ch. 70-283; s. 1, ch. 77-51; s. 19, ch. 79-400.
cf.—s. 6, Art. X, State Const. Eminent domain.

73.072 Mobile home parks; compensation for permanent improvements by mobile home owners.—

(1) Where the appropriation under this chapter is of all or a portion of a mobile home park as defined in s. 83.752, the condemning authority shall separately determine the compensation for any permanent improvements made to each site. This compensation shall be awarded to the mobile home owner leasing the site if:

(a) The effect of the taking includes a requirement that the mobile home owner remove or relocate his mobile home from the site;

(b) The mobile home owner currently leasing the site paid for the permanent improvements to the site; and

(c) The value of the permanent improvements on the site exceeds $1,000 as of the date of taking.

(2) "Permanent improvement" means any addition or improvement to the site upon which a mobile home is located which cannot be detached and removed from the site without destroying its practical utility at another site. If capable of removal to another site, compensation for the expense of removal and relocation shall be as provided by law.

(3) A mobile home owner who is the lessee of the site and is required to remove his mobile home as the result of a taking of all or a part of a mobile home park may petition to intervene as a party defendant in proceedings under this chapter, for purposes of asserting his right to the separate compensation to be determined and awarded under this section. Failure to intervene shall not constitute a waiver of the right of a mobile home owner to institute a separate action to recover from a mobile home park owner the compensation awarded to such park owner for the permanent improvements made by the mobile home owner to the site on which his mobile home is located.

History.—s. 1, ch. 78-315.

73.081 Form of verdict.—The verdict of the jury shall state an accurate description of each parcel of the property sought to be appropriated and the amount to be paid therefor, together with any damage to the remainder caused by the taking and including business damages when allowable by statute. When severance damages, business damages, moving costs, separate compensation for permanent improvements made by a mobile home owner under s. 73.072, or other special damages are sought, the verdict shall state the amount of such damages separately from the amounts of other damages awarded.

History.—s. 1, ch. 65-369; s. 1, ch. 70-284; s. 2, ch. 78-315.

73.091 Costs of the proceedings.—The petitioner shall pay all reasonable costs of the proceedings in the circuit court, including a reasonable attorney's fee to be assessed by that court.

History.—s. 1, ch. 65-369.

73.092 Attorney's fees.—In assessing attorney's fees in eminent domain proceedings, the court shall consider:

(1) Benefits resulting to the client from the services rendered.

(2) The novelty, difficulty, and importance of the questions involved.

(3) The skill employed by the attorney in conducting the cause.

(4) The amount of money involved.

(5) The responsibility incurred and fulfilled by the attorney.

(6) The attorney's time and labor reasonably required adequately to represent the client.

However, under no circumstances shall the attorney's fees be based solely on a percentage of the award.

History.—s. 1, ch. 76-158.

73.101 Form of judgment.—The judgment shall recite the verdict in full and shall state that the estate or interest in the property described in the petition and sought to be appropriated by the petitioner shall vest in the petitioner upon the payment of, or securing by deposit of money, the amount found by the verdict of the jury. Where there are conflicting claims to the amount awarded for any parcel, the court, upon appropriate motion, shall determine the rights of the interested parties with respect to the amount awarded for each parcel and the method of apportionment, together with the disposition of any other matters arising from the taking.

History.—s. 1, ch. 65-369.

73.111 Deposit and possession.—Within 20 days after the rendition of the judgment, the petitioner shall deposit the amount set forth therein into the registry of the court for the use of the defendants, or the proceeding shall be null and void, unless for good cause further time, not exceeding 60 days, is allowed by the court. Upon such deposit and the entry in the proper records in the clerk's office of the judgment and the clerk's certificate that the compensation has been paid into the court, the estate or interest sought shall vest in the petitioner. The court may fix the time within which, and the terms upon which, the defendants shall be required to surrender possession to the petitioner.

History.—s. 1, ch. 65-369; s. 3, ch. 78-315.

73.121 Writs of assistance and possession.—Whenever the judge is satisfied that any person, whether holding under the defendant or not, is preventing or obstructing the petitioner from entering upon or taking possession of the property after the petitioner is entitled to do so, he may grant such writs as he may think necessary, or he may proceed for contempt of court.

History.—s. 1, ch. 65-369.

73.131 Appeals; costs.—

(1) Appeals in eminent domain actions shall be taken in the manner prescribed by law and in accordance with the appellate rules, except that an appeal shall not prevent appropriation of the property by the petitioner where the amount awarded by the judgment has been deposited with the court as aforesaid. If, at any time after entry of the judgment, a defendant shall take out of the court the amount due him, any pending appeal taken by him shall be dismissed by the appellate court upon the filing of a certificate by the clerk of the circuit court stating that the defendant taking the appeal has withdrawn the amount due him.

(2) The petitioner shall pay all reasonable costs of the proceedings in the appellate court, including a reasonable attorney's fee to be assessed by that court, except upon an appeal taken by a defendant in which the judgment of the trial court shall be affirmed.

History.—s. 1, ch. 65-369.

73.141 Payment.—

(1) In the event that no appeal has been taken within the time and in the manner provided by the Florida Appellate Rules, the clerk shall pay each judgment creditor the sum necessary to satisfy the judgment from the funds on deposit, and upon order of the court shall refund to the petitioner all the funds not necessary for the satisfaction of the judgment, costs and attorney fees.

(2) In the event that a timely appeal is taken and the judgment of the trial court is affirmed, the clerk of the court shall pay each judgment creditor as hereinabove provided.

History.—s. 1, ch. 65-369; s. 1, ch. 69-267.

73.151 Railroads and canal companies.—

(1) Whenever land sought to be condemned to the use of a railroad or canal company is in the possession, under any law of this state, of another railroad or canal company which is using the same in the construction or operation of its railroad or canal, the use of no more land than is necessary to furnish to the petitioner a right-of-way 105 feet in width across such railroad or canal shall be condemned for such use.

(2) If it shall be necessary for any railroad company organized under any law of this state to use, for the purpose of its road, any lands over which any other railroad company shall have previously acquired the right-of-way for its road, the right to use such lands may be acquired as in other cases. Such lands shall not be taken in a manner to interfere with the main track of the railroad first established except for crossing, as provided by law.

History.—s. 1, ch. 65-345; s. 1, ch. 65-369.

73.161 Right-of-way for telephone and telegraph over railroad right-of-way.—

(1) If any telegraph or telephone company fails to secure the consent of any railroad or railway company for the construction of its lines along and upon the right-of-way of any railroad in this state, the same may be acquired by eminent domain. If the defendant railroad or railway company has a principal office or place of business in this state, and any portion of the right-of-way sought to be condemned extends into the county wherein such principal office or place of business is located, then the eminent domain action shall be had in such county. No map need be filed with the petition, but it shall state about how many poles per mile will be erected on such right-of-way, and about how far from each other, and from the centers of the main track of the railroad, their length and size, the depth they will be planted in the ground, and the amount of land that will be occupied by them. No pole shall be set at a greater distance than 10 feet from the outer edge of the right-of-way. In such action, the petitioner shall give bond for costs in the penalty of $200, payable to the defendant, with surety to be approved by the clerk.

(2) The judgment shall authorize the petitioner to enter upon the right-of-way of the defendant and construct its lines thereon. Said judgment shall further provide that such lines shall be constructed so as not to interfere with the operation of the trains of said defendant or any telephone or telegraph line already upon such right-of-way; and, furthermore, that if, at any time, the railroad or railway company shall desire, for railway purposes, the immediate use of any land occupied by said petitioner, then the petitioner shall, upon reasonable notice in writing, at its own expense, remove its line to some other place adjacent thereto on such right-of-way so as not to interfere with the track or use of said railway or any telephone or telegraph line already on said right-of-way, and that the said line shall not be erected on any embankment or slope of any cut of such right-of-way, and if at any time the said railroad or railway company shall require for railroad purposes its entire right-of-way at any point occupied by said line, the said petitioner shall, at such point, remove said line entirely off such right-of-way.

(3) The telegraph or telephone company by such action shall acquire only an easement in and to said railroad right-of-way for the purpose of constructing, maintaining, and operating its telegraph or telephone line thereon, and only the interests of such parties as are brought before the court shall be condemned in such action. If the easement or right-of-way claimed extends in or through more counties than one, the whole right and controversy may be heard and determined in any county into or through which such right-of-way extends, except as herein otherwise provided.

History.—s. 1, ch. 65-369.

73.171 Effective date.—This act shall take effect on October 1, 1965, and shall apply to all eminent domain proceedings filed after that date.

History.—s. 1, ch. 65-369.

CHAPTER 74

PROCEEDINGS SUPPLEMENTAL TO EMINENT DOMAIN

74.011 Scope.—In any eminent domain action, properly instituted by and in the name of the state, the Division of Road Operations of the Department of Transportation, or any county, school board, municipality, expressway authority, regional water supply authority, flood control district, drainage or subdrainage district, the ship canal authority, any lawfully constituted housing, port or aviation authority, rural electric cooperative, telephone cooperative corporation, or public utility corporation, the petitioner may avail itself of the provisions of this chapter to take possession and title in advance of the entry of final judgment.

History.—s. 4, ch. 65-369; ss. 23, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 78-422.

74.021 Rights under this chapter; additional.—The right to take possession and title in advance of final judgment in eminent domain actions, as provided by this law, shall be in addition to any right, power or authority conferred by laws of the state under which proceedings may be conducted and shall not be construed as abrogating, limiting or modifying any such right, power or authority.

History.—s. 4, ch. 65-369.

74.031 Declaration of taking; contents.—Those having the right to take possession and title in advance of the entry of final judgment in eminent domain actions, as provided by law, may file, either with the petition or at any time prior to the entry of final judgment, a declaration of taking signed by the petitioner, or its duly authorized agent or attorney, stating that the property sought to be appropriated is thereby taken for the use set forth in the petition. The petitioner shall make a good faith estimate of value, based upon a valid appraisal of each parcel in the proceeding, which shall be made a part of the declaration of taking.

History.—s. 4, ch. 65-369.

74.041 Process; service and publication.—

(1) Upon the filing of the declaration of taking, the clerk of the court shall issue a notice of hearing to the defendants, containing the names of all defendants named in the petition, notifying them that the petitioner will apply to the court for an order of taking on a specified date. A copy of the notice of hearing and the declaration of taking shall be served upon all resident defendants in the manner provided by law for service of original process in eminent domain actions, and not less than 20 days prior to the date specified for the hearing on the order of taking.

(2) If any defendant is alleged to be a nonresident of the state, or if the name or address of any defendant is alleged to be unknown, or if personal service cannot be had upon any defendant for any other reason, the clerk of the court shall cause the notice of hearing to be published one time, not less than 20 days prior to the date specified for the hearing on the order of taking, in some newspaper published in the county; provided, however, that if the petitioner be a municipality and a newspaper is published therein, the notice shall be published in such a newspaper. The clerk shall mail a copy of the notice of hearing and the declaration of taking to each out-of-state defendant at the address set forth in the petition. The clerk shall file a certificate of mailing, which, together with proof of publication, shall constitute effective service as to these defendants. The failure of any party to receive notice, by mail, shall not invalidate the proceedings of the court or any order made pursuant to this chapter.

(3) The notice of hearing provided in this section may be combined with the summons to show cause and the published notice provided in s. 73.031, but in no event shall the hearing provided in this section be noticed for a date earlier than 1 day following the date specified in the summons to show cause and the published notice provided in s. 73.031 for the defendants to serve written defenses to the petition in eminent domain proceedings.

History.—s. 4, ch. 65-369; s. 1, ch. 70-286.

74.051 Hearing on order of taking.—

(1) On the date specified in the notice of hearing, all parties may appear and be heard on all matters properly before the court which must be determined prior to the entry of the order of taking, including the jurisdiction of the court, the sufficiency of pleadings, whether the petitioner is properly exercising its delegated authority, and the amount to be deposited for the property sought to be appropriated.

(2) The court shall make such order as it deems proper, securing to all parties the rights to which they may be entitled. The court may make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable. If the court finds that the petitioner is entitled to possession of the property prior to final judgment, it shall enter an order requiring the petitioner to deposit in the registry of the court such sum of money as will fully secure and fully compensate the persons entitled to compensation as ultimately determined by the final judgment. Said deposit shall not be less than the amount of the petitioner's estimate of value, if the petitioner be the state or any agency thereof, any county, the city or other public body; otherwise, double the amount of petitioner's estimate of value.

(3) The court may fix the time within which and the terms upon which the defendants shall be required to surrender possession to the petitioner. The order of taking shall become effective upon the de-

posit of the required sum in the registry of the court, but if the deposit is not made within 20 days from the entry of the order of taking, the order shall be void and of no further force or effect. The clerk is authorized to invest such deposits so as to earn the highest interest obtainable under the circumstances in state or national financial institutions in Florida insured by the Federal Government. Any interest earned shall be credited to the secondary road fund of the respective county. No sum refunded to the petitioner from the registry of the court pursuant to this chapter shall be charged with commissions or poundage.

History.—s. 4, ch. 65-369; s. 1, ch. 67-34; ss. 1, 3, ch. 67-370; s. 1, ch. 70-365.

74.061 Vesting of title or interest sought.—Immediately upon the making of the deposit, the title or interest specified in the petition shall vest in the petitioner, and the said lands shall be deemed to be condemned and taken for the use of the petitioner, and the right to compensation for the same shall vest in the persons entitled thereto. Compensation shall be determined in accordance with the provisions of chapter 73, except that interest shall be allowed at the same rate as provided in all circuit court judgments from the date of surrender of possession to the date of payment on the amount that the verdict exceeds the estimate of value set forth in the declaration of taking.

History.—s. 4, ch. 65-369; ss. 1, 2, ch. 67-277; s. 28, ch. 73-333; s. 4, ch. 78-315.

74.071 Paying over funds in court.—At any time, prior to the entry of final judgment, and upon motion by the proper defendants, the court may direct that the sum of money set forth in the declaration of taking be paid forthwith to such defendants from the money deposited in the registry of the court. If the compensation awarded for the property by the final judgment shall exceed the amount withdrawn by the defendant, the court shall enter judgment against the petitioner for the deficiency. If the amount withdrawn exceeds the compensation awarded for the property by the final judgment, the court shall enter a judgment against such defendant for the excess, and such judgment shall be a lien against any of his property except his homestead.

History.—s. 4, ch. 65-369.

74.081 Proceedings as evidence.—Neither the declaration of taking, nor the amount of the deposit, shall be admissible in evidence in any action.

History.—s. 4, ch. 65-369.

74.091 Effect of failure to pay final judgment.—Where an order of taking has been entered and deposit made, the failure of the petitioner to pay into the court the compensation ascertained by the jury shall not invalidate said judgment or the title of the petitioner, and such failure shall not authorize any person to molest, interfere with, enter or trespass upon said property; provided, however, persons lawfully entitled to compensation may sue out execution, in the event a timely appeal has not been filed, and such execution may be levied upon the property so condemned and any other property of the petitioner in the same manner as executions are levied in common law actions.

History.—s. 4, ch. 65-369.

74.101 Rights of housing authority after taking.—In any action in which any housing authority created under the laws of Florida has taken or may take possession of any real property in advance of final judgment therein, and the said petitioner has become irrevocably committed to pay the amount ultimately to be awarded as compensation, then it is lawful to expend moneys duly appropriated for that purpose in demolishing existing structures on said land, and in erecting buildings or public works thereon, or in improving said land or erecting and constructing buildings or works thereon, authorized by law to be constructed by any petitioner.

History.—s. 4, ch. 65-369.

74.111 Drainage districts and housing authorities.—In any action instituted by a drainage or subdrainage district, or housing authority wherein the petitioner seeks to avail itself of the provisions of this chapter:

(1) Action under this chapter shall not be taken unless the chairman or other legally constituted head of the petitioning authority empowered to acquire the land shall be of the opinion that the ultimate award probably will be within the limits of the authority's ability to pay.

(2) It shall be lawful for the petitioner to expend moneys duly appropriated for the purpose of availing itself of the provisions of this chapter in going forward with the project for which the land was taken; provided that, in the opinion of the attorney representing the taking authority, the title has been vested in the authority taking, or all persons having an interest therein have been made parties to such proceeding and will be bound by the final judgment therein.

(3) No money shall be paid nor contracts made for payment for any construction or maintenance proposed by the petitioner under this chapter in excess of the amount specifically appropriated therefor by the Legislature of the state, or procured by and secured to the petitioner under contracts with private persons, firms, or corporations in accordance with the laws authorizing such taking authority to negotiate contracts with private persons, firms, or corporations, or by the issuance of bonds and other debentures pursuant to tax levies duly made, all in accordance with the law in such cases made and provided.

(4) The attorney representing the petitioner is authorized to stipulate or agree in behalf of the taking authority to exclude any property, or any part thereof, or any interest therein, that may have been, or may be taken by or on behalf of the authority taking by the declaration of taking, or otherwise.

History.—s. 4, ch. 65-369.

74.121 Effective date.—This act shall take effect on October 1, 1965, and shall apply to all eminent domain proceedings filed after that date.

History.—s. 4, ch. 65-369.

CHAPTER 75

BOND VALIDATION

75.01 Jurisdiction.—Circuit courts have jurisdiction to determine the validation of bonds and certificates of indebtedness and all matters connected therewith.

History.—s. 25, ch. 67-254.

75.02 Plaintiff.—Any county, municipality, taxing district or other political district or subdivision of this state, including the governing body of any drainage, conservation or reclamation district, and including also state agencies, commissions and departments authorized by law to issue bonds, may determine its authority to incur bonded debt or issue certificates of debt and the legality of all proceedings in connection therewith, including assessment of taxes levied or to be levied, the lien thereof and proceedings or other remedies for their collection. For this purpose a complaint shall be filed in the circuit court in the county or in the county where the municipality or district, or any part thereof, is located against the state and the taxpayers, property owners, and citizens of the county, municipality or district, including nonresidents owning property or subject to taxation therein. In actions to validate bonds or certificates of debt issued by state agencies, commissions or departments, the complaint shall be filed in the circuit court of the county where the proceeds of the bond issue are to be expended, or where the seat of state government is situated, and shall be brought against the state and the taxpayers, property owners and citizens thereof, including nonresidents owning property or subject to taxation therein.

History.—s. 1, ch. 6868, 1915; RGS 3296; s. 1, ch. 10036, 1925; s. 1, ch. 12003, 1927; CGL 5106, 5113, 5123; s. 1, ch. 25263, 1949; s. 25, ch. 67-254.

75.03 Condition precedent.—As a condition precedent to filing of a complaint for the validation of bonds or certificates of debt, the county, municipality, state agency, commission or department, or district desiring to issue them shall cause an election to be held to authorize the issuance of such bonds or certificates and show prima facie that the election was in favor of the issuance thereof, or, when permitted by law, adopt an ordinance, resolution or other proceeding providing for the issuance of such bonds or certificates in accordance with law.

History.—s. 1, ch. 6868, 1915; RGS 3296; CGL 5106; s. 2, ch. 25263, 1949; s. 25, ch. 67-254.
cf.—ss. 11, 12, Art. VII, State Const.

75.04 Complaint.—The complaint shall set out the plaintiff's authority for incurring the bonded debt or issuing certificates of debt, the holding of an election and the result when an election is required, the ordinance, resolution, or other proceeding authorizing the issue and its adoption, all other essential proceedings had or taken in connection therewith, the amount of the bonds or certificates to be issued and the interest they are to bear; and, in case of a drainage, conservation or reclamation district, the authority for the creation of such district, for the issuance of bonds, for the levy and assessment of taxes and all other pertinent matters.

History.—s. 2, ch. 6868, 1915; RGS 3297; s. 2, ch. 12003, 1927; CGL 5107, 5123, 5124; s. 1, ch. 14504, 1929; s. 25, ch. 67-254.

75.05 Order and service.—

(1) The court shall issue an order directed against the state and the several property owners, taxpayers, citizens and others having or claiming any right, title or interest in property to be affected by the issuance of bonds or certificates, or to be affected thereby, requiring all persons, in general terms and without naming them and the state through its State Attorney or attorneys of the circuits where the county, municipality or district lies, to appear at a designated time and place within the circuit where the complaint is filed and show why the complaint should not be granted and the proceedings and bonds or certificates validated. A copy of the complaint and order shall be served on the State Attorney of the circuit in which such proceedings are pending, and when the municipality or district lies in more than one judicial circuit, on the State Attorney of each of the circuits at least 20 days before the time fixed for hearing. The State Attorney shall examine the complaint, and, if it appears or there is reason to believe that it is defective, insufficient, or untrue, or if in the opinion of the State Attorney the issuance of the bonds or certificates in question has not been duly authorized, defense shall be made by said State Attorney. The State Attorney shall have access, for the purposes aforesaid, to all records and proceedings of the county, municipality, state agency, commission or department, or district, and any officer, agent or employee having charge, possession, or control of any of the books, papers, or records of the county, municipality, state agency, commission, department, or district shall exhibit them for examination on demand of the State Attorney, and shall furnish, without cost, duly authenticated copies thereof which pertain to the proceedings for the issuance of the bonds or certificates or which may affect their legality.

(2) In the case of state agencies, commissions, or departments a copy of the complaint and order shall be served on the State Attorney of the circuit in

which the action is pending and if pending in a county when the proceeds of the bond issue are to be expended in any other county, on the State Attorney of each county in which it is proposed to expend the proceeds.

(3) In the case of independent special districts as defined in s. 218.31(7), a copy of the complaint shall be served on the Department of Banking and Finance of the Office of the Comptroller.

History.—s. 2, ch. 6868, 1915; RGS 3297; s. 2, ch. 10036, 1925; s. 2, ch. 12003, 1927; CGL 5107, 5114, 5124; s. 1, ch. 14504, 1929; s. 1, ch. 22623, 1945; s. 3, ch. 25263, 1949; s. 25, ch. 67-254; s. 11, ch. 79-183.

75.06 Publication of notice.—

(1) Before the date set for hearing, the clerk shall publish a copy of the order in the county where the complaint is filed, and if plaintiff is a municipality or district in more than one county, then in each county, once each week for three consecutive weeks, commencing with the first publication, which shall not be less than 20 days before the date set for hearing but if there is a newspaper published in the territory to be affected by the issuance of the bonds or certificates, and in the county or counties the publication shall be therein unless otherwise ordered by the court. By this publication all property owners, taxpayers, citizens, and others having or claiming any right, title or interest in the county, municipality or district, or the taxable property therein, are made parties defendant to the action and the court has jurisdiction of them to the same extent as if named as defendants in the complaint and personally served with process.

(2) In actions to validate the bonds of state agencies, commissions or departments, the order shall be published in the same manner in a newspaper in each of the counties where the proceeds of bonds are to be expended, and in a newspaper published in the county in which the seat of state government is located if the action is brought therein.

History.—s. 2, ch. 6868, 1915; RGS 3297; s. 3, ch. 10036, 1925; s. 2, ch. 12003, 1927; CGL 5107, 5115, 5124; s. 1, ch. 14504, 1929; s. 1, ch. 22633, 1945; s. 4, ch. 25263, 1949; s. 25, ch. 67-254.

75.07 Intervention; hearings.—Any property owner, taxpayer, citizen or person interested may become a party to the action by moving against or pleading to the complaint at or before the time set for hearing. At the hearing the court shall determine all questions of law and fact and make such orders as will enable it to properly try and determine the action and render a final judgment with the least possible delay.

History.—s. 3, ch. 6868, 1915; RGS 3298; s. 1, ch. 11854; s. 3, ch. 12003, 1927; CGL 5108, 5125; s. 25, ch. 67-254.

75.08 Appeal and review.—Any party to the action whether plaintiff, defendant, intervenor or otherwise, dissatisfied with the final judgment, may appeal to the Supreme Court within the time and in the manner prescribed by the Florida Appellate Rules.

History.—s. 3, ch. 6868, 1915; RGS 3298; s. 1, ch. 11854, s. 3, ch. 12003, 1927; CGL 5108, 5125; s. 10, ch. 63-559; s. 25, ch. 67-254.

75.09 Effect of final judgment.—If the judgment validates such bonds, certificates or other obligations, which may include the validation of the county, municipality, taxing district, political district, subdivision, agency, instrumentality or other public body itself and any taxes, assessments or revenues affected, and no appeal is taken within the time prescribed, or if taken and the judgment is affirmed, such judgment is forever conclusive as to all matters adjudicated against plaintiff and all parties affected thereby, including all property owners, taxpayers and citizens of the plaintiff, and all others having or claiming any right, title or interest in property to be affected by the issuance of said bonds, certificates or other obligations, or to be affected in any way thereby, and the validity of said bonds, certificates or other obligations or of any taxes, assessments or revenues pledged for the payment thereof, or of the proceedings authorizing the issuance thereof, including any remedies provided for their collection, shall never be called in question in any court by any person or party.

History.—s. 4, ch. 6868, 1915; RGS 3299; s. 4, ch. 12003, 1927; CGL 5109, 5126; s. 1, ch. 29691, 1955; s. 9, ch. 57-1; s. 25, ch. 67-254.

75.10 Recording of judgment in other counties.—If any judgment extends into more than one county it shall be recorded in each county in which the plaintiff municipality or district extends.

History.—s. 4, ch. 10036, 1925; CGL 5116; s. 25, ch. 67-254.

75.11 Stamping instruments validated.—

(1) Bonds or certificates, when validated under this chapter, shall have stamped or written thereon, by the proper officers of such county, municipality or district issuing them, a statement in substantially the following form:

"This bond is one of a series of bonds which were validated by judgment of the Circuit Court for ..... County, rendered on ....., 19....."

(2) A certified copy of the judgment or decree shall be received as evidence in any court in this state.

History.—s. 5, ch. 6868, 1915; RGS 3300; s. 5, ch. 12003, 1927; CGL 5110, 5127; s. 1, ch. 57-300; s. 25, ch. 67-254.

75.12 Payment of costs.—The costs shall be paid by the county, municipality or district filing the complaint except when a taxpayer, citizen or other person contests the action or intervenes, the court may tax the whole or any part of the costs against him as is equitable.

History.—s. 6, ch. 6868, 1915; RGS 3301; s. 6, ch. 12003, 1927; CGL 5111, 5128; s. 25, ch. 67-254.

75.13 Certain prior proceedings validated.—Any action for validation heretofore brought by any municipality, special taxing district or political district or subdivision which extends into more than one county or judicial circuit, whereby bonds or certificates of debt have been validated in which the proceedings have been brought in one county and a decree has been entered, said decree shall be binding on all of the citizens, property owners, or taxpayers of each municipality, district or subdivision.

History.—s. 5, ch. 10036, 1925; CGL 5117; s. 25, ch. 67-254.

75.14 Landowner or taxpayer not disqualification of judge.—No judge shall be disqualified in any validation action because he is a landowner or taxpayer of any county, municipality or district seeking relief hereunder.

History.—s. 1, ch. 10164; 1925; CGL 5118; s. 25, ch. 67-254.

75.16 Certain orders and decrees validated.—All orders, decrees and judgments heretofore or hereafter made in actions for the validation of bonds or certificates of indebtedness by any judge disqualified by matters not apparent on the record are valid and binding on all parties unless attacked within 20 days of the entry thereof; and all orders, decrees and judgments heretofore made in such validation actions by judges other than the regular judge or those mentioned or designated in the notices, or at places other than, or dates subsequent to, those mentioned in said notices, when it appears that the regular judge was disqualified, absent or disabled from discharging the duties of his office, are hereby ratified.

History.—s. 3, ch. 10164, 1925; s. 2, ch. 12066, 1927; CGL 5120, 5122; s. 25, ch. 67-254.

75.17 Commencement of action after validation; affidavit of good faith.—Every person who commences an action as taxpayer or otherwise to challenge the validity of any bonds or certificates or to prevent the use of any moneys derived from the sale of the bonds or certificates after the bonds or certificates have been validated by courts of competent jurisdiction pursuant to this chapter, shall file an affidavit of good faith stating that the action is not filed for delay and setting forth with particularity why the objection was not made as part of the validation action.

History.—s. 1, ch. 61-508; s. 25, ch. 67-254.

CHAPTER 76

ATTACHMENT

76.01 Right to attachment.—Any creditor may have an attachment at law against the goods and chattels, lands and tenements of his debtor under the circumstances and in the manner hereinafter provided.

History.—RS 1635; GS 2099; RGS 3400; CGL 5253; s. 26, ch. 67-254.

76.02 Attachment of corporate stock.—Shares of stock in any corporation incorporated by the laws of this state are subject to attachment under the circumstances hereinafter provided and in the manner prescribed for levy of execution thereon.

History.—s. 1, ch. 3917, 1889; RGS 2846; CGL 4533; s. 26, ch. 67-254.

76.03 Courts from which attachments shall issue.—Attachments shall be issued by a judge of the court which has jurisdiction of the amount claimed by the creditor, but if the property to be attached is being actually removed from the state and the creditor is unable to obtain process from the proper court in time to prevent such removal, any judge may issue the writ, making it returnable to the proper court and immediately sending all papers in the action to the clerk of the court to which the writ is returnable.

History.—s. 2, Feb. 15, 1834; s. 1, ch. 250, 1849; RS 1636; GS 2100; RGS 3401; CGL 5254; s. 26, ch. 67-254; s. 15, ch. 73-334; s. 1, ch. 78-38.

76.04 Grounds when debt due.—The creditor may have an attachment on a debt actually due to him by his debtor, when the debtor:

(1) Will fraudulently part with his property before judgment can be obtained against him.

(2) Is actually removing his property out of the state.

(3) Is about to remove his property out of the state.

(4) Resides out of the state.

(5) Is actually moving himself out of the state.

(6) Is about to move himself out of the state.

(7) Is absconding.

(8) Is concealing himself.

(9) Is secreting his property.

(10) Is fraudulently disposing of his property.

(11) Is actually removing himself beyond the limits of the judicial circuit in which he resides.

(12) Is about to remove himself out of the limits of such judicial circuit.

History.—s. 1, ch. 998, 1859; s. 2, ch. 1101, 1861; RS 1637; GS 2101; RGS 3402; CGL 5255; s. 26, ch. 67-254.

76.05 Grounds when debt not due.—Any creditor may have an attachment on a debt not due, when the debtor:

(1) Is actually removing his property out of the state.

(2) Is fraudulently disposing of his property to avoid the payment of his debts.

(3) Is fraudulently secreting his property to avoid payment of his debts.

History.—s. 1, Feb. 14, 1835; RS 1638; s. 1, ch. 5257, 1903; GS 2102; RGS 3403; CGL 5256; s. 26, ch. 67-254.

76.06 Effect of attachment upon unmatured debt.—In attachments for debts not due, under s. 76.05, the existence of one or more of the special grounds assigned, and in case of attachment against executors or administrators for a debt not due, the existence of all the grounds assigned, shall cause the debt to become due, and plaintiff may proceed as on a debt falling due on a day before commencement of the action.

History.—RS 1647; GS 2111; RGS 3412; CGL 5265; s. 26, ch. 67-254.

76.07 Attachment in aid of foreclosure.—Any creditor who is commencing or has commenced an action to foreclose a mortgage on personal property may have an attachment against the property, when he has reason to believe and does believe that:

(1) The property or part of it will be concealed or disposed of so that it will not be forthcoming to answer a judgment on foreclosure.

(2) The property or part of it will be removed beyond the jurisdiction of the court.

(3) The property or part of it is of a perishable character and is being used and consumed by the mortgagor or other parties.

(4) The property or part of it has been disposed of without the consent of the party holding the mortgage, and stating who has the property, if known and if not known, that he does not know who has it.

History.—s. 6, Dec. 11, 1824; RS 1640; GS 2104; RGS 3405; s. 1, ch. 8477,

1921; CGL 5258; s. 26, ch. 67-254.

76.08 Procurement of attachment; generally.—Upon motion by plaintiff, a writ of attachment may issue when the grounds relied on for the issuance of the writ clearly appear from specific facts shown by a verified complaint or a separate affidavit of the plaintiff, and all applicable requirements of s. 76.09, s. 76.10, or s. 76.11 are met.

History.—RS 1641; GS 2105; RGS 3406; CGL 5259; s. 26, ch. 67-254; s. 2, ch. 78-38.

76.09 Motion when debt due.—When the debt is actually due, the motion shall state the amount of the debt that is actually due, and that movant has reason to believe in the existence of one or more of the special grounds in s. 76.04, stating specifically the grounds.

History.—s. 1, ch. 998, 1859; RS 1642; GS 2106; RGS 3407; CGL 5260; s. 26, ch. 67-254.

76.10 Motion when debt not due.—When the debt is not actually due, the motion shall state the amount of the debt or demand; that it is actually an existing debt; and the existence of one or more of the special grounds in s. 76.05, stating specifically the grounds and plaintiff shall produce before the officer granting the attachment satisfactory proof, by affidavit (other than his own) or otherwise, of the existence of the special ground.

History.—s. 2, Feb. 14, 1835; RS 1643; GS 2107; RGS 3408; CGL 5261; s. 26, ch. 67-254.

76.11 Motion for attachment in aid of foreclosure.—In attachments in aid of foreclosure of mortgages on personal property the motion shall describe the property on which the mortgage exists, and state that a complaint has been filed to foreclose the mortgage, the amount of the debt secured by the mortgage, that it is actually due, and that movant has reason to believe in the existence of one or more of the special grounds enumerated in s. 76.07, stating specifically the grounds.

History.—s. 6, Dec. 11, 1824; RS 1645; GS 2109; RGS 3410; CGL 5263; s. 2, ch. 29737, 1955; s. 26, ch. 67-254.

76.12 Attachment bond.—No attachment shall issue until the person applying for it, his agent or attorney, makes a bond with surety to be approved by the clerk payable to defendant in at least double the debt demanded conditioned to pay all costs and damages which defendant sustains in consequence of plaintiff's improperly suing out the attachment. In foreclosure of a mortgage on personal property if the motion states that the property or part of it has been disposed of without the consent of the party holding the mortgage and that plaintiff does not know who has the property or part of it, the bond shall be made payable to the state for the use and benefit of all parties interested, conditioned to pay all costs and damages which are sustained in consequence of plaintiff's improperly suing out the attachment. Any party aggrieved may sue on the bond but the state is not liable for any costs, damages or expenses that are incurred. Any bond in attachment is not void as against the obligors, nor are they discharged therefrom on account of any informality, although the attachment is dissolved because of the informality.

History.—s. 10, Feb. 15, 1834; RS 1646; GS 2110; RGS 3411; s. 2, ch. 8477, 1921; CGL 5264; s. 26, ch. 67-254.

76.13 Writ; form.—

(1) GENERALLY.—The writ of attachment shall command the officer to attach and take into custody so much of the lands, tenements, goods and chattels of the party against whose property the writ is issued as is sufficient to satisfy the debt demanded with costs.

(2) IN AID OF SUITS TO FORECLOSE.—In actions to foreclose mortgages the writ shall describe the property, and command the officer to take and hold such property or so much thereof as can be found sufficient to satisfy the debt to be foreclosed.

History.—s. 2, Feb. 15, 1834; RS 1648; GS 2112; RGS 3413; CGL 5266; s. 26, ch. 67-254.

76.14 Writ; effect of levy.—The levy of a writ of attachment does not operate to dispossess the tenant of any lands or tenements, but a levy on real or personal property binds the property attached, except against preexisting liens. Levies on the same property under successive attachments have precedence as liens in the order in which they are made. A levy binds real estate as against subsequent creditors or purchasers only from the time of the record by the Clerk of the Circuit Court of a notice of the levy and a description of the property levied on.

History.—s. 9, Feb. 17, 1833; RS 1651; GS 2115; RGS 3416; CGL 5269; s. 26, ch. 67-254.

76.16 Writ; levy in other counties.—

(1) When plaintiff states in a motion for attachment that defendant has real or personal property in some county other than the one in which the action was instituted, a writ of attachment, original or ancillary, shall be issued and delivered to the sheriff of the county where the property is situate. The officer shall execute the writ and hold the property levied on subject to the order of the court from which the writ issued, which court has the power to order the delivery thereof to the sheriff of the county where the action was commenced or order the officer executing the writ to hold and dispose of it in his county.

(2) When any real property is levied on under this section, the officer levying the writ shall file a written notice of levy with the Clerk of the Circuit Court for the county in which the property is located, which notice shall contain a description of the property levied on. The record shall be notice to all persons of the levy. If the attachment is dissolved or the action is dismissed, or for any reason the property ceases to be bound by the attachment, on due proof thereof the clerk shall note this on the record of the levy.

History.—s. 2, ch. 3721, 1887; RS 1650; GS 2114; RGS 3415; CGL 5268; s. 26, ch. 67-254.

76.17 Writ; levy upon property removed from county pending levy.—When personal property of the defendant is located in any county at the time an action is commenced in which an attachment issues but is removed from the county pending the action, the officer to whom the writ is delivered shall make return of the fact of the removal and plaintiff may

file a motion stating to what county he believes the property has been removed, whereupon an alias writ shall issue and be delivered to the sheriff of each county to which the property or a part thereof has been removed. On receipt of the writ, the sheriff shall take possession of the property and deliver it to the proper officer of the court from which the writ was issued, and make return of the writ. All questions about the title of the property shall be adjudicated in the county in which the action was brought, unless the court changes the venue.

History.—ss. 1, 2, ch. 3245, 1881; RS 1650; GS 2114; RGS 3415; CGL 5268; s. 26, ch. 67-254.

76.18 Return of property upon forthcoming bond.—At any time after execution of the writ, property attached may be restored to defendant or some other person for him on defendant or such other person giving bond with surety to the officer levying the attachment to be approved by the officer payable to plaintiff in an amount which shall exceed by one-fourth the value of the property, as determined by the court, or which shall exceed by one-fourth the amount of the claim, whichever is less, conditioned for the forthcoming of the property restored to abide the final order of the court.

History.—s. 13, Mar. 15, 1843; s. 1, ch. 6865, 1915; RS 1652; GS 2116; RGS 3417; CGL 5270; s. 26, ch. 67-254; s. 3, ch. 78-38.

76.19 Return of property upon bond to pay debt.—Property attached may be restored to defendant (or in case of foreclosure of mortgage, to any person who makes affidavit that he is the owner of the equity of redemption), on his giving a bond with surety to be approved by the officer, conditioned for the payment to plaintiff of the debt and all costs of the action, when they are adjudicated to be payable to plaintiff.

History.—s. 4, Feb. 14, 1835; RS 1653; GS 2117; RGS 3418; CGL 5271; s. 26, ch. 67-254.

76.20 Replevy of property taken by attachment.—If property taken under a writ of attachment is not subject to attachment, it may be replevied by defendant.

History.—s. 4, Feb. 14, 1835; RS 1654; GS 2118; RGS 3419; CGL 5272; s. 26, ch. 67-254.

76.21 Claims of third parties to attached property.—If any attachment is levied on property claimed by any person other than defendant, such person may replevy it or interpose a claim in the manner provided in case of execution.

History.—s. 8, Feb. 15, 1834; s. 1, Mar. 15, 1843; RS 1665; GS 2129; RGS 3430; CGL 5283; s. 26, ch. 67-254.

76.22 Custody of attached property; sale of perishables.—All personal property levied on by attachment, shall remain in custody of the officer who attached it until disposed of according to law unless it is restored to defendant or some person for him, or is claimed by a third person. When the property attached is perishable or liable to great deterioration in value or the costs of keeping it are greatly disproportionate to its value, the court may order the sale of the property after such notice as is expedient, and the proceeds of the sale shall be paid into court and abide the judgment.

History.—s. 12, Feb. 17, 1833; RS 1655; GS 2119; RGS 3420; CGL 5273; s. 26, ch. 67-254.

76.24 Dissolution of attachment.—

(1) The defendant by motion may obtain the dissolution of a writ of attachment unless the plaintiff proves the grounds upon which the writ was issued and a reasonable probability that the final judgment in the underlying action will be rendered in his favor. The court shall set down such motion for an immediate hearing. This motion shall be in lieu of the provisions of s. 76.18.

(2) On answer by defendant that any allegation in plaintiff's motion is untrue, this issue shall be tried. If the allegation in plaintiff's motion which is denied is not proved to be true, the attachment shall be dissolved.

(3) If the answer denies the debt demanded, the judge may require pleadings thereon on motion of either party to be filed in such time as he fixes.

(4) The issue, if any, raised by the pleadings shall be tried at the same time as the issue, if any, made by the answer on the special cause assigned in plaintiff's motion for the suit. On demand of either party a jury summoned from the body of the county shall be impaneled to try the issue.

History.—s. 5, Feb. 15, 1834; RS 1656; GS 2120; RGS 3421; CGL 5274; s. 15, ch. 29737, 1955; s. 26, ch. 67-254; s. 4, ch. 78-38.

76.25 Effect of dissolution.—

(1) ON THE ACTION.—When an attachment is dissolved, the attachment only shall be dissolved, and plaintiff may prosecute the action to final judgment.

(2) ON WRITS OF GARNISHMENT.—When an attachment is dissolved and a writ of garnishment has been issued the garnishment shall not be dissolved in consequence of dissolution of the attachment, but shall remain in full force and abide the termination of the action.

History.—s. 7, Feb. 15, 1834; s. 3, ch. 1100, 1861; RS 1657; GS 2121; RGS 3422; CGL 5275; s. 10, ch. 28301, 1953; s. 26, ch. 67-254.

76.251 When writ returnable.—A writ of attachment is returnable when fully executed or when the officer is convinced that no property can be found. If property is seized under the writ, the writ shall be returned when the property seized finally passes from the lien of the writ and control of the officer levying it. At the time of each action taken under the writ, the officer shall endorse the action thereon.

History.—s. 26, ch. 67-254.

76.31 Judgments.—If a default is entered for plaintiff and defendant has retaken the property on a forthcoming bond, final judgment shall be entered at the same time against defendant and the surety on the bond for the amount of the judgment against defendant if it is less than the value of the property as fixed by the officer, or for the value of the property so fixed if the value is less than the judgment against defendant. If defendant has retaken the property on a bond to pay the debt, the judgment shall also be entered against the surety for the amount of the judgment against defendant. When judgment is en-

tered against defendant after trial, it shall be entered against the surety as above provided except that the value of the property retaken by defendant shall be found by the court or jury, as the case may be, and stated in the finding or verdict.

History.—RS 1664; GS 2128; RGS 3429; CGL 5282; s. 26, ch. 67-254.

76.32 Attachment of vessels.—

(1) WHEN APPLICABLE.—In all actions by any person, firm, corporation or association of persons, including the state and any governmental subdivision, agency or department of the state, against any person, firm, association of persons or corporation, whether resident or nonresident, to recover damages for injury to the person or property thereof, resulting from negligence in the navigation, direction or management of any ship or boat of any kind, whether domestic or foreign and however propelled, within the territorial jurisdiction of the state, plaintiff is entitled to an attachment at law against the vessel in the manner hereinafter provided.

(2) VENUE.—Venue shall be in the county where defendants or any of them reside or the county where the damage or injury was suffered or the county where the vessel charged with the responsibility for the damage or injury is found.

(3) MOTION FOR.—Before any writ of attachment issues, plaintiff shall file in the court from which the writ is desired, a motion, which shall not be verified or negative the attachment debtor's exemptions, and which shall set forth the filing of the action, the circumstances under which the injury or damage complained of was suffered giving rise to plaintiff's cause of action and the amount of plaintiff's demand made in good faith.

(4) BOND.—No attachment shall issue until the person applying for it, his agent or attorney, makes a bond with surety to be approved by the clerk of the court in which the action is commenced payable to defendant in a sum at least double the amount of money in good faith demanded conditioned to pay all costs and damages which defendant may sustain in consequence of plaintiff's improperly suing out the attachment but no bond shall be required when the state, or any governmental subdivision, agency or department is plaintiff.

(5) FORTHCOMING BOND.—Any vessel attached under this law may be restored at any time to defendant or to some other person for him, on defendant or the other person giving bond with surety to the officer levying the attachment to be approved by the officer payable to plaintiff in double the value of the vessel levied on, if the value does not exceed the amount of plaintiff's claim, or double the amount of plaintiff's claim, if the value exceeds the amount of plaintiff's claim, the value to be fixed by the officer, conditioned for the forthcoming of the property restored to abide the final judgment of the court but if the action is for unliquidated damages, defendant or the claimant of the offending vessel instead of furnishing a bond may apply to the court for a reduction in the amount of the bond, and the court may fix the amount and conditions of the bond at a sum sufficient to adequately secure payment of the amount of the injury or damage which may have been suffered by plaintiff with costs. The release bond shall be approved by the court. If plaintiff recovers a judgment, it shall be rendered against defendant, or the claimant of the vessel, and his surety on the release bond.

(6) APPLICATION OF LAW.—This law applies to those actions for injury, loss or damage which occur without the admiralty and maritime jurisdiction of the courts of the United States.

History.—ss. 1-6, ch. 23137, 1945; s. 26, ch. 67-254.
Note.—Former ss. 76.32-76.37.

CHAPTER 77

GARNISHMENT

77.01 Right to garnishment.—Every person who has sued to recover a debt or has recovered judgment in any court against any person, natural or corporate, has a right to a writ of garnishment, in the manner hereinafter provided, to subject any debt due to defendant by a third person, and any tangible or intangible personal property of defendant in the possession or control of a third person. The officers, agents and employees of any companies or corporations are third persons in regard to the companies or corporations, and as such are subject to garnishment after judgment against the companies or corporations.

History.—s. 1, ch. 43, 1845; s. 1, ch. 3738, 1887; RS 1666; s. 1, ch. 4136, 1893; GS 2130; s. 1, ch. 6910, 1915; RGS 3431; CGL 5284; s. 27, ch. 67-254.

77.02 Garnishment in tort actions.—Before judgment against a defendant no writ of garnishment shall issue in any action sounding in tort.

History.—s. 1, ch. 7352, 1917; RGS 3432; CGL 5285; s. 27, ch. 67-254.

77.03 Writ; procurement after judgment.—After judgment has been obtained against defendant but before the writ of garnishment is issued, the plaintiff, his agent or attorney, shall file a motion (which shall not be verified or negative defendant's exemptions) stating the amount of the judgment and that movant does not believe that defendant has in his possession visible property on which a levy can be made sufficient to satisfy the judgment. The motion may be filed and the writ issued either before or after the return of execution.

History.—ss. 1, 14, ch. 43, 1845; RS 1667; s. 1, ch. 4393, 1895; GS 2131; RGS 3433; CGL 5286; s. 27, ch. 67-254.

77.031 Garnishment before judgment; procurement.—

(1) Before judgment has been obtained by plaintiff against defendant, no writ of garnishment shall issue until plaintiff, his agent or attorney, files in the court where the action is pending, a motion (which shall not be verified or negative defendant's exemptions) stating that the debt for which plaintiff sues is just, due and unpaid, that the garnishment is not sued out to injure either defendant or garnishee, and that movant does not believe that defendant will have in his possession after execution is issued, visible property in this state and in the county in which the action is pending on which a levy can be made sufficient to satisfy plaintiff's claim.

(2) Except when plaintiff has had an attachment, no writ of garnishment before judgment shall issue until the person applying for it, his agent or attorney, gives a bond with surety to be approved by the clerk payable to defendant in at least double the debt demanded conditioned to pay all costs and damages which defendant sustains in consequence of plaintiff's improperly suing out the writ of garnishment.

(3) Any bond in garnishment is not void as against the obligors, nor shall they be discharged therefrom on account of any informality in it, although the garnishment is dissolved because of the informality.

History.—s. 11, ch. 43, 1845; RS 1680; s. 1, ch. 4393, 1895; GS 2144; s. 2, ch. 6910, 1915; RGS 3446; CGL 5299; s. 2, ch. 29737, 1955; s. 27, ch. 67-254.
Note.—Former s. 77.18.

77.04 Writ; form.—The writ shall require the garnishee to serve an answer to it on plaintiff within 20 days after service stating whether he is indebted to defendant at the time of the answer, or was indebted at the time of service of the writ, or at any time between such times; and in what sum and what tangible or intangible personal property of defendant he has in his possession or control at the time of his answer, or had at the time of the service of the writ, or at any time between such times; and whether he knows of any other person indebted to defendant, or who may have any of the property of defendant in his possession or control. The writ shall state the amount named in plaintiff's motion.

History.—s. 1, ch. 43, 1845; RS 1668; s. 1, ch. 4393, 1895; GS 2132; RGS 3434; CGL 5287; s. 11, ch. 28301, 1953; s. 27, ch. 67-254.

77.06 Writ; effect.—

(1) Service of the writ shall make garnishee liable for all debts due by him to defendant and for any tangible or intangible personal property of defendant in his possession or control at the time of the service of the writ or at any time between the service and the time of his answer.

(2) A bank or other financial institution authorized to accept deposits, upon being served with a writ of garnishment, shall report in its answer and re-

tain, subject to the provisions of s. 77.19 and subject to disposition as provided in this chapter, any deposit, account or tangible or intangible personal property in the possession or control of such garnishee, if the deposit or ownership records of such bank or other financial institution relating to such deposit or property reflect that any defendant named in the writ has or appears to have an ownership interest therein, whether solely or with another or others not named in the writ; but the answer shall state the name or names and address if known to the garnishee of the defendant and any such other or others having or appearing to have an ownership interest therein as shown on said records, and the plaintiff shall, within 5 days of the service of the answer on him, serve by delivery or by mail on the defendant and each such other person notice of the writ and the garnishee's answer and shall file in the proceeding a certificate of such service at the address of the defendant as shown on the records of the bank.

(3) In any case where a garnishee in good faith is in doubt as to whether any indebtedness or property is required by law to be included in the garnishee's answer or retained by it, the garnishee may include and retain the same, subject to the provisions of s. 77.19 and subject to disposition as provided in this chapter, and in such case the garnishee shall not be liable for so doing to the defendant or to any other person claiming the same or any interest therein or claiming to have sustained damage on account thereof.

(4) Service of a writ on a garnishee shall render him liable as provided in this chapter in any fiduciary or representative capacity held by him if the fiduciary or representative capacity is specified in the writ.

History.—s. 1, ch. 43, 1845; RS 1670; GS 2134; RGS 3436; CGL 5289; s. 27, ch. 67-254; s. 1, ch. 71-69; s. 1, ch. 74-98.

77.061 Reply.—When any garnishee answers and plaintiff is not satisfied with the answer, he shall serve a reply within 20 days thereafter denying the allegations of the answer as he desires. On failure of plaintiff to file a reply, the answer shall be taken as true and on proper disposition of the assets, if any are disclosed thereby, the garnishee is entitled to an order discharging him from further liability under the writ.

History.—s. 27, ch. 67-254.

77.07 Writ; dissolution.—

(1) The court to which a garnishment is returnable shall always be open for hearing motions to dissolve the garnishment.

(2) On motion by defendant served within 20 days after service of the writ stating that any allegation in plaintiff's motion for the writ is untrue, this issue shall be tried, and if the allegation in plaintiff's motion which is denied is not proved to be true, the garnishment shall be dissolved.

(3) If the motion denies the debt demanded before judgment, the judge may require pleadings on motion of either party on the debt demanded to be filed in such time as he fixes.

(4) The issue, if any, raised by the pleadings shall be tried at the same time as the issue, if any, made by defendant's motion to plaintiff's motion.

History.—s. 1, ch. 7353, 1917; RGS 3454; CGL 5307; s. 27, ch. 67-254.

77.08 Writ; jury trials.—On demand of either party a jury summoned from the body of the county shall be empaneled to try the issues.

History.—s. 1, ch. 7353, 1917; RGS 3455; CGL 5308; s. 27, ch. 67-254.

77.081 Default; judgment.—

(1) If the garnishee fails to answer as required, a default shall be entered against him.

(2) On the entry of judgment for plaintiff, a final judgment shall be entered against the garnishee for the amount of plaintiff's claim with interest and costs. No final judgment against a garnishee shall be entered before the entry of, or in excess of, the final judgment against the original defendant with interest and costs. If the claim of the plaintiff is dismissed or judgment is entered against him the default against garnishee shall be vacated and judgment for his costs entered.

History.—s. 11, ch. 43, 1845; RS 1681, 1682; GS 2146, 2147; RGS 3448, 3449; CGL 5301, 5302; s. 27, ch. 67-254.
Note.—Former ss. 77.20, 77.21.

77.082 No reply filed.—If no reply to garnishee's answer is served, garnishee may surrender any goods, chattels or effects of defendant in his hands or possession to the sheriff and may pay any money or debt into registry of court. In such event or if garnishee prevails in the trial of any reply and after proper disposition of any property disclosed by his answer, the court shall discharge him from further liability under the writ.

History.—s. 27, ch. 67-254.

77.083 Judgment.—Judgment against garnishee on his answer or after trial of a reply to his answer shall be entered for the amount of his liability as disclosed by the answer or trial. Instead of scire facias, the court may subpoena garnishee to inquire about his liability to or possession of property of defendant.

History.—s. 27, ch. 67-254.

77.13 Execution on garnishee's refusal to surrender property.—If garnishee will not surrender the personal property belonging to defendant, provided he has the power to do so, and which he has admitted is in his possession, the court may order execution issued against garnishee for the unpaid amount of plaintiff's judgment against defendant. The officer shall sell garnishee's property as under other executions. Garnishee may release his property from the levy and sale by surrendering the property of defendant to the officer levying the execution at the time appointed for the sale of his property so levied on, or at any time before the day of the sale and by paying the costs of the proceedings to sell up to the time of the surrender.

History.—s. 5, ch. 43, 1845; RS 1675; GS 2139; RGS 3441; CGL 5294; s. 27, ch. 67-254.

77.14 Disposition of property surrendered by garnishee.—When any garnishee has any of the personal property of defendant in his possession or control and surrenders it, the sheriff shall receive

the property and sell it under the execution against defendant.

History.—s. 6, ch. 43, 1845; RS 1676; GS 2140; RGS 3442; CGL 5295; s. 27, ch. 67-254.

77.15 Proceedings against third persons named in answer.—If the answer of garnishee shows that there is any of defendant's personal property in the possession or control of any person who has not been garnisheed, on motion of plaintiff a writ of garnishment shall issue against the person having personal property of the defendant and the person shall answer and be liable as other garnishees.

History.—s. 3, ch. 43, 1845; RS 1677; GS 2141; RGS 3443; CGL 5296; s. 2, ch. 29737, 1955; s. 27, ch. 67-254.

77.16 Claims by third persons to garnisheed property.—

(1) If any person other than defendant claims that the debt due by a garnishee is due to him and not to defendant, or that the property in the hands or possession of any garnishee is his property and shall make an affidavit to the effect, the court shall impanel a jury to determine the right of property between the claimant and plaintiff unless a jury is waived.

(2) If the verdict is against the claimant, plaintiff shall recover costs. If the verdict is in favor of the claimant, he shall recover costs against plaintiff.

(3) If the claim is interposed after a levy on property, the officer making the levy shall return the execution with his levy thereon and the affidavit of the claimant to the court from which execution issued, and the proceedings shall be as in other cases of claims made to property taken on execution.

History.—s. 8, ch. 43, 1845; RS 1679; GS 2143; RGS 3445; CGL 5298; s. 27, ch. 67-254.

77.17 Compensation to garnishee.—The garnishee shall be allowed the pay of a witness for his attendance out of the debt owed to defendant or the property in his possession. If there is no debt or property in his possession, the allowance shall be against plaintiff.

History.—s. 7, ch. 43, 1845; RS 1678; GS 2142; RGS 3444; CGL 5297; s. 27, ch. 67-254.

77.19 Amount retained by garnishee.—No garnishee who is indebted to or has in his possession the money of a person whose money or credits may be garnisheed shall retain out of the money more than double the amount which the writ of garnishment specifies as the amount plaintiff expects to recover or more than double the amount of the judgment plaintiff has recovered.

History.—s. 2, ch. 4393, 1895; GS 2145; RGS 3447; CGL 5300; s. 27, ch. 67-254.

77.22 Before judgment; effect of judgment for defendant.—

(1) If the judgment is for defendant in the main action, plaintiff shall pay all costs which have accrued in consequence of suing out a writ of garnishment before judgment and the money or property brought into the registry of the court or custody of the officer thereby inures to the benefit of and shall be controlled by defendant as completely as though it had been rendered in his favor.

(2) If plaintiff dismisses his action or has a judgment against him on the trial, the judgment against garnishee shall become a nullity and garnishee shall have execution for his costs against plaintiff.

History.—s. 11, ch. 43, 1845; s. 2, ch. 1100, 1861; RS 1683, 1684; GS 2148, 2149; RGS 3450, 3451; CGL 5303, 5304; s. 27, ch. 67-254.

Note.—Former ss. 77.22, 77.23.

77.24 Before judgment; discharge.—At any time before the entry of judgment, a defendant whose property has been garnisheed may secure its release by giving a bond with surety to be approved by the clerk in at least double the amount claimed in the complaint with interest and costs, or if the value of the property garnisheed is less than this amount, then in double the value, conditioned to pay any judgment recovered against him in the action with interest and costs, or so much thereof as shall equal the value. On the approval of the bond the court shall discharge the garnishment and release the property. The order shall become effective on its filing with the bond. If garnishee admits a debt to or possession of property of defendant in excess of a sum sufficient to satisfy plaintiff's claim, on motion of defendant and notice to plaintiff, the court shall release garnishee from responsibility to plaintiff for any debt to or property of defendant except in a sum deemed by the court sufficient to satisfy plaintiff's claim with interest and costs.

History.—RS 1685; GS 2150; s. 1, ch. 5906, 1909; s. 2, ch. 6910, 1915; RGS 3452; CGL 5305; s. 27, ch. 67-254.

77.27 No appeal until fees are paid.—If the writ is dismissed or plaintiff fails to sustain his claim, no appeal from the judgment shall be permitted until the attorney's fee provided in s. 77.28, has been paid into court.

History.—s. 2, ch. 4030, 1891; GS 1357; RGS 2553; CGL 4171; s. 27, ch. 67-254.

77.28 Garnishment; attorney's fees, costs, expenses, etc.; deposit required.—Before issuance of any writ of garnishment, the party applying for it shall deposit $10 in the registry of the court which shall be paid to garnishee on his demand at any time after the service of the writ for the payment or part payment of his attorney's fee which he expends, or agrees to expend, in obtaining representation in response to the writ. On rendering final judgment the court shall determine garnishee's costs and expenses, including a reasonable attorney's fee, and the amount shall be taxed as costs. Plaintiff may recover in this manner the sum advanced by him and paid into registry of court, and if the amount allowed by the court is greater than the amount of the deposit, judgment for garnishee shall be entered against the party against whom the costs are taxed for the deficiency.

History.—s. 1, ch. 21772, 1943; s. 27, ch. 67-254.

CHAPTER 78

REPLEVIN

78.01 Right of replevin.—Any person whose personal property is wrongfully detained by any other person or officer may have a writ of replevin to recover said personal property and any damages sustained by reason of the wrongful taking or detention as herein provided. Notice of lis pendens to charge third persons with knowledge of plaintiff's claim on the property may be recorded.

History.—s. 1, Mar. 11, 1845; RS 1707; GS 2171; RGS 3476; CGL 5329; s. 1, ch. 28277, 1953; s. 1, ch. 29706, 1955; s. 28, ch. 67-254; s. 1, ch. 73-20.

78.02 What may not be taken by replevin.—No replevin shall lie:

(1) For any property taken by virtue of any warrant for the collection of any tax, assessment or fine pursuant to any statute;

(2) For defendant in any execution or attachment to recover goods and chattels seized by virtue thereof unless such goods and chattels are exempt from the execution or attachment;

(3) By the original defendant in replevin for property taken in replevin and delivered to plaintiff while it remains in the possession of the original plaintiff or his agents.

(4) For any person unless he has a right to reduce the goods taken into his possession.

History.—ss. 2, 3, Mar. 11, 1845; s. 4, ch. 1099, 1861; ch. 1938, 1873; ch. 2040, 1875; RS 1708; GS 2172; RGS 3477; CGL 5330; s. 28, ch. 67-254; s. 1, ch. 73-20.

78.03 Venue and jurisdiction.—The action shall be brought in the court in the county where the property is which has jurisdiction of the value of the property sought to be replevied. When property consists of separate articles, the value of any one of which is within the jurisdiction of a lower court but taken together will exceed that jurisdiction, the plaintiff shall not divide the property to give jurisdiction to the lower court to enable plaintiff to bring separate actions therefor.

History.—s. 14, Mar. 11, 1845; RS 1709; GS 2173; RGS 3478; CGL 5331; s. 28, ch. 67-254; s. 1, ch. 73-20; s. 15, ch. 73-334.

78.045 Writ; court order required.—No clerk of court shall issue a writ of replevin prior to final judgment unless there has been filed with the clerk of court an order authorizing the issuance of such writ of replevin.

History.—s. 1, ch. 73-20.

78.055 Complaint; requirements.—To obtain an order authorizing the issuance of a writ of replevin prior to final judgment, the plaintiff shall first file with the clerk of the court a complaint reciting and showing the following information:

(1) A description of the claimed property that is sufficient to make possible its identification and a statement, to the best knowledge, information, and belief of the plaintiff of the value of such property and its location.

(2) A statement that the plaintiff is the owner of the claimed property or is entitled to possession of it, describing the source of such title or right. If the plaintiff's interest in such property is based on a written instrument, a copy of said instrument must be attached to the complaint.

(3) A statement that the property is wrongfully detained by the defendant, the means by which the defendant came into possession thereof, and the cause of such detention according to the best knowledge, information, and belief of the plaintiff.

(4) A statement that the claimed property has not been taken for a tax, assessment, or fine pursuant to law.

(5) A statement that the property has not been taken under an execution or attachment against the property of the plaintiff or, if so taken, that it is by law exempt from such taking, setting forth a reference to the exemption law relied upon.

History.—s. 1, ch. 73-20; s. 3, ch. 76-19.

78.065 Order to show cause; contents.—

(1) The court without delay shall examine the complaint filed, and if, on the basis of the complaint and further showing of the plaintiff in support of it, the court finds that the defendant has waived in accordance with s. 78.075 his right to be notified and heard, the court shall promptly issue an order authorizing the clerk of the court to issue a writ of replevin.

(2) If, upon examination of the complaint filed and on further showing of the plaintiff in support of it, the court finds that the defendant has not waived in accordance with s. 78.075 his right to be notified and heard, the court shall promptly issue an order directed to the defendant to show cause why the claimed property should not be taken from the possession of the defendant and delivered to plaintiff. Such order shall:

(a) Fix the date and time for hearing on the order. However, the date for the hearing shall not be

set sooner than 5 days nor more than 10 days after the service of the order.

(b) Direct the time within which service of the order and the complaint shall be made upon the defendant.

(c) Fix the manner in which service of the order shall be made on the defendant. The order shall direct that service as provided by law shall be made on the defendant if such service is possible or, in the event the officer serving the order is unable to serve said defendant as provided by law within the time specified in paragraph (b), that the officer shall place the order, together with the summons, on or in the claimed property or on the main entrance of the defendant's residence. The officer's return shall state that the officer was unable to locate the defendant and how the order was served.

(d) State that the nonpersonal service as provided herein shall be effective to afford notice to the defendant of the show-cause order, but for no other purpose.

(e) State that the defendant has the right to file affidavits on his behalf with the court and may appear personally or by way of an attorney and present testimony on his behalf at the time of the hearing, or that he may, upon a finding by the court pursuant to s. 78.067(2) that the plaintiff is entitled to the possession of the claimed property pending final adjudication of the claims of the parties, file with the court a written undertaking executed by a surety approved by the court in an amount equal to the value of the property to stay an order authorizing the delivery of the property to the plaintiff.

(f) State that if the defendant fails to appear he shall be deemed to have waived his right to a hearing and that in such case the court may order the clerk of the court to issue a writ of replevin.

History.—s. 1, ch. 73-20; s. 10, ch. 79-396.

78.067 Order to show cause; hearing.—

(1) If, after serving a show-cause order as provided above, the court finds that the defendant has waived his right to be heard on that order in accordance with s. 78.075, it shall dispense with the hearing on the show-cause order and promptly issue an order authorizing the clerk of the court to issue a writ of replevin.

(2) If the court finds that the defendant has not waived his right to be heard on the order to show cause in accordance with s. 78.075, the court shall at the hearing on the order to show cause consider the affidavits and other showings made by the parties appearing and make a determination of which party, with reasonable probability, is entitled to the possession of the claimed property pending final adjudication of the claims of the parties. This determination shall be based on a finding as to the probable validity of the underlying claim alleged against the defendant. If the court determines that the plaintiff is entitled to take possession of the claimed property, it shall issue an order directing the clerk of the court to issue a writ of replevin. However, the order shall be stayed pending final adjudication of the claims of the parties if the defendant files with the court a written undertaking executed by a surety approved by the court in an amount equal to the value of the property.

History.—s. 1, ch. 73-20.

78.068 Prejudgment writ of replevin.—

(1) A prejudgment writ of replevin may be issued and the property seized delivered forthwith to the petitioners when the nature of the claim and the amount thereof, if any, and the grounds relied upon for the issuance of the writ clearly appear from specific facts shown by the verified petition or by separate affidavit of the petitioner.

(2) This prejudgment writ of replevin may issue if the court finds, pursuant to subsection (1), that the defendant is engaging in, or is about to engage in, conduct that may place the claimed property in danger of destruction, concealment, waste, removal from the state, removal from the jurisdiction of the court, or transfer to an innocent purchaser during the pendency of the action or that the defendant has failed to make payment as agreed.

(3) The petitioner must post bond in the amount of twice the value of the goods subject to the writ or twice the balance remaining due and owing, whichever is lesser as determined by the court, as security for the payment of damages the defendant may sustain when the writ is obtained wrongfully.

(4) The defendant may obtain release of the property seized under a prejudgment writ of replevin by posting bond within 5 days after serving of the writ in the amount of one and one-fourth the amount due and owing on the agreement for the satisfaction of any judgment which may be rendered against him.

(5) A prejudgment writ of replevin shall issue only upon the signed order of a circuit court judge or a county court judge.

(6) The defendant, by contradictory motion filed with the court within 10 days after service of the writ, may obtain the dissolution of a prejudgment writ of replevin unless the petitioner proves the grounds upon which the writ was issued. The court shall set down such motion for an immediate hearing. This motion shall be in lieu of the provisions of subsection (4).

History.—s. 1, ch. 76-19; s. 1, ch. 77-174.

78.075 Order to show cause; waiver.—The right to be heard provided in ss. 78.065 and 78.067 is waived if the defendant, after receiving a show-cause order, engages in any conduct that clearly shows that he wants to forego his right to be heard on that order. The defendant's failure to appear at the hearing duly scheduled on the order to show cause presumptively constitutes conduct that clearly shows that he wants to forego his right to be so heard. If the defendant, after service of the order to show cause, sends or delivers to the plaintiff or the court issuing the order to show cause a writing prepared by anyone but signed by the defendant after service of the order to show cause, indicating in any language that the defendant does not want to be heard on the show-cause order, the defendant shall be presumed to have waived his right to be heard. For this purpose, a writing containing the following language is sufficient: "I, (name of the defendant), am aware that I have the right and opportunity to be heard on a show-cause order that has been served upon me con-

cerning the right of plaintiff to obtain a writ of replevin authorizing the appropriate officer of the court to take (describe property) from my possession prior to final judgment against me. I hereby state that I do not want to be heard on this matter and that I expressly waive my right to be heard. I understand that the effect of my signing this paper probably will be a court order authorizing the issuance of a writ of replevin directing an officer of the court to take possession of the property described above prior to final judgment against me with respect to the claim under which the property is taken."

History.—s. 1, ch. 73-20.

78.08 Writ; form; return.—The writ shall command the officer to whom it may be directed to replevy the described personal property in possession of defendant.

History.—s. 4, Mar. 11, 1845; RS 1714; GS 2178; RGS 3483; CGL 5336; s. 28, ch. 67-254; s. 1, ch. 73-20.

78.10 Writ; execution on property in buildings, etc.—In executing the writ of replevin, if the property or any part thereof is secreted or concealed in any dwelling house or other building or enclosure, the officer shall publicly demand delivery thereof and if it is not delivered by the defendant or some other person, he shall cause such house, building or enclosure to be broken open and shall make replevin according to the writ; and if necessary, he shall take to his assistance the power of the county.

History.—s. 7, Mar. 11, 1845; RS 1716; GS 2180; RGS 3485; CGL 5338; s. 28, ch. 67-254; s. 1, ch. 73-20.

78.11 Writ; execution on property changing possession, etc.—If the property to be replevied is in the possession of defendant at the time of the issuance of the writ, and passes into the possession of a third person before the execution of the writ, the officer holding the writ shall execute it on the property in the possession of the third person and shall serve the writ on defendant and the third person, and the action with proper amendments, shall proceed against the third person.

History.—RS 1717; GS 2181; RGS 3486; CGL 5339; s. 28, ch. 67-254; s. 1, ch. 73-20.

78.12 Writ; execution on property removed from jurisdiction.—At the time of the service of the writ if the property to be replevied is outside the territorial jurisdiction of the court issuing the writ, the officer to whom the writ is directed shall deliver it to the proper officer in the jurisdiction into which the property has been removed, and the latter officer shall execute the writ, and shall hold the property subject to the orders of the court issuing the writ.

History.—RS 1718; GS 2182; RGS 3487; CGL 5340; s. 28, ch. 67-254; s. 1, ch. 73-20.

78.13 Writ; disposition of property levied on.—The officer executing the writ shall deliver the property to plaintiff after the lapse of 3 days from the time the property was taken unless within the 3 days defendant gives bond with surety to be approved by the officer in the value of the property as appraised by the officer, conditioned to have the property forthcoming to abide the result of the action, in which event the property shall be redelivered to defendant.

History.—s. 1, ch. 1099; 1861; RS 1719; GS 2183; RGS 3488; CGL 5341; s. 28, ch. 67-254; s. 1, ch. 73-20.

78.18 Judgment for plaintiff when goods not delivered to defendant.—If it appears that the property described in the complaint was wrongfully taken or detained by defendant and the property has been delivered to plaintiff by the officer executing the writ, plaintiff shall have judgment for his damages caused by the taking and detention and costs.

History.—s. 11, Mar. 11, 1845; RS 1724; GS 2188; RGS 3493; CGL 5346; s. 28, ch. 67-254; s. 1, ch. 73-20.

78.19 Judgment for plaintiff when goods retained by or redelivered to defendant.—

(1) If it appears that the property was retained by, or redelivered to, defendant on his forthcoming bond, plaintiff shall take judgment for the property and against defendant and the surety on the forthcoming bond for the value of the property, but when plaintiff's interest in the property is based on a claim of lien or some special interest therein, the judgment shall be only for the amount of the lien or the value of such special interest and costs, and the judgment shall be satisfied by the recovery of the property or the amount adjudged against defendant and his surety.

(2) After rendition of judgment, plaintiff at his option may have a writ of possession for the property and execution for his costs or have execution against defendant and his surety for the amount recovered and costs. If he elects to have a writ of possession for the property and the officer returns that he is unable to find it or any of it, plaintiff may immediately have execution against defendant and his surety for the whole amount recovered against them or for the amount recovered less the value of the property found by the officer. If he has execution for the whole amount, the officer shall release all property taken under the writ of possession.

(3) In any proceeding to ascertain the value of the property so that judgment for the value may be entered, the value of each article shall be found but it is not necessary to ascertain the value of each article of a lot of goods, wares and merchandise when it has been replevied, but it is sufficient to ascertain the total value of the entire lot found.

History.—s. 1, ch. 3133, 1879; RS 1724; s. 1, ch. 5159, 1903; GS 2188; RGS 3493; s. 1, ch. 9320, 1923; CGL 5346, 5348; s. 28, ch. 67-254; s. 1, ch. 73-20.

78.20 Judgment for defendant when goods retained by, or redelivered to, him.—When property has been retained by, or redelivered to, defendant on his forthcoming bond or upon the dissolution of a prejudgment writ and defendant prevails, he shall have judgment against plaintiff for his damages for the taking, if any, of the property, attorney fees, and costs. The remedies provided in this section and s. 78.21 shall not preclude any other remedies available under the laws of this state.

History.—s. 12, Mar. 11, 1845; RS 1725; GS 2189; RGS 3494; CGL 5347; s. 28, ch. 67-254; s. 1, ch. 73-20; s. 2, ch. 76-19.

78.21 Judgment for defendant when goods not retained by or redelivered to him.—When the property has not been retained by, or redelivered to, defendant and he prevails, judgment shall be entered against plaintiff for possession of the property and costs and against him for the value of the property and costs in the same manner as provided in s. 78.19 for judgment in favor of plaintiff. The value of each article of the goods replevied shall be found as directed in s. 78.19 [F. S. 1973] with the same exception. The remedies provided in s. 78.20 and this section shall not preclude any other remedies available under the laws of this state.

History.—s. 13, Mar. 11, 1845; RS 1725; GS 2189; RGS 3494; s. 1, ch. 9320, 1923; CGL 5347; s. 28, ch. 67-254; s. 1, ch. 73-20.

CHAPTER 79

HABEAS CORPUS

79.01 Application and writ.—When any person detained in custody, whether charged with a criminal offense or not, applies to the Supreme Court or any justice thereof, or to any district court of appeal or any judge thereof or to any circuit judge for a writ of habeas corpus and shows by affidavit or evidence probable cause to believe that he is detained without lawful authority, the court, justice or judge to whom such application is made shall grant the writ forthwith, against the person in whose custody the applicant is detained and returnable immediately before any of the courts, justices or judges as the writ directs.

History.—s. 1, Sept. 16, 1822; s. 1, ch. 3129, 1879; RS 1771; GS 2248; RGS 3571; CGL 5435; s. 29, ch. 67-254.

79.02 Bond may be required.—When it appears necessary, the court, justice or judge granting the writ shall require bond with surety to be approved by the judge or clerk payable to the Governor executed in such manner and reasonable penalty as the court, justice or judge prescribes; conditioned for the payment of the charges and costs awarded against the prisoner and that he will not escape by the way. The bond shall be filed and may be sued on in the name of the Governor for the benefit of any person interested therein. In the event of inability to give bond for the payment of charges and costs, he may be permitted, in the place thereof, to make deposit in such amount as the court, justice or judge requires.

History.—s. 1, Sept. 16, 1822; s. 1, ch. 3129, 1879; RS 1771; GS 2248; RGS 3571; CGL 5435; s. 29, ch. 67-254.

79.03 Service of writ.—When issued, the writ shall be served by the sheriff of the county in which the petitioner is alleged to be detained on the officer or other person against whom it is issued, or in his absence from the place where the prisoner is confined, on the person having the immediate custody of the prisoner. When the sheriff of the county is the person holding the party detained, a delivery to or receipt of the writ by him is sufficient service.

History.—s. 2, ch. 3129, 1879; RS 1772; GS 2249; RGS 3572; CGL 5436; s. 29, ch. 67-254.

79.04 Return to writ.—

(1) The person on whom the writ is served shall bring the body of the prisoner, or cause it to be brought, before the court, justice or judge before whom the writ is made returnable without delay and at the same time certify to the cause of the detention.

(2) When the writ is issued, the court shall set an early return date, at which time the formal return of the defendant shall be made. In the absence of a motion to quash or a motion for discharge notwithstanding the return, issue is joined when the return is filed and the action shall be ready for final disposition.

History.—s. 2, Sept. 16, 1822; s. 2, ch. 3129, 1879; RS 1773; GS 2250; RGS 3573; CGL 5437; s. 29, ch. 67-254.

79.05 Compelling return and production of body.—

(1) CIVIL LIABILITY.—Any person failing to return to the writ served on him with the cause of the prisoner's detention, or to bring the body of the prisoner before the court, justice or judge, according to the command of the writ for 3 days after the service shall forfeit and pay to the prisoner the sum of $300.

(2) BY PROCEEDINGS BY THE COURT.—A justice or judge in vacation may enforce obedience to any writ of habeas corpus and in cases pending before the supreme court, or any of the justices thereof, writs for the enforcement of obedience may be directed to the sheriff or other officer.

History.—ss. 3, 4, Sept. 16, 1822; ss. 3, 4, ch. 3129, 1879; RS 1774; GS 2251; RGS 3574; CGL 5438; s. 29, ch. 67-254.

79.06 Effect of the return.—

(1) GENERALLY.—The return made to the writ may be amended, and is not conclusive as to the facts stated therein, but the court, justice or judge before whom the return is made may examine into the cause of the imprisonment or detention, receive evidence in contradiction of the return, and determine it as the truth of the case requires.

(2) IN CASES OF CONTEMPT.—On the return of the writ when the cause of detention appears to be a contempt, plainly and specifically charged in the commitment by some court officer or body having authority to commit for the contempt so charged and for the time stated, the court, justice or judge before whom the writ is returnable shall remand the prisoner forthwith if the time for detention for contempt has not expired.

History.—s. 6, Sept. 16, 1822; s. 6, ch. 3129, 1879; RS 1775; GS 2252; RGS 3575; CGL 5439; s. 29, ch. 67-254.

79.07 Procurement of evidence.—When it is inconvenient to procure the personal attendance of a witness, his affidavit, taken upon reasonable notice to the adverse party, may be received in evidence.

History.—s. 7, Sept. 16, 1822; s. 7, ch. 3129, 1879; RS 1776; GS 2253; RGS 3576; CGL 5440; s. 29, ch. 67-254.

79.071 Notice to prosecutor.—If the validity of any statute, criminal law proceeding or conviction is attacked by habeas corpus in the circuit court, notice of the application for the writ shall be given to the prosecuting attorney of the court in which the statute under attack is being applied, the criminal law

proceeding is being maintained or the conviction has occurred.

History.—s. 29, ch. 67-254.

79.08 Hearing and judgment.—The court, justice or judge before whom the prisoner is brought shall inquire without delay into the cause of his imprisonment, and shall either discharge him, admit him to bail or remand him to custody, as the law and the evidence require; and shall either award against the prisoner the charges of his transportation, not exceeding 15 cents per mile and the costs of the proceedings, or shall award the costs in his favor, or shall award no costs or charges against either party, as is right. The clerk of the court in which such action is pending shall issue execution for the costs and charges awarded.

History.—s. 5, Sept. 16, 1822; s. 8, ch. 3129, 1879; RS 1777; GS 2254; RGS 3577; CGL 5441; s. 29, ch. 67-254.

79.09 Filing of papers.—Before a circuit judge the petition and the papers shall be filed with the clerk of the circuit court of the county in which the prisoner is detained. Before the other courts, justices or judges, the papers shall be filed with the clerk of the court on which the justice or judge sits.

History.—s. 8, Sept. 16, 1822; s. 8, ch. 3129, 1879; RS 1778; GS 2255; RGS 3578; CGL 5442; s. 29, ch. 67-254.

79.10 Effect of judgment.—The judgment is conclusive until reversed and no person remanded by the judgment while it continues in force shall be at liberty to obtain another habeas corpus for the same cause or by any other proceeding bring the same matter again in question except by an appeal or by action of false imprisonment; nor shall any person who is discharged from confinement by the judgment be afterward confined or imprisoned for the same cause except by order of a court of competent jurisdiction.

History.—s. 9, Sept. 16, 1822; s. 9, ch. 3129, 1879; RS 1779; GS 2256; RGS 3579; CGL 5443; s. 29, ch. 67-254.

79.12 Trial of accused pending appeal.—When in any criminal prosecution a writ of habeas corpus is applied for by any person charged with any criminal offense and the accused has been remanded to custody by the court to which such application is made, a supersedeas of the order made on appeal being taken to an appellate court shall not prevent the state from proceeding with the prosecution of the accused pending the decision by the appellate court in the habeas corpus, but the state may prosecute the accused as if appeal had not been taken in habeas corpus. If the accused is convicted of the charge, the court shall withhold imposition of sentence and final judgment until the appellate court has determined the issues presented in the habeas corpus.

History.—s. 1, ch. 10098, 1925; CGL 5445; s. 29, ch. 67-254.

CHAPTER 80

QUO WARRANTO

80.01 Quo warranto; refusal of Attorney General to institute.—Any person claiming title to an office which is exercised by another has the right, on refusal by the Attorney General to commence an action in the name of the state upon the claimant's relation, or on the Attorney General's refusal to file a petition setting forth his name as the person rightfully entitled to the office, to file an action in the name of the state against the person exercising the office, setting up his own claim. The court shall determine the right of the claimant to the office, if he so desires. No person shall be adjudged entitled to hold an office except upon full proof of his title to the office in any action of this character.

History.—s. 2, ch. 1874, 1872; RS 1782; GS 2259; RGS 3582; CGL 5447; s. 30, ch 67-254.

80.02 Quo warranto; control of Attorney General over proceedings instituted by him.—When the Attorney General commences an action setting forth the name of the person rightfully entitled, or when petition is filed upon the relation of a party claiming title, the Attorney General shall not dismiss the action without the consent of the claimant, but the court shall investigate the claim and determine the right, if so desired by the person on whose relation the petition is filed and the claimant may have counsel of his choice to control the action in his behalf.

History.—s. 4, ch. 1874, 1872; RS 1784; GS 2261; RGS 3584; CGL 5449; s. 30, ch. 67-254.

80.031 Procedure.—The rules about pleading and procedure in mandamus apply to actions for quo warranto as near as may be.

History.—s. 30, ch. 67-254.

80.032 Judgment of ouster.—When any petition is well-founded, a judgment of ouster may issue without further amendments to the extent that the petition is well-founded.

History.—s. 30, ch. 67-254.

80.04 Quo warranto; effect of judgment.—When an individual institutes an action without the consent of the Attorney General, the judgment is conclusive as between the parties other than the state. The judgment is not a bar to any quo warranto by the state nor shall a judgment instituted by the Attorney General be a bar to actions by any claimant other than the parties thereto. The party receiving judgment shall be entitled to exercise the office until removed by quo warranto or until his rights thereto shall otherwise cease.

History.—s. 3, ch. 1874, 1872; RS 1783; GS 2260; RGS 3583; CGL 5448; s. 30, ch. 67-254.

CHAPTER 81

PROHIBITION

81.011 Petition for prohibition.—The petitioner shall file a petition stating the nature of the action, the proceedings in the inferior court, tribunal or body presuming to exercise jurisdiction sought to be prohibited, and demand that writ of prohibition be granted in that behalf. When the matters appear on the face of the proceedings in the body presuming to exercise jurisdiction, the certified transcript of the record of all the proceedings shall accompany the petition. When the matters are not matters of record, they shall be verified by affidavit of petitioner or his agent, or attorney.

History.—s. 1, ch. 1873, 1872; s. 2, ch. 3002, 1877; RS 1785; GS 2262; RGS 3585; CGL 5450; s. 32, ch. 67-254.

Note.—Former s. 80.06.

81.021 Prohibition; supersedeas.—If in its judgment a prima facie case is made, the court shall issue an order directed to the body presuming to exercise jurisdiction and to plaintiff to show cause why the writ of prohibition should not issue. The order is a supersedeas and shall be served on the body presuming to exercise jurisdiction and the parties at such time as the court directs and those served shall defend within the time set in the writ. In case of failure to make an answer, it may be enforced by contempt.

History.—s. 2, ch. 1873, 1872; s. 3, ch. 3002, 1877; RS 1786; GS 2263; RGS 3586; CGL 5451; s. 32, ch. 67-254; s. 29, ch. 73-333.

Note.—Former s. 80.07.

81.031 Prohibition; procedure.—In the circuit court the petition shall be accompanied by a supporting brief in the same manner as required for mandamus in that court.

History.—s. 32, ch. 67-254.

CHAPTER 82

FORCIBLE ENTRY AND UNLAWFUL DETAINER

82.01 "Unlawful entry and forcible entry" defined.—No person shall enter into any lands or tenements except when entry is given by law, nor shall any person, when entry is given by law, enter with strong hand or with multitude of people, but only in a peaceable, easy and open manner.

History.—s. 1, ch. 1630, 1868; RS 1687; GS 2152; RGS 3456; CGL 5309; s. 33, ch. 67-254.

82.02 "Unlawful entry and unlawful detention" defined.—

(1) No person who enters without consent in a peaceable, easy and open manner into any lands or tenements shall hold them afterwards against the consent of the party entitled to possession.

(2) This section shall not apply with regard to residential tenancies.

History.—s. 2, ch. 1630, 1868; RS 1688; GS 2153; RGS 3457; CGL 5310; s. 33, ch. 67-254; s. 13, ch. 73-330; s. 19, ch. 77-104.

82.03 Remedy declared for unlawful entry and forcible entry.—If any person enters or has entered into lands or tenements when entry is not given by law, or if any person enters or has entered into any lands or tenements with strong hand or with multitude of people, even when entry is given by law, the party turned out or deprived of possession by the unlawful or forcible entry, by whatever right or title he held possession, or whatever estate he held or claimed in the lands or tenements of which he was so dispossessed, is entitled to the summary procedure under s. 51.011 within 3 years thereafter.

History.—s. 3, ch. 1630, 1868; RS 1689; GS 2154; RGS 3458; CGL 5311; s. 33, ch. 67-254.

82.04 Remedy declared for unlawful detention.—

(1) If any person enters or has entered in a peaceable manner into any lands or tenements when the entry is lawful and after the expiration of his right continues to hold them against the consent of the party entitled to possession, the party so entitled to possession is entitled to the summary procedure under s. 51.011, at any time within 3 years after the possession has been withheld from him against his consent.

(2) This section shall not apply with regard to residential tenancies.

History.—s. 4, ch. 1630, 1868; RS 1690; GS 2155; RGS 3459; CGL 5312; s. 33, ch. 67-254; s. 13, ch. 73-330; s. 19, ch. 77-104.

82.05 Questions involved in this proceeding.—No question of title, but only right of possession and damages, is involved in the action.

History.—s. 20, ch. 1630, 1868; RS 1691; GS 2156; RGS 3460; CGL 5313; s. 33, ch. 67-254.

82.061 Process.—If no person can be found at the usual place of residence of defendant, summons may be served by posting a copy in a conspicuous place on the property, described in the complaint and summons.

History.—ss. 9, 24, ch. 1630, 1868; RS 1694; GS 2159; RGS 3463; CGL 5316; s. 33, ch. 67-254.

Note.—Former s. 82.08.

82.071 Trial; evidence as to damages.—At trial evidence shall be admitted about the monthly rental value of the premises and if plaintiff recovers, the jury shall fix his damages at double the rental value of the premises from the time of the unlawful or wrongful holding, but the damages in no action of detainer shall be fixed at more than rental value of the premises unless the jury is satisfied that such detention is willful and knowingly wrongful.

History.—s. 14, ch. 1630, 1868; RS 1700; GS 2165; RGS 3469; CGL 5322; s. 33, ch. 67-254.

Note.—Former s. 82.14.

82.081 Trial; form of verdict.—

(1) IN CASES OF FORCIBLE OR UNLAWFUL ENTRY.—In forcible or unlawful entry the form of verdict shall be substantially as follows:

We, the jury, find that defendant did (or did not), within 3 years next before the filing of the complaint, forcibly (or unlawfully) enter upon the real estate mentioned in the complaint and turn plaintiff out of possession; that defendant did (or did not) continue to hold possession at the date of the complaint; and we assess the damages of plaintiff at ..... dollars.

(2) IN CASES OF UNLAWFUL DETAINER.—The form of verdict in unlawful detainer shall be substantially as follows:

We, the jury, find that the defendant did (or did not), at the time of filing the complaint, wrongfully hold possession of the real estate mentioned in the complaint against the consent of plaintiff that defendant has (or has not) so held possession thereof against the consent of plaintiff, within 3 years next before the filing of the complaint; and that plaintiff has (or has not) the right of possession in the real estate, and we assess the damage of plaintiff at ..... dollars.

This subsection shall not apply with regard to residential tenancies.

History.—s. 13, ch. 1630, 1868; RS 1701; GS 2166; RGS 3470; CGL 5323; s. 33, ch. 67-254; s. 13, ch. 73-330; s. 19, ch. 77-104.

Note.—Former s. 82.15.

82.091 Judgment and execution.—If the verdict is in favor of plaintiff, the court shall enter judgment that plaintiff recover possession of the property described in the complaint with his damages and costs, and shall award a writ of possession to be executed without delay and execution for his damages and costs. If the verdict is for defendant, the court shall enter judgment against plaintiff dismissing the complaint and order that defendant recover costs.

History.—s. 15, ch. 1630, 1868; RS 1702; GS 2167; RGS 3471; CGL 5324; s. 33, ch. 67-254.

Note.—Former s. 82.16.

82.101 Effect of judgment.—No judgment rendered either for plaintiff or defendant bars any action of trespass for injury to the property or ejectment between the same parties respecting the same property. No verdict is conclusive of the facts therein found in any action of trespass or ejectment.

History.—s. 20, ch. 1630, 1868; RS 1703; GS 2168; RGS 3472; CGL 5325; s. 33, ch. 67-254.

Note.—Former s. 82.17.

CHAPTER 83

LANDLORD AND TENANT

PART I NONRESIDENTIAL TENANCIES (ss. 83.001-83.251)

PART II RESIDENTIAL TENANCIES (ss. 83.40-83.63)

PART III MOBILE HOME PARK LOTS (ss. 83.750-83.794)

PART IV SELF-SERVICE STORAGE SPACE (ss. 83.801-83.807)

PART I

NONRESIDENTIAL TENANCIES

83.001 Application.—This part applies to nonresidential tenancies and all tenancies not governed by part II of this chapter.

History.—s. 1, ch. 73-330.

83.01 Unwritten lease tenancy at will; duration.—Any lease of lands and tenements, or either, made shall be deemed and held to be a tenancy at will unless it shall be in writing signed by the lessor. Such tenancy shall be from year to year, or quarter to quarter, or month to month, or week to week, to be determined by the periods at which the rent is payable. If the rent is payable weekly, then the tenancy shall be from week to week; if payable monthly, then from month to month; if payable quarterly, then from quarter to quarter; if payable yearly, then from year to year.

History.—ss. 1, 2, ch. 5441, 1905; RGS 3567, 3568; CGL 5431, 5432; s. 34, ch. 67-254.

83.02 Certain written leases tenancies at will; duration.—Where any tenancy has been created by an instrument in writing from year to year, or quarter to quarter, or month to month, or week to week, to be determined by the periods at which the rent is payable, and the term of which tenancy is unlimited, the tenancy shall be a tenancy at will. If the rent is payable weekly, then the tenancy shall be from week to week; if payable monthly, then the tenancy shall be from month to month; if payable quarterly, then from quarter to quarter; if payable yearly, then from year to year.

History.—s. 2, ch. 5441, 1905; RGS 3568; CGL 5432; s. 2, ch. 15057, 1931; s. 34, ch. 67-254.

83.03 Termination of tenancy at will; length of notice.—A tenancy at will may be terminated by either party giving notice as follows:

(1) Where the tenancy is from year to year, by giving not less than 3 months' notice prior to any annual period;

(2) Where the tenancy is from quarter to quarter, by giving not less than 45 days' notice prior to the end of any quarter;

(3) Where the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period, and

(4) Where the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

History.—s. 3, ch. 5441, 1905; RGS 3569; CGL 5433; s. 34, ch. 67-254.

83.04 Holding over after term, tenancy at sufferance, etc.—When any tenancy created by an instrument in writing, the term of which is limited, has expired and the tenant holds over in the possession of said premises without renewing the lease by some further instrument in writing then such holding over shall be construed to be a tenancy at sufferance. The mere payment or acceptance of rent shall not be construed to be a renewal of the term, but if the holding over be continued with the written consent of the lessor then the tenancy shall become a tenancy at will under the provisions of this law.

History.—s. 4, ch. 5441, 1905; RGS 3570; CGL 5434; s. 3, ch. 15057, 1931; s. 34, ch. 67-254.

83.05 Right of entry upon default in rent.—If any person leasing or rerenting any land or house fails to pay the rent at the time it becomes due, the lessor may immediately thereafter enter and take possession of the property so leased or rented.

History.—s. 5, Nov. 21, 1828; RS 1750; GS 2226; RGS 3534; CGL 5398; s. 34, ch. 67-254.

83.06 Right to demand double rent upon refusal to deliver possession.—

(1) When any tenant refuses to give up possession of the premises at the end of his lease, the landlord, his agent, attorney or legal representatives, may demand of such tenant double the monthly rent, and may recover the same at the expiration of every month, or in the same proportion for a longer or shorter time by distress, in the manner pointed out hereinafter.

(2) All contracts for rent, verbal or in writing, shall bear interest from the time the rent becomes due, any law, usage or custom to the contrary notwithstanding.

History.—ss. 4, 6, Nov. 21, 1828; RS 1759; GS 2235; RGS 3554; CGL 5418; s. 34, ch. 67-254.

83.07 Action for use and occupation.—Any landlord, his heirs, executors, administrators or assigns may recover reasonable damages for any house, lands, tenements, or hereditaments held or occupied by any person by his permission in an action on the case for the use and occupation of the lands, tenements, or hereditaments when they are not held, occupied by or under agreement or demise by deed; and if on trial of any action, any demise or agreement (not being by deed) whereby a certain rent was reserved is given in evidence, the plaintiff shall not be dismissed but may make use thereof as an evidence of the quantum of damages to be recovered.

History.—s. 7, Nov. 21, 1828; RS 1760; GS 2236; RGS 3555; CGL 5419; s. 34, ch. 67-254.

83.08 Landlord's lien for rent.—Every person to whom rent may be due, his heirs, executors, administrators or assigns, shall have a lien for such rent upon the property found upon or off the premises leased or rented, and in the possession of any person, as follows:

(1) Upon agricultural products raised on the land leased or rented for the current year. This lien shall be superior to all other liens, though of older date.

(2) Upon all other property of the lessee or his sublessee or assigns, usually kept on the premises. This lien shall be superior to any lien acquired subsequent to the bringing of the property on the premises leased.

(3) Upon all other property of the defendant. This lien shall date from the levy of the distress warrant hereinafter provided.

History.—ss. 1, 9, 10, ch. 3131, 1879; RS 1761; GS 2237; RGS 3556; CGL 5420; s. 34, ch. 67-254.

83.09 Exemptions from liens for rent.—No property of any tenant or lessee shall be exempt from distress and sale for rent, except beds, bedclothes and wearing apparel.

History.—s. 6, Feb. 14, 1835; RS 1762; GS 2238; RGS 3557; CGL 5421; s. 34, ch. 67-254.

83.10 Landlord's lien for advances.—Landlords shall have a lien on the crop grown on rented land for advances made in money or other things of value, whether made directly by them or at their instance and requested by another person, or for which they have assumed a legal responsibility, at or before the time at which such advances were made, for the sustenance or well-being of the tenant or his family, or for preparing the ground for cultivation, or for cultivating, gathering, saving, handling or preparing the crop for market. They shall have a lien also upon each and every article advanced, and upon all property purchased with money advanced, or obtained, by barter or exchange for any articles advanced, for the aggregate value or price of all the property or articles so advanced. The liens upon the crop shall be of equal dignity with liens for rent, and upon the articles advanced shall be paramount to all other liens.

History.—s. 2, ch. 3247, 1879; RS 1763; GS 2239; RGS 3558; CGL 5422; s. 34, ch. 67-254.

83.11 Distress for rent; complaint.—Any person to whom any rent or money for advances is due, his agent or attorney, may file an action in the court in the county where the land lies having jurisdiction of the amount claimed. The complaint shall allege the amount or quality and value of the rent due for such land, or the advances, and whether payable in money, cotton, or other agricultural product or thing.

History.—s. 2, ch. 3131, 1879; RS 1764; GS 2240; RGS 3559; CGL 5423; s. 34, ch. 67-254.

83.12 Distress for rent; form of writ.—On filing the complaint, the clerk shall issue a distress writ commanding the sheriff to levy on property liable to be distrained for rent or advances, and to collect the amount claimed, or the value thereof, and to summon defendant to answer the complaint. Before the writ issues, plaintiff, his agent or attorney, shall file a bond with surety to be approved by the clerk payable to defendant in at least double the sum demanded, or if property, in double the value of the property sought to be levied on, conditioned to pay all costs and damages which defendant sustains in consequence of plaintiff's improperly suing out the distress.

History.—s. 2, ch. 3131, 1879; RS 1765; GS 2241; s. 10, ch. 7838, 1919; RGS 3560; CGL 5424; s. 34, ch. 67-254.

83.13 Distress for rent; levy of writ.—The officer shall execute the writ by service on defendant and by levy on property distrainable for rent or advances, if found in his jurisdiction. If the property is not so found but is in another jurisdiction, he shall deliver the writ to the proper officer in the other jurisdiction and the other officer shall execute the writ by levying on said property and delivering it to the officer of the court in which the action is pending to be disposed of according to law unless he is ordered by the court from which the writ emanated to hold the property and dispose of it in his jurisdiction according to law. If defendant cannot be found, the levy on the property suffices as service on him.

History.—s. 3, ch. 3721, 1887; RS 1765; GS 2241; RGS 3560; CGL 5424; s. 34, ch. 67-254.

83.14 Distress for rent; replevy of distrained property.—The property distrained may be restored to the defendant at any time on his giving bond with surety to the officer levying such writ to be approved by such officer payable to plaintiff in double the value of the property levied on, such value to be fixed by said officer and conditioned for the forthcoming of the property restored to abide the final order of the court. It may be also restored to defendant on his giving bond with surety to be approved by the officer making the levy conditioned to pay the plaintiff the amount or value of the rental or advances which may be adjudicated to be payable to plaintiff. Judgment may be entered against the surety on such bonds and in the manner and with like effect as provided in s. 76.31.

History.—s. 3, ch. 3131, 1879; RS 1766; s. 1, ch. 4408, 1895; RGS 3561; CGL 5425; s. 34, ch. 67-254.

83.15 Distress for rent; claims by third persons.—Any third person claiming any property so distrained may interpose and prosecute his claim for it in the same manner as is provided in similar cases of claim to property levied on under execution.

History.—s. 7, ch. 3131, 1879; RS 1770; GS 2246; RGS 3565; CGL 5429; s. 34, ch. 67-254.

83.18 Distress for rent; trial; verdict; judgment.—If the verdict or the finding of the court is for plaintiff, judgment shall be rendered against defendant for the amount or value of the rental or advances, including interest and costs, and against the surety on defendant's bond as provided for in s. 83.14, if the property has been restored to defendant, and execution shall issue. If the verdict or the finding of the court is for defendant, the action shall be dismissed and defendant shall have judgment and execution against plaintiff for costs.

History.—RS 1768; s. 3, ch. 4408, 1895; GS 2244; RGS 3563; CGL 5427; s. 14, ch. 63-559; s. 34, ch. 67-254.

83.19 Distress for rent; sale of property distrained.—

(1) If the judgment is for plaintiff and the property in whole or in part has not been replevied, it, or the part not restored to defendant, shall be sold and the proceeds applied on the payment of the execution. If the rental or any part of it is due in agricultural products and the property distrained, or any part of it, is of a similar kind to that claimed in the complaint, the property up to a quantity to be adjudged of by the officer holding the execution (not exceeding that claimed), may be delivered to plaintiff as a payment on his execution at his request.

(2) When any property levied on is sold, it shall be advertised two times, the first advertisement being at least 10 days before the sale. All property so levied on may be sold on the leased premises or at the courthouse door.

(3) Before the sale if defendant appeals and obtains supersedeas and pays all costs accrued up to the time that the supersedeas becomes operative, the property shall be restored to him and there shall be no sale.

(4) In case any property is sold to satisfy any rent payable in cotton or other agricultural product or thing, the officer shall settle with the plaintiff at the value of the rental at the time it became due.

History.—ss. 5, 6, ch. 3131, 1879; RS 1769; GS 2245; RGS 3564; CGL 5428; s. 34, ch. 67-254.

83.20 Causes for removal of tenants.—Any tenant or lessee at will or sufferance, or for part of the year, or for one or more years, of any houses, lands or tenements, and the assigns, under tenants or legal representatives of such tenant or lessee, may be removed from the premises in the manner hereinafter provided in the following cases:

(1) Where such person holds over and continues in the possession of the demised premises, or any part thereof, after the expiration of his time, without the permission of his landlord.

(2) Where such person holds over without permission as aforesaid, after any default in the payment of rent pursuant to the agreement under which the premises are held, and 3 days' notice in writing, requiring the payment of the rent or the possession of the premises, has been served by the person entitled to the rent on the person owing the same. The service of the notice shall be by delivery of a true copy thereof, or if the tenant be absent from his last or usual place of residence, by leaving a copy thereof at such place.

History.—s. 1, ch. 3248, 1881; RS 1751; GS 2227; RGS 3535; CGL 5399; s. 34, ch. 67-254; s. 20, ch. 77-104.

83.21 Removal of tenant.—The landlord, his attorney or agent, applying for the removal of any tenant, shall file a complaint stating the facts which authorize the removal of the tenant, and describing the premises in the proper court of the county where the premises are situated and is entitled to the summary procedure provided in s. 51.011.

History.—s. 2, ch. 3248, 1881; RS 1752; GS 2228; RGS 3536; CGL 5400; s. 1, ch. 61-318; s. 34, ch. 67-254.

83.22 Removal of tenant; service.—If the defendant cannot be found in the county in which the action is pending and either he has no usual place of abode in the county or there is no person of his family above 15 years of age at his usual place of abode in the county, the sheriff shall serve the summons by attaching it to some part of the premises involved in the proceedings.

History.—s. 2, ch. 3248, 1881; RS 1753; GS 2229; RGS 3537; CGL 5401; s. 1, ch. 22731, 1945; s. 34, ch. 67-254.

83.231 Removal of tenant; judgment.—If the issues are found for plaintiff, judgment shall be entered that he recover possession of the premises but if they be found for defendant, judgment shall be entered dismissing the action.

History.—s. 8, ch. 6463, 1913; RGS 3549; CGL 5413; s. 34, ch. 67-254.
Note.—Former s. 83.34.

83.241 Removal of tenant; process.—After entry of judgment in favor of plaintiff the clerk shall issue a writ to the sheriff describing the premises and commanding him to put plaintiff in possession. However, in the case of the removal of any mobile home tenant or the mobile home of any tenant for the reason of holding over after the expiration of the tenant's time, the writ of possession shall not issue

earlier than 30 days from the service of the petition for removal upon the defendant.

History.—s. 9, ch. 6463, 1913; RGS 3550; CGL 5414; s. 34, ch. 67-254; s. 1, ch. 70-360.

Note.—Former s. 83.35.

83.251 Removal of tenant; costs.—The prevailing party shall have judgment for costs and execution shall issue therefor.

History.—s. 11, ch. 6463, 1913; RGS 3552; CGL 5416; s. 34, ch. 67-254.

Note.—Former s. 83.37.

PART II

RESIDENTIAL TENANCIES

83.40 Short title.—This part shall be known as the "Florida Residential Landlord and Tenant Act."

History.—s. 2, ch. 73-330.

83.41 Application.—This part applies to the rental of a dwelling unit and a mobile home lot.

History.—s. 2, ch. 73-330.

83.42 Exclusions from application of part.—This part does not apply to:

(1) Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services.

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part.

(3) Transient occupancy in a hotel, condominium, motel, roominghouse, or similar public lodging, or transient occupancy in a mobile home park.

(4) Occupancy by a holder of a proprietary lease in a cooperative apartment.

(5) Occupancy by an owner of a condominium unit.

History.—s. 2, ch. 73-330.

83.43 Definitions.—As used in this part, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(1) "Building, housing, and health codes" means any law, ordinance, or governmental regulation concerning health, safety, sanitation or fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance, of any dwelling unit.

(2) "Dwelling unit" means:

(a) A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household.

(b) A mobile home rented by a tenant.

(c) A mobile home lot within a mobile home park that is rented for occupancy by one or more persons who own the mobile home located on the lot.

(3) "Landlord" means the owner or lessor of a dwelling unit.

(4) "Tenant" means any person entitled to occupy a dwelling unit under a rental agreement.

(5) "Premises" means a dwelling unit and the structure of which it is a part and a mobile home lot and the appurtenant facilities and grounds, areas, facilities, and property held out for the use of tenants generally.

(6) "Rent" means the periodic payments due the landlord from the tenant for occupancy under a rental agreement and any other payments due the landlord from the tenant as may be designated as rent in a written rental agreement.

(7) "Rental agreement" means any written agreement, or oral agreement if for less duration than 1 year, providing for use and occupancy of premises.

(8) "Good faith" means honesty in fact in the conduct or transaction concerned.

(9) "Advance rent" means moneys paid to the landlord to be applied to future rent payment periods, but does not include rent paid in advance for a current rent payment period.

(10) "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary.

(11) "Deposit money" means any money held by the landlord on behalf of the tenant, including, but not limited to, damage deposits, security deposits, advance rent deposit, pet deposit, or any contractual deposit agreed to between landlord and tenant either in writing or orally.

(12) "Security deposits" means any moneys held by the landlord as security for the performance of the rental agreement, including, but not limited to, monetary damage to the landlord caused by the tenant's breach of lease prior to the expiration thereof.

History.—s. 2, ch. 73-330; s. 1, ch. 74-143.

83.44 Obligation of good faith.—Every rental agreement or duty within this part imposes an obligation of good faith in its performance or enforcement.

History.—s. 2, ch. 73-330.

83.45 Unconscionable rental agreement or provision.—

(1) If the court as a matter of law finds a rental agreement or any provision of a rental agreement to have been unconscionable at the time it was made, the court may refuse to enforce the rental agreement, enforce the remainder of the rental agreement without the unconscionable provision, or so limit the application of any unconscionable provision as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the rental agreement or any provision thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to meaning, relationship of the parties, purpose, and effect to aid the court in making the determination.

History.—s. 2, ch. 73-330.

83.46 Rent; duration of tenancies.—

(1) Unless otherwise agreed, rent is payable without demand or notice; periodic rent is payable at the beginning of each rent payment period; and rent is uniformly apportionable from day to day.

(2) If the rental agreement contains no provision as to duration of the tenancy, the duration is determined by the periods for which the rent is payable. If the rent is payable weekly, then the tenancy is from week to week; if payable monthly, tenancy is from month to month; if payable quarterly, tenancy is from quarter to quarter; if payable yearly, tenancy is from year to year.

History.—s. 2, ch. 73-330.

83.47 Prohibited provisions in rental agreements.—

(1) A provision in a rental agreement is void and unenforceable to the extent that it:

(a) Purports to waive or preclude the rights, remedies, or requirements set forth in this part.

(b) Purports to limit or preclude any liability of the landlord to the tenant or of the tenant to the landlord, arising under law.

(2) If such a void and unenforceable provision is included in a rental agreement entered into, extended, or renewed after the effective date of this part and either party suffers actual damages as a result of the inclusion, the aggrieved party may recover those damages sustained after the effective date of this part.

History.—s. 2, ch. 73-330.

83.48 Attorney's fees.—If a rental agreement contains a provision allowing attorney's fees to the landlord when he is required to take any action to enforce the rental agreement, the court may also allow reasonable attorney's fees to the tenant when he prevails in any action by or against him with respect to the rental agreement.

History.—s. 2, ch. 73-330.

83.49 Deposit money or advance rent; duty of landlord and tenant.—

(1) Whenever money is deposited or advanced by a tenant on a rental agreement as security for performance of the rental agreement or as advance rent, which is held in excess of 3 months by the landlord or his agent, the total amount of such money held by the landlord on behalf of the tenant shall be held in a separate account for the benefit of the tenant by the landlord and shall not be commingled with any other funds of the landlord; or, in the alternative, the landlord shall post a surety bond with the clerk of the circuit court in the county in which the dwelling unit is located in the total amount of the security deposits and advance rent he holds on behalf of the tenants or $50,000, whichever is less, executed by the landlord as principal and a surety company authorized and licensed to do business in the state as surety. The bond shall be conditioned upon the faithful compliance of the landlord with the provisions of this section and shall run to the governor for the benefit of any tenant injured by the landlord's violation of the provisions of this section.

(2) Whenever the landlord shall require a security deposit or advance rent which is held in excess of 6 months by the landlord or his agent, it shall accumulate interest at the rate of 5 percent per annum, simple interest. However, no interest shall be required to be paid to the tenant when such moneys are held in a separate account for the benefit of the tenants and not commingled with other funds of the landlord. The landlord shall not hypothecate, pledge, or in any other way make use of such moneys until such moneys are actually due the landlord. If such commingled funds are deposited in an interest-bearing account, said account shall be in a Florida banking institution, and the landlord shall immediately notify the tenant of the name and address of the banking institution and the amount of his money so deposited, and the tenant shall receive and collect at least 75 percent of the interest payable on such account in lieu of the payment of 5 percent interest by the landlord. The landlord shall, within 30 days of receipt of advance rent or a security deposit, notify the tenant in writing of the manner in which the landlord is holding the advance rent or security deposit, the rate of interest, if any, which the tenant is to receive, and the time of interest payments to the tenant. Such written notice shall:

(a) Be given in person or by mail to the tenant.

(b) State the name and address of the depository where the advance rent or security deposit is being held, whether the advance rent or security deposit is being held in a separate account for the benefit of the tenant or is commingled with other funds of the landlord, and, if commingled, whether such funds are deposited in an interest-bearing account in a Florida banking institution.

(c) Include a copy of the provisions of subsection (3).

Subsequent to providing such notice, should the landlord change the manner or location in which he is holding the advance rent or security deposit, he shall notify the tenant within 30 days of the change according to the provisions herein set forth. The

landlord shall pay directly to the tenant or credit against the current month's rent, the interest to the tenant, at least once annually. This subsection shall not apply to any landlord who rents fewer than five individual dwelling units. Failure to provide this notice shall not be a defense to the payment of rent when due.

(3)(a) Upon the vacating of the premises for termination of the lease, the landlord shall have 15 days to return said security deposit together with interest or in which to give the tenant written notice by certified mail to the tenant's last known mailing address of his intention to impose a claim thereon. The notice shall contain a statement in substantially the following form:

This is a notice of my intention to impose a claim for damages in the amount of ..... upon your security deposit. It is sent to you as required by s. 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to (landlord's address).

If the landlord fails to give the required notice within the 15-day period, he forfeits his right to impose a claim upon the security deposit.

(b) Unless the tenant objects to the imposition of the landlord's claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the landlord may then deduct the amount of his claim and shall remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages.

(c) If either party institutes an action in a court of competent jurisdiction to adjudicate his right to the security deposit, the prevailing party is entitled to receive his court costs plus a reasonable fee for his attorney. The court shall advance the cause on the calendar.

(4) The provisions of this section shall not apply to transient rentals by hotels or motels as defined in chapter 509, nor shall it apply to those instances in which the amount of rent or deposit, or both, is regulated by law or rules or regulations of a public body, including federally administered or regulated housing programs, s. 202, s. 221(d)(3), or s. 236 of the National Housing Act as amended, other than for rent stabilization.

(5) Except when otherwise provided by the terms of a written lease, any tenant who vacates or abandons the premises prior to the expiration of the term specified in the written lease, or any tenant who vacates or abandons premises which are the subject of a tenancy from week to week, month to month, quarter to quarter, or year to year, shall give at least 7 days' notice by certified mail to the landlord prior to vacating or abandoning the premises. Failure to give such notice shall relieve the landlord of the notice requirement of subsection (3)(a).

(6) For the purposes of this part, a renewal of an existing rental agreement shall be considered a new rental agreement, and any security deposit carried forward shall be considered a new security deposit.

(7) Any person licensed under the provisions of s. 509.241, unless excluded by the provisions of this part, who fails to comply with the provisions of this part shall be subject to a fine or to the suspension or revocation of his license by the Division of Hotels and Restaurants of the Department of Business Regulation in the manner provided in s. 509.261.

History.—s. 1, ch. 69-282; s. 3, ch. 70-360; s. 1, ch. 72-19; s. 1, ch. 72-43; s. 5, ch. 73-330; s. 1, ch. 74-93; s. 3, ch. 74-146; ss. 1, 2, ch. 75-133; s. 1, ch. 76-15; s. 1, ch. 77-445; s. 20, ch. 79-400.

Note.—Former s. 83.261.

83.50 Disclosure.—

(1) The landlord, or a person authorized to enter into a rental agreement on his behalf, shall disclose in writing to the tenant, at or before the commencement of the tenancy, the name and address of the landlord or a person authorized to receive notices and demands in his behalf. The person so authorized to receive notices and demands retains authority until the tenant is notified otherwise. All notices of such names and addresses or changes thereto shall be delivered to the tenant's residence or, if specified in writing by the tenant, to any other address.

(2) The landlord or his authorized representative, upon completion of construction of a building exceeding three stories in height and containing dwelling units, shall disclose to the tenants initially moving into the building the availability or lack of availability of fire protection.

History.—s. 2, ch. 73-330.

83.51 Landlord's obligation to maintain premises.—

(1) The landlord at all times during the tenancy shall:

(a) Comply with the requirements of applicable building, housing, and health codes; or

(b) Where there are no applicable building, housing, or health codes, maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads and the plumbing in reasonable working condition. However, the landlord shall not be required to maintain a mobile home or other structure owned by the tenant.

The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.

(2)(a) Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, and bedbugs.
2. Locks and keys.
3. The clean and safe condition of common areas.
4. Garbage removal and outside receptacles therefor.
5. Heat during winter, running water, and hot water.

(b) Nothing in this part authorizes the tenant to raise a noncompliance by the landlord with this sub-

section as a defense to an action for possession under s. 83.59.

(c) This subsection shall not apply to a mobile home owned by a tenant.

(d) Nothing contained in this subsection prohibits the landlord from providing in the rental agreement that the tenant is obligated to pay costs or charges for garbage removal, water, fuel, or utilities.

(3) If the duty imposed by subsection (1) is the same or greater than any duty imposed by subsection (2), the landlord's duty is determined by subsection (1).

(4) The landlord is not responsible to the tenant under this section for conditions created or caused by the negligent or wrongful act or omission of the tenant, a member of his family, or other person on the premises with his consent.

History.—s. 2, ch. 73-330.

83.52 Tenant's obligation to maintain dwelling unit.—The tenant at all times during the tenancy shall:

(1) Comply with all obligations imposed upon tenants by applicable provisions of building, housing, and health codes.

(2) Keep that part of the premises which he occupies and uses clean and sanitary.

(3) Remove from his dwelling unit all garbage in a clean and sanitary manner.

(4) Keep all plumbing fixtures in the dwelling unit or used by the tenant clean and sanitary and in repair.

(5) Use and operate in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators.

(6) Not destroy, deface, damage, impair, or remove any part of the premises or property therein belonging to the landlord nor permit any person to do so.

(7) Conduct himself, and require other persons on the premises with his consent to conduct themselves, in a manner that does not unreasonably disturb his neighbors or constitute a breach of the peace.

History.—s. 2, ch. 73-330.

83.53 Landlord's access to dwelling unit.—

(1) The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit from time to time in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) The landlord may enter the dwelling unit at any time for the protection or preservation of the premises. The landlord may enter the dwelling unit when necessary for the purposes set forth in subsection (1) under any of the following circumstances:

(a) With the consent of the tenant;

(b) In case of emergency;

(c) When the tenant unreasonably withholds consent; or

(d) If the tenant is absent from the premises for a period of time equal to one-half the time for periodic rental payments. If the rent is current and the tenant notifies the landlord of an intended absence, then the landlord may enter only with the consent of the tenant or for the protection or preservation of the premises.

(3) The landlord shall not abuse the right of access nor use it to harass the tenant.

History.—s. 2, ch. 73-330.

83.54 Remedies; enforcement of rights and duties; civil action.—Any right or duty declared in this part is enforceable by civil action.

History.—s. 2, ch. 73-330.

83.55 Remedies; right of action for damages.—If either the landlord or the tenant fails to comply with the requirements of the rental agreement or this part, the aggrieved party may recover the damages caused by the noncompliance.

History.—s. 2, ch. 73-330.

83.56 Remedies; termination of rental agreement.—

(1) If the landlord materially fails to comply with s. 83.51(1) [F. S. 1973] or material provisions of the rental agreement within 7 days after delivery of written notice by the tenant specifying the noncompliance and indicating the intention of the tenant to terminate the rental agreement by reason thereof, the tenant may terminate the rental agreement. If the failure to comply with s. 83.51(1) [F. S. 1973] or material provisions of the rental agreement is due to causes beyond the control of the landlord and the landlord has made and continues to make every reasonable effort to correct the failure to comply, the rental agreement may be terminated or altered by the parties, as follows:

(a) If the landlord's failure to comply renders the dwelling unit untenantable and the tenant vacates, the tenant shall not be liable for rent during the period the dwelling unit remains uninhabitable.

(b) If the landlord's failure to comply does not render the dwelling unit untenantable and the tenant remains in occupancy, the rent for the period of noncompliance shall be reduced by an amount in proportion to the loss of rental value caused by the noncompliance.

(2) If the tenant materially fails to comply with s. 83.52 [F. S. 1973] or material provisions of the rental agreement, other than a failure to pay rent, within 7 days after delivery of written notice by the landlord specifying the noncompliance and indicating the intention of the landlord to terminate the rental agreement by reason thereof, the landlord may terminate the rental agreement.

(3) If the tenant fails to pay rent when due and the default continues for 3 days after delivery of written demand by the landlord for payment of the rent or possession of the premises, the landlord may terminate the rental agreement.

(4) The delivery of the written notices required by subsections (1), (2), and (3) shall be by mailing or delivery of a true copy thereof or, if the tenant is absent from his last or usual place of residence, by leaving a copy thereof at the residence.

(5) If the landlord accepts rent with actual knowledge of a noncompliance by the tenant or ac-

cepts performance by the tenant of any other provision of the rental agreement that is at variance with its provisions, or if the tenant pays rent with actual knowledge of a noncompliance by the landlord or accepts performance by the landlord of any other provision of the rental agreement that is at variance with its provisions, the landlord or tenant waives his right to terminate the rental agreement or to bring a civil action for that noncompliance, but not for any subsequent or continuing noncompliance.

(6) If the rental agreement is terminated, the landlord shall comply with s. 83.49(3) [F. S. 1973].

History.—s. 2, ch. 73-330.

83.57 Remedies; termination of tenancy without specific term.—A tenancy without a specific duration, as defined in s. 83.46(2), may be terminated by either party giving written notice in the manner provided in s. 83.56(4) [F. S. 1973], as follows:

(1) When the tenancy is from year to year, by giving not less than 60 days' notice prior to the end of any annual period;

(2) When the tenancy is from quarter to quarter, by giving not less than 30 days' notice prior to the end of any quarterly period;

(3) When the tenancy is from month to month, by giving not less than 15 days' notice prior to the end of any monthly period; and

(4) When the tenancy is from week to week, by giving not less than 7 days' notice prior to the end of any weekly period.

History.—s. 2, ch. 73-330.

83.58 Remedies; tenant holding over.—If the tenant holds over and continues in possession of the dwelling unit or any part thereof after the expiration of the rental agreement without the permission of the landlord, the landlord may recover possession of the dwelling unit in the manner provided for in s. 83.59 [F. S. 1973]. The landlord may also recover double the amount of rent due on the dwelling unit, or any part thereof, for the period during which the tenant refuses to surrender possession.

History.—s. 2, ch. 73-330.

83.59 Remedies; right of action for possession.—

(1) If the rental agreement is terminated and the tenant does not vacate the premises, the landlord may recover possession of the dwelling unit as provided in this section.

(2) A landlord applying for the removal of a tenant shall file in the county court of the county where the premises are situated a complaint describing the dwelling unit and stating the facts that authorize its recovery. The landlord is entitled to the summary procedure provided in s. 51.011 [F. S. 1971], and the court shall advance the cause on the calendar.

(3) The landlord shall not recover possession of a dwelling unit except:

(a) In an action for possession under subsection (2) or other civil action in which the issue of right of possession is determined;

(b) When the tenant has surrendered possession of the dwelling unit to the landlord; or

(c) When the tenant has abandoned the dwelling unit. In the absence of actual knowledge of abandonment, it shall be presumed that the tenant has abandoned the dwelling unit if he is absent from the premises for a period of time equal to one-half the time for periodic rental payments. However, this presumption shall not apply if the rent is current or the tenant has notified the landlord of an intended absence.

(4) The prevailing party is entitled to have judgment for costs and execution therefor.

History.—s. 2, ch. 73-330; s. 1, ch. 74-146.

83.60 Remedies; defenses to action for rent or possession; procedure.—

(1) In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent or in an action by the landlord under s. 83.55 seeking to recover unpaid rent, the tenant may defend upon the ground of a material noncompliance with s. 83.51(1) [F. S. 1973], or may raise any other defense, whether legal or equitable, that he may have. The defense of a material noncompliance with s. 83.51(1) [F. S. 1973] may only be raised by the tenant if 7 days have elapsed after the delivery of written notice by the tenant to the landlord as prescribed in s. 83.56(4) [F. S. 1973], specifying the noncompliance and indicating the intention of the tenant not to pay rent by reason thereof. A material noncompliance with s. 83.51(1) [F. S. 1973] by the landlord is a complete defense to an action for possession based upon nonpayment of rent, and, upon hearing, the court or the jury, as the case may be, shall determine the amount, if any, by which the rent is to be reduced to reflect the diminution in value of the dwelling unit during the period of noncompliance with s. 83.51(1) [F. S. 1973]. After consideration of all other relevant issues, the court shall enter appropriate judgment.

(2) In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent, if the tenant interposes any defense other than payment, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent which accrues during the pendency of the proceeding, when due. Failure of the tenant to pay the rent into the registry of the court as provided herein constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default.

History.—s. 2, ch. 73-330.

83.61 Disbursement of funds in registry of court; prompt final hearing.—When the tenant has deposited funds into the registry of the court in accordance with the provisions of s. 83.60(2) and the landlord is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises, the landlord may apply to the court for disbursement of all or part of the funds or for prompt final hearing. The court shall advance the cause on the calendar. The court, after preliminary hearing, may award all or any portion of the funds on deposit to the landlord or may proceed immediately to a final resolution of the cause.

History.—s. 2, ch. 73-330; s. 2, ch. 74-146.

83.62 Remedies; removal of tenant; process.—In an action for possession, after entry of judgment in favor of the landlord, the clerk shall issue a writ to the sheriff describing the premises and commanding him to put the landlord in possession after 24 hours' notice conspicuously posted on the premises. In the case of the removal of the mobile home of any tenant for the reason of holding over after the expiration of the rental agreement, the writ of possession shall not issue earlier than 30 days from the service of the complaint for removal upon the tenant.

History.—s. 2, ch. 73-330.

83.625 Power to award possession and enter money judgment.—In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent, if the court finds the rent is due, owing, and unpaid and by reason thereof the landlord is entitled to possession of the premises, the court, in addition to awarding possession of the premises to the landlord, shall also direct, in an amount which is within its jurisdictional limitations, the entry of a money judgment in favor of the landlord and against the tenant for the amount of money found due, owing, and unpaid by the tenant to the landlord, with costs. However, no money judgment shall be entered unless service of process has been effected by personal service or, where authorized by law, by certified or registered mail, return receipt, or in any other manner prescribed by law or the rules of the court; and said money judgment shall not be entered earlier than the day following the expiration of the time period within which the tenant-defendant would be required to file an answer or otherwise appear, were the proceeding solely an action at law to recover money damages.

History.—s. 1, ch. 75-147.

83.63 Remedies; casualty damage.—If the premises are damaged or destroyed other than by the wrongful or negligent acts of the tenant so that the enjoyment of the premises is substantially impaired, the tenant may terminate the rental agreement and immediately vacate the premises. The tenant may vacate the part of the premises rendered unusable by the casualty, in which case his liability for rent shall be reduced by the fair rental value of that part of the premises damaged or destroyed. If the rental agreement is terminated, the landlord shall comply with s. 83.49(3) [F. S. 1973].

History.—s. 2, ch. 73-330.

PART III

MOBILE HOME PARK LOTS

83.750 Short title.—This part shall be known and may be cited as the "Florida Mobile Home Landlord and Tenant Act."

History.—s. 1, ch. 76-81.

83.751 Application.—The provisions of this part shall apply to tenancies in which a mobile home is placed upon a rented or leased lot in a mobile home park for residential use. This part shall not be construed to apply to any other tenancy including a tenancy, in which both a mobile home and a mobile home lot are rented or leased by the mobile home resident. Where both the mobile home and lot are rented, the tenancy shall be governed by the provisions of part II, the "Florida Residential Landlord and Tenant Act," ss. 83.40-83.68.

History.—s. 1, ch. 76-81.

83.752 Definitions.—As used in this part, the following words and terms shall have the following meanings unless clearly indicated otherwise:

(1) "Mobile home owner" means a person who owns a mobile home and rents or leases a lot within a mobile home park for residential use.

(2) "Mobile home park owner" or "park owner" means the owner or operator of a mobile home park.

(3) "Mobile home park" or "park" means a use of land in which 10 or more lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.

(4) "Mobile home lot rental agreement" or "rental agreement" means any mutual understanding, lease, or tenancy between a mobile home owner and a mobile home park owner in which the mobile home owner is entitled to place his mobile home on a mobile home lot for the payment of consideration to the mobile home park owner.

History.—s. 1, ch. 76-81.

83.753 Obligation of good faith.—Every rental agreement or duty within this part imposes an obligation of good faith in its performance or enforcement.

History.—s. 1, ch. 76-81.

83.754 Unconscionable lot rental agreements.—

(1) If the court as a matter of law finds a mobile home lot rental agreement, or any provision of the rental agreement, to have been unconscionable at the time it was made, the court may:

(a) Refuse to enforce the rental agreement.

(b) Enforce the remainder of the rental agreement without the unconscionable provision.

(c) So limit the application of any unconscionable provision as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the rental agreement, or any provision thereof, may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to meaning, relationship of the parties, purpose, and other relevant factors to aid the court in making the determination.

History.—s. 1, ch. 76-81.

83.755 Prohibited or unenforceable provisions in mobile home lot rental agreements.—

(1) A mobile home lot rental agreement may provide a specific duration with regard to the amount of rental payments and other conditions of the tenancy, but the rental agreement shall neither provide for, nor be construed to provide for, the termination of any rental agreement, except as otherwise provided in this part.

(2) Any provision in the rental agreement is void and unenforceable to the extent that it attempts to waive or preclude the rights, remedies, or requirements set forth in this part or those arising under law.

History.—s. 1, ch. 76-81.

83.756 Attorney's fees.—If a mobile home lot rental agreement contains a provision allowing attorney's fees to the mobile home park owner, the court may also allow reasonable attorney's fees to the mobile home owner whenever the mobile home owner prevails in any action by or against him.

History.—s. 1, ch. 76-81.

83.757 Park owner's access to mobile home and mobile home lot.—The mobile home park owner shall have no right of access to a mobile home unless the mobile home owner's prior written consent has been obtained or to prevent imminent danger to the occupant or the mobile home. Such consent may be revoked in writing by the mobile home owner at any time. The park owner shall, however, have the right of entry onto the lot for purposes of repair and replacement of utilities and protection of the mobile home park at all reasonable times, but not in such manner or at such time as to interfere unreasonably with the mobile home owner's quiet enjoyment of said lot.

History.—s. 1, ch. 76-81.

83.758 Mobile home owner's and mobile home park owner's obligation.—

(1) The mobile home owner shall at all times:

(a) Comply with all reasonable park rules.

(b) Comply with all obligations imposed on mobile home owners by applicable provisions of building, housing, and health codes.

(c) Keep the mobile home lot which he occupies clean and sanitary.

(d) Comply with reasonable park rules and regulations by conducting himself, and requiring other persons on the premises with his consent to conduct themselves, in a manner that does not unreasonably disturb his neighbors or constitute a breach of the peace.

(2) The mobile home park owner shall at all times:

(a) Comply with the requirements of applicable building, housing, and health codes.

(b) Maintain buildings and improvements in common areas in a good state of repair and maintenance and maintain the common areas in a good state of appearance, safety, and cleanliness.

(c) Provide access to the common areas, including buildings and improvements thereto, at all reasonable times for the benefit of the park residents.

(d) Maintain utility connections and systems in reasonably usable condition.

History.—s. 1, ch. 76-81.

83.759 Mobile home parks; eviction, grounds, proceedings.—

(1) A mobile home park owner or operator may not evict a mobile home or a mobile home dweller other than for the following reasons:

(a) Nonpayment of rent.

(b) Conviction of a violation of some federal or state law or local ordinance, which violation may be deemed detrimental to the health, safety, or welfare of other dwellers in the mobile home park.

(c) Violation of any reasonable rule or regulation established by the park owner or operator, provided the mobile home owner received written notice of the grounds upon which he is to be evicted at least 30 days prior to the date he is required to vacate. A copy of all rules and regulations shall be delivered by the park owner or operator to the mobile home owner prior to his signing the lease or entering into a rental agreement. A copy of the rules and regulations shall also be posted in the recreation hall, if any, or some other conspicuous place in the park. A mobile home park rule or regulation shall be presumed to be reasonable if it is similar to rules and regulations customarily established in other mobile home parks located in this state or if the rule or regulation is not immoderate or excessive.

(d) Change in use of land comprising the mobile home park or a portion thereof on which a mobile home to be evicted is located from mobile home lot

rentals to some other use, provided all tenants affected are given at least 6 months' notice, or longer if provided for in a valid lease, of the projected change of use and of their need to secure other accommodations.

(2) Cumulative eviction proceedings may be established in a written lease agreement between the park owner or operator and a mobile home dweller in addition to those established by law.

(3) This section shall not preclude summary eviction proceedings, and if the park operator or owner does not have one of the grounds set forth in subsection (1) available, the mobile home owner may raise the same by affirmative defense.

History.—s. 1, ch. 72-28; s. 1, ch. 73-182; s. 12, ch. 73-330; s. 2, ch. 76-81.
Note.—Former s. 83.69.

83.760 Mobile home lease.—

(1) No tenancy, except one of transient occupancy, of any person owning a mobile home who hereafter rents, leases, or occupies real property in a mobile home park for a valuable consideration shall be enforceable, or be terminated, by the mobile home park owner unless, prior to occupancy, the mobile home owner has been offered a written lease as herein provided. In the event a mobile home owner does not enter into a written lease, or upon the expiration of a written lease, the tenancy may only be terminated in accordance with the provisions of s. 83.759, which section is cumulative to all other sections in this part and deemed to supersede any provisions in conflict therewith.

(2) No such tenancy existing upon January 1, 1975, may thereafter be terminated unless the mobile home owner has been offered a written lease and has, after the expiration of 60 days from the time of delivery to him, refused or failed to execute same. The leases so offered by any mobile home park owner must be bona fide offers to lease for a specified term upon the same terms and conditions as leases offered to all other mobile home owners in the park, excepting only rent variations based upon lot location and size.

(3) Only such park rules or regulations as are reasonable under the circumstances and specifically incorporated by reference in the written leases shall be enforceable. The lease shall contain a provision that part III of chapter 83 governs mobile home park tenancies. The lease shall contain the amount of the rent, any security deposit, installation charges, fees, assessments, and any other financial obligations of the mobile home owner. However, this provision shall not be construed to prevent any mobile home park owner from passing on to the mobile home owner any costs, including increased cost for utilities, which are incurred due to the actions of any state or local government.

(4) No agency of any municipal, local, county or state government shall approve any application for rezoning, or take any other official action, which would result in the removal or relocation of mobile home owners residing in a mobile home park without first investigating as to the adequacy of mobile home parks or other suitable facilities for the relocation of the mobile home owners or when said action is opposed by the mobile home park owner.

(5) This act shall not apply in those instances where rental space is offered for occupancy by recreational vehicle-type units primarily designed as temporary living quarters for recreational, camping, or travel use and which either have their own motive power or are mounted on or drawn by another vehicle.

(6) No provision of this section shall apply to a mobile home park which contains 10 or less mobile home lots.

History.—s. 1, ch. 74-160; s. 3, ch. 76-81.
Note.—Former s. 83.695.

83.761 Civil remedy; venue; court costs and attorney's fees; injunction.—

(1) Any right or duty declared in this part is enforceable by civil action.

(2) If either the mobile home park owner or the mobile home owner fails to comply with the requirements of the mobile home lot rental agreement or other provisions of this part, the aggrieved party may recover the damages caused by the noncompliance.

(3) A mobile home owner or dweller may bring a civil action against a mobile home park owner or operator violating the provisions of this part in the appropriate court of the county in which the alleged violator resides or has his principal place of business or in the county wherein the alleged violation occurred. Upon adverse adjudication, the defendant shall be liable for damages. The court may in its discretion award such equitable relief as it deems necessary, including the enjoining of the defendant from further violations. The losing party may be liable for court costs and reasonable attorney's fees incurred by the prevailing party.

(4) In addition to other penalties provided herein, the state attorneys and their assistants are authorized to apply to the circuit court within their respective jurisdictions, upon the sworn affidavit of any mobile home owner or dweller alleging a violation by a mobile home park owner or operator of any of the provisions of this part, and such court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining such mobile home park owner or operator from any further violation, whether or not there exists an adequate remedy at law, and such injunction may issue without bond at the court's discretion. The Department of Legal Affairs shall have concurrent jurisdiction as an enforcing authority if the violation occurs in, or affects, more than one judicial circuit or if the office of the state attorney fails to act upon a violation within a reasonable period of time.

History.—s. 4, ch. 76-81.

83.762 Disclosure.—The mobile home park owner, or a person authorized to enter into a mobile home lot rental agreement on his behalf, shall disclose in writing to the mobile home owner, at or before the commencement of the tenancy, and, on request, to anyone having previously established a tenancy, the name and address of the mobile home park owner or a person authorized to receive notices and demands on his behalf. Any person so authorized to receive notices and demands retains such authority until the mobile home owner is notified otherwise. All notices of such names and addresses or

changes made thereto shall be delivered to the mobile home owner's residence or, if specified in writing by the mobile home owner, to such specified address.

History.—s. 5, ch. 76-81.

83.763 Remedies; defenses to action for rent or possession; procedure.—

(1) In an action by the mobile home park owner for possession of a mobile home lot based upon nonpayment of rent or seeking to recover unpaid rent, the mobile home owner may defend upon the ground of a material noncompliance with any portion of this part or may raise any other defense, whether legal or equitable, which he may have. The defense of material noncompliance may be raised by the mobile home owner only if said mobile home owner has, prior to the due date of rent, notified the park owner in writing of his intention not to pay rent based upon the park owner's noncompliance with portions of this part, specifying in reasonable detail the provisions in default. A material noncompliance with this part by the park owner is a complete defense to an action for possession based upon nonpayment of rent, and, upon hearing, the court or the jury, as the case may be, shall determine the amount, if any, by which the rent is to be reduced to reflect the diminution in value of the lot during the period of noncompliance with any portion of this part. After consideration of all other relevant issues, the court shall enter appropriate judgment.

(2) In an action by the park owner for possession of a mobile home lot based upon nonpayment of rent, if the mobile home owner interposes any defense other than payment, the mobile home owner shall pay into the registry of the court the accrued rent, as alleged in the complaint or as determined by the court, and the rent which accrues during the pendency of the proceeding, when due. Failure of the mobile home owner to pay the rent into the registry of the court as required herein constitutes an absolute waiver of the mobile home owner's defenses other than payment, and the park owner is entitled to an immediate default.

(3) When the mobile home owner has deposited funds into the registry of the court in accordance with the provisions of this section and the park owner is in actual danger of loss of the premises or other personal hardship resulting from the loss of rental income from the premises, the park owner may apply to the court for disbursement of all or part of the funds or for prompt final hearing, whereupon the court shall advance the cause on the calendar. The court, after preliminary hearing, may award all or any portion of the funds on deposit to the park owner or may proceed immediately to a final resolution of the cause.

History.—s. 5, ch. 76-81.

83.764 Purchase of equipment, installation of appliances; fees, charges, assessments; rules and regulations.—

(1) No mobile home park owner or operator shall require a resident of the mobile home park to purchase from said owner or operator underskirting, equipment for tying down mobile homes, or any other equipment required by law, local ordinance, or regulation of the mobile home park. However, the park operator may determine by rule or regulation the style or quality of such equipment to be purchased by the mobile home owner from the vendor of the mobile home owner's choosing.

(2) No mobile home park owner or operator shall charge any resident who chooses to install an electric or gas appliance in his mobile home an additional fee solely on the basis of such installation or restrict the installation, service, or maintenance of any such appliance or the making of any interior improvement in such mobile home, so long as such an installation or improvement is in compliance with applicable building codes and other provisions of law.

(3)(a) A mobile home park owner or operator shall be required to disclose fully in writing all fees, charges, assessments, and rules and regulations prior to a mobile home dweller's assuming occupancy in the park. No fees, charges, or assessments so disclosed may be increased, or rules and regulations changed, by the park owner or operator without specifying the date of implementation of said fees, charges, assessments, or rules and regulations, which date shall be no less than 30 days after written notice to all mobile home owners.

(b) A mobile home park owner or operator shall not charge any entrance or exit fees except for those fees which are directly incurred by said park owner or operator as a result of the placing of a mobile home upon, or removal of a mobile home from, a park site. Any such fee shall be clearly identified in writing at the time that the rental agreement is signed or otherwise concluded.

(c) It is unlawful for any mobile home park owner or operator or mobile home dealer to make any agreement, written or oral, whereby the fees authorized in this subsection shall be split between any such mobile home park owner or operator and any mobile home dealer. Any person who violates any of the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Failure on the part of the mobile home park owner or operator to disclose fully all fees, charges, or assessments shall prevent the park owner or operator from collecting said fees, charges, or assessments, and refusal by the dweller to pay any undisclosed charges shall not be used by the park owner or operator as a cause for eviction in any court of law.

(5) No person shall be required by a mobile home park owner or operator, as a condition of residence in the mobile home park, to provide any permanent improvements that become a part of the real property of the mobile home park owner or operator.

(6) Whenever an entrance fee is charged by a mobile home park owner or operator for the entrance of a mobile home or a mobile home owner into the park and such mobile home or mobile home owner leaves before 2 years have passed from the date on which the fee was charged, the fee shall be prorated and a portion returned as follows:

(a) Entrance fees shall be refunded at the rate of one twenty-fourth of said fee for each month short of 2 years that a mobile home owner maintains his mobile home within the park.

(b) Entrance fees shall be refunded within 15 days after the mobile home has been physically moved from the park.

No new entrance fees may be charged for a move within the same park. This subsection shall not apply in instances in which the mobile home owner is evicted on grounds of nonpayment of rent, violation of a federal, state, or local ordinance, or violation of a reasonable park rule or regulation or leaves before the expiration date of his lease agreement. However, the sums due to the park by the mobile home owner may be offset against the balance due on the entrance fee.

(7) No mobile home park owner or operator who purchases electricity or gas (natural, manufactured, or similar gaseous substance) from any public utility or municipally owned utility for the purpose of supplying or reselling the electricity or gas to any other person to whom he leases, lets, rents, subleases, sublets, or subrents the premises upon which the electricity or gas is to be used shall charge, demand, or receive, directly or indirectly, any amount for the resale of such electricity or gas greater than that amount charged by the public utility or municipally owned utility from whom the electricity or gas was purchased.

(8) An invitee of a mobile home park tenant shall have ingress and egress to and from the tenant's site without the tenant or invitee being required to pay a fee or any charge whatsoever. For purposes of this subsection, an invitee shall be defined as a person whose stay, at the request of a mobile home park tenant, does not exceed 15 consecutive days or 30 total days per year, unless such person has the permission of the park management. After October 1, 1976, any mobile home park rule or regulation providing for such fees or charges shall be null and void.

History.—s. 2, ch. 72-28; s. 3, ch. 73-182; s. 12, ch. 73-330; s. 1, ch. 74-12; s. 3, ch. 74-160; s. 6, ch. 76-81; s. 1, ch. 76-278; s. 1, ch. 77-174.
Note.—Former s. 83.70.

83.765 Mobile home parks; restrictions on disposal of mobile homes, proceedings.—

(1) No mobile home park shall make or enforce any rule which shall deny or abridge the right of any resident of such mobile home park or any owner of a mobile home located in such park to sell said mobile home within the park, which shall prohibit the mobile home owner from placing a "for sale" sign on or in his mobile home, the size, placement and character of all signs to be subject to reasonable rules and regulations of the mobile home park, or which shall require the resident or owner to remove the mobile home from the park solely on the basis of the sale thereof. The purchaser of said mobile home, if said purchaser would otherwise qualify with the requirements of entry into the park under the park rules and regulations, may become a tenant of the park, subject to the approval of the park, but such approval may not be unreasonably withheld. The park shall not exact a commission or fee with respect to the price realized by the seller unless the park owner or operator has acted as agent for the mobile home owner in the sale pursuant to a written contract. If for any reason the park refuses permission to any resident or owner to sell to a qualified buyer and prospective mobile home owner after three bona fide offers, then the next offer may be accepted as a matter of course.

(2) No tenancy entered into by a purchaser in accordance with this section may thereafter be terminated unless the purchaser has been offered a written agreement by the landlord to assume the remainder of the term of any written lease then in effect between the landlord and the seller and has, after the expiration of 60 days from the time of delivery to him, refused or failed, without cause, to execute same.

History.—s. 3, ch. 72-28; s. 2, ch. 73-182; s. 12, ch. 73-330; s. 2, ch. 74-12; s. 7, ch. 76-81; s. 2, ch. 76-278; s. 1, ch. 78-311.
Note.—Former s. 83.71.

83.770 Legislative findings.—The Legislature finds that there exists an emergency in rental accommodations in mobile home parks. The Legislature further finds that this condition, coupled with the inordinate expense of relocating a mobile home, causes tenants in such parks to be placed in an unequal bargaining position with respect to increases in charges imposed by the owners or managers of such parks. The Legislature further finds that this inequality can only be alleviated by the enactment of reasonable legislative restraints which provide both a reasonable return on a park owner's investment and a safeguard to tenants against exorbitant rental or service charges.

History.—s. 1, ch. 77-49; s. 21, ch. 79-400.

83.772 Definitions.—For the purposes of ss. 83.770-83.794:

(1) "Commission" means the State Mobile Home Tenant-Landlord Commission created by s. 83.776.

(2) "Commissioner" or "member" means a member of the commission.

(3) "Mobile home park owner" or "owner" means the owner, lessor, operator, or manager of a mobile home park, within the purview of ss. 83.770-83.794.

(4) "Tenant" means any person entitled to occupy a dwelling unit under a rental agreement.

(5) "Dwelling unit" means a mobile home rented by a tenant within a mobile home park or a mobile home lot within a mobile home park that is rented for occupancy by one or more persons who own the mobile home located on the lot.

(6) "Service charge" includes any fee for services at a mobile home park.

History.—s. 2, ch. 77-49.

83.774 Applicability.—The provisions of ss. 83.770-83.794 shall not apply to any mobile home park which contains fewer than 100 dwelling units, nor shall it apply to any mobile home park established by an employer solely for the use and occupancy of its employees.

History.—s. 3, ch. 77-49.

83.776 State Mobile Home Tenant-Landlord Commission.—

(1) There is created the State Mobile Home Tenant-Landlord Commission within the Department of Business Regulation, the membership of which shall be appointed by the Governor as follows:

(a) Two members shall be mobile home park owners or operators.

(b) Two members shall be mobile home park tenants.

(c) Three members shall be members of the general public from the state at large without any connection or affiliation with any mobile home park.

(2) Commissioners shall serve for terms of 4 years, except that, of those members first appointed by the Governor, the two members who are mobile home park owners or operators shall be appointed for terms of 2 years, the two members who are mobile home park tenants shall be appointed for terms of 3 years, and the three members of the general public shall be appointed for terms of 4 years. A member chosen to fill a vacancy occurring otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he is to succeed. A member of the commission shall be eligible for reappointment.

(3) Commissioners shall not be compensated for their service on the commission, but shall be entitled to receive per diem and travel expenses as provided by s. 112.061. A vacancy in the commission shall not impair the right of the remaining members to exercise the powers of the commission. A majority of the commission shall constitute a quorum.

History.—s. 4, ch. 77-49; s. 22, ch. 79-400.

83.778 State Mobile Home Tenant-Landlord Trust Fund.—There is hereby created a State Mobile Home Tenant-Landlord Trust Fund which shall be used to finance the duties and functions assigned to the commission. The fund shall consist of fees deposited by the commission pursuant to s. 83.780.

History.—s. 5, ch. 77-49.

83.780 Registration of certain mobile home parks; number of units.—

(1) The owner or operator of every mobile home park which contains 100 or more dwelling units shall register his mobile home park with the commission. His application of registration, which shall be on a form approved by the commission, shall include the number of dwelling units in the park, and the application shall be submitted to the commission by January 1 of each year.

(2) The owner or operator of every mobile home park required to be registered with the commission pursuant to this section shall forward a $1 fee for each dwelling unit contained in the mobile home park, along with the application for registration, to the commission. The commission shall deposit all such fees in the State Mobile Home Tenant-Landlord Trust Fund. Mobile home park owners or operators are authorized to charge each dwelling unit in the park a $1 fee per year to pay for compliance with the provisions of this section.

History.—s. 6, ch. 77-49; s. 20, ch. 79-164.

83.782 Powers of the commission.—Within the limitations provided by law, the commission shall have the power:

(1) To maintain an office in the City of St. Petersburg.

(2) To meet and exercise its powers at any place within the state.

(3) To employ and fix the compensation of personnel as may be necessary to adequately perform its functions.

(4) To receive, investigate, hold hearings on, and pass upon, the petitions of mobile home tenants as set forth in ss. 83.770-83.794.

(5) To make or arrange for studies appropriate to effectuate the purposes and policies of ss. 83.770-83.794 and to make the results thereof available to the public.

(6) To render, at least annually, a comprehensive written report to the Governor and to the Legislature. The report may contain recommendations of the commission for legislation or other action to effectuate the purposes and policies of ss. 83.770-83.794.

(7) To adopt, promulgate, amend, and rescind rules to effectuate the purposes and policies of ss. 83.770-83.794.

History.—s. 7, ch. 77-49.

83.784 Commission required to act; mobile home park owners required to notify tenants of rental or service charge increases.—

(1)(a) Upon petition of 51 percent of the tenants of any dwelling units in a mobile home park who will be subject to a rental or service charge increase or a decrease in services in any calendar year in excess of the net United States Department of Labor Consumer Price Index increases since the last rental increase, the commission shall hold a hearing at the mobile home park or at such other facility selected by the commission, so long as it is reasonably accessible to all parties, at a date to be set by the commission, to determine whether or not the rental or service charge increase or a decrease in services is so great as to be unconscionable or not justified under the facts and circumstances of the particular situation.

(b) Every petition to the commission for a hearing must contain the signatures of at least 51 percent of all of the tenants of any mobile home park and must be accompanied by an affidavit attesting to the fact that the petition contains the required number of signatures. The petition shall be submitted to the commission within 60 days from notification from the mobile home park owner as described in subsection (3).

(2)(a) The increased costs to the owner of a mobile home park attributable to:

1. Increases in utility rates;
2. Property taxes;
3. Fluctuation in property value;
4. Governmental assessments;
5. Cost of living increases attributable to and relevant to incidental services, normal repair, and maintenance; and
6. Capital improvements not otherwise promised or contracted for

may be passed on to the tenants or prospective tenants in the form of increased rental or service charges if such increases are reasonable and justified under the facts and circumstances of the particular case.

(b) The provisions of this subsection shall not be cumulative to the provisions of subsection (1). If the increases sought by the park owner, together with

all rental increases experienced by the tenants for the preceding 5 years, exceed the cumulative cost of living increases for the same period, then such proposed increases shall not be exempted from this commission's jurisdiction.

(3) As of November 1 of each year, every mobile home park owner shall notify each tenant of a dwelling unit in the park whose rental agreement or service charge will be subject to negotiation and will be increased in the succeeding year of such fact and the amount of all proposed increases. No rental or service charge increases shall be allowed unless properly noticed in writing as provided in this subsection.

(4) The commission shall examine any rental or service charge increases which took effect on or after January 1, 1977, but prior to July 1, 1977, upon petition of the tenants as required by this section, within 60 days after July 1, 1977.

History.—ss. 8, 15, ch. 77-49; s. 23, ch. 79-400.

83.786 Commission to resolve rental or service charge increases; rules.—

(1) After holding a hearing pursuant to the provisions of chapter 120, the commission shall require the mobile home park owner to:

(a) Reduce the rental or service charges to a rate set by the commission;

(b) Continue rental or service charges as they existed under the former lease or agreement;

(c) Increase the rental or service charges to a rate set by the commission; or

(d) Increase the rental or service charges as the mobile home park owner has proposed.

(2) In addition to any other rules which the commission may make, the commission shall make rules to provide:

(a) That any rental or service charge increases which have been collected by a mobile home park owner after the time that the tenants have petitioned the commission and before the time that the commission acts upon the petition, when the commission does not authorize the full increase, shall be either returned to the tenants or credited toward future rental charges.

(b) For procedures with respect to hearings at mobile home parks.

History.—s. 9, ch. 77-49.

83.788 Representation.—The mobile home tenants of any mobile home park within the purview of ss. 83.770-83.794 may form an incorporated association as provided by law. This association may represent such tenants in any hearing before the commission. The association must have at least 60 percent of the total mobile home tenants of such park as registered members. Such association shall have standing to represent its members in any legal proceeding relating to matters of common interest.

History.—s. 10, ch. 77-49.

83.790 Appeal procedure.—If either party is not satisfied with the ruling of the commission as provided by this act, such party shall have the right to appeal said ruling to the Circuit Court of the Judicial Circuit in which the park is located. Such notice of appeal must be filed within 30 days after the notice of the commission's ruling. Any rental or service charge increases that are approved by the commission shall be paid by the tenants to the park owners during any appeal process. However, if such increases are not upheld on appeal, then all sums paid under such increase provisions shall either be refunded by the park owner or credited to the next ensuing rental or service charges due from said tenants. If any increases are denied by the commission and the owner appeals, then the proposed increases shall be paid to the owners as scheduled; however, the owner shall deposit the same monthly into the registry of the court. These funds shall be disbursed as determined by the circuit court, as provided in s. 83.763(3).

History.—s. 11, ch. 77-49.

83.792 Enforcement.—If no appeal is filed within 30 days of notice of the ruling of the commission and either party fails, refuses, or neglects to conform to said ruling, then the aggrieved party may seek enforcement of the ruling by filing a petition for compliance in the Circuit Court. Such petition must have attached thereto a certified copy of the commission's ruling and must set forth the allegations which constitute noncompliance. A copy of said petition shall be served by personal service on the noncomplying party together with a notice of hearing on the petition advising the noncomplying party that he must show cause as to why the ruling should not be enforced. Such hearing shall be held no less than 20 days or more than 60 days after service on the noncomplying party. Unless good cause is shown, the Circuit Court shall enter its order directing the parties to comply with the commission's ruling. The court shall enforce such ruling and may punish willful noncompliance by imposing fines against the party in willful noncompliance. Such fines shall not exceed $500 a day for each day the party continues in willful noncompliance.

History.—s. 12, ch. 77-49.

83.794 State preemption of mobile home park rental regulation.—It is declared to be the legislative intent that ss. 83.770-83.794 shall preempt to the state all control of mobile home rents in mobile home parks subject to ss. 83.770-83.794, and all units of local government are prohibited from legislating with respect to the same. The jurisdiction of the commission with respect to rents in mobile home parks subject to ss. 83.770-83.794 shall be exclusive, and all proceedings under this act shall be held according to chapter 120 except for the appeal procedure.

History.—s. 14, ch. 77-49.

PART IV

SELF-SERVICE STORAGE SPACE

83.801 Short Title.—Sections 83.801-83.807 shall be known and may be cited as the "Mini-self-storage Landlord and Tenant Act."

History.—s. 1, ch. 79-404.

83.802 Application.—

(1) Sections 83.801-83.807 apply to tenancies in mini-self-storage buildings where the space is used solely for the storage of goods, personal property, or merchandise.

(2) Sections 83.01-83.807 shall apply to rental agreements entered into after October 1, 1979.

History.—s. 1, ch. 79-404.

83.803 Definitions.—As used in ss. 83.801-83.807:

(1) "Mini-self-storage building" means a building or series of buildings operated as one enterprise which is comprised of not fewer than 30 spaces, the largest of which contains no more than 700 square feet, and which is offered for rent to the public for the storage of goods, personal property, or merchandise. The leased premises shall not be inhabitable, shall not contain sanitary facilities or office partitions, and shall be used solely for the storage of goods, personal property, or merchandise.

(2) "Mini-self-storage owner" means the owner or operator of a mini-self-storage building.

(3) "Rental agreement" means any mutual understanding, lease, or tenancy between a mini-self-storage owner and a tenant pursuant to which the tenant is entitled to store his goods, personal property, or merchandise in the leased premises for the payment of consideration to the mini-self-storage owner.

(4) "Tenant" means any individual, partnership, association, corporation, or other entity which leases space in a mini-self-storage building solely for the storage of goods, personal property, or merchandise.

History.—s. 1, ch. 79-404.

83.804 Obligation of good faith.—Every rental agreement or duty within ss. 83.801-83.807 imposes an obligation of good faith in its performance or enforcement.

History.—s. 1, ch. 79-404.

83.805 Lien for rent.—A mini-self-storage owner to whom rent is due shall have a lien for rent as provided to a landlord under s. 83.08.

History.—s. 1, ch. 79-404.

83.806 Remedies of mini-self-storage owner.—

(1) If a tenant fails to pay the rent as specified in the written rental agreement, or if a tenant fails to pay the rent within 10 days after it is due, the mini-self-storage owner, or his attorney or agent acting in his behalf, may commence a court action for the rent which is due. This action shall be filed in the appropriate court in the county in which the mini-self-storage building is located. The complaint shall allege the amount of the rent due for such premises. Service of process may be obtained in such manner as prescribed by law, including the Florida Rules of Civil Procedure and Florida Rules of Summary Procedure promulgated by the Supreme Court.

(2) In any such action, if the amount in controversy is less than $1,500, the mini-self-storage owner is entitled to the summary procedures provided in s. 51.011.

(3) The mini-self-storage owner may also avail himself of any other remedies prescribed by law, including the provisions of part I of this chapter.

History.—s. 1, ch. 79-404.

83.807 Postjudgment procedures.—The mini-self-storage owner, by written agreement with the tenant, may provide for the following postjudgment procedures in addition to those provided in part I of this chapter:

(1) If the court renders final judgment in favor of the mini-self-storage owner, he shall be entitled to enter the premises 10 days after the date of final judgment and sell, in a commercially reasonable manner, the property stored on the premises.

(2) Sale of the property stored on the premises may be made by public or private proceedings and by way of one or more contracts. Sale may also be as a unit or in parcels, at any time and place, and on any terms as long as the sale is commercially reasonable.

(3) Unless the property stored in the premises is perishable or threatens to decline speedily in value, or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale, or reasonable notification of the time after which any private sale is to be made, shall be sent by the mini-self-storage owner to the defendant at his last-known address.

(4) The term "commercially reasonable" shall be used as that term is used in s. 679.504(3).

(5) The prevailing party shall be entitled to attorneys' fees and costs incurred in the suit. If the mini-self-storage owner prevails, he shall also be entitled to recover the reasonable expenses of retaking, holding, preparing for sale, selling, and the like incurred in disposing of the property stored in the leased premises if the sale is commercially reasonable.

(6) The mini-self-storage owner may enforce his judgment in any way permissible by law. However, the amount of the judgment outstanding shall be reduced by the amount which is realized from the sale of the property on the leased premises.

(7) If the sale of the property on the leased premises by the mini-self-storage owner results in a sum in excess of the amount owed, plus attorneys' fees, costs of the suit, and costs of the sale, the excess sum shall be delivered to the tenant at his last-known address within 10 days from the date of the sale.

History.—s. 1, ch. 79-404.

CHAPTER 85

ENFORCEMENT OF STATUTORY LIENS

85.011 Enforcement by persons in privity with the owner.—All liens on real or personal property provided for by part I or part II of chapter 713 are enforceable by persons in privity with the owners, except when otherwise provided, as follows:

(1) RETENTION OF POSSESSION.—By retention of possession of the property on which the lien has attached for a period of not exceeding 3 months by the person entitled to the lien, if he was in possession at the time the lien attached.

(2) BY ACTION IN CHANCERY.—By an action in chancery, however this is the exclusive remedy for enforcement of liens on the separate statutory property of married women and against estates by the entireties.

(3) ORDINARY ACTION AT LAW.—By an ordinary action at law and levy of the execution obtained therein on the property on which the lien is held.

(4) SPECIAL ACTION AT LAW.—By an action at law in which the complaint shall state the manner in which the lien arose, the amount for which the lien is held, the description of the property and demand that the property be sold to satisfy the lien. The judgment for plaintiff is a personal judgment against defendant as well as a lien on the property, which it shall describe, and shall direct execution against the property, as well as against the property generally of defendant.

(5) SUMMARY ACTION.—

(a) By a person claiming a lien for labor performed, or claiming a landlord's lien under s. 713.691, filing in the court having jurisdiction of the amount of the lien claimed, a complaint describing the property on which a lien is claimed and stating the facts which authorize or create the lien. Such person is entitled to the summary procedure under s. 51.011.

(b) If the issues are found for plaintiff, judgment shall be entered for the amount found to be due him with 15 percent attorney's fee and costs. The judgment is a prior lien on the property described in the petition over all other liens accruing or that may be filed subsequent to the day the lien for such labor performed or unpaid rent accrued, but if such issues are found for defendant, judgment shall be entered dismissing the action.

History.—RS 1744; s. 13, ch. 5143, 1903; GS 2212; RGS 3519; s. 1, ch. 12079, 1927; CGL 5382; s. 2, ch. 29737, 1955; s. 15, ch. 63-559; s. 37, ch. 67-254; s. 9, ch. 73-330.

Note.—Former ss. 86.01-86.06.

cf.—Ch. 55 Judgments.

85.021 Enforcement by persons not in privity with the owner.—A person not in privity with the owner may resort to any of the remedies prescribed by s. 85.011. The judgment may provide for the recovery from the contractor or other person for whom the labor or material was furnished, if he is joined in the action, of the amount due by him, and from the owner of the amount due by him to the contractor or other person as aforesaid, at the time of the service of the notice provided for by s. 713.75 of part II of chapter 713, as well as enforce the lien against the property of such owner for such amount, but only one satisfaction of the judgment shall be had. Although no lien is found to exist and no judgment rendered against the owner, judgment may be rendered against the contractor or other person for whom the labor or materials were furnished for the amount due by him.

History.—RS 1744; s. 15, ch. 5143, 1903; GS 2213; RGS 3520; CGL 5383; s. 37, ch. 67-254.

Note.—Former s. 86.07.

cf.—Ch. 49 Constructive service of process.

85.031 Remedies against personal property only; all lienors.—

(1) BY INJUNCTION AND ATTACHMENT.—If any person entitled to a lien under part II of chapter 713 on personal property has reason to believe that it is about to be removed from the county in which it is, he may enjoin its removal in the manner provided for enjoining the removal of property subject to a mortgage or, if the lien has been perfected, may attach it in the manner provided for attachment in aid of foreclosure of mortgages.

(2) BY SALE WITHOUT JUDICIAL PROCEEDINGS.—When any person entrusts to any mechanic or laborer, materials with which to construct, alter or repair any article of value, or any article of value to be altered or repaired, and if the article is completed and not taken away, and the reasonable charges not paid, such mechanic or laborer may sell it after 3 months from the time such charges become due at public auction for cash but before the sale the mechanic or laborer shall give public notice of the time and place thereof, by notices posted for 10 days in 3 public places in the county, one of which shall be at the courthouse, and another in some conspicuous part of his shop or place of business. The proceeds of the sale, after payment of charges for construction or repair with the costs of the sale, shall be deposited with the clerk of the circuit court for the county, if the owner is absent, where they shall remain subject to the order of the person legally entitled thereto. The clerk shall be entitled to receive 5 percent on the proceeds for the care and disbursement thereof. Any person claiming a lien under s. 713.65, of part II of chapter 713, may enforce it by sale without judicial proceedings in the manner set forth herein after 1

month after the time the charges for which a lien is claimed become due.

History.—RS 1745; GS 2214; RGS 3521; CGL 5384; s. 2, ch. 25048, 1949; s. 1, ch. 57-94; s. 37, ch. 67-254; ss. 24, 35, ch. 69-106; s. 1, ch. 70-89; s. 2, ch. 79-244.
Note.—Former s. 86.08.

85.041 Joinder.—All persons who have liens under part I or part II of chapter 713, may join to enforce their respective liens.

History.—s. 14, ch. 5143, 1903; GS 2224; RGS 3531; CGL 5394; s. 37, ch. 67-254.
Note.—Former s. 86.10.

85.051 Time of bringing action.—When there has been no record of a notice of lien, action to enforce a lien (if it exists without such record) must be brought within 12 months from the accrual of the unpaid rent, the performance of the work, or the furnishing of the materials, and if there has been such record, the action must be brought within 12 months from the time of such record.

History.—RS 1748; s. 18, ch. 5143, 1903; GS 2223; RGS 3530; CGL 5393; s. 37, ch. 67-254; s. 10, ch. 73-330.
Note.—Former s. 86.11.

CHAPTER 86

DECLARATORY JUDGMENTS

86.011 Jurisdiction of circuit court.—The circuit courts have jurisdiction to declare rights, status and other equitable or legal relations whether or not further relief is or could be claimed. No action or procedure is open to objection on the ground that a declaratory judgment is demanded. The court's declaration may be either affirmative or negative in form and effect and such declaration has the force and effect of a final judgment. The court may render declaratory judgments on the existence, or nonexistence:

(1) Of any immunity, power, privilege or right; or

(2) Of any fact upon which the existence or nonexistence of such immunity, power, privilege or right does or may depend, whether such immunity, power, privilege or right now exists or will arise in the future. Any person seeking a declaratory judgment may also demand additional, alternative, coercive, subsequent or supplemental relief in the same action.

History.—s. 1, ch. 21820, 1943; s. 2, ch. 29737, 1955; s. 38, ch. 67-254.
Note.—Former s. 87.01.
cf.—s. 5, Art. V, State Const.

86.021 Power to construe, etc.—Any person claiming to be interested or who may be in doubt about his rights under a deed, will, contract or other article, memorandum, or instrument in writing or whose rights, status, or other equitable or legal relations are affected by a statute, or any regulation made under statutory authority, or by municipal ordinance, contract, deed, will, franchise, or other article, memorandum, or instrument in writing may have determined any question of construction or validity arising under such statute, regulation, municipal ordinance, contract, deed, will, franchise, or other article, memorandum, or instrument in writing, or any part thereof, and obtain a declaration of rights, status or other equitable or legal relations thereunder.

History.—s. 2, ch. 21820, 1943; s. 38, ch. 67-254.
Note.—Former s. 87.02.

86.031 Before breach.—A contract may be construed either before or after there has been a breach of it.

History.—s. 3, ch. 21820, 1943; s. 38, ch. 67-254.
Note.—Former s. 87.03.

86.041 Actions by executors, administrators, trustees, etc.—Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or equitable or legal relations in respect thereto:

(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others; or

(2) To direct the executor, administrator, or trustee to refrain from doing any particular act in his fiduciary capacity; or

(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

History.—s. 4, ch. 21820, 1943; s. 38, ch. 67-254.
Note.—Former s. 87.04.

86.051 Enumeration not exclusive.—The enumeration in ss. 86.021, 86.031 and 86.041 does not limit or restrict the exercise of the general powers conferred in s. 86.011 in any action where declaratory relief is sought. Any declaratory judgment rendered pursuant to this chapter may be rendered by way of anticipation with respect to any act not yet done or any event which has not yet happened, and in such case the judgment shall have the same binding effect with respect to that future act or event, and the rights or liability to arise therefrom, as if that act or event had already been done or had already happened before the judgment was rendered.

History.—s. 5, ch. 21820, 1943; s. 38, ch. 67-254.
Note.—Former s. 87.05.

86.061 Supplemental relief.—Further relief based on a declaratory judgment may be granted when necessary or proper. The application therefor shall be by motion to the court having jurisdiction to grant relief. If the application is sufficient, the court shall require any adverse party whose rights have been adjudicated by the declaratory judgment to show cause on reasonable notice, why further relief should not be granted forthwith.

History.—s. 7, ch. 21820, 1943; s. 38, ch. 67-254.
Note.—Former s. 87.07.

86.071 Jury trials.—When an action under this chapter concerns the determination of an issue of fact, the issue may be tried as issues of fact are tried in other civil actions in the court in which the proceeding is pending. To settle questions of fact necessary to be determined before judgment can be rendered, the court may direct their submission to a jury. When a declaration of right or the granting of further relief based thereon concerns the determination of issues of fact triable by a jury, the issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict is required or not. Neither this section nor any other section of this chapter shall be con-

strued as requiring a jury to determine issues of fact in chancery actions.

History.—s. 8, ch. 21820, 1943; s. 38, ch. 67-254.
Note.—Former s. 87.08.

86.081 Costs.—The court may award costs as are equitable.

History.—s. 9, ch. 21820, 1943; s. 38, ch. 67-254.
Note.—Former s. 87.09.

86.091 Parties.—When declaratory relief is sought, all persons may be made parties who have or claim any interest which would be affected by the declaration. No declaration shall prejudice the rights of persons not parties to the proceedings. In any proceeding concerning the validity of a county or municipal charter, ordinance or franchise, such county or municipality shall be made a party and shall be entitled to be heard. If the statute, charter, ordinance, or franchise is alleged to be unconstitutional, the Attorney General or the State Attorney of the judicial circuit in which the action is pending shall be served with a copy of the complaint and be entitled to be heard.

History.—s. 10, ch. 21820, 1943; s. 1, ch. 59-440; s. 38, ch. 67-254.
Note.—Former s. 87.10.

86.101 Construction of law.—This chapter is declared to be substantive and remedial. Its purpose is to settle and to afford relief from insecurity and uncertainty with respect to rights, status and other equitable or legal relations and is to be liberally administered and construed.

History.—s. 11, ch. 21820, 1943; s. 38, ch. 67-254.
Note.—Former s. 87.11.

86.111 Adequate remedy does not preclude.—The existence of another adequate remedy does not preclude a judgment for declaratory relief. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar. The court has power to give as full and complete equitable relief as it would have had if such proceeding had been instituted as an action in chancery.

History.—s. 12, ch. 21820, 1943; s. 2, ch. 29737, 1955; s. 38, ch. 67-254.
Note.—Former s. 87.12.

CHAPTER 88

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT

PART I GENERAL PROVISIONS (ss. 88.011-88.051)

PART II CRIMINAL ENFORCEMENT (ss. 88.061, 88.065)

PART III CIVIL ENFORCEMENT (ss. 88.081-88.311)

PART IV REGISTRATION OF FOREIGN SUPPORT ORDERS (ss. 88.321-88.371)

PART I

GENERAL PROVISIONS

88.011 Short title.—This act may be cited as the "Revised Uniform Reciprocal Enforcement of Support Act (1968)."

History.—s. 1, ch. 29901, 1955; s. 1, ch. 79-383.

88.012 Legislative intent.—Common-law and statutory procedures governing the remedies for the establishment and enforcement of orders of support for children by responsible parents under the Uniform Reciprocal Enforcement of Support Act have not proven sufficiently effective or efficient to cope with the increasing incidence of establishing and collecting child-support obligations when the petitioner and respondent reside in different states. The state, therefore, exercising its police and sovereign powers, declares that the common-law and statutory remedies pertaining to family desertion and nonsupport of dependent children shall be augmented by the additional remedies directed to the resources of the responsible parents as mandated by the Florida IV-D program in chapter 409. In order to render resources more immediately available to satisfy child-support orders, it is the legislative intent that the remedies provided herein shall be in addition to, and not in lieu of, existing remedies. It is declared to be the public policy of this state that this act shall be construed and administered to the end that children residing in this or some other state shall be maintained from the resources of responsible parents, whether the responsible parents live in this or some other state, thereby relieving, at least in part, the burden borne by the custodial parent or the general citizenry through public assistance programs.

History.—s. 2, ch. 79-383.
cf.—s. 409.2557.

88.021 Purpose.—The purpose of this act is to improve and extend by reciprocal legislation the enforcement of duties of support.

History.—s. 2, ch. 29901, 1955; s. 3, ch. 79-383.

88.031 Definitions.—As used in this chapter, unless the context requires otherwise:

(1) "Court" means the circuit court of this state and, when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

(2) "Department" means the Department of Health and Rehabilitative Services.

(3) "Duty of support" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for dissolution of marriage, separation, separate maintenance, or otherwise, and includes the duty to pay arrearages of support past due and unpaid.

(4) "Governor" includes any person performing the functions of governor or the executive authority of any state covered by this act.

(5) "Initiating court" means the court in which a proceeding is commenced.

(6) "Initiating state" means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(7) "IV-D program" means the Child Support Enforcement Program operated pursuant to Title IV-D of the Social Security Act 42 U.S.C. s. 1302, 88 Stat. 2351, Pub. L. No. 93-647, and chapter 409.

(8) "Law" includes both common and statutory law.

(9) "Petitioner" means a person, including a state or political subdivision, to whom a duty of support is owed or a person, including a state or political subdivision, who has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(10) "Program attorney" means an attorney employed by, or under contract with, the department to provide legal representation for the department in a proceeding related to determination of paternity or child-support enforcement brought pursuant to law.

(11) "Prosecuting attorney" means the state attorney or program attorney in the appropriate place who has the duty to enforce laws relating to the failure to provide for the support of any person.

(12) "Register" means to record or file in the Registry of Foreign Support Orders.

(13) "Registering court" means any court of this state in which a support order of a rendering state is registered.

(14) "Rendering state" means a state in which

the court has issued a support order for which registration is sought or granted in the court of another state.

(15) "Respondent" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(16) "Responding court" means the court in which the responsive proceeding is commenced.

(17) "Responding state" means a state in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced.

(18) "State" includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(19) "Support order" means any judgment, decree, or order of support in favor of a petitioner, whether temporary or final or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

History.—s. 3, ch. 29901, 1955; s. 1, ch. 73-300; s. 4, ch. 79-383.

88.041 Remedies additional to those now existing.—The remedies herein provided are in addition to and not in substitution for any other remedies.

History.—s. 4, ch. 29901, 1955.

88.051 Extent of duties of support.—Duties of support arising under the law of this state, when applicable under s. 88.081, bind the respondent present in this state regardless of the presence or residence of the petitioner.

History.—s. 5, ch. 29901, 1955; s. 5, ch. 79-383.

PART II

CRIMINAL ENFORCEMENT

88.061 Interstate rendition.—The Governor of this state may:

(1) Demand of the governor of another state the surrender of a person found in that state who is charged in this state with failing to provide for the support of any person; or

(2) Surrender on demand by the governor of another state a person found in this state who is charged in that state with failing to provide for the support of any person.

The provisions for extradition of criminals not inconsistent with this act apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the act and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the act was in the demanding state.

History.—s. 6, ch. 29901, 1955; s. 6, ch. 79-383.
cf.—s. 941.02 Fugitive from justice; duty of Governor.

88.065 Conditions of interstate rendition.—

(1) Before making demand upon the governor of another state for the surrender of a person charged in this state with failing to provide for the support of a person, the Governor of this state may require any prosecuting attorney of this state to satisfy him that at least 60 days prior thereto the petitioner initiated proceedings for support under this act or that any proceeding would be of no avail.

(2) If, under a substantially similar act, the governor of another state makes a demand upon the Governor of this state for the surrender of a person charged in that state with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If proceedings have been initiated and the person demanded has prevailed therein, the Governor may decline to honor the demand. If the petitioner prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

History.—s. 7, ch. 79-383.

PART III

CIVIL ENFORCEMENT

88.081 Choice of law.—Duties of support applicable under this act are those imposed under the laws of any state where the respondent was present for the period during which support is sought. The respondent is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

History.—s. 8, ch. 29901, 1955; s. 8, ch. 79-383.

88.091 Remedies of state or political subdivision furnishing support.—If a state or a political subdivision furnishes support to an individual petitioner, it has the same right to initiate a proceeding under this act as the individual petitioner for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

History.—s. 9, ch. 29901, 1955; s. 9, ch. 79-383.

88.101 How duties of support are enforced.—All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this act, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the respondent.

History.—s. 10, ch. 29901, 1955; s. 10, ch. 79-383.

88.105 Jurisdiction.—Jurisdiction of any proceeding under this act is vested in the circuit court.

History.—s. 11, ch. 79-383.

88.111 Contents and filing of motion for support; venue.—

(1) The motion shall be verified and shall state the name and, so far as known to the petitioner, the address and circumstances of the respondent and the persons for whom support is sought and all other pertinent information. The petitioner may include in or attach to the motion any information which may help in locating or identifying the respondent, including a photograph of the respondent, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his social security number.

(2) The motion may be filed in the appropriate court of any state in which the petitioner resides. The court shall not decline or refuse to accept and forward the motion on the ground that it should be filed with some other court of this or any other state where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

History.—s. 11, ch. 29901, 1955; s. 12, ch. 79-383.

88.121 Officials to represent petitioner.—If this state is acting as an initiating state, the prosecuting attorney upon the request of the court or of the Department of Health and Rehabilitative Services shall represent the petitioner in any proceeding under this act.

History.—s. 12, ch. 29901, 1955; ss. 19, 35, ch. 69-106; s. 1, ch. 69-268; s. 26, ch. 77-147; s. 13, ch. 79-383.

88.131 Motion on behalf of a minor.—A motion on behalf of a minor petitioner may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

History.—s. 13, ch. 29901, 1955; s. 14, ch. 79-383.

cf.—s. 1.01 Definition of minor.
s. 743.07 Rights, privileges and obligations of persons 18 years of age or older.

88.141 Duty of initiating court.—If the initiating court finds that the motion sets forth facts from which it may be determined that the respondent owes a duty of support and that a court of the responding state may obtain jurisdiction of the respondent or his property, it shall so certify and cause three copies of the motion and its certificate and one copy of this act to be sent to the responding court or the state information agency. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court are unknown and the responding state has an information agency comparable to that established in the initiating state, it shall cause the copies to be sent to the state information agency or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

History.—s. 14, ch. 29901, 1955; s. 15, ch. 79-383.

88.151 Costs and fees.—An initiating court shall not require payment of either a filing fee or other costs from the petitioner but may request the responding court to collect fees and costs from the respondent. A responding court shall not require payment of a filing fee or other costs from the petitioner, but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the respondent, be paid in whole or in part by the respondent or by the state or political subdivision thereof. These costs or fees do not have priority over amounts due to the petitioner.

History.—s. 15, ch. 29901, 1955; s. 1, ch. 57-405; s. 16, ch. 79-383.

88.161 Jurisdiction by arrest.—If the court of this state finds that the respondent may flee, it may:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the respondent by appropriate process; or

(2) As a responding court, obtain the body of the respondent by appropriate process. Thereupon, it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

History.—s. 16, ch. 29901, 1955; s. 17, ch. 79-383.

88.171 State information agency.—
(1) The Department of Health and Rehabilitative Services is hereby designated as the state information agency under this act, and it shall:
(a) Compile a list of the courts and their addresses in this state having jurisdiction under this act and transmit it to the state information agency of every other state which has adopted this or a substantially similar act. Upon the adjournment of each session of the Legislature, the agency shall distribute copies of any amendments to the act and a statement of the effective dates thereof to all other state information agencies.
(b) Maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this act.
(c) Forward to the court in this state which has jurisdiction over the respondent or his property motions, certificates, and copies of the acts it receives from courts or information agencies of other states.
(2) If the state information agency does not know the location of the respondent or his property in the state and no state location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources, such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices, both state and federal, when such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.
History.—s. 17, ch. 29901, 1955; s. 1, ch. 65-208; ss. 11, 35, ch. 69-106; s. 18, ch. 79-383.

88.181 Duty of the court and officials of this state as responding state.—
(1) After the responding court receives copies of the motion, certificate, and act from the initiating court or state information agency, the clerk of the court shall docket the case and notify the prosecuting attorney of his action.
(2) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this state to enable the court to obtain jurisdiction over the respondent or his property and shall request the court to set a time and place for a hearing and give notice thereof to the respondent in accordance with law.
History.—s. 18, ch. 29901, 1955; s. 19, ch. 79-383.

88.191 Further duties of court and officials in the responding state.—
(1) If, because of inaccuracies in the motion or otherwise, the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended motion from the initiating court.
(2) If the respondent or his property is not found in the circuit, and the prosecuting attorney discovers that the respondent or his property may be found in another circuit of this state or in another state, he shall so inform the court. Thereupon, the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other circuit or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this act apply to the recipient of the documents so forwarded. If the clerk of a court of this state forwards documents to another court, he shall forthwith notify the initiating court.
(3) If the prosecuting attorney has no information as to the location of the respondent or his property, he shall so inform the initiating court.
History.—s. 19, ch. 29901, 1955; s. 20, ch. 79-383.

88.193 Hearing and continuance.—If the petitioner is not present at the hearing and the respondent denies owing the duty of support alleged in the motion or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.
History.—s. 21, ch. 79-383.

88.211 Order of support.—If the responding court finds a duty of support, it may order the respondent to furnish support or reimbursement therefor and subject the property of the respondent to the order. Support orders made pursuant to this act shall require that payments be made to the clerk of the court of the responding state. The court and prosecuting attorney of any circuit in which the respondent is present or has property have the same powers and duties to enforce the order as have those of the circuit in which it was first issued. If enforcement is impossible or cannot be completed in the circuit in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any circuit in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.
History.—s. 21, ch. 29901, 1955; s. 22, ch. 79-383.

88.221 Responding court to transmit copies to initiating court.—The responding court shall cause a copy of each support order to be sent to the initiating court and the state information agency.
History.—s. 22, ch. 29901, 1955; s. 23, ch. 79-383.

88.231 Additional powers of responding court.—In addition to the foregoing powers, a responding court may subject the respondent to any terms and conditions proper to assure compliance with its orders and in particular to:
(1) Require the respondent to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due.
(2) Require the respondent to report personally

and to make payments at specified intervals to the clerk of the court.

(3) Punish under the power of contempt the respondent who violates any order of the court.

History.—s. 23, ch. 29901, 1955; s. 24, ch. 79-383.

88.235 Paternity.—If the respondent asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may adjourn the hearing until the paternity issue has been adjudicated.

History.—s. 25, ch. 79-383.

88.241 Additional duties of responding court.—A responding court has the following duties which may be carried out through the clerk of the court:

(1) To transmit to the initiating court or the IV-D agency any payment made by the respondent pursuant to any order of the court or otherwise; and

(2) To furnish to the initiating court or the IV-D agency upon request a certified statement of all payments made by the respondent.

History.—s. 24, ch. 29901, 1955; s. 26, ch. 79-383.

88.251 Additional duty of initiating court.—An initiating court or the IV-D agency shall receive and disburse forthwith all payments made by the respondent or sent by the responding court. This duty may be carried out through the clerk of the court.

History.—s. 25, ch. 29901, 1955; s. 27, ch. 79-383.

88.255 Proceedings not to be stayed.—A responding court shall not stay the proceeding or refuse a hearing under this act because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof, it may require the respondent to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the motion being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter, the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

History.—s. 28, ch. 79-383.

88.261 Evidence of husband and wife.—Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

History.—s. 26, ch. 29901, 1955; s. 29, ch. 79-383.

88.271 Rules of evidence.—In any hearing for the civil enforcement of this act, the court is governed by the rules of evidence applicable in a civil court action in the circuit court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to a respondent concerning a substantial change in the circumstances of the parties relating to the obligations of support or with respect to paternity pursuant to s. 88.235 or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one petitioner is unaffected by any interference by another petitioner with rights of custody or visitation granted by a court.

History.—s. 27, ch. 29901, 1955; s. 30, ch. 79-383.

88.281 Application of payments.—A support order made by a court of this state pursuant to this act does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this state.

History.—s. 28, ch. 29901, 1955; s. 1, ch. 73-300; s. 31, ch. 79-383.

88.291 Effect of participation in proceedings.—Participation in any proceeding under this act does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

History.—s. 29, ch. 29901, 1955; s. 32, ch. 79-383.

88.295 Intrastate application.—Cases entered into the Revised Uniform Reciprocal Enforcement of Support Act (1968) system which must be handled on an intrastate basis shall be transmitted to the appropriate program attorney to be filed and processed in accordance with the procedures specified in ss. 409.2554-409.2597.

History.—s. 33, ch. 79-383.

88.297 Appeals.—If the prosecuting attorney is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(1) Perfect an appeal to the proper appellate court if the support order was issued by a court of this state; or

(2) If the support order was issued in another state, cause the appeal to be taken in the other state.

In either case, expenses of an appeal of an IV-D case may be paid from funds appropriated for the IV-D program.

History.—s. 34, ch. 79-383.

88.311 Uniformity of interpretation.—This act shall be so construed as to effectuate its general

purpose to make uniform the law of those states which enact it.

History.—s. 32, ch. 29901, 1955; s. 35, ch. 79-383.

PART IV

REGISTRATION OF FOREIGN SUPPORT ORDERS

88.321 Additional remedies.—If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in ss. 88.331-88.371.

History.—s. 1, ch. 59-393.

88.331 Registration.—The obligee may register the foreign support order in a circuit court of this state in the manner, with the effect, and for the purposes herein provided.

History.—s. 1, ch. 59-393.

88.341 Registry of foreign support orders.—The clerk of the circuit court shall maintain a registry of foreign support orders in which he shall record foreign support orders.

History.—s. 1, ch. 59-393.

88.345 Official to represent petitioner.—If this state is acting either as a rendering or a registering state, the prosecuting attorney upon the request of the court or the Department of Health and Rehabilitative Services shall represent the petitioner in proceedings under this part.

History.—s. 36, ch. 79-383.

88.351 Registration procedure; notice.—

(1) A petitioner seeking to register a foreign support order in a circuit court of this state shall transmit to the clerk of the circuit court:

(a) Three certified copies of the order with all modifications thereof;

(b) One copy of the reciprocal enforcement of support act of the state in which the order was made; and

(c) A statement, verified and signed by the petitioner, showing the post office address of the petitioner, the last known place of residence and post office address of the respondent, the amount of support remaining unpaid, a description and the location of any property of the respondent available upon execution, and a list of the states in which the order is registered.

Upon receipt of these documents, the clerk of the circuit court, without payment of a filing fee or other cost to the petitioner, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this act.

(2) Promptly upon registration, the clerk of the circuit court shall send by certified or registered mail to the respondent at the address given a notice of the registration with a copy of the registered support order and the post office address of the petitioner. He shall also docket the case and notify the prosecuting attorney and the IV-D agency of his action. The prosecuting attorney shall proceed diligently to enforce the order.

History.—s. 1, ch. 59-393; s. 37, ch. 79-383.

88.371 Effect of registration; enforcement procedure.—

(1) Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

(2) The respondent has 25 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

(3) At the hearing to enforce the registered support order, the respondent may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment and matters concerning a substantial change in the circumstances of the parties relating to the obligation of support. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the respondent has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this state may be stayed, the court shall stay enforcement of the order for an appropriate period if the respondent furnishes the same security for payment of the support ordered that is required for a support order of this state.

History.—s. 1, ch. 59-393; s. 38, ch. 79-383.

TITLE VII

EVIDENCE

CHAPTER 90

EVIDENCE CODE

90.958 Functions of court and jury.

90.101 Short title.—This chapter shall be known and may be cited as the "Florida Evidence Code."

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.102 Construction.—This chapter shall replace and supersede existing statutory or common law in conflict with its provisions.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.103 Scope; applicability.—

(1) Unless otherwise provided by statute, this code applies to the same proceedings that the general law of evidence applied to before the effective date of this code.

(2) This act shall apply to civil actions accruing after the effective date of this code, to criminal proceedings related to crimes committed after the effective date of this code, and to other proceedings brought after the effective date of this code.

(3) Nothing in this act shall operate to repeal or modify the parol evidence rule.

History.—ss. 1, 5, 7, ch. 76-237; s. 1, ch. 77-77; ss. 1, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.104 Rulings on evidence.—

(1) A court may predicate error, set aside or reverse a judgment, or grant a new trial on the basis of admitted or excluded evidence when a substantial right of the party is adversely affected and:

(a) When the ruling is one admitting evidence, a timely objection or motion to strike appears on the record, stating the specific ground of objection if the specific ground was not apparent from the context; or

(b) When the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer of proof or was apparent from the context within which the questions were asked.

(2) In cases tried by a jury, a court shall conduct proceedings, to the maximum extent practicable, in such a manner as to prevent inadmissible evidence from being suggested to the jury by any means.

(3) Nothing in this section shall preclude a court from taking notice of fundamental errors affecting substantial rights, even though such errors were not brought to the attention of the trial judge.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 1, ch. 77-174; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.105 Preliminary questions.—

(1) Except as provided in subsection (2), the court shall determine preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence.

(2) When the relevancy of evidence depends upon the existence of a preliminary fact, the court shall admit the proffered evidence when there is prima facie evidence sufficient to support a finding of the preliminary fact. If prima facie evidence is not introduced to support a finding of the preliminary fact, the court may admit the proffered evidence subject to the subsequent introduction of prima facie evidence of the preliminary fact.

(3) Hearings on the admissibility of confessions shall be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be similarly conducted when the interests of justice require or when an accused is a witness, if he so requests.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.106 Summing up and comment by judge.—A judge may not sum up the evidence or comment to the jury upon the weight of the evidence, the credibility of the witnesses, or the guilt of the accused.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.107 Limited admissibility.—When evidence that is admissible as to one party or for one purpose, but inadmissible as to another party or for another purpose, is admitted, the court, upon request, shall restrict such evidence to its proper scope and so inform the jury at the time it is admitted.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.108 Introduction of related writings or recorded statements.—When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement that in fairness ought to be considered contemporaneously. An adverse party is not bound by evidence introduced under this section.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 2, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.201 Matters which must be judicially noticed.—A court shall take judicial notice of:

(1) Decisional, constitutional, and public statutory law and resolutions of the Florida Legislature and the Congress of the United States.

(2) Florida rules of court that have statewide application, its own rules, and the rules of United States courts adopted by the United States Supreme Court.

(3) Rules of court of the United States Supreme Court and of the United States Courts of Appeal.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 21, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.202 Matters which may be judicially noticed.—A court may take judicial notice of the following matters, to the extent that they are not embraced within s. 90.201:

(1) Special, local, and private acts and resolutions of the Congress of the United States and of the Florida Legislature.

(2) Decisional, constitutional, and public statutory law of every other state, territory, and jurisdiction of the United States.

(3) Contents of the Federal Register.

(4) Laws of foreign nations and of an organization of nations.

(5) Official actions of the legislative, executive, and judicial departments of the United States and of any state, territory, or jurisdiction of the United States.

(6) Records of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States.

(7) Rules of court of any court of this state or of any court of record of the United States or of any

other state, territory, or jurisdiction of the United States.

(8) Provisions of all municipal and county charters and charter amendments of this state, provided they are available in printed copies or as certified copies.

(9) Rules promulgated by governmental agencies of this state which are published in the Florida Administrative Code or in bound written copies.

(10) Duly enacted ordinances and resolutions of municipalities and counties located in Florida, provided such ordinances and resolutions are available in printed copies or as certified copies.

(11) Facts that are not subject to dispute because they are generally known within the territorial jurisdiction of the court.

(12) Facts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned.

(13) Official seals of governmental agencies and departments of the United States and of any state, territory, or jurisdiction of the United States.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 1, ch. 77-174; ss. 3, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.203 Compulsory judicial notice upon request.—A court shall take judicial notice of any matter in s. 90.202 when a party requests it and:

(1) Gives each adverse party timely written notice of the request, proof of which is filed with the court, to enable the adverse party to prepare to meet the request.

(2) Furnishes the court with sufficient information to enable it to take judicial notice of the matter.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.204 Determination of propriety of judicial notice and nature of matter noticed.—

(1) When a court determines upon its own motion that judicial notice of a matter should be taken or when a party requests such notice and shows good cause for not complying with s. 90.203(1), the court shall afford each party reasonable opportunity to present information relevant to the propriety of taking judicial notice and to the nature of the matter noticed.

(2) In determining the propriety of taking judicial notice of a matter or the nature thereof, a court may use any source of pertinent and reliable information, whether or not furnished by a party, without regard to any exclusionary rule except a valid claim of privilege and except for the exclusions provided in s. 90.403.

(3) If a court resorts to any documentary source of information not received in open court, the court shall make the information and its source a part of the record in the action and shall afford each party reasonable opportunity to challenge such information, and to offer additional information, before judicial notice of the matter is taken.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.205 Denial of a request for judicial notice.—Upon request of counsel, when a court denies a request to take judicial notice of any matter, the court shall inform the parties at the earliest practicable time and shall indicate for the record that it has denied the request.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.206 Instructing jury on judicial notice.—The court may instruct the jury during the trial to accept as a fact a matter judicially noticed.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 4, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.207 Judicial notice by trial court in subsequent proceedings.—The failure or refusal of a court to take judicial notice of a matter does not preclude a court from taking judicial notice of the matter in subsequent proceedings, in accordance with the procedure specified in ss. 90.201-90.206.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.301 Presumption defined; inferences.—

(1) For the purposes of this chapter, a presumption is an assumption of fact which the law makes from the existence of another fact or group of facts found or otherwise established.

(2) Except for presumptions that are conclusive under the law from which they arise, a presumption is rebuttable.

(3) Nothing in this chapter shall prevent the drawing of an inference that is appropriate.

(4) Sections 90.301-90.304 are applicable only in civil actions or proceedings.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 5, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.302 Classification of rebuttable presumptions.—Every rebuttable presumption is either:

(1) A presumption affecting the burden of producing evidence and requiring the trier of fact to assume the existence of the presumed fact, unless credible evidence sufficient to sustain a finding of the nonexistence of the presumed fact is introduced, in which event, the existence or nonexistence of the presumed fact shall be determined from the evidence without regard to the presumption; or

(2) A presumption affecting the burden of proof that imposes upon the party against whom it operates the burden of proof concerning the nonexistence of the presumed fact.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.303 Presumption affecting the burden of producing evidence defined.—In a civil action or proceeding, unless otherwise provided by statute, a presumption established primarily to facilitate the determination of the particular action in which the presumption is applied, rather than to implement public policy, is a presumption affecting the burden of producing evidence.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.304 Presumption affecting the burden of proof defined.—In civil actions, all rebuttable presumptions which are not defined in s. 90.303 are presumptions affecting the burden of proof.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.401 Definition of relevant evidence.—Relevant evidence is evidence tending to prove or disprove a material fact.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.402 Admissibility of relevant evidence.—All relevant evidence is admissible, except as provided by law.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.403 Exclusion on grounds of prejudice or confusion.—Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence. This section shall not be construed to mean that evidence of the existence of available third-party benefits is inadmissible.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 6, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.404 Character evidence; when admissible.—

(1) CHARACTER EVIDENCE GENERALLY.—Evidence of a person's character or a trait of his character is inadmissible to prove that he acted in conformity with it on a particular occasion, except:

(a) *Character of accused.*—Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the trait.

(b) *Character of victim.*—

1. Except as provided in s. 794.022, evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the trait; or

2. Evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor.

(c) *Character of witness.*—Evidence of the character of a witness, as provided in ss. 90.608-90.610.

(2) OTHER CRIMES, WRONGS, OR ACTS.—

(a) Similar fact evidence of other crimes, wrongs, or acts is admissible when relevant to prove a material fact in issue, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, but it is inadmissible when the evidence is relevant solely to prove bad character or propensity.

(b)1. When the state in a criminal action intends to offer evidence of other criminal offenses under paragraph (a), no fewer than 10 days before trial, the state shall furnish to the accused a written statement of the acts or offenses it intends to offer, describing them with the particularity required of an indictment or information. No notice is required for evidence of offenses used for impeachment or on rebuttal.

2. When the evidence is admitted, the court shall, if requested, charge the jury on the limited purpose for which the evidence is received and is to be considered. After the close of the evidence, the jury shall be instructed on the limited purpose for which the evidence was received and that the defendant cannot be convicted for a charge not included in the indictment or information.

(3) Nothing in this section affects the admissibility of evidence under s. 90.610.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.405 Methods of proving character.—

(1) REPUTATION.—When evidence of the character of a person or of a trait of his character is admissible, proof may be made by testimony about his reputation.

(2) SPECIFIC INSTANCES OF CONDUCT.—When character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may be made of specific instances of his conduct.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 7, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.406 Routine practice.—Evidence of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is admissible to prove that the conduct of the organization on a particular occasion was in conformity with the routine practice.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.407 Subsequent remedial measures.—Evidence of measures taken after an event, which measures if taken before it occurred would have made the event less likely to occur, is not admissible to prove negligence or culpable conduct in connection with the event.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 1, ch. 77-174; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.408 Compromise and offers to compromise.—Evidence of an offer to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements made in negotiations concerning a compromise, is inadmissible to prove liability or absence of liability for the claim or its value.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.409 Payment of medical and similar expenses.—Evidence of furnishing, or offering or promising to pay, medical or hospital expenses or other damages occasioned by an injury or accident is inadmissible to prove liability for the injury or accident.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.410 Offer to plead guilty; nolo contendere; withdrawn pleas of guilty.—Evidence of a plea of guilty, later withdrawn; a plea of nolo contendere; or an offer to plead guilty or nolo contendere to the crime charged or any other crime is inadmissible in any civil or criminal proceeding. Evidence of statements made in connection with any of the pleas or offers is inadmissible, except when such statements are offered in a prosecution under chapter 837.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 8, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.501 Privileges recognized only as provided.—Except as otherwise provided by this chapter, any other statute, or the Constitution of the United

States or of the State of Florida, no person in a legal proceeding has a privilege to:

(1) Refuse to be a witness.

(2) Refuse to disclose any matter.

(3) Refuse to produce any object or writing.

(4) Prevent another from being a witness, from disclosing any matter, or from producing any object or writing.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 9, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.502 Lawyer-client privilege.—

(1) For purposes of this section:

(a) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(b) A "client" is any person, public officer, corporation, association, or other organization or entity, either public or private, who consults a lawyer with the purpose of obtaining legal services or who is rendered legal services by a lawyer.

(c) A communication between lawyer and client is "confidential" if it is not intended to be disclosed to third persons other than:

1. Those to whom disclosure is in furtherance of the rendition of legal services to the client.

2. Those reasonably necessary for the transmission of the communication.

(2) A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications when such other person learned of the communications because they were made in the rendition of legal services to the client.

(3) The privilege may be claimed by:

(a) The client.

(b) A guardian or conservator of the client.

(c) The personal representative of a deceased client.

(d) A successor, assignee, trustee in dissolution, or any similar representative of an organization, corporation, or association or other entity, either public or private, whether or not in existence.

(e) The lawyer, but only on behalf of the client. The lawyer's authority to claim the privilege is presumed in the absence of contrary evidence.

(4) There is no lawyer-client privilege under this section when:

(a) The services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew was a crime or fraud.

(b) A communication is relevant to an issue between parties who claim through the same deceased client.

(c) A communication is relevant to an issue of breach of duty by the lawyer to his client or by the client to his lawyer, arising from the lawyer-client relationship.

(d) A communication is relevant to an issue concerning the intention or competence of a client executing an attested document to which the lawyer is an attesting witness, or concerning the execution or attestation of the document.

(e) A communication is relevant to a matter of common interest between two or more clients, or their successors in interest, if the communication was made by any of them to a lawyer retained or consulted in common when offered in a civil action between the clients or their successors in interest.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.503 Psychotherapist-patient privilege.—

(1) For purposes of this section:

(a) A "psychotherapist" is:

1. A person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction; or

2. A person licensed or certified as a psychologist under the laws of any state or nation, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction.

(b) A "patient" is a person who consults, or is interviewed by, a psychotherapist for purposes of diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction.

(c) A communication between psychotherapist and patient is "confidential" if it is not intended to be disclosed to third persons other than:

1. Those persons present to further the interest of the patient in the consultation, examination, or interview.

2. Those persons necessary for the transmission of the communication.

3. Those persons who are participating in the diagnosis and treatment under the direction of the psychotherapist.

(2) A patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or treatment of his mental or emotional condition, including alcoholism and other drug addiction, between himself and his psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the psychotherapist. This privilege includes any diagnosis made, and advice given, by the psychotherapist in the course of that relationship.

(3) The privilege may be claimed by:

(a) The patient or his attorney on his behalf.

(b) A guardian or conservator of the patient.

(c) The personal representative of a deceased patient.

(d) The psychotherapist, but only on behalf of the patient. The authority of a psychotherapist to claim the privilege is presumed in the absence of evidence to the contrary.

(4) There is no privilege under this section:

(a) For communications relevant to an issue in proceedings to compel hospitalization of a patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has reasonable cause to believe the patient is in need of hospitalization.

(b) For communications made in the course of a court-ordered examination of the mental or emotional condition of the patient.

(c) For communications relevant to an issue of the mental or emotional condition of the patient in any proceeding in which he relies upon the condition as an element of his claim or defense or, after the patient's death, in any proceeding in which any par-

ty relies upon the condition as an element of his claim or defense.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.504 Husband-wife privilege.—

(1) A spouse has a privilege during and after the marital relationship to refuse to disclose, and to prevent another from disclosing, communications which were intended to be made in confidence between the spouses while they were husband and wife.

(2) The privilege may be claimed by either spouse or by the guardian or conservator of a spouse. The authority of a spouse, or guardian or conservator of a spouse, to claim the privilege is presumed in the absence of contrary evidence.

(3) There is no privilege under this section:

(a) In a proceeding brought by or on behalf of one spouse against the other spouse.

(b) In a criminal proceeding in which one spouse is charged with a crime committed at any time against the person or property of the other spouse, or the person or property of a child of either.

(c) In a criminal proceeding in which the communication is offered in evidence by a defendant-spouse who is one of the spouses between whom the communication was made.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 10, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.505 Privilege with respect to communications to clergymen.—

(1) For the purposes of this section:

(a) A "clergyman" is a priest, rabbi, practitioner of Christian Science, or minister of any religious organization or denomination usually referred to as a church, or an individual reasonably believed so to be by the person consulting him.

(b) A communication between a clergyman and a person is "confidential" if made privately for the purpose of seeking spiritual counsel and advice from the clergyman in the usual course of his practice or discipline and not intended for further disclosure except to other persons present in furtherance of the communication.

(2) A person has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication by the person to a clergyman in his capacity as spiritual advisor.

(3) The privilege may be claimed by:

(a) The person.

(b) The guardian or conservator of a person.

(c) The personal representative of a deceased person.

(d) The clergyman, on behalf of the person. The clergyman's authority to do so is presumed in the absence of evidence to the contrary.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 1, ch. 77-174; ss. 11, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.5055 Accountant-client privilege.—

(1) For purposes of this section:

(a) An "accountant" is a certified public accountant or a public accountant.

(b) A "client" is any person, public officer, corporation, association, or other organization or entity, either public or private, who consults an accountant with the purpose of obtaining accounting services.

(c) A communication between an accountant and his client is "confidential" if it is not intended to be disclosed to third persons other than:

1. Those to whom disclosure is in furtherance of the rendition of accounting services to the client.

2. Those reasonably necessary for the transmission of the communication.

(2) A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications with an accountant when such other person learned of the communications because they were made in the rendition of accounting services to the client. This privilege includes other confidential information obtained by the accountant from the client for the purpose of rendering accounting advice.

(3) The privilege may be claimed by:

(a) The client.

(b) A guardian or conservator of the client.

(c) The personal representative of a deceased client.

(d) A successor, assignee, trustee in dissolution, or any similar representative of an organization, corporation, or association or other entity, either public or private, whether or not in existence.

(e) The accountant, but only on behalf of the client. The accountant's authority to claim the privilege is presumed in the absence of contrary evidence.

(4) There is no accountant-client privilege under this section when:

(a) The services of the accountant were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or should have known was a crime or fraud.

(b) A communication is relevant to an issue of breach of duty by the accountant to his client or by the client to his accountant.

(c) A communication is relevant to a matter of common interest between two or more clients, if the communication was made by any of them to an accountant retained or consulted in common when offered in a civil action between the clients.

History.—s. 12, ch. 78-361; s. 2, ch. 78-379.

90.506 Privilege with respect to trade secrets.—A person has a privilege to refuse to disclose, and to prevent other persons from disclosing, a trade secret owned by him if the allowance of the privilege will not conceal fraud or otherwise work injustice. When the court directs disclosure, it shall take the protective measures that the interests of the holder of the privilege, the interests of the parties, and the furtherance of justice require. The privilege may be claimed by the person or his agent or employee.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.507 Waiver of privilege by voluntary disclosure.—A person who has a privilege against the disclosure of a confidential matter or communication waives the privilege if he, or his predecessor while holder of the privilege, voluntarily discloses or makes the communication when he does not have a reasonable expectation of privacy, or consents to disclosure of, any significant part of the matter or com-

munication. This section is not applicable when the disclosure is itself a privileged communication.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 13, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.508 Privileged matter disclosed under compulsion or without opportunity to claim privilege.—Evidence of a statement or other disclosure of privileged matter is inadmissible against the holder of the privilege if the statement or disclosure was compelled erroneously by the court or made without opportunity to claim the privilege.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.509 Application of privileged communication.—Nothing in this act shall abrogate a privilege for any communication which was made prior to [1]July 1, 1979, if such communication was privileged at the time it was made.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

[1]Note.—Changed from "July 1, 1977," to "July 1, 1979," by the editors. As originally enacted in ch. 76-237, this read "the effective date of this act," and it was editorially changed. The effective date of ch. 76-237 was subsequently postponed by 1977 and 1978 legislation.

90.510 Privileged communication necessary to adverse party.—In any civil case or proceeding in which a party claims a privilege as to a communication necessary to an adverse party, the court, upon motion, may dismiss the claim for relief or the affirmative defense to which the privileged testimony would relate. In making its determination, the court may engage in an in camera inquiry into the privilege.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.601 General rule of competency.—Every person is competent to be a witness, except as otherwise provided by statute.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361, s. 1, ch. 78-379.

90.602 Testimony of interested persons.—

(1) No person interested in an action or proceeding against the personal representative, heir-at-law, assignee, legatee, devisee, or survivor of a deceased person, or against the assignee, committee, or guardian of an insane person, shall be examined as a witness regarding any oral communication between the interested person and the person who is deceased or insane at the time of the examination.

(2) This section does not apply when:

(a) A personal representative, heir-at-law, assignee, legatee, devisee, or survivor of a deceased person, or the assignee, committee, or guardian of an insane person, is examined on his own behalf regarding the oral communication.

(b) Evidence of the subject matter of the oral communication is offered by the personal representative, heir-at-law, assignee, legatee, devisee, or survivor of a deceased person, or the assignee, committee, or guardian of an insane person.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.603 Disqualification of witness.—A person is disqualified to testify as a witness when the court determines that he is:

(1) Incapable of expressing himself concerning the matter in such a manner as to be understood, either directly or through interpretation by one who can understand him.

(2) Incapable of understanding the duty of a witness to tell the truth.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.604 Lack of personal knowledge.—Except as otherwise provided in s. 90.702, a witness may not testify to a matter unless evidence is introduced which is sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may be given by the witness himself.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.605 Oath or affirmation of witness.—

(1) Before testifying, each witness shall declare that he will testify truthfully, by taking an oath or affirmation in substantially the following form: "Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?" The witness's answer shall be noted in the record.

(2) In the court's discretion, a young child may testify without taking the oath if the court determines the child understands the duty to tell the truth.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.606 Interpreters and translators.—

(1) When a judge determines that a witness cannot hear or understand the English language, or cannot express himself in English sufficiently to be understood, an interpreter who is duly qualified to interpret for the witness shall be sworn to do so.

(2) A person who serves in the role of interpreter or translator in any action or proceeding is subject to all the provisions of this chapter relating to witnesses.

(3) An interpreter shall take an oath that he will make a true interpretation of the questions asked and the answers given and that he will make a true translation into English of any writing which he is required by his duties to decipher or translate.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.607 Competency of certain persons as witnesses.—

(1)(a) Except as provided in paragraph (b), the judge presiding at the trial of an action is not competent to testify as a witness in that trial. An objection is not necessary to preserve the point.

(b) By agreement of the parties, the trial judge may give evidence on a purely formal matter to facilitate the trial of the action.

(2)(a) A member of the jury is not competent to testify as a witness in a trial when he is sitting as a juror. If he is called to testify, the opposing party shall be given an opportunity to object out of the presence of the jury.

(b) Upon an inquiry into the validity of a verdict or indictment, a juror is not competent to testify as to any matter which essentially inheres in the verdict or indictment.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.608 Who may impeach.—

(1) Any party, except the party calling the witness, may attack the credibility of a witness by:

(a) Introducing statements of the witness which are inconsistent with his present testimony.

(b) Showing that the witness is biased.

(c) Attacking the character of the witness in accordance with the provisions of s. 90.609 or s. 90.610.

(d) Showing a defect of capacity, ability, or opportunity in the witness to observe, remember, or recount the matters about which he testified.

(e) Proof by other witnesses that material facts are not as testified to by the witness being impeached.

(2) A party calling a witness shall not be allowed to impeach his character as provided in s. 90.609 or s. 90.610, but, if the witness proves adverse, such party may contradict the witness by other evidence or may prove that the witness has made an inconsistent statement at another time, without regard to whether the party was surprised by the testimony of the witness. Leading questions may be used during any examination under this subsection.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 14, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.609 Character of witness as impeachment.—A party may attack or support the credibility of a witness, including an accused, by evidence in the form of reputation, except that:

(1) The evidence may refer only to character relating to truthfulness.

(2) Evidence of a truthful character is admissible only after the character of the witness for truthfulness has been attacked by reputation evidence.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 15, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.610 Conviction of certain crimes as impeachment.—

(1) A party may attack the credibility of any witness, including an accused, by evidence that the witness has been convicted of a crime if the crime was punishable by death or imprisonment in excess of 1 year under the law under which he was convicted, or if the crime involved dishonesty or a false statement regardless of the punishment, with the following exceptions:

(a) Evidence of any such conviction is inadmissible in a civil trial if it is so remote in time as to have no bearing on the present character of the witness.

(b) Evidence of juvenile adjudications are inadmissible under this subsection.

(2) The pendency of an appeal or the granting of a pardon relating to such crime does not render evidence of the conviction from which the appeal was taken or for which the pardon was granted inadmissible. Evidence of the pendency of the appeal is admissible.

(3) Nothing in this section affects the admissibility of evidence under s. 90.404 or s. 90.608.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 16, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.611 Religious beliefs or opinions.—Evidence of the beliefs or opinions of a witness on matters of religion is inadmissible to show that his credibility is impaired or enhanced thereby.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.612 Mode and order of interrogation and presentation.—

(1) The judge shall exercise reasonable control over the mode and order of the interrogation of witnesses and the presentation of evidence, so as to:

(a) Facilitate, through effective interrogation and presentation, the discovery of the truth.

(b) Avoid needless consumption of time.

(c) Protect witnesses from harassment or undue embarrassment.

(2) Cross-examination of a witness is limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in its discretion, permit inquiry into additional matters.

(3) Except as provided by rule of court or when the interests of justice otherwise require:

(a) A party may not ask a witness a leading question on direct or redirect examination.

(b) A party may ask a witness a leading question on cross-examination or recross-examination.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.613 Refreshing the memory of a witness.—When a witness uses a writing or other item to refresh his memory while testifying, an adverse party is entitled to have such writing or other item produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce it, or, in the case of a writing, to introduce those portions which relate to the testimony of the witness, in evidence. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the judge shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objection shall be preserved and made available to the appellate court in the event of an appeal. If a writing or other item is not produced or delivered pursuant to order under this section, the testimony of the witness concerning those matters shall be stricken.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.614 Prior statements of witnesses.—

(1) When a witness is examined concerning his prior written statement or concerning an oral statement that has been reduced to writing, the court, on motion of the adverse party, shall order the statement to be shown to the witness or its contents disclosed to him.

(2) Extrinsic evidence of a prior inconsistent statement by a witness is inadmissible unless the witness is first afforded an opportunity to explain or deny the prior statement and the opposing party is afforded an opportunity to interrogate him on it, or the interests of justice otherwise require. If a witness denies making or does not distinctly admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. This sub-

section is not applicable to admissions of a party-opponent as defined in s. 90.803(18).

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 17, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.615 Calling witnesses by the court.—

(1) The court may call witnesses whom all parties may cross-examine.

(2) When required by the interests of justice, the court may interrogate witnesses, whether called by the court or by a party.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.701 Opinion testimony of lay witnesses.— If a witness is not testifying as an expert, his testimony about what he perceived may be in the form of inference and opinion when:

(1) The witness cannot readily, and with equal accuracy and adequacy, communicate what he has perceived to the trier of fact without testifying in terms of inferences or opinions and his use of inferences or opinions will not mislead the trier of fact to the prejudice of the objecting party; and

(2) The opinions and inferences do not require a special knowledge, skill, experience, or training.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.702 Testimony by experts.—If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion; however, the opinion is admissible only if it can be applied to evidence at trial.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.703 Opinion on ultimate issue.—Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it includes an ultimate issue to be decided by the trier of fact.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.704 Basis of opinion testimony by experts. —The facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, him at or before the trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.705 Disclosure of facts or data underlying expert opinion.—

(1) Unless otherwise required by the court, an expert may testify in terms of opinion or inferences and give his reasons without prior disclosure of the underlying facts or data. On cross-examination he shall be required to specify the facts or data.

(2) Prior to the witness giving his opinion, a party against whom the opinion or inference is offered may conduct a voir dire examination of the witness directed to the underlying facts or data for his opinion. If the party establishes prima facie evidence that the expert does not have a sufficient basis for his opinion, the opinions and inferences of the expert are inadmissible unless the party offering the testimony establishes the underlying facts or data.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.706 Authoritativeness of literature for use in cross-examination.—Statements of facts or opinions on a subject of science, art, or specialized knowledge contained in a published treatise, periodical, book, dissertation, pamphlet, or other writing may be used in cross-examination of an expert witness if the expert witness recognizes the author or the treatise, periodical, book, dissertation, pamphlet, or other writing to be authoritative, or, notwithstanding nonrecognition by the expert witness, if the trial court finds the author or the treatise, periodical, book, dissertation, pamphlet, or other writing to be authoritative and relevant to the subject matter.

History.—s. 18, ch. 78-361; s. 2, ch. 78-379.

90.801 Hearsay; definitions; exceptions.—

(1) The following definitions apply under this chapter:

(a) A "statement" is:

1. An oral or written assertion; or

2. Nonverbal conduct of a person if it is intended by him as an assertion.

(b) A "declarant" is a person who makes a statement.

(c) "Hearsay" is an out-of-court statement, other than one made by a declarant who testifies at the trial or hearing, offered in court to prove the truth of the matter contained in the statement.

(2) A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is:

(a) Inconsistent with his testimony and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(b) Consistent with his testimony and is offered to rebut an express or implied charge against him of improper influence, motive, or recent fabrication; or

(c) One of identification of a person made after perceiving him.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; ss. 19, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.802 Hearsay rule.—Except as provided by statute, hearsay evidence is inadmissible.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.803 Hearsay exceptions; availability of declarant immaterial.—The provision of s. 90.802 to the contrary notwithstanding, the following are not inadmissible as evidence, even though the declarant is available as a witness:

(1) SPONTANEOUS STATEMENT.—A spontaneous statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, except when such statement is made under circumstances that indicate its lack of trustworthiness.

(2) EXCITED UTTERANCE.—A statement or excited utterance relating to a startling event or con-

dition made while the declarant was under the stress of excitement caused by the event or condition.

(3) THEN EXISTING MENTAL, EMOTIONAL, OR PHYSICAL CONDITION.—

(a) A statement of the declarant's then existing state of mind, emotion, or physical sensation, including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health, when such evidence is offered to:

1. Prove the declarant's state of mind, emotion, or physical sensation at that time or at any other time when such state is an issue in the action.

2. Prove or explain acts of subsequent conduct of the declarant.

(b) However, this subsection does not make admissible:

1. An after-the-fact statement of memory or belief to prove the fact remembered or believed, unless such statement relates to the execution, revocation, identification, or terms of the declarant's will.

2. A statement made under circumstances that indicate its lack of trustworthiness.

(4) STATEMENTS FOR PURPOSES OF MEDICAL DIAGNOSIS OR TREATMENT.—Statements made for purposes of medical diagnosis or treatment by a person seeking the diagnosis or treatment, or made by an individual who has knowledge of the facts and is legally responsible for the person who is unable to communicate the facts, which statements describe medical history, past or present symptoms, pain, or sensations, or the inceptions or general character of the cause or external source thereof, insofar as reasonably pertinent to diagnosis or treatment.

(5) RECORDED RECOLLECTION.—A memorandum or record concerning a matter about which a witness once had knowledge, but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. A party may read into evidence a memorandum or record when it is admitted, but no such memorandum or record is admissible as an exhibit unless offered by an adverse party.

(6) RECORDS OF REGULARLY CONDUCTED BUSINESS ACTIVITY.—

(a) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinion, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make such memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the sources of information or other circumstances show lack of trustworthiness. The term "business" as used in this paragraph includes a business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(b) No evidence in the form of an opinion or diagnosis is admissible under paragraph (a) unless such opinion or diagnosis would be admissible under ss. 90.701-90.705 if the person whose opinion is recorded were to testify to the opinion directly.

(7) ABSENCE OF ENTRY IN RECORDS OF REGULARLY CONDUCTED ACTIVITY.—Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, of a regularly conducted activity to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances show lack of trustworthiness.

(8) PUBLIC RECORDS AND REPORTS.—Records, reports, statements reduced to writing, or data compilations, in any form, of public offices or agencies, setting forth the activities of the office or agency, or matters observed pursuant to duty imposed by law as to matters which there was a duty to report, excluding in criminal cases matters observed by a police officer or other law enforcement personnel, unless the sources of information or other circumstances show their lack of trustworthiness.

(9) RECORDS OF VITAL STATISTICS.—Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if a report was made to a public office pursuant to requirements of law. However, nothing in this section shall be construed to make admissible any other marriage of any party to any cause of action except for the purpose of impeachment as set forth in s. 90.610.

(10) ABSENCE OF PUBLIC RECORD OR ENTRY.—Evidence, in the form of a certification in accord with s. 90.902, or in the form of testimony, that diligent search failed to disclose a record, report, statement, or data compilation or entry, when offered to prove the absence of the record, report, statement, or data compilation or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation would regularly have been made and preserved by a public office and agency.

(11) RECORDS OF RELIGIOUS ORGANIZATIONS.—Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history contained in a regularly kept record of a religious organization.

(12) MARRIAGE, BAPTISMAL, AND SIMILAR CERTIFICATES.—Statements of facts contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, when such statement was certified by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and when such certificate purports to have been issued at the time of the act or within a reasonable time thereafter.

(13) FAMILY RECORDS.—Statements of fact concerning personal or family history in family Bibles, charts, engravings in rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) RECORDS OF DOCUMENTS AFFECTING AN INTEREST IN PROPERTY.—The record of a document purporting to establish or affect an interest in property, as proof of the contents of the original recorded or filed document and its execution and

delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorized the recording or filing of the document in the office.

(15) STATEMENTS IN DOCUMENTS AFFECTING AN INTEREST IN PROPERTY.—A statement contained in a document purporting to establish or affect an interest in property, if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) STATEMENTS IN ANCIENT DOCUMENTS.—Statements in a document in existence 20 years or more, the authenticity of which is established.

(17) MARKET REPORTS, COMMERCIAL PUBLICATIONS.—Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations if, in the opinion of the court, the sources of information and method of preparation were such as to justify their admission.

(18) ADMISSIONS.—A statement that is offered against a party and is:

(a) His own statement in either an individual or a representative capacity;

(b) A statement of which he has manifested his adoption or belief in its truth;

(c) A statement by a person specifically authorized by him to make a statement concerning the subject;

(d) A statement by his agent or servant concerning a matter within the scope of the agency or employment thereof, made during the existence of the relationship; or

(e) A statement by a person who was a coconspirator of the party during the course, and in furtherance, of the conspiracy. Upon request of counsel, the court shall instruct the jury that the conspiracy itself and each member's participation in it must be established by independent evidence, either before the introduction of any evidence or before evidence is admitted under this paragraph.

(19) REPUTATION CONCERNING PERSONAL OR FAMILY HISTORY.—Evidence of reputation:

(a) Among members of his family by blood, adoption, or marriage;

(b) Among his associates; or

(c) In the community,

concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his personal or family history.

(20) REPUTATION CONCERNING BOUNDARIES OR GENERAL HISTORY.—Evidence of reputation:

(a) In a community, arising before the controversy about the boundaries of, or customs affecting lands in, the community.

(b) About events of general history which are important to the community, state, or nation where located.

(21) REPUTATION AS TO CHARACTER.—Evidence of reputation of a person's character among his associates or in the community.

(22) FORMER TESTIMONY.—Former testimony given by the declarant at a civil trial, when used in a retrial of said trial involving identical parties and the same facts.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 1, ch. 77-174; ss. 20, 22, ch. 78-361; ss. 1, 2, ch. 78-379.

90.804 Hearsay exceptions; declarant unavailable.—

(1) DEFINITION OF UNAVAILABILITY.—"Unavailability as a witness" means that the declarant:

(a) Is exempted by a ruling of a court on the ground of privilege from testifying concerning the subject matter of his statement;

(b) Persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so;

(c) Has suffered a lack of memory of the subject matter of his statement so as to destroy his effectiveness as a witness during the trial;

(d) Is unable to be present or to testify at the hearing because of death or because of then existing physical or mental illness or infirmity; or

(e) Is absent from the hearing, and the proponent of his statement has been unable to procure his attendance or testimony by process or other reasonable means.

However, a declarant is not unavailable as a witness if such exemption, refusal, claim of lack of memory, inability to be present, or absence is due to the procurement or wrongdoing of the party who is the proponent of his statement in preventing the witness from attending or testifying.

(2) HEARSAY EXCEPTIONS.—The following are not excluded under s. 90.802, provided that the declarant is unavailable as a witness:

(a) *Former testimony.*—Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or re-direct examination.

(b) *Statement under belief of impending death.*—In a civil or criminal trial, a statement made by a declarant while reasonably believing that his death was imminent, concerning the physical cause or instrumentalities of what he believed to be his impending death or the circumstances surrounding his impending death.

(c) *Statement against interest.*—A statement which, at the time of its making, was so far contrary to the declarant's pecuniary or proprietary interest or tended to subject him to liability or to render invalid a claim by him against another, so that a person in the declarant's position would not have made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is inadmissible, unless corroborating circumstances show the trustworthiness of the statement. A state-

ment or confession which is offered against the accused in a criminal action, and which is made by a codefendant or other person implicating both himself and the accused, is not within this exception.

(d) *Statement of personal or family history.*—A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, ancestry, or other similar fact of personal or family history, including relationship by blood, adoption, or marriage, even though the declarant had no means of acquiring personal knowledge of the matter stated.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.805 Hearsay within hearsay.—Hearsay within hearsay is not excluded under s. 90.802, provided each part of the combined statements conforms with an exception to the hearsay rule as provided in s. 90.803 or s. 90.804.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.806 Attacking and supporting credibility of declarant.—

(1) When a hearsay statement has been admitted in evidence, credibility of the declarant may be attacked and, if attacked, may be supported by any evidence that would be admissible for those purposes if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time inconsistent with his hearsay statement is admissible, regardless of whether or not the declarant has been afforded an opportunity to deny or explain it.

(2) If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine him on the statement as if under cross-examination.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.901 Requirement of authentication or identification.—Authentication or identification of evidence is required as a condition precedent to its admissibility. The requirements of this section are satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.902 Self-authentication.—Extrinsic evidence of authenticity as a condition precedent to admissibility is not required for:

(1) A document bearing:

(a) A seal purporting to be that of the United States or any state, district, commonwealth, territory, or insular possession thereof; the Panama Canal Zone; the Trust Territory of the Pacific Islands; or a court, political subdivision, department, officer, or agency of any of them; and

(b) A signature by the custodian of the document attesting to the authenticity of the seal.

(2) A document not bearing a seal but purporting to bear a signature of an officer or employee of any entity listed in subsection (1), affixed in his official capacity.

(3) An official foreign document, record, or entry that is:

(a) Executed or attested to by a person in his official capacity authorized by the laws of a foreign country to make the execution or attestation; and

(b) Accompanied by a final certification, as provided herein, of the genuineness of the signature and official position of:

1. The executing person; or

2. Any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation.

The final certification may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States or a diplomatic or consular official of the foreign country assigned or accredited to the United States. When the parties receive reasonable opportunity to investigate the authenticity and accuracy of official foreign documents, the court may order that they be treated as presumptively authentic without final certification or permit them in evidence by an attested summary with or without final certification.

(4) A copy of an official public record, report, or entry, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification by certificate complying with subsections (1), (2), or (3) or complying with any act of the Legislature or rule adopted by the Supreme Court.

(5) Books, pamphlets, or other publications purporting to be issued by a governmental authority.

(6) Printed materials purporting to be newspapers or periodicals.

(7) Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) Commercial papers and signatures thereon and documents relating to them, to the extent provided in the Uniform Commercial Code.

(9) Any signature, document, or other matter declared by the Legislature to be presumptively or prima facie genuine or authentic.

(10) Any document properly certified under the law of the jurisdiction where the certification is made.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 1, ch. 77-174; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.903 Testimony of subscribing witness unnecessary.—The testimony of a subscribing witness is not necessary to authenticate a writing unless the statute requiring attestation requires it.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.951 Definitions.—For purposes of this chapter:

(1) "Writings" and "recordings" include letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, mechanical or electronic recording, or other form of data compilation, upon paper, wood, stone, recording tape, or other materials.

(2) "Photographs" include still photographs, x-ray films, videotapes, and motion pictures.

(3) An "original" of a writing or recording means the writing or recording itself, or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print made from it. If data are stored in a computer or similar device, any printout or other output readable by sight and shown to reflect the data accurately is an "original."

(4) "Duplicate" includes:

(a) A counterpart produced by the same impression as the original, from the same matrix; by means of photography, including enlargements and miniatures; by mechanical or electronic rerecording; by chemical reproduction; or by other equivalent technique that accurately reproduces the original; or

(b) An executed carbon copy not intended by the parties to be an original.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.952 Requirement of originals.—Except as otherwise provided by statute, an original writing, recording, or photograph is required in order to prove the contents of the writing, recording, or photograph.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 1, ch. 77-174; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.953 Admissibility of duplicates.—A duplicate is admissible to the same extent as an original, unless:

(1) The document or writing is a negotiable instrument as defined in s. 673.104, a security as defined in s. 678.102, or any other writing that evidences a right to the payment of money, is not itself a security agreement or lease, and is of a type that is transferred by delivery in the ordinary course of business with any necessary endorsement or assignment.

(2) A genuine question is raised about the authenticity of the original or any other document or writing.

(3) It is unfair, under the circumstance, to admit the duplicate in lieu of the original.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.954 Admissibility of other evidence of contents.—The original of a writing, recording, or photograph is not required, except as provided in s. 90.953, and other evidence of its contents is admissible when:

(1) All originals are lost or destroyed, unless the proponent lost or destroyed them in bad faith.

(2) An original cannot be obtained in this state by any judicial process or procedure.

(3) An original was under the control of the party against whom offered at a time when he was put on notice by the pleadings or by written notice from the adverse party that the contents of such original would be subject to proof at the hearing, and such original is not produced at the hearing.

(4) The writing, recording, or photograph is not related to a controlling issue.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 1, ch. 77-174; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.955 Public records.—

(1) The contents of an official record or of a document authorized to be recorded or filed, and actually recorded or filed, with a governmental agency, either federal, state, county, or municipal, in a place where official records or documents are ordinarily filed, including data compilations in any form, may be proved by a copy authenticated as provided in s. 90.902, if otherwise admissible.

(2) If a party cannot obtain, by the exercise of reasonable diligence, a copy that complies with subsection (1), other evidence of the contents is admissible.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.956 Summaries.—When it is not convenient to examine in court the contents of voluminous writings, recordings, or photographs, a party may present them in the form of a chart, summary, or calculation by calling a qualified witness. The party intending to use such a summary must give timely written notice of his intention to use the summary, proof of which shall be filed with the court, and shall make the summary and the originals or duplicates of the data from which the summary is compiled available for examination or copying, or both, by other parties at a reasonable time and place. A judge may order that they be produced in court.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.957 Testimony or written admissions of a party.—A party may prove the contents of writings, recordings, or photographs by the testimony or deposition of the party against whom they are offered or by his written admission, without accounting for the nonproduction of the original.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

90.958 Functions of court and jury.—

(1) Except as provided in subsection (2), when the admissibility under this chapter of other evidence of the contents of writings, recordings, or photographs depends upon the existence of a preliminary fact, the question as to whether the preliminary fact exists is for the court to determine.

(2) The trier of fact shall determine whether:

(a) The asserted writing ever existed.

(b) Another writing, recording, or photograph produced at the trial is the original.

(c) Other evidence of the contents correctly reflects the contents.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

CHAPTER 92

WITNESSES, RECORDS, AND DOCUMENTS

92.05 Final judgments and decrees of courts of record.—All final judgments and decrees heretofore or hereafter rendered and entered in courts of record of this state, and certified copies thereof, shall be admissible as prima facie evidence in the several courts of this state of the entry and validity of such judgments and decrees. For the purposes of this section, a court of record shall be taken and construed to mean any court other than a municipal court or the Metropolitan Court of Dade County.

History.—s. 1, ch. 4723, 1899; GS 1522; RGS 2722; CGL 4390; s. 7, ch. 22858, 1945; s. 1, ch. 67-362; s. 15, ch. 73-334.

92.06 Judgments and decrees of U. S. District Courts as evidence in state courts.—All final judgments and decrees heretofore or hereafter to be rendered and entered in the United States District Courts of this state and certified copies thereof are declared to be admissible as prima facie evidence in the several courts of this state of the entry and validity of such judgments and decrees.

History.—s. 1, ch. 14748, 1931; CGL 1936 Supp. 4391(1).

92.07 Judgments and decrees of this state as evidence.—The recitals in all judgments and decrees of the Supreme Court and of the several circuit courts of this state, when such judgment or decree appears regular and has been recorded as provided by law for more than 20 years, shall be admissible in evidence as prima facie proof of the truth of the facts so recited. Either party to any suit at law or equity may offer a properly certified copy of such judgment or decree entered and recorded more than 20 years prior to the institution of the suit in which the same is offered, and such copy shall be admissible in evidence as prima facie proof of the facts in said judgment or decree set forth; provided, however, the party offering the same shall at least 10 days before the trial of the suit in which this copy is offered in evidence give notice to the opposite side of the intention to offer such copy in evidence and the purpose for which the same will be offered, and deliver with such notice a copy of the judgment or decree; provided, that nothing in this law shall render admissible in evidence any instrument of writing based on any judgment, deed of conveyance or power of attorney included in this law where any such instrument of writing has heretofore been brought in question in any action at law or in equity in any suit now pending or heretofore decided.

History.—s. 1, ch. 10111, 1925; CGL 4391.

92.08 Deeds and powers of attorney of record for 20 years or more as evidence.—The recitals in any deed of conveyance or power of attorney shall be admissible in evidence when offered in evidence by either party to any suit at law or in equity as prima facie proof of the truth of the facts therein recited,

provided such deed of conveyance or power of attorney appears regular on its face and is a muniment in the chain of title under which the party offering the deed claims, and has been recorded as provided by law for more than 20 years prior to the institution of the suit in which it is offered; and provided further, that the party offering the deed of conveyance or power of attorney for such purposes shall at least 10 days before the trial of the suit in which the said copy is offered in evidence give notice to the opposite side of the intention to offer such copy in evidence and the purpose for which the same will be offered, and deliver with such notice a copy of the deed or power of attorney. The original deed or power of attorney shall be offered unless the party offering the certified copy shall show that the original is not within the custody or control of the party offering the copy.

History.—s. 2, ch. 10111, 1925; CGL 4392.

92.09 Effect of reversal, etc., of such deeds, etc.—No copy of a judgment or decree shall be admitted in evidence as aforesaid when it shall be made to appear that such decree has been reversed, annulled, vacated, or set aside, or that the same in collateral proceedings has been successfully attacked. No deed shall be admitted in evidence as hereinbefore provided if it shall appear that the execution or validity of said deed has been successfully attacked in any proceedings to which the grantee therein named or those or any of them holding under such grantee has been a party or parties.

History.—s. 3, ch. 10111, 1925; CGL 4393.

92.13 Certified copies of records of certified copies as evidence.—Certified copies of the record of certified copies of deeds, mortgages, powers of attorney and other instruments referred to in s. 695.19 shall have the same effect as to notice and all other purposes whatsoever as the record of the original has or can have; and certified copies of the record of such certified copies shall be admissible and may be used in evidence in the same manner and with like effect and under the same conditions as certified copies of the record of the original instrument.

History.—s. 2, ch. 11989, 1927; CGL 4388, 5718.

92.14 United States deeds and patents and copies thereof as evidence.—Deeds and patents issued by the United States Government and photographic copies made by authority of said government from its records thereof in the General Land Office, embracing lands in this state, and certified copies of the record thereof made in this state may be used in evidence in the courts of this state subject to the same rules that are applicable to the admission in evidence of other deeds and certified copies of the record thereof.

History.—s. 3, ch. 8565, 1921; CGL 5716.

92.141 Law enforcement officers; per diem, expenses; witnesses, pay.—Any law enforcement officer of any municipality, county or the state who shall appear as an official witness to testify at any hearing or law action in any court of this state as a direct result of his employment as a law enforcement officer shall be entitled to per diem and traveling expenses at the same rate provided for state employees under s. 112.061. In addition thereto, such officer shall be entitled to receive the daily witness pay, exclusive of the mileage allowance, as provided by [1]s. 92.142, except when such officer is appearing as a witness during time compensated as a part of his normal duties.

History.—s. 1, ch. 63-508; s. 1, ch. 67-427; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

[1]**Note.**—Cross-reference revised to conform to transfer of referenced section by s. 3, ch. 76-237, effective July 1, 1979.

Note.—Former s. 90.141.

92.142 Witnesses; pay.—Witnesses in all cases, civil and criminal, in all courts, now or hereafter created, and witnesses summoned before any arbitrator or master in chancery shall receive for each day's actual attendance $5 and also 6 cents per mile for actual distance traveled to and from the courts. Witnesses in criminal cases required to appear in counties other than the county of their residence and residing more than 50 miles from the location of the trial shall be entitled to per diem and travel expenses at the same rate provided for state employees under s. 112.061, in lieu of any other witness fee at the discretion of the court.

History.—s. 5, ch. 3106, 1879; RS 1103; s. 1, ch. 4387, 1895; GS 1512; s. 2, ch. 5649, 1907; s. 1, ch. 6905, 1915; s. 1, ch. 7280, 1917; RGS 2712; CGL 4379; s. 1, ch. 29927, 1955; s. 8, ch. 65-483; s. 1, ch. 67-401; s. 15, ch. 73-334; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 1, ch. 78-175; s. 22, ch. 78-361; ss. 1, 2, ch. 78-379.

Note.—Former s. 90.14.

92.15 Receipts in cases involving title from United States.—A receipt of a receiver of a United States Land Office shall in all cases be prima facie evidence that the title to the land covered by said receipt has passed from the United States to the person named in the receipt as having paid for the said land.

History.—s. 1, ch. 3915, 1889; RS 1119; GS 1537; RGS 2737; CGL 4409.

92.151 Manner of obtaining compensation.—Compensation shall be paid to the witness by the party in whose behalf he is summoned, and the prevailing party may tax the same as costs against his adversary; but no person shall be compelled to attend court as a witness in any civil cause unless the party in whose behalf he is summoned shall first pay him the amount of compensation to which he would be entitled for mileage and per diem for 1 day, or the same is deposited with the executive officer of said court, and he shall not be compelled to attend thereafter unless paid in advance. But if any witness should serve without payment in advance, at the completion of his services he may exhibit his account for compensation, and when the same shall have been taxed and approved by the court wherein the services have been rendered, such bill shall have the force and effect of judgment and execution against the party in whose behalf the witness was summoned, and be collected by the sheriff as in other cases of execution. Any witness who shall charge and receive more than is really due shall forfeit and pay to the party injured four times the amount so unjustly claimed; and if he shall willfully make out his account for more than is lawfully due, he shall forfeit his compensation.

History.—s. 41, Nov. 11, 1828; RS 1104; s. 4, ch. 4387, 1895; GS 1513; RGS 2713; CGL 4380; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

Note.—Former s. 90.15.

cf.—s. 914.11 Indigent defendants.

92.16 Certificates of Board of Trustees of the Internal Improvement Trust Fund respecting the ownership, conveyance of and other facts in connection with public lands.—A certificate of the Board of Trustees of the Internal Improvement Trust Fund under its official seal, with respect to the present or past ownership by the state or by the school, seminary or internal improvement funds of any lands in this state, or of the conveyance or transfer of any such lands by said Board of Trustees of the Internal Improvement Trust Fund or of the State Board of Education or other officers or boards of the state having power to convey any such lands, or any facts shown by the public records of his office with respect to any of such lands, or the transfer, ownership or conveyance of the same, shall be prima facie evidence of the facts therein certified, and every such certificate shall be admissible in evidence in all of the courts of this state. All such certificates shall, without other or further proof, be admitted to record and recorded in the deed books of the respective counties of this state where the lands mentioned in such certificates lie, and the record of every such certificate shall have the same force and effect for all purposes as the record of deeds.

History.—s. 1, ch. 2063, 1875; RS 1112; GS 1524; s. 1, ch. 7381, 1917; RGS 2724; CGL 4395; s. 7, ch. 22858, 1945; s. 3, ch. 63-294; ss. 27, 35, ch. 69-106.

92.17 Effect of seal of Board of Trustees of the Internal Improvement Trust Fund.—The impression of the seal of the Board of Trustees of the Internal Improvement Trust Fund upon any deed, agreement or contract, purporting to have been made by the Board of Trustees of the Internal Improvement Trust Fund, or by the members of the State Board of Education, shall entitle the same to be received in evidence in all courts and in all proceedings in this state.

History.—s. 1, ch. 3127, 1879; ss. 1, 2, ch. 3877, 1889; RS 1114; GS 1526; RGS 2726; CGL 4397; s. 4, ch. 63-294; ss. 27, 35, ch. 69-106.

92.18 Certificate of state officer.—The certificate of any state officer, under his seal of office, as to any official act occurring in the course of the official business of the office in which he presides, shall be prima facie evidence of such fact.

History.—s. 1, ch. 3250, 1881; RS 1113; GS 1525; RGS 2725; CGL 4396.

92.19 Portions of records as evidence.—In all cases where any certified copy of any record, pleading, document, deed, conveyance, paper or instrument in writing, involving the title to real estate shall be lawfully admissible in evidence in any of the courts of this state, a certified copy of such portions of such instrument as shall contain the essential parts thereof and only such portion of the descriptive matter thereof as shall be involved in the case on trial, shall likewise be admissible in evidence; and in no case shall it be necessary to include in such certified copies descriptive matter not involved in the case in which such copy is offered in evidence.

History.—s. 1, ch. 10237, 1925; CGL 4400.

92.20 Certificates issued under authority of Congress as evidence.—Every certificate issued under authority of the Congress and every duly certified copy thereof under the seal of the United States governmental department having the authority to issue such certified copy, relating to the grade, classification, quality or condition of agricultural products shall be accepted in any court of this state as prima facie evidence of the true grade, classification, condition or quality of such agricultural product at the time of its inspection.

History.—s. 1, ch. 13568, 1929; CGL 1936 Supp. 4400(1).

92.21 Certificate as to sanitary condition of buildings.—Every owner, agent or lessee of any building or buildings used for the purpose of providing board and lodgings for the entertainment of guests, containing 10 rooms or more, who shall have obtained and posted a certificate as provided by law, may present the same as evidence in his defense in any suit in any of the courts in this state in which damages are claimed for injuries from alleged unsanitary conditions of said buildings and premises.

History.—s. 4, ch. 4606, 1899; GS 1527; RGS 2727; CGL 4398.

92.23 Rule of evidence in suits on fire policies for loss or damage to building.—In all suits or proceedings brought upon policies of insurance on buildings against loss or damage by fire, hereafter issued or renewed, the insurer shall not be permitted to deny that the property insured was worth, at the time of insuring it by the policy, the full sum insured therein on such property.

History.—s. 2, ch. 4677, 1899; GS 1528; RGS 2728; CGL 4399.

92.231 Expert witnesses; fee.—

(1) The term "expert witness" as used herein shall apply to any witness who offers himself in the trial of any civil action as an expert witness or who is subpoenaed to testify in such capacity before a state attorney in the investigation of a criminal matter, or before a grand jury, and who is permitted by the court to qualify and testify as such, upon any matter pending before any court.

(2) Any expert or skilled witness who shall have testified in any cause shall be allowed a witness fee including the cost of any exhibits used by such witness in the amount of $10 per hour or such amount as the trial judge may deem reasonable, and the same shall be taxed as costs.

History.—ss. 1, 2, ch. 25090, 1949; s. 19, ch. 29737, 1955; s. 1, ch. 59-201; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

Note.—Former s. 90.231.

cf.—s. 914.06 Compensation of expert witnesses in felony cases.

92.24 Certain tax deeds prima facie evidence of title.—All tax deeds issued under and pursuant to the provisions and in the form prescribed in and by the following acts and statutes of this state, to wit: s. 10, chapter 4888, Acts, 1901 and said section as amended by s. 1, chapter 5152, Acts, 1903; s. 577 of the General Statutes of Florida, 1906; s. 779 of the Revised General Statutes of Florida, 1920, and said section as amended by s. 12, chapter 14572, Acts, 1929; are declared to be prima facie evidence of the regularity of the proceedings from the valuation of the land described in such deeds respectively, by the assessors, to the date of the deed or deeds inclusive,

and shall be so received in evidence in any and all the courts of this state, without regard to date of execution.

History.—s. 1, ch. 5150, 1903; GS 1521; RGS 2721; CGL 4389.

92.25 Records destroyed by fire; use of abstracts as evidence.—Whenever in the trial of any suit, or in any proceeding in any court of this state, it shall be made to appear that the original of any deed or other instrument of writing, or of any record of any court relating to any land, the title thereof or any interest therein being in controversy in such suit or proceeding, is lost or destroyed, or not within the power of the party to produce the same, and that the record thereof has been heretofore destroyed by fire, and that no certified copy of such record is in the possession or control of such party, it is lawful for such party, and the court shall receive as evidence, any abstract of title, or letter-press copy thereof made in the ordinary course of business prior to such loss or destruction; and it is also lawful for any such party to offer, and the court shall receive as evidence, any copy, extract or minutes from such destroyed records, or from the original thereof, which were at the date of such destruction in the possession of any person or persons then engaged in the business of making abstracts of titles for others for hire.

History.—s. 1, ch. 4951, 1901; GS 1529; RGS 2729; CGL 4401.

92.251 Uniform Foreign Depositions Law.—(1) This section may be cited as the "Uniform Foreign Depositions Law."

(2) Whenever any mandate, writ or commission is issued out of any court of record in any other state, territory, district, or foreign jurisdiction, or whenever upon notice or agreement it is required to take the testimony of a witness or witnesses in this state, witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in this state.

(3) This section shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

History.—ss. 1-3, ch. 59-250; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

Note.—Former s. 90.25.

92.26 Records destroyed by fire; use of sworn copies as evidence.—A sworn copy of any writing admissible under the above section made by the person or persons having possession of such writing shall be admissible in evidence; provided, the party desiring to use such sworn copy, as aforesaid, shall have given the opposite party a reasonable opportunity to verify the correctness of such copy; and provided, that no abstract of title or letter-press copy thereof, extract or minutes or copy made admissible in evidence by this section, shall be so admitted by virtue hereof unless a copy thereof shall have been served on the opposite party, or his attorney or counsel, at least 10 days before the same is offered in evidence. Nothing herein shall be construed to prevent the impeachment of such evidence, or its exclusion by the court for good and sufficient cause.

History.—s. 1, ch. 4951, 1901; GS 1530; RGS 2730; CGL 4402.

92.27 Records destroyed by fire; effect of abstracts in evidence.—In all cases in which any destroyed abstracts, copies, minutes, extracts, maps or plats, or copies thereof, purchased and placed in the clerk's office, as provided by law, or which are made admissible in evidence under any of the provisions of this revision, whether purchased or placed in such office or not, shall be received in evidence under this law, all deeds or other instruments of writing appearing thereby to have been executed by any person or persons, or in which they appear to have joined, shall (except as against any person or persons in actual possession of the land or lot described therein at the time of the destruction of the record of such county, claiming title thereto, otherwise than under sale for taxes or special assessments) be presumed to have been executed and acknowledged according to law; and all sales under powers, and all judgments, decrees and legal proceedings, and all sales thereunder (sale for taxes and assessments, and judgments and proceedings for the enforcement of taxes and assessments excepted) shall be presumed to be regular and correct, except as against the person or persons in this section above-mentioned and excepted.

History.—s. 4, ch. 4951, 1901; GS 1531; RGS 2731; CGL 4403.

92.28 Records destroyed by fire; land title suits; what may be received in evidence.—In all suits or proceedings concerning any land, or any estate, interest or right in, or any lien or encumbrance upon the same, when it shall be made to appear that the original of any deed, conveyance, map, plat or other written or record evidence has been lost or destroyed, or is not in the power, custody or control of the party wishing to use it on the trial to produce same, and the record thereof has been heretofore destroyed by fire, the court shall receive all such evidence as may have a bearing on the case to establish the execution or contents of any deed, conveyance, map, plat record, or other written evidence so lost or destroyed; provided, that the testimony of the parties themselves shall be received only in such cases, and subject to all the qualifications in respect to such testimony as now provided by law; and provided further, that any writing in the hands of any person or persons, which may become admissible in evidence under the provisions of this section, or any part of this law, shall be rejected and not admitted as evidence, unless the same appear upon the face thereof without erasure, blemish, alteration, interlineation or interpolation in any material part, unless the same shall be explained to the satisfaction of the court, and appear fairly and honestly made in the ordinary course of business.

History.—s. 5, ch. 4951, 1901; GS 1532; RGS 2732; CGL 4404.

cf.—s. 831.04 Penalty for changing record.

92.29 Photographic copies as evidence.—Photographic reproductions made by any federal, state, county, or municipal governmental board, department or agency, in the regular course of business, of any original record, document, paper or instrument in writing, which is, or may be, required or authorized to be made or filed or recorded with said board, department or agency shall in all cases and in all courts and places be admitted and received as

evidence with a like force and effect as the original would be, whether said original record, document, paper, or instrument in writing is in existence or not.
History.—s. 1, ch. 20866, 1941.

92.30 Presumption of death; official findings as evidence.—A written finding of presumed death, made by the Secretary of the Army, the Secretary of the Navy, or other officer or employee of the United States authorized to make such findings, pursuant to the Federal Missing Persons Act (56 Stat. 143, 1092, and P. L. 408, Ch. 371, 2d Sess. 78th Cong.; 50 U. S. C. App. Supp. 1001-17), as now or hereafter amended, or a duly certified copy of such finding, shall be received in any court, office or other place in this state as evidence of the death of the person therein found to be dead, and the date, circumstances and place of his disappearance.
History.—s. 1, ch. 22866, 1945; s. 22, ch. 77-104.

92.31 Missing persons; prisoners; etc.; official reports as evidence.—An official written report or record, or duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, made by any officer or employee of the United States authorized by the act referred to in s. 92.30, or by any other law of the United States to make same, shall be received in any court, office, or other place in this state as evidence that such person is missing, missing in action, interned in a neutral country, or beleaguered, besieged, or captured by an enemy, or is dead, or is alive, as the case may be.
History.—s. 2, ch. 22866, 1945.

92.32 Official findings and reports; presumption of authority to issue or execute.—For the purposes of this law, any finding, report, or record, or duly certified copy thereof, purporting to have been signed by such an officer or employee of the United States as is described above, shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of his authority so to certify.
History.—s. 3, ch. 22866, 1945.

92.33 Written statement concerning injury to person or property; admission as evidence.—Every person who shall take a written statement by any injured person with respect to any accident or with respect to any injury to person or property shall, at the time of taking such statement, furnish to the person making such statement a true and complete copy thereof. Any person having taken, or having possession of any written statement or a copy of such statement, by any injured person with respect to any accident or with respect to any injury to person or property shall, at the request of the person who made such statement or his personal representative, furnish the person who made such statement or his personal representative a true and complete copy thereof. No written statement by an injured person shall be admissible in evidence or otherwise used in any manner in any civil action relating to the subject matter thereof unless it shall be made to appear that a true and complete copy thereof was furnished to the person making such statement at the time of the making thereof, or, if it shall be made to appear that thereafter a person having possession of such statement refused, upon request of the person who made the statement or his personal representatives, to furnish him a true and complete copy thereof.
History.—s. 1, ch. 26482, 1951.

92.38 Comparison of disputed writings.—Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine, shall be permitted to be made by the witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the jury, or to the court in case of a trial by the court, as evidence of the genuineness, or otherwise, of the writing in dispute.
History.—s. 55, ch. 1096, 1861; RS 1121; GS 1539; RGS 2739; CGL 4411.
Note.—Former s. 90.20.

92.39 Evidence of individual's claim against the state in suits between them.—In suits between the state and individuals, no claim for a credit shall be allowed upon trial, but such as shall appear to have been presented to the Comptroller for his examination, and by him disallowed in whole or in part, unless it shall be proved to the satisfaction of the court that the defendant is, at the time of the trial, in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting a claim for such credit at the Comptroller's office by unavoidable accident.
History.—s. 4, Feb. 10, 1837; RS 1122; GS 1540; RGS 2740; CGL 4412.
Note.—Former s. 90.22.

92.40 Reports of building, housing, or health code violations; admissibility.—A copy of a report, notice, or citation of a violation of any building, housing, or health code by a governmental agency charged with the enforcement of such codes, certified by the agency, if otherwise material shall be admissible as evidence.
History.—s. 11, ch. 73-330.

92.50 Oaths, affidavits, and acknowledgments; who may take or administer; requirements.—

(1) IN THIS STATE.—Oaths, affidavits, and acknowledgments required or authorized under the laws of this state (except oaths to jurors and witnesses in court and such other oaths, affidavits and acknowledgments as are required by law to be taken or administered by or before particular officers) may be taken or administered by or before any judge, clerk, or deputy clerk of any court of record within this state, including federal courts, or before any United States commissioner or any notary public within this state. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; however, when taken or administered before any judge, clerk, or deputy clerk of a court of record, the seal of such court may be

affixed as the seal of such officer or person.

(2) IN OTHER STATES, TERRITORIES, AND DISTRICTS OF THE UNITED STATES.—Oaths, affidavits, and acknowledgments required or authorized under the laws of this state, may be taken or administered in any other state, territory, or district of the United States, before any judge, clerk or deputy clerk of any court of record, within such state, territory, or district, having a seal, or before any notary public or justice of the peace, having a seal, in such state, territory, or district; provided, however, such officer or person is authorized under the laws of such state, territory, or district to take or administer oaths, affidavits and acknowledgments. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; provided, however, when taken or administered by or before any judge, clerk, or deputy clerk of a court of record, the seal of such court may be affixed as the seal of such officer or person.

(3) IN FOREIGN COUNTRIES.—Oaths, affidavits, and acknowledgments, required or authorized by the laws of this state, may be taken or administered in any foreign country, by or before any judge or justice of a court of last resort, any notary public of such foreign country, any minister, consul general, charge d'affaires, or consul of the United States resident in such country. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of the officer or person taking or administering the same; provided, however, when taken or administered by or before any judge or justice of a court of last resort, the seal of such court may be affixed as the seal of such judge or justice.

History.—s. 1, ch. 48, 1845; RS 1299; GS 1730; RGS 2945; CGL 4669; s. 1, ch. 23156, 1945; s. 7, ch. 24337, 1947; s. 15, ch. 73-334; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

Note.—Former s. 90.01.

92.51 Oaths, affidavits, and acknowledgments; taken or administered by commissioned officer of U.S. Armed Forces.—

(1) Oaths, affidavits, and acknowledgments required or authorized by the laws of this state may be taken or administered within or without the United States by or before any commissioned officer in active service of the Armed Forces of the United States with the rank of second lieutenant or higher in the Army, Air Force or Marine Corps or ensign or higher in the Navy or Coast Guard when the person required or authorized to make and execute the oath, affidavit, or acknowledgment is a member of the Armed Forces of the United States, the spouse of such member or a person whose duties require his presence with the Armed Forces of the United States.

(2) A certificate endorsed upon the instrument which shows the date of the oath, affidavit, or acknowledgment and which states in substance that the person appearing before the officer acknowledged the instrument as his act or made or signed the instrument under oath shall be sufficient for all intents and purposes. The instrument shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

(3) If the signature, rank, and branch of service or subdivision thereof of any commissioned officer appears upon such instrument, document or certificate no further proof of the authority of such officer so to act shall be required and such action by such commissioned officer shall be prima facie evidence that the person making such oath, affidavit or acknowledgment is within the purview of this act.

History.—ss. 1-3, ch. 61-196; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

Note.—Former s. 90.011.

92.52 Affirmation equivalent to oath.—Whenever an oath shall be required by any law of this state in any proceeding, an affirmation may be substituted therefor.

History.—RS 1300; GS 1731; RGS 2946; CGL 4670; s. 3, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379.

Note.—Former s. 90.02.

TITLE VIII

LIMITATIONS

CHAPTER 95

LIMITATIONS OF ACTIONS; ADVERSE POSSESSION

95.011 Applicability.—A civil action or proceeding, called "action" in this chapter, including one brought by the state, a public officer, a political subdivision of the state, a municipality, a public corporation or body corporate, or any agency or officer of any of them, or any other governmental authority, shall be barred unless begun within the time prescribed in this chapter or, if a different time is prescribed elsewhere in these statutes, within the time prescribed elsewhere.

History.—s. 1, ch. 74-382; s. 1, ch. 77-174.

95.022 Effective date; saving clause.—This act shall become effective on January 1, 1975, but any action that will be barred when this act becomes effective and that would not have been barred under prior law may be commenced before January 1, 1976, and if it is not commenced by that date, the action shall be barred.

History.—s. 36, ch. 74-382.

95.03 Contracts shortening time.—Any provision in a contract fixing the period of time within which an action arising out of the contract may be begun at a time less than that provided by the applicable statute of limitations is void.

History.—ss. 1, 2, ch. 6465, 1913; RGS 2931; CGL 4651; s. 2, ch. 74-382.

95.031 Computation of time.—Except as provided in subsection 95.051(2) and elsewhere in these statutes, the time within which an action shall be begun under any statute of limitations runs from the time the cause of action accrues.

(1) A cause of action accrues when the last element constituting the cause of action occurs. For the purposes of this chapter, the last element constituting a cause of action on an obligation or liability founded on a negotiable or nonnegotiable note payable on demand or after date with no specific maturity date specified in the note, and the last element constituting a cause of action against any endorser, guarantor, or other person secondarily liable on any such obligation or liability founded on any such note, is the first written demand for payment, notwithstanding that the endorser, guarantor, or other person secondarily liable has executed a separate writing evidencing such liability.

(2) Actions for products liability and fraud under s. 95.11(3) must be begun within the period prescribed in this chapter, with the period running from the time the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, instead of running from any date prescribed elsewhere in s. 95.11(3), but in any event within 12 years after the date of delivery of the completed product to its original purchaser or within 12 years after the date of the commission of the alleged fraud, regardless of the date the defect in the product or the fraud was or should have been discovered.

(3) No cause of action on behalf of the state for conversion of property severed from, for trespass upon, or for other unauthorized use or invasion of

state-owned lands, including sovereignty lands, shall be barred by any provision of this chapter. This subsection will expire on July 1, 1980.

History.—s. 3, ch. 74-382; s. 1, ch. 75-234; s. 2, ch. 77-54; ss. 1, 2, ch. 78-289; s. 1, ch. 78-418.
cf.—s.46.051 Applicability of s. 95.031(2) as amended by ch. 78-418.

95.04 Promise to pay barred debt.—An acknowledgment of, or promise to pay, a debt barred by a statute of limitations must be in writing and signed by the person sought to be charged.

History.—s. 1, ch. 4375, 1895; GS 1717; RGS 2930; CGL 4650; s. 6, ch. 74-382.

95.051 When limitations tolled.—

(1) The running of the time under any statute of limitations except ss. 95.281, 95.35, and 95.36 is tolled by:

(a) Absence from the state of the person to be sued.

(b) Use by the person to be sued of a false name that is unknown to the person entitled to sue so that process cannot be served on him.

(c) Concealment in the state of the person to be sued so that process cannot be served on him.

(d) The adjudicated incompetency, before the cause of action accrued, of the person entitled to sue. In any event, the action must be begun within 7 years after the act, event, or occurrence giving rise to the cause of action.

(e) Voluntary payments by the alleged father of the child in paternity actions during the time of the payments.

(f) The payment of any part of the principal or interest of any obligation or liability founded on a written instrument.

Paragraphs (a)-(c) shall not apply if service of process or service by publication can be made in a manner sufficient to confer jurisdiction to grant the relief sought.

(2) No disability or other reason shall toll the running of any statute of limitations except those specified in this section, s. 95.091, the Florida Probate Code, or the Florida Guardianship Law.

History.—s. 16, Nov. 10, 1828; ss. 14, 17, ch. 1869, 1872; RS 1284, 1285; GS 1715, 1716; RGS 2928, 2929; CGL 4648, 4649; s. 4, ch. 74-382; s. 2, ch. 75-234; s. 1, ch. 77-174.
Note.—Former ss. 95.05 and 95.07.
cf.—Chs. 731-735 Florida Probate Code.
Ch. 744 Florida Guardianship Law.

95.091 Limitation on actions to collect taxes.—

(1) Except in the case of taxes for which certificates have been sold or of taxes levied under chapters 198 and 220, any tax lien granted by law to the state or any of its political subdivisions, any municipality, any public corporation or body politic, or any other entity having authority to levy and collect taxes shall expire 5 years after the date the tax is assessed or becomes delinquent, whichever is later. No action may be begun to collect any tax after the expiration of the lien securing the payment of the tax.

(2) If no lien to secure the payment of a tax is provided by law, no action may be begun to collect the tax after 5 years from the date the tax is assessed or becomes delinquent, whichever is later.

(3) Except as otherwise provided by law, the amount of any tax may be determined and assessed within 3 years after the first day of the month following the date on which the tax becomes due and payable. However, this limitation shall be tolled for a period of 2 years by a request for inspection and examination of a taxpayer's books and records by the taxing authority within that period, in which event the period for which tax due may be determined and assessed shall be the 3 years immediately preceding the first day of the month in which a request for inspection and examination of the books and records has been made by the taxing authority.

(4) If administrative or judicial proceedings for review of the tax assessment or collection are begun within a period of limitation prescribed in this section, the running of the period shall be tolled during the pendency of the proceeding.

History.—s. 20, ch. 74-382.

95.10 Causes of action arising out of the state.—When the cause of action arose in another state or territory of the United States, or in a foreign country, and its laws forbid the maintenance of the action because of lapse of time, no action shall be maintained in this state.

History.—s. 18, ch. 1869, 1872; RS 1295; GS 1726; RGS 2940; CGL 4664; s. 5, ch. 74-382.

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(1) WITHIN TWENTY YEARS.—An action on a judgment or decree of a court of record in this state.

(2) WITHIN FIVE YEARS.—

(a) An action on a judgment or decree of any court, not of record, of this state or any court of the United States, any other state or territory in the United States, or a foreign country.

(b) A legal or equitable action on a contract, obligation, or liability founded on a written instrument.

(c) An action to foreclose a mortgage.

(3) WITHIN FOUR YEARS.—

(a) An action founded on negligence.

(b) An action relating to the determination of paternity.

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his employer; except that when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event the action must be commenced within 12 years after the date of actual possession by the owner, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his employer.

(d) An action to recover public money or property held by a public officer or employee, or former public officer or employee, and obtained during, or as a result of, his public office or employment.

(e) An action for injury to a person founded on the design, manufacture, distribution, or sale of personal property that is not permanently incorporated in an improvement to real property, including fixtures.

(f) An action founded on a statutory liability.

(g) An action for trespass on real property.

(h) An action for taking, detaining, or injuring personal property.

(i) An action to recover specific personal property.

(j) A legal or equitable action founded on fraud.

(k) A legal or equitable action on a contract, obligation, or liability not founded on a written instrument, including an action for the sale and delivery of goods, wares, and merchandise, and on store accounts.

(l) An action to rescind a contract.

(m) An action for money paid to any governmental authority by mistake or inadvertence.

(n) An action for a statutory penalty or forfeiture.

(o) An action for libel, slander, assault, battery, false arrest, malicious prosecution, malicious interference, false imprisonment, or any other intentional tort, except as provided in subsection (5).

(p) Any action not specifically provided for in these statutes.

(4) WITHIN TWO YEARS.—

(a) An action for professional malpractice, other than medical malpractice, whether founded on contract or tort; provided that the period of limitations shall run from the time the cause of action is discovered or should have been discovered with the exercise of due diligence. However, the limitation of actions herein for professional malpractice shall be limited to persons in privity with the professional.

(b) An action for medical malpractice shall be commenced within 2 years from the time the incident giving rise to the action occurred or within 2 years from the time the incident is discovered, or should have been discovered with the exercise of due diligence; however, in no event shall the action be commenced later than 4 years from the date of the incident or occurrence out of which the cause of action accrued. An "action for medical malpractice" is defined as a claim in tort or in contract for damages because of the death, injury, or monetary loss to any person arising out of any medical, dental, or surgical diagnosis, treatment, or care by any provider of health care. The limitation of actions within this subsection shall be limited to the health care provider and persons in privity with the provider of health care. In those actions covered by this paragraph in which it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the injury within the 4-year period, the period of limitations is extended forward 2 years from the time that the injury is discovered or should have been discovered with the exercise of due diligence, but in no event to exceed 7 years from the date the incident giving rise to the injury occurred.

(c) An action to recover wages or overtime or damages or penalties concerning payment of wages and overtime.

(d) An action for wrongful death.

(e) An action founded upon a violation of any provision of part I of chapter 517, with the period running from the time the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, but not more than 5 years from the date such violation occurred.

(5) WITHIN ONE YEAR.—

(a) An action for specific performance of a contract.

(b) An action to enforce an equitable lien arising from the furnishing of labor, services, or material for the improvement of real property.

(c) An action to enforce rights under the Uniform Commercial Code—Bulk Transfers.

(6) LACHES.—Laches shall bar any action unless it is commenced within the time provided for legal actions concerning the same subject matter regardless of lack of knowledge by the person sought to be held liable that the person alleging liability would assert his rights and whether the person sought to be held liable is injured or prejudiced by the delay. This subsection shall not affect application of laches at an earlier time in accordance with law.

History.—s. 10, ch. 1869, 1872; s. 1, ch. 3900, 1889; RS 1294; GS 1725; s. 10, ch. 7838, 1919; RGS 2939; CGL 4663; s. 1, ch. 21892, 1943; s. 7, ch. 24337, 1947; s. 24, ch. 57-1; s. 1, ch. 59-188; s. 1, ch. 67-284; s. 1, ch. 71-254; s. 30, ch. 73-333; s. 7, ch. 74-382; s. 7, ch. 75-9; s. 1, ch. 77-174; s. 11, ch. 78-435.

cf.—s. 95.191 Limitations when tax deed holder in possession.
s. 350.32 Limitations on actions against common carriers for rate discrimination.
s. 659.35 Bank statements; limitation on time for objections.
Chs. 671-679 Uniform Commercial Code.
ss. 733.104, 733.710 Suspension of statutes of limitations, decedents' estates.

95.111 Limitations after death of a person served by publication.—In all suits or actions when a decree pro confesso or default was duly entered against a defendant on whom constructive service was duly obtained and the defendant died after the entry of the decree pro confesso or default and before the entry of final decree or judgment, and the death was not suggested to the court before the entry of the final decree or judgment, the final decree or judgment shall be binding and conclusive against persons claiming under the deceased defendant 1 year after its date as if the death had been suggested and the suit or action revived or continued against the proper parties.

History.—s. 1, ch. 11996, 1927; CGL 4947; s. 46, ch. 67-254; s. 21, ch. 74-382.
Note.—Former s. 62.08.

95.12 Real property actions.—No action to recover real property or its possession shall be maintained unless the person seeking recovery or his ancestor, predecessor, or grantor was seized or possessed of the property within 7 years before the commencement of the action.

History.—s. 2, ch. 1869, 1872; RS 1287; GS 1718; RGS 2932; CGL 4652; s. 8, ch. 74-382.

95.13 Real property actions; possession by legal owner presumed.—In every action to recover real property or its possession, the person establishing legal title to the property shall be presumed to have been possessed of it within the time prescribed by law. The occupation of the property by any other person shall be in subordination to the legal title unless the property was possessed adversely to the

legal title for 7 years before the commencement of the action.

History.—s. 4, ch. 1869, 1872; RS 1289; GS 1720; RGS 2934; CGL 4654; s. 9, ch. 74-382.

95.14 Real property actions; limitation upon action founded upon title.—No cause of action or defense to an action founded on the title to real property, or to rents or service from it, shall be maintained unless:

(1) The person prosecuting the action or making the defense, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor, or grantor of the person, was seized or possessed of the real property within 7 years before commencement of the action; or

(2) Title to the real property was derived from the United States or the state within 7 years before commencement of the action. The time under this subsection shall not begin to run until the conveyance of the title from the state or the United States.

History.—s. 3, ch. 1869, 1872; RS 1288; GS 1719; RGS 2933; CGL 4653; s. 10, ch. 74-382.

95.16 Real property actions; adverse possession under color of title.—

(1) When the occupant, or those under whom he claims, entered into possession of real property under a claim of title exclusive of any other right, founding the claim on a written instrument as being a conveyance of the property, or on a decree or judgment, and has for 7 years been in continued possession of the property included in the instrument, decree, or judgment, the property is held adversely. If the property is divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract. Adverse possession commencing after December 31, 1945 shall not be deemed adverse possession under color of title until the instrument upon which the claim of title is founded is recorded in the office of the clerk of the circuit court of the county where the property is located.

(2) For the purpose of this section, property is deemed possessed in any of the following cases:

(a) When it has been usually cultivated or improved.

(b) When it has been protected by a substantial enclosure. All contiguous land protected by the enclosure shall be property included within the written instrument, judgment, or decree, within the purview of this section.

(c) When, although not enclosed, it has been used for the supply of fuel or fencing timber for husbandry or for the ordinary use of the occupant.

(d) When a known lot or single farm has been partly improved, the part that has not been cleared or enclosed according to the usual custom of the county is to be considered as occupied for the same length of time as the part improved or cultivated.

History.—s. 5, ch. 1869, 1872; RS 1290; GS 1721; RGS 2935; CGL 4655; s. 1, ch. 19253, 1939; s. 1, ch. 22897, 1945; ss. 11, 12, ch. 74-382; s. 1, ch. 77-174.

95.18 Real property actions; adverse possession without color of title.—

(1) When the occupant or those under whom he claims have been in actual continued occupation of real property for 7 years under a claim of title exclusive of any other right, but not founded on a written instrument, judgment, or decree, the property actually occupied shall be held adversely if the person claiming adverse possession made a return of the property by proper legal description to the property appraiser of the county where it is located within 1 year after entering into possession and has subsequently paid all taxes and matured installments of special improvement liens levied against the property by the state, county, and municipality.

(2) For the purpose of this section, property shall be deemed to be possessed in the following cases only:

(a) When it has been protected by substantial enclosure.

(b) When it has been usually cultivated or improved.

History.—s. 7, ch. 1869, 1872; RS 1291; GS 1722; RGS 2936; CGL 4656; s. 1, ch. 19254, 1939; ss. 13, 14, ch. 74-382; s. 1, ch. 77-102.

95.191 Limitations when tax deed holder in possession.—When the holder of a tax deed goes into actual possession of the real property described in the tax deed, no action to recover possession of the property shall be maintained by a former owner or other adverse claimant unless the action commenced is begun within 4 years after the holder of the tax deed has gone into actual possession. When the real property is adversely possessed by any person, no action shall be brought by the tax deed holder unless the action is begun within 4 years from the date of the deed.

History.—s. 64, ch. 4322, 1895; GS 591; s. 61, ch. 5596, 1907; RGS 794; s. 2, ch. 12409, 1927; CGL 1020; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 28, ch. 73-332; s. 1, ch. 77-174.

Note.—Former ss. 196.06, 197.725, 197.286.

95.192 Limitation upon acting against tax deeds.—

(1) When a tax deed has been issued to any person under s. 197.271 for 4 years, no action shall be brought by the former owner of the property or any claimant under him.

(2) When a tax deed is issued conveying or attempting to convey real property before a patent has been issued thereon by the United States, or before a conveyance by the state, and thereafter a patent by the United States or a conveyance by the state is issued to the person to whom the property was assessed or a claimant under him, and the tax deed grantee or a claimant under him has paid the taxes for four successive years at any time after the issuance of the patent or conveyance, the patentee, or grantee, and any claimant under him shall be presumed to have abandoned the property and any right, title, and interest in it. Upon such abandonment, the tax deed grantee and any claimant under him is the legal owner of the property described by the tax deed.

(3) This statute applies whether the tax deed grantee or any claimant under him has been in actual possession of the property described in the tax deed or not. If a tax deed has been issued to property in the actual possession of the legal owner and he or any claimant under him continues in actual possession 1 year after issuance of the tax deed and before

an action to eject him is begun, subsections (1) and (2) shall not apply.

History.—s. 27, ch. 73-332.

95.21 Adverse possession against lands purchased at sales made by executors.—The title of any purchaser, or his assigns, who has held possession for 3 years of any real or personal property purchased at a sale made by an executor, administrator, or guardian shall not be questioned because of any irregularity in the conveyance or any insufficiency or irregularity in the court proceedings authorizing the sale, whether jurisdictional or not, nor shall it be questioned because the sale is made without court approval or confirmation or under a will or codicil. The title shall not be questioned at any time by anyone who has received the money to which he was entitled from the sale. This section shall not bar an action for fraud or an action against the executor, administrator, or guardian for personal liability to any heir, distributee, or ward.

History.—s. 1, ch. 3134, 1879; RS 1293; GS 1724; RGS 2938; CGL 4658; s. 1, ch. 20954, 1941; s. 3, ch. 22897, 1945; s. 15, ch. 74-382; s. 1, ch. 77-174.

95.22 Limitation upon claims by remaining heirs, when deed made by one or more.—

(1) When any person owning real property or any interest in it dies and a conveyance is made by one or more of his heirs or devisees, purporting to convey, either singly or in the aggregate, the entire interest of the decedent in the property or any part of it, then no person shall claim or recover the property conveyed after 7 years from the date of recording the conveyance in the county where the property is located.

(2) This section shall not apply to persons whose names appear of record as devisees under the will or as the heirs in proceedings brought to determine their identity in the office of the judge administering the estate of decedent.

History.—s. 1, ch. 10168, 1925; CGL 4659; s. 14, ch. 20954, 1941; s. 15, ch. 73-334; s. 16, ch. 74-382.

95.231 Limitations where deed or will on record.—

(1) Five years after the recording of a deed or the probate of a will purporting to convey real property, from which it appears that the person owning the property attempted to convey or devise it, the deed or will shall be held to authorize the conveyance or devise of, or to convey or devise, the fee simple title to the real property, or any interest in it, of the person signing the instrument, as if there had been no lack of seal or seals, witness or witnesses, defect in acknowledgment or relinquishment of dower, in the absence of fraud, adverse possession, or pending litigation. The instrument shall be admissible in evidence.

(2) After 20 years from the recording of a deed or the probate of a will purporting to convey real property, no person shall assert any claim to the property against the claimants under the deed or will or their successors in title.

(3) This law is cumulative to all laws on the subject matter.

History.—ss. 1, 2, ch. 10171, 1925; CGL 4660, 4661; ss. 1-4, ch. 21790, 1943; s. 35, ch. 69-216; s. 17, ch. 74-382.

Note.—Former ss. 95.23, 95.26.

95.281 Limitations; instruments encumbering real property.—

(1) The lien of a mortgage or other instrument encumbering real property, herein called mortgage, except those specified in subsection (5), shall terminate after the expiration of the following periods of time:

(a) If the final maturity of an obligation secured by a mortgage is ascertainable from the record of it, 5 years after the date of maturity.

(b) If the final maturity of an obligation secured by a mortgage is not ascertainable from the record of it, 20 years after the date of the mortgage.

(c) For all obligations, including taxes, paid by the mortgagee, 5 years from the date of payment. A mortgagee shall have no right of subrogation to the lien of the state for taxes paid by the mortgagee to protect the security of his mortgage unless he obtains an assignment from the state of the tax certificate. Redemption of the tax certificate shall be insufficient for subrogation.

(2) If an extension agreement executed by the mortgagee or his successors in interest and the mortgagor or his successors in interest is recorded, the time shall be extended as follows:

(a) If the final maturity of the obligation, as extended, secured by the mortgage is ascertainable from the record of the extension agreement, 5 years after the date of final maturity of the obligation as extended.

(b) If the final maturity of the obligation, as extended, secured by the mortgage is not ascertainable from the record of the extension agreement, 20 years after the date of the extension agreement.

(3) If the record of the mortgage shows that it secures an obligation payable in installments and the maturity date of the final installment of the obligation is ascertainable from the record of the mortgage, the time shall run from the maturity date of the final installment.

(4) The time shall be extended only as provided in this law and shall not be extended by any other agreement, nonresidence, disability, part payment, operation of law, or any other method.

(5) This section shall not apply to mortgages or deeds of trust executed by any railroad or other public utility corporation or by any receiver or trustee of them or to liens or notices of liens under chapter 713.

History.—ss. 1-7, ch. 22560, 1945; s. 1, ch. 29977, 1955; s. 18, ch. 74-382; s. 1, ch. 77-174.

Note.—Former ss. 95.28-95.32.

95.35 Termination of contracts to purchase real estate in which there is no maturity date.—Whenever:

(1) Any person contracts by written agreement to purchase real property before July 1, 1972, and the final maturity of the obligation is not ascertainable from the record of the contract, or accepts an assignment of such a contract, but

(2) Even though the existence of the contract or assignment appears from the record of the instrument or by reference to it in another recorded instrument, such person has not recorded a deed to the property or a judgment recognizing his rights to the property and is not in actual possession of the prop-

erty as defined in s. 95.16, then

he and those claiming under him shall have no further interest in the property by virtue of the contract or assignment. In these circumstances, the record of the contract or assignment, or other record reference to either, shall no longer constitute actual or constructive notice to any person acquiring any interest in the property.

History.—s. 1, ch. 24292, 1947; s. 19, ch. 74-382; s. 1, ch. 77-174.

95.36 Dedications to municipalities for park purposes.—

(1) Dedications of land to municipalities for park purposes that have been recorded for 30 years shall not be challenged by the dedicator or any other person when the land has been put to some municipal use during the period of dedication or has been conveyed by the municipality by a deed recorded for 7 years, and all rights of the dedicator and all other persons in the land are terminated.

(2) When dedications of land to municipalities for park purposes have been put to some municipal use, the dedication was accepted by written instrument or by actions constituting acceptance, and the municipality vacates the park and the ordinance or resolution vacating it recites that the municipality is surrendering all of its title to the dedicated land, the fee simple title shall not be challenged in any action by any person, except in cases of fraud, and the rights of all persons except the owner of the fee simple title are terminated.

History.—s. 1, ch. 25503, 1949; s. 1, ch. 70-337; s. 24, ch. 74-382.

95.361 Roads presumed to be dedicated.—

(1) When a road, constructed by a county, a municipality, or the Division of Road Operations, has been maintained or repaired continuously and uninterruptedly for 4 years by the county, municipality, or Division of Road Operations, jointly or severally, the road shall be deemed to be dedicated to the public to the extent in width that has been actually maintained for the prescribed period, whether the road has been formally established as a public highway or not. The dedication shall vest all right, title, easement, and appurtenances in and to the road in:

(a) The county, if it is a county road;

(b) The municipality, if it is a municipal street or road; or

(c) The state, if it is a road in the state highway system or state park road system,

whether there is a record of a conveyance, dedication, or appropriation to the public use or not.

(2) The filing of a map in the office of the clerk of the circuit court of the county where the road is located showing the lands and reciting on it that the road has vested in the state, a county, or a municipality in accordance with subsection (1) or by any other means of acquisition, duly certified by:

(a) The secretary of the Department of Transportation, if the road is a road in the state highway system or state park road system;

(b) The chairman and clerk of the board of county commissioners of the county, if the road is a county road; or

(c) The mayor and clerk of the municipality, if the road is a municipal road or street,

shall be prima facie evidence of ownership of the land by the state, county, or municipality, as the case may be.

History.—s. 110, ch. 29965, 1955; ss. 23, 35, ch. 69-106; s. 23, ch. 74-382; s. 1, ch. 77-174.

Note.—Former s. 337.31.

TITLE IX

ELECTORS AND ELECTIONS

CHAPTER 97

QUALIFICATION AND REGISTRATION OF ELECTORS

97.011 Short title.—Chapters 97 through 106 inclusive shall be known and may be cited as "The Florida Election Code."

History.—s. 1, ch. 26870, 1951; s. 1, ch. 65-60; s. 1, ch. 77-175.

97.012 Secretary of State as chief election officer.—The Secretary of State is the chief election officer of the state, and it is his responsibility to:

(1) Obtain and maintain uniformity in the application, operation, and interpretation of the election laws.

(2) Actively seek out and collect the data and statistics necessary to knowledgeably scrutinize the effectiveness of election laws.

(3) Provide technical assistance to the supervisors of elections on voter education and election personnel training services.

History.—s. 1, ch. 75-98.

97.021 Definitions.—The following words and phrases when used in this code shall be construed as follows:

(1) "Election" means any primary election, special primary election, special election, general election, or presidential preference primary election.

(2) "Primary election" means an election held preceding the general election for the purpose of nominating a party nominee to be voted for in the general election to fill a national, state, county, or district office. The first primary is a nomination or elimination election; the second primary is a nominating election only.

(3) "Special primary election" is a special nomination election designated by the Governor, called for the purpose of nominating a party nominee to be voted on in a general or special election.

(4) "General election" means an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law.

(5) "Special election" is a special election called for the purpose of voting on a party nominee to fill a vacancy in the national, state, county, or district office.

(6) "Nonpartisan office" means an office for which a candidate is prohibited from campaigning or qualifying for election or retention in office based on party affiliation.

(7) "Elector" is synonymous with the word "voter" or "qualified elector or voter", except where the word is used to describe presidential electors.

(8) "Absent elector" means any registered and qualified voter who:

(a) Is unable without another's assistance to attend the polls.

(b) Is an inspector, a poll worker, a deputy voting machine custodian, a deputy sheriff, a supervisor of elections, or a deputy supervisor who is assigned to a different precinct than that in which he is registered to vote.

(c) On account of the tenets of his religion, cannot attend the polls on the day of a general, special, or primary election.

(d) Has changed his residency to another county in Florida within the time period during which the registration books are closed for the election for which the ballot is requested.

(e) Will not be in the county of his residence during the hours the polls are open for voting on the day of an election, except that any person confined in prison shall not be entitled to vote absentee.

(f) Has changed his residency to another state and is ineligible under the laws of that state to vote

in the general election; however, this shall pertain only to presidential ballots.

(9) "Ballot" or "official ballot" when used in reference to:

(a) "Voting machines" means that portion of the printed strips of cardboard, paper, or other material that is within the ballot frames containing the names of candidates, or a statement of a proposed constitutional amendment or other question or proposition submitted to the electorate at any election.

(b) "Paper ballots" means that printed sheet of paper containing the names of candidates, or a statement of proposed constitutional amendments or other questions or propositions submitted to the electorate at any election, on which sheet of paper an elector casts his vote.

(c) "Electronic or electromechanical devices" means a ballot which is voted by the process of punching or marking with a marking device for tabulation by automatic tabulating equipment or data processing equipment.

(10) "Voting booth" or "booth" means that booth or enclosure wherein an elector casts his ballot, be it a paper ballot, a voting machine ballot, or a ballot cast for tabulation by an electronic or electromechanical device.

(11) "Election board" means the clerk and inspectors appointed to conduct an election.

(12) Wherever the word "supervisor" is used it shall mean the supervisor of elections.

(13) "Weekday" shall include every day but Sunday.

(14) "Minor political party" is any group as defined in this subsection which on January 1 preceding a primary election does not have registered as members five percent of the total registered electors of the state. Any group of citizens organized for the general purposes of electing to office qualified persons and determining public issues under the democratic processes of the United States may become a minor political party of this state by filing with the Department of State a certificate showing the name of the organization, the names of its current officers, including the members of its executive committee, and a copy of its constitution or bylaws. It shall be the duty of the minor political party to notify the Department of State of any changes in the filing certificate within five days of such changes.

(15) "Members of the Merchant Marine of the United States" means persons (other than members of the Armed Forces) employed as officers or members of crews of vessels documented under the laws of the United States, or of vessels owned by the United States, or of vessels of foreign-flag registry under charter to or control of the United States, and persons (other than members of the Armed Forces) enrolled with the United States for employment, or for training for employment, or maintained by the United States for emergency relief service, as officers or members of crews of any such vessel; but does not include persons so employed, or enrolled for such employment, or for training for such employment, or maintained for emergency relief service, on the Great Lakes or the inland waterways.

(16) "Armed Forces" shall be interpreted to mean and include the Army of the United States, Navy, Air Force of the United States, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service, when on active duty.

(17) "Dependent" means any person who is in fact a dependent.

(18) "Candidate" means any person to whom any one or more of the following applies:

(a) Any person who seeks to qualify for nomination or election by means of the petitioning process;

(b) Any person who receives contributions or makes expenditures, or gives his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination, election, or retention to public office;

(c) Any person who appoints a treasurer and designates a primary depository; or

(d) Any person who files qualification papers and subscribes to a candidate's oath as required by law.

However, this definition shall not include any candidate for a political party executive committee.

(19) "Branch office" means a substantial structure, fixed or movable, or a motor vehicle, bus, or other mobile unit, in which voter registrations will be accepted, which office and location shall be designated by the supervisor.

(20) "Newspaper of general circulation" means a newspaper printed in the language most commonly spoken in the area within which it circulates and which is readily available for purchase by all inhabitants in the area of circulation, but does not include a newspaper intended primarily for members of a particular professional or occupational group, a newspaper the primary function of which is to carry legal notices, or a newspaper that is given away primarily to distribute advertising.

(21) "Public office" means any federal, state, county, or school or other district office or position which is filled by vote of the electors.

History.—s. 2, ch. 6469, 1913; RGS 300; s. 1, ch. 8582, 1921; CGL 356; s. 1, ch. 13761, 1929; s. 1, ch. 18060, 1937; s. 1, ch. 19663, 1939; s. 1, ch. 26870, 1951; s. 1, ch. 28156, 1953; s. 1, ch. 61-370; s. 2, ch. 65-60; s. 1, ch. 67-32; s. 2, ch. 67-142; s. 2, ch. 67-386; s. 1, ch. 69-137; s. 1, ch. 69-280; s. 1, ch. 69-377; s. 1, ch. 70-269; s. 1, ch. 70-439; s. 1, ch. 71-206; s. 1, ch. 73-157; s. 31, ch. 73-333; s. 23, ch. 77-104; s. 1, ch. 77-175; s. 1, ch. 79-157; s. 24, ch. 79-400.

Note.—Former s. 102.02.

97.041 Qualifications to register or vote.—

(1)(a) Any person at least 18 years of age who is a citizen of the United States and a permanent resident of Florida and of the county where he wishes to register is eligible to register with the supervisor when the registration books are open. Upon registration, such person shall be a qualified elector of that county.

(b) Any person who will become 18 years of age on or before the date of any election and who is otherwise qualified shall be entitled, within 180 days preceding his 18th birthday, to preregister with the supervisor for any election occurring on or after his 18th birthday, when the registration books are open.

(2) When any person presents himself to register and there is any question regarding his qualifications, the supervisor may require satisfactory proof of his qualifications.

(3) The following persons are not entitled to register or to vote:

(a) Persons adjudicated mentally incompetent in this or any other state and who have not had their

competency restored pursuant to law.

(b) Persons convicted of any felony by any court of record and whose civil rights have not been restored.

(4) Any person who is not registered shall not be entitled to vote.

History.—ss. 1, chs. 3850, 3879, 1889; RS 154; s. 1, ch. 4328, 1895; GS 170; RGS 215; s. 1, ch. 8583, 1921; CGL 248; s. 1, ch. 26870, 1951; s. 2, ch. 28156, 1953; s. 1, ch. 63-408; s. 3, ch. 65-60; s. 1, ch. 67-67; ss. 1, 4, ch. 71-108; s. 1, ch. 72-197; s. 2, ch. 73-157; s. 31, ch. 73-333; s. 1, ch. 74-5; s. 1, ch. 77-175.
Note.—Former s. 98.01.

97.051 Oath and identification of elector for registration.—

(1) A person making application for registration as an elector shall take the following oath: "I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, and that I am qualified to register as an elector under the Constitution and laws of the State of Florida."

(2) The person shall also execute a written statement under oath that he has never previously registered to vote in any other jurisdiction or that he has been registered, stating the place of the last prior registration and the name under which he was registered and requesting the proper official in that jurisdiction to strike his registration from the record. The oath may be administered by the registration officer. The registration officer shall, within 2 weeks of the execution of the written statement, notify the supervisor in that jurisdiction to cancel the prior registration. The applicant shall also give a sufficient description of himself as to reasonably identify his person.

History.—s. 7, ch. 3879, 1889; RS 161; s. 8, ch. 4328, 1895; GS 178; RGS 222; CGL 257; s. 4, ch. 25383, 1949; s. 1, ch. 26870, 1951; s. 3, ch. 69-280; ss. 2, 4, ch. 71-108; s. 1, ch. 72-63; s. 2, ch. 77-175.
Note.—Former s. 98.11.

97.061 Special registration for electors requiring assistance.—

(1) Any person who is otherwise eligible to register but who is unable to read or write or who, because of some physical disability likely to continue for a prolonged period of time, needs assistance in voting shall upon his request be registered by the supervisor under the procedure prescribed by this section and shall be entitled to receive assistance at the polls under the conditions prescribed by this section.

(2) The supervisor, upon finding that a person is qualified to register pursuant to this section, shall enter in his registration record a specific description of the particular disabling impairment and a precise, accurate, and full description of the physical appearance of the person, giving, in addition to the information required of all other electors, the person's weight, height, color of eyes, description of hair, complexion, and any other distinguishing characteristic which would be of assistance in establishing his identity.

(3) Upon registering any person pursuant to this section, the supervisor shall make a notation on the registration books or records which are delivered to the polls on election day that such person is eligible for assistance in voting, and the supervisor may issue such person a special registration identification card or make some notation on the regular registration identification card that such person is eligible for assistance in voting. Such person shall be entitled to receive the assistance of two election officials or some other person of his own choice who has not previously so acted for more than one other person during the election, except that a blind elector may receive the assistance of any person of his own choice, without the necessity of executing the "Declaration to Secure Assistance" prescribed in s. 101.051. Such person shall notify the supervisor of any change in his condition which makes it unnecessary for him to receive assistance in voting.

History.—s. 14, ch. 6469, 1913; RGS 318; CGL 375; s. 3, ch. 25388, 1949; s. 6, ch. 25391, 1949; s. 1, ch. 26870, 1951; s. 3, ch. 28156, 1953; s. 1, ch. 59-446; s. 1, ch. 61-358; s. 4, ch. 65-60; s. 3, ch. 77-175; s. 1, ch. 79-366.
Note.—Former ss. 97.06 and 102.21.

97.063 Eligibility for absentee registration.—

(1) The following persons shall be entitled to register absentee if qualified pursuant to s. 97.041 and as otherwise provided by law:

(a) Members of the Armed Forces while in the active service and their spouses and dependents;

(b) Members of the Merchant Marine of the United States and their spouses and dependents;

(c) Citizens of the United States who are permanent residents of the state and are temporarily residing outside the territorial limits of the United States and the District of Columbia, and their spouses and dependents when residing with or accompanying them;

(d) Citizens of the United States who are permanent residents of the state and are temporarily residing outside the state or who are residing within the state but temporarily outside the county of their permanent residence; and

(e) Residents of the state who are physically disabled and unable to register in person.

(f) Residents of the state who are unable to register in person.

(2) The federal postcard application, as provided by 50 U.S.C. s. 1464, shall be accepted as a request for an application for absentee registration when duly executed by any person described in paragraphs (a)-(c) of subsection (1). Any person described in paragraph (d) or paragraph (e) of subsection (1) may obtain an application for absentee registration by writing to the supervisor of elections for the county of his permanent residence stating that registering in person would cause a hardship due to temporary absence from the state or physical disability, or stating that he is unable to register in person, and requesting that an application for absentee registration be provided to him.

(3) Upon receipt of the duly executed federal postcard application or other such request for an application for absentee registration as provided for by subsection (2), the supervisor of elections shall mail to the applicant an application for absentee registration if the applicant has never registered in the county or if the applicant has registered and has failed to reregister. Upon receipt of such application, the supervisor shall note on the application the precinct in which the voter is registered.

(4) The application for absentee registration shall be in substantially the following form:

APPLICATION FOR ABSENTEE

REGISTRATION

I, ..., being first duly sworn, on oath say that I am a citizen of the United States and eligible to become a legal voter in the State of Florida; that my legal residence is ..... Street (or Avenue) in the municipality of ....., County of .....; that I have not been and will not be able to register personally for the reason that .....; that my full name is .....; that I was born on ..... at .....; that, if I was born in a foreign country, I obtained citizenship by means of .....; that my sex is .....; that my race is .....; that my party affiliation is .....; that I desire a registration certificate be mailed to me at .....; and I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, that I am 18 years of age, or will have attained the age of 18 on or before the election, and that I am qualified to vote under the Constitution and laws of the State of Florida; that if I am currently registered in another county or state, my registration in ..... County, State of ..... is recorded at the following address:

(Registering Official)

(Street), (City), (State)

(Signature)

Sworn to and subscribed to before me this ..... day of ....., 19.....

(Signature and title of person administering oath)

or the signatures of two registered voters of ..... County, Florida:.....

.....

(5) The application for absentee registration shall be witnessed either by a notary or other official authorized to administer oaths or by two registered electors of the county for which the application is requested.

(6) If the elector is registered in any other county of Florida, or in any other state, the supervisor shall also have the elector complete a separate form, signed by the elector, to be mailed by the supervisor to the registering official in the jurisdiction in which such elector was last registered for the purpose of advising such official to cancel the elector's former registration.

(7) Upon the return of the application for absentee registration form, the supervisor shall properly register the applicant's name in the registration books of the county and maintain on file, as the basis for such registration, the properly filled out form received from the applicant; provided no absentee registrations shall be accepted when the registration books are closed.

History.—s. 1, ch. 59-217; s. 5, ch. 65-60; s. 1, ch. 70-119; s. 3, ch. 72-63; s. 3, ch. 73-157; s. 31, ch. 73-333; s. 3, ch. 74-5; s. 3, ch. 77-175; s. 25, ch. 79-400.

97.0631 Armed Services overseas.—A member of the Armed Services, upon receiving an overseas assignment, may notify the supervisor of elections in the county where registered of his overseas address, and thereafter, the supervisor shall notify said serviceman at least 90 days prior to regular primary and general elections and as soon as possible prior to any special election so that said serviceman may follow the procedures for absentee voting provided by law.

History.—s. 1, ch. 67-454; s. 8, ch. 69-280; s. 3, ch. 77-175.

97.064 Registration of federal employees and military personnel when previously registered.—

(1) When a person holding a position in the Government of the United States or in the military service (including the spouse and dependents of such persons) is, by reason of his duties incident to his position, required to be absent from the state during the period of time required for the registration of qualified electors to vote in a primary or general election as now required by law and his registration has lapsed because of his failure to return the notice mailed to his address of record by the supervisor in compliance with the provisions to purge the registration books, it is lawful in such case for such elector, if retaining his qualifications to vote under his last registration, to complete and forward to the supervisor of the county in which he is registered a federal postcard application and thereby have his name transferred from the inactive files to the present registration books.

(2) Upon receipt of the federal postcard application the supervisor shall make out his renewal certificate of registration, transferring the elector's prior registration to the new registration books, and the renewal or transfer of registration, when so made, is valid for all purposes, provided the elector retains his residence and other qualifications to vote at the place specified in the registration. Such reinstatement shall be permitted even though the registration books or records may have been closed in preparation for the impending election.

(3) No person entitled to have his name reinstated, as provided in subsection (1), shall be deprived of voting in any election because of failure to reregister after his name has been stricken from the registration books, but the supervisor or the registering official shall require him to execute the federal postcard application before allowing him to vote.

History.—s. 1, ch. 19333, 1939; CGL 1940 Supp. 280(69); s. 1, ch. 26370, 1951; s. 10, ch. 65-60; s. 1, ch. 67-386; s. 3, ch. 77-175.
Note.—Former s. 102.14; s. 97.131.

97.065 Administration of oaths; military personnel, federal employees, and other absentee registrants.—For the purposes of this code, oaths may be administered and attested by any commissioned officer in the active service of the Armed Forces, any member of the Merchant Marine of the United States designated for this purpose by the Secretary of Commerce, any civilian official empowered by state or federal law to administer oaths, or any civilian employee designated by the head of any department or agency of the United States, except when this code requires an oath to be administered and attested by another official specifically named.

History.—s. 6, ch. 29904, 1955; s. 42, ch. 65-380; s. 4, ch. 72-63; s. 3, ch. 77-175.
Note.—Former s. 101.695.

97.071 Registration identification card.—A registration identification card shall be furnished all electors registering under the permanent registration system and shall contain:

(1) Elector's registration number.

(2) Date of registration.
(3) Full name.
(4) Sex.
(5) Party affiliation.
(6) Date of birth.
(7) Race.
(8) Residence address.
(9) Precinct or district number.
(10) Signature of registration officer.
(11) Place for elector's signature.
(12) Other information deemed necessary by the Department of State.

History.—s. 13, ch. 3879, 1889; RS 167; s. 15, ch. 4328, 1895; GS 191, 192; RGS 235, 236; CGL 288, 289; s. 4, ch. 24203, 1947; s. 11, ch. 25035, 1949; s. 1, ch. 26870, 1951; s. 10, ch. 27991, 1953; s. 6, ch. 65-60; s. 8, ch. 69-377; ss. 10, 35, ch. 69-106.
Note.—Former ss. 98.31 and 98.32.

97.072 Replacement of registration identification card.—Each elector has the right to a replacement of his registration identification card without charge when same becomes defaced, upon his surrendering the card to the supervisor. Any elector who loses his card is entitled to receive a duplicate thereof from the supervisor of the county in which he was registered upon application. He shall apply for a new registration identification card, stating under oath administered by the supervisor that his card was lost and was not sold, bartered, or willfully destroyed or lost. The supervisor, if he feels the facts justify it, shall issue a duplicate card.

History.—s. 15, ch. 3879, 1889, RS 169; s. 17, ch. 4328, 1895; GS 198; RGS 242; CGL 295; s. 1, ch. 26870, 1951; s. 8, ch. 65-60; s. 9, ch. 69-280; s. 3, ch. 77-175.
Note.—Former s. 98.38; s. 97.101.

97.091 Electors must be registered in precinct; provisions for residence or name change.—

(1) No person shall be permitted to vote in any election precinct or district other than the one in which he has his permanent place of residence and in which he is registered; provided however, that persons temporarily residing outside of the county shall be registered in the precinct in which the county courthouse is located when they have no permanent address in the county and it is their intention to remain a resident of Florida and of the county in which they are registered to vote.

(2)(a) An elector who moves from the precinct within the county in which registered may be permitted to vote in the precinct to which he has moved his residence in any election prior to and including the next general election, provided such elector furnishes at the polls proof of his new residence address and executes an affidavit under oath in substantially the following form:

AFFIDAVIT

Change of Residence of Registered Voter

I, (Name of voter), being first duly sworn under oath, certify that my former residence was (Address) in the municipality of ....., in ..... County, Florida, and I was registered to vote in the ..... precinct of ..... County, Florida; that I have not voted in the precinct of my former registration in this election; that I now reside at (Address) in the Municipality of ....., in ..... County, Florida, and am therefore eligible to vote in the ..... precinct of ..... County, Florida; and I further certify that I am otherwise legally registered and entitled to vote.

(Signature of voter whose residence has changed)

Sworn to and subscribed to before me this ..... day of ....., 19.....

(Signature and title of person administering oath)

(b) An elector whose name changes because of marriage or other legal process may be permitted to vote, provided such elector furnishes at the polls proof of his new name and executes an affidavit under oath in substantially the following form:

AFFIDAVIT

Change of Name of Registered Voter

I, (New name of voter), being first duly sworn under oath, certify that my name has been changed because of marriage or other legal process. My former name and address appear on the registration books of precinct ..... as follows:
Name .....
Address.....
Municipality .....
County .....
Florida, Zip .....
My present name and address are as follows:
Name .....
Address.....
Municipality .....
County .....
Florida, Zip .....
and I further certify that I am otherwise legally registered and entitled to vote.

(Signature of voter whose name has changed)

Sworn to and subscribed to before me this ..... day of ....., 19.....

(Signature and title of person administering oath)

(c) Such affidavit, when properly executed and presented at the precinct in which such elector is entitled to vote shall entitle such elector to vote as provided in this subsection. Upon receipt of an affidavit certifying a change in residence or change in name, the supervisor shall as soon as practicable make the necessary changes in the registration records of the county to reflect the change in residence or change in name of such elector.

(d) In accordance with the provisions of s. 98.051, after the general election has passed subsequent to the change of residence or name, the elector whose residence has changed may notify the supervisor in writing and obtain a voter identification card reflecting the new residence address; and, in the case of change of name, such elector shall notify the supervisor in person to be entitled to vote in any future elections.

(e) A request for an absentee ballot pursuant to s. 101.62 which indicates that the elector has had a change of residence from that in the supervisor's records shall be sufficient as the notice to the supervisor of elections of change of residence required by this section. Upon receipt of such request for an absentee ballot from an elector who has changed his

place of residence, the supervisor of elections shall provide the elector with the proper ballot for the precinct in which he then has his permanent place of residence.

(3) When an elector's name does not appear on the registration books of the election precinct in which he is registered and when he cannot present a valid registration identification card, he may have his name restored if the supervisor is otherwise satisfied that he is validly registered, that his name has been erroneously omitted from the books, and that he is entitled to have his name restored. The supervisor, if he is satisfied as to the elector's previous registration, shall allow such person to vote and shall thereafter issue a duplicate registration identification card.

History.—s. 13, ch. 3879, 1889; RS 167; s. 15, ch. 4328, 1895; GS 192; RGS 236; CGL 289; s. 4, ch. 24203, 1947; s. 11, ch. 25035, 1949; s. 1, ch. 26870, 1951; s. 4, ch. 28156, 1953; s. 7, ch. 65-60; s. 1, ch. 71-307; s. 3, ch. 77-175; s. 6, ch. 78-403.
Note.—Former s. 98.32.

97.102 Electors moving within the state or out of the state.—

(1) An elector who changes his residence to another county in Florida from the county in Florida in which he is registered as an elector after the books in the county to which he has changed his residence are closed for any general, primary, or special election shall be permitted to vote absentee in the county of his former residence in that election for President and Vice President, United States Senator, statewide offices, and statewide issues. Such person shall not be permitted to vote in the county of his former residence after the general election.

(2) An elector registered in this state who moves his permanent residence to another state and who is prohibited by the laws of that state from voting for the offices of President and Vice President of the United States shall be permitted to vote absentee in the county of his former residence for those offices.

History.—s. 1, ch. 69-136; s. 11, ch. 69-280; s. 4, ch. 73-157; s. 31, ch. 73-333; s. 3, ch. 77-175; s. 1, ch. 79-365.

97.1031 Notice of change of residence or name.—When an elector moves from the address named on his voter registration records, it is the duty of such elector to notify the office of the supervisor of elections in writing of such change. When the name of an elector is changed by marriage or other legal process, it is the duty of such elector to notify the office of the supervisor of elections in person of such change. The supervisor of elections shall make the necessary changes in the elector's records upon receipt of such notice of a change of residence or name.

History.—s. 7, ch. 78-403.

97.111 How persons may register change of party affiliation.—Any person who has registered and desires to change his party affiliation may at any time after a general election and until the books are closed for the next succeeding primary election, when the registration books are open in the main office or in any branch office and at no other time, change his party affiliation. The person shall surrender his registration identification card, or make a sworn affidavit if his card is lost, to the supervisor, at which time the supervisor shall cancel his prior registration and issue the person a new card. All cancellations shall be retained on file by the supervisor.

History.—s. 9, ch. 6469, 1913; s. 1, ch. 6874, 1915; RGS 309; CGL 365; s. 1, ch. 25388, 1949; s. 1, ch. 26870, 1951; s. 5, ch. 28156, 1953; s. 2, ch. 29934, 1955; s. 2, ch. 71-206; s. 3, ch. 77-175.
Note.—Former s. 102.11.

CHAPTER 98

REGISTRATION OFFICE, OFFICERS, AND PROCEDURES

98.031 Registration and election districts, precincts and polling places; boundaries.—

(1) Subject to the provisions of s. 98.091, each county election precinct, election district, and polling place in this state as defined and fixed is recognized and continued. Except as otherwise provided in paragraph (a) of subsection (3), the board of county commissioners in each county, upon recommendation and approval of the supervisor, shall alter or create new districts or precincts. Each precinct as nearly as practicable shall be composed of contiguous and compact areas having clearly observable boundaries and shall be numbered and a polling place at a suitable location designated. The district or precinct shall not be changed thereafter except with the consent of four members of the board of county commissioners and the supervisor. The board of county commissioners and the supervisor may have precinct boundaries conform to municipal boundaries in accordance with the provisions of s. 98.091, but, in any event, the registration books shall be maintained in such a manner that there may be determined therefrom the total number of electors in each municipality.

(2) When in any election there are less than 25 registered electors of the only political party having candidates on the ballot at any precinct, such precinct may be combined with other adjoining precincts into one election district upon the recommendation of the supervisor and the approval of the county commissioners. Notice of the combination of precincts into election districts shall be given in the same manner as provided in s. 101.71(2).

(3)(a)1. No election precinct or district shall be created, divided, abolished, or consolidated, or the boundaries therein changed, during the period between January 1 of any year the last digit of which is 7 and December 1 of any year the last digit of which is 0.

2. In addition to those periods of time during which change of precinct or district boundaries is not prohibited pursuant to subparagraph 1., the boundaries of election precincts and districts may be changed during the period between January 1 of any year the last digit of which is 7 and January 1 of any year the last digit of which is 0, when such change is due to the subdivision of an existing precinct or district or to municipal annexation, detachment, or consolidation or other such action.

(b) The Secretary of State may, upon the request of a county, waive compliance with paragraph (a) if such county has met the requirements of the U.S. Bureau of the Census as set forth in its guidelines.

(4)(a) Each supervisor of elections shall provide and maintain a suitable map drawn to a scale no smaller than 3 miles to the inch and clearly delineating all major observable features such as roads, streams, and railway lines and showing the current geographical boundaries of each precinct, election district, representative district, and senatorial district in the county. A word description of the geographical boundaries shall be attached to each map.

(b) Each supervisor of elections shall send a copy of each map with attached description to the Secretary of State no later than March 1 of any year the last digit of which is 7. No later than April 1 in any such year, the Secretary of State shall transmit an appropriate copy or facsimile of each map to the United States Bureau of the Census.

(c) The supervisor of elections shall notify the Secretary of State in writing within 30 days of any reorganization of precincts or election districts and shall furnish a copy of the map showing the current geographical boundaries, designation, and word description of each new precinct or election district.

History.—s. 10, ch. 3879, 1889; RS 164; s. 11, ch. 4328, 1895; GS 184; RGS 228; CGL 281; s. 2, ch. 24203, 1947; s. 6, ch. 25383, 1949; s. 2, ch. 26329, 1949; s. 2, ch. 26870, 1951; s. 4, ch. 29934, 1955; s. 3, ch. 57-166; s. 1, ch. 59-281; s. 1,

ch. 67-169; s. 1, ch. 72-25; s. 3, ch. 73-155; s. 1, ch. 76-60; s. 1, ch. 76-121; s. 1, ch. 76-233; s. 4, ch. 77-175.
Note.—Former s. 98.23.

98.041 Permanent single registration system established.—A permanent single registration system for the registration of electors to qualify them to vote in all elections is provided for the several counties and municipalities. This system shall be put into use by all municipalities and shall be in lieu of any other system of municipal registration. Electors shall be registered in pursuance of this system by the supervisor or by a deputy supervisor, and electors registered shall not thereafter be required to register or reregister except as provided by law.
History.—s. 1, ch. 25391, 1949; s. 2, ch. 26870, 1951; s. 1, ch. 59-237; s. 2, ch. 69-377; s. 1, ch. 73-155; s. 32, ch. 73-333; s. 5, ch. 77-175.
Note.—Former s. 97.01.

98.051 Registration books for permanent registration system; when open.—
(1)(a) The office of the Supervisor of Elections shall be open Monday through Friday, excluding legal holidays, for a period of not less than 8 hours per day, beginning no later than 9 a.m.
(b) A supervisor may keep his office and any branch offices open on any weekday, excluding legal holidays, for 10 hours in addition to the 8 hours specified in paragraph (a), provided notice of the time and place shall be published at least once, not less than one day prior to such extension of time, in a newspaper of general circulation in the county in which such offices are to be located. However, if the publication deadline for such notice cannot be met, the public notice shall be posted at the courthouse and may be advertised in the news media.
(c) During the 30-day period prior to the closing of the registration books for any statewide or federal election, the supervisor shall keep his office open each weekday for a period not less than 8 hours per day and may keep any branch office open each weekday, excluding legal holidays.
(2) When registration books are open, voter registration and changes in registration shall be accepted in the office or branch office of the supervisor when such office is open as provided by law.
(3)(a) The registration books shall close for the first and second primary elections at 5 p.m. on the 30th day before the first primary election and shall remain closed until after the second primary election, during which time no registration, address change, party change, or name change shall be accepted for such elections. For any other election, the books shall close at 5 p.m. on the 30th day before such election and shall remain closed until after such election, during which time no registration, address change, party change, or name change shall be accepted for such election. However, when the books are closed for an election, registration and changes in registration shall be accepted for all subsequent elections. For purposes of this subsection, however, a first and second primary shall be considered one election.
(b) In computing the 30-day period for closing of the registration books, the election day shall be excluded, but all other holidays and Sundays shall be included. Registration shall be conducted on weekdays only and should the 30th day preceding an election fall on Sunday or a legal holiday, then the registration books shall close at 5 p.m. on the immediately preceding day which is not a Sunday or legal holiday.
(c) When a district, municipal, or special election is called at a time when the books are open, the supervisor shall close the books to further registration, address changes, party changes, and name changes for such district, municipal, or special election on the 30th day before such election, or immediately, in the event the date of the election is less than 30 days away, but the books shall remain open for all subsequent elections.
History.—s. 2, ch. 25391, 1949; s. 2, ch. 26870, 1951; s. 5, ch. 29934, s. 1, ch. 29761, 1955; s. 3, ch. 65-134; s. 2, ch. 67-530; s. 1, ch. 71-124; ss. 7, 8, ch. 72-63; s. 4, ch. 74-5; s. 1, ch. 77-174; s. 5, ch. 77-175.
Note.—Former s. 97.02.

98.081 Removal of names from registration books; procedure.—
(1) During each odd-numbered year the supervisor shall mail, to each elector who did not vote in any election in the county during the past 2 years, a form to be filled in, signed, and returned by mail within 30 days after the notice is postmarked. The form returned shall advise the supervisor whether the elector's status has changed from that of the registration record. Names of electors failing to return the forms within this period shall have their names withdrawn temporarily from registration books. The list of the electors temporarily withdrawn shall be posted at the courthouse. When the list is completed, the supervisor shall provide a copy thereof, upon request, to the chairman of the county executive committee of any political party, and the supervisor may charge the actual cost of duplicating the list. A name shall be restored to the registration records when the elector, in writing, makes known to the supervisor that his status has not changed. The supervisor shall then reinstate the name on the registration books without the elector reregistering. Notice of these requirements shall be printed on the voter registration identification card. This method prescribed for the removal of names is cumulative to other provisions of law relating to the removal of names from registration books. This is not a reregistration but a method to be used for keeping the permanent registration list up to date. However, the name of any elector temporarily withdrawn from the registration books shall be removed from such books if the elector fails to respond to the notice within 3 years from the date the last such notice was mailed to him, and such person shall be required to reregister to have his name restored to the registration books.
(2) Any elector may have his name removed from the registration books by filing with the supervisor a written request, duly acknowledged, and upon receipt of such request the supervisor shall remove the name of the elector from the registration books. Any person whose name is removed between the first primary and the subsequent general election shall not register in a different political party after the first primary and before the subsequent general election.
(3) When the name of any elector is removed from the books pursuant to this section, s. 98.201, or s. 98.301, his original registration form shall be filed

alphabetically in the office of the supervisor.

(4) When the name of any elector has been erroneously or illegally removed from the registration books pursuant to this section, s. 98.201, or s. 98.301, the name of the elector shall be restored by the supervisor upon satisfactory proof, even though the registration books are closed.

History.—s. 8, ch. 25391, 1949; s. 2, ch. 26870, 1951; s. 1, ch. 61-86; s. 5, ch. 77-175; s. 1, ch. 78-102; s. 14, ch. 79-365.
Note.—Former s. 97.08.

98.091 Use of system by municipalities.—

(1) The board of county commissioners, with the concurrence of the supervisor of elections, may arrange the boundaries of the precincts in each municipality within the county to conform to the boundaries of the municipality, subject to the concurrence of the governing body of the municipality. All binders, files, and other equipment or materials necessary for the permanent registration system shall be furnished by the board of county commissioners.

(2) The supervisor of elections shall deliver the records required for a municipal election to the municipal elections boards or other appropriate elections officials before the election and collect them after the election. The municipality shall reimburse the county for the actual costs incurred.

(3) Any person who is a duly registered elector pursuant to this code and who resides within the boundaries of a municipality is qualified to participate in all municipal elections, the provisions of special acts or local charters notwithstanding. Electors who are not registered under the permanent registration system shall not be permitted to vote.

History.—s. 4, ch. 25391, 1949; s. 2, ch. 26870, 1951; s. 10, ch. 27991, 1953; s. 2, ch. 29761, 1955; s. 1, ch. 57-136; s. 1, ch. 63-268; s. 6, ch. 65-134; s. 2, ch. 73-155; s. 5, ch. 77-175.
Note.—Former s. 97.04.

98.101 Specifications for permanent registration binders, files and forms.—In the permanent registration system, visible record binders, files, and registration forms shall be used as registration books. The binders shall be visible record binders, metal bound with built-in shifts, to hold executed registration forms, with labelholders and followers for sheet protection as necessary. The registration forms shall consist of duplicates, both to be signed by the registrant. One of the original executed forms shall be used for the poll binders, which binders shall have a built-in lock to protect the forms. The poll binders shall be divided in a manner convenient for electors to vote. The other original form shall be used for the office copies and arranged alphabetically, in suitable filing cabinets, thus providing a master list of all electors in the county; however, any county may, as an alternate method, use electronic data processing equipment to fulfill the requirements of this chapter.

History.—s. 3, ch. 25391, 1949; s. 2, ch. 26870, 1951; s. 7, ch. 65-134; s. 4, ch. 73-155; s. 5, ch. 77-175.
Note.—Former s. 97.03.

98.111 Registration form; Department of State to prescribe; information required.—

(1) The Department of State shall prescribe the registration form, and the form shall be prepared to elicit the following information:

(a) Registration number;
(b) Date of registration;
(c) Full name;
(d) Sex;
(e) Party affiliation;
(f) Date of birth;
(g) Race;
(h) State or country of birth;
(i) Residence address at time of registering;
(j) Post office mailing address at time of registering;
(k) Precinct number;
(l) If the registrant is able to write his name or mark his ballot, and if not, the reason therefor; and
(m) Other information deemed necessary by the Department of State.

(2) There shall also be printed on the form an affidavit to include the oaths prescribed by law and a sworn statement by the applicant that all the information on the form is true, followed by a space for the elector's signature.

(3) The Department of State shall prescribe a form to elicit whether the applicant has been convicted of a felony and, if so, whether his civil rights have been restored. The form shall include a sworn statement by the applicant that all the information is true, followed by a space for the applicant's signature. This form shall be retained on file in the office of the supervisor.

History.—s. 5, ch. 25391, 1949; s. 2, ch. 26870, 1951; s. 1, ch. 59-231; s. 8, ch. 65-134; s. 1, ch. 67-170; s. 8, ch. 69-377; ss. 10, 35, ch. 69-106; s. 2, ch. 72-63; s. 5, ch. 77-175.
Note.—Former s. 97.05.

98.161 Supervisor of elections; election, tenure of office, compensation, custody of books, successor, seal.—

(1) A supervisor of elections shall be elected in each county at the general election in each year the number of which is a multiple of four for a 4-year term commencing on the first Tuesday after the first Monday in January succeeding his election. Each supervisor shall, before performing any of his duties, take the oath prescribed in s. 5, Art. II of the State Constitution and give a surety bond payable to the Governor in the sum of $5,000, conditioned on the faithful discharge of his duties.

(2) The supervisor's compensation shall be paid by the board of county commissioners.

(3) The supervisor is the official custodian of the registration books and has the exclusive control of matters pertaining to registration of electors.

(4) The supervisor shall preserve statements and other information required to be filed with his office pursuant to chapter 106 for a period of 10 years from date of receipt.

(5) The supervisor shall, upon leaving office, deliver to his successor immediately all records belonging to his office.

(6) Each supervisor is authorized to obtain for his office an impression seal approved by the Department of State. An impression of the seal with a description thereof shall be filed with the Department of State. The supervisor is empowered to attach an impression of his seal upon official documents and certificates executed over his signature and take oaths and acknowledgments under his seal in mat-

ters pertaining to his office. However, said seal need not be affixed to registration certificates.

History.—Chs. 3700, 3704, 1887; s. 8, ch. 3879, 1889; RS 162; s. 9, ch. 4328, 1895; GS 179, 180; s. 1, ch. 5614, 1907; s. 1, ch. 9271, 1923; RGS 223, 224; CGL 258, 259; ss. 1, 2, ch. 22759, 1945; s. 2, ch. 26870, 1951; s. 10, ch. 65-134; ss. 10, 11, 35, ch. 69-106; s. 33, ch. 69-216; s. 5, ch. 77-175.

Note.—Former ss. 98.13, 98.14 and 98.17.

cf.—s. 145.09 Compensation.

98.181 Supervisor of elections to make up indexes or records.—A set of indexes or records as the supervisor may direct shall be kept in each municipality of over 25,000 population, when such municipality is not the county seat, as will enable the supervisor, or the supervisor's deputy, to provide registration services to the electors in such municipality. Such set of indexes or records may be limited to cover those persons residing in such municipality and its environs. If there be two or more such municipalities in a county, then an additional set shall be kept, or such number of sets as may be required to serve each such municipality.

History.—ss. 12, 14, ch. 3879, 1889; RS 166, 168; ss. 14, 16, ch. 4328, 1895; GS 190, 195; RGS 234, 239; CGL 287, 292; ss. 3, 7, ch. 24203, 1947; s. 8, ch. 25383, 1949; s. 2, ch. 26870, 1951; s. 6, ch. 29934, 1955; s. 12, ch. 65-134; s. 5, ch. 77-175.

Note.—Former ss. 98.30 and 98.35.

98.201 Removal of names of disqualified electors.—

(1) Whenever it shall come to the supervisor's knowledge that any elector has become disqualified to vote by reason of conviction of any disqualifying crime or from other causes, has moved from the county or to another precinct without complying with s. 97.091, or his right to vote has become affected since his registration, the supervisor shall notify the person at his last known address by mail. Should there be evidence that the notice was not received, then notice shall be given by publication in a newspaper of general circulation in the county where the person was last registered or last known. The notice by publication shall run one time. The notification shall plainly state that the registration is allegedly invalidated and shall be in the form of a notice to show cause why the person's name should not be removed from the registration books. The notice shall state a time and place for the person so notified to appear before the supervisor to show cause why his name should not be removed. Upon hearing all evidence in an administrative hearing, the supervisor of elections shall determine whether or not there is sufficient evidence to strike the person's name from the registration books. If the supervisor determines that there is sufficient evidence he shall strike the name forthwith. Appeal shall be to the circuit court in and for the county wherein the person was registered. Notice of appeal shall be filed within the time and in the manner provided by the Florida Appellate Rules and shall act as supersedeas. Trial in the circuit court shall be de novo and governed by the rules of that court. Unless the person can show that his name was erroneously or illegally stricken from the registration books or that he is indigent, he shall be made to bear the costs of the trial in the circuit court. Otherwise, the costs of the appeal shall be paid by the board of county commissioners.

(2) The supervisor may, whenever he has reason to believe that an elector has become disqualified, process and forward to such elector a post or renewal card to verify the qualifications of such elector and, on the nonreturn of such card within the prescribed time set by law, shall proceed as otherwise provided in s. 98.081, for nonreturns.

History.—s. 14, ch. 3879, 1889; RS 168; s. 16, ch. 4328, 1895; GS 196; RGS 240; CGL 293; s. 2, ch. 26870, 1951; s. 7, ch. 28156, 1953; s. 7, ch. 29934, 1955; s. 1, ch. 63-481; s. 14, ch. 65-134; s. 1, ch. 69-267; s. 5, ch. 77-175.

Note.—Former s. 98.36.

98.211 County registers open to inspection; copies.—

(1) The registration books are public records. Every citizen is allowed to examine the registration books while they are in the custody of the supervisor, but is not allowed to make copies or extracts therefrom. The supervisor shall furnish at cost lists of the registered electors of the county that include only the name, party affiliation, address, and precinct number of each elector, and shall furnish such lists only to:

(a) The courts for the purpose of jury selection;
(b) Municipalities;
(c) Other governmental agencies;
(d) Candidates, to further their candidacy;
(e) Registered political committees, registered committees of continuous existence, and political parties or officials thereof, for political purposes only; and
(f) Incumbent officeholders to report to their constituents.

Such lists shall be used solely for political purposes and not for commercial purposes. No person to whom a list of registered voters is made available pursuant to this section, and no person who acquires such a list, shall use any information contained therein for purposes which are not related to elections, political activities, voter registration, law enforcement, or jury selection.

(2) Any person who acquires a precinct list from the office of the supervisor shall take and subscribe to an oath which shall be in substantially the following form:

I hereby swear or affirm that I am a person authorized by s. 98.211, Florida Statutes, to acquire a list of the registered voters of ..... County, Florida; that the lists acquired will be used only for the purposes prescribed in said section and for no other purpose; and that I will not permit the use or copying of such list by persons not authorized by the Election Code of the State of Florida to use such list.

(Signature of person acquiring list)

Sworn to and subscribed before me, the Supervisor or Deputy Supervisor of Elections of ..... County, Florida, this ..... day of ....., 19.....

(Signature of Supervisor or Deputy Supervisor)

History.—s. 18, ch. 6469, 1913; RGS 322; CGL 379; s. 4, ch. 25388, 1949; s. 2, ch. 26870, 1951; s. 8, ch. 29934, 1955; s. 1, ch. 57-810; s. 15, ch. 65-134; s. 5, ch. 77-175.

Note.—Former s. 102.25.

98.212 Supervisors to furnish statistical and other information.—

(1) Upon written request supervisors shall, as promptly as possible, furnish to recognized public or private universities and senior colleges within the state, to state or county governmental agencies, and to recognized political party committees, statistical

information for the purpose of analyzing election returns and results.

(2) Supervisors may require reimbursement for any or all actual expense of supplying such information. Supervisors may use the services of research and statistical personnel that may be supplied.

(3) Lists of names submitted to supervisors for indication of registration or nonregistration or of party affiliation shall be processed at any time at cost, except that in no case shall the charge exceed 10 cents for each name on which the information is furnished.

History.—s. 2, ch. 57-810; s. 5, ch. 77-175; s. 26, ch. 79-400.

98.231 Supervisor of elections to furnish Department of State number of registered electors.—The supervisor of each county, within 15 days after the closing of registration books prior to the election, shall, for the county and for each legislative and congressional district in which such county or any portion thereof is located, advise the Department of State of the total number of registered electors of each political party in which any elector has registered and the number of electors registered as independents or without party affiliation.

History.—s. 17, ch. 6469, 1913; RGS 321; CGL 378; s. 3, ch. 25379, 1949; s. 2, ch. 26870, 1951; s. 1, ch. 61-84; ss. 10, 35, ch. 69-106; s. 5, ch. 77-175.
Note.—Former s. 102.24.

98.251 Election Code; copies thereof.—A pamphlet of a reprint of the Election Code, adequately indexed, shall be prepared by the Department of State. It shall have a sufficient number of these pamphlets printed so that one may be given, upon request, to each candidate who qualifies with the department. A sufficient number may be sent to each supervisor, prior to the first day of qualifying, for distribution, upon request, to each candidate who qualifies with the supervisor and to each clerk of elections. The cost of printing the pamphlets shall be paid out of funds appropriated for conducting elections.

History.—s. 38, ch. 3879, 1889; RS 192; s. 69, ch. 4328, 1895; GS 253; RGS 297; CGL 353; s. 2, ch. 26870, 1951; s. 17, ch. 65-134; ss. 10, 35, ch. 69-106; s. 5, ch. 77-175; s. 2, ch. 79-365.
Note.—Former s. 99.54.

98.271 Appointment of deputy supervisors, authority; compensation.—

(1) Each supervisor shall select and appoint, subject to removal by him, as many deputy supervisors as may be necessary, whose compensation shall be paid by the board of county commissioners and who shall have the same powers and whose acts shall be as effective as the acts of the supervisor. Each deputy supervisor of elections shall, before entering office, make an oath in writing that he will faithfully perform the duties of his office, which oath shall be acknowledged by the supervisor and filed with the clerk of the circuit court.

(2) The supervisor may appoint as many deputy supervisors as he deems necessary for the purpose of registering voters and accepting changes in registration, and may limit the authority of such deputies to such duties.

History.—Chs. 3700, 3704, 1887; s. 8, ch. 3879, 1889; RS 162; s. 9, ch. 4328, 1895; GS 179, 181; ss. 9, 13, ch. 6469, 1913; RGS 223, 225, 311, 317; s. 1, ch. 9271, 1923; CGL 258, 261, 368, 374; s. 2, ch. 26870, 1951; s. 8, ch. 28156, 1953; s. 19, ch. 65-134; s. 5, ch. 77-175.
Note.—Former ss. 98.15, 98.18, 102.16 and 102.20.

98.301 Duty of officials to furnish lists of deceased persons, persons adjudicated mentally incompetent, and persons convicted of a felony.—

(1) The Department of Health and Rehabilitative Services shall furnish monthly to each supervisor of elections a list containing the name, address, age, race, and sex of each deceased person 18 years of age or older who was a resident of such supervisor's county.

(2) Each clerk of the circuit court shall, at least once each month, deliver to the supervisor of his county a list stating the name, address, age, race, and sex of each person convicted of a felony during the preceding calendar month, a list stating the name, address, age, race, and sex of each person adjudicated mentally incompetent during the preceding calendar month, and a list stating the name, address, age, race, and sex of each person whose mental competency has been restored.

(3) Upon receipt of any such list, the supervisor shall remove from the registration books the name of any person listed who is deceased, convicted of a felony, or adjudicated mentally incompetent. Persons who have had their mental competency restored or who have had their civil rights restored after conviction of a felony shall be required to reregister to have their names restored to the registration books.

(4) Nothing in this section shall limit or restrict the supervisor in his duty to remove the names of such persons from the registration books after verification of information received from other sources as provided in s. 98.201 or other provisions of this code.

History.—s. 3, ch. 14730, 1931; CGL 1936 Supp. 302(1); s. 10, ch. 24203, 1947; s. 11, ch. 25035, 1949; s. 2, ch. 26870, 1951; s. 1, ch. 29917; s. 9, ch. 29934, 1955; s. 33, ch. 73-333; s. 27, ch. 77-147; s. 5, ch. 77-175.
Note.—Former s. 98.41.

98.321 Certificate of election.—The supervisor shall give to any person the election of whom is certified by the county canvassing board a certificate of his election. The Department of State shall give to any person the election of whom is certified by the state canvassing board a certificate of his election. The certificate of election which is issued to any person shall be prima facie evidence of the election of such person.

History.—s. 32, ch. 3879, 1889; RS 186; s. 63, ch. 4328, 1895; GS 245; RGS 289; CGL 345; s. 2, ch. 26870, 1951; s. 5, ch. 77-175.
Note.—Former s. 99.46.
cf.—s. 28.24 Compensation of the clerk of the circuit court.
s. 696.05 Photographic recording by the clerk of the circuit court.

98.391 Registration; automation in processing.—For the purpose of providing a supplemental and alternative procedure for the registration of electors and for conducting elections at the precinct level, in those counties of the state where voting machines are used in the conduct of elections, the supervisor of elections and the officials lawfully charged with conducting elections may employ and adopt a system of automation in the processing of registration data, and make use of computers and data processing equipment and records adaptable for efficiency in conducting elections in such counties. The forms to be used in the system herein pro-

vided for shall be submitted to the Department of State for approval.

History.—s. 1, ch. 65-139; s. 2, ch. 65-60; ss. 10, 35, ch. 69-106.

98.401 Data processing cards; contents.—The data processing cards herein authorized shall be prepared to elicit the following information about electors: Last name, first name and middle name or initial; precinct number; certificate number; party; race; sex; height; weight; color of eyes; color of hair; freeholder status; month, day and year of birth; physical infirmities; if the registrant can read and write, and such other additional information as to readily identify the voter. Data processing cards used for registration of electors shall contain a printed oath of elector as otherwise required by law with space for the elector's signature and address. The reverse side of the voter's registration application data card shall contain a line for a sample signature of the applicant for registration with space for the registrant to verify and write his signature on each succeeding line below the sample signature at any election in which the elector shall participate. The reverse side of the data processing card shall also be prepared with a column one-half inch wide on the left side of the card for the inspector of election (record inspector) to initial after verifying the voter's signature. There shall also be a column five-eighths inch wide on the right side of the data processing card for an inspector of election to write the machine number used by the elector and to initial upon admitting the elector to the voting machine.

History.—s. 2, ch. 65-139.

98.412 Electors' master data record cards.—A master registration data record card shall be prepared, completed and kept by the supervisor of elections on each registered elector. Said master record cards shall be filed in alphabetical order, thus providing a master list of all voters throughout the county.

History.—s. 3, ch. 65-139; s. 2, ch. 65-60.

98.421 Use of cards at precinct level.—The registration record data card as defined in s. 98.401 shall be used at the precinct level for the purpose of identifying and processing of the elector prior to entering the voting booth to cast a ballot. The election inspectors may, if deemed necessary for the purpose of identification, require each elector upon entering the polling place to present to the election inspector his voting registration identification card or other personal identification sufficient to satisfy the requirements necessary to identify the elector. The elector shall sign his name on the reverse side of the data processing card under his sample signature in lieu of signing a signature identification slip required under chapter 101. All other provisions of chapter 101, other than those relating to the use of the printed identification slip, shall be complied with. The data processing card, when signed by the voter, will be verified and initialed by the clerk or record inspector. The data processing card will be returned to the voter, who will then present the registration record data card to the machine inspector who will admit the voter to a voting machine to cast his ballot. The machine inspector will write the machine number on the card in the space provided for that purpose and initial it. The machine inspector will use an abbreviated rubber stamp indicating the type of election, superimposing the rubber stamp over the voter's signature. The machine inspector will then place the data card in a receptacle provided on the end of the voting machine. This process shall be prima facie evidence that the person whose name appears thereon as an elector was admitted to the voting machine and that the elector then and there voted.

History.—s. 4, ch. 65-139.

98.431 Precinct record boxes; seal.—The supervisor of elections under the system provided for in this act shall furnish the election officials of each election precinct in the county the registration records of the qualified electors registered in the particular precinct in which the election is being held. Records of the affected precinct shall be contained in a metal file box, which can be sealed and properly identified by the supervisor of elections, and across the face of such seal shall be a certificate to be executed in the presence of a majority of the members of the affected election board prior to the opening of the polls. The form of the certificate shall be as follows:

We, the undersigned inspectors of election, constituting a majority of the election board of Precinct No. ....., hereby certify that the certificate sealing the metal box containing the registration records of electors of said precinct was intact and said records had not been tampered with and that the seal thereon was broken in the presence of the following members of the election board of said precinct:

Clerk .....
Inspector .....
Inspector .....
Inspector .....
Inspector .....
Inspector .....

History.—s. 5, ch. 65-139; s. 2, ch. 65-60.

98.441 Alternative procedure.—The provisions of ss. 98.391, 98.401, 98.412, 98.421, and 98.431 are not intended to repeal any of the other provisions of this code but to provide an alternative procedure in conjunction with the other provisions of this code, which may be followed in the affected counties.

History.—s. 6, ch. 65-139; s. 5, ch. 77-175.

98.451 Registration; automation in processing.—For the purpose of providing a supplemental and alternative procedure for the registration of electors and for conducting elections, the supervisor of elections may require a system of automation in the processing of registration data, and may make use of computers and data processing equipment and records adaptable for efficiency in conducting elections.

History.—s. 1, ch. 77-267.

98.461 Registration form, precinct register; contents.—A registration form, approved by the Department of State, containing the information required in s. 98.111 shall be filed alphabetically in the office of the supervisor as the master list of electors

of the county. A computer printout may be used at the polls as a precinct register in lieu of the registration books. The precinct register shall contain the date of the election, the precinct number, and the following information concerning each registered elector: last name, first name and middle name or initial; party affiliation; residence address; registration number; date of birth; sex; race; state or country of birth; whether the voter needs assistance in voting; and such other additional information as to readily identify the elector. The precinct register may also contain a list of the forms of identification approved by the Department of State, which shall include, but not be limited to, the voter registration identification card and Florida driver's license. The precinct register may also contain a space for the elector's signature, a space for the initials of the witnessing clerk or inspector, and a space for the signature slip or ballot number.

History.—s. 1, ch. 77-267.

98.471 Use of precinct register at polls.—The precinct register, as prescribed in s. 98.461, may be used at the polls in lieu of the registration books for the purpose of identifying the elector at the polls prior to allowing him to vote. The clerk or inspector shall require each elector, upon entering the polling place, to present one of the forms of identification which are on the list of forms approved by the Department of State pursuant to s. 98.461. The elector shall sign his name in the space provided, and the clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his initials in the space provided and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector. If the elector fails to furnish the required identification, or if the clerk or inspector is in doubt as to the identity of the elector, such clerk or inspector shall follow the procedure prescribed in s. 101.49. The precinct register may also contain the information set forth in s. 101.47(8) and, if so, the inspector shall follow the procedure required in s. 101.47, except that the identification provided by the elector shall be used for the signature comparison.

History.—s. 1, ch. 77-267.

98.481 Challenge to electors.—In any county using a precinct register in lieu of registration books at the polls, the right to vote of any person who desires to vote may be challenged in accordance with the provisions of s. 101.111, except that the inspector shall compare information supplied by such person with that entered or described on the precinct register opposite the elector's name.

History.—s. 1, ch. 77-267.

98.491 Alternative procedure.—The provisions of ss. 98.451, 98.461, 98.471, and 98.481 are not intended to repeal any of the other provisions of this code. These provisions are intended to provide an alternative procedure which may be followed at the discretion of the supervisor of elections.

History.—s. 1, ch. 77-267.

CHAPTER 99

CANDIDATES, CAMPAIGN EXPENSES, AND CONTESTING ELECTIONS

99.012 Restrictions on individuals qualifying for public office.—

(1) No individual may qualify as a candidate for public office whose name appears on the same or another ballot for another office, whether federal, state, county or municipal, the term of which or part thereof runs concurrently with the office for which he seeks to qualify. This, however, does not apply to political party offices.

(2) No individual may qualify as a candidate for public office who holds another elective or appointive office, whether state, county or municipal, the term of which or any part thereof runs concurrently with the term of office for which he seeks to qualify without resigning from such office not less than 10 days prior to the first day of qualifying for the office he intends to seek. Said resignation shall be effective not later than the date upon which he would assume office, if elected to the office to which he seeks to qualify, the expiration date of the term of the office which he presently holds, or the general election day at which his successor is elected, whichever occurs earliest. With regard to elective offices, said resignation shall create a vacancy in said office thereby permitting persons to qualify as candidates for nomination and election to that office in the same manner as if the term of such public officer were otherwise scheduled to expire; or, in regard to elective municipal or home rule charter county offices, said resignation shall create a vacancy which may be filled for the unexpired term of the resigned officer in such manner as provided in the municipal or county charter. This does not apply to political party offices.

(3) Any incumbent public officer whose term of office or any part thereof runs concurrently to the term of office for which he seeks to qualify shall resign his office pursuant to the provisions of this section and shall execute an instrument in writing directed, except as provided below, to the governor, irrevocably resigning from the office he currently occupies. The resignation shall be presented to the governor with a copy to the Department of State except that, in the case of a county or municipal public officer, the resignation shall be directed and presented to the officer with whom he qualified for the office from which he is resigning, or, in the case of an appointed official, to the officer or authority by whom he was appointed to the office from which he is resigning, with a copy to the governor and to the Department of State. The resignation shall become effective and shall have the effect of creating a vacancy in office as provided herein, and the public officer shall continue to serve until his successor is elected or the vacancy otherwise filled as provided in subsection (2).

(4) Nothing contained in subsections (2) and (3) shall relate to persons holding any federal office.

(5) No person who serves as a member of any appointive board or authority without salary shall be in violation of this section by reason of holding any such office.

(6) No individual may qualify as a candidate for public office until he has filed a statement of financial interest pursuant to s. 112.3145.

(7) For the purposes of this section, no individual who is a subordinate personnel, deputy sheriff, or police officer need resign pursuant to subsection (2) or subsection (3) unless such individual is seeking to qualify for a public office which is currently held by an individual who has the authority to appoint, employ, promote, or otherwise supervise that subordinate personnel, deputy sheriff, or police officer and who has qualified as a candidate for reelection to that public office. However, any such personnel, deputy sheriff, police officer, or other such individual shall take a leave of absence without pay from his employment during the period in which he is seeking election to public office.

History.—s. 1, ch. 63-269; s. 2, ch. 65-378; s. 1, ch. 70-80; s. 10, ch. 71-373; s. 1, ch. 74-76; s. 3, ch. 75-196; s. 1, ch. 79-391.

99.021 Form of candidate oath.—

(1)(a) Each candidate, whether a party candidate or an independent candidate, in order to qualify for nomination or election to any office other than a judicial office as defined in chapter 105, shall take and subscribe to an oath or affirmation in writing. A printed copy of the oath or affirmation shall be furnished to the candidate by the officer before whom such candidate seeks to qualify and shall be substantially in the following form:

State of Florida
County of .....

Before me, an officer authorized to administer oaths, personally appeared (please print name as you wish it to appear on the ballot), to me well known, who, being sworn, says that he is a candidate for the office of .....; that he is a qualified elector of ..... County, Florida; that he is qualified under the Constitution and the

laws of Florida to hold the office to which he desires to be nominated or elected; that he has taken the oath required by ss. 876.05-876.10, Florida Statutes; that he has not violated any of the laws of the state relating to elections or the registration of electors; that he has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent with that of the office he seeks; and that he has resigned from any office from which he is required to resign pursuant to s. 99.012, Florida Statutes.

.....(Signature of candidate).....

.....(Address).....

Sworn to and subscribed before me this ..... day of ....., 19..... at ..... County, Florida.

.....(Signature and title of officer administering oath).....

(b) In addition, any person seeking to qualify for nomination as a candidate of any political party shall, at the time of subscribing to the oath or affirmation, state in writing:

1. The party of which he is a member.
2. That he is not a registered member of any other political party and has not been a candidate for nomination for any other political party for a period of 6 months preceding the general election for which he seeks to qualify.
3. That he has paid the assessment levied against him, if any, as a candidate for said office by the executive committee of the party of which he is a member.

(c) The officer before whom such person qualifies shall certify the name of such person to the supervisor of elections in each county affected by such candidacy so that the name of such person may be printed on the ballot.

(2) The provisions of subsection (1) relating to the oath required of candidates, and the form of oath prescribed, shall apply with equal force and effect to, and shall be the oath required of, a candidate for election to a political party executive committee office, as provided by law. The requirements set forth in this section shall also apply to any person filling a vacancy on a political party executive committee.

History.—ss. 22, 23, ch. 6469, 1913; RGS 326, 327; CGL 383, 384; s. 3, ch. 19663, 1939; s. 3, ch. 26870, 1951; s. 10, ch. 28156, 1953; s. 1, ch. 57-742; s. 1, ch. 61-128; s. 2, ch. 63-269; s. 1, ch. 63-66; s. 1, ch. 65-376; s. 1, ch. 67-149; s. 2, ch. 70-269; s. 19, ch. 71-355; s. 6, ch. 77-175; s. 3, ch. 79-365; s. 27, ch. 79-400.
Note.—Former ss. 102.29 and 102.30.

99.032 Qualification of candidates for county commission.—A candidate for the office of county commissioner shall, at the time he qualifies, be a resident of the district from which he qualifies.

History.—s. 1, ch. 59-489; s. 3, ch. 65-378; s. 1, ch. 69-300; s. 6, ch. 77-175.
Note.—Former s. 99.022.

99.061 Method of qualifying for nomination or election to federal, state, county, or district office.—

(1) Each person seeking to qualify for nomination or election to a federal, state, or multicounty district office, other than a judicial office as defined in chapter 105, shall file his qualification papers with, and pay the qualification fee and party assessment, if any has been levied, to, the Department of State, or qualify by the alternative method with the Department of State, at any time after noon of the 1st day for qualifying, which shall be the 63rd day prior to the first primary, but not later than noon of the 49th day prior to the date of the first primary. However, the qualification fee, if any, paid by an independent candidate or a minor party candidate shall be refunded to such candidate by the qualifying officer within 10 days from the date that the determination is made that such candidate or minor party failed to obtain the required number of signatures.

(2) Each person seeking to qualify for nomination or election to a county office, or district office not covered by subsection (1), shall file his qualification papers with, and pay the qualification fees and party assessment, if any has been levied, to, the supervisor of elections of the county, or qualify by the alternative method with the supervisor of elections, at any time after noon of the first day for qualifying, which shall be the 63rd day prior to the first primary, but not later than noon the 49th day prior to the first primary. The supervisor of elections shall remit to the secretary of the state executive committee of the political party to which the candidate belongs within 30 days after the closing of qualifying time the amount of the filing fee, two-thirds of which shall be used to promote the candidacy of candidates for county offices and the candidacy of members of the Legislature.

(3) The Department of State shall certify to the supervisor of elections, within 10 days after the closing date for qualifying, the names of all duly qualified candidates for nomination or election who have qualified with the Department of State.

(4) Notwithstanding the qualifying period prescribed in this section, if a candidate has submitted the necessary petitions by the required deadline in order to qualify by the alternative method as a candidate for nomination and such candidate is notified after the 5th day prior to the last day for qualifying that the required number of signatures has been obtained, such candidate shall be entitled to subscribe to the candidate's oath and file the qualifying papers at any time within 5 days from the date such candidate is notified that the necessary number of signatures has been obtained. Any candidate who qualifies within the time prescribed in this subsection shall be entitled to have his name printed on the ballot.

(5) Within 7 days after the closing of qualifying time or within 7 days after a candidate files his qualifying papers, whichever last occurs, the Department of State or the supervisor of elections, as the case may be, shall notify a candidate by registered mail of any error in his papers or fees. Candidates notified shall have 72 hours from the time such notification is received, excluding Saturdays, Sundays, and legal holidays, to file with the appropriate qualifying officer any papers or fees necessary to correct any such error.

History.—ss. 25, 26, ch. 6469, 1913; RGS 329, 330; CGL 386, 387; ss. 4, 5, ch. 13761, 1929; s. 1, ch. 16990, 1935; CGL 1936 Supp. 386; ss. 1, chs. 19007, 19008, 19009, 1939; CGL 1940 Supp. 4769(3); s. 1, ch. 20619, 1941; s. 1, ch. 21851, 1943;

s. 1, ch. 23006, 1945; s. 1, ch. 24163, 1947; s. 3, ch. 26870, 1951; s. 11, ch. 28156, 1953; s. 4, ch. 29936, 1955; s. 10, ch. 57-1; s. 1, ch. 59-84; s. 1, ch. 61-373 and s. 4, ch. 61-530; s. 1, ch. 63-502; s. 7, ch. 65-378; s. 2, ch. 67-531; ss. 10, 35, ch. 69-106; s. 5, ch. 69-281; s. 1, ch. 69-300; s. 1, ch. 70-42; s. 1, ch. 70-93; s. 1, ch. 70-439; s. 6, ch. 77-175; s. 1, ch. 78-188.

Note.—Former ss. 102.32, 102.33, 102.351, 102.36, 102.66, and 102.69.

99.081 United States Senators elected in general election.—United States Senators from Florida shall be elected at the general election held next preceding the expiration of their terms of office, and such election shall conform as nearly as practicable to the methods provided for the election of state officers.

History.—s. 3, ch. 26870, 1951; s. 6, ch. 77-175.

Note.—Former s. 106.01.

99.091 Representatives to Congress.—

(1) A Representative to Congress shall be elected in and for each congressional district at each general election.

(2) When Florida is entitled to additional representatives according to the last census, representatives shall be elected from the state at large and at large thereafter until the state is redistricted by the Legislature.

History.—ss. 2, 3, ch. 3879, 1889; RS 157; s. 4, ch. 4328, 1895; s. 3, ch. 4537, 1897; GS 174; RGS 218; CGL 253; s. 2, ch. 25383, 1949; s. 3, ch. 26870, 1951; s. 6, ch. 77-175.

Note.—Former s. 98.07.

99.092 Filing fee of candidate; notification of Department of State.—

(1) Each person seeking to qualify for nomination or election to any office, except a person seeking to qualify pursuant to s. 99.095, shall pay a filing fee to the officer with whom he qualifies and, if any party assessment has been levied, attach the original or signed duplicate of the receipt for his party assessment or pay the same, in accordance with the provisions of s. 103.121, at the time of filing his other qualifying papers. The amount of the filing fee is 3 percent of the annual salary of the office. The amount of the committee assessment is 2 percent of the annual salary unless made less by the executive committee. The annual salary of the office for purposes of computing the filing fee and party assessment shall be computed by multiplying 12 times the monthly salary, excluding any special qualification pay, authorized for such office as of July 1 immediately preceding the first day of qualifying. No qualifying fees shall be returned to the candidate unless he withdraws his candidacy before the last date to qualify. If a candidate dies prior to an election and has not withdrawn his candidacy before the last date to qualify, his qualifying fee shall be returned to his designated beneficiary, and, if the filing fee or any portion thereof has been transferred to the political party of the candidate, the Secretary of State shall direct the party to return that portion to the candidate's designated beneficiary.

(2) The supervisor of elections shall, immediately after the last day for qualifying, submit to the Department of State a list containing the names, party affiliation, and addresses of all candidates and the offices for which they qualified.

(3) Each candidate for the office of Governor and each candidate for the office of Lieutenant Governor shall pay a separate fee for his office in accordance with this section.

History.—s. 24, ch. 6469, 1913; RGS 328; CGL 385; s. 3, ch. 26870, 1951; s. 12, ch. 29934, 1955; s. 4, ch. 65-378; s. 1, ch. 67-531; ss. 10, 35, ch. 69-106; s. 6, ch. 69-281; s. 1, ch. 74-119; s. 1, ch. 75-123; s. 1, ch. 75-247; s. 6, ch. 77-175; s. 28, ch. 79-400.

Note.—Former s. 102.31; s. 99.031.

99.095 Alternative method of qualifying.—

(1) A person seeking to qualify for nomination to any office who is unable to pay the filing fee and party assessment prescribed by s. 99.092 without imposing an undue burden on his personal resources or on resources otherwise available to him may qualify to have his name placed on the ballot for the first primary election by means of the petitioning process prescribed in this section. A person using this petitioning process shall file an oath with the officer before whom the candidate would qualify for the office stating that he intends to qualify for the office sought and stating that he is unable to pay the filing fee and party assessment for that office without imposing an undue burden on his personal resources or on resources otherwise available to him. Such oath shall be filed at any time after the first Tuesday after the first Monday in January of the year in which the first primary is held, but prior to the 92nd day prior to the date of the first primary election. The Department of State shall prescribe the form to be used in administering and filing such oath. No signatures shall be obtained by a candidate on any nominating petition until he has filed the oath required in this section.

(2) Upon receipt of a written oath from a candidate, the qualifying officer shall provide the candidate with petition forms in sufficient numbers to facilitate the gathering of signatures pursuant to this section. Such forms shall be prescribed by the Department of State.

(3) When a candidate has filed the oath prescribed in subsection (1), he may begin to seek signatures on petitions supporting his candidacy. Only signatures of electors who are registered in the political party by which the candidate seeks to be nominated and who are registered to vote in the county, district, or other geographical entity represented by the office sought shall be counted toward obtaining the minimum numbers of signatures prescribed in this subsection. A candidate for an office elected on a statewide basis shall obtain the signatures of a number of qualified electors equal to at least 3 percent of the total number of registered electors of Florida who are registered in the party by which he seeks nomination, as shown by the compilation by the Department of State for the last preceding general election. A candidate for any federal, state, county, or district office to be elected on less than a statewide basis shall obtain the signatures of a number of qualified electors of the district, county, or other geographical entity equal to at least 3 percent of the total number of registered voters of the party by which he seeks nomination that are registered within the district, county, or other geographical entity represented by the office sought, as shown by the compilation by the Department of State for the last preceding general election. A separate petition shall be circulated for each candidate availing himself of the provisions of this section. However, candidates

for the offices of Governor and Lieutenant Governor forming joint candidacies shall use the same nominating petition for both candidates.

(4)(a) Each candidate for nomination to federal, state, or multicounty district office shall file a separate petition for each county from which signatures are sought. Each petition shall be submitted, prior to noon of the 92nd day preceding the first primary election, to the supervisor of elections of the county for which such petition is circulated. Each supervisor of elections to whom a petition is submitted shall check the signatures on the petition to verify their status as electors of the political party by which the candidate seeks nomination and of that county, district, or other geographical unit represented by the office being sought by the candidate. Prior to the first date for qualifying, the supervisor shall certify the number shown as registered electors of such county, district, or other geographical unit and of the appropriate political party and submit such certification to the Department of State. The Department of State shall determine whether the required number of signatures has been obtained for the name of the candidate to be placed on the ballot and shall notify the candidate. If the required number of signatures has been obtained, the candidate shall, during the time prescribed for qualifying for office, submit a copy of such notice to, and file his qualifying papers and oath prescribed by s. 99.021 with, the Department of State. Upon receipt of the copy of such notice and the qualifying papers, the department shall certify the name of the candidate to the appropriate supervisor or supervisors of elections as having qualified for the office sought.

(b) Each candidate for nomination to a county office, or district office not covered by paragraph (a), shall submit his petition, prior to noon of the 92nd day preceding the first primary election, to the supervisor of elections of the county for which the petition was circulated. The supervisor shall check the signatures on the petition to verify their status as electors of the political party for which the candidate seeks nomination and of the county, district, or other geographical entity represented by the office being sought. Prior to the first date for qualifying, the supervisor shall determine whether the required number of signatures has been obtained for the name of the candidate to be placed on the ballot and shall notify the candidate. If the required number of signatures has been obtained, the candidate shall, during the time prescribed for qualifying for office, submit a copy of the notice and file his qualifying papers and oath prescribed by s. 99.021 with the supervisor of elections. Upon receipt of the copy of such notice and the qualifying papers by the supervisor of elections, such candidate shall be entitled to have his name printed on the ballot.

History.—s. 2, ch. 74-119; s. 6, ch. 77-175; s. 29, ch. 79-400.

99.0955 Independent candidate for office; name on general election ballot.—

(1) Any registered elector seeking to have his name placed on the ballot at the general election as an independent candidate for an office may have his name printed on the general election ballot in which election such office is to be filled, provided he is otherwise qualified to hold the office that he seeks and provided a petition requesting that he be assigned a position on the general election ballot is signed by the required number of registered electors. Such person shall obtain the signatures on a petition form prescribed by the Department of State and furnished by the appropriate qualifying officer. Such forms may be obtained from the qualifying officer at any time after the first Tuesday following the first Monday in January preceding the general election, but prior to the 49th day prior to the date of the first primary election.

(2) A candidate for an office elected on a statewide basis shall obtain the signatures of a number of the qualified electors equal to 3 percent of the registered electors of Florida, as shown by the compilation by the Department of State for the last preceding general election. When joint candidacies for the offices of Governor and Lieutenant Governor are provided by law, independent candidates for the offices of Governor and Lieutenant Governor shall form a joint candidacy, and only one petition shall be used to place both names on the ballot as otherwise provided in this section. A candidate for any federal, state, county, or district office to be elected on less than a statewide basis shall obtain the signatures of a number of the qualified electors of the district, county, or other geographical entity equal to at least 3 percent of the total number of the registered voters of the district, county, or other geographical entity represented by the office sought, as shown by the compilation by the Department of State for the last preceding general election.

(3)(a) Each candidate for a federal, state, or multicounty district office shall submit a separate petition for each county from which signatures are sought. Each petition shall be submitted, prior to noon of the 49th day preceding the first primary election, to the supervisor of elections of the county for which such petition was circulated. Each supervisor to whom a petition is submitted shall check the names and shall, upon payment of the cost of checking the petitions or filing of the oath as prescribed in s. 99.097, certify to the Department of State, within 30 days of the last day for qualifying, the number shown as registered electors of said county. The Department of State shall determine whether or not the required number of signatures has been obtained and shall notify the candidate. If the required number of signatures has been obtained and the candidate has, during the time prescribed for qualifying for office, filed his qualifying papers with the Department of State, paid his filing fee, and taken the oath provided in s. 99.021, such candidate shall be entitled to have his name printed on the general election ballot. However, any candidate who is unable to pay such fee without imposing an undue burden on his personal resources or upon resources otherwise available to him shall, upon written certification of such inability given under oath to the Department of State, be exempt from paying the filing fees. The name of each candidate who is entitled pursuant to this paragraph to have his name printed on the general election ballot shall be certified to the supervisor of elections of each county affected by such candidacy by the Department of State at the time the names of other candidates to be printed on the

general election ballot are certified to each supervisor.

(b) Each candidate for a county office, or district office not covered by paragraph (a), shall submit his petition, prior to noon of the 49th day preceding the first primary election, to the supervisor of elections of the county for which such petition was circulated. The supervisor shall determine whether the required number of signatures has been obtained and shall, within 30 days of the last day for qualifying, notify the candidate. If the required number of signatures has been obtained for the name of the candidate to be placed on the ballot and the candidate has, during the time prescribed for qualifying for office, filed his qualification papers with the supervisor of elections, paid his filing fee, and taken the oath prescribed in s. 99.021, such candidate shall be entitled to have his name printed on the general election ballot. However, any candidate who is unable to pay such fee without imposing an undue burden on his personal resources or upon resources otherwise available to him shall, upon written certification of such inability given under oath to the supervisor, be exempt from paying the filing fee. Upon paying the cost of checking the petitions or filing the oath required by s. 99.097, such candidate shall be entitled to have his name placed on the general election ballot.

History.—s. 6, ch. 70-269; s. 1, ch. 70-439; s. 3, ch. 74-119; s. 7, ch. 77-175; s. 2, ch. 78-188.
Note.—Former s. 99.152.

99.096 Minor party candidates; names on ballot.—

(1) A minor political party may have the names of its candidates for offices which are elected on a statewide basis printed on the general election ballot in an election in which one or more of those offices will be filled if a petition requesting that the party be assigned a position on the general election ballot is signed by 3 percent of the registered electors of the state, as shown by the compilation by the Department of State for the last preceding general election. A minor political party may have the names of its candidates for offices which are elected on less than a statewide basis printed on the general election ballot in an election in which one or more of those offices are to be filled if such party has qualified by petition to have a slate of candidates for offices elected on a statewide basis printed on the ballot and if such petition requesting that the party be assigned a position on the general election ballot is signed by 3 percent of the registered electors of the district, county, or other geographical entity represented by the office, as shown by the compilation by the Department of State for the last preceding general election.

(2) Petitions to have a slate of candidates printed on the ballot shall be provided by the Department of State. The form of the petitions shall be prescribed by the Department of State. A minor political party may obtain such petition forms at any time after the first Tuesday after the first Monday in January preceding said general election, but prior to the 49th day prior to the date of the first primary election.

(3) A separate petition shall be submitted from each county for which signatures are solicited. The petition shall be submitted to the supervisor of elections of the county prior to noon of the 49th day preceding the first primary election, and the supervisor shall check the names and shall, upon payment of the cost of checking the petitions prescribed in s. 99.097, certify, within 30 days of the last day for qualifying, the number shown as registered electors of the county. The supervisor shall then forward the certificate to the Department of State which shall determine whether or not the percentage factor as required in this section has been met. When the percentage factor has been met, the Department of State shall notify the minor party executive committee that the party has secured a position on the general election ballot.

(4) The executive committee of the party shall, at the time of submitting the petitions to the various supervisors of elections, but no later than noon of the 49th day preceding the first primary election, submit to the Department of State an official list of the candidates nominated by that party to be on the ballot in the general election. If the minor party has qualified to have a slate of candidates for any offices for which candidates are required to qualify with a supervisor of elections, the Department of State shall notify such supervisor of the name of each candidate eligible to qualify for such an office. Candidates selected by a party pursuant to this section shall qualify with the Department of State or appropriate supervisor of elections, pay their filing fees, and take and subscribe to the oath provided in s. 99.021 during the time prescribed for qualifying for office. Any candidate who is unable to pay such fee without imposing an undue burden on his personal resources or upon resources otherwise available to him shall, upon written certification of such inability given under oath to the Department of State or appropriate supervisor of elections, be exempt from paying the filing fee. The official list of nominated candidates may not be changed by the party after having been filed with the Department of State, except that candidates who have qualified may withdraw from the ballot pursuant to the provisions of this code.

History.—s. 5, ch. 70-269; s. 1, ch. 70-439; s. 4, ch. 74-119; s. 8, ch. 77-175; s. 3, ch. 78-188.
Note.—Former s. 101.261.

99.0965 Minor parties; selection of candidates.—A minor political party with a position on the general election ballot may provide for the designation of its official list of nominated candidates in any manner that it deems proper. The state executive committee of the party shall by resolution adopt a procedure for the selection of candidates, a copy of which shall be submitted to the Department of State.

History.—s. 5, ch. 70-269; s. 1, ch. 70-439; s. 9, ch. 77-175.
Note.—Former s. 101.263.

99.097 Verification of signatures on petitions.—

(1) As determined by each supervisor, based upon local conditions, the checking of names on petitions may be based on the most inexpensive and administratively feasible of either of the following methods of verification:

(a) A name-by-name, signature-by-signature

check of the number of authorized signatures on the petitions; or

(b) A check of a random sample, as provided by the Department of State, of names and signatures on the petitions. The sample must be such that a determination can be made as to whether or not the required number of signatures have been obtained with a reliability of at least 99.5 percent. Rules and guidelines for this method of petition verification shall be promulgated by the Department of State, which may include a requirement that petitions bear an additional number of names and signatures, not to exceed 15 percent of the names and signatures otherwise required. If the petitions do not meet such criteria, then the use of the verification method described in this paragraph shall not be available to supervisors.

(2) When a petitioner submits petitions which contain at least 15 percent more than the required number of signatures, he may require that the supervisor of elections use the random sampling verification method in certifying the petition.

(3) A name on a petition, which name is not in substantially the same form as a name on the voter registration books, shall be counted as a valid signature if, after comparing the signature on the petition with the signature of the alleged signer as shown on the registration books, the supervisor determines that the person signing the petition and the person who registered to vote are one and the same. In any situation in which this code requires the form of the petition to be prescribed by the Department of State, no signature shall be counted toward the number of signatures required unless it is on a petition form prescribed by the Department of State.

(4) The supervisor shall be paid the sum of 10 cents for each signature checked or the actual cost of checking such signature, whichever is less, by the candidate, minor party, or person authorized by such minor party submitting the petition or, in the case of a petition to have an issue placed on the ballot, by the person or organization submitting the petition. However, if a candidate cannot pay such charges without imposing an undue burden on his personal resources or upon the resources otherwise available to him, he shall, upon written certification of such inability given under oath to the supervisor, be entitled to have the signatures verified at no charge. If such candidate has filed the oath prescribed by s. 99.095(1), he shall not be required to file a second oath in order to have the signatures verified at no charge. However, an oath in lieu of payment of the charges shall not be allowed to verify the signatures on a petition to have a minor party's slate of candidates placed on the ballot or to have an issue placed on the ballot. In the event a candidate is entitled to have the signatures verified at no charge, the board of county commissioners of each county in which the signatures are verified at no charge shall submit the total number of such signatures checked in the county to the Comptroller no later than December 1 of the general election year, and the Comptroller shall cause such board of county commissioners to be reimbursed from the General Revenue Fund in an amount equal to 10 cents for each name checked or the actual cost of checking such signatures, whichever is less.

(5) The candidate; an announced opponent; a representative of a designated political committee; or a person, party, or other organization submitting the petition which does not wish to accept the results of a verification pursuant to subsection (1)(b) may require a complete check of the names and signatures pursuant to subsection (1)(a). If any such candidate; announced opponent; representative of a designated political committee; or party, person, or organization submitting the petition requires such a complete check and the result is not changed as to the success or lack of success of the petitioner in obtaining the requisite number of valid signatures, then such candidate, unless he has filed the oath stating that he is unable to pay such charges; announced opponent; representative of a designated political committee; or party, person, or organization submitting the petition shall pay to the board of county commissioners of each affected county for the complete check an amount calculated at the rate of 10 cents for each additional signature checked or the actual cost of checking such additional signatures, whichever is less. Such petitions shall be retained by the supervisor for a period of 1 year following the election for which such petitions are circulated.

History.—s. 2, ch. 76-233; s. 10, ch. 77-175.

99.103 Department of State to remit part of filing fees and party assessments of candidates to state executive committee.—

(1) If more than three-fourths of the full authorized membership of the state executive committee of any party was elected at the last previous election for such members and if such party shall be declared by the Department of State to have recorded on the registration books of the counties, as of the first Tuesday after the first Monday in January prior to the first primary in general election years, 5 percent of the total registration of such counties when added together, such committee shall receive, for the purpose of meeting its expenses, all filing fees collected by the Department of State from its candidates less an amount equal to 15 percent of the filing fees, which amount the Department of State shall deposit in the General Revenue Fund of the state.

(2) Not later than 30 days prior to the first primary in even-numbered years, the Department of State shall remit all filing fees, less the amount deposited in general revenue pursuant to subsection (1), or party assessments that may have been collected by it to the respective state executive committees of the parties complying with subsection (1). Party assessments collected by the Department of State shall be remitted to the appropriate state executive committee, irrespective of other requirements of this section, provided such committee is duly organized under the provisions of chapter 103.

History.—s. 1, ch. 29935, 1955; s. 24, ch. 57-1; s. 1, ch. 57-62; s. 4, ch. 57-166; s. 1, ch. 69-295; ss. 10, 35, ch. 69-106; s. 11, ch. 77-175.

99.121 Department of State to certify nominations to supervisors of elections.—The Department of State shall certify to the supervisor of elections of each county affected by a candidacy for office the names of persons nominated to such office. The

names of such persons shall be printed by the supervisor of elections upon the ballot in their proper place as provided by law.

History.—s. 30, ch. 4328, 1895; s. 10, ch. 4537, 1897; GS 215, 3824; s. 54, ch. 6469, 1913; RGS 259, 358, 5885; CGL 315, 415, 8148; s. 11, ch. 26329, 1949; s. 3, ch. 26870, 1951; s. 5, ch. 57-166; ss. 10, 35, ch. 69-106; s. 11, ch. 77-175.

Note.—Former ss. 99.13 and 102.51.

CHAPTER 100

GENERAL, PRIMARY, SPECIAL, BOND, AND REFERENDUM ELECTIONS

100.011 Opening and closing of polls, all elections; expenses.—

(1) The polls shall be open at the voting places at 7:00 a. m., on the day of the election, and shall be kept open until 7:00 p. m., of the same day, and the time shall be regulated by the customary time in standard use in the locality. The inspectors shall make public proclamation of the opening and closing of the polls. During the election and canvass of the votes the ballot box shall not be concealed.

(2) The time of opening and closing of the polls shall be observed in all elections held in this state, including municipal and school elections.

(3) The expenses of holding all elections for county and state offices necessarily incurred shall be paid out of the treasury of the county or state, as the case may be, in the same manner and by the same officers as in general elections.

History.—s. 23, ch. 3879, 1889; RS 177; s. 27, ch. 4328, 1895; GS 209; s. 8, ch. 6469, 1913; RGS 253, 306; CGL 309, 362; ss. 1, 2, ch. 20409, 1941; ss. 1, 2, ch. 22739, 1945; s. 4, ch. 25384, 1949; s. 4, ch. 26870, 1951; s. 12, ch. 77-175.
Note.—Former ss. 99.07 and 102.08.

100.021 Notice of general election.—The Department of State shall, in any year in which a general election is held, make out a notice stating what offices and vacancies are to be filled at the general election in the state, and in each county and district thereof. During the month of June, prior to the election, the Department of State shall have the notice published two times in a newspaper of general circulation in each county, and, in counties in which there is no newspaper of general circulation, it shall send to the sheriff a notice of the offices and vacancies to be filled at such general election by the qualified voters of his county or any district thereof, and the sheriff shall have at least five copies of the notice posted in conspicuous places in the county.

History.—s. 5, ch. 3879, 1889; RS 159; s. 6, ch. 4328, 1895; s. 4, ch. 4537, 1897; GS 176; RGS 220; CGL 255; s. 1, ch. 25383, 1949; s. 4, ch. 26870, 1951; ss. 10, 35, ch. 69-106; s. 12, ch. 77-175.
Note.—Former s. 98.06.

100.031 General election.—A general election shall be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective federal, state, county, and district officer whose term will expire before the next general election and, except as provided in the State Constitution, to fill each vacancy in elective office for the unexpired portion of the term.

History.—s. 2, ch. 3879, 1889; RS 155; s. 2, ch. 4328, 1895; s. 1, ch. 4537, 1897; GS 171; RGS 216; CGL 251; s. 4, ch. 26870, 1951; s. 12, ch. 77-175.
Note.—Former s. 98.04.

[1]100.041 Officers chosen at general election.—

(1) State senators shall be elected for terms of 4 years, those from odd-numbered districts in each year the number of which is a multiple of four and those from even-numbered districts in each even-numbered year the number of which is not a multiple of four. Members of the House of Representatives shall be elected for terms of 2 years in each even-numbered year. In each county, a clerk of the circuit court, sheriff, superintendent of schools, property appraiser, and tax collector shall be chosen by the qualified electors at the general election in each year the number of which is a multiple of four. The Governor and the administrative officers of the executive branch of the state shall be elected for terms of 4 years in each even-numbered year the number of

which is not a multiple of four. The terms of state and county offices other than the terms of members of the Legislature and of superintendents of schools shall begin on the first Tuesday after the first Monday in January after said election. The term of office of each member of the Legislature shall begin upon election.

(2) Each county commissioner from an odd-numbered district shall be elected in the county at large at the general election in each year the number of which is a multiple of four, for a 4-year term commencing on the second Tuesday following such election, and each county commissioner from an even-numbered district shall be elected in the county at large at the general election in each even-numbered year the number of which is not a multiple of four, for a 4-year term commencing on the second Tuesday following such election.

(3)(a) School board members shall be elected at a general election for terms of 4 years. The term of office of a school board member and of a superintendent of schools shall begin on the second Tuesday following the general election in which such member or superintendent is elected.

(b) In each school district which has five school board members, the terms shall be arranged so that three members are elected at one general election and two members elected at the next ensuing general election.

(4) Except as provided in subsections (2) and (3), the term of office of each county and each district officer not otherwise provided by law shall commence on the first Tuesday after the first Monday in January following his election.

History.—s. 3, ch. 3879, 1889; RS 156; s. 3, ch. 4328, 1895; s. 2, ch. 4537, 1897; GS 172; s. 10, ch. 7838, 1919; RGS 217; CGL 252; s. 4, ch. 26870, 1951; s. 15, ch. 28156, 1953; s. 1, ch. 59-140; s. 1, ch. 63-479; s. 1, ch. 67-98; s. 1, ch. 67-510; s. 11, ch. 69-216; s. 1, ch. 69-300; (4) formerly s. 14, Art. XVIII of the Constitution of 1885, as amended; converted to statutory law by s. 10, Art. XII of the Constitution as revised in 1968; s. 1, ch. 73-47; s. 18, ch. 73-334; s. 1, ch. 77-102; s. 12, ch. 77-175; s. 1, ch. 78-321; s. 21, ch. 79-164.

[1]**Note.**—Section 2, ch. 78-321 provides that that act, which changes the time a superintendent of schools takes office from the first Tuesday after the first Monday in January to the second Tuesday following the general election, shall not shorten the term of any superintendent serving as of June 18, 1978.

Note.—Former s. 98.05.

100.051 Candidate's name on general election ballot.—The supervisor of elections of each county shall print on ballots to be used in the county at the next general election the names of candidates who have been nominated by a political party, other than a minor political party, and the candidates who have otherwise obtained a position on the general election ballot in compliance with the requirements of this code.

History.—s. 53, ch. 6469, 1913; RGS 357; CGL 414; s. 4, ch. 26870, 1951; s. 3, ch. 70-269; s. 1, ch. 70-439; s. 12, ch. 77-175.

Note.—Former s. 102.50.

100.061 First primary election.—A first primary election shall be held on the first Tuesday that falls on the 6th day or later in September of each year in which a general election is held for nomination of candidates of political parties. Each candidate receiving a majority of the votes cast in each contest in the first primary election shall be declared nominated for such office. A second primary election shall be held as provided by s. 100.091, in all contests in which a candidate does not receive a majority.

History.—s. 5, ch. 6469, 1913; RGS 303; CGL 359; s. 2, ch. 13761, 1929; s. 1, ch. 17897, 1937; s. 7, ch. 26329, 1949; s. 4, ch. 26870, 1951; s. 1, ch. 57-166; s. 1, ch. 59-4; s. 1, ch. 69-1745.

Note.—Former s. 102.05.

100.071 Grouping of candidates on primary ballots.—

(1)(a) Where two or more similar offices are to be filled in the same election, the names of candidates shall be placed or printed upon the ballot or voting machine in groups or districts; that is, if two or more members of the Legislature or two or more members of a governing board are to be elected from the same geographical area, then the candidates' names shall be placed or printed on the ballot or voting machines in groups or districts, as the case may be.

(b) The name of the office shall be printed over each numbered group or district, and each numbered group or district shall be clearly separated from the next numbered group or district, the same as in the case of single offices, so as to emphasize the necessity of voting for one candidate in each numbered group or district.

(2) Each nominee of a political party chosen in the primaries shall appear on the general election ballot in the same numbered group or district as on the primary election ballot.

History.—ss. 1, 2, ch. 23957, 1947; s. 10, ch. 24994, 1948; s. 1, ch. 25051, 1949; s. 4, ch. 26870, 1951; s. 1, ch. 29937, 1955; s. 1, ch. 66-2; s. 12, ch. 77-175.

Note.—Former s. 99.58.

100.081 Conducting primary elections; nomination of county commissioners.—The primary elections shall provide for the nomination of county commissioners by the qualified electors of such county at the time and place set for voting on other county officers.

History.—s. 63, ch. 6469, 1913; s. 10, ch. 6874, 1915; RGS 362; CGL 419; s. 18, ch. 13761, 1929; CGL 1936 Supp. 424(2); s. 4, ch. 26870, 1951; s. 11, ch. 69-216; s. 12, ch. 77-175.

Note.—Former s. 102.55.

100.091 Second primary election.—

(1) A second primary election shall be held on the third Tuesday after the first primary election in each year in which a general election is held, for the nomination of candidates of political parties where nominations are not made in the first primary election. However, in 1978, 1980, and 1982, the second primary shall be held on the fourth Tuesday after the first primary election.

(2) The names of the candidates placing first and second in the first primary election shall be placed on the ballot in the second primary election for each contest in which no candidate receives a majority of the votes cast in the first primary election, subject to the following exceptions:

(a) In any contest in which there is a tie for first place in the first primary election, only the names of the candidates so tying shall be placed on the ballot in the second primary election.

(b) In any contest in which there is a tie for second place in the first primary election and the candidate placing first did not receive a majority of the votes cast, the name of the candidate placing first and the names of the candidates tying for second

shall be placed on the ballot in the second primary election.

(3) The candidate who receives the highest number of votes cast for the office in the second primary election shall be declared nominated. In case two or more persons shall receive an equal and highest number of votes for the same office in the second primary, such persons shall draw lots to determine who shall receive the nomination.

History.—s. 50, ch. 6469, 1913; RGS 354; CGL 411; s. 14, ch. 13761, 1929; s. 2, ch. 17897, 1937; s. 4, ch. 19663, 1939; s. 4, ch. 26870, 1951; s. 2, ch. 57-166; s. 2, ch. 59-4; s. 1, ch. 65-240; s. 2, ch. 69-1745; s. 1, ch. 75-246; ss. 12, 66, ch. 77-175.

Note.—Former s. 102.48.

100.096 Special election at second primary election.—Notwithstanding the provision of any local law, a special election which is required by local law to be held on the third Tuesday after the first primary election provided for in s. 100.061 may be held in conjunction with the second primary election on the date provided by general law for the second primary election.

History.—s. 5, ch. 78-188.

100.101 Special elections and special primary elections.—A special election or special primary election shall be held in the following cases:

(1) If no person has been elected at a general election to fill an office which was required to be filled by election at such general election.

(2) If a vacancy occurs in the office of state senator or member of the House of Representatives.

(3) If it shall be necessary to elect presidential electors, by reason of the offices of President and Vice President both having become vacant.

(4) If a vacancy occurs in the office of member of the House of Representatives of Congress from Florida.

(5) If a vacancy occurs in nomination.

History.—s. 4, ch. 3879, 1889; RS 158; s. 5, ch. 4328, 1895; GS 175; RGS 219; CGL 254; s. 4, ch. 26870, 1951; s. 12, ch. 77-175.

Note.—Former s. 98.08.

100.102 Cost of special elections and special primary elections to be incurred by the state.—Whenever any special election or special primary election is held as required in s. 100.101, each county incurring expenses resulting from such special election or special primary election shall be reimbursed by the state. Reimbursement shall be based upon actual expenses as filed by the supervisor of elections with the county governing body. The Department of State shall verify the expenses of each special election and each special primary election and authorize payment for reimbursement to each county affected.

History.—s. 2, ch. 74-120; s. 12, ch. 77-175.

100.111 Filling vacancy.—

(1)(a) If any vacancy occurs in any office which is required to be filled pursuant to s. 1(f), Art. IV of the State Constitution and the remainder of the term of such office is 28 months or longer, then at the next general election a person shall be elected to fill the unexpired portion of such term, commencing on the first Tuesday after the first Monday following such general election.

(b) If such a vacancy occurs prior to the first day set by law for qualifying for election to office at such general election, any person seeking nomination or election to the unexpired portion of the term shall qualify within the time prescribed by law for qualifying for other offices to be filled by election at such general election.

(c) If such a vacancy occurs prior to the first primary but on or after the first day set by law for qualifying, the Secretary of State shall set dates for qualifying for the unexpired portion of the term of such office. Any person seeking nomination or election to the unexpired portion of the term shall qualify within the time set by the Secretary of State. If time does not permit party nominations to be made in conjunction with the first and second primary elections, the Governor may call a special primary election, and, if necessary, a second special primary election, to select party nominees for the unexpired portion of such term.

(2) Whenever there is a vacancy for which a special election is required pursuant to s. 100.101(1)-(4) and a special election is called by the Governor to fill the vacancy in such office, nominees of political parties other than minor political parties shall be chosen under the primary laws of Florida in a special primary election which shall be called by the Governor who, after consultation with the Secretary of State, may fix the date of a primary election and, if necessary, a second primary election to select nominees of political parties other than minor political parties to become candidates in the special election. The dates fixed by the Governor shall be specific days certain and shall not be established by the happening of a condition or stated in the alternative. If a vacancy occurs in the office of state senator and no session of the Legislature is scheduled to be held prior to the next general election, the Governor may fix the dates for any special primary and for the special election to coincide with the dates of the first and second primary and general election. If a vacancy in office occurs in any district in the Florida Senate or House of Representatives or in any Congressional District, and no session of the Legislature, or session of Congress if the vacancy is in a Congressional District, is scheduled to be held during the unexpired portion of the term, the Governor is not required to call a special election to fill such vacancy.

(a) The dates for candidates to qualify in such special election or special primary election shall be fixed by the Department of State and candidates shall qualify not later than noon of the last day so fixed.

(b) The filing of campaign expense statements by candidates in such special elections or special primaries shall be not later than such dates as shall be fixed by the Department of State, and in fixing such dates the Department of State shall take into consideration and be governed by the practical time limitations.

(c) The qualification fees and party assessments of such candidates as may qualify shall be the same as collected for the same office at the last previous primary for that office. The party assessment shall be paid to the appropriate executive committee of the political party to which the candidate belongs.

(d) Each county canvassing board shall make as speedy a return of the result of such special elections

and primaries as time will permit, and the Elections Canvassing Commission likewise shall make as speedy a canvass and declaration of the nominees as time will permit.

(3)(a) In the event that death, resignation, withdrawal, removal or any other cause or event should cause a party to have a vacancy in nomination which leaves no candidate for an office from such party, the Governor shall, after conferring with the Secretary of State, call a special primary election and, if necessary, a second special primary election to select for such office a nominee of such political party. The dates on which candidates may qualify for such special primary election shall be fixed by the Department of State, and the candidates shall qualify no later than noon of the last day so fixed. The filing of campaign expense statements by candidates in special primaries shall not be later than such dates as shall be fixed by the Department of State. In fixing such dates the Department of State shall take into consideration and be governed by the practical time limitations. The qualifying fees and party assessment of such candidates as may qualify shall be the same as collected for the same office at the last previous primary for that office. Each county canvassing board shall make as speedy a return of the results of such primaries as time will permit, and the Elections Canvassing Commission shall likewise make as speedy a canvass and declaration of the nominees as time will permit.

(b) If the vacancy in nomination occurs later than September 15, or if the vacancy in nomination occurs with respect to a candidate of a minor political party which has obtained a position on the ballot, no special primary election shall be held and the Department of State shall notify the chairman of the appropriate state, district, or county political party executive committee of such party, and the chairman shall as soon as possible call a meeting of his executive committee to designate a nominee to fill the vacancy. The nominee shall be named as soon as possible in order that he may have his name printed or otherwise placed on the ballot of the ensuing general election, but in no event shall the supervisor of elections be required to place a name on a ballot submitted less than 5 days prior to the election. For purposes of this paragraph, "district political party executive committee" means the members of the state executive committee of a political party from those counties comprising the area involving a district office.

(c) When, under the circumstances set forth in the preceding paragraph, vacancies in nomination are required to be filled by committee nominations, such vacancies shall be filled by party rule. In any instance in which a nominee is selected by a committee to fill a vacancy in nomination, such nominee shall pay the same filing fee and take the same oath as he would have taken had he regularly qualified for election to said office.

(4) In the event of unforeseeable circumstances not contemplated in these general election laws concerning the calling and holding of special primary elections and special elections resulting from court order or other unpredictable circumstances, the Department of State shall have the authority by emergency rule to provide for the conduct of orderly elections.

History.—s. 4, ch. 26870, 1951; s. 16, ch. 28156, 1953; s. 1, ch. 29938, 1955; s. 1, ch. 57-91; s. 1, ch. 59-139; s. 2, ch. 65-240; ss. 10, 35, ch. 69-106; s. 1, ch. 73-191; s. 1, ch. 74-120; s. 12, ch. 77-175; s. 30, ch. 79-400.

100.141 Notice of special election to fill any vacancy in office or nomination.—Whenever a special election is required to fill any vacancy in office or nomination, the Governor, after consultation with the Secretary of State, shall issue an order declaring on what day the election shall be held and deliver the order to the Department of State. The Department of State shall prepare a notice stating what offices and vacancies are to be filled in the special election, the date set for each special primary election and the special election, the dates fixed for qualifying for office, and the dates fixed for filing campaign expense statements. The department shall deliver a copy of such notice to the supervisor of elections of each county in which the special election is to be held. The supervisor shall have the notice published two times in a newspaper of general circulation in the county at least 10 days prior to the first day set for qualifying for office. If such a newspaper is not published within the period set forth, the supervisor shall post at least five copies of the notice in conspicuous places in the county not less than 10 days prior to the first date set for qualifying.

History.—s. 6, ch. 3879, 1889; RS 160; s. 7, ch. 4328, 1895; GS 177; RGS 221; CGL 256; s. 3, ch. 25383, 1949; s. 1, ch. 26329, 1949; s. 4, ch. 26870, 1951; ss. 10, 35, ch. 69-106; s. 12, ch. 77-175.
Note.—Former s. 98.10.

100.151 County commissioners calling special election, notice.—The county commissioners shall not call any special election until notice is given to the supervisor of elections and his consent obtained as to a date when the registration books can be available.

History.—s. 4, ch. 26870, 1951; s. 2, ch. 65-60.

100.161 Filling vacancy of United States Senators.—Should a vacancy happen in the representation of this state in the Senate of the United States, the Governor shall issue a writ of election to fill such vacancy at the next general election; and the Governor may make a temporary appointment until the vacancy is filled by election.

History.—s. 4, ch. 26870, 1951; s. 17, ch. 28156, 1953; s. 12, ch. 77-175.

100.181 Determination of person elected.—The person receiving the highest number of votes cast in a general or special election for an office shall be elected to the office. In case two or more persons receive an equal and highest number of votes for the same office, such persons shall draw lots to determine who shall be elected to the office.

History.—s. 7, ch. 20872, 1941; s. 4, ch. 26329, 1949; s. 4, ch. 26870, 1951; s. 24, ch. 77-104; s. 12, ch. 77-175. s. 24, ch. 77-104; s. 12, ch. 77-175.
Note.—Former s. 98.49.

100.191 General election laws applicable to special elections; returns.—All laws that are applicable to general elections are applicable to special elections or special primary elections to fill a vacancy in office or nomination, except that the canvass of returns by the county canvassing board of each county in which a special election is held shall be made

on the day following the election, and the certificate of the result of the canvass shall be immediately forwarded to the Department of State. The Elections Canvassing Commission shall immediately, upon receipt of returns from the county in which a special election is held, proceed to canvass the returns and determine and declare the result thereof.

History.—s. 6, ch. 20872, 1941; s. 4, ch. 26870, 1951; ss. 10, 35, ch. 69-106; s. 12, ch. 77-175.
Note.—Former s. 98.48.

100.201 Referendum required before issuing bonds.—Whenever any county, district, or municipality is by law given power to issue bonds which are required to be approved by referendum, such bonds shall be issued only after the same have been approved by the majority of votes cast by those persons eligible to vote in such referendum.

History.—s. 1, ch. 14715, 1931; CGL 1936 Supp. 457(1); s. 4, ch. 26870, 1951; s. 3, ch. 69-377; s. 12, ch. 77-175.
Note.—Former s. 103.01.

100.211 Power to call bond referendum; notice required.—The board of county commissioners or the governing authority of any district or municipality may call a bond referendum under this code. In the event any referendum is called to decide whether a majority of the electors participating are in favor of the issuance of bonds in the county, district, or municipality, the board of county commissioners, or the governing authority of the municipality or district, shall by resolution order the bond referendum to be held in the county, district, or municipality and shall give notice of the election in the manner prescribed by s. 100.342.

History.—s. 2, ch. 14715, 1931; CGL 1936 Supp. 457(2); s. 4, ch. 26870, 1951; s. 4, ch. 69-377; s. 12, ch. 77-175.
Note.—Former s. 103.02.

100.221 General election laws to govern bond referenda.—The laws governing the holding of general elections are applicable to bond referenda, except as provided in ss. 100.201-100.351. The places for voting in a bond referendum shall be the same as the places for voting in general elections, when a bond referendum is held in the county or district; but when a bond referendum is held in a municipality, the polling places shall be the same as in other municipal elections.

History.—s. 8, ch. 14715, 1931; CGL 1936 Supp. 457(8); s. 4, ch. 26870, 1951; s. 12, ch. 77-175.
Note.—Former s. 103.08.

100.241 Freeholder voting; election; etc.—

(1) In any election or referendum in which only electors who are freeholders are qualified to vote, the regular registration books covering the precincts located within the geographical area in which the election or referendum is to be held shall be used.

(2) Qualification and registration of electors participating in such an election or referendum shall be the same as prescribed for voting in other elections under this code, and, in addition, each such elector shall submit proof by affidavit made before an inspector that he is a freeholder who is a qualified elector residing in the county, district, or municipality in which the election or referendum is to be held.

(3) Each registered elector who makes a sworn affidavit of ownership to the inspectors, giving either a legal description, address, or location of property in his name which is not wholly exempt from taxation shall be entitled to vote in the election or referendum and shall be considered a freeholder.

(4) The actual costs of conducting such freeholders' election or referendum shall be paid by the county, district, or municipality requiring the same to be held.

(5) It is unlawful for any person to vote in any county, district, or other election or referendum which is limited to a vote of the electors who are freeholders, unless such person is a freeholder and a qualified elector. Any person who violates the provisions of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 9294, 1923; CGL 250; ss. 4, 6, 14, ch. 14715, 1931; CGL 1936 Supp. 457(4), (6), (14); s. 7, ch. 22858, 1945; s. 4, ch. 26870, 1951; s. 1, ch. 61-332; s. 5, ch. 65-240; s. 5, ch. 69-377; s. 12, ch. 77-175.
Note.—Former ss. 98.03, 103.04, 103.06, 103.14.

100.261 Holding bond referenda with other elections.—Whenever any bond referendum is called, it shall be lawful for any county, district, or municipality to hold such bond referendum on the day of any state, county, or municipal primary or general election, or on the day of any election of such county, district, or municipality for any purpose other than the purpose of voting on such bonds. However, nothing in this section shall prohibit the holding of a special or separate bond referendum.

History.—s. 1, ch. 22545, 1945; s. 4, ch. 26870, 1951; s. 19, ch. 28156, 1953; s. 12, ch. 77-175.
Note.—Former s. 103.21.

100.271 Inspectors, clerk, duties; return and canvass of referendum recorded.—In any bond referendum, unless the referendum is held in connection with a regular or special state, county, or municipal election, at least two inspectors and one clerk shall be appointed and qualified, as in cases of general elections, and they shall canvass the vote cast and make due returns of same without delay. Any bond referendum held in a municipality shall be returned to and canvassed by the governing authority which called the referendum, but in any county or district the returns shall be made to the board of county commissioners. The board of county commissioners or, in the case of a municipality, the governing authority thereof, shall canvass the returns and declare the result and have same recorded in the minutes of the board of county commissioners, or, in the case of a district, the certificate of declaration of result shall be recorded in the minutes of the governing authority of such district, or, in the case of a municipality, the result shall be recorded in the minutes of the governing authority of the municipality. If any bond referendum is held in conjunction with any other election, however, the officials responsible for the canvass of such election shall also canvass the returns of the referendum and certify the same to the proper governing body.

History.—s. 10, ch. 14715, 1931; CGL 1936 Supp. 457(10); s. 4, ch. 26870, 1951; s. 12, ch. 77-175.
Note.—Former s. 103.10.

100.281 Approval to issue bonds.—Should a majority of the votes cast in a bond referendum be in favor of the issuance of bonds, then the issuance of said bonds is deemed authorized in accordance

with s. 12, Art. VII of the State Constitution. In the event less than a majority of those voting on the issue voted in favor of the issuance of the proposed bonds, then the issuance of those specified bonds shall be deemed to have failed of approval and it is unlawful to issue or attempt to issue said bonds.

History.—s. 12, ch. 14715, 1931; CGL 1936 Supp. 457(12); s. 4, ch. 26870, 1951; s. 15, ch. 69-216; s. 7, ch. 69-377; s. 12, ch. 77-175.
Note.—Former s. 103.12.

100.291 Record results of election prima facie evidence.—Whenever any bond referendum is called and held, and the minutes have been recorded as provided in s. 100.271 and also a separate finding as to the total number of votes cast in the referendum, both in favor and against the approval of bonds, then a duly certified copy of the finding shall be admissible as prima facie evidence in all state courts of the truth, including the regularity, of the call, conduct, and holding of the referendum at the time and place specified.

History.—s. 17, ch. 14715, 1931; CGL 1936 Supp. 457(15); s. 4, ch. 26870, 1951; s. 12, ch. 77-175.
Note.—Former s. 103.17.

100.301 Refunding bonds excluded.—Sections 100.201-100.351 shall not apply to refunding bonds, and wherever the word "bond" or "bonds" is used in these sections it shall be construed to exclude refunding bonds; but if the statute, ordinance, or resolution under which refunding bonds are authorized or are to be issued requires a referendum to determine whether such refunding bonds shall be issued, the referendum may be held as provided by ss. 100.201-100.351.

History.—s. 21½, ch. 14715, 1931; CGL 1936 Supp. 457(19); s. 4, ch. 26870, 1951; s. 12, ch. 77-175.
Note.—Former s. 103.20.

100.311 Local law governs bond election held by municipalities.—No section of this code controlling or regulating bond referenda shall be deemed to repeal or modify any provision contained in any local law relating to bond referenda held by any municipality, but ss. 100.201-100.351 shall be deemed additional and supplementary to any such local law.

History.—s. 21, ch. 14715, 1931; CGL 1936 Supp. 457(18); s. 4, ch. 26870, 1951; s. 12, ch. 77-175.
Note.—Former s. 103.19.

100.321 Test suit.—Any taxpayer of the county, district, or municipality wherein bonds are declared to have been authorized, shall have the right to test the legality of the referendum and of the declaration of the result thereof, by an action in the circuit court of the county in which the referendum was held. The action shall be brought against the county commissioners in the case of a county or district referendum, or against the governing authority of the municipality in the case of a municipal referendum. In case any such referendum or the declaration of results thereof shall be adjudged to be illegal and void in any such suit, the judgment shall have the effect of nullifying the referendum. No suit shall be brought to test the validity of any bond referendum unless the suit shall be instituted within 60 days after the declaration of the results of the referendum. In the event proceedings shall be filed in any court to validate the bonds, which have been voted for, then any such taxpayer shall be bound to intervene in such validation suit and contest the validity of the holding of the referendum or the declaration of the results thereof, in which event the exclusive jurisdiction to determine the legality of such referendum or the declaration of the results thereof shall be vested in the court hearing and determining said validation proceedings. If said bonds in the validation proceedings shall be held valid on final hearing or an intervention by the taxpayer shall be interposed and held not to have been sustained, then the judgment in said validation proceedings shall be final and conclusive as to the legality and validity of the referendum and of the declaration of the results thereof, and no separate suit to test the same shall be thereafter permissible.

History.—s. 18, ch. 14715, 1931; CGL 1936 Supp. 457(16); s. 4, ch. 26870, 1951; s. 12, ch. 77-175.
Note.—Former s. 103.18.
cf.—Ch. 75 Bond validation.

100.331 Referendum for defeated bond issue.—If any bond referendum is called and held for approving the issuance of bonds for a particular purpose and such referendum does not result in the approval of the bonds, then no other referendum for the approval of bonds for the same purpose shall be called for at least 6 months.

History.—s. 13, ch. 14715, 1931; CGL 1936 Supp. 457 (13); s. 4, ch. 26870, 1951; s. 12, ch. 77-175.
Note.—Former s. 103.13.

100.341 Bond referendum ballot.—The ballots used in bond referenda shall be on plain white paper with printed description of the issuance of bonds to be voted on as prescribed by the authority calling the referendum. A separate statement of each issue of bonds to be approved, giving the amount of the bonds and interest rate thereon, together with other details necessary to inform the electors, shall be printed on the ballots in connection with the question "For Bonds" and "Against Bonds."

History.—s. 11, ch. 14715, 1931; CGL 1936 Supp. 457(11); s. 4, ch. 26870, 1951; s. 12, ch. 77-175.
Note.—Former s. 103.11.

100.342 Notice of special election or referendum.—In any special election or referendum not otherwise provided for there shall be at least 30 days' notice of the election or referendum by publication in a newspaper of general circulation in the county, district, or municipality, as the case may be. The publication shall be made at least twice, once in the fifth week and once in the third week prior to the week in which the election or referendum is to be held. If there is no newspaper of general circulation in the county, district, or municipality, the notice shall be posted in no less than five places within the territorial limits of the county, district, or municipality.

History.—s. 1, ch. 59-335; s. 2, ch. 65-60; s. 12, ch. 77-175.

100.351 Referendum election; certificate of results to Department of State.—Whenever an election is held under a referendum provision of an act of the Legislature, the election officials of the governmental unit in which the election is held shall

certify the results thereof to the Department of State, which shall enter such results upon the official record of the act requiring such election on file in the office of the Department of State.

History.—s. 1, ch. 25438, 1949; s. 4, ch. 26870, 1951; ss. 10, 35, ch. 69-106; s. 12, ch. 77-175.

Note.—Former s. 99.59.

100.361 Municipal recall.—

(1) RECALL PETITION.—Any member of the governing body of a municipality or charter county, hereinafter referred to in this section as municipality, may be removed from office by the electors of the municipality by the following procedure:

(a) A petition shall be prepared naming the person sought to be recalled and containing a "statement of grounds for recall" in not more than 200 words.

1. In a municipality of less than 500 electors, the petition shall be signed by at least 50 electors or by 10 percent of the total number of registered electors of the municipality as of the preceding municipal election, whichever is greater.

2. In a municipality of 500 or more but less than 2,000 registered electors, the petition shall be signed by at least 100 electors or by 10 percent of the total number of registered electors of the municipality as of the preceding municipal election, whichever is greater.

3. In a municipality of 2,000 or more but less than 5,000 registered electors, the petition shall be signed by at least 250 electors or by 10 percent of the total number of registered electors of the municipality as of the preceding municipal election, whichever is greater.

4. In a municipality of 5,000 or more but less than 10,000 registered electors, the petition shall be signed by at least 500 electors or by 10 percent of the total number of registered electors of the municipality as of the preceding municipal election, whichever is greater.

5. In a municipality of 10,000 or more but less than 25,000 registered electors, the petition shall be signed by at least 1,000 electors or by 5 percent of the total number of registered electors of the municipality as of the preceding municipal election, whichever is greater.

6. In a municipality of 25,000 or more registered electors, the petition shall be signed by at least 1,000 electors or by 3 percent of the total number of registered electors of the municipality as of the preceding municipal election, whichever is greater. A specific person shall be designated therein as chairman of the [1]committee to act for the [1]committee. Only qualified electors of the municipality are eligible to sign the petition. Signatures and affidavits of circulators shall be executed as provided in paragraph (c). All signatures shall be obtained within a period of 30 days, and the petition shall be filed within 30 days after the date the first signature is obtained on the petition.

(b) The grounds for removal of elected municipal officials shall, for the purposes of this act, be limited to the following:

1. Malfeasance;
2. Misfeasance;
3. Neglect of duty;
4. Drunkenness;
5. Incompetence;
6. Permanent inability to perform official duties; and
7. Conviction of a felony involving moral turpitude.

(c) Each elector of the municipality signing a petition shall sign his name in ink or indelible pencil as registered in the office of the supervisor of elections and shall state his place of residence and voting precinct. Each counterpart of the petition shall contain appropriate lines for signature by electors and a form of affidavit, to be executed by the circulator thereof, verifying the fact that the circulator saw each person sign the counterpart of the petition, that each signature appearing thereon is the genuine signature of the person it purports to be, and that the petition was signed in the presence of the circulator on the date indicated.

(d) The petition shall be filed with the city auditor or clerk, or his equivalent, by the person designated as chairman of the [1]committee, and, when the petition is filed, the city auditor or clerk, or his equivalent, shall submit such petition to the county supervisor of elections who shall, within a period of not more than 30 days, determine whether the petition contains the required valid signatures. The supervisor shall be paid by the persons or [1]committee seeking verification the sum of 10 cents for each name checked.

(e) If it is determined that the petition does not contain the required signatures, the city auditor or clerk, or his equivalent, shall so certify to the governing body and file the petition without taking further action, and the matter shall be at an end. No additional names may be added to the petition, and the petition shall not be used in any other proceeding.

(f) If it is determined that the petition has the required signatures, then the city auditor or clerk, or his equivalent, shall at once serve upon the person sought to be recalled a certified copy of the petition. Within 5 days after service, the person sought to be recalled may file with the city auditor or clerk, or his equivalent, a defensive statement of not more than 200 words. The city auditor or clerk, or his equivalent, shall, within 5 days, prepare a sufficient number of typewritten, printed, or mimeographed counterparts of the recall petition and "statement of grounds for recall" and defensive statements thereto, as well as the names and affidavits upon the original petition, and deliver them to the person who has been designated as chairman of the [1]committee and take his receipt therefor. The prepared counterpart shall be entitled "Recall Petition and Defense" and shall contain lines and spaces for signatures of registered electors, place of residence, election precinct number, and date of signing, together with affidavits to be executed by the circulators which conform to the provisions of paragraph (c). The city auditor or clerk, or his equivalent, shall deliver forms sufficient to carry the signatures of 30 percent of the registered electors.

(g) Upon receipt of the counterparts, the [1]committee may circulate them to obtain the signatures of 15 percent of the electors. Any elector who signs

a recall petition shall have the right to demand in writing that his name be stricken from the petition. A written demand signed by the elector shall be filed with the city auditor or clerk, or his equivalent, and upon receipt of the demand the city auditor or clerk, or his equivalent, shall strike the name of the elector from the petition and place his initials to the side of the signature stricken. However, no signature may be stricken after the city auditor or clerk, or his equivalent, has certified the total of electors to the governing body.

(h) Within 60 days after delivery of the counterparts to the chairman, the chairman shall file with the city auditor or clerk, or his equivalent, the counterparts that bear signatures of electors. The city auditor or clerk, or his equivalent, shall assemble all signed counterparts, check to see that each counterpart is properly verified by the affidavit of the circulator, and submit such petitions to the county supervisor of elections who shall ascertain the number of different signatures upon the counterparts, purge the names withdrawn, certify within 30 days whether 15 percent of the qualified electors of the municipality have signed the petitions, and report his findings to the governing body. The supervisor shall be paid by the persons or [1]committee seeking verification the sum of 10 cents for each name checked.

(i) If the petitions do not contain the required signatures, the city auditor or clerk, or his equivalent, shall report such fact to the governing body and file the petitions and the proceedings shall be terminated, and the petitions shall not again be used. If the signatures do amount to 15 percent of the qualified electors, he shall serve notice of that fact upon the person sought to be recalled and deliver to the governing body a certificate as to the percentage of qualified voters who signed.

(2) RECALL ELECTION.—If the person designated in the petition files with the city auditor or clerk, or his equivalent, within 5 days after the last-mentioned notice, his written resignation, the city auditor or clerk, or his equivalent, shall at once notify the governing body of that fact, and the resignation shall be irrevocable. The governing body shall then proceed to fill the vacancy according to the provisions of the appropriate law. In the absence of a resignation, the chief judge of the judicial circuit in which the municipality is located shall fix a day for holding a recall election for the removal of those not resigning. Any such election shall be held not less than 30 days or more than 60 days after the expiration of the 5-day period last-mentioned and at the same time as any other general or special election held within the period; but if no such election is to be held within that period, the judge shall call a special recall election to be held within the period aforesaid.

(3) BALLOTS.—The ballots at the recall election shall conform to the following: With respect to each person whose removal is sought, the question shall be submitted: "Shall ..... be removed from the office of ..... by recall?" Immediately following each question there shall be printed on the ballots the two propositions in the order here set forth:

"For the recall of (name of person)."

"Against the recall of (name of person)."

Immediately to the right of each of the propositions shall be placed a square on which the electors, by making a crossmark (X), may vote either of the propositions. Voting machines may be used.

(4) FILLING OF VACANCIES.—If in any election a majority of the votes cast on the question of removal of any member of the governing body of a municipality is affirmative, the member whose removal is sought shall be deemed removed from office upon the announcement of the official canvass of that election, and the vacancy caused by the recall shall be filled by the governing body according to the provisions of the appropriate law. If, however, an election is held for the recall of more than one member, candidates to succeed them for the unexpired terms shall be voted upon at the same election, and shall be nominated in the same manner as provided by the appropriate law for the nomination of candidates at general elections.

(5) COUNTING THE VOTE.—Candidates shall not be nominated to succeed any particular member. If only one member is removed, the candidate receiving the highest number of votes shall be declared elected to fill the vacancy. If more than one member is removed, candidates equal in number to the number of members removed shall be declared elected to fill the vacancies; and, among the successful candidates, those receiving the greatest number of votes shall be declared elected for the longest terms. Cases of ties, and all other matters not herein specially provided for, shall be determined by the rules governing elections generally.

(6) EFFECT OF RESIGNATIONS.—No proceedings for the recall of all of the members of the governing body at the same election shall be defeated in whole or in part by the resignation of any or all of them, but, upon the resignation of any of them, the governing body shall have power to fill the vacancy or vacancies until successors are elected, and the proceedings for the recall and election of successors shall continue and have the same effect as though there had been no resignation.

(7) WHEN PETITION MAY BE FILED.—Except as otherwise provided, no petition to recall any member of the governing body of a municipality shall be filed until he has served one-fourth of his term of office. No person removed by a recall, or resigning after a petition has been filed against him, shall be eligible to be appointed to the governing body within a period of 2 years after the date of such recall or resignation. The city auditor or clerk, or his equivalent, shall preserve in his office all papers comprising or connected with a petition for recall for a period of 2 years after they were filed. This method of removing members of the governing body of a municipality is in addition to such other methods now or hereafter provided by the general laws of this state.

(8) OFFENSES RELATING TO PETITIONS.—No person shall impersonate another, purposely write his name or residence falsely in the signing of any petition for recall or forge any name thereto, or sign any paper with knowledge that he is not a qualified elector of the municipality. No expenditures for campaigning for or against an officer being recalled shall be made until the date on which the recall election is to be held is publicly announced. The

[1]committee and the officer being recalled shall be subject to chapter 106. No person shall employ or pay another to accept employment or payment for circulating a recall petition. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor of the second degree and shall, upon conviction, be punished as provided by law.

(9) INTENT.—It is the intent of the Legislature that the recall procedures provided in this act shall be uniform statewide. Therefore, all municipal charter and special law provisions which are contrary to the provisions of this act are hereby repealed to the extent of this conflict.

(10) PROVISIONS APPLICABLE.—The provisions of this act shall apply to cities and charter counties which have adopted recall provisions.

History.—ss. 1, 2, ch. 74-130; s. 1, ch. 77-174; s. 12, ch. 77-175; s. 1, ch. 77-279.

[1]**Note.**—Prior to the amendment of this section by ch. 77-175, the electors who had signed the original petition for recall were designated a "committee" for the purpose of making the charges contained in the statement of grounds for recall. The deletion of this definition was apparently unintended.

100.371 Initiatives; procedure for placement on ballot.—

(1) Constitutional amendments proposed by initiative shall be placed on the ballot for the general election occurring in excess of 90 days from the certification of ballot position by the Secretary of State.

(2) Such certification shall be issued when the Secretary of State has received verification certificates from the supervisors of elections indicating that the requisite number and distribution of signatures of electors have been submitted to and verified by the supervisors.

(3) The sponsor of an initiative amendment shall, prior to obtaining any signatures, register as a political committee pursuant to s. 106.03 and submit the text of the proposed amendment to the Secretary of State, with the form on which the signatures shall be affixed, and shall obtain the approval of the Secretary of State of such form. The Secretary of State shall promulgate rules pursuant to s. 120.54 prescribing the style and requirements of such form.

(4) The sponsor shall submit signed forms to the appropriate supervisor of elections for verification as to the number of registered electors whose signatures appear thereon. The supervisor shall promptly verify the signatures upon payment of the fee required by s. 99.097. Upon completion of verification, the supervisor shall execute a certificate indicating the total number of signatures checked, the number verified as being of registered electors, and the distribution by congressional district. This certificate shall be immediately transmitted to the Secretary of State. The supervisor shall retain the signature forms for at least 1 year.

(5) The Secretary of State shall determine from the verification certificates received from supervisors of elections the total number of verified signatures and distribution of such signatures by congressional districts. Upon a determination that the requisite number and distribution of signatures have been obtained, the secretary shall issue a certificate of ballot position for that proposed amendment and shall assign a designating number pursuant to s. 101.161. A petition shall be deemed to be filed with the Secretary of State upon the date of the receipt by the secretary of a certificate or certificates from supervisors of elections indicating the petition has been signed by the constitutionally required number of electors.

(6) The Department of State shall have the authority to promulgate rules in accordance with s. 120.54 to carry out the provisions of this section.

History.—s. 15, ch. 79-365.

CHAPTER 101

VOTING METHODS AND PROCEDURE

cause.

101.011 Voting by paper ballot.—

(1) In counties where paper ballots are used, each elector shall be given a ballot by the inspector. Before delivering the ballot to the elector, one of the inspectors shall write his initials or name on the stub attached to the ballot; then the elector shall, without leaving the polling place, retire alone to a booth or compartment provided, and place an "X" mark after the name of the candidate of his choice for each office to be filled, and likewise mark an "X" after the answer he desires in case of a constitutional amendment or other question submitted to a vote.

(2) No paper ballot shall be voided or declared invalid in any election within the state by reason of the fact that same is marked other than with an "X," so long as there is a clear indication thereon to the election officials that the person marking such ballot has made a definite choice, and provided further, that the mark placed on said ballot with respect to any candidate by any such voter shall be located in the blank space on the ballot opposite such candidate's name.

(3) After preparing his paper ballot, the elector shall fold the ballot so as to conceal the face of the ballot and show the stub attached with the name or initials of the inspector and hand it to the receiving inspector, who shall detach the stub and return the ballot to the elector to deposit in the ballot box in the presence of the inspectors. The detached stubs shall be numbered consecutively and filed by the inspectors.

(4) If the elector marks more names than there are persons to be elected to an office, or if it is impossible to determine the elector's choice, his ballot shall not be counted for the office; but this shall not vitiate the ballot as to those names which are properly marked, and nothing in this code shall be construed to prevent any elector, at any general election, from voting for any qualified candidate.

(5) Any elector who shall, by mistake, spoil a ballot so he cannot vote the same may return it to the inspectors, who shall immediately detach the stub, destroy the ballot without examination, and give the elector another ballot. In no case shall an elector be furnished with more than three ballots or carry a ballot outside the polling room. The clerk shall keep a record of all ballots destroyed.

History.—s. 46, ch. 4328, 1895; s. 3, ch. 4329, 1895; GS 230; RGS 275; CGL 331; s. 8, ch. 17898, 1937; s. 5, ch. 26870, 1951; s. 1, ch. 28030, s. 20, ch. 28156, 1953; s. 1, ch. 59-334; s. 3, ch. 67-386; s. 13, ch. 77-175.
Note.—Former s. 99.28.

101.021 Elector to vote the primary ballot of the political party in which he is registered.—In a primary election a qualified elector is entitled to vote the official primary election ballot of the political party designated in his registration, and no other. It is unlawful for any elector to vote in a primary for any candidate running for nomination from a party other than that in which such elector is registered.

History.—s. 41, ch. 6469, 1913; RGS 345; CGL 402; s. 5, ch. 26870, 1951; s. 21, ch. 28156, 1953; s. 13, ch. 77-175.
Note.—Former s. 102.40.

101.031 Instructions for electors.—

(1) The Department of State, or in case of municipal elections the governing body of the municipality, shall print, in large type on cards, instructions for the electors to use in voting. It shall provide not less than two cards for each voting precinct and furnish such cards to each supervisor upon requisition. Each supervisor of elections shall send a sufficient number of these cards to the precincts prior to an election. The election inspectors shall display the cards in the polling places as information for electors. The cards shall contain information about how to vote and such other information as the Department of State may deem necessary.

(2) In case any elector, after entering the voting booth, shall ask for further instructions concerning the manner of voting, two election officers who are not both members of the same political party, if present, or, if not, two election officers who are members of the same political party, shall give such instructions to such elector, but no officer or person assisting an elector shall in any manner request, suggest, or seek to pursuade or induce any elector to vote for or against any particular ticket, candidate, amendment, question, or proposition. After giving the elector instructions and before the elector has voted, the officers or persons assisting the elector shall retire, and such elector shall vote in secret.

History.—s. 40, ch. 4328, 1895; s. 12, ch. 4537, 1897; GS 225; RGS 270; CGL 326; s. 1, ch. 25106, 1949; s. 5, ch. 26870, 1951; ss. 10, 35, ch. 69-106; s. 25, ch. 77-104; s. 13, ch. 77-175; s. 31, ch. 79-400.
Note.—Former s. 99.24.

101.041 Secret voting.—In all elections held on any subject which may be submitted to a vote, and for all or any state, county, district, or municipal officers, the voting shall be by secret, official ballot printed and distributed as provided by this code, and no vote shall be received or counted in any election, except as prescribed by this code.

History.—s. 24, ch. 3879, 1889; RS 178; s. 28, ch. 4328, 1895; GS 210; RGS 254; CGL 310; s. 3, ch. 17898, 1937; s. 5, ch. 26870, 1951; s. 13, ch. 77-175.
Note.—Former s. 99.08.

101.051 Electors seeking assistance in casting ballots; form to be executed; forms to be furnished.—

(1) Any elector applying to vote in any election who is unable to read or write or who, because of some physical disability, needs assistance in voting may request assistance of two election officials or some other person of his own choice, who has not previously so acted for more than one other person during the election, to assist him in casting his vote; however, a blind elector may receive the assistance of any person of his own choice. Any such elector, before retiring to the voting booth, may have one of said persons read over to him, without suggestion or interference, the titles of the offices to be filled and the candidates therefor and the issues on the ballot. After the elector requests the aid of the two election officials, or the person of his choice, they shall retire to the voting booth for the purpose of casting the elector's vote according to the elector's choice.

(2) It shall be unlawful for any person to be in the voting booth with any elector except as provided subsection (1).

(3) Any elector applying to cast an absen

lot in the office of the supervisor, in any election, who is unable to read or write or who, because of some physical disability, needs assistance in voting may request the assistance of some person of his own choice, who has not previously assisted more than one other person during the election, in casting his absentee ballot; however, a blind elector may receive the assistance of any person of his own choice. However, no supervisor of elections or his deputies or members of his staff shall act in such capacity.

(4) If an elector needs assistance in voting pursuant to the provisions of this section, the clerk or one of the inspectors shall require the elector requesting assistance in voting to take the following oath:

DECLARATION TO SECURE ASSISTANCE

State of Florida

County of .....

Date .....

Precinct .....

I, ... (Print name) ....., swear or affirm that I am a registered elector and request assistance from .....(Print names) ..... in voting at the (name of election) held on (date of election) for the following reason ....

.....

.....

(Signature of voter)

Sworn and subscribed to before me this ..... day of ....., 19.....

(Signature of Official Administering Oath)

(5) The supervisor of elections shall deliver a sufficient number of these forms to each precinct, along with other election paraphernalia.

History.—s. 3, ch. 22018, 1943; s. 5, ch. 26870, 1951; s. 2, ch. 59-446; s. 1, ch. 65-380; s. 2, ch. 65-60; s. 13, ch. 77-175; s. 2, ch. 79-366.

Note.—Former s. 100.36.

101.111 Person desiring to vote may be challenged; challenger to execute oath; oath of challenged elector; determination of challenge.—

(1) When the right to vote of any person who desires to vote is questioned by any elector or watcher, the challenge shall be reduced to writing with an oath as provided in this section, giving reasons for the challenge, which shall be delivered to the clerk or inspector. Any elector or authorized poll watcher challenging an elector at an election shall execute the oath set forth below:

OATH OF PERSON ENTERING CHALLENGE

State of Florida
County of .....

I do solemnly swear that my name is .....; that I am a member of the ..... party; that I am ..... years old; that I was born in the state of..... or the country of .....; that my residence is on ..... street, in the municipality of .....; and that I have reason to believe that ..... is attempting to vote illegally and the reasons for my belief are set forth herein to wit: .....

.....

.....

(Signature of person challenging voter)

Sworn and subscribed to before me this ..... day of ....., 19.....

(Clerk of election)

(2) Before a challenged elector is permitted to vote by any officer or person in charge of admission to the polling place, his right to vote shall be determined in accordance with the provisions of subsection (3). The clerk or inspector shall immediately deliver to the challenged elector a copy of the oath of the person entering the challenge and shall request the challenged elector to execute the following affidavit:

OATH OF CHALLENGED VOTER

State of Florida
County of .....

I do solemnly swear that my name is .....; that I am a member of the ..... party; that I am ..... years old; that I was born in the state of ..... or the country of .....; that my residence is on ..... street, in the municipality of ....., in this the ..... precinct of ..... county; that I personally made application for registration and signed my name and that I am a qualified voter, and I am not registered to vote in any other precinct other than the one in which I am presently seeking to vote.

(Signature of voter)

Sworn and subscribed to before me this ..... day of ....., 19.....

(Clerk of election or Inspector)

Any inspector or clerk of election may administer the oath.

(3) If the challenged person refuses to make and sign the affidavit, the clerk or inspector shall refuse to allow him to vote. If such person makes the affidavit, the inspectors and clerk of election shall compare the information in the affidavit with that entered on the registration books opposite his name, and, upon such comparison of the information and his signature and the taking of other evidence which may then be offered, the clerk and inspectors shall decide by a majority vote whether the challenged person may vote. If the challenged person is unable to write or sign his name, the clerk or inspector shall examine the precinct register to ascertain whether the person registered under the name of such person is represented to have signed his name. If he is so represented, then he shall be denied permission to

vote without further examination; but, if not, then the clerk or one of the inspectors shall place such person under oath and orally examine him upon the subject matter contained in the affidavit, and, if there is any doubt as to the identity of such person, the clerk or inspector shall compare his appearance with the description entered upon the precinct register opposite his name. The clerk or inspector shall then proceed as in other cases to determine whether the challenged person may vote.

History.—s. 43, ch. 4328, 1895; GS 227; s. 43, ch. 6469, 1913; RGS 272, 347; CGL 328, 404; s. 5, ch. 26870, 1951; s. 10, ch. 27991, 1953; s. 23, ch. 28156, 1953; s. 4, ch. 65-380; s. 13, ch. 77-175.

Note.—Former ss. 99.26 and 102.42.

101.121 Persons allowed in polling places.—As many electors may be admitted to vote as there are booths available, and no person who is not in line to vote may come within 15 feet of any polling place from the opening to the closing of the polls, except the officially designated watchers, the inspectors, the clerks of election, and the supervisor of elections or his deputy. However, the sheriff, a deputy sheriff, or a city policeman may enter the polling place with permission from the clerk or a majority of the inspectors.

History.—ss. 39, 42, ch. 4328, 1895; GS 224, 226; RGS 269, 271; CGL 325, 327; s. 5, ch. 26870, 1951; s. 17, ch. 29934, 1955; s. 5, ch. 65-380; s. 1, ch. 75-174; s. 13, ch. 77-175.

Note.—Former ss. 99.23 and 99.25.

101.131 Watchers at polls.—

(1) Each political party and each candidate may have one watcher in each polling place at any one time during the election. No watcher shall be permitted to come closer to the officials' table or the voting booths than is reasonably necessary to properly perform his functions, but each shall be allowed within the polling room to watch and observe the conduct of electors and officials. The watchers shall furnish their own materials and necessities and shall not obstruct the orderly conduct of any election. Each watcher shall be a qualified and registered elector of the county in which he serves. During the elections the officials shall call out the names of electors loudly enough to be heard by the watchers.

(2) Each party and each candidate requesting to have poll watchers shall designate, in writing, poll watchers for each precinct prior to noon of the 10th day preceding the election. The poll watchers for each precinct shall be approved by the supervisor of elections at least 5 days prior to the election. The supervisor shall furnish to each precinct a list of the poll watchers designated and approved for such precinct.

(3) No candidate or sheriff, deputy sheriff, policeman, or other law enforcement officer may be designated as a poll watcher.

History.—s. 3D, ch. 22018, 1943; s. 5, ch. 26870, 1951; s. 18, ch. 29934, 1955; s. 6, ch. 65-380; s. 13, ch. 77-175.

Note.—Former s. 100.45.

101.141 Specifications for primary election ballot.—In counties in which voting machines are not used, and in other counties for use as absentee ballots not designed for tabulation by an electronic or electromechanical voting system, the primary election ballot shall conform to the following specifications:

(1) The ballots shall be of a different color for each political party participating in the primary election. All ballots shall contain the same information as far as possible and be printed on paper of such thickness that the printing cannot be distinguished from the back.

(2) Across the top of the ballot shall be printed, "Official Primary Ballot ..... Party" (with proper party name inserted), beneath which shall be printed the county, the precinct number, and the date of the election, except that a precinct number shall not be required for absentee ballots. Above the caption of the ballot shall be two stubs, with a perforated line between the stubs and between the lower stub and top of the ballot. Each stub shall have printed thereon: "Official Primary Ballot," below which shall appear the party name; on the left side shall be a blank line under which shall be "Signature of Voter" (only on the top stub); on the right side shall appear: "Initials of Issuing Official," above which shall be a blank line; under the party name shall appear the name of the county, the precinct number, and the date of the primary election; the stubs of all ballots for each precinct shall be prenumbered consecutively, beginning with "No. 1," and the stubs on each ballot shall bear the same number. However, a second stub shall not be required for absentee ballots.

(3) Beneath the caption and preceding names of candidates shall be the following words: "To vote for a candidate, mark a cross (X) in the blank space at the right of the name of the candidate for whom you desire to vote."

(4) The ballot shall have the headings, under which appear the names of the offices and the candidates for the respective offices alphabetically arranged as to surnames, in the following order: The heading "Congressional" and thereunder the offices of United States Senator and representative in Congress; the heading "State" and thereunder the offices of Governor and Lieutenant Governor, Secretary of State, Attorney General, Comptroller, State Treasurer, Commissioner of Education, Commissioner of Agriculture, public service commissioner, state attorney, and public defender; the heading "Legislative" and thereunder the offices of state senator and state representative; the heading "County" and thereunder clerk of the circuit court, clerk of the county court (when authorized by law), sheriff, property appraiser, tax collector, district superintendent of schools, and supervisor of elections. Thereafter follows: Members of the board of county commissioners, members of the district school board, and such other county and district offices as are involved in the primary election, in the order fixed by the Department of State; the heading "Official Presidential Preference Primary Ballot," as provided in s. 103.101; followed, in the years of their election, by "Party offices," and thereunder the offices of state and county party executive committee members. Immediately following the name of each office on the ballot shall be printed, "Vote for One." When more than one candidate is to be nominated for office, the candidates for such office shall qualify and run in a group or district. The group or district number shall

be printed beneath the name of the office. The names of candidates in the respective group or district shall be arranged thereunder in alphabetical order as to surnames, and following the group or district number there shall be printed the words, "Vote for One." The name of the office shall be printed over each numbered group or district and each numbered group or district shall be clearly separated from the next numbered group or district, the same as in the case of single offices. When two or more candidates running for the same office have the same or similar surname and one candidate is currently holding that office, the word "Incumbent" shall be printed next to the incumbent's name. If in any primary election all the offices as above set forth are not involved, those offices to be filled shall be arranged on the ballot in the order named.

(5) On each ballot stub the words, "Official Primary Ballot" and the party name, and on the caption the words, "Official Primary Ballot ..... Party," shall be in 18-point caps; the printed instruction to electors immediately preceding the offices and names of candidates shall be in 10-point type; the headings shall be in 12-point blackface caps; the offices, the group or district numbers, and the words, "Vote for One" shall be in 12-point upper and lower case blackface type; the names of candidates shall be in 10-point lightface caps; the lines on which are printed the candidates' names shall be at least one and one half picas apart, and the box to the right of each candidate's name provided for the cross (X) in voting shall be two picas wide and one and one half picas high.

(6) Should the above directions for complete preparation of the ballot be insufficient, the Department of State shall determine and prescribe any additional matter or form. The Department of State shall, not less than 60 days prior to the first primary election, mail to each supervisor of elections the form of the ballot to be used, and before the ballots are printed shall approve the ballots, including the color, to insure that they comply with the form required by law.

(7) If the above requirements as to type, size, and kind are not possible to follow, the ballot shall be prepared to conform as closely as possible to such requirements.

History.—ss. 38, 39, ch. 6469, 1913; RGS 342, 343; CGL 399, 400; s. 7, ch. 13761, 1929; s. 1, ch. 17901, 1937; ss. 1, 2, ch. 25386, 1949; s. 5, ch. 26870, 1951; s. 2, ch. 29937, 1955; s. 1, ch. 65-52; s. 2, ch. 65-60; s. 7, ch. 65-380; s. 7, ch. 69-281; ss. 10, 35, ch. 69-106; s. 1, ch. 70-268; s. 1, ch. 71-236; s. 36, ch. 73-333; s. 1, ch. 77-102; s. 13, ch. 77-175; s. 32, ch. 79-400.

Note.—Former ss. 102.37 and 102.38.

101.151 Specifications for general election ballot.—In counties in which voting machines are not used, and in other counties for use as absentee ballots not designed for tabulation by an electronic or electromechanical voting system, the general election ballot shall conform to the following specifications:

(1) The ballot shall be printed on paper of such thickness that the printing cannot be distinguished from the back.

(2) Across the top of the ballot shall be printed "Official Ballot, General Election," beneath which shall be printed the county, the precinct number, and the date of the election. The precinct number, however, shall not be required for absentee ballots. Above the caption of the ballot shall be two stubs with a perforated line between the stubs and between the lower stub and the top of the ballot. The top stub shall be stub No. 1 and shall have printed thereon, "General Election, Official Ballot," and then shall appear the name of the county, the precinct number, and the date of the election. On the left side shall be a blank line under which shall be printed "Signature of Voter." On the right side shall be "Initials of Issuing Official," above which there shall be a blank line. The second stub shall be the same, except there shall not be a space for signature of the elector. Both stubs No. 1 and No. 2 on ballots for each precinct shall be prenumbered consecutively, beginning with "No. 1." However, a second stub shall not be required for absentee ballots.

(3)(a) Beneath the caption and preceding the names of candidates shall be the following words: "To vote for a candidate, place a cross (X) mark in the blank space at the right of the name of the candidate for whom you desire to vote." The ballot shall have headings under which shall appear the names of the offices and names of duly nominated candidates for the respective offices in the following order: The heading "Electors for President and Vice President" and thereunder the names of the candidates for President and Vice President of the United States nominated by the political party which received the highest vote for Governor in the last general election of the Governor in this state, above which shall appear the name of said party. Then shall appear the names of other candidates for President and Vice President of the United States who have been properly nominated. Then shall follow the heading "Congressional" and thereunder the offices of United States Senator and Representative in Congress; then the heading "State" and thereunder the offices of Governor and Lieutenant Governor, Secretary of State, Attorney General, Comptroller, State Treasurer, Commissioner of Education, Commissioner of Agriculture, public service commissioner, state attorney, and public defender, together with the names of the candidates for each office and the title of the office which they seek; then the heading "Legislative" and thereunder the offices of state senator and state representative; then the heading "County" and thereunder clerk of the circuit court, clerk of the county court (when authorized by law), sheriff, property appraiser, tax collector, district superintendent of schools, and supervisor of elections. Thereafter follows: Members of the board of county commissioners, members of the district school board, and such other county offices as are involved in the general election, in the order fixed by the Department of State.

(b) Immediately following the name of each office on the ballot shall be printed, "Vote for One." When more than one candidate is nominated for office, the candidates for such office shall qualify and run in a group or district, and the group or district number shall be printed beneath the name of the office. The name of the office shall be printed over each numbered group or district and each numbered group or district shall be clearly separated from the next numbered group or district, the same as in the

case of single offices. Following the group or district number shall be printed the words, "Vote for One," and the names of the candidates in the respective groups or districts shall be arranged thereunder.

(4) The names of the candidates of the party which received the highest number of votes for Governor in the last election in which a Governor was elected shall be placed first under the heading for each office, together with appropriate abbreviation of party name; the names of the candidates of the party which received the second highest vote for Governor shall be second under the heading for each office, together with appropriate abbreviation of the party name.

(5) Minor political party candidates and independent candidates shall have their names appear on the general election ballot following the names of recognized political parties, in the same order as they were certified.

(6) Except for justices of the Supreme Court and judges of District Courts of Appeal, the names of unopposed candidates shall not appear on the general election ballot. Each unopposed candidate shall be deemed to have voted for himself.

(7) The same requirement as to the type, size, and kind of printing of official ballots in primary elections as provided in s. 101.141(5) shall govern the printing of official ballots in general elections.

(8) Should the above directions for complete preparation of the ballot be insufficient, the Department of State shall determine and prescribe any additional matter or form. Not less than 60 days prior to a general election, the Department of State shall mail to each supervisor of elections the form of the ballot to be used, and before the ballots are printed shall approve the ballots to insure that they comply with the form required by law.

(9) The provisions of s. 101.141(7) shall be applicable in printing of said ballot.

History.—s. 35, ch. 4328, 1895; GS 219; s. 1, ch. 5612, 1907; RGS 264; CGL 320; s. 5, ch. 17898, 1937; ss. 2, 3, ch. 25187, 1949; s. 5, ch. 26870, 1951; s. 3, ch. 29937, 1955; s. 1, ch. 57-235; s. 2, ch. 59-334; s. 8, ch. 65-380; s. 1, ch. 65-52; s. 2, ch. 65-60; s. 8, ch. 65-380; s. 4, ch. 67-386; ss. 10, 35, ch. 69-106; s. 8, ch. 69-281; s. 1, ch. 69-380; s. 37, ch. 73-333; s. 1, ch. 77-102; s. 13, ch. 77-175; s. 33, ch. 79-400.
Note.—Former ss. 99.18 and 99.171.

101.161 Constitutional amendment or other public measure.—Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed on the ballot after the list of candidates, followed by the word "for," and also by the word "against." The wording of the substance of the amendment or other public measure to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, or enabling resolution or ordinance and shall be furnished to the supervisor of elections of each county in which such public measure is to be voted on. The substance of an amendment proposed by initiative shall be prepared by the sponsor and approved by the Secretary of State in accordance with rules adopted pursuant to s. 120.54. The Department of State shall give each proposed constitutional amendment a designating number for convenient reference. This number designation shall appear on the ballot.

History.—s. 34, ch. 4328, 1895; GS 218; RGS 262; CGL 318; ss. 1-11, ch. 16180, 1933; s. 1, ch. 16877, 1935; s. 4, ch. 17898, 1937; s. 1, ch. 22626, 1945; s. 5, ch. 26870, 1951; ss. 10, 35, ch. 69-106; s. 1, ch. 73-7; s. 13, ch. 77-175; s. 16, ch. 79-365.
Note.—Former s. 99.16.

101.171 Copy of constitutional amendment to be posted.—Whenever any amendment to the State Constitution is to be voted upon at any election, the Department of State shall have printed, and shall furnish to each supervisor of elections, a sufficient number of copies of the amendment, and the supervisor shall have a copy thereof conspicuously posted at each precinct upon the day of election.

History.—s. 1, ch. 5405, 1905; RGS 263; CGL 319; s. 5, ch. 26870, 1951; ss. 10, 35, ch. 69-106; s. 13, ch. 77-175.
Note.—Formerly s. 99.17.

101.181 Form of primary ballot.—

(1) The primary election ballot shall be in substantially the following form:

OFFICIAL PRIMARY BALLOT
No. .... Party
..... COUNTY, FLORIDA
Precinct No. .....
.....(Date).....
(Signature of Voter) (Initials of Issuing Official)
Stub No. 1

OFFICIAL PRIMARY BALLOT
No. .... Party
..... COUNTY, FLORIDA
Precinct No. .....
.....(Date).....
(Initials of Issuing Official)
Stub No. 2

OFFICIAL PRIMARY BALLOT
..... Party
..... COUNTY, FLORIDA
Precinct No. .....
.....(Date).....

TO VOTE for a candidate, mark a cross (X) in the blank space at the RIGHT of the name of the candidate for whom you desire to vote.

CONGRESSIONAL
UNITED STATES SENATOR
Vote for One

(Name of Candidate) ☐
(Name of Candidate) ☐
(Name of Candidate) ☐

(And thence other offices under this heading, followed by the headings and offices as prescribed in s. 101.141.)

(2) The primary election ballot shall be arranged and printed so that the offices of Governor and Lieutenant Governor are joined in a single voting space to allow each elector to cast a single vote for the joint

candidacies for Governor and Lieutenant Governor.

History.—s. 40, ch. 6469, 1913; s. 5, ch. 6874, 1915; RGS 344; CGL 401; s. 8, ch. 13761, 1929; s. 2, ch. 17901, 1937; s. 3, ch. 25386, 1949; s. 5, ch. 26870, 1951; s. 9, ch. 69-281; s. 14, ch. 77-175.

Note.—Former s. 102.39.

101.191 Form of general election ballot.—

(1) The general election ballot shall be in substantially the following form:

OFFICIAL BALLOT GENERAL ELECTION
No. .... COUNTY, FLORIDA
Precinct No. .....
(Date).....
(Signature of Voter) (Initials of Issuing Official)
Stub No. 1

OFFICIAL BALLOT GENERAL ELECTION
No. .... COUNTY, FLORIDA
Precinct No. .....
(Date).....
(Initials of Issuing Official)
Stub No. 2

OFFICIAL BALLOT GENERAL ELECTION
..... COUNTY, FLORIDA
Precinct No. .....
(Date).....

TO VOTE for a candidate, mark a cross (X) in the blank space at the RIGHT of the name of the candidate for whom you desire to vote.

ELECTORS
For President
and
Vice President
(A vote for the candidates will actually be a vote for their electors)
Vote for group

DEMOCRATIC

(Name of Candidate)
For President ☐

(Name of Candidate)
For Vice President

REPUBLICAN

(Name of Candidate)
For President
☐
(Name of Candidate)
For Vice President

(NAME OF MINOR PARTY)

(Name of Candidate)
For President
☐
(Name of Candidate)
For Vice President

INDEPENDENT

(Name of Candidate)
For President
☐
(Name of Candidate)
For Vice President

CONGRESSIONAL
UNITED STATES SENATOR
Vote for One

(Name of Candidate) (Party abbreviation) ☐

(Name of Candidate) (Party abbreviation ☐

(And thence other offices under this heading, followed by the headings and offices as prescribed in s. 101.151.)

PROPOSED CONSTITUTIONAL AMENDMENTS
Mark a cross (X) in the blank space at the RIGHT for the Amendment or against the Amendment.

No. .....
CONSTITUTIONAL
AMENDMENT
ARTICLE ....., SECTION .....
(Here the wording of the substance of the amendment shall be inserted.)

FOR the Amendment ☐

AGAINST the Amendment ☐

(2) The general election ballot shall be arranged and printed so that the offices of President and Vice President are joined in a single voting space to allow each elector to cast a single vote for the joint candidacies for President and Vice President and so that the offices of Governor and Lieutenant Governor are joined in a single voting space to allow each elector to cast a single vote for the joint candidacies for Governor and Lieutenant Governor.

History.—s. 35, ch. 4328, 1895; GS 220; RGS 265; CGL 321; s. 5, ch. 24994, 1948; s. 4, ch. 25187, 1949; s. 5, ch. 26870, 1951; s. 29, ch. 29934, 1955; s. 2, ch. 57-235; s. 3, ch. 59-334; ss. 10, 35, ch. 69-106; s. 10, ch. 69-281; s. 15, ch. 77-175.

Note.—Former s. 99.19.

101.20 Publication of ballot form; sample ballots.—

(1) Two sample ballots shall be furnished to each polling place by the officer whose duty it is to provide official ballots. The sample ballots shall be in the form of the official ballot as it will appear at that polling place on election day. Sample ballots shall be open to inspection by all electors in any election, and a sufficient number of reduced-size ballots may be furnished to election officials so that one may be given to any elector desiring same.

(2) Upon completion of the list of qualified candidates, a sample ballot shall be published by the supervisor of elections in a newspaper of general circulation in the county, prior to the day of election. If the county has an addressograph or equivalent system for mailing to registered electors, a sample bal-

lot may be mailed to each registered elector or to each household in which there is a registered elector, in lieu of publication, at least 7 days prior to any election.

History.—s. 5, ch. 26870, 1951; s. 8, ch. 57-166; s. 9, ch. 65-380; s. 1, ch. 75-174; s. 16, ch. 77-175.

101.21 Official ballots; number; printing; payment for ballots.—

(1) In any county in which voting machines are not used, there shall be printed as many official ballots as shall be equal to 110 percent of the number of registered electors. The printing and delivery of ballots and cards of instruction shall, in a municipal election, be paid for by the municipality, and in all other elections by the county.

(2) In any county in which voting machines are used, two sets of official ballots shall be provided for each polling place for each precinct, of which one set shall be inserted or placed in or upon the machine and the other retained in the custody of the supervisor, unless it shall become necessary during the election to make use of same upon or in said machine.

History.—ss. 29, 37, ch. 4328, 1895; s. 11, ch. 4537, 1897; GS 211, 222; RGS 255, 267; CGL 311, 323; s. 7, ch. 17898, 1937; s. 2, ch. 24088, 1947; s. 7, ch. 25384, 1949; s. 5, ch. 26870, 1951; s. 10, ch. 65-380; s. 1, ch. 69-281; s. 20, ch. 71-355; s. 16, ch. 77-175; s. 34, ch. 79-400.

Note.—Former ss. 99.09, 99.21.

101.22 Voting procedure, paper ballots.—Before any paper ballot is delivered to an elector at the polls on election day, one of the inspectors shall affix his initials on the line provided on each of the two ballot stubs and the elector shall sign his name on the line on the top stub, or, if he is unable to write, he shall sign his mark. The inspector shall compare the signature on the ballot stub with the signature on the elector's registration and, if necessary, require other identification. If the inspector is reasonably sure that the person is entitled to vote, he shall detach and retain the upper stub, and the elector shall go to the booth and mark his ballot and, after he has marked his ballot, he shall fold it so as to leave the stub remaining attached visible so that it can be detached without unfolding. The inspector shall compare it with the stub he retained and, if it is the ballot he delivered to the elector, he shall detach and retain the remaining stub, and the elector shall then deposit the folded ballot in the ballot box. But, if the marked ballot returned proves to be a different one from the one delivered to him, the inspector shall search the elector, and, if the original ballot is found on his person, the inspector shall take possession of the ballot and discharge the elector from the polling place without permitting him to vote. An inspector of elections, where paper ballots are used, is clothed with such police power as is necessary to carry out the provisions of this section.

History.—s. 36, ch. 4328, 1895; GS 221; s. 42, ch. 6469, 1913; RGS 266, 346, 5911; CGL 322, 403, 8175; s. 6, ch. 17898, s. 3, ch. 17901, 1937; s. 6, ch. 25187, s. 4, ch. 25386, 1949; s. 5, ch. 26870, 1951; s. 16, ch. 77-175; s. 35, ch. 79-400.

Note.—Former ss. 99.20, 102.41.

101.23 Election inspector to keep list of those voting.—

(1) When any person has been admitted to vote, his name shall be checked by the clerk or one of the inspectors at the place indicated upon the registration books or voter history form provided by the supervisor. One of the inspectors shall, at the same time, keep a poll list containing names of electors who have voted or a list of registered electors, on which those electors who have voted are indicated. Such lists shall be available for inspection during regular voting hours by poll watchers designated and appointed pursuant to s. 101.131, except that the election inspector may regulate access to the lists so as to ensure that such inspection does not unreasonably interfere with the orderly operation of the polling place.

(2) The inspectors shall prevent any person from voting a second time when they have reason to believe that the person has voted. They shall refuse to allow any person to vote who is not a qualified elector or who has become disqualified to vote in the precinct, and may prevent any elector from consuming more than 5 minutes in voting.

History.—s. 58, ch. 4328, 1895; GS 236; RGS 281; CGL 337; s. 5, ch. 26870, 1951; s. 24, ch. 28156, 1953; s. 11, ch. 65-380; s. 16, ch. 77-175.

Note.—Former s. 99.37.

101.24 Ballot boxes and ballots.—The supervisor of elections, except where voting machines are used, shall prepare for each polling place one ballot box of sufficient size to contain all the ballots of the particular precinct, and the ballot box shall be plainly marked with the name of the precinct for which it is intended. Before each election, the supervisor shall place in the ballot box as many ballots as are required in s. 101.21. After securely sealing the ballot box, the supervisor shall send the ballot box to the clerk or inspector of election of the precinct in which it is to be used. The clerk or inspector shall be placed under oath or affirmation to perform his duties faithfully and without favor or prejudice to any political party.

History.—s. 26, ch. 3879, 1889; RS 180; s. 7, ch. 4328, 1895; s. 7, ch. 4537, 1897; GS 203; RGS 247; CGL 303; s. 1, ch. 17898, 1937; s. 1, ch. 24088, 1947; s. 11, ch. 25035, 1949; s. 1, ch. 25384, 1949; s. 5, ch. 26870, 1951; s. 12, ch. 65-380; s. 16, ch. 77-175.

Note.—Former s. 99.02.

101.251 Supervisor of elections to print names of candidates on ballots, etc.—

(1) The supervisor of elections of each county shall print, on the general election ballots to be used in such county, the names of candidates nominated by primary election or special primary elections or selected by the appropriate executive committee of any political party.

(2) In addition to the names printed on the ballot as provided in subsection (1), the supervisor of elections of each county shall have printed on the general election ballot to be used in the county the names of the judicial officers, as defined in chapter 105, who are entitled to have their names printed on the ballot, and minor party and independent candidates who have obtained a position on the general election ballot in compliance with the requirements of this code.

History.—s. 30, ch. 4328, 1895; s. 10, ch. 4537, 1897; GS 212; RGS 256; s. 1, ch. 9293, 1923; s. 1, ch. 12038, 1927; CGL 312; s. 1, ch. 14657, 1931; s. 7, ch. 22858, 1945; s. 5, ch. 25384, 1949; s. 5, ch. 26329, 1949; s. 3, ch. 26870, 1951; s. 6, ch. 57-166; s. 8, ch. 65-378; s. 5, ch. 67-386; s. 4, ch. 70-269; s. 1, ch. 70-439; s. 16, ch. 77-175.

Note.—Former s. 99.10; s. 99.131.

101.252 Candidates entitled to have names printed on certain ballots; exception.—

(1) Any candidate for nomination who has qualified as prescribed by law is entitled to have his name printed on the official primary election ballot. However, when there is only one candidate of any political party qualified for an office, the name of the candidate shall not be printed on the primary election ballot, and such candidate shall be declared nominated for the office.

(2) Any candidate for party executive committee member who has qualified as prescribed by law is entitled to have his name printed on the official presidential preference primary ballot. However, when there is only one candidate of any political party qualified for such an office, the name of the candidate shall not be printed on the presidential preference primary ballot, and such candidate shall be declared elected to the state or county executive committee.

History.—s. 27, ch. 6469, 1913; RGS 331; CGL 388; s. 3, ch. 26870, 1951; s. 1, ch. 63-99; s. 5, ch. 65-378; s. 16, ch. 77-175.
Note.—Former s. 102.34; s. 99.041.

101.253 When names not to be printed on ballot.—

(1) No candidate's name, which candidate is required to qualify with a supervisor of elections for any primary or general election, shall be printed on the ballot if such candidate has notified the supervisor of elections in writing, under oath, on or before the 39th day before the election, that he will not accept the nomination or office for which he filed qualification papers. The supervisor of elections may, in his discretion with the approval of the Department of State, allow such a candidate to withdraw after the 39th day before an election, upon receipt of written notice, sworn to under oath, that he will not accept the nomination or office for which he qualified.

(2) No candidate's name, which candidate is required to qualify with the Department of State for any primary or general election, shall be printed on the ballot if such candidate has notified the Department of State in writing, under oath, on or before the 39th day before the election that he will not accept the nomination or office for which he filed qualification papers. The Department of State may in its discretion allow such a candidate to withdraw after the 39th day before an election upon receipt of a written notice, sworn to under oath, that he will not accept the nomination or office for which he qualified.

(3) In no case shall the supervisor be required to print on the ballot a name which is submitted less than 5 days prior to the election. In the event the ballots are printed 5 days or more prior to the election, the name of any candidate whose death, resignation, removal, or withdrawal created a vacancy in office or nomination shall be stricken from the ballot with a rubber stamp or appropriate printing device, and the name of the new nominee shall be inserted on the ballot in a like manner.

History.—s. 30, ch. 4328, 1895; s. 10, ch. 4537, 1897; GS 213; RGS 257; CGL 313; s. 6, ch. 25384, 1949; s. 3, ch. 26870, 1951; s. 7, ch. 57-166; s. 1, ch. 61-363; s. 9, ch. 65-378; ss. 10, 35, ch. 69-106; s. 16, ch. 77-175.

Note.—Former s. 99.11; s. 99.141.

101.254 When nominated names to appear in groups or districts.—When an office requires the nomination of more than one candidate, as many groups or districts shall be numerically designated as there are vacancies to be filled by nomination. Each candidate shall indicate the group or district in which he desires his name to appear on the ballot.

History.—s. 52, ch. 6469, 1913; s. 8, ch. 6874, 1915; RGS 356; CGL 413; s. 3, ch. 26870, 1951; s. 6, ch. 65-378; s. 16, ch. 77-175.
Note.—Former s. 102.49; s. 99.051.

101.27 Voting machine ballots.—

(1) All ballots for voting machines shall be printed on strips of white cardboard, paper, or other material of such size as will fill the ballot frames of the machine, in plain black type as large as the space will permit, so as to show the name of the candidate, statement of the proposed constitutional amendment, or other question or proposition submitted to the electorate at any election.

(2) The captions on the ballots for voting machines shall be placed so as to indicate to the elector what push knob, key, lever, or other device is used or operated in order to cast his vote for or against a candidate, proposed constitutional amendment, or other question or proposition submitted to the electorate at any election.

(3) The order in which the voting machine ballot is arranged shall as nearly as practicable conform to the requirements of the form of the paper ballot for that election. The names of the unopposed candidates shall not appear on the general election ballot. Each unopposed candidate shall be deemed to have voted for himself.

(4) If the official ballot is longer than the voting machine can accommodate, paper ballots may be used in conjunction with a voting machine, in which case the order of the offices on the voting machine ballot shall be the same as prescribed in ss. 101.141(4) and 101.151(3). Where the machine ballot is filled in this order, there shall be a continuation of the ballot in the same order on paper ballots, except that no state or federal opposed officer shall be placed upon a paper ballot. In any primary election, if the official ballot is longer than the voting machine can accommodate, paper ballots may be used in conjunction with a voting machine, in which case the order of the offices on the voting machine ballot shall be the same as prescribed in s. 101.141(4), except that no portion of a category of candidates as established in s. 101.141(4) shall be divided between the voting machine ballot and the paper ballot. In the event a category of candidates must be removed from the voting machine ballot because of the foregoing provision, the supervisor of elections in such county may complete the balance of the voting machine ballot with some whole portion of another category of candidates out of its proper sequence, except that no state or federal office shall be placed upon a paper ballot.

(5) In all primary elections, supervisors of elections may print voting machine ballots in shaded colors to group and identify the number of candidates in any or all races. Colors shall be light or pastel with candidates' names overprinted in plain black type. In no case shall any particular color or

pattern of colors be used to identify any political party in the general election.

(6) Should the above directions for the complete preparation of the ballot be insufficient, the Department of State shall determine and prescribe any additional matter or form in which the ballot may be printed, and, prior to the final printing of the ballot, the supervisor of elections shall submit such ballot to the Department of State for its review and approval to insure that such ballot complies with the form required by law. No ballot shall be used in any election which has not first been approved by the Department of State.

History.—s. 1, ch. 13893, 1929; CGL 1936 Supp. 337(1); s. 1, ch. 18405, 1937; s. 5, ch. 26870, 1951; s. 13, ch. 65-380; ss. 10, 35, ch. 69-106; s. 1, ch. 71-266; s. 1, ch. 73-75; s. 1, ch. 74-129; s. 16, ch. 77-175; s. 36, ch. 79-400.

Note.—Former s. 100.01.

101.28 Requirements of voting machines.—The Division of Elections of the Department of State shall adopt uniform rules for the purchase, use, and sale of voting machines, voting machine equipment, and electronic and electromechanical voting systems and equipment in the state. Such standards and specifications shall meet the following minimum requirements:

(1) All machines shall:

(a) Secure to the elector secrecy in the act of voting.

(b) Provide facilities for voting for or against as many questions as may be submitted.

(c) Permit the elector to vote for the candidates of one or more parties.

(d) Permit the elector to vote for as many persons for an office as he is lawfully entitled to vote for, but no more.

(e) Prevent the elector from voting for the same person more than once for the same office.

(f) Permit the elector to vote for or against any question he may have the right to vote upon, but no other.

(g) Be so equipped that, when used in primary elections, the election officials can, by a single adjustment on the outside of the machine, lock out all races and questions except those in which the elector is entitled to vote.

(h) Correctly register or record, and accurately count, all votes cast for any and all persons and for or against any and all questions.

(i) Be provided with a "protective counter" or "protective device" whereby any operation of the machine before or after the election will be detected.

(j) Be provided with a counter which shall show at all times during any election how many persons have voted.

(k) Be provided with one device per machine for each party for voting for all presidential electors of that party by one operation, and in that connection there shall be provided on the ballot the words "Electors for President and Vice President" followed by the name of the party and thereafter by the names of the candidates thereof for the offices of President and Vice President, and a registering device which shall register the votes cast for such electors thus voted for collectively, as contemplated by s. 103.011.

(2) Each voting machine shall be furnished with an electric light, or a proper substitute for one, which shall give sufficient light to enable electors while voting to read the ballots.

(3) Each voting machine used in any election shall be provided with a screen, hood, or curtain which shall be so made and adjusted as to conceal the elector and his action while voting.

(4) Voting machines may be provided with a device or devices which shall print a copy or copies of the count shown on the candidate and question counters, as registered both before the polls open and after the polls close.

History.—s. 2, ch. 13893, 1929; CGL 1936 Supp. 337(2); s. 5, ch. 26870, 1951; s. 25, ch. 28156, 1953; s. 14, ch. 65-380; s. 1, ch. 72-303; s. 16, ch. 73-156; s. 16, ch. 77-175.

Note.—Former s. 100.02.

101.29 Providing machines; payment for same.—The authorities adopting the use of voting machines shall, as soon as practicable, provide for each polling place one or more voting machines in complete working order, and the authorities in charge of elections shall preserve and keep such machines repaired and have custody of same when not in use at any election. If it is impracticable to supply each election district with voting machines at any election, as many may be supplied as it is practicable to procure, and these may be used in the districts as the officers adopting the machine may direct. The board of county commissioners or the municipal authorities, on the adoption and rental or purchase of voting machines, shall provide for the payment for such machines.

History.—ss. 5, 6, ch. 13893, 1929; CGL 1936 Supp. 337(5),(6); s. 5, ch. 26870, 1951; s. 16, ch. 77-175.

Note.—Former ss. 100.05, 100.06.

101.292 Definitions.—As used in ss. 101.292-101.295, the following terms shall have the following meanings:

(1) "Governing body" means the board of county commissioners of a county or any other governing body empowered by general or special act or local ordinance to purchase or sell voting equipment.

(2) "Voting equipment" means new or used voting machines and materials, parts, or other equipment necessary for the maintenance or improvement of voting machines, the individual retail value of which is in excess of $1,000, or the combined retail value of which is in excess of $1,000. "Voting equipment" shall also include electronic or electromechanical voting systems, marking devices, and automatic tabulating equipment as defined in s. 101.5603, as well as materials, parts, or other equipment necessary for the operation and maintenance of such systems and devices.

(3) "Purchase" means a contract for the purchase, lease, rental, or other acquisition of voting equipment.

History.—s. 2, ch. 72-303; s. 17, ch. 73-156; s. 16, ch. 77-175.

101.293 Competitive bids required.—

(1) Any purchase of voting equipment by a governing body shall be by means of sealed competitive bids from at least two bidders, except under the following conditions:

(a) If a majority of such governing body agrees by vote that an emergency situation exists in regard to the purchase of such equipment to the extent that the potential benefits derived from competitive bids

is outweighed by the detrimental effects of a delay in the acquisition of such equipment; or

(b) If a majority of the governing body finds that there is but a single source from which suitable equipment may be obtained.

If such conditions are found to exist, the chairman of the governing body shall certify to the Division of Elections the situation and conditions requiring an exception to the competitive bidding requirements of this section.

(2) The Division of Elections of the Department of State shall establish bidding procedures for carrying out the provisions and the intent of ss. 101.292-101.295, and each governing body shall follow the procedures so established.

History.—s. 2, ch. 72-303; s. 18, ch. 73-156; s. 38, ch. 73-333; s. 16, ch. 77-175.

101.294 Approval of division required for certain transactions.—

(1) No governing body shall purchase or cause to be purchased, or sell or cause to be sold, any voting equipment without the prior approval of the Division of Elections. However, if the division fails to act on a request for approval within 30 days after proper notice is received by the division, approval shall not be required.

(2) The Division of Elections shall consider the following factors in determining whether to approve the purchase or sale of any voting equipment by the governing body of any county of the state:

(a) The age and capabilities of voting equipment currently owned by the governing body;

(b) The population and projected ballot length for such county;

(c) The availability of used equipment from another county in the state;

(d) The cost of obtaining and operating the proposed new equipment; and

(e) Such other factors as may be relevant to the need for such equipment.

(3) Any governing body contemplating the purchase or sale of voting equipment shall notify the Division of Elections of such considerations. The division shall attempt to coordinate the sale of excess or outmoded equipment by one county with purchases of necessary equipment by other counties.

(4) The division shall inform the governing bodies of the various counties of the state of the availability of new or used voting equipment and of sources available for obtaining such equipment.

History.—s. 2, ch. 72-303; s. 19, ch. 73-156; s. 17, ch. 77-175.

101.295 Penalties for violation.—Any member of a governing body which purchases or sells voting equipment in violation of the provisions of ss. 101.292-101.295, which member knowingly votes to purchase or sell voting equipment in violation of the provisions of ss. 101.292-101.295, is guilty of a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083, and shall be subject to suspension from office on the grounds of malfeasance.

History.—s. 2, ch. 72-303; s. 18, ch. 77-175.

101.31 Experimental use of voting machines.—The board of county commissioners of any county, or the governing body of any municipality, may provide for experimental use of any voting machine or machines at any election in one or more precincts. The use of any voting machine or machines on an experimental basis shall be valid for all purposes.

History.—s. 4, ch. 13893, 1929; CGL 1936 Supp. 337(4); s. 3, ch. 18405, 1937; s. 5, ch. 26870, 1951; s. 18, ch. 77-175.

Note.—Former s. 100.04.

101.32 Adoption of voting machines; powers incident to adoption.—

(1) The board of county commissioners or the governing body of a municipality may, if it so elects, submit to the electors of a county or municipality at a general or special election the question of whether it shall adopt voting machines; however, no special election shall be called for the sole purpose of determining this question.

(2) If a majority of the electors approve of same, the board of county commissioners of the county or governing body of the municipality shall adopt for use at elections any kind of voting machine that meets the requirements set forth in s. 101.28, and the machines shall be used at any and all elections held in the county or municipality or any part thereof for voting, registering, and counting votes cast at any election; except that the board of county commissioners or governing body of the municipality may purchase, install, and use not to exceed five voting machines for experimenting with same in districts or precincts without submission of the question to the electors of the county or municipality. Voting machines may be adopted for use in different districts in the same county or municipality.

(3) The provisions of this section relating to the submission of a question to the public with respect to the adoption of voting machines shall be construed as permissive.

(4) In every case in which the governing body of any municipality shall adopt and use at any precinct any voting machine, the governing body may do anything necessary which it deems to be requisite to a fair, honest, and satisfactory use of the machines.

History.—ss. 3, 28, ch. 13893, 1929; CGL 1936 Supp. 337(3), (27); s. 2, ch. 18405, 1937; s. 5, ch. 26870, 1951; s. 1, ch. 59-116; s. 18, ch. 77-175.

Note.—Former ss. 100.03, 100.32.

101.33 Number of electors for each machine.—In any county in which voting machines are used, the board of county commissioners shall provide at least one voting machine for each 400 registered electors in the county, except that in any county in which 25 percent or more of the registered electors are 60 years of age or older, the board of county commissioners shall provide at least one machine for each 350 registered electors. The supervisor of elections shall determine the actual number of machines to be used in each precinct at each election. In determining the number of machines to be used in each precinct, the supervisor shall take into consideration the traditional voting patterns of such precinct and shall furnish the number of machines necessary to handle efficiently the number of anticipated voters in the precinct.

History.—s. 14, ch. 13893, 1929; CGL 1936 Supp. 337(14); s. 5, ch. 18405, 1937; s. 5, ch. 26870, 1951; s. 15, ch. 65-380; s. 2, ch. 69-281; s. 1, ch. 69-1744; s. 18, ch. 77-175.

Note.—Former s. 100.14.

101.34 Supervisor shall be custodian of voting machines.—The supervisor shall be the custodian of voting machines in the county using them, and he shall appoint deputies necessary to prepare and supervise the machines prior to and during elections. The compensation for such deputies shall be paid by the board of county commissioners.

History.—s. 3A, ch. 22018, 1943; s. 4, ch. 24089, 1947; s. 5, ch. 26870, 1951; s. 16, ch. 65-380; s. 18, ch. 77-175.
Note.—Former s. 100.42.

101.341 Prohibited activities by voting machine custodians and deputy custodians.—

(1) No voting machine custodian, deputy custodian, or other employee of a county whose duties are primarily involved with the preparation, maintenance, or repair of voting equipment shall accept employment or any form of consideration from any person or business entity involved in the purchase, repair, or sale of voting equipment unless such employment has the prior written approval of the board of county commissioners of the county by which such person is employed.

(2) Any person violating the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083. Such person shall also be subject to immediate discharge from his position.

History.—s. 3, ch. 72-303.

101.35 Preparation of voting machines; notice of sealing; instruction of members of board of election in use of voting machines.—Where a voting machine is used, it shall be in proper order for use at any election at the polling place before the time fixed for opening of the polls, and the counters shall be set at zero. The supervisor shall appoint one or more deputies to be known as deputy custodians of voting machines, who shall be competent, thoroughly instructed, and sworn to perform their duties honestly and faithfully; they shall be instructed by the supervisor at least 30 days before the election, and shall be considered as officers of election. The supervisor shall, at least 10 days prior to an election, insert a legal notice in a newspaper of general circulation in the county and mail written notice to the chairman of the county executive committee of each party, whose responsibility it is to notify any candidate representing such party, or, if the election is to be a municipal, bond, or referendum election, or if there is no chairman of any county executive committee, to the chairman of a local organization representing each opposing side, stating the time and place where the machines will be sealed, at which time one representative of each political party or opposing side and each candidate or his representative shall be afforded an opportunity to see that the machines are in proper condition. Each representative shall have written authorization from the candidate, group, or party that he represents and shall not interfere or assume any of the deputy custodian's duties. Any such representative may check the voting machines to make sure they are in proper working order. At the completion of this inspection, the machines shall be sealed, and any such authorized representative may remain present and record the voting machine numbers, the protective counter numbers, and the seal numbers. The representative shall certify the number of machines and that the counters are set at zero and the numbers registered on the protective counters and on the seals. Upon completion of sealing the voting machines, the keys shall be delivered to the board of officials having charge of the election, together with a written report stating that such machines are properly prepared for the election. The machines shall be transferred to the polling place, and the local authorities shall provide protection against molestation or damage to such machines. The lantern or light fixtures shall be in good order before opening the polls.

History.—ss. 10, 11, ch. 13893, 1929; CGL 1936 Supp. 337(10), (11); s. 4, ch. 18405, 1937; s. 1, ch. 24089, 1947; s. 11, ch. 25035, 1949; s. 5, ch. 26870, 1951; s. 19, ch. 29934, 1955; s. 17, ch. 65-380; s. 1, ch. 67-189; s. 1, ch. 75-174; s. 18, ch. 77-175.
Note.—Former ss. 100.10, 100.11.

101.36 Voting machines or electronic or electromechanical voting; when used.—In counties that have adopted voting machines or electronic or electromechanical voting, the machines or voting devices shall be so arranged as to require individual voting for all offices. The order in which the ballot is arranged shall as nearly as practicable conform to the requirements of the form of the paper ballot. The voting machines or devices shall be used by the counties in all general, primary, and special elections. In counties above 260,000 population, according to the latest federal census, which have adopted the use of voting machines or electronic or electromechanical voting, it shall be mandatory for all municipalities in such counties to use such voting machines or devices in all elections, but in all counties of lesser population it shall be optional with each municipality as to whether it shall use ballots or voting machines or devices in its elections. Authority is hereby granted to the board of county commissioners of any county that has adopted voting machines or electronic or electromechanical voting to permit municipalities within the county to use county-owned voting machines or devices and to permit public agencies, private organizations, and others to use such machines or devices on a rental basis, upon such terms and conditions as the board may determine.

History.—s. 12, ch. 18405, 1937; CGL 1940 Supp. 337(28a); s. 3B, ch. 22018, 1943; s. 6, ch. 24994, 1948; s. 5, ch. 25187, 1949; s. 5, ch. 26870, 1951; s. 1, ch. 28101, 1953; s. 4, ch. 29937, 1955; s. 1, ch. 61-481; s. 1, ch. 75-60; s. 18, ch. 77-175.
Note.—Former ss. 99.191, 100.30, 100.43.

101.37 Location of voting machines.—At all elections where voting machines are used, the arrangement of the polling room shall be as follows: The exterior of the voting machine and every part of the polling room shall be in plain view of the election officers; the voting machine shall be placed at least 1 foot from every wall or partition of the polling room and at least 4 feet from any table where any of the election officers may be engaged or seated. The voting machine shall be so placed that the ballots on the face of the machine can be plainly seen by the election officers and the party watchers when not in use by electors. The election officers shall not themselves be, or permit any other person to be in any position or near any position that will permit one to see or ascertain how an elector votes, or how he has voted. The election officer attending the machine

shall inspect the face of the machine after each elector has cast his vote, to see that the ballots on the face of the machine are in proper places and that the machine has not been injured. During elections the door or other covering of the counter compartment of the machine shall not be unlocked or open, or the counters exposed except for good and sufficient reasons, a statement of which shall be made and signed by the election officers and shall be sent with the returns.

History.—s. 19, ch. 13893, 1929; CGL 1936 Supp. 337(19); s. 5, ch. 26870, 1951.

Note.—Former s. 100.19.

101.38 Disposition of voting machine keys immediately following an election.—The keys of the machine shall be enclosed in an envelope supplied by the custodian on which shall be written the number of the machine and the district where it has been used, which envelope shall be securely sealed and endorsed by the election officers and returned to the officer from whom the keys were received. The number on the seal and the number registered on the protective counter shall be written on the envelope containing the keys. All keys for voting machines shall be kept securely locked by officials having them in charge. It shall be unlawful for any unauthorized person to have in his possession any key of any voting machine, and all election officers or persons entrusted with the keys for election purposes, education, or display purposes, or in the preparation of the machines, shall not retain them longer than necessary to use them for such purposes. All machines shall be stored in a suitable place as soon as possible after the election.

History.—s. 25, ch. 13893, 1929; CGL 1936 Supp. 337(25); s. 5, ch. 26870, 1951; s. 18, ch. 65-380; s. 18, ch. 77-175.

Note.—Former s. 100.27.

101.39 Voting machines, sealing curtains.—Curtains on all voting machines shall be securely sealed or fastened before being used in any election so that the clearance lever can not be operated without opening or closing curtains. And no voting machine, while in use, shall be concealed in any voting place, so as to hide or obscure the machine from public view.

History.—s. 3C, ch. 22018, 1943; s. 5, ch. 26870, 1951.

Note.—Former s. 100.44.

101.40 Voting machine out of order.—In case any voting machine used in any precinct shall, during the time the polls are open, become inoperable, the election board shall substitute an operable machine, if possible, and, at the close of the polls, the records of votes shown on the counters of both machines shall be added together in ascertaining the results of the election. If no other machine can be prepared for use at the election, and the inoperable machine cannot be repaired in time for use, unofficial ballots made as nearly as possible like the official ballots may be used, received by election officers, and placed in a receptacle, in such case to be provided by said officers, and counted with votes registered on the voting machines, and the result shall be declared the same as though no machine had become inoperable. The ballots thus voted shall be preserved and returned with a certificate or statement setting forth how and why same were voted.

History.—s. 16, ch. 13893, 1929; CGL 1936 Supp. 337(16); s. 6, ch. 18405, 1937; s. 5, ch. 26870, 1951; s. 18, ch. 77-175.

Note.—Former s. 100.16.

101.43 Substitute ballot.—When voting machines are used and the required official ballots for a precinct are not delivered in time to be used on election day, or after delivery, are lost, destroyed or stolen, the clerk or other officials whose duty it is to provide ballots for use at such election, in lieu of the official ballots, shall have substitute ballots prepared, conforming as nearly as possible to the official ballots, and the board of election shall substitute these ballots to be used in the same manner as the official ballots would have been used at the election.

History.—s. 15, ch. 13893, 1929; CGL 1936 Supp. 337(15); s. 5, ch. 26870, 1951.

Note.—Former s. 100.15.

101.45 Election board opening polls.—

(1) The election board of each precinct shall attend the polling place by 6 a.m. of the day of the election and shall arrange the furniture, stationery, and voting machines. The keys to the machines shall be delivered to the election officers by 6 a.m. of the day of the election in a sealed envelope on which shall be written or printed the number and location of the machine, the number of the seal, and the number registered on the protective counter or device, as reported by the custodian. The said envelope shall not be opened until at least one member of the board from each of two political parties is present and shall have examined the envelope to see that same has not been opened. Before opening the envelope, the election officers present shall examine the number on the seal on the machine, also the number registered on the protective counter, and see if they are the same as the number written on the envelope. If they are not the same, the custodian or an authorized person must be present when the machine is opened to reexamine such machine and certify that it is properly arranged. If the numbers are found to agree with those on the envelope, the election officer shall proceed to open the doors concealing the counters and each officer shall carefully examine every counter and see that it registers zero, and same is subject to the inspection of official watchers. The machine shall remain locked against voting until the polls are opened, and only electors shall operate same.

(2) If any counter is found not to register at zero, the board of election shall immediately notify the custodian, who shall adjust such counters at zero, but if it is impracticable for the custodian to arrive in time to adjust such counters, the election officers shall immediately make a written statement of the designating letter and number of such counter, together with the number registered thereon, and shall sign and post same upon the wall of the polling room, and it shall remain throughout election day. In filling out the statement of canvass, they shall subtract such number from the total then registered thereon.

(3) If the machine is equipped with a device or devices which produce a printed record of the regis-

ter shown on the candidate and amendment counters, the board of elections of each precinct shall take the necessary steps to secure such printed record from each machine. In the event any counter is found not to register at zero, and if, upon notification, it is impracticable for the custodian to arrive in time to adjust such counter, the board of elections shall post the printed record from such machine in a conspicuous place in such precinct. In filling out the statement of canvass, they shall subtract such number from the total then registered thereon.

History.—s. 17, ch. 13893, 1929; CGL 1936 Supp. 337(17); s. 5, ch. 26870, 1951; s. 21, ch. 65-380; s. 3, ch. 69-281; s. 18, ch. 77-175.
Note.—Former s. 100.17.

101.46 Instruction to electors before election.—The authorities in charge of elections, where voting machines are used, shall designate suitable and adequate times and places for giving instructions to electors who apply, and the machines shall contain a sample ballot showing the title of offices to be filled, and, so far as practicable, the names of candidates to be voted on at the next election. No voting machine which is to be assigned for use in an election shall be used for instruction after having been prepared and sealed for the election. During the public exhibition of any voting machine for any instruction, the counting mechanism shall be concealed, but the doors may be temporarily opened when authorized by the supervisor of elections.

History.—s. 12, ch. 13893, 1929; CGL 1936 Supp. 337(12); s. 5, ch. 26870, 1951; s. 18, ch. 77-175.
Note.—Former s. 100.12.

101.47 Requirements before elector enters voting machine booth.—

(1) Whenever voting machines are used, each elector desiring to vote shall identify himself to the clerk or an inspector of the election as a duly qualified elector at such election by signing his signature, in ink or indelible pencil, to an identification blank or slip which is in substantially the form provided by this code.

(2) The clerk or inspector shall compare the signature with the signature of the elector upon the registration books, and, if satisfied that the signature is the same, he then shall initial the slip in the place provided and the initials shall constitute an oath or affirmation of the fact stated by the clerk or inspector above his initials.

(3) The supervisor shall supply sufficient containers for each precinct, each container to be securely sealed. Each container shall have a slot large enough to receive the identification slips. Before the polls open, the clerk, in the presence of all inspectors and the public, shall open the container and ascertain that it is empty and, while empty, shall securely seal same, leaving a slot open without breaking or removing the seal; and the clerk or inspectors shall sign their names upon the seal. Printed forms of seals shall be furnished with each container, containing a statement over the place for the signature that the container was opened, emptied, and sealed while empty before the polls were opened; the signing of the certificate shall constitute the clerk's or inspector's certificate to the facts.

(4) No person shall be admitted to a voting machine unless he presents to the clerk or inspector an identification slip as provided in subsections (1) and (2).

(5) Before the elector enters a voting machine he shall deliver his identification slip duly signed to the clerk or inspector operating the machine. The clerk or inspector shall also initial the slip, and his initials shall constitute an oath or affirmation as to the printed facts set forth above his initials; then the clerk or inspector shall deposit the slip through the slot in the locked or sealed container.

(6) The identification slip, when signed by any person as an elector and initialed by the clerk or inspector comparing his signature and by the clerk or inspector admitting him to the voting machine and depositing slip in the container, shall be prima facie evidence that the person whose name appears thereon as an elector was admitted to the voting machine and that he voted.

(7) The clerk and inspectors shall return all unused signature identification blanks to the supervisor immediately on the closing of the polls and shall seal the slot of the container with a seal signed by all the election officials in that precinct, and the clerk shall deliver same to the supervisor. The supervisor shall destroy all unused signature identification slips as soon as practicable.

(8) The identification slip shall be in substantially the following form:

No. .....

SIGNATURE IDENTIFICATION SLIP
..... ELECTION

Held in ..... County, Florida, on the ..... day of ..... A. D. 19.....

I affix my signature hereto in the place and at the time of voting for the purpose of identifying myself as a duly registered and qualified voter in this election.

.....(Signature of voter).....

I hereby certify that the foregoing signature was signed in my presence during voting hours at this voting precinct and by me compared with that on the registration books and approved for voting in precinct No. .....

.....(Initials of clerk or inspector).....

I hereby certify that I admitted the person who signed this identification slip to the voting machine; that said voter was personally known to me, or told me that he signed it; and that the number of the voting machine is .....

.....(Initials of official operating machine).....

(9) The supervisor of elections shall prepare and deliver to each precinct the same number of signature identification slips as there are qualified electors for such precinct. In being prepared, the slips shall either be numbered consecutively beginning with number (1) and continued to such number as there are qualified electors for the county or be uniquely numbered for each elector. In preparing the identification slips, the appropriate information to designate the date, name of county, and kind of election (general, special, or primary) shall be print-

ed in at the appropriate blank spaces appearing in the form. The supervisor shall preserve for 1 year a record in his office showing the number of signature identification slips which he delivered to each precinct, designating on such record the precinct number and address and numbers of slips so delivered.

(10) Any certificate signed by any clerk or inspector of any election certifying to the result of the election in or for any precinct is admissible in evidence in the trial of any cause, either civil or criminal, in any court in the state and, when admitted, shall constitute prima facie evidence that it was signed by the persons whose names are signed thereto and conclusive proof that any person who signed the certificate as clerk or inspector of election was duly appointed and qualified to act throughout the election and in the capacity indicated upon said certificate, unless the contrary is disclosed thereby.

(11) The identification slips and all other election materials required to be delivered to each precinct shall be delivered by enclosing and locking same in the voting machine or a sealed container, along with an itemized list with a receipt in the form: "I hereby certify that I have checked the items listed hereon and acknowledge receipt thereof," which receipt shall be signed by the clerk of the precinct and deposited in the container provided for identification slips.

(12) It shall be unlawful for any person, other than the printer while printing and delivering the slips to the supervisor of elections, the supervisor and his agents in placing the slips in the voting machine or a sealed container for delivery to the voting precincts, the clerks and inspectors, and qualified electors while acting inside of polling places during the election, to have in his possession any signature identification slip or other slip containing the same or substantially the same wording as the signature identification slip; and it shall be unlawful for any person or official to deliver any official slip or other slip containing the same or substantially the same wording as the signature identification slip to any person other than as provided in this section.

(13) All signature identification slips where voting machines are used shall be preserved by the clerk and inspectors of election, but, in those instances where an affidavit has been made in addition to the identification slip, such affidavits and slips bearing the signature of the same persons shall be placed together in a separate envelope and kept separate from the remaining slips. All such slips and affidavits preserved shall be returned to the supervisor whose duty it is to preserve them for at least 1 year.

History.—s. 1, ch. 18407, 1937; CGL 1940 Supp. 337(28-c); s. 1, ch. 22018, 1943; s. 3, ch. 24089, 1947; s. 5, ch. 26870, 1951; s. 29, ch. 28156, 1953; s. 22, ch. 65-380; s. 1, ch. 67-41; ss. 1, 2, ch. 70-105; s. 18, ch. 77-175; s. 37, ch. 79-400.
Note.—Former s. 100.34.

101.49 Procedure of election officers where signatures differ.—

(1) Whenever any clerk or inspector, upon a just comparison of the signature, shall doubt that the handwriting affixed to a signature identification slip of any elector who presents himself at the polls to vote is the same as the signature of the elector affixed in the registration book, the clerk or inspector shall deliver to the person an affidavit which shall be in substantially the following form:

STATE OF FLORIDA,
COUNTY OF .....

I do solemnly swear (or affirm) that my name is .....; that I am ..... years old; that I was born in the State of .....; that I am registered to vote, and at the time I registered I resided on ..... Street, in the municipality of ....., County of ....., State of Florida; that I am a qualified voter of the county and state aforesaid and have not voted in this election.

(Signature of voter)

Sworn to and subscribed before me this ..... day of ....., A. D. 19.....

(Clerk or inspector of election)

Precinct No. .....
County of .....

(2) The person shall fill out, in his own handwriting or with assistance from a member of the election board, the form and make an affidavit to the facts stated in the filled-in form; such affidavit shall then be sworn to and subscribed before one of the inspectors or clerks of the election who is authorized to administer the oath. Whenever the affidavit is made and filed with the clerk or inspector, the person shall then be admitted to the voting machine to cast his vote, but if the person fails or refuses to make out or file such affidavit, then he shall not be permitted to vote.

History.—s. 2, ch. 18407, 1937; CGL 1940 Supp. 337(28-d); s. 2, ch. 22018, 1943; s. 5, ch. 26870, 1951; s. 18, ch. 77-175.
Note.—Former s. 100.35.

101.51 Electors to occupy booth alone; time allowed.—

(1) When the elector presents himself to vote, the election official shall ascertain whether his name is upon the register of electors, and, if his name appears and no challenge interposes, or, if interposed, be not sustained, one of the election officials stationed at the entrance shall announce the name of the elector and permit him to enter the booth or compartment to cast his vote, allowing only one elector at a time to pass through to vote. No elector, while casting his ballot, shall occupy a booth or compartment longer than 5 minutes or be allowed to occupy a booth or compartment already occupied or to speak with anyone, except as provided by s. 101.051, while in the polling place.

(2) If an elector requires longer than 5 minutes, then upon a sufficient reason he may be granted a longer period of time by the election officials in charge. After casting his vote, he shall at once leave the polling room by the exit opening and shall not be permitted to reenter on any pretext whatever. After the elector has voted, or declined or failed to vote within 5 minutes, he shall immediately withdraw from the polling place. If he refuses to leave after the lapse of 5 minutes, he shall be removed by the election officials.

History.—ss. 44, 45, ch. 4328, 1895; GS 228, 229; RGS 273, 274; CGL 329, 330; s. 20, ch. 13893, 1929; 1936 Supp. 337(20); s. 5, ch. 26870, 1951; s. 25, ch. 65-380; s. 18, ch. 77-175.

Note.—Former ss. 99.27, 99.28, 100.20.

101.54 Tabulation of vote and proclamation of results, where voting machine used.—

(1) As soon as the polls are closed, the inspectors of election shall immediately lock and seal the voting machines against voting. The inspectors then shall sign a certificate stating: that the machines have been locked against voting and sealed; the number of electors as shown on the public counters; the number on the seal; the number registered on the protective counter, if one is provided; and that the voting machines are closed and locked. The inspectors then shall open the counting compartments in the presence of the watchers and all other persons who may be lawfully within the polling place, giving full view of all the counter numbers. The clerk of the board of elections shall then read and announce in distinct tones the designating number and letter on each counter for each candidate's name and the results as shown by the counter numbers. He shall also read and announce the vote on each constitutional amendment, proposition, or other question. The results shall be announced four times by the following procedure. While the clerk is announcing the results, one inspector shall stand by his side and check the clerk's announcements. The vote as registered shall be entered on the certificate of returns by two inspectors of different political affiliation, whenever practicable, but not including the clerk, in the same order on the space which has the same designating number and letter, after which the figures shall be verified by being called off from the counters of the machine by the inspector standing near the clerk. While the inspector is announcing the results, the clerk shall stand by his side and check the inspector's announcement. After the results are announced by the clerk and the inspector, they shall exchange positions with the two inspectors who are tabulating the results. The same procedure as used by the clerk and inspector shall again be followed by the two inspectors in announcing the results. The tabulation shall then be filled out, which shall show the total number of votes cast for each candidate, as shown on his counter, and the number of votes for persons not nominated or elected. The counter compartment of the voting machine shall remain open until the official returns and all other reports have been fully completed and verified by the board of elections. Any candidate or duly accredited watcher who may desire to be present shall be admitted to the polling place from the closing of the polls until count and tabulation are complete. The proclamation of the result of the votes cast shall be deliberately announced in a distinct voice by the clerk who shall read the name of each candidate, with the designating number and letter of his counter and the vote registered on such counter and also the vote cast for and against each question submitted. During each proclamation, ample opportunity shall be given to any person lawfully present to compare the results so announced with the counter dials of the machine, and any necessary corrections shall immediately be made by the board, after which the doors of the voting machine shall be closed and locked. Before adjourning, the board shall, with the seal provided therefor, so seal the operating lever of the machines that the voting and counting mechanism will be prevented from operating. The same procedure shall be followed for each machine in the precinct, and a final proclamation made of the total vote received by each candidate. As each vote is read and announced, it shall be recorded on two statements by two other members of the board and, when completed, compared with the numbers on the counters of the machine. If found correct, the result shall be announced by the clerk, and the tabulation of votes, after being duly certified and sworn to, shall be filed as provided for filing election returns.

(2) The inspector filing the returns shall deliver to the supervisor the keys of the voting machine, enclosed in a sealed envelope having endorsed thereon a certificate of the inspectors stating the number of the machine or machines, the precinct where it has been used, the number on the seal, and the number on the protective counter, if any.

(3) If the machine is provided with a device or devices which produces a printed record of the votes cast on the candidate and amendment counters, the inspectors of elections shall take the necessary steps to secure such printed record from each machine. Such printed record shall be deemed the official statement or certificate of returns for that machine and shall be properly endorsed, delivered and filed as previously required. If the precinct has more than one machine equipped with a device or devices which produce a printed record of the votes cast on the candidate and amendment counters, the inspectors of elections shall secure such printed record from each machine and shall make a final proclamation of the total votes on the certificate of returns as provided under s. 101.55.

History.—s. 23, ch. 13893, 1929; CGL 1936 Supp. 337(23); s. 7, ch. 18405, 1937; s. 5, ch. 26870, 1951; s. 28, ch. 65-380; s. 19, ch. 77-175.

Note.—Former s. 100.23.

101.545 Retention and destruction of certain election materials.—All ballots, forms, and other election materials shall be retained in the custody of the supervisor of elections in accordance with the schedule approved by the Division of Archives and History of the Department of State. All unused ballots, forms, and other election materials may, with the approval of the Department of State, be destroyed by the supervisor after the election for which such ballots, forms, or other election materials were to be used.

History.—s. 20, ch. 77-175.

101.55 Certificate of results.—In precincts where voting machines are used, certificates of results shall be printed to conform with the type of machines used, on a form approved by the Department of State. The designating number and letter on the counter for each candidate shall be printed next to the candidate's name on the certificate of the result. The form of such certificate shall also provide for the entry of the total number of votes cast for each candidate and upon each question. Three of such certificates shall be made in each precinct, of which one shall be sent to the supervisor of the county, another sent to the chairman of the county can-

vassing board, and another publicly posted at the polling place in which the precinct is situated.

History.—s. 8, ch. 18405, 1937; CGL 1940 Supp. 337(23-a); s. 5, ch. 26870, 1951; ss. 10, 35, ch. 69-106; s. 19, ch. 73-334; s. 21, ch. 77-175.

Note.—Former s. 100.24.

101.56 Locking machine.—The election officers shall, as soon as the count is completed and ascertained, lock the counter compartment of the machine, and it shall so remain for a period not less than 10 days, unless another election is held within 3 weeks, in which event the machine shall remain locked for 5 days, except in either event it may be opened by the canvassing board or by order of a court of competent jurisdiction.

History.—s. 24, ch. 13893, 1929; CGL 1936 Supp. 337(24); s. 10, ch. 18405, 1937; s. 2, ch. 24089, 1947; s. 11, ch. 25035, 1949; s. 5, ch. 26870, 1951; s. 21, ch. 77-175.

Note.—Former s. 100.26.

101.5601 Short title.—Sections 101.5601 through 101.5615 shall be known as the "Electronic Voting Systems Act."

History.—s. 1, ch. 73-156.

101.5602 Purpose.—The purpose of this act is to authorize the use of electronic and electromechanical voting systems in which the voter records his vote in such a manner that votes may be counted by data processing machines at one or more counting places.

History.—s. 2, ch. 73-156; s. 21, ch. 77-175.

101.5603 Definitions.—As used in this act:

(1) "Automatic tabulating equipment" includes apparatus necessary to automatically examine, count, and record votes.

(2) "Ballot" means the card, tape, or other vehicle upon which the elector's choices are recorded.

(3) "Ballot information" means the material containing the names of offices and candidates and the questions to be voted on.

(4) "Marking device" means either an approved apparatus used for the piercing of ballots by the voter or any approved device for marking a ballot with ink or other substance which will enable the ballot to be tabulated by means of automatic tabulating equipment.

History.—s. 3, ch. 73-156; s. 21, ch. 77-175.

101.5604 Adoption of system; procurement of equipment; commercial tabulations.—The board of county commissioners of any county, at any regular meeting or a special meeting called for the purpose, may, upon consultation with the supervisor of elections, adopt, purchase or otherwise procure, and provide for the use of any electronic or electromechanical voting system approved by the Department of State in all or a portion of the election precincts of that county. Thereafter the electronic or electromechanical voting system may be used for voting at all elections for public and party offices and on all measures and for receiving, registering, and counting the votes thereof in such election precincts as the governing body directs. Any such board may contract for the tabulation of votes at a location within the county when there is no suitable tabulating equipment available which is owned by the county.

History.—s. 4, ch. 73-156; s. 21, ch. 77-175.

101.5605 Examination and approval of equipment.—

(1) The Department of State shall publicly examine all makes of electronic or electromechanical voting systems submitted to it and determine whether the systems comply with the requirements of s. 101.5606.

(2) Any person owning or interested in an electronic or electromechanical voting system may submit it to the Department of State for examination. The vote counting segment shall be certified after a satisfactory evaluation testing has been performed according to electronic industry standards. This testing shall include, but not be limited to, the basic source program and its security; the ballot reader; the rote processor, especially in its logic and memory components; the digital printer; the fail-safe operations; the counting center environmental requirements; and the equipment reliability estimate. For the purpose of assisting in examining the system, the Department of State may employ not more than three individuals who are expert in one or more fields of data processing, mechanical engineering, and public administration and shall require from them a written report of their examination. The person submitting a system for approval or the board of county commissioners of any county seeking approval of a given system shall reimburse the Department of State in an amount equal to the actual costs incurred by the department in examining the system. Such reimbursement shall be made whether or not the system is approved by the Department of State. Neither the Secretary of State nor any examiner shall have any pecuniary interest in any voting equipment. The Department of State shall approve or disapprove any voting system submitted to it within 180 days after the date of its initial submission.

(3) Within 30 days after completing the examination and upon approval of any electronic or electromechanical voting system, the Department of State shall make and maintain a report on the system, together with a written or printed description and drawings and photographs clearly identifying the system and the operation thereof. As soon as practicable after such filing, the Department of State shall send a notice of certification and, upon request, a copy of the report to the governing bodies of the respective counties of the state. Any voting system that does not receive the approval of the Department of State shall not be adopted for or used at any election. After a voting system has been approved by the department, any change or improvement in the system is required to be approved by the Department of State prior to the adoption of such change or improvement by any county. However, the Department of State shall not reexamine or reapprove the system in its entirety.

(4) No governing body shall purchase or cause to be purchased any certified voting system or equipment without prior approval of the Department of State. The department, within 30 days of receipt of notice of intention to make such a purchase, shall

reexamine the voting system or equipment to be purchased to insure that any changes made in the equipment or system since the most recent certification of the equipment or system also comply with the requirements of this act. If any of the changes do not comply with the requirements of this act, the department shall suspend all sales of the equipment or system in the state until the equipment or system complies with the requirements of this act.

History.—s. 5, ch. 73-156; s. 21, ch. 77-175.

101.5606 Requirements for approval of systems.—No electronic or electromechanical voting system shall be approved by the Department of State unless it is so constructed that:

(1) It permits and requires voting in secrecy.

(2) It permits each elector to vote at any election for all persons and offices for whom and for which he is lawfully entitled to vote, and no others; to vote for as many persons for an office as he is entitled to vote for; and to vote for or against any question upon which he is entitled to vote.

(3) The automatic tabulating equipment may be set to reject all votes for any office or measure when the number of votes therefor exceeds the number which the voter is entitled to cast or when the voter is not entitled to cast a vote for the office or measure.

(4) It is capable of correctly counting votes.

(5) When used in primary elections, the automatic tabulating equipment will count only votes for the candidates of one party, reject all votes for an office when the number of votes therefor exceeds the number which the voter is entitled to cast, and reject all votes of a voter cast for candidates of more than one party.

(6) At presidential elections it permits each elector, by one operation, to vote for all presidential electors of a party or independent candidates for President and Vice President.

(7) It provides a method for write-in voting.

(8) It is capable of accumulating a count of the specific number of ballots tallied for a precinct, accumulating total votes by candidate for each office, and accumulating total votes for and against each question and issue of the ballots tallied for a precinct.

(9) It is capable of tallying votes from ballots of different political parties from the same precinct, in the case of a primary election.

(10) It is capable of automatically producing precinct totals in printed, marked, or punched form, or a combination thereof.

History.—s. 6, ch. 73-156; s. 21, ch. 77-175.

101.5607 Department of State to prescribe rules and regulations.—The Department of State shall prescribe rules and regulations to achieve and maintain the maximum degree of correctness, impartiality, and efficiency of the procedures of voting, and of counting, tabulating, and recording votes, by the electronic or electromechanical voting systems and methods provided by this act.

History.—s. 7, ch. 73-156; s. 21, ch. 77-175.

101.5608 Paper balloting procedures to apply.—So far as practicable, the procedures for voting paper ballots as prescribed in this code shall apply to procedures followed pursuant to this act. The following procedures shall apply, however, and any procedure prescribed for paper ballots which is made impractical because of any of the following requirements may be modified with approval of the Department of State to facilitate adherence to the following requirements:

(1) After preparing his ballot, the elector shall place his ballot in the secrecy envelope so as to cover the ballot but leave the attached stub exposed.

(2) The ballot shall have two stubs. Stub number one shall have the ballot serial number on it. Stub number two shall have the official title of the election and the name of the county and state on it. On ballots to be used in the precincts, the ballot serial number shall also be on stub number two. On absentee ballots, the ballot serial number may be on stub number two, but shall be on stub number one.

(3) Ballots to be used in the precincts shall be assembled in pads so that stub number one will remain on the ballot pad and stub number two will go with the ballot. On absentee ballots, stub number one shall be retained by the supervisor, and stub number two may be retained by the supervisor or sent with the ballot.

(4) The elector shall sign the signature slip, poll list, or ballot stub on which the ballot serial number may be recorded.

(5) Absentee ballots shall be placed in the secrecy envelope before being placed in the mailing envelope on which the Voter's Certificate is printed.

History.—s. 8, ch. 73-156; s. 21, ch. 77-175.

101.5609 Ballot requirements.—

(1) The ballot information, whether placed on the ballot or on the marking device, shall, as far as practicable, be in the order of arrangement provided for paper ballots. Ballots for all questions or propositions to be voted on shall be provided in the same manner and shall be arranged on or in the marking device in the places provided for such purposes.

(2) When an electronic voting system utilizes ballot information for candidates and propositions to be voted upon, such ballot information may be provided with a series of pages distinguished by different colors. More than one public measure or proposition may be placed on the same page or series of pages.

(3) In primary elections, a separate ballot information booklet, marking device, and voting booth shall be used for each political party holding a primary, with the ballot information booklet arranged to include pages listing the candidates of the party and public measures and other propositions to be voted upon on the day of the primary election. One ballot may be used for recording the voter's vote on all such races, proposals, public measures, or propositions, and such ballot shall, if possible, be arranged so as to record the voter's vote in a separate column or columns for races, ballot proposals, public measures, or propositions.

(4) If the ballot information booklet includes pages containing candidates for office and pages containing public measures or propositions to be voted on, the election official in charge of the election shall divide the pages by protruding tabs identifying the division of the pages which relate to candidates, constitutional amendments, bond referenda, or other propositions.

(5) Voting squares may be placed in front of or in back of the names of candidates and statements of questions and shall be of such size as is compatible with the type of system used. Ballots and ballot information shall be printed in a size and style of type as plain and clear as the ballot spaces will reasonably permit. Tear-off stubs shall be of a size suitable for the ballots used and for the requirements of the marking device. The ballots may contain special printed marks and holes as required for proper positioning and reading of the ballots by the automatic tabulating equipment. When ballots are bound into pads, they may be bound at the top or bottom or at either side. In the case of the paper ballots, all offices and questions may be printed on the same sheet of paper.

(6) Absentee ballots may consist of ballot cards, envelopes, or paper ballots voted in person in the office of the election official in charge of the election or voted by mail. When a ballot card is used for voting by mail, it shall be accompanied by a marking device; voter instructions; an envelope which will maintain the secrecy of a marked ballot; a mailing envelope; a specimen ballot showing the proper positions to vote on the ballot card for each party, candidate, proposal, public measure, or proposition; and any other item needed by the elector to cast his vote. If a punching device is required, the ballot card shall be mounted on a suitable material to receive the punched-out chip.

(7) Any voter who spoils his ballot or makes an error may return the ballot to the election officials and secure another, except that in no case shall a voter be furnished more than three ballots. A spoiled ballot shall be preserved, without examination, in an envelope provided for that purpose. The stub shall be removed from the ballot and placed in an envelope separate from the ballot.

History.—s. 9, ch. 73-156; s. 21, ch. 77-175; s. 38, ch. 79-400.

101.5610 Inspection of ballot by election board.—The election board of each precinct shall cause the marking devices to be put in order, set, adjusted, and made ready for voting when delivered to the polling places. Before the opening of the polls, the election board shall compare the ballots used in the marking devices with the sample ballots furnished and see that the names, numbers, and letters thereon agree and shall certify thereto on forms provided by the supervisor of elections.

History.—s. 10, ch. 73-156.

101.5611 Instructions to electors.—

(1) For the instruction of voters on election day, the supervisor of elections shall provide at each polling place one instruction model illustrating the manner of voting with the system. Each such instruction model shall show the arrangement of party rows, office columns, and questions to be voted on. Such model shall be located at a place which voters must pass to reach the official voting booth.

(2) Before entering the voting booth each voter shall be offered instruction in voting by use of the instruction model, and the voter shall be given ample opportunity to operate the model by himself. In instructing voters, no precinct official may show partiality to any political party or candidate.

History.—s. 11, ch. 73-156; s. 21, ch. 77-175.

101.5612 Testing of tabulating equipment.—

(1) On any day not more than 10 days prior to the election day, the supervisor of elections shall have the automatic tabulating equipment tested to ascertain that the equipment will correctly count the votes cast for all offices and on all measures. Public notice of the time and place of the test shall be given at least 48 hours prior thereto by publication once in one or more newspapers of general circulation in the county or, if there is no newspaper of general circulation in the county, by posting such notice in at least four conspicuous places in the county. The canvassing board shall convene, and each member of the canvassing board shall certify to the accuracy of the test. For the test, the canvassing board may designate one member to represent it. The test shall be open to representatives of the political parties, the press, and the public.

(2) The test shall be conducted by processing a preaudited group of ballots so punched or marked as to record a predetermined number of valid votes for each candidate and on each measure and shall include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. If any error is detected, the cause therefor shall be ascertained and corrected and an errorless count shall be made before the automatic tabulating equipment is approved. The test shall be repeated immediately before the start of the official count of the ballots in the same manner as set forth above. After the completion of the count, the test shall be repeated. The programs and ballots used shall be sealed and retained under the custody of the county canvassing board.

History.—s. 12, ch. 73-156; s. 21, ch. 77-175; s. 39, ch. 79-400.

101.5613 Examination of equipment during voting.—A member of the election board shall occasionally examine the face of the voting machine and the ballot information to determine that the machine and the ballot information have not been damaged or tampered with.

History.—s. 13, ch. 73-156; s. 21, ch. 77-175.

101.5614 Canvass of returns.—

(1) In precincts in which an electronic or electromechanical voting system is used, as soon as the polls are closed, the election board shall secure the marking devices against further voting. They shall thereafter open the ballot box and count the number of voted ballots, unused ballots, and spoiled ballots to ascertain whether such number corresponds with the number of ballots issued by the supervisor. If there is a difference, this fact shall be reported in writing to the county canvassing board with the reasons therefor if known. The total number of voted ballots shall be entered on the forms provided.

(2)(a) If the ballots are to be tallied at a central location, the election board shall place all ballots that have been cast in the container provided for the purpose, which shall be sealed and delivered forthwith to the central counting location or other desig-

nated location by two inspectors who shall not, whenever possible, be of the same political party, together with the unused, void, and defective ballots. The election board shall certify that the ballots were placed in such container and the container was sealed in its presence and under its supervision, and it shall further certify to the number of ballots of each type placed in the container.

(b) If ballots are to be counted at the precincts, such ballots shall be counted pursuant to rules adopted by the Department of State, which rules shall provide safeguards which conform as nearly as practicable to the safeguards provided in the procedures prescribed in paragraph (a) for the counting of votes at a central location.

(3) All proceedings at the central counting location or other designated location shall be under the direction of the county canvassing board, and shall be open to the public, but no persons except those employed and authorized for the purpose shall touch any ballot or ballot container, any item of automatic tabulating equipment, or any return prior to its release.

(4) If any ballot card of the type for which the offices and measures are not printed directly on the card is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot card in the presence of witnesses and substituted for the damaged ballot. Likewise, a duplicate ballot card shall be made of a defective ballot which shall not include the invalid votes. All duplicate ballot cards shall be clearly labeled "duplicate," bear a serial number which shall be recorded on the damaged or defective ballot card, and be counted in lieu of the damaged or defective ballot. If any ballot card of the type for which offices and measures are printed directly on the card is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy may be made of the damaged ballot card in the presence of witnesses and in the manner set forth above, or the valid votes on the damaged ballot card may be manually counted at the counting center by the canvassing board, whichever procedure is best suited to the system used. If any paper ballot is damaged or defective so that it cannot be counted properly by the automatic tabulating equipment, the ballot shall be counted manually at the counting center by the canvassing board. The totals for all such ballots or ballot cards counted manually shall be added to the totals for the several precincts or election districts. No vote shall be declared invalid or void if there is a clear indication of the intent of the voter as determined by the canvassing board. After duplicating a ballot, the defective ballot shall be placed in an envelope provided for that purpose, and the duplicate ballot shall be tallied with the other ballots for that precinct.

(5) Absentee ballots may be counted by automatic tabulating equipment if they have been punched or marked in a manner which will enable them to be properly counted by such equipment.

(6) The return printed by the automatic tabulating equipment, to which has been added the return of absentee and manually counted votes, shall constitute the official return of the election. Upon completion of the count, the returns shall be open to the public. A copy of the returns may be posted at the central counting place or at the office of the supervisor of elections in lieu of the posting of returns at individual precincts.

History.—s. 14, ch. 73-156; s. 1, ch. 77-174; s. 21, ch. 77-175.

101.5615 Recounts and election contests.—Except as herein provided, recounts and election contests shall be conducted as otherwise provided for in this code. The automatic tabulating equipment shall be tested prior to the recount or election contest, as provided in s. 101.5612, and then the official ballots or ballot cards shall be recounted on the automatic tabulating equipment. Each duplicate ballot shall be compared with the original ballot to insure the correctness of the duplicate.

History.—s. 15, ch. 73-156; s. 21, ch. 77-175.

101.58 Supervising and observing registration and election processes.—The Department of State may, at any time it deems fit; upon the petition of 5 percent of the registered electors; or upon the petition of any candidate, county executive committee chairman, state committeeman or committeewoman, or state executive committee chairman, appoint one or more deputies whose duties shall be to observe and examine the registration and election processes and the condition, custody, and operation of voting machines in any county or municipality. The deputy shall have access to all registration books and records as well as any other records or procedures relating to the voting process. The deputy shall supervise preparation of the election machines and procedures for election, and it shall be unlawful for any person to obstruct the deputy in the performance of his duty. He shall file with the Department of State a certificate that he personally examined the voting machines and with such certificate file a report of his findings and observations of the registration and election processes in the county or municipality, and a copy of the certificate and report shall also be filed with the Clerk of the Circuit Court of said county. The compensation of such deputies shall be fixed by the Department of State; and costs incurred under this section shall be paid from the annual operating appropriation made to the Department of State.

History.—s. 13, ch. 18405, 1937; CGL 1940 Supp. 337(28-b); s. 5, ch. 26870, 1951; s. 1, ch. 63-256; ss. 10, 35, ch. 69-106; s. 1, ch. 73-305; s. 21, ch. 77-175.
Note.—Former s. 100.31.

101.62 Request for absentee ballots.—

(1) An absent elector may request from the supervisor of elections or his deputy an absentee ballot during the 1-year period preceding an election. The supervisor may accept a request for an absentee ballot for an elector from any person designated by such elector. Such request may be made in person, by mail, or by telephone. One request shall be deemed sufficient to receive an absentee ballot for each election which is held within such 1-year period, provided the elector or his designee indicates at the time the request is made the elections for which the elector desires to receive an absentee ballot.

(2) If a request for an absentee ballot is received, after the Friday before the election, by the supervi-

sor of elections from an absent elector overseas, the supervisor shall send a notice to the elector acknowledging receipt of his request and notifying the elector that the ballot will not be forwarded due to insufficient time for return of the ballot by the required deadline.

(3) For each request for an absentee ballot received, the supervisor shall record the date the request was made, the date the absentee ballot was delivered or mailed, the date the ballot was received by the supervisor, and such other information he may deem necessary.

(4) As soon as the absentee ballots are printed, the supervisor of elections shall deliver or mail an absentee ballot to each elector for whom a request for such ballot has been made. Any elector, however, may designate in writing a person to pick up the ballot for him. Upon presentation, of such written authorization by such designee in person, the supervisor may give the ballot to such designee for delivery to the elector. The supervisor shall initial the stub attached to the absentee ballot and enter the name of the elector in the place indicated for the elector to sign. The supervisor shall then detach the ballot from the stub and mail or deliver the ballot. Before mailing or delivering the ballot, the supervisor shall fill in the number of the precinct in which the voter is registered in the space provided for this purpose on the envelope. If an elector appears in person to cast an absentee ballot, the elector shall sign the stub, and the supervisor shall then detach the ballot from the stub and deliver the ballot to the elector.

(5) No campaign literature shall be mailed or delivered with any absentee ballot.

History.—s. 2, ch. 7380, 1917; RGS 369; CGL 430; s. 1, ch. 25385, 1949; s. 5, ch. 26870, 1951; s. 32, ch. 28156, 1953; s. 21, ch. 29934, 1955; s. 2, ch. 59-213; s. 32, ch. 65-380; s. 1, ch. 67-33; s. 2, ch. 69-136; s. 4, ch. 69-280; s. 2, ch. 70-93; ss. 1, 2, ch. 71-149; s. 5, ch. 73-157; s. 39, ch. 73-333; s. 2, ch. 75-174; s. 21, ch. 77-175; s. 40, ch. 79-400.

Note.—Former s. 101.02.

101.635 Distribution of blocks of printed ballots.—In any county in which the supervisor of elections maintains deputies in a municipality other than the county seat and such municipality has a population in excess of 90,000, blocks of numbered ballots shall be made available as required and as the supervisor may direct, in order to comply with the provisions of s. 98.181. All ballots made available in any such municipality shall be fully accounted for to the supervisor.

History.—s. 22, ch. 77-175.

101.64 Delivery of absentee ballots; envelopes; form.—

(1) The supervisor shall enclose with each absentee ballot two envelopes, a plain white envelope into which the absent elector shall enclose and seal his marked ballot and a second envelope, into which the absent elector shall then place the sealed white envelope, which shall be addressed to the supervisor and also bear on the back side of this "mailing envelope" a certificate which shall be substantially in the following form:

Note: Please Read Instructions Carefully Before Marking Ballot and Completing Voter's Certificate.

VOTER'S CERTIFICATE

I, ..., am duly qualified and registered as a ...(Party)... voter of the ..... Precinct of ..... County, Florida, coming within the purview of the definition of "absent elector," and I am entitled to vote an absentee ballot for the following reason:

CHECK ONLY ONE

1. .....I am unable without another's assistance to attend the polls.

2. .....I will not be in the county of my residence during the hours the polls are open for voting on election day.

3. .....I am an inspector, a poll worker, a deputy voting machine custodian, a deputy sheriff, a supervisor of elections, or a deputy supervisor who is assigned to a different precinct than that in which I am registered.

4. .....On account of the tenets of my religion, I cannot attend the polls on the day of the general, special, or primary election.

5. .....I have changed my permanent residency to another county in Florida within the time period during which the registration books are closed for the election. I understand that I am allowed to vote only for national and statewide offices and statewide issues.

6. .....I have changed my permanent residency to another state and am unable under the laws of such state to vote in the general election. I understand that I am allowed to vote only for President and Vice President.

...(Voter's Signature)...

Note: Your Signature Must Be Witnessed By Either

1. A Notary or Officer Defined in Item 5(b) of the Instruction Sheet.

Subscribed and sworn to before me this ..... day of ....., 19..... ...(Official Title)... My Commission Expires this ..... day of ....., 19.....

(Do Not Use Impression Seal)

...(Signature of Official)...

...(Address)... ...(City/State)...

Or

2. Two Witnesses Eighteen (18) Years or Older.

...(First Witness)...

...(Address)... ...(City/State)...

...(Second Witness)...

...(Address)... ...(City/State)...

(2) The statement shall be so arranged that the signature of the absent elector and the attesting witness or witnesses shall be across the seal of the envelope. The absent elector and the attesting witness or witnesses shall execute the form on the envelope.

History.—s. 4, ch. 7380, 1917; RGS 371; CGL 432; s. 1, ch. 25385, 1949; s. 5, ch. 26870, 1951; s. 34, ch. 28156, 1953; s. 22, ch. 29934, 1955; s. 1, ch. 61-369; s. 33, ch. 65-380; s. 3, ch. 69-136; s. 5, ch. 69-280; s. 21, ch. 71-355; s. 1, ch. 73-105; s. 6, ch. 73-157; s. 39, ch. 73-333; s. 3, ch. 75-174; s. 23, ch. 77-175; s. 4, ch. 79-365.

Note.—Former s. 101.04.

101.65 Instructions to absent electors.—The supervisor of elections shall enclose with each ballot sent to an absent elector separate printed instructions in substantially the following form:

READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING BALLOT.

1. Mark your ballot in secret as instructed on the ballot.

2. Place your marked ballot in the enclosed plain white envelope.

3. Securely seal the plain white envelope and place it in the enclosed mailing envelope which is addressed to the supervisor.

4. Seal the mailing envelope and completely fill out the Voter's Certificate on the back of the mailing envelope.

5. VERY IMPORTANT. Sign your name on the line above "(Voter's Signature)."

a. Persons serving as attesting witnesses shall affix their signatures and addresses on the Voter's Certificate. Any two persons 18 years of age or older may serve as attesting witnesses.

b. Any notary or other officer entitled to administer oaths or a Florida supervisor of elections or his deputy may serve as a sole attesting witness. The sole attesting witness shall affix his signature, official title, and address to the Voter's Certificate.

6. Mail, deliver, or have delivered the completed mailing envelope. Be sure there is sufficient postage if mailed.

7. VERY IMPORTANT. The supervisor of elections of the county in which your precinct is located must receive your ballot no later than 7 p.m. on the day of the election.

History.—s. 5, ch. 7380, 1917; RGS 372; CGL 433; s. 1, ch. 25385, 1949; s. 5, ch. 26870, 1951; s. 35, ch. 28156, 1953; s. 23, ch. 29934, 1955; s. 34, ch. 65-380; s. 4, ch. 71-149; s. 9, ch. 72-63; s. 2, ch. 73-105; s. 7, ch. 73-157; ss. 3, 4, ch. 75-174; s. 23, ch. 77-175.

Note.—Former s. 101.05.

101.67 Safekeeping of mailed ballots; deadline for receiving absentee ballots; certain absentee ballots not to be counted.—

(1) The supervisor of elections shall safely keep in his office any envelopes received containing marked ballots of absent electors, and he shall, before the canvassing of the election returns, deliver the envelopes to the county canvassing board along with his file or list kept regarding said ballots.

(2) All marked absent electors' ballots to be counted must be received by the supervisor by 7 p.m. the day of the election. All ballots received thereafter shall be marked with the time and date of receipt and filed in his office.

History.—s. 2, ch. 11824, 1927; CGL 436; s. 1, ch. 25385, 1949; s. 5, ch. 26870, 1951; s. 24, ch. 29934, 1955; s. 24, ch. 57-1; s. 35, ch. 65-380; s. 5, ch. 71-149; s. 23, ch. 77-175.

Note.—Former s. 101.07.

101.68 Canvassing of absent elector's ballot.—

(1) The supervisor of the county where the absent elector resides shall receive the voted ballot, at which time the supervisor may compare the information on the Voter's Certificate on the back of the envelope with the information in the registration books to determine whether the elector is duly registered in the precinct and may record on the elector's registration certificate that the elector has voted. The supervisor shall safely keep the ballot unopened in his office until the county canvassing board canvasses the vote according to law. The canvassing board shall begin the canvassing of absentee ballots not later than noon on the day following the election. The canvassing board shall compare the ballots presented to it by the supervisor for canvass with the record required by s. 101.62(3), so as to compare the number of ballots in its possession with the number of requests for ballots received to be counted according to the supervisor's file or list, to insure all the absentee ballots to be counted by the canvassing board are accounted for. The canvassing board shall, if the supervisor has not already done so, compare the information on the back of the envelope with the registration book to see that the elector is duly registered in the precinct and has not voted on election day and to determine the legality of the absent elector's ballot. If it is determined by the canvassing board that any vote is illegal, then some member of the board shall, without opening the envelope, mark across the face of the envelope, "rejected as illegal." The envelope and the ballot contained therein shall be preserved in the manner that official ballots voted are preserved.

(2) If any elector or candidate present believes that any absentee ballot is illegal due to any defect apparent on the Voter's Certificate, he may, at any time before the ballot is removed from the envelope, file with the canvassing board a protest against the canvass of such ballot, specifying the precinct, the ballot, and the reason he believes such ballot to be illegal. No challenge based upon any defect in the Voter's Certificate shall be accepted after the ballot has been removed from the mailing envelope.

(3) The county canvassing board shall then record the ballot upon the poll book of the proper precinct in the same manner as clerks of elections record votes, unless the ballot has been previously recorded by the supervisor of elections. The mailing envelopes for the entire county shall be opened and the plain white sealed envelopes shall be mixed up so as to make it impossible to determine which plain envelope came out of which signed mailing envelope; however, in any county in which an electronic or electromechanical voting system is used, the ballots may be sorted by ballot styles and the mailing envelopes may be opened and the plain white envelopes mixed up for each ballot style separately. The votes on absentee ballots shall be included in the total vote of the county.

(4) The supervisor or the chairman of the canvassing board shall, after the board convenes, have custody of the absent electors' ballots until a final proclamation is made as to the total vote received by each candidate.

History.—s. 5, ch. 26870, 1951; s. 37, ch. 28156, 1953; s. 36, ch. 65-380; s. 6, ch. 69-280; s. 3, ch. 75-174; s. 23, ch. 77-175; s. 41, ch. 79-400.

101.69 Voting in person; return of absent elector's ballot.—The provisions of this code shall not be construed to prohibit any absent elector returning to his home county from voting in his precinct at any election notwithstanding that he has

requested an absentee ballot and the same has been mailed to him, provided the elector returns the ballot whether voted or not, if he received same, to the election board in his precinct. The returned ballot shall be marked "canceled" by the board and placed with other canceled ballots.

History.—s. 1, ch. 22014, 1943; s. 1, ch. 25385, 1949; s. 5, ch. 26870, 1951; s. 37, ch. 65-380; s. 23, ch. 77-175.
Note.—Former s. 101.11.

101.692 Postcard application for ballot.—

(1) Upon receipt of a federal postcard application for an absentee ballot, the supervisor of elections shall check the registration records to determine whether the applicant's registration is in order.

(2) If the applicant's registration is in order, an absentee ballot shall be mailed as provided in s. 101.694.

(3) If the applicant's registration is not in order and the supervisor finds that the applicant has never registered in the county, that the registration books are open and, that the applicant is entitled to register absentee in accordance with the provisions of s. 97.063(1), then the supervisor shall send to the applicant the "application for absentee registration" form as provided in s. 97.063(4), which shall permit the applicant's registration in accordance with s. 97.063 when it is properly filled out and returned to the supervisor during the period in which the registration books are open.

(4) If the applicant's registration is not in order and the supervisor finds that the applicant has previously been registered and his registration has lapsed because of his failure to reregister or because of his failure to return a notice mailed to his address of record by the supervisor in compliance with the provisions of the permanent single registration law, then the supervisor shall reinstate such elector.

(5) No absentee ballot mailed in accordance with subsection (3) shall be counted if the applicant does not complete his registration.

History.—s. 3, ch. 29904, 1955; s. 2, ch. 59-217; s. 39, ch. 65-380; s. 6, ch. 72-63; s. 23, ch. 77-175.

101.694 Mailing of ballots upon receipt of federal postcard application.—

(1) Upon receipt of a federal postcard application for an absentee ballot executed by a person whose registration is in order, the supervisor of elections shall mail to the applicant a ballot, if the ballots are available for mailing.

(2) Upon receipt of a federal postcard application for an absentee ballot executed by a person whose registration is not in order, the supervisor of elections shall follow the procedure set forth in subsection (3) or subsection (4) of s. 101.692, where applicable.

(3) There shall be printed across the face of each envelope in which a ballot is sent to a federal postcard applicant, or is returned by such applicant to the supervisor, two parallel horizontal red bars, each one-quarter inch wide, extending from one side of the envelope to the other side, with an intervening space of one-quarter inch, the top bar to be one and one-quarter inches from the top of the envelope, and with the words "Official Election Balloting Material-via Air Mail," or similar language, between the bars. There shall be printed in the upper right corner of each such envelope, in a box, the words "Free of U. S. Postage, including Air Mail." All printing on the face of each envelope shall be in red, and there shall be printed in red in the upper left corner of each ballot envelope an appropriate inscription or blanks for return address of sender. Otherwise the envelopes shall be the same as those used in sending ballots to, or receiving them from, other absentee voters.

(4) Cognizance shall be taken of the fact that absentee ballots and other materials such as instructions and envelopes are to be carried via air mail, and, to the maximum extent possible, such ballots and materials shall be reduced in size and weight of paper. The same ballot shall be used, however, as is used by other absentee voters.

History.—s. 5, ch. 29904, 1955; ss. 4, 5, ch. 59-217; s. 41, ch. 65-380; s. 12, ch. 69-280; s. 23, ch. 77-175.

101.71 Polling place.—

(1) There shall be in each precinct in each county one polling place which shall be accessible to the public on election day and is managed by a board of inspectors and clerk of election. Only one elector shall be allowed to enter any voting booth at a time; no one except inspectors shall be allowed to speak to him while casting his vote; and no inspector shall speak to or interfere with the elector concerning his voting, except to perform his duties as such inspector. Notwithstanding any other provision of this chapter, this section shall be applicable where the computer method of voting is in use, and adequate provision shall be made for the privacy of the elector while casting his vote.

(2) Notwithstanding the provisions of subsection (1) and of s. 98.031, whenever the supervisor of elections of any county shall determine that the accommodations for holding any election at a polling place designated for any precinct in the county are inadequate for the expeditious and efficient housing and handling of voting and voting paraphernalia, including voting machines where used, said supervisor may provide, not less than 60 days prior to the holding of such election, that the voting place for such precinct shall be moved for the purpose of such election to another site which shall be accessible to the public on election day in said precinct or, if such is not available, to another site which shall be accessible to the public on election day in a contiguous precinct. If such action of the supervisor shall result in the voting place for two or more precincts being located for the purposes of an election in one building, the voting places for the several precincts involved shall be established and maintained separate from each other in said building. When any supervisor moves any polling place pursuant to this subsection, he shall, not more than 30 days or less than 20 days prior to the holding of any such election, give notice of the change of the polling place for the precinct involved, with clear description of the voting place to which changed, not less than two times in a newspaper of general circulation in said county and may notify the voters by mail or use such other advertising media as necessary to properly publicize said change.

(3) In cases of emergency and when time does not permit compliance with subsection (2), the supervi-

sor of elections shall designate a new polling place which shall be accessible to the public on election day within the boundaries of the same precinct and shall cause a notice to be posted at the old polling place advising the electors of the location of the new polling place.

(4) Each polling place shall be conspicuously identified by a sign, on or near the premises of the polling place, designating the polling place by precinct number. Such sign shall be large enough to be clearly visible to occupants of passing vehicular traffic on roadways contiguous to the polling place, with letters no smaller than 3 inches high, and shall be displayed at all times while the polls are open on any election day.

History.—s. 22, ch. 3879, 1889; RS 176; s. 26, ch. 4328, 1895; s. 1, ch. 4699, 1899; GS 208; RGS 252; CGL 308; s. 5, ch. 26870, 1951; s. 1, ch. 57-385; s. 3, ch. 67-530; s. 4, ch. 69-281; s. 23, ch. 77-175; s. 4, ch. 78-188.
Note.—Former s. 99.06.

101.715 Accessibility of polling places to the elderly and physically handicapped.—

(1) Each polling place shall be accessible to, and usable by, elderly persons and by physically handicapped persons by complying, when necessary, with the following standards of accessibility:

(a) Doors, entrances, and exits used to gain access to, or egress from, the polling place shall have a minimum width of 29 inches.

(b) Any curb adjacent to the main entrance to a polling place shall have curb cuts or temporary ramps.

(c) Any stairs necessarily used to enter the polling place shall have a temporary handrail and ramp.

(d) At the polling place, no barrier shall impede the path of the physically handicapped to the voting booth.

(2) Polling places which are of a temporary nature are exempt from compliance with s. 255.21.

(3) Each supervisor of elections shall only select as polling places, sites which meet the standards of accessibility prescribed in subsection (1), except that the supervisor may select a site not meeting the standards if:

(a) No acceptable and accessible site exists within the precinct or other designated voting area; and

(b) It is anticipated that the site will be brought into compliance with such standards in the foreseeable future, or the site will be temporarily made to comply with the standards for the time during which the polls are open.

(4) Any supervisor of elections who selects as a polling place a site which does not meet the standards prescribed in subsection (1) shall report such selection to the board of county commissioners. The report shall expressly state that the supervisor has determined that such polling place can be made accessible to, and usable by, elderly persons and by physically handicapped persons in the foreseeable future by affirmative governmental action.

(5) Each board of county commissioners which receives a report from a supervisor pursuant to subsection (4) shall take affirmative action to bring the selected polling place into compliance with the standards prescribed in subsection (1).

(6) Each district school board and each municipality shall cooperate with the board of county commissioners in its respective county in implementing the provisions of this section.

History.—s. 1, ch. 76-50.

101.72 Booths.—The supervisor of elections of each county, or, in case of a municipal election, the mayor or other chief executive officer, where voting machines are not used shall provide at each polling place a room or covered enclosure. In such room or covered enclosure booths or compartments shall be provided, one booth or compartment for each 125, or fraction of 125 over 70, qualified electors registered for that election. Each booth or compartment shall be furnished with a shelf or table for the convenience of electors in preparing their ballots and shall be so arranged that it will be impossible for one elector in one compartment to see an elector in another in the act of marking his ballot. Each voting table or shelf shall be kept supplied with conveniences for marking the ballots.

History.—s. 38, ch. 4328, 1895; s. 7, ch. 4329, 1895; GS 223; RGS 268; CGL 324; s. 5, ch. 26870, 1951; s. 23, ch. 77-175.
Note.—Former s. 99.22.

101.73 Description of election districts and precincts.—Within 10 days after there is any change in the division, number, or boundaries of the election precincts, or of the location of the polling places, the county commissioners shall make in writing an accurate description of any new or altered election precincts, setting forth the boundary lines thereof, so as to designate accurately the limits of each precinct. They shall at the same time name, clearly define, and describe in writing the polling place which they have established in each new or altered election precinct or in any precinct in which they may have changed the polling place. Such changes shall be recorded in the registry of deeds in the clerk of the circuit court's office for such county. Upon the recording of the changes, the county commissioners shall publish the change two times in a newspaper of general circulation in the county or, if there is no newspaper of general circulation in the county, they shall post a plainly written or printed copy at the courthouse in a conspicuous place and also at three places in each changed or altered district.

History.—s. 10, ch. 3879, 1889; RS 164; s. 11, ch. 4328, 1895; GS 185, 186; RGS 229, 230; CGL 282, 283; s. 7, ch. 25383, 1949; s. 5, ch. 26870, 1951; s. 23, ch. 77-175; s. 42, ch. 79-400.
Note.—Former ss. 98.25, 98.26.

101.74 Temporary change of polling place in case of natural disaster.—In case of an epidemic or natural disaster existing in any precinct at the time of the holding of any election, the supervisor of elections may establish, at any safe and convenient point outside such precinct, an additional polling place for the electors of said precinct, in which the qualified electors may vote. The registration books of the affected precinct shall be applicable to, and be used at, the polling place so established.

History.—s. 39, ch. 3879, 1889; RS 193; s. 70, ch. 4328, 1895; GS 254; RGS 298; CGL 354; s. 5, ch. 26870, 1951; s. 44, ch. 65-380; s. 23, ch. 77-175.
Note.—Former s. 99.55.

101.75 Municipal elections; change of dates for cause.—

(1) In any municipality, when the date of the municipal elections falls on the same date as any statewide election and voting machines are not available for both elections, the municipality may provide that the municipal primary and general elections may be held within 30 days prior to or subsequent to the statewide election.

(2) Whenever it is impracticable to hold a municipal election due to an emergency resulting from a flood or hurricane, or due to the immediate probability or imminence of such flood or hurricane, the Governor, by executive order, upon determining that such impracticability exists, may suspend the election at any time prior to the close of the polls. The election shall be held within 30 days after the date of the suspended election, and notice of the election shall be published at least once in a newspaper of general circulation in the municipality at least 1 week prior to the date the election is to be held.

(3) The date of said municipal election shall be set by the municipality by ordinance.

History.—ss. 1, 2, ch. 59-493; s. 1, ch. 76-68; s. 24, ch. 77-175.

Note.—Former s. 104.451.

CHAPTER 102

CONDUCTING ELECTIONS AND ASCERTAINING THE RESULTS

102.012 Inspectors and clerks to conduct elections.—

(1) The supervisor of elections of each county, at least 20 days prior to the holding of any election, shall appoint two election boards for each precinct in the county; however, the supervisor of elections may, in any election, appoint one election board if he has reason to believe that only one is necessary. Each election board shall be composed of three inspectors and a clerk. The clerk shall be in charge of, and responsible for, seeing that the election board carries out its duties and responsibilities. Each inspector and each clerk shall take and subscribe to an oath or affirmation, which shall be written or printed, to the effect that he will perform the duties of inspector or clerk of election, respectively, according to law and will endeavor to prevent all fraud, deceit, or abuse in conducting the election. The oath may be taken before an officer authorized to administer oaths or before any of the persons who are to act as inspectors, one of them to swear the others, and one of the others sworn thus, in turn, to administer the oath to him who has not been sworn. The oaths shall be returned with the poll list and the returns of the election to the supervisor. In all questions that may arise before the members of an election board, the decision of a majority of them shall decide the question. The supervisor of elections of each county shall be responsible for the attendance and diligent performance of his duties by each clerk and inspector.

(2) Each member of the election board shall be able to read and write the English language and shall be a registered qualified elector of the precinct in which he is appointed, and, in the event no such elector can be found to serve in any precinct, an elector may be appointed from any other precinct within the county. No election board shall be composed solely of members of one political party; however, in any primary in which only one party has candidates appearing on the ballot all clerks and inspectors may be of that party. Any person whose name appears as an opposed candidate for any office shall not be eligible to serve on an election board.

(3) The supervisor shall furnish inspectors of election for each precinct with the registration books divided alphabetically as will best facilitate the holding of an election. The supervisor shall also furnish to the inspectors of election at the polling place at each precinct in his county a sufficient number of forms and blanks for use on election day.

(4) An election board shall conduct the voting, beginning and closing at the time set forth in s. 100.011. If more than one board has been appointed, the second board shall, upon the closing of the polls, come on duty and count the votes cast. In such case, the first board shall turn over to the second board all closed ballot boxes, registration books, and other records of the election at the time the boards change. The second board shall continue counting until the count is complete or until 7 a.m. the next morning, and, if the count is not completed at that time, the first board that conducted the election shall again report for duty and complete the count. The second board shall turn over to the first board all ballots counted, all ballots not counted, and all registration books and other records and shall advise the first board as to what has transpired in tabulating the results of the election.

(5) In precincts in which there are more than 1,000 registered electors, the supervisor of elections shall appoint additional election boards necessary for the election.

(6) In precincts in which there are less than 300 registered electors, it is not necessary to appoint two election boards, but one such board shall suffice.

(7) For any precinct using voting machines, there shall be one election board appointed, plus an additional inspector for each machine in excess of one; however, the supervisor of elections may appoint a greater number of additional inspectors than required by this subsection.

(8) The supervisor of elections shall conduct training classes for inspectors, clerks, and deputy sheriffs prior to each first primary, general, or special election for the purpose of instructing such persons in their duties and responsibilities as election officials. A certificate shall be issued by the supervisor of elections to each person completing such training. No person shall serve as an inspector, clerk, or deputy sheriff for an election unless such person has been issued a certificate, except a person who is ap-

pointed to fill a vacancy on election day who has attended previous training classes conducted within 2 years of the election. If no person with prior training is available to fill such vacancy, the supervisor of elections may fill such vacancy in accordance with the provisions of subsection (9) from among persons who have not received the training and certification required by this section.

(9) In the case of absence or refusal to act of any inspector or clerk at any precinct on the day of an election, the supervisor shall appoint a replacement who meets the qualifications prescribed in subsection (2). The inspector or clerk so appointed shall be a member of the same political party as the clerk or inspector whom he replaces.

History.—s. 20, ch. 3879, 1889; RS 174; s. 24, ch. 4328, 1895; s. 8, ch. 4537, 1897; GS 205; RGS 249; s. 1, ch. 8587, 1921; CGL 305; s. 2, ch. 17898, 1937; s. 2, ch. 25384, 1949; s. 6, ch. 26870, 1951; s. 38, ch. 28156, 1953; s. 25, ch. 29934, 1955; s. 10, ch. 57-166; s. 1, ch. 63-53; s. 1, ch. 65-416; s. 1, ch. 67-168; s. 1, ch. 67-385; s. 1, ch. 73-151; s. 25, ch. 77-175; s. 43, ch. 79-400.
Note.—Former s. 99.03.

102.021 Compensation of inspectors, clerks, and deputy sheriffs.—

(1) Each inspector and each clerk of any election and each deputy sheriff serving at a precinct shall be paid for his services by the board of county commissioners, and each inspector who delivers the returns to the county seat shall receive such sums as the board of county commissioners shall determine.

(2) Inspectors and clerks of election and deputy sheriffs serving at the precincts may receive compensation and traveling expenses as provided in s. 112.061, for attending the poll worker classes required by s. 102.012(8).

History.—s. 24, ch. 4328, 1895; s. 8, ch. 4537, 1897; GS 206; RGS 250; CGL 306; ss. 1, 2, ch. 20448, 1941; s. 3, ch. 25384, 1949; s. 6, ch. 26870, 1951; s. 5, ch. 63-400; s. 1, ch. 65-129; s. 25, ch. 77-175.
Note.—Former s. 99.04.

102.031 Election boards to maintain good order.—Each election board shall possess full authority to maintain order at the polls and enforce obedience to its lawful commands during an election and the canvass of the votes.

History.—s. 58, ch. 4328, 1895; GS 237; RGS 282; CGL 338; s. 6, ch. 26870, 1951; s. 1, ch. 59-212; s. 25, ch. 77-175.
Note.—Former s. 99.38.

102.061 Duties of election board; counting; closing polls.—

(1) At the close of the election at each precinct, the election board that conducted the election shall turn the ballot box, registration books, and other records over to the relieving board, when more than one board is conducting the election, which relieving board shall proceed to open the ballot box in the presence of the public desiring to witness the canvass and count the ballots without adjournment or interruption until the count is completed, except for the necessary interruption provided for in s. 102.012. The ballots shall first be counted, and, if the number of ballots exceeds the number of persons who voted, as may appear by the poll list kept by the clerk and by the stubs detached by the inspectors, the ballots shall be placed back into the box, and one of the inspectors shall publicly draw out and destroy unopened as many ballots as are equal to such excess. If two or more ballots are found folded together to present the appearance of a single ballot, they shall be laid aside until the count is completed, and, if, upon comparison of the count and the appearance of such ballots, a majority of the inspectors are of the opinion that the ballots were voted by one person, such ballots shall be destroyed.

(2) In counting the ballots, the election board shall use either the tally call system of counting or a system whereby the ballots are opened and placed in piles according to the candidate voted for and then the number of ballots in each pile is counted. The ballots shall then be reshuffled and the process repeated until the total votes cast for each candidate for each office has been determined; and no other system of counting shall be used.

History.—s. 29, ch. 3879, 1889; RS 183; s. 60, ch. 4328, 1895; GS 241; RGS 285; CGL 341; s. 9, ch. 17898, 1937; s. 8, ch. 25384, 1949; s. 6, ch. 26870, 1951; s. 25, ch. 77-175; s. 44, ch. 79-400.
Note.—Former s. 99.42.

102.071 Tabulation of votes and proclamation of results where ballots are used.—The election board shall post at the polls, for the benefit of the public, the results of the voting for each office or other item on the ballot as the count is completed. Upon completion of all counts in all races, triplicate certificates of the results shall be drawn up by the inspectors and clerk at each precinct upon a form provided by the supervisor of elections which shall contain the name of each person voted for, for each office, and the number of votes cast for each person for such office; and, if any question is submitted, the certificate shall also contain the number of votes cast for and against the question. The certificate shall be signed by the inspectors and clerk, and one of the certificates shall be delivered without delay by one of the inspectors, securely sealed, to the supervisor for immediate publication; the duplicate copy of the certificate shall be delivered to the county court judge; and the remaining copy shall be enclosed in the ballot box together with the oaths of inspectors and clerks. All the ballot boxes, ballots, ballot stubs, memoranda, and papers of all kinds used in the election shall also be transmitted, sealed by the inspectors, with the certificates of result of the election to be filed in the supervisor's office. Registration books and the poll lists shall not be placed in the ballot boxes but shall be returned to the supervisor.

History.—s. 30, ch. 3879, 1889; RS 184; s. 61, ch. 4328, 1895; s. 2, ch. 4699, 1899; GS 242; RGS 286; CGL 342; s. 9, ch. 25384, 1949; s. 6, ch. 26329, 1949; s. 6, ch. 26870, 1951; s. 39, ch. 28156, 1953; s. 19, ch. 73-334; s. 25, ch. 77-175; s. 45, ch. 79-400.
Note.—Former s. 99.43.

102.081 Deputy sheriff at each polling place.—The sheriff shall deputize a deputy sheriff for each precinct who shall be present during the time the polls are open and until the election is completed, who shall be subject to all lawful commands of the clerk or inspectors, and who shall maintain good order. The deputy may summon assistance from among bystanders to aid him when necessary to maintain peace and order at the polls.

History.—s. 27, ch. 3879, 1889; RS 181; s. 58, ch. 4328, 1895; GS 238; RGS 283; CGL 339; s. 6, ch. 26870, 1951; s. 25, ch. 77-175.
Note.—Former s. 99.39.

102.091 Duty of sheriff to watch for violations; appointment of special officers.—The sheriff shall exercise strict vigilance in the detection of any violations of the election laws and in apprehend-

ing the violators. The Governor may appoint special officers to investigate alleged violations of the election laws, when it is deemed necessary to see that violators of the election laws are apprehended and punished.

History.—s. 6, ch. 26870, 1951; s. 3, ch. 65-129.

102.101 Sheriff and other officers not allowed in polling place.—No sheriff, deputy sheriff, policeman, or other officer of the law shall be allowed within the polling place without permission from the clerk or a majority of the inspectors, except to cast his ballot. Upon the failure of any of said officers to comply with this provision, the clerk or the inspectors or any one of them shall make an affidavit against such officer for his arrest.

History.—s. 58, ch. 4328, 1895; GS 239; RGS 284; CGL 340; s. 6, ch. 26870, 1951; s. 4, ch. 65-129; s. 25, ch. 77-175.
Note.—Former s. 99.41.

102.111 Elections Canvassing Commission.—(1) Immediately after certification of any election by the county canvassing board, the results shall be forwarded to the Department of State concerning the election of any federal or state officer. The Governor and Cabinet shall meet in the Secretary of State's office after reasonable notice, and they shall be the Elections Canvassing Commission. The Elections Canvassing Commission shall canvass the returns of the election and determine and declare who has been elected for each office. If the county returns are not received by the Department of State by 5 p.m. of the seventh day following an election, all missing counties shall be ignored, and the results shown by the returns on the file shall be certified.

(2) The Division of Elections shall provide the staff services required by the Elections Canvassing Commission.

History.—s. 35, ch. 3879, 1889; RS 189; s. 66, ch. 4328, 1895; GS 248; RGS 292; CGL 348; s. 6, ch. 26870, 1951; ss. 10, 35, ch. 69-106; s. 30, ch. 71-377; s. 2, ch. 77-122; s. 25, ch. 77-175.
Note.—Former s. 99.49.

102.121 Elections Canvassing Commission to issue certificates.—The Elections Canvassing Commission shall make and sign separate certificates of the result of the election for federal and state officers, which certificates shall be written and contain the total number of votes cast for each person for each office. The certificates, the one including the result of the election for presidential electors and representatives to Congress, and the other including the result of the election for state officers, shall be recorded in the Department of State in a book to be kept for that purpose.

History.—s. 35, ch. 3879, 1889; RS 189; s. 66, ch. 4328, 1895; GS 250; RGS 294; CGL 350; s. 6, ch. 26870, 1951; ss. 10, 35, ch. 69-106; s. 25, ch. 77-175.
Note.—Former s. 99.51.

102.131 Returns before canvassing commission.—If any returns shall appear to be irregular or false so that the Elections Canvassing Commission is unable to determine the true vote for any office, nomination, constitutional amendment, or other measure presented to the electors, the commission shall so certify and shall not include the returns in its determination, canvass, and declaration. The Elections Canvassing Commission in determining the true vote shall not have authority to look beyond the county returns. The Department of State shall file in its office all the returns, together with other documents and papers received by it or the commission. The commission shall canvass the returns for presidential electors and representatives to Congress separately from their canvass of returns for state officers.

History.—s. 35, ch. 3879, 1889; RS 189; s. 66, ch. 4328, 1895; GS 249; RGS 293; CGL 349; s. 6, ch. 26870, 1951; s. 5, ch. 65-129; ss. 10, 35, ch. 69-106; s. 25, ch. 77-175; s. 46, ch. 79-400.
Note.—Former s. 99.50.

102.141 County canvassing board; duties.—(1) The county canvassing board shall be composed of the supervisor of elections; a county court judge, who shall act as chairman; and the chairman of the board of county commissioners. In the event any member of the county canvassing board is unable to serve, is a candidate who has opposition in the election being canvassed, or is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed, such member shall be replaced as follows:

(a) If no county court judge is able to serve or if all are disqualified, the chief judge of the judicial circuit in which the county is located shall appoint as a substitute member a qualified elector of the county who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed. In such event, the members of the county canvassing board shall meet and elect a chairman.

(b) If the supervisor of elections is unable to serve or is disqualified, the chairman of the board of county commissioners shall appoint as a substitute member a member of the board of county commissioners who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed. The supervisor, however, shall act in an advisory capacity to the canvassing board.

(c) If the chairman of the board of county commissioners is unable to serve or is disqualified, the board of county commissioners shall appoint as a substitute member one of its members who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed.

(d) If a substitute member cannot be appointed as provided elsewhere in this subsection, the chief judge of the judicial circuit in which the county is located shall appoint as a substitute member a qualified elector of the county who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed.

(2) At the close of the polls, or as soon thereafter as practicable, but not later than noon on the day following any primary, general, special, or other election, the county canvassing board shall meet in the courthouse at a time and place to be designated by the chairman. It shall then proceed to publicly canvass the absentee electors' ballots as provided for

in s. 101.68. As soon as the absentee electors' ballots are canvassed the board shall proceed to publicly canvass the vote given each candidate, nominee, constitutional amendment, or other measure submitted to the electorate of the county, as shown by the returns then on file in the office of the supervisor of elections and the office of the county court judge.

(3) The canvass, except the canvass of absentee electors' returns, shall be made from the returns and certificates of the inspectors as signed and filed by them with the county court judge and supervisor, respectively, and the county canvassing board shall not change the number of votes cast for a candidate, nominee, constitutional amendment, or other measure submitted to the electorate of the county, respectively, in any polling place, as shown by the returns. All returns shall be made to the board on or before noon of the day following any primary, general, special, or other election. If the returns from any precinct are missing, if there are any omissions on the returns from any precinct, or if there is an obvious error on any such returns, the canvassing board shall order a recount of the returns from such precinct. Before canvassing such returns the canvassing board shall examine the counters on the machines or the tabulation of the ballots cast in such precinct and determine whether the returns correctly reflect the votes cast. If there is a discrepancy between the returns and the counters of the machines or the tabulation of the ballots cast, the counters of such machines or the tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly.

(4) If the returns for any office reflect that a candidate was defeated or eliminated by one-half of a percent or less of the votes cast for such office, that a candidate for retention to a judicial office was retained or not retained by one-half of a percent or less of the votes cast on the question of retention, or that a measure appearing on the ballot was approved or rejected by one-half of a percent or less of the votes cast on such measure, the board responsible for certifying the results of the vote on such race or measure shall order a recount of the votes cast with respect to such office or measure. A recount need not be ordered with respect to the returns for any office, however, if the candidate or candidates defeated or eliminated from contention for such office by one-half of a percent or less of the votes cast for such office request in writing that a recount not be made. Each canvassing board responsible for conducting a recount shall examine the counters on the machines or the tabulation of the ballots cast in each precinct in which the office or issue appeared on the ballot and determine whether the returns correctly reflect the votes cast. If there is a discrepancy between the returns and the counters of the machines or the tabulation of the ballots cast, the counters of such machines or the tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly.

(5) The canvassing board may employ such clerical help to assist with the work of the board as it deems necessary, with at least one member of the board present at all times, until canvass of the returns is completed. The clerical help shall be paid from the same fund as inspectors and other necessary election officials.

History.—s. 46, ch. 6469, 1913; RGS 350; CGL 407; s. 11, ch. 13761, 1929; s. 6, ch. 26870, 1951; s. 1, ch. 57-104; s. 6, ch. 65-129; s. 19, ch. 73-334; s. 26, ch. 77-175; s. 47, ch. 79-400.
Note.—Former s. 102.45.

102.151 County canvassing board to issue certificates; supervisor to give notice to Department of State.—The county canvassing board shall make and sign triplicate certificates containing the total number of votes cast for each person nominated or elected, the names of persons for whom such votes were cast, and the number of votes cast for each candidate or nominee. One of such certificates which relates to offices for which the candidates or nominees have been voted for in more than one county shall be immediately transmitted to the Department of State, another to the clerk of the circuit court, and the third copy filed in the supervisor's office. The supervisor shall transmit to the Department of State, immediately after the county canvassing board has canvassed the returns of the election, a list containing the names of all county and district officers nominated or elected, the office for which each was nominated or elected, and the mailing address of each.

History.—s. 47, ch. 6469, 1913; RGS 351; CGL 408; s. 12, ch. 13761, 1929; s. 5, ch. 25388, 1949; s. 6, ch. 26870, 1951; ss. 10, 35, ch. 69-106; s. 27, ch. 77-175.
Note.—Former s. 102.46.

102.166 Protest of election returns; procedure; venue.—

(1) Any candidate for nomination or election, or any elector qualified to vote in the election related to such candidacy, shall have the right to protest the returns of the election as being erroneous by filing with the appropriate canvassing board a sworn, written protest.

(a) Such protest shall be filed with the canvassing board prior to the time the canvassing board adjourns or within 5 days of midnight of the date the election is held, whichever last occurs.

(b) Before canvassing such returns the canvassing board shall examine the counters on the machines or the tabulation of the paper ballots cast in such precincts and determine whether the returns correctly reflect the votes cast. If there is a discrepancy between the returns and the counters of the machines or the tabulation of the paper ballots cast, the counters of such machines or the precinct tabulation of the paper ballots cast shall be presumed correct, and such votes shall be canvassed accordingly. The rights of all parties in interest to appeal to the court for protection against error are not annulled.

(2) Any candidate for nomination or election, or any elector qualified to vote in the election related to such candidacy, shall have the right to protest the returns of the election or the practices attendant thereto as being fraudulent by presenting to any circuit judge of the circuit wherein such fraud is alleged to have occurred a sworn, written protest. If it is alleged that fraudulent returns or practices exist in more than one county, venue for such protest shall be in any such county wherein such fraud is alleged to have occurred.

(a) The protest shall be presented to a circuit judge prior to the time the canvassing board ad-

journs or within 5 days of midnight of the date the election occurs, whichever last occurs.

(b) The circuit judge to whom the protest is presented shall have authority to fashion such orders as he may deem necessary to insure that such allegation is investigated, examined, or checked; to prevent or correct such fraud; or to provide any relief appropriate under such circumstances. Any candidate or elector presenting such a protest to a circuit judge shall be entitled to an immediate hearing thereon or to any appropriate relief.

History.—s. 9, ch. 18405, 1937; CGL 1940; Supp. 337(23-b); s. 7, ch. 22858, 1945; s. 5, ch. 26870, 1951; s. 30, ch. 28156, 1953; s. 24, ch. 57-1; s. 29, ch. 65-380; s. 27, ch. 77-175; s. 48; ch. 79-400.
Note.—Former s. 100.25; s. 101.57.

102.167 Form of protest of election returns.—(1) The form of the "Protest of Election Returns to Canvassing Board" shall be as follows:

PROTEST OF ELECTION RETURNS TO CANVASSING BOARD

....., Florida
....., 19.....

As provided in Section 102.166(1), Florida Statutes, I, ... of ..... County, Florida, believe the election returns from Precinct No. ..... in the ..... election 19..... are erroneous.

I hereby protest the canvass of such returns by the ..... Canvassing Board, and request that said returns be investigated, examined, checked, and corrected by said Canvassing Board. The basis for this protest is

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Under penalties of perjury, I swear (or affirm) that I have read the foregoing and that the facts alleged are true, to the best of my knowledge and belief.

(Signature of person protesting election returns)

(2) The form of the "Protest of Election Returns to Circuit Judge" shall be as follows:

PROTEST OF ELECTION RETURNS TO CIRCUIT JUDGE

....., Florida
....., 19.....

As provided in Section 102.166(2), Florida Statutes, I, ... of ..... Florida, being a qualified elector in Precinct No. ..... of ..... County, Florida believe the election returns from Precinct No. ..... in the ..... election of ..... 19..... are fraudulent.

I hereby protest against the canvass of such returns by the ..... Canvassing Board, and request that said returns be investigated, examined, checked, and corrected. The basis for this protest is .....
.....
.....
.....
.....

Under penalties of perjury, I swear (or affirm) that I have read the foregoing and that the facts alleged are true, to the best of my knowledge and belief.

(Signature of person protesting election returns)

History.—s. 31, ch. 28156, 1953; s. 30, ch. 65-380; s. 27, ch. 77-175.
Note.—Former s. 101.571.

102.168 Contest of election.—The certification of election or nomination of any person to office, or of the result on any question submitted by referendum, may be contested in the circuit court by any unsuccessful candidate for such office or nomination thereto, or by any taxpayer, respectively. Such contestant shall file a complaint, together with the fees prescribed in chapter 28, with the Clerk of the Circuit Court within 10 days after midnight of the date the last county canvassing board empowered to canvass the returns adjourns, and the complaint shall set forth the grounds on which the contestant intends to establish his right to such office or set aside the result of the election on a submitted referendum. The canvassing board or election board shall be the proper party defendant, and the successful candidate shall be an indispensable party to any action brought to contest the election or nomination of a candidate.

History.—ss. 7, 8, Art. 10, ch. 38, 1845; RS 199; GS 283; RGS 379; CGL 444; s. 3, ch. 26870, 1951; s. 16, ch. 65-378; s. 28, ch. 77-175; s. 49, ch. 79-400.
Note.—Former s. 104.06; s. 99.192; s. 102.161.

102.1682 Judgment of ouster; revocation of commission; judgment setting aside referendum.—(1) If the contestant is found to be entitled to the office, if on the findings a judgment to that effect is entered, and if the adverse party has been commissioned or has entered upon the duties thereof or is holding the office, then a judgment of ouster shall be entered against such party. Upon presentation of a certified copy of the judgment of ouster to the Governor, the Governor shall revoke such commission and commission the person found in the judgment to be entitled to the office.

(2) If a judgment is entered setting aside a referendum, the election shall be void.

History.—s. 9, Art. 10, ch. 38, 1845; RS 201; GS 285; RGS 381; CGL 446; s. 3, ch. 26870, 1951; s. 18, ch. 65-378; s. 29, ch. 77-175.
Note.—Former s. 104.08; s. 99.211; s. 102.163.

102.1685 Venue.—The venue for contesting a nomination or election or the results of a referendum shall be in the county in which the contestant qualified or in the county in which the question was submitted for referendum or, if the election or referendum covered more than one county, then in Leon County.

History.—s. 3, ch. 26870, 1951; s. 17, ch. 65-378; s. 30, ch. 77-175.
Note.—Former s. 99.202; s. 102.162.

102.169 Quo warranto not abridged.—Nothing in this code shall be construed to abrogate or abridge any remedy that may now exist by quo warranto, but in such case the proceeding prescribed in s. 102.168 shall be an alternative or cumulative remedy.

History.—RS 203; GS 287; RGS 383; CGL 448; s. 3, ch. 26870, 1951; s. 19, ch. 65-378; s. 31, ch. 77-175.
Note.—Former s. 104.10; s. 99.221; s. 102.164.

CHAPTER 103

PRESIDENTIAL ELECTORS; POLITICAL PARTIES; EXECUTIVE COMMITTEES AND MEMBERS

103.011 Electors of President and Vice President.—Electors of President and Vice President, known as presidential electors, shall be elected on the first Tuesday after the first Monday in November of each year the number of which is a multiple of four. Votes cast for the actual candidates for President and Vice President shall be counted as votes cast for the presidential electors supporting such candidates. The Department of State shall certify as elected the presidential electors of the candidates for President and Vice President who receive the highest number of votes.

History.—ss. 2, 3, ch. 3879, 1889; RS 157; s. 4, ch. 4328, 1895; s. 3, ch. 4537, 1897; GS 174; RGS 218; CGL 253; s. 2, ch. 25383, 1949; s. 7, ch. 26870, 1951; ss. 10, 35, ch. 69-106; s. 32, ch. 77-175.

Note.—Former s. 98.07.

103.021 Nomination for presidential electors.—Candidates for presidential electors shall be nominated in the following manner:

(1) The Governor shall nominate the presidential electors of each political party. He shall nominate only the electors recommended by the state executive committee of the respective political party. Each such elector shall be a qualified elector of the party he represents who has taken an oath that he will vote for the candidates of the party that he is nominated to represent. The Governor shall certify to the Department of State on or before September 1, in each presidential election year, the names of a number of electors for each political party equal to the number of senators and representatives which this state has in Congress.

(2) The names of the presidential electors shall not be printed on the general election ballot, but the names of the actual candidates for President and Vice President for whom the presidential electors will vote if elected shall be printed on the ballot in the order in which the party of which the candidate is a nominee polled the highest number of votes for Governor in the last general election.

(3) A minor political party may have the names of its candidates for President and Vice President printed, and independent candidates for President and Vice President may have their names printed, on the general election ballots if a petition is signed by one percent of the registered electors of Florida, as shown by the compilation by the Department of State for the last preceding general election. A separate petition shall be submitted from each county for which signatures are solicited. Said petition shall be submitted to the supervisor of elections of the respective county no later than August 15 of each presidential election year. The supervisor shall check the names and shall, on or before the date of the first primary, certify the number shown as registered electors of said county, and said supervisor shall be paid by the person requesting the certification the cost of checking the petitions prescribed in s. 99.097. The supervisor shall then forward the certificate to the Department of State which shall determine whether or not the percentage factor as required in this section has been met. When the percentage factor as required in this section has been met, the Department of State shall order the names of the candidates for whom the petition was circulated to be included on the ballot and shall permit the required number of persons to be certified as electors in the same manner as other party candidates.

(4) Any minor political party which has met the petitioning requirements of s. 99.096 and will have the names of a candidate or candidates for any office or offices to be filled by a statewide election printed on the general election ballot, and which minor party is affiliated with a national party holding a national convention to nominate candidates for President and Vice President of the United States, may have the names of its candidates for President and Vice President of the United States printed on the general election ballot by filing with the Department of State a certificate naming the candidates for President and Vice President and listing the required number of persons to serve as electors. Notification to the Department of State under this subsection shall be made by September 1 of the year in which the election is held. When the Department of State has been so notified, it shall order the names of the candidates for whom the petition was circulated to be included on the ballot and shall permit the required number of persons to be certified as electors in the same manner as other party candidates.

(5) When for any reason a person nominated or elected as a presidential elector is unable to serve because of death, incapacity, or otherwise, the Governor may appoint a person to fill such vacancy who possesses the qualifications required for him to have been nominated in the first instance. Such person shall file with the Governor an oath that he will support the same candidates for President and Vice President that the person who is unable to serve was committed to support.

History.—s. 1, ch. 25143, 1949; s. 7, ch. 26870, 1951; s. 1, ch. 61-364; s. 1, ch. 67-353; ss. 10, 35, ch. 69-106; ss. 7, 8, ch. 70-269; s. 1, ch. 70-439; s. 32, ch. 77-175.

Note.—Former s. 102.011.

103.051 Congress sets meeting dates of electors.—The presidential electors shall, at noon on the day which is directed by Congress, meet at Tallahassee and perform the duties required of them by the Constitution and Laws of the United States.

History.—s. 6, ch. 71, 1847; RS 204; GS 288; RGS 384; CGL 449; s. 7, ch. 26870, 1951; s. 32, 77-175.
Note.—Former s. 105.01.

103.061 Meeting of electors and filling of vacancies.—Each presidential elector shall, before noon on the day preceding the day fixed by Congress to elect a President and Vice President, give notice to the Governor that he is in Tallahassee and ready to perform the duties of presidential elector. The Governor shall forthwith deliver to the presidential electors present a certificate of the names of all the electors; and if, on examination thereof, it should be found that one or more electors are absent, and such absent electors fail to appear before 10 a.m. on the day of election of President and Vice President, the electors present shall elect by ballot, in the presence of the Governor, a person or persons to fill such vacancy or vacancies as may have occurred through the nonattendance of one or more of the electors.

History.—s. 8, ch. 71, 1847; RS 206; GS 290; RGS 386; CGL 451; s. 7, ch. 26870, 1951; s. 32, ch. 77-175.
Note.—Former s. 105.03.

103.062 Plurality of votes to fill vacancy; proceeding in case of tie.—If any more than the number of persons required to fill the vacancy as provided by s. 103.061 receive the highest and an equal number of votes, then the election of those receiving such highest and equal number of votes shall be determined by lot drawn by the Governor in the presence of the presidential electors attending; otherwise, those, to the number required, receiving the highest number of votes, shall be considered elected to fill the vacancy.

History.—s. 7, ch. 26870, 1951; s. 2, ch. 67-353; s. 32, ch. 77-175.
Note.—Former s. 103.031.

103.071 Compensation of electors.—Each presidential elector attending as such in Tallahassee shall be reimbursed for his traveling expenses, as provided in s. 112.061, from his place of residence to Tallahassee and return. Such expenses shall be paid upon approval of the Governor. The amounts necessary to meet the requirements of this section shall be included in the legislative budget request of the Governor. If the amounts appropriated for this purpose are insufficient, the Executive Office of the Governor may release the necessary amounts from the deficiency appropriation.

History.—s. 12, ch. 71, 1847; RS 210; GS 294; RGS 390; CGL 455; ss. 7, chs. 26869, 26870, 1951; s. 1, ch. 61-32; s. 6, ch. 63-400; ss. 2, 3, ch. 67-371; ss. 31, 35, ch. 69-106; s. 86, ch. 79-190.
Note.—Former s. 105.07.

103.081 Use of party name; political advertising.—

(1) No person shall use the name, abbreviation, or symbol of any political party, the name, abbreviation, or symbol of which is filed with the Department of State, in political advertising in newspapers, other publications, handbills, radio or television, or any other form of advertising in connection with any political activities in support of a candidate of any other party, unless such person shall first obtain the written permission of the chairman of the state executive committee of the party the name, abbreviation, or symbol of which is to be used.

(2) No person or group of persons shall use the name, abbreviation, or symbol of any political party, the name, abbreviation, or symbol of which is filed with the Department of State, in connection with any club, group, association, or organization of any kind unless approval and permission have been given in writing by the state executive committee of such party. This subsection shall not apply to county executive committees of such parties and organizations which are chartered by the national executive committee of the party the name, abbreviation, or symbol of which is to be used, or to organizations using the name of any political party which organizations have been in existence and organized on a statewide basis for a period of 10 years.

History.—s. 6, ch. 6469, 1913; RGS 304; CGL 360; s. 7, ch. 26870, 1951; s. 26, ch. 29934, 1955; s. 1, ch. 57-202; s. 1, ch. 61-424; s. 3, ch. 67-353; ss. 10, 35, ch. 69-106; s. 32, ch. 77-175.
Note.—Former s. 102.06.

103.091 Political parties.—

(1) Each political party of the state shall be represented by a state executive committee. County executive committees and other committees may be established in accordance with the rules of the state executive committee. A political party may provide for the selection of its national committee and its state and county executive committees in such manner as it deems proper. Unless otherwise provided by party rule, the county executive committee of each political party shall consist of at least two members, a man and a woman, from each precinct, who shall be called the precinct committeeman and committeewoman. In counties divided into 40 or more precincts, the state executive committee may adopt a district unit of representation for such county executive committees. Upon adoption of a district unit of representation, the state executive committee shall request the supervisor of elections of that county, with approval of the board of county commissioners, to provide for election districts as nearly equal in number of registered voters as possible.

(2) The state executive committee of a political party may by resolution provide a method of election of national committeemen and national committeewomen and of nomination of presidential electors, if such party is entitled to a place on the ballot as otherwise provided for presidential electors, and may provide also for the election of delegates and alternates to national conventions.

(3) The state executive committee of each political party shall file with the Department of State the names and addresses of its chairman, vice chairman, secretary, treasurer, and members and shall file a copy of its constitution, bylaws, and rules and regulations with the Department of State. Each county executive committee shall file with the state executive committee and with the supervisor of elections the names and addresses of its officers and members.

(4) Any political party other than a minor political party may by rule provide for the membership of its state or county executive committee to be elected for 4-year terms at the presidential preference primary election. The terms shall commence on the first day of the month following the presidential

preference primary election; but the names of candidates for political party offices shall not be placed on the ballot at any other election. The results of such election shall be determined by a plurality of the votes cast. In such event, electors seeking to qualify for such office shall do so with the Department of State or supervisor of elections not earlier than noon of the 63rd day, or later than noon of the 49th day, preceding the presidential preference primary election. The outgoing chairman of each state and county executive committee shall, within 30 days after the committee members take office, call an organizational meeting of all newly elected members for the purpose of electing officers.

(5) In the event no county committeeman or committeewoman is elected, or a vacancy occurs from any other cause in any county executive committee, the county chairman shall call a meeting of the county executive committee by due notice to all members, and the vacancy shall be filled by a majority vote of those present at a meeting at which a quorum is present. Such vacancy shall be filled by a qualified member of the political party residing in the district where the vacancy occurred and for the unexpired portion of the term.

(6) No state executive committee or county executive committee of any political party or any committee established by a state or county executive committee shall endorse or oppose any candidate of its political party seeking nomination in any primary election. Nothing herein shall prohibit an individual member of a state executive committee or an individual member of a county executive committee from independently endorsing or opposing a candidate of his political party seeking nomination in any primary election, provided that such endorsement shall in no way indicate the member's position on, or connection with, the state or county executive committee.

History.—ss. 1-2A, ch. 22039, 1943; ss. 1-3, ch. 22678, 1945; s. 7, ch. 26870, 1951; s. 32, ch. 77-175; s. 1, ch. 78-1; s. 22, ch. 79-164.
Note.—Former s. 102.71.

103.101 Presidential preference primary.—

(1) Each political party other than a minor political party shall, on the second Tuesday in March in each year the number of which is a multiple of four, elect one person to be the candidate for nomination of such party for President of the United States. Each elector of such party may vote his preference for one person to be the candidate for nomination of such party for President.

(2)(a) The name of any candidate for a political party nomination for President of the United States shall be printed on the ballots upon the direction of a Presidential Candidate Selection Committee composed of the Secretary of State, who shall be a nonvoting chairman, the Speaker of the House of Representatives, the President of the Senate, the minority leader of each house of the Legislature, and the chairman of each political party required to have a presidential preference primary under this section. Each year a presidential preference primary is held, the Secretary of State shall prepare and publish a list of names of presidential candidates who are generally advocated or recognized in news media throughout the United States or in the state. The Secretary of State shall submit such list of names of presidential candidates to the selection committee on the first Tuesday after the first Monday in January each year a presidential preference primary election is held. Each person designated by the Secretary of State as a presidential candidate shall appear on the presidential preference primary ballot unless all committee members of the same political party as the candidate agree to delete such candidate's name from the ballot. The selection committee shall meet in Tallahassee on the first Tuesday after the first Monday in January each year a presidential preference primary is held. The selection committee shall publicly announce and submit the names of presidential candidates who shall appear on the presidential primary ballot to the Department of State no later than 5 p.m. on the following day. Within 5 days from receipt of such list, the Department of State shall notify each presidential candidate designated by the committee. Such notification shall be in writing by registered mail with return receipt requested.

(b) Any presidential candidate whose name is not selected by the Secretary of State or whose name is deleted by the selection committee may request in writing to the chairman of the selection committee, prior to the third Tuesday after the first Monday in January each year a presidential preference primary election is held, that his name be placed on the ballot. On the third Tuesday after the first Monday in January the Secretary of State shall convene the committee to consider such requests. If any member of the selection committee of the same political party as the candidate requests that such candidate's name be placed on the ballot, the committee shall direct the Department of State to place the candidate's name on the ballot. Within 5 days after such meeting, the Department of State shall notify the presidential candidate that his name will appear on the ballot.

(3) A candidate's name shall be printed on the presidential preference primary ballot unless he submits to the Department of State, prior to the third Tuesday after the first Monday in January, an affidavit stating that he is not now, and does not presently intend to become, a candidate for President at the upcoming nominating convention. If a candidate withdraws pursuant to this subsection, the Department of State shall notify the state executive committee that the candidate's name will not be placed on the ballot. The Department of State shall, no later than the fourth Tuesday after the first Monday in January, certify to each supervisor of elections the name of each candidate for political party nomination to be printed on the ballot.

(4) The names of candidates for political party nominations for President of the United States shall be printed on official ballots for the presidential preference primary election and shall be marked, counted, canvassed, returned, and proclaimed in the same manner and under the same conditions, so far as the same are applicable, as in other state elections.

(5) The state executive committee of each party, by rule adopted at least 90 days prior to the presidential preference primary election, shall determine the

number, and establish procedures to be followed in the selection, of delegates and delegate alternates from among each candidate's supporters. However, no more than 25 percent of the total number of delegates may be elected by the state executive committee. A copy of any rule adopted by the executive committee shall be filed with the Department of State within 7 days after its adoption and shall become a public record.

(6) Any person selected as a delegate or delegate alternate to the national convention shall file a qualification oath with the Department of State, pledging support at the convention to the candidate of his party for the office of President of the United States that he was selected to support. The oath shall state that the delegate or delegate alternate affirms to support such candidate until the candidate is either nominated by such convention or receives less than 35 percent of the votes for nomination by such convention during any balloting, or until the candidate releases the delegates from such pledge and any other oath as prescribed by the Department of State. No delegate shall be required to vote for such candidate after two convention nominating ballots have been taken.

(7) Any delegate to a national convention whose presidential candidate withdraws after being entitled to delegate votes pursuant to this section shall be an unpledged delegate to the national convention.

(8) Delegates shall be allocated among the candidates by one of the following two methods:

(a) The presidential candidate receiving the highest number of votes in any congressional district shall receive all delegate votes from such congressional district. The presidential candidate receiving the highest number of statewide votes shall receive all statewide delegate votes and all votes of delegates chosen by the state executive committee of the candidate's party.

(b) When provided by party rule, delegates at the congressional district level and at the statewide level shall be allocated among the several candidates on the basis of the proportion that the number of votes each candidate receives bears to the total number of votes cast for the candidates of the same party at the congressional district or statewide level. Such party rule shall provide that delegates need not be allocated to any candidate receiving less than 15 percent of the votes cast for candidates of his political party at the congressional district or statewide level. Such party rule shall also provide that the entire number of delegates for a given congressional district and the entire number of statewide delegates be allocated among only those candidates receiving over 15 percent of the vote. In the event that delegates are to be chosen pursuant to the provisions of this paragraph, the Secretary of State shall cause the words "No Preference" to appear on the presidential preference primary ballot after the names of the candidates of any political party electing to utilize the provisions of this paragraph. An elector may cast his vote for such designation in the same manner that he casts a vote for a candidate of that party. In the event that the number of votes cast for such designation at the district or statewide level is at least 15 percent of the total votes cast for the ballot of such party at that level, delegates shall be allocated in the manner prescribed above. Delegates so allocated shall be considered uncommitted delegates and shall be chosen in the manner prescribed by party rule for delegates allocated to candidates. When delegates are to be allocated according to the provisions of this paragraph, the number of delegates that each candidate is to receive shall be rounded to the nearest whole number.

(9) The Department of State shall place the candidates' names on the ballot in alphabetical order. The ballot as prescribed in this section shall be used.

(10) The form of the presidential preference primary ballot shall be in substantially the following form:

OFFICIAL PRESIDENTIAL PREFERENCE
PRIMARY BALLOT
No. .... Party
..... COUNTY, FLORIDA
Precinct No. .....
.....(Date).....
.....(Signature of Voter)..... .....(Initials of Issuing Official).....

Stub No. 1
OFFICIAL PRESIDENTIAL PREFERENCE
PRIMARY BALLOT
No. .... Party
..... COUNTY, FLORIDA
Precinct No. .....
.....(Date).....
.....(Initials of Issuing Official).....

Stub No. 2
OFFICIAL PRESIDENTIAL PREFERENCE
PRIMARY BALLOT
..... Party
..... COUNTY, FLORIDA
Precinct No. .....
.....(Date).....

Place a cross (X) in the blank space to the right of the name of the presidential candidate for whom you wish to vote.

For President

.....(Name of Candidate)..... ☐

.....(Name of Candidate)..... ☐

History.—s. 3, ch. 6469, 1913; RGS 301; CGL 357; ss. 1-3, ch. 22058, 1943; s. 1, ch. 22729, 1945; s. 1, ch. 25235, 1949; s. 7, ch. 26870, 1951; s. 1, ch. 29947, 1955; s. 4, ch. 67-353; ss. 10, 35, ch. 69-106; s. 2, ch. 71-236; s. 2, ch. 75-246; s. 1, ch. 77-174; s. 32, ch. 77-175.

Note.—Former ss. 102.03, 102.72.

cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

103.121 Powers and duties of executive committees.—

(1) Each state and county executive committee of a political party shall have the power and duty:

(a) To adopt a constitution by two-thirds vote of the full committee.

(b) To adopt such bylaws as it may deem necessary by majority vote of the full committee.

(c) To conduct its meetings according to generally accepted parliamentary practice.

(d) To make party nomination when required by law.

(e) To conduct campaigns for party nominees.
(f) To raise and expend party funds.
(g) To make any assessment it requires of candidates, for the purpose of meeting its expenses or maintaining its party organization. However, no executive committee shall levy an assessment to exceed 2 percent of the annual salary of the office sought by the candidate. Within 5 days after adoption, the state executive committee shall deliver a certified copy of its assessment resolution to the Department of State, and the county executive committee shall deliver a certified copy of its assessment resolution to the supervisor of elections. The county executive committee shall have exclusive power to levy and receive payment of assessments upon candidates to be voted for in a single county except state senators and members of the House of Representatives and representatives to the Congress of the United States, and the state executive committees shall have exclusive power to levy all other assessments authorized. If any executive committee fails to meet and levy party assessments, such assessments shall be 2 percent of the annual salary of the office sought by the respective candidate.

(2) The state executive committee shall by resolution recommend candidates for presidential electors and deliver a certified copy thereof to the Governor prior to September 1 of each presidential election year.

(3) The chairman and treasurer of an executive committee of any political party shall be accountable for the funds of such committee and jointly liable for their proper expenditure for authorized purposes only. The chairman and treasurer of the state executive committee of any political party shall furnish adequate bond, but not less than $10,000, conditioned upon the faithful performance by such party officers of their duties and for the faithful accounting for party funds which shall come into their hands; and the chairman and treasurer of a county executive committee of a political party shall furnish adequate bond, but not less than $5,000, conditioned as aforesaid. A bond for the chairman and treasurer of the state executive committee of a political party shall be filed with the Department of State. A bond for the chairman and treasurer of a county executive committee shall be filed with the supervisor of elections. The funds of each such state executive committee shall be publicly audited at the end of each calendar year and a copy of such audit furnished to the Department of State for its examination prior to April 1 of the ensuing year. When filed with the Department of State, copies of such audit shall be public documents. The treasurer of each county executive committee shall maintain adequate records evidencing receipt and disbursement of all party funds received by him, and such records shall be publicly audited at the end of each calendar year and a copy of such audit filed with the supervisor of elections and the state executive committee prior to April 1 of the ensuing year.

(4) Any chairman or treasurer of a state or county executive committee of any political party who knowingly misappropriates, or makes an unlawful expenditure of, or a false or improper accounting for, the funds of such committee is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 20, 21, 23, 28, ch. 6469, 1913; RGS 324, 325, 327, 332; CGL 381, 382, 384, 389; s. 1, ch. 25389, 1949; s. 9, ch. 26329, 1949; s. 7, ch. 26870, 1951; s. 41, ch. 28156, 1953; s. 2, ch. 29935, 1955; s. 1, ch. 57-743; s. 1, ch. 61-157; s. 1, ch. 63-97; ss. 6-8, ch. 67-353; ss. 10, 35, ch. 69-106; s. 26, ch. 77-104; s. 32, ch. 77-175; s. 50, ch. 79-400.

Note.—Former ss. 102.27, 102.28, 102.30, 102.35.

103.131 Political party offices deemed vacant in certain cases.—Every political party office shall be deemed vacant in the following cases:

(1) By the death of the incumbent.
(2) By his resignation.
(3) By his removal.
(4) By his ceasing to be an inhabitant of the state, district or precinct for which he shall have been elected or appointed.
(5) By his refusal to accept the office.
(6) The conviction of the incumbent of any felony.
(7) The decision of a competent tribunal declaring void his election or appointment, and his removal by said tribunal.
(8) By his failure to attend, without good and sufficient reason, three consecutive meetings, regular or called, of the committee of which he is a member.

History.—s. 1, ch. 59-68; s. 1, ch. 61-122; s. 9, ch. 67-353.

103.141 Removal of county executive committee member for violation of oath.—

(1) Where the county executive committee by at least a two-thirds majority vote of the members of the committee, attending a meeting held after due notice has been given and at which meeting a quorum is present, determines an incumbent county executive committee member to be guilty of an offense involving a violation of his oath of office, said committeeman so violating his oath shall be removed from office and the office shall be deemed vacant. Provided, however, if the county committee wrongfully removes a county committeeman and the committeeman so wrongfully removed files suit in the circuit court alleging his removal was wrongful and wins said suit, he shall be restored to office and the county committee shall pay the costs incurred by the wrongfully removed committee member in bringing the suit, including reasonable attorney's fees.

(2) Either the county or state executive committee is empowered to take judicial action in chancery against a county committee member for alleged violation of his oath of office in the circuit court of the county in which that committee member is an elector; provided, however, that the state committee may take such judicial action only when a county committee refuses to take such judicial action within 10 days after a charge is made. Procedure shall be as in other cases in chancery, and if the court shall find as fact that the defendant did violate his oath of office, it shall enter a decree removing the defendant from the county committee. If either such executive committee brings suit in the circuit court for the removal of a county committee member and loses said suit, such committee shall pay the court costs incurred in such suit by the committee member, including reasonable attorney's fees.

History.—s. 10, ch. 67-353.

103.151 Removal of state executive committee member for violation of oath.—

(1) The state executive committee is empowered to take judicial action in chancery in the circuit court of the county in which a state committee member is an elector to remove a state committee member from office for a violation of his oath of office. Procedure shall be as in other cases in chancery, and if the court shall find as fact that the defendant did violate his oath of office, it shall enter a decree removing the defendant from the state committee.

(2) If a charge of violating his oath of office is made against a member of the state committee and the state committee fails to take such judicial action within 10 days after a charge is made, the county executive committee in the county from which the state committee member is elected shall have the right to seek said committee member's removal in the circuit court of that county in the manner and according to the procedure set forth in subsection (1).

(3) If either the county or state executive committee seeks the removal of a state committee member as provided in subsections (1) or (2) and loses such suit, the committee bringing said suit shall pay the court costs incurred by the committee member in defending such suit, including reasonable attorney's fees.

History.—s. 11, ch. 67-353.

CHAPTER 104

ELECTION CODE; VIOLATIONS; PENALTIES

104.011 False swearing.—Whoever willfully swears or affirms falsely to any oath or affirmation, or willfully procures another person to swear or affirm falsely to an oath or affirmation, in connection with or arising out of voting, registration, or elections is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 15, ch. 14715, 1931; CGL 1936 Supp. 8202(6); s. 8, ch. 26870, 1951; s. 19, ch. 71-136; s. 33, ch. 77-175.

104.012 Consideration for registration.—Any person who gives anything of value that is redeemable in cash to any person in consideration for his becoming a registered voter is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This section shall not be interpreted, however, to exclude such services as transportation to the place of registration or babysitting in connection with the absence of an elector from home for registering.

History.—s. 1, ch. 63-198; s. 20, ch. 71-136; s. 33, ch. 77-175.

104.013 Unauthorized use, possession, or destruction of voter registration identification card.—

(1) It is unlawful for any person knowingly to have in his possession any blank, forged, stolen, fictitious, counterfeit, or unlawfully issued voter registration identification card unless possession by such person has been duly authorized by the Supervisor of Elections.

(2) It is unlawful for any person to barter, trade, sell, or give away a voter registration identification card unless said person has been duly authorized to issue a registration identification card as provided in chapter 98.

(3) It is unlawful for any person willfully to destroy or deface the registration identification card of a duly registered voter.

(4) Any person who violates any of the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 76-49; s. 1, ch. 77-174; s. 34, ch. 77-175.

104.031 False declaration to secure assistance in preparing ballot.—Any person who makes a false declaration for assistance in voting, or in the preparation of his ballot, in any election is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 49, ch. 4328, 1895; GS 3829; RGS 5892; CGL 8156; s. 8, ch. 26870, 1951; s. 22, ch. 71-136; s. 35, ch. 77-175.

Note.—Former s. 99.31.

104.041 Fraud in connection with casting vote.—Any person perpetrating or attempting to perpetrate or aid in the perpetration of any fraud in connection with any vote cast, to be cast, or attempted to be cast, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 4, ch. 22014, 1943; s. 1, ch. 25385, 1949; s. 8, ch. 26870, 1951; s. 23, ch. 71-136; s. 35, ch. 77-175.

Note.—Former s. 101.14.

104.051 Violations; neglect of duty; corrupt practices.—

(1) Any official who willfully violates any of the provisions of this election code shall be excluded from the polls. Any election official who is excluded shall be replaced as provided in this code.

(2) Any official who willfully refuses or willfully neglects to perform his duties as prescribed by this election code is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any official who performs his duty as prescribed by this election code fraudulently or corruptly is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any supervisor, deputy supervisor, or election employee who attempts to influence or interfere with any elector voting an absentee ballot is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 30, ch. 4328, 1895; s. 10, ch. 4537, 1897; s. 16, ch. 14715, 1931; s. 4, ch. 18407, 1937; GS 215, 3824; RGS 259, 5885; CGL 315, 8148; 1936 Supp. 8151(1); 1940 Supp. 7476(8); ss. 3E, 4, 7, 8, ch. 22018, 1943; s. 8, ch. 26870, 1951; s. 42, ch. 28156, 1953; s. 24, ch. 71-136; s. 35, ch. 77-175.

104.061 Corruptly influencing voting.—

(1) Whoever by bribery, menace, threat, or other corruption whatsoever, either directly or indirectly, attempts to influence, deceive, or deter any elector in voting or interferes with him in the free exercise of his right to vote at any election is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083 for the first conviction, and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any subsequent conviction.

(2) No person shall directly or indirectly give or promise anything of value to another intending thereby to buy his or another's vote or to corruptly influence him or another in casting his vote. Any person who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, this subsection shall not apply to the serving of food to be consumed at a political rally or meeting.

History.—ss. 1, 3, ch. 6470, 1913; RGS 5918; CGL 8182; s. 1, ch. 19617, 1939; s. 1, ch. 20934, 1941; s. 7, ch. 22858, 1945; s. 8, ch. 26870, 1951; s. 1, ch. 65-379; s. 25, ch. 71-136; s. 35, ch. 77-175; s. 51, ch. 79-400.

104.071 Remuneration by candidate for services, support, etc.; penalty.—

(1) It is unlawful for any person supporting a candidate, or for any candidate, in order to aid or promote the nomination or election of such candidate in any election, directly or indirectly to:

(a) Promise to appoint another person, promise to secure or aid in securing appointment, nomination or election of another person to any public or private position, or to any position of honor, trust, or emolument, except one who has publicly announced or defined what his choice or purpose in relation to any election in which he may be called to take part, if elected.

(b) Give, or promise to give, pay, or loan, any money or other thing of value to the owner, editor, publisher, or agent, of any communication media, as well as newspapers, to advocate or oppose, through such media, any candidate for nomination in any election or any candidate for election, and no such owner, editor, or agent shall give, solicit, or accept such payment or reward. It shall likewise be unlawful for any owner, editor, publisher, or agent of any poll-taking or poll-publishing concern to advocate or oppose through such poll any candidate for nomination in any election or any candidate for election in return for the giving or promising to give, pay, or loan any money or other thing of value to said owner, editor, publisher, or agent of any poll-taking or poll-publishing concern.

(c) Give, pay, expend, or contribute any money or thing of value for the furtherance of the candidacy of any other candidate.

(d) Furnish, give, or deliver to another person any money or other thing of value for any purpose prohibited by the election laws.

(2) Any person who violates any provision of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, and from and after his conviction he shall be disqualified to hold office.

History.—s. 8, ch. 26870, 1951; s. 2, ch. 65-379; s. 26, ch. 71-136; s. 35, ch. 77-175; s. 52, ch. 79-400.

104.081 Threats of employers to control votes of employees.—It shall be unlawful for any person having one or more persons in his service as employees to discharge or threaten to discharge any employee in his service for voting or not voting in any election, state, county, or municipal, for any candidate or measure submitted to a vote of the people. Any person who violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 8, ch. 26870, 1951; s. 27, ch. 71-136; s. 35, ch. 77-175.

104.091 Aiding, abetting, or advising violation of the code.—Any person who shall knowingly aid, abet or advise the violation of this code shall be punished in like manner as the principal offender.

History.—s. 8, ch. 26870, 1951; s. 1, ch. 67-164; s. 28, ch. 71-136; s. 35, ch. 77-175.

104.101 Failure to assist officers at polls.—Any person summoned by the sheriff or deputy sheriff who fails or refuses to assist him in maintaining the peace at the polls is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 27, ch. 3879, 1889; RS 181; s. 58, ch. 4328, 1895; GS 3834; RGS 5896; CGL 8160; s. 8, ch. 26870, 1951; s. 29, ch. 71-136; s. 35, ch. 77-175.
Note.—Former s. 99.40.

104.11 Neglect of duty by sheriff or other officer.—Any sheriff, deputy sheriff, or other officer who willfully neglects or willfully refuses to perform his duties relating to elections is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 8, ch. 26870, 1951; s. 30, ch. 71-136; s. 35, ch. 77-175.

104.13 Intermingling ballots.—Whoever willfully places any ballot in the ballot box except as properly voted by electors, or willfully intermingles any other ballots which have not been duly received during the election with the ballots which are voted by the electors, is guilty of a felony of the third de-

gree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 8, ch. 26870, 1951; s. 3, ch. 65-379; s. 32, ch. 71-136; s. 35, ch. 77-175.

104.15 Person knowing he is not qualified elector voting at any election.—Whoever, knowing he is not a qualified elector, willfully votes at any election is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 8, ch. 26870, 1951; s. 5, ch. 65-379; s. 34, ch. 71-136; s. 35, ch. 77-175.

104.16 Voting fraudulent ballot.—Any elector who knowingly votes or attempts to vote a fraudulent ballot, or any person who knowingly solicits, or attempts, to vote a fraudulent ballot, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 36, ch. 4328, 1895; GS 221; s. 42, ch. 6469, 1913; RGS 266, 346, 5911; CGL 322, 403; 8175; s. 6, ch. 17898, 1937; s. 3, ch. 17901, 1937; s. 6, ch. 25187, 1949; s. 4, ch. 25386, 1949; s. 8, ch. 26870, 1951; s. 6, ch. 65-379; s. 35, ch. 71-136; s. 35, ch. 77-175.

Note.—Former ss. 99.20 and 102.41.

104.17 Voting in person after casting absentee ballot.—Any person who willfully votes or attempts to vote both in person and by absentee ballot at any election is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 22014, 1943; s. 1, ch. 25385, 1949; s. 8, ch. 26870, 1951; s. 7, ch. 65-379; s. 36, ch. 71-136; s. 35, ch. 77-175.

Note.—Former s. 101.11.

104.18 Casting more than one ballot at any election.—Whoever willfully votes more than one ballot at any election is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 8, ch. 26870, 1951; s. 8, ch. 65-379; s. 37, ch. 71-136; s. 35, ch. 77-175.

104.185 Unlawful to knowingly sign a petition more than one time.—It is unlawful for any person knowingly to sign a petition or petitions for a particular issue or candidate more than one time. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 77-178.

104.19 Use of stickers, rubber stamps, etc., unlawfully.—It is unlawful for any person casting a ballot at any election to use stickers or rubber stamps or to carry into a voting booth any mechanical device, paper, or memorandum which might be used to affect adversely the normal election process. Any person who violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 7, ch. 25187, 1949; s. 8, ch. 26870, 1951; s. 1, ch. 70-136; s. 39, ch. 71-136; s. 35, ch. 77-175.

Note.—Former s. 99.201.

104.20 Ballot not to be seen, and other offenses.—Any elector who, except as provided by law, allows his ballot to be seen by any person; takes or removes, or attempts to take or remove, any ballot from the polling place before the close of the polls; places any mark on his ballot by which it may be identified; remains longer than the specified time allowed by law in the booth or compartment after having been notified that his time has expired; endeavors to induce any elector to show how he voted; aids or attempts to aid any elector unlawfully; or prints or procures to be printed, or has in his possession, any copies of any ballot prepared to be voted is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 55, ch. 4328, 1895; s. 2, ch. 4536, 1897; GS 3835; RGS 5897; CGL 8161; s. 8, ch. 26870, 1951; s. 40, ch. 71-136; s. 35, ch. 77-175.

Note.—Former s. 99.34.

104.21 Changing electors' ballots.—Whoever fraudulently changes or attempts to change the vote or ballot of any elector, by which actions such elector is prevented from voting such ballot or from voting such ballot as he intended, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 8, ch. 26870, 1951; s. 10, ch. 65-379; s. 41, ch. 71-136; s. 35, ch. 77-175.

104.22 Stealing and destroying records, etc., of election.—Any person who is guilty of stealing, willfully and wrongfully breaking, destroying, mutilating, defacing, or unlawfully moving or securing and detaining the whole or any part of any ballot box or any record tally sheet or copy thereof, returns, or any other paper or document provided for, or who fraudulently makes any entry or alteration therein except as provided by law, or who permits any other person so to do, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 8, ch. 26870, 1951; s. 11, ch. 65-379; s. 42, ch. 71-136; s. 35, ch. 77-175.

104.23 Disclosing how elector votes.—Any election official or person assisting any elector who willfully discloses how any elector voted, except upon trial in court, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 8, ch. 26870, 1951; s. 12, ch. 65-379; s. 43, ch. 71-136; s. 35, ch. 77-175.

104.24 Penalty for assuming name.—No registered elector shall, in connection with any part of the election process, fraudulently call himself, or fraudulently pass by, any other name than the name by which he is registered or fraudulently use the name of another in voting. Any person who violates this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 57, ch. 6469, 1913; RGS 360, 5913; CGL 417, 8177; s. 4, ch. 22014, 1943; s. 1, ch. 25385, 1949; s. 8, ch. 26870, 1951; s. 13, ch. 65-379; s. 44, ch. 71-136; s. 35, ch. 77-175.

Note.—Former ss. 101.14 and 102.53.

104.26 Penalty for destroying ballot or booth, etc.—Any person who wrongfully, during or before an election, removes, tears down, destroys, or defaces any ballot, booth, compartment, or other convenience provided for the purpose of enabling the

elector to prepare his ballot, or any card for the instruction of the voter, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 8, ch. 26870, 1951; s. 46, ch. 71-136; s. 35, ch. 77-175.

104.271 False or malicious charges against opposing candidates; penalty.—Any candidate who, in a primary election or other election, willfully charges an opposing candidate participating in such election with a violation of any provision of this code, which charge is known by the candidate making such charge to be false or malicious, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083; in addition, after his conviction he shall be disqualified to hold office.

History.—s. 44, ch. 28156, 1953; s. 48, ch. 71-136; s. 27, ch. 77-104; s. 35, ch. 77-175.

104.29 Inspectors refusing to allow watchers while ballots are counted.—The inspectors or other election officials shall, at all times while the ballots are being counted, allow as many as three persons near to them to see whether the ballots are being correctly read and called and the votes correctly tallied, and any official who denies this privilege or interferes therewith is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 8, ch. 26870, 1951; s. 51, ch. 71-136; s. 35, ch. 77-175; s. 53, ch. 79-400.

104.30 Voting machine; unlawful possession; tampering with.—

(1) Any unauthorized person who unlawfully has possession of any voting machine or key thereof is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who tampers or attempts to tamper with or destroy any voting machine with the intention of interfering with the election process or the results thereof is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 26, ch. 13893, 1929; CGL 1936 Supp. 8202(1); s. 8, ch. 26870, 1951; s. 17, ch. 65-379; s. 52, ch. 71-136; s. 35, ch. 77-175.
Note.—Former s. 100.28.

104.31 Political activities of state, county, and municipal officers and employees.—

(1) No officer or employee of the state, or of any county or municipality thereof, except as hereinafter exempted from provisions hereof, shall:

(a) Use his official authority or influence for the purpose of interfering with an election or a nomination of office or coercing or influencing another person's vote or affecting the result thereof.

(b) Directly or indirectly coerce or attempt to coerce, command or advise any other officer or employee to pay, lend or contribute any part of his salary, kick back any sum of money, or anything else of value to any party, committee, organization, agency, or person for political purposes. Nothing in this paragraph or in any county or municipal charter or ordinance shall prohibit an employee from suggesting to another employee in a noncoercive manner that he or she may voluntarily contribute to a fund which is administered by a party, committee, organization, agency, person, labor union or other employee organization for political purposes.

(c) Directly or indirectly coerce or attempt to coerce, command and advise any such officer or employee as to where he might purchase commodities or to interfere in any other way with the personal right of said officer or employee.

The provisions of this section shall not be construed so as to prevent any person from becoming a candidate for and actively campaigning for any elective office in this state. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates. The provisions of paragraph (a) shall not be construed so as to limit the political activity in general, special, primary, bond, referendum or any other election of any kind or nature, of elected officials or candidates for public office in the state or of any county or municipality thereof; and the provisions of paragraph (a) shall not be construed so as to limit the political activity in general or special elections of officials appointed as the heads or directors of state administrative agencies, boards, commissions or committees or of the members of state boards, commissions or committees whether they be salaried, nonsalaried or reimbursed for expense. In the event of a dual capacity of any member of a state board, commission or committee, any restrictive provisions applicable to either capacity shall apply. The provisions of paragraph (a) shall not be construed so as to limit the political activity in general, special, primary, bond, referendum or any other election of any kind or nature of the Governor, the elected members of the Governor's Cabinet or the members of the Legislature. The provisions of paragraphs (b) and (c) shall apply to all officers and employees of the state, or of any county or municipality thereof, whether elected, appointed or otherwise employed, or whether the activity shall be in connection with a primary, general, special, bond, referendum or any other election of any kind or nature. Those officers and employees under the State Merit System who are employed by state agencies receiving federal funds and who are not otherwise exempted from paragraph (a) in general or special elections shall not be eligible to hold party offices or membership on any county or state executive committee.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Nothing contained in this section or in any county or municipal charter shall be deemed to prohibit any public employee from expressing his opinions on any candidate or issue or from participating in any political campaign during his off-duty hours so long as such activities are not in conflict with the provisions of subsection (1) or s. 110.233.

History.—s. 8, ch. 26870, 1951; s. 7, ch. 29615, 1955; s. 5, ch. 29936, 1955; s. 1, ch. 59-208; s. 18, ch. 65-379; s. 53, ch. 71-136; ss. 1, 2, ch. 74-13; s. 1, ch. 75-261; s. 30, ch. 79-190.

104.32 Supervisor of elections; delivery of books to successor.—Any supervisor of elections who willfully fails or refuses promptly to comply with the demand of his successor for the delivery of

registration books, papers, and blanks connected with his office is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 8, ch. 3879, 1889; RS 2779; s. 9, ch. 4328, 1895; GS 3820; RGS 5881; CGL 8144; s. 8, ch. 26870, 1951; s. 2, ch. 65-60; s. 54, ch. 71-136; s. 35, ch. 77-175.
Note.—Former s. 98.21.

104.36 Solicitation near polling places.—Any person who, within 100 yards of any polling place on the day of any election, distributes or attempts to distribute any political or campaign material; solicits or attempts to solicit any vote, opinion, or contribution for any purpose; solicits or attempts to solicit a signature on any petition; or, except in an established place of business, sells or attempts to sell any item is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 8, ch. 26870, 1951; s. 56, ch. 71-136; s. 1, ch. 76-61.

104.39 Witnesses as to violations.—Any person who violates any provision of this code shall be a competent witness against any other person so violating and may be compelled to attend and testify as any other person. The testimony given shall not be used in any prosecution or criminal proceeding against the person so testifying, except in a prosecution for perjury.

History.—s. 8, ch. 26870, 1951; s. 35, ch. 77-175.

104.41 Violations not otherwise provided for.—Any violation of this code not otherwise provided for is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 8, ch. 26870, 1951; s. 61, ch. 71-136; s. 35, ch. 77-175.

104.42 Fraudulent registration and illegal voting; investigation.—The board of county commissioners in any county may appropriate funds for the purpose of investigating fraudulent registrations and illegal voting.

History.—ss. 12, 14, ch. 17899, 1937; CGL 1940 Supp. 369(4); s. 8, ch. 26870, 1951; s. 35, ch. 77-175.
Note.—Former s. 100.40.

104.43 Grand juries; special investigation.—The grand jury in any circuit shall, upon the request of any candidate or qualified voter, make a special investigation when it convenes during a campaign preceding any election day to determine whether there is any violation of the provisions of this code, and shall return indictments when sufficient ground is found.

History.—s. 8, ch. 26870, 1951; s. 35, ch. 77-175.

CHAPTER 105

NONPARTISAN ELECTIONS FOR JUDICIAL OFFICERS

105.011 Definitions.—

(1) As used in this chapter, the term "judicial office" includes the office of:

(a) Justice of the Supreme Court.

(b) Judge of a District Court of Appeal.

(c) Judge of a Circuit Court.

(d) County Court Judge.

(2) A judicial office is a nonpartisan office, and a candidate for election or retention thereto is prohibited from campaigning or qualifying for such an office based on party affiliation.

History.—s. 1, ch. 71-49; s. 1, ch. 72-310; s. 36, ch. 77-175.

105.031 Qualification; filing fee; candidate's oath.—

(1) TIME OF QUALIFYING.—Candidates for judicial office shall qualify with the Division of Elections of the Department of State no earlier than noon of the 63rd day, and no later than noon of the 49th day, before the first primary election. Filing shall be on forms provided for that purpose by the Division of Elections. Any person seeking to qualify as a candidate for circuit judge or county court judge by the alternative method, if he has submitted the necessary petitions by the required deadline and is notified after the fifth day prior to the last day for qualifying that the required number of signatures has been obtained, shall be entitled to subscribe to the candidate's oath and file the qualifying papers at any time within 5 days from the date he is notified that the necessary number of signatures has been obtained. Any person who qualifies within the time prescribed in this subsection shall be entitled to have his name printed on the ballot.

(2) FILING IN GROUPS.—Candidates shall qualify in groups where multiple judicial offices are to be filled.

(3) QUALIFYING FEE.—Each candidate qualifying for election to judicial office shall, during the time for qualifying, pay the Division of Elections a qualifying fee of 3 percent of the annual salary of the office to which he seeks election, or qualify by the alternative method. The Division of Elections shall forward all such qualifying fees to the Department of Revenue for deposit in the General Revenue Fund. The annual salary of the office for purposes of computing the qualifying fee shall be computed by multiplying 12 times the monthly salary authorized for such office as of July 1 immediately preceding the first day of qualifying. This subsection shall not apply to candidates qualifying for retention to judicial office.

(4) CANDIDATE'S OATH.—All candidates for judicial office shall subscribe to an oath or affirmation in writing to be filed with the Division of Elections upon qualifying. A printed copy of the oath or affirmation shall be furnished to the candidate by the Division of Elections and shall be in substantially the following form:

State of Florida
County of .....

Before me, an officer authorized to administer oaths, personally appeared (please print name as you wish it to appear on the ballot), to me well known, who, being sworn, says he is a candidate for the judicial office of .....; that his legal residence is ..... County, Florida; that he is a qualified elector of the state and of the territorial jurisdiction of the court to which he seeks election; that he is qualified under the Constitution and Laws of Florida to hold the judicial office to which he desires to be elected or in which he desires to be retained; that he has taken the oath required by ss. 876.05-876.10, Florida Statutes; that he has not violated any of the laws of the state relating to elections or the registration of electors; that he has qualified for no other public office in the state, the term of which office or any part thereof runs concurrent to the office he seeks; and that he has resigned from any office which he is required to resign pursuant to s. 99.012, Florida Statutes.

(Signature of candidate)

(Address)

Sworn to and subscribed before me this ..... day of....., 19..... at Leon County, Florida.

.....

(Signature and title of officer administering oath)

History.—s. 3, ch. 71-49; s. 36, ch. 77-175; s. 1, ch. 78-260; s. 5, ch. 79-365; s. 54, ch. 79-400.

105.035 Alternative method of qualifying for certain judicial offices.—

(1) A person seeking to qualify for election to the office of circuit judge or county court judge who is unable to pay the qualifying fee without imposing an undue burden on his personal resources or on resources otherwise available to him may qualify for election to such office by means of the petitioning process prescribed in this section. A person using this petitioning process shall file an oath with the Division of Elections stating that he intends to qualify for the office sought and stating that he is unable to pay the qualifying fee for the office without imposing an undue burden on his resources or on resources otherwise available to him. Such oath shall be filed at any time after the first Tuesday after the first Monday in January of the year in which the election is held, but prior to the 92nd day prior to the date of the first primary election. The form of such oath shall be prescribed by the Division of Elections. No signatures shall be obtained until he has filed the

oath prescribed in this subsection.

(2) The Division of Elections shall prescribe the form of the petitions and shall, upon receipt of a written oath from a candidate, provide the candidate with petition forms in sufficient numbers to facilitate the gathering of signatures pursuant to this section. No signature shall be counted toward the number of signatures required unless it is on a petition form prescribed pursuant to this subsection.

(3) A candidate for the office of circuit judge shall obtain the signature of a number of qualified electors equal to at least 3 percent of the total number of registered electors of the judicial circuit as shown by the compilation by the Department of State for the last preceding general election. A candidate for the office of county court judge shall obtain the signatures of a number of qualified electors equal to at least 3 percent of the total number of registered electors of the county, as shown by the compilation by the Department of State for the last preceding general election. A separate petition shall be circulated for each candidate availing himself of the provisions of this section.

(4) Each candidate seeking to qualify for election to a judicial office pursuant to this section shall file a separate petition from each county from which signatures are sought. Each petition shall be submitted, prior to noon of the 92nd day preceding the first primary election, to the supervisor of elections of the county for which such petition was circulated. Each supervisor of elections to whom a petition is submitted shall check the signatures on the petition to verify their status as electors of the judicial circuit or county, as the case may be. Prior to the first date for qualifying, the supervisor shall certify the number shown as registered electors of the circuit or county and submit such certification to the Division of Elections. The division shall determine whether the required number of signatures has been obtained for the name of the candidate to be placed on the ballot and shall notify the candidate. If the required number of signatures has been obtained, the candidate shall, during the time prescribed for qualifying for office, submit a copy of such notice and file his qualifying papers and oath prescribed in s. 105.031 with the Division of Elections. Upon receipt of the copy of such notice and qualifying papers, the division shall certify the name of the candidate to the appropriate supervisor or supervisors of elections as having qualified for the office sought.

History.—s. 37, ch. 77-175.

105.041 Form of ballot.—

(1) BALLOTS.—The names of candidates for judicial office which appear on the ballot at the first primary election shall either be grouped together on a separate portion of the ballot or on a separate ballot. The names of candidates for judicial office which appear on the ballot at the general election and the names of justices and judges seeking retention to office shall be grouped together on a separate portion of the general election ballot.

(2) LISTING OF CANDIDATES.—The names of all candidates for the office of circuit judge or office of county court judge shall be listed in alphabetical order. With respect to justices and judges of District Courts of Appeal the question "Shall Justice (or Judge) (name of justice or judge) of the (name of the court) be retained in office?" shall appear on the ballot and thereafter the words "For Retention" and "Against Retention".

(3) REFERENCE TO PARTY AFFILIATION PROHIBITED.—No reference to political party affiliation shall appear on any ballot with respect to any nonpartisan judicial office or candidate.

History.—s. 4, ch. 71-49; s. 38, ch. 77-175; s. 55, ch. 79-400.

105.051 Determination of election to office.—

(1)(a) The name of an unopposed candidate for the office of circuit judge or county court judge shall not appear on any ballot, and such candidate shall be deemed to have voted for himself at the general election.

(b) If two or more candidates qualify for such an office, the names of those candidates shall be placed on the ballot at the first primary election. If any candidate for such an office receives a majority of the votes cast for such office in the first primary election, the name of the candidate who receives such majority shall not appear on any other ballot and such candidate shall be deemed to have voted for himself at the general election. If no candidate for such an office receives a majority of the votes cast for such office in the first primary election, the names of the two candidates receiving the highest number of votes for such office shall be placed on the general election ballot. If more than two candidates receive an equal and highest number of votes, the name of each candidate receiving an equal and highest number of votes shall be placed on the general election ballot. In any contest in which there is a tie for second place and the candidate placing first did not receive a majority of the votes cast for such office, the name of the candidate placing first and the name of each candidate tying for second shall be placed on the general election ballot.

(c) The candidate who receives the highest number of votes cast for the office in the general election shall be elected to such office. If the vote at the general election results in a tie, the outcome shall be determined by lot.

(2) With respect to any justice of the Supreme Court or judge of a District Court of Appeal who qualifies to run for retention in office, the question prescribed in s. 105.041(2) shall be placed on the ballot at the general election. If a majority of the qualified electors voting on such question within the territorial jurisdiction of the court vote for retention, the justice or judge shall be retained for a term of 6 years commencing on the first Tuesday after the first Monday in January following the general election. If less than a majority of the qualified electors voting on such question within the territorial jurisdiction of the court vote for retention, a vacancy shall exist in such office upon the expiration of the term being served by the justice or judge.

History.—s. 5, ch. 71-49; s. 38, ch. 77-175.

105.061 Electors qualified to vote.—Each qualified elector of the territorial jurisdiction of a court shall be eligible to vote for a candidate for each

judicial office of such court or, in the case of a Justice of the Supreme Court or a Judge of a District Court of Appeal, for or against retention of such justice or judge.

History.—s. 6, ch. 71-49; s. 38, ch. 77-175.

105.071 Candidates for judicial office; limitations on political activity.—A candidate for judicial office shall not:

(1) Participate in any partisan political party activities, except that such candidate may register to vote as a member of any political party and may vote in any party primary for candidates for nomination of the party in which he is registered to vote.

(2) Campaign as a member of any political party.

(3) Publicly represent or advertise himself as a member of any political party.

(4) Endorse any candidate.

(5) Make political speeches other than in his own behalf.

(6) Make contributions to political party funds.

(7) Accept contributions from any political party.

(8) Solicit contributions for any political party.

(9) Accept or retain a place on any political party committee.

(10) Make any contribution to any person, group, or organization for its endorsement to judicial office.

(11) Agree to pay all or any part of any advertisement sponsored by any person, group, or organization wherein the candidate may be endorsed for judicial office by any such person, group, or organization.

A candidate for judicial office or retention therein who violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 7, ch. 71-49; s. 2, ch. 72-310; s. 38, ch. 77-175.

105.08 Campaign contribution and expense.—A candidate for judicial office may accept contributions and may incur only such expenses as are authorized by law. Each such candidate shall keep an accurate record of his contributions and expenses, and shall file reports thereof on the same basis as is required of a candidate for a nonjudicial state office.

History.—s. 8, ch. 71-49; s. 38, ch. 77-175.

105.09 Political activity in behalf of a candidate for judicial office limited.—

(1) No political party or partisan political organization shall endorse, support, or assist any candidate in a campaign for election to judicial office.

(2) Any person who knowingly, in his individual capacity or as an officer of an organization, violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 9, ch. 71-49; s. 38, ch. 77-175.

105.10 Applicability of election code.—If any provision of this chapter is in conflict with any other provision of this code, the provision of this chapter shall prevail.

History.—s. 10, ch. 71-49; s. 38, ch. 77-175.

CHAPTER 106

CAMPAIGN FINANCING

106.011 Definitions.—As used in this chapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

(1) "Political committee" means a combination of two or more individuals, or a person other than an individual, the primary or incidental purpose of which is to support or oppose any candidate, issue, or political party, and which accepts contributions or makes expenditures during a calendar year in an aggregate amount in excess of $100, or the sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors. Organizations which are certified by the Department of State as committees of continuous existence pursuant to s. 106.04 and the state and county executive committees of political parties regulated by chapter 103 shall not be considered political committees for the purposes of this chapter. Corporations regulated by chapter 607 or chapter 617 are not political committees if their political activities are limited to contributions to candidates or political committees or expenditures in support or opposition of an issue from corporate funds and if no contributions are received by such corporations.

(2) "Committee of continuous existence" means any group, organization, association, or other such entity which is certified pursuant to the provisions of s. 106.04.

(3) "Contribution" means:

(a) A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election.

(b) A transfer of funds between political committees, between committees of continuous existence, or between a political committee and a committee of continuous existence.

(c) The payment by any person other than a candidate or political committee of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.

(d) The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a campaign savings account or certificate of deposit, and the term includes any interest earned on such account or certificate.

Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee.

(4) "Expenditure" means a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a campaign savings account or certificate of deposit, or gift of money or anything of value made for the purpose of influencing the results of an election. However, "expenditure" does not include a purchase, payment, distribution, loan, advance, or gift of money or anything of value made for the purpose of influencing the results of an election when made by an organization, in existence prior to the time during which a candi-

date qualifies or an issue is placed on the ballot for that election, for the purpose of printing or distributing such organization's newsletter, containing a statement by such organization in support of or opposition to a candidate or issue, which newsletter is distributed only to members of such organization.

(5) "Independent expenditure" means an expenditure by a person for the purpose of advocating the election or defeat of a candidate or the approval or rejection of an issue, which expenditure is not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee.

(6) "Election" means any primary election, special primary election, general election, special election, or municipal election held in this state for the purpose of nominating or electing candidates to public office, choosing delegates to the national nominating conventions of political parties, or submitting an issue to the electors for their approval or rejection.

(7) "Issue" means any proposition which is required by the state constitution, by law or resolution of the legislature, or by the charter, ordinance, or resolution of any political subdivision of this state to be submitted to the electors for their approval or rejection at an election, or any proposition for which a petition is circulated in order to have such proposition placed on the ballot at any election.

(8) "Person" means an individual or a corporation, association, firm, partnership, joint venture, joint stock company, club, organization, estate, trust, business trust, syndicate, or other combination of individuals having collective capacity.

(9) "Campaign treasurer" means an individual appointed by a candidate or political committee as provided in this chapter.

(10) "Public office" means any state, county, municipal, or school or other district office or position which is filled by vote of the electors.

(11) "Testimonial" means any breakfast, dinner, luncheon, rally, party, reception, or other affair held to raise funds for any purpose.

(12) "Division" means the Division of Elections of the Department of State.

(13) "Communications media" means broadcasting stations, newspapers, magazines, outdoor advertising facilities, printers, direct mailing companies, advertising agencies, and telephone companies; but with respect to telephones, an expenditure shall be deemed to be an expenditure for the use of communications media only if made for the costs of telephones, paid telephonists, or automatic telephone equipment to be used by a candidate or a political committee to communicate with potential voters but excluding any costs of telephones incurred by a volunteer for use of telephones by such volunteer.

History.—s. 1, ch. 73-128; s. 1, ch. 74-200; s. 1, ch. 77-174; s. 39, ch. 77-175; s. 2, ch. 79-157; ss. 6, 17, ch. 79-365; s. 1, ch. 79-378.

106.021 Campaign treasurers; deputies; primary and secondary depositories.—

(1)(a) Each candidate for nomination or election to office and each political committee shall appoint a campaign treasurer. Each person who seeks to qualify for nomination or election to, or retention in, office shall appoint a campaign treasurer and designate a primary campaign depository prior to qualifying for office. Any person who seeks to qualify for election or nomination to any office by means of the petitioning process shall appoint a treasurer and designate a primary depository on or before the date he obtains the petitions. Each candidate shall at the same time he designates his campaign depository and appoints his treasurer also designate the office for which he is a candidate. Nothing in this subsection shall prohibit a candidate, at a later date, from changing the designation of the office for which he is a candidate and using the campaign funds for that candidacy. No person shall accept any contribution or make any expenditure with a view to bringing about his nomination, election, or retention in public office, or authorize another to accept such contributions or make such expenditure on his behalf, unless such person has appointed a campaign treasurer and designated a primary campaign depository. A candidate for an office voted upon on a statewide basis may appoint not more than 15 deputy campaign treasurers, and any other candidate or political committee may appoint not more than three deputy campaign treasurers. The names and addresses of the campaign treasurer and deputy campaign treasurers so appointed shall be filed with the officer before whom such candidate is required to qualify or with whom such political committee is required to file reports pursuant to s. 106.07.

(b) Except as provided in paragraph (d), each candidate and each political committee shall also designate one primary campaign depository for the purpose of depositing all contributions received, and disbursing all expenditures made, by the candidate or political committee. The candidate or political committee may also designate one secondary depository in each county in which an election is held in which the candidate or committee participates. Secondary depositories shall be for the sole purpose of depositing contributions and forwarding the deposits to the primary campaign depository. Any bank authorized to transact business in this state may be designated as a campaign depository. The candidate or political committee shall file the name and address of each primary and secondary depository so designated at the same time that, and with the same officer with whom, the candidate or committee files the name of his or its campaign treasurer pursuant to paragraph (a). In addition, the campaign treasurer or a deputy campaign treasurer may deposit any funds which are in the primary campaign depository and which are not then currently needed for the disbursement of expenditures into a savings account in any bank or savings and loan association authorized to transact business in this state. The savings account shall be designated "campaign savings account of (name of candidate or committee)." In lieu thereof, the campaign treasurer or deputy campaign treasurer may purchase a certificate of deposit with such unneeded funds in such bank or savings and loan association. The campaign savings account or certificate of deposit shall be separate from any personal or other savings account or certificate of deposit. Any withdrawal of the principal or earned interest or any part thereof shall only be made from the campaign savings account or certificate of deposit for the pur-

pose of transferring funds to the primary account and shall be reported as a contribution.

(c) Any campaign treasurer or deputy treasurer appointed pursuant to this section shall be a registered voter in this state and shall, before such appointment may become effective, have accepted appointment to such position in writing and filed such acceptance with the officer before whom the candidate is required to qualify or with the officer with whom the political committee is required to file reports. An individual may be appointed and serve as campaign treasurer of a candidate and a political committee or two or more candidates and political committees. A candidate may appoint himself as his own campaign treasurer.

(d) Any political committee which deposits all contributions received in a national depository from which the political committee receives funds to contribute to state and local candidates shall not be required to designate a campaign depository in the state.

(2) A candidate or political committee may remove his or its campaign treasurer or any deputy treasurer. In case of the death, resignation, or removal of a campaign treasurer before compliance with all obligations of a campaign treasurer under this chapter, the candidate or political committee shall appoint a successor and certify the name and address of the successor in the manner provided in the case of an original appointment. No resignation shall be effective until it has been submitted to the candidate or committee in writing and a copy thereof has been filed with the officer before whom the candidate is required to qualify or the officer with whom the political committee is required to file reports. No treasurer or deputy treasurer shall be deemed removed by a candidate or political committee until written notice of such removal has been given to such treasurer or deputy treasurer and has been filed with the officer before whom such candidate is required to qualify or with the officer with whom such committee is required to file reports.

(3) Except for independent expenditures, no contribution or expenditure, including contributions or expenditures of a candidate himself or of his family, shall be directly or indirectly made or received in furtherance of the candidacy of any person for nomination or election to political office in the state or on behalf of any political committee except through the duly appointed campaign treasurer of the candidate or political committee. However, expenditures may be made directly by any political committee or political party regulated by chapter 103 for obtaining time, space, or services in or by any communications media for the purpose of jointly endorsing six or more candidates, and any such expenditure shall not be considered a contribution or expenditure to or on behalf of any such candidates for the purposes of this chapter.

(4) A deputy campaign treasurer may exercise any of the powers and duties of a campaign treasurer as set forth in this chapter when specifically authorized to do so by the campaign treasurer and the candidate, in the case of a candidate, or the campaign treasurer and chairman of the political committee, in the case of a political committee.

History.—s. 2, ch. 73-128; s. 2, ch. 74-200; s. 1, ch. 75-139; s. 39, ch. 77-175; s. 2, ch. 79-378; s. 56, ch. 79-400.

106.025 Testimonials.—

(1)(a) No testimonial may be held for purposes of raising funds to be used in a campaign for public office or nomination or election thereto, unless the person for whom such funds are to be so used is a candidate for public office and written notice of intent to hold such testimonial is filed pursuant to this subsection.

(b) Notice of intent to hold such a testimonial shall be filed by the candidate or person in charge of such testimonial with the officer with whom reports are required to be filed by the candidate for whom the funds are to be used pursuant to s. 106.07. Such notice shall state the date and place the testimonial is to be held, the name and address of the person or persons in charge of such testimonial, and the name and address of the candidate for whose campaign the funds are to be used. No moneys may be raised and no expenditures made in furtherance of such a testimonial until the notice of intent has been filed.

(c) All money and contributions [1][made] with respect to such a testimonial shall be made only through the campaign treasurer of the candidate for whom the funds are to be used, shall be deemed to be campaign contributions, and [2][shall be] accounted for, and subject to the same restrictions, as other campaign contributions. Any amount paid for the purchase of tickets for testimonials held pursuant to this subsection shall be a contribution subject to the limits of s. 106.08 and shall be included in calculating the maximum contributions permitted by s. 106.08. All expenditures made with respect to such a testimonial shall be made only by a check drawn on the campaign depository of the candidate for whom the funds are to be used and shall be deemed to be campaign expenditures [2][to be] accounted for, and subject to the same restrictions, as other campaign expenditures.

(d) Any tickets or advertising for such a testimonial shall contain the following statement: "The purchase of a ticket for, or a contribution to, the testimonial is a contribution to the campaign of (name of the candidate for whose benefit the testimonial is held)." Such tickets or advertising shall also comply with other provisions of this chapter relating to political advertising.

(e) Any person or candidate who holds a testimonial, or consents to a testimonial being held, in violation of the provisions of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2)(a) Except for testimonials held pursuant to subsection (1), no testimonial shall be held in honor or on behalf of any person holding public office unless a notice of intent to hold such testimonial has first been filed pursuant to this subsection by the person in charge of such testimonial and unless a separate testimonial account has been set up in a depository and a treasurer appointed. No money or donation may be accepted, nor any payment made, with respect to such testimonial until the notice of intent has been filed and a separate testimonial ac-

count has been established and a treasurer appointed.

(b) Such notice, in the case of a state or multicounty district officer, shall be filed with the Division of Elections, and, in the case of any other public officer, shall be filed with the supervisor of elections of the county in which such officer resides. Such notice shall state the date and place the testimonial is to be held, the name and address of the person or persons in charge of the testimonial, the name and address of the officer in whose honor or in whose behalf the testimonial is to be held, the purpose for which the testimonial is to be held, and the purpose for which the funds raised are to be used.

(c) All money and donations received, and all payments made, with respect to such testimonial shall be [2][received and] made only through the treasurer duly appointed pursuant to this subsection. The appointed treasurer shall keep detailed accounts of all deposits and all payments made with respect to such account in the same manner, and subject to the same restrictions, as required for a campaign account by a campaign treasurer and shall file regular reports on the first and third Mondays of each month with the officer with whom the notice of intent is filed until the funds on deposit are disposed of and the account closed. Each report shall contain the following information:

1. The full name, residence or business address, mailing address if different from the residence or business address, and occupation, and principal place of business, if any, of each person, political committee, or committee of continuous existence who, within the reporting period, purchases one or more tickets, or gives any money or donation, with respect to such testimonial, together with the amount and date thereof. However, the occupation and principal place of business need not be listed if the purchase price of the ticket or tickets, or the money or donation, does not exceed $100.

2. The full name, residence or business address, mailing address if different from the residence or business address, [3][and] occupation, and principal place of business, if any, of each person, political committee, or committee of continuous existence to whom any payment is made within the reporting period, together with the date and amount thereof and the purpose therefor.

(d) No person may purchase more than $1,000 worth of tickets to such a testimonial or give money or make any donation in excess of $1,000 with respect to such a testimonial or purchase any ticket for, or give any money or make any donation to, such a testimonial in the name of another. Any person who violates the provisions of this paragraph is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(e) The proceeds of the testimonial held pursuant to this subsection remaining after the payment of the expenses therefor shall be disposed of as provided in this paragraph. All proceeds after payment of the expenses for such testimonial shall be donated to a charity stated in the notice of intent; returned prorata to each person who purchased a ticket, gave money, or made a donation; or given, in the case of a state officer, to the state to be deposited in the General Revenue Fund or, in the case of an officer of a political subdivision, to the political subdivision to be deposited in the general fund thereof. Such disposition of funds shall be made by the person in charge of such testimonial within 90 days from the date the testimonial is held, and a report shall be filed with the officer with whom the notice of intent is filed, which report shall be in the form and manner and contain the information prescribed in s. 106.141(6).

(f) Any person or officer who holds a testimonial, or who consents to a testimonial being held, in violation of the provisions of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(g) Any person who is required by the provisions of this subsection to dispose of funds in a testimonial account [3][and] fails to dispose of the funds in the manner provided in this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) This section shall not apply to any testimonial held on behalf of a political party by the state or county executive committee of such party, provided that the proceeds of such testimonial are reported pursuant to s. 106.29.

History.—s. 40, ch. 77-175.
[1]**Note.**—Bracketed word substituted for "received" by the editors.
[2]**Note.**—Bracketed words inserted by the editors.
[3]**Note.**—Bracketed word inserted by the editors.

106.03 Registration of political committees.—

(1) Each political committee which anticipates receiving contributions or making expenditures during a calendar year in an aggregate amount exceeding $100, or is seeking the signatures of registered electors in support of an initiative, shall file a statement of organization with the officer with whom such committee files original reports pursuant to s. 106.07 within 10 days after its organization or, if later, within 10 days after the date on which it has information which causes the committee to anticipate that it will receive contributions or make expenditures in excess of $100. However, committees required by the Federal Campaign Communications Act of 1971 (Pub. L. No. 92-225) to file statements of organization with federal officials may file a duplicate copy of such statement in lieu of the statement required by this section. If a political committee is organized within 10 days of any election, it shall immediately file the statement of organization required by this section.

(2) The statement of organization shall include:

(a) The name and address of the committee;

(b) The names, addresses, and relationships of affiliated or connected organizations;

(c) The area, scope, or jurisdiction of the committee;

(d) The name, address, and position of the custodian of books and accounts;

(e) The name, address, and position of other principal officers, including officers and members of the finance committee, if any;

(f) The name, address, office sought, and party affiliation of:

1. Each candidate whom the committee is supporting;

2. Any other individual, if any, whom the committee is supporting for nomination for election, or election, to any public office whatever;

(g) Any issue or issues such organization is supporting or opposing;

(h) If the committee is supporting the entire ticket of any party, a statement to that effect and the name of the party;

(i) A statement of whether the committee is a continuing one;

(j) Plans for the disposition of residual funds which will be made in the event of dissolution;

(k) A listing of all banks, safety-deposit boxes, or other depositories used for committee funds; and

(l) A statement of the reports required to be filed by the committee with federal officials, if any, and the names, addresses, and positions of such officials.

(3) Any change in information previously submitted in a statement of organization shall be reported to the officer with whom such committee is required to file reports pursuant to s. 106.07, within 10 days following the change.

(4) Any committee which, after having filed one or more statements of organization, disbands or determines it will no longer receive contributions or make expenditures during the calendar year in an aggregate amount exceeding $100 shall so notify the officer with whom such committee is required to file reports pursuant to s. 106.07.

History.—s. 3, ch. 73-128; s. 3, ch. 74-200; s. 1, ch. 77-174; s. 41, ch. 77-175; s. 18, ch. 79-365.

106.04 Committees of continuous existence.—

(1) In order to qualify as a committee of continuous existence for the purposes of this chapter, a group, organization, association, or other such entity which is involved in making contributions to candidates shall meet the following criteria:

(a) It shall be organized and operated in accordance with a written charter or set of bylaws which contains procedures for the election of officers and directors and which clearly defines membership in the organization; and

(b) At least 25 percent of the income of such organization must be derived from dues or assessments payable on a regular basis by its membership pursuant to provisions contained in the charter or bylaws.

(2) Any group, organization, association, or other entity may seek certification from the Department of State as a committee of continuous existence by filing an application with the Division of Elections on a form provided by the division. Such application shall provide the information required of political committees by s. 106.03(2). Each application shall be accompanied by the name and street address of the principal officer of the applying entity as of the date of the application; a copy of the charter or bylaws of the organization; a copy of the dues or assessment schedule of the organization, or formula by which dues or assessments are levied; and a complete financial statement or annual audit summarizing all income received, and all expenses incurred, by the organization during the 12 months preceding the date of application. A membership list shall be made available for inspection if deemed necessary by the division.

(3) If the Division of Elections finds that an applying organization meets the criteria for a committee of continuous existence as provided by subsection (1), it shall certify such findings and notify the applying organization of such certification. If it finds that an applying organization does not meet the criteria for certification, it shall notify the organization of such findings and shall state the reasons why such criteria are not met.

(4) Each committee of continuous existence shall file an annual report with the Division of Elections during the month of January of each year. Such annual reports shall contain the same information and shall be accompanied by the same materials as original applications filed pursuant to subsection (2). In addition to such annual report, each committee shall file regular reports with the Division of Elections at the same times that reports are required of candidates by s. 106.07(1). A duplicate copy of each report shall be filed with the supervisor of elections in the county in which the committee maintains its books and records. Reports shall be on forms provided by the division and shall contain the following information:

(a) The full name, residence or business address, mailing address if different from the residence or business address, and occupation of each person who has made one or more contributions to the committee during the reporting period, together with the amounts and dates of such contributions. However, if the contribution is less than $100, the occupation of the contributor need not be listed, and only the name and mailing address is necessary. However, for any contributions which represent the payment of dues by members in a fixed amount pursuant to the schedule on file with the Division of Elections, only the aggregate amount of such contributions need be listed, together with the number of members paying such dues and the amount of the membership dues.

(b) The name and address of each political committee or committee of continuous existence from which the reporting committee received, or to which it made, any transfer of funds, together with the amounts and dates of all transfers.

(c) Any other receipt of funds not listed pursuant to paragraphs (a) or (b), including the sources and amounts of all such funds.

(d) The name, address, and office sought by each candidate to whom the committee has made a contribution during the reporting period, together with the amount and date of each contribution. The treasurer of each committee shall certify as to the correctness of each report and shall bear the responsibility for its accuracy and veracity. Any treasurer who willfully certifies to the correctness of a report while knowing that such report is incorrect, false, or incomplete is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) No committee of continuous existence shall contribute to any candidate or political committee an amount in excess of the limits contained in s. 106.08(1) or participate in any other activity which is prohibited by this chapter. If any violation occurs, it shall be punishable as provided in this chapter for the given offense. No funds of a committee of contin-

uous existence shall be expended on behalf of a candidate, except by means of a contribution made through the duly appointed campaign treasurer of a candidate. No such committee shall make expenditures in support of, or in opposition to, an issue unless such committee first registers as a political committee pursuant to this chapter and undertakes all the practices and procedures required thereof.

(6) All accounts and records of a committee of continuous existence may be inspected under reasonable circumstances by any authorized representative of the Division of Elections or the Florida Elections Commission. The right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction.

(7) If a committee of continuous existence ceases to meet the criteria prescribed by subsection (1), the Division of Elections shall revoke its certification until such time as the criteria are again met.

History.—s. 4, ch. 73-128; ss. 4, 16, ch. 74-200; s. 1, ch. 77-174; s. 42, ch. 77-175; s. 57, ch. 79-400.

106.05 Deposit of contributions; statement of campaign treasurer.—All funds received by the campaign treasurer of any candidate or political committee shall, prior to the end of the second business day following the receipt thereof, Sundays and legal holidays excluded, be deposited in a campaign depository designated pursuant to s. 106.021, in an account designated "Campaign Account of (name of candidate or committee)." All deposits shall be accompanied by a bank deposit slip containing the name of each contributor and the amount contributed by each. However, any contribution which is in an amount of $100 or less need not be deposited in such account until the end of the 7th day following the receipt thereof, unless during such 7-day period the aggregate of contributions received totals more than $100. If a contribution is deposited in a secondary campaign depository, the depository shall forward the full amount of the deposit, along with a copy of the deposit slip accompanying the deposit, to the primary campaign depository prior to the end of the first business day following the deposit.

History.—s. 5, ch. 73-128; s. 1, ch. 76-88; s. 1, ch. 77-174; s. 43, ch. 77-175.

106.055 Valuation of in-kind contributions.—Any person who makes an in-kind contribution shall, at the time of making such contribution, place a value on such contribution, which valuation shall be the fair market value of such contribution.

History.—s. 44, ch. 77-175.

106.06 Treasurer to keep records; inspections.—

(1) The campaign treasurer of each candidate and the campaign treasurer of each political committee shall keep detailed accounts, current within not more than 2 days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate or political committee that are required to be set forth in a statement filed under this chapter. The campaign treasurer shall also keep detailed accounts of all deposits made in any savings account or certificate of deposit and of all withdrawals made therefrom to the primary depository and of all interest earned thereon.

(2) Accounts, including campaign savings accounts and certificates of deposit, kept by the campaign treasurer of a candidate or political committee may be inspected under reasonable circumstances before, during, or after the election to which the accounts refer by any authorized representative of the Division of Elections or the Florida Elections Commission. The right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction. The campaign treasurer of a political committee supporting a candidate may be joined with the campaign treasurer of the candidate as respondent in such a proceeding.

(3) Accounts kept by a campaign treasurer of a candidate shall be preserved by the campaign treasurer for a number of years equal to the term of office of the office to which the candidate seeks election. Accounts kept by a campaign treasurer of a political committee shall be preserved by such treasurer for at least 2 years after the date of the election to which the accounts refer or at least 1 year after the date the last supplemental statement is filed under s. 106.07, whichever is later.

History.—s. 6, ch. 73-128; s. 45, ch. 77-175; s. 3, ch. 79-378.

106.07 Reports; certification and filing.—

(1) Each campaign treasurer designated by a candidate or political committee pursuant to s. 106.021 shall file regular reports of all contributions received, and all expenditures made, by or on behalf of such candidate or political committee. Reports shall be filed on the first Friday of each calendar quarter from the time the campaign treasurer is appointed. Following the last day of qualifying for office, the reports shall be filed:

(a) On the Monday preceding the election, for a candidate who is unopposed in seeking nomination and election to any office;

(b) On Friday of each week preceding the election, for a candidate who is opposed in seeking nomination or election to a statewide office, or for a political committee supporting or opposing a candidate or issue to be voted on in a statewide election; or

(c) On the first, third, and fifth Fridays of each month and the Monday immediately preceding the election, for a candidate who is opposed in seeking nomination or election to less than a statewide office, for a political committee supporting or opposing a candidate or issue to be voted on on less than a statewide basis, or for committees of continuous existence.

(2) All reports required of a candidate by this section shall be filed with the officer before whom the candidate is required by law to qualify. Reports shall be filed not later than 5 p.m. of the day designated; however any report postmarked no later than midnight of the day designated shall be deemed to have been filed in a timely manner. Reports shall contain information of all previously unreported contributions received and expenditures made as of the preceding Friday, except that the report filed on the Monday immediately preceding the election shall contain information of all previously unreported contributions received and expenditures made as of the day preceding that designated due date. All such reports shall be open to public inspection. All

candidates for other than statewide office who qualify with the Secretary of State shall file a duplicate copy at the same time with the supervisor of elections in the county in which the candidate resides. Any report which is deemed to be incomplete by the officer with whom the candidate qualifies shall be accepted on a conditional basis, and the campaign treasurer shall be notified by registered mail as to why the report is incomplete and be given 3 days from receipt of such notice to file an addendum to the report providing all information necessary to complete the report in compliance with this section. Failure to file a complete report after such notice shall constitute a violation of this chapter.

(3) Reports required of a political committee shall be filed with the Division of Elections, if such committee is supporting or opposing a candidate for statewide office or advocating the acceptance or rejection of an issue to be voted on in a statewide election. If such political committee is supporting or opposing a candidate, or is advocating the acceptance or rejection of an issue, to be voted on in an election to be held in more than one county, such reports shall be filed with the supervisor of elections of each county in which the election is to be held, and a duplicate copy shall be filed with the Division of Elections. If such political committee is supporting or opposing a candidate for countywide office or for any office on less than a countywide basis, or is advocating the acceptance or rejection of an issue to be voted on in a countywide election or in any election on less than a countywide basis, such reports shall be filed with the supervisor of elections of the county in which such election is being held. However, political committees which only support or oppose candidates for municipal office or issues to be voted on in a municipal election shall file their reports with the officer before whom municipal candidates qualify. Incomplete reports by political committees shall be treated in the manner provided for incomplete reports by candidates in subsection (2).

(4) Each report required by this section shall contain:

(a) The full name, residence or business address, mailing address if different from the residence or business address, and occupation, and principal place of business, if any, of each person who has made one or more contributions to or for such committee or candidate within the reporting period, together with the amount and date of such contributions. However, if the contribution is less than $100, the occupation and principal place of business of the contributor need not be listed, and only the name, residence or business address, and mailing address if different from the residence or business address, is necessary.

(b) The name and address of each political committee from which the reporting committee or the candidate received, or to which the reporting committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers.

(c) Each loan for campaign purposes to or from any person or political committee within the reporting period, together with the full names, addresses, and occupations, and principal places of business, if any, of the lender and endorsers, if any, and the date and amount of such loans.

(d) The total amount of proceeds from:

1. Each testimonial event regulated by s. 106.025; and

2. Sales of such items as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials.

(e) A statement of each contribution, rebate, refund, or other receipt not otherwise listed under paragraphs (a) through (d).

(f) The total sum of all receipts by or for such committee or candidate during the reporting period.

(g) The full name, residence or business address, and mailing address if different from the residence or business address, and principal place of business, if any, of each person to whom expenditures have been made by or on behalf of the committee or candidate within the reporting period; the amount, date, and purpose of each such expenditure; and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made. However, expenditures made from the petty cash fund provided by s. 106.12 need not be reported individually.

(h) The full name, residence or business address, and mailing address if different from the residence address or business address, and principal place of business, if any, of each person to whom an expenditure for personal services, salary, or reimbursed expenses has been made and which is not otherwise reported, including the amount, date, and purpose of such expenditure. However, expenditures made from the petty cash fund provided by s. 106.12 need not be reported individually.

(i) The total amount withdrawn and the total amount spent for petty cash purposes pursuant to this chapter during the reporting period.

(j) The total sum of expenditures made by such committee or candidate during the reporting period.

(k) The amount and nature of debts and obligations owed by or to the committee or candidate, which relate to the conduct of any political campaign.

(l) A list of all credit card purchases, and the amount thereof, made by the candidate or political committee during the reporting period. A copy of each statement shall be included in the next report following receipt thereof by the candidate or political committee. Receipts for each credit card purchase shall be retained by the treasurer with the records for the campaign account.

(m) The amount and nature of any [1]campaign savings accounts or certificates of deposit and identification of the financial institution in which such accounts or certificates of deposit are located.

(5) A report shall be filed 45 days after the last election in a given election period in which a candidate or political committee participates or 45 days after the election in which a candidate is eliminated for nomination or election to office. If such report shows an unexpended balance of contributions, the campaign treasurer of the candidate or political committee shall file with the officer before whom original reports are filed pursuant to subsections (2) and (3) a supplemental statement of contributions and expenditures. Such supplemental statement shall be filed on the first Monday of each calendar

quarter until the account shows no unexpended balance of contributions and the account has been closed.

(6) The candidate and his campaign treasurer, in the case of a candidate, or the political committee chairman and campaign treasurer of the committee, in the case of a political committee, shall certify as to the correctness of each report, and each person so certifying shall bear the responsibility for the accuracy and veracity of each report. Any campaign treasurer, candidate, or political committee chairman who willfully certifies the correctness of any report while knowing that such report is incorrect, false, or incomplete is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) The campaign depository shall return all checks drawn on the account and all deposit slips for such account to the campaign treasurer who shall retain the records pursuant to s. 106.06. The records maintained by the depository with respect to such account shall be subject to inspection by an agent of the Division of Elections or the Florida Elections Commission at any time during normal banking hours, and such depository shall furnish certified copies of any of such records to the Division of Elections or Florida Elections Commission upon request.

(8) Notwithstanding any other provisions of this chapter, in any reporting period during which a candidate, political committee, or committee of continuous existence has not received funds, made any contributions, or expended any reportable funds, the filing of the required report for that period is waived. However, the next report filed must specify that the report covers the entire period between the last submitted report and the report being filed, and any candidate, political committee, or committee of continuous existence not reporting by virtue of this subsection on dates prescribed elsewhere in this chapter shall notify the filing officer in writing on the prescribed reporting date that no report is being filed on that date.

(9) The provisions of this section to the contrary notwithstanding, any political committee which deposits all contributions received in a national depository from which the political committee receives funds to contribute to state and local candidates may file a copy of the list of contributions required by the Federal Campaign Communications Act of 1971 (Pub. L. No. 92-225), with the Department of State, in lieu of any report required in this section. However, any contribution or expenditure not required to be reported by the committee under such federal law shall be reported to the division in accordance with the provisions of this chapter.

History.—s. 7, ch. 73-128; ss. 5, 15, 17, ch. 74-200; ss. 1, 2, ch. 75-8; s. 2, ch. 75-139; s. 1, ch. 77-174; s. 46, ch. 77-175; s. 23, ch. 79-164; ss. 7, 8, ch. 79-365; s. 4, ch. 79-378; s. 58, ch. 79-400.

[1]**Note.**—The word "campaign" was inserted by the editors for clarity.

106.071 Independent expenditures; reports; disclaimers.—

(1) Each person who makes an independent expenditure with respect to any candidate or issue, which expenditure, in the aggregate, is in the amount of $100 or more, shall file periodic reports of such expenditures in the same manner, at the same time, and with the same officer as a political committee supporting or opposing such candidate or issue. Any political advertisement paid for by an independent expenditure shall prominently state "Paid political advertisement paid for by (Name of person or committee paying for advertisement) independently of any candidate," and shall contain the name and address of the person paying for the political advertisement.

(2) Any person who fails to include the disclaimer prescribed in subsection (1) in any political advertisement which is required to contain such disclaimer is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) No person may make a contribution in excess of $1,000 to any other person, to be used by such other person to make an independent expenditure.

History.—s. 47, ch. 77-175.

106.08 Contributions; limitations on.—

(1) No person or political committee shall make contributions to any candidate or political committee in this state, for any election, in excess of the following amounts:

(a) To a candidate for countywide office or to a candidate in any election conducted on less than a countywide basis, $1,000.

(b) To a candidate for legislative or multicounty office, $1,000.

(c) To a candidate for statewide office, $3,000.

(d) To any political committee in support of, or in opposition to, an issue to be voted on in a statewide election, $3,000.

(e) To any political committee in support of, or in opposition to, an issue to be voted on in a countywide, districtwide, or less than countywide election, $1,000.

(f) To a political committee supporting or opposing one or more candidates, $1,000.

(g) To a candidate for county court judge or circuit judge, $1,000.

(h) To a candidate for retention as a judge of a District Court of Appeal, $2,000.

(i) To a candidate for retention as a justice of the Supreme Court, $3,000.

The contribution limits provided in paragraphs (a) through (i) shall not apply to contributions made by a state or county executive committee of a political party regulated by chapter 103 or to amounts contributed by a candidate to his own campaign. The limitations provided by this subsection shall apply to each election. For purposes of this subsection the first primary, second primary, and general election shall be deemed separate elections or election time segments, whether or not the candidate has opposition in the respective elections. However, for the purpose of contribution limits with respect to candidates for retention as a justice of the Supreme Court or judge of a District Court of Appeal, there shall be only one election, which shall be the general election, and with respect to candidates for circuit judge or county court judge, there shall be only two elections, which shall be the first primary election and general election.

(2) Any contribution received by a candidate with opposition in an election or the campaign treasurer or a deputy treasurer of such a candidate, or by the treasurer or a deputy treasurer of a political

committee supporting or opposing a candidate with opposition or supporting or opposing an issue on the ballot in an election, on the day of that election or less than 5 days prior to the day of that election shall be returned by him to the person or political committee contributing it and shall not be used or expended by or on behalf of the candidate or political committee. Any contribution received by a candidate or the campaign treasurer or a deputy treasurer of a candidate after the date at which the candidate withdraws his candidacy, or after the date the candidate is defeated or elected to office, shall be returned to the person or political committee contributing it and shall not be used or expended by or on behalf of the candidate.

(3) No person shall make any contribution in support of or opposition to a candidate for election or nomination, in support of or opposition to an issue, or to any political committee, through or in the name of another, directly or indirectly, in any election. The solicitation from, and contributions by, candidates, political committees, and party executive committees to any religious, charitable, civic, eleemosynary, or other causes or organizations established primarily for the public good is expressly prohibited. However, it shall not be construed as a violation of this subsection for a candidate to continue regular personal contributions to religious, civic, or charitable groups of which he is a member or to which he has been a regular contributor for more than 6 months.

(4) Any person who knowingly and willfully makes a contribution in violation of subsection (1) or subsection (3), or any person who knowingly and willfully fails or refuses to return any contribution as required in subsection (2), is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If any corporation, partnership, or other business entity is convicted of knowingly and willfully violating this section, it shall be fined not less than $1,000 and not more than $10,000. If it is a domestic entity, it may be ordered dissolved by a court of competent jurisdiction; if it is a foreign or nonresident business entity, its right to do business in this state may be forfeited. Any officer, partner, agent, attorney, or other representative of a corporation, partnership, or other business entity who aids, abets, advises, or participates in a violation of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) Any person who knowingly and willfully violates the provisions of this section shall, in addition to any other penalty prescribed by this chapter, pay to the state a sum equal to twice the amount contributed in violation of this chapter. Each campaign treasurer shall pay all amounts contributed in violation of this section to the state for deposit in the General Revenue Fund.

(6) The provisions of this section shall not apply to the transfer of funds between a primary depository and a savings account or certificate of deposit or to any interest earned on such account or certificate.

History.—s. 8, ch. 73-128; s. 6, ch. 74-200; s. 1, ch. 77-174; s. 48, ch. 77-175; s. 1, ch. 78-403; s. 9, ch. 79-365; s. 5, ch. 79-378.

106.09 Cash contributions and contribution by cashier's checks.—

(1) No person shall make or accept a cash contribution or contribution by means of a cashier's check in excess of $100.

(2) Any person who makes or accepts a contribution in violation of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 9, ch. 73-128; s. 48, ch. 77-175.

106.11 Expenses of and expenditures by candidates and political committees.—Each candidate and each political committee which designates a primary campaign depository pursuant to s. 106.021(1) shall make expenditures from funds on deposit in such primary campaign depository only in the following manner, with the exception of expenditures made from petty cash funds provided by s. 106.12:

(1) The campaign treasurer or deputy campaign treasurer of a candidate or political committee shall make expenditures from funds on deposit in the primary campaign depository only by means of a bank check drawn upon the campaign account of the candidate or political committee. The campaign account shall be separate from any personal or other account and shall be used only for the purpose of depositing contributions and making expenditures for the candidate or political committee. The checks for such account shall contain, as a minimum, the following information:

(a) The statement "Campaign Account of (name of candidate or political committee)."

(b) The account number and the name of the bank.

(c) The exact amount of the expenditure.

(d) The signature of the campaign treasurer or deputy treasurer.

(e) The exact purpose for which the expenditure is authorized.

(f) The name of the payee.

(2) The campaign treasurer or deputy treasurer who signs the check shall be responsible for the completeness and accuracy of the information on such check and for insuring that such expenditure is an authorized expenditure.

(3) No candidate, campaign manager, treasurer, deputy treasurer, or political committee or any officer or agent thereof, or any person acting on behalf of any of the foregoing, shall authorize any expenses, nor shall any campaign treasurer or deputy treasurer sign a check drawn on the primary campaign account for any purpose, unless there are sufficient funds on deposit in the primary depository account of the candidate or political committee to pay the full amount of the authorized expense, to honor all other checks drawn on such account, which checks are outstanding, and to meet all expenses previously authorized but not yet paid. However, an expense may be incurred for the purchase of goods or services if there are sufficient funds on deposit in the primary depository account to pay the full amount of the incurred expense, to honor all checks drawn on such account, which checks are outstanding, and to meet all other expenses previously authorized but not yet paid, provided that payment for such goods or ser-

vices is made upon final delivery and acceptance of the goods or services; and an expenditure from petty cash pursuant to the provisions of s. 106.12 may be authorized, if there is a sufficient amount of money in the petty cash fund to pay for such expenditure. Payment for credit card purchases shall be made pursuant to s. 106.125. Any expense incurred or authorized in excess of such funds on deposit shall, in addition to other penalties provided by law, constitute a violation of this chapter.

History.—s. 11, ch. 73-128; s. 8, ch. 74-200; s. 48, ch. 77-175; s. 2, ch. 78-403; s. 10, ch. 79-365.

106.12 Petty cash funds allowed.—

(1) Each campaign treasurer designated pursuant to s. 106.021(1) for a candidate or political committee is authorized to withdraw from the primary campaign account, until the close of the last day for qualifying for office, the amount of $500 per calendar quarter reporting period for the purpose of providing a petty cash fund for the candidate or political committee.

(2) Following the close of the last day for qualifying and until the report is filed pursuant to s. 106.07(5), the campaign treasurer of each political committee is authorized to withdraw the following amount each week from the primary depository campaign account for the purpose of providing a petty cash fund for the political committee, and, following the close of the last day for qualifying and until the election at which such candidate is eliminated or elected to office, the campaign treasurer of each candidate is authorized to withdraw the following amount each week from the primary depository campaign account for the purpose of providing a petty cash fund for the candidate:

(a) For all candidates for nomination or election on a statewide basis, $500 per week.

(b) For all other candidates and all political committees, $100 per week.

(3) The petty cash fund so provided shall be spent only in amounts less than $20 and only for office supplies, transportation expenses, and other necessities. Petty cash shall not be used for the purchase of time, space, or services from communications media as defined in s. 106.011(13).

History.—s. 12, ch. 73-128; s. 48, ch. 77-175.

106.125 Credit cards; conditions on use.—Any candidate for statewide office or any political committee created to support or oppose any candidate for statewide office or to support or oppose any statewide issue may obtain, and use in making travel-related campaign expenditures, credit cards. The obtention and use of credit cards by any such candidate or political committee shall be subject to the following conditions:

(1) Credit cards may be obtained only from the same bank which has been designated as the candidate's or political committee's primary campaign depository.

(2) Credit cards shall be in the name of the candidate or political committee and shall reflect that the account is a campaign account.

(3) Before a credit card may be used, a copy of the agreement or contract between the candidate and the bank, or the political committee and the bank, and a list of all persons who have been authorized to use the card shall be filed with the Secretary of State.

(4) All credit cards issued to candidates or political committees shall expire no later than midnight of the last day of the month of the general election.

(5) Each statement rendered by the issuer of a credit card shall be paid upon receipt.

(6) Campaign travel-related expenditures shall include transportation, lodging, meals, and other expenses incurred in connection with traveling for campaign purposes.

History.—s. 11, ch. 79-365.

106.14 No goods or services provided without prior authorization.—

(1) Authorization for expenditures to public utilities for telephone, electric, gas, water, and like services shall be made when the bill for such services is received if the candidate or political committee receiving such services has deposited with the utility an amount which such public utility estimates as being sufficient to meet all charges for a given billing period.

(2) Any corporation, partnership, or other business entity which knowingly and willfully violates this section is guilty of a misdemeanor, punishable by a fine of not less than $1,000 and not more than $10,000. If it is a domestic corporation, partnership, or other business entity, in addition to such fine and penalty, it may be dissolved; if it is a foreign or nonresident corporation, partnership, or other business entity, its right to do business in this state may be declared forfeited.

(3) Any officer, partner, employee, agent, or attorney or other representative of a corporation, partnership, or other business entity who knowingly and willfully aids or abets in a violation of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Any individual who knowingly and willfully violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 14, ch. 73-128; s. 48, ch. 77-175; s. 5, ch. 78-403; s. 59, ch. 79-400.

106.1405 Use of campaign funds by candidates.—If a candidate or spouse of a candidate intends to draw a salary from the campaign account of such candidate or use funds on deposit in a campaign account to defray normal living expenses for himself or his family, other than expenses actually incurred for transportation, meals, and lodging by himself or a member of his family during travel in the course of the campaign, the candidate shall, within 30 days after January 1, 1978, or at the same time he appoints his treasurer and designates his campaign depository, whichever last occurs, file with the officer before whom he qualifies a statement that the candidate intends to use the funds for such purposes. Unless the statement of intent is filed at such time, the funds shall not be so used.

History.—s. 49, ch. 77-175.

106.141 Disposition by candidates of surplus funds.—

(1) Any candidate who withdraws his candidacy shall, pursuant to this section, within 90 days of withdrawing his candidacy, dispose of the funds on deposit in his campaign account. Such candidate shall not accept any contributions, nor shall any person accept contributions on behalf of such candidate, after the candidate withdraws his candidacy.

(2) Each candidate shall, pursuant to this section, within 90 days after having been eliminated as a candidate or elected to office, dispose of the funds on deposit in his campaign account. Such candidate shall not accept any contributions, nor shall any person accept contributions on behalf of such candidate, after the candidate has been eliminated as a candidate or elected to office.

(3) All funds on deposit in the campaign account of any candidate, which funds have not been used in a campaign for public office within 2 years from the date the campaign account was established, shall, within 90 days following the second anniversary of the date the campaign account was established, be disposed of pursuant to this section. Such candidate shall not accept any contributions, nor shall any person accept contributions on behalf of such candidate, after the second anniversary of the date the campaign account was established.

(4) The campaign treasurer of a candidate who withdraws his candidacy or who has been eliminated as a candidate or who has been elected to office and who has funds on deposit in a campaign savings account or certificate of deposit shall, within 7 days of the date of such withdrawal, elimination, or election, transfer such funds and accumulated interest earned thereon to the campaign account of the candidate for disposal in accordance with the provisions of this section.

(5) Any candidate required to dispose of funds pursuant to this section shall, at the option of the candidate, either

(a) Return prorata to each contributor the funds which have not been spent, or obligated to be spent, with respect to a campaign which has been conducted, or

(b) Give the funds which have not been spent, or obligated to be spent, with respect to a campaign which has been conducted,

1. In the case of a candidate for state office, to the state, to be deposited in the General Revenue Fund, or,

2. In the case of a candidate for an office of a political subdivision, to such political subdivision, to be deposited in the general fund thereof.

(6) A candidate elected to office may dispose of all of the funds in such account in the manner provided in this section or may retain on deposit in such account any amount of the funds on deposit in such account up to:

(a) $6,000, for a candidate for statewide office.

(b) $3,000, for a candidate for legislative or multicounty office.

(c) $1,500, for a candidate for countywide office or for a candidate in any election conducted on less than a countywide basis.

(d) $6,000, for a candidate for retention as a justice of the Supreme Court.

(e) $3,000, for a candidate for retention as a judge of a District Court of Appeal.

(f) $1,500, for a candidate for county court judge or circuit judge.

Any funds so retained by a candidate shall be used only for legitimate expenses in connection with his public office. Any candidate elected to office who retains funds pursuant to this subsection and who has funds remaining in such account after a subsequent election at which such candidate is reelected to office or elected to another office shall, pursuant to subsection (4), dispose of all funds on deposit in the account established to finance the subsequent campaign which funds have not been spent or obligated to be spent with respect to such subsequent campaign, except that such candidate may transfer from the campaign account established to finance his campaign in the subsequent election to the account in which the previously retained funds are deposited an amount equal to the difference between the amount retained and the amount of previously retained funds to be used for legitimate office expenses. Upon leaving public office, any person who has funds retained pursuant to this subsection remaining on deposit shall give such funds, in the case of a state officer, to the state to be deposited in the General Revenue Fund or, in the case of an officer of a political subdivision, to the political subdivision to be deposited in the general fund thereof.

(7) Any candidate required to dispose of campaign funds pursuant to this section shall do so within the time required by this section and shall, on or before the date by which such disposition is to have been made, file with the officer with whom reports are required to be filed pursuant to s. 106.07 a form prescribed by the Division of Elections listing:

(a) The name and address of each person or unit of government to whom any of the funds were distributed and the amounts thereof;

(b) The name and address of each person to whom an expenditure was made, together with the amount thereof and purpose therefor; and

(c) The amount of such funds retained by the candidate.

Such report shall be signed by the candidate and the campaign treasurer and certified as true and correct pursuant to s. 106.07.

(8) Any candidate, or any person on behalf of a candidate, who accepts contributions after such candidate has withdrawn his candidacy, after the candidate has been eliminated as a candidate or elected to office, or after the second anniversary of the date the campaign account of such candidate was established, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(9) Any candidate who is required by the provisions of this section to dispose of funds in his campaign account and who fails to dispose of the funds in the manner provided in this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 50, ch. 77-175; s. 6, ch. 79-378; s. 60, ch. 79-400.

106.142 Political advertisement defined.—"Political advertisement" is a paid expression in any mass medium, whether radio, television, newspaper, magazine, periodical, campaign literature, direct mail, or display or by means other than the spoken word in direct conversation, which shall support or oppose any candidate or issue, excluding the campaign messages designed to be worn on a person's clothing used by a candidate and his supporters and excluding a statement by an organization, in existence prior to the time during which a candidate qualifies or an issue is placed on the ballot for that election, in support of or opposition to a candidate or issue, in that organization's newsletter which newsletter is distributed only to the members of that organization.

History.—s. 45, ch. 28156, 1953; s. 2, ch. 76-49; s. 1, ch. 77-174; s. 51, ch. 77-175; s. 12, ch. 79-365.
Note.—Former s. 104.371.

106.143 Political advertisements circulated prior to election; requirements.—

(1) Any political advertisement and any campaign literature published or circulated prior to, or on the day of, any election shall be marked "paid political advertisement paid for by (name of person or organization and officer of such organization paying for such advertisement)."

(2) Any political advertisement of a candidate running for office in a general election shall express the name of the political party of which the candidate is the nominee. Any political advertisement endorsing the candidate shall expressly state whether the permission of the candidate has been obtained to advertise such endorsement.

(3) It shall be unlawful for any candidate or person on behalf of a candidate to represent that any person or organization supports such candidate, unless the person or organization so represented has given specific approval in writing to make such representation. However, this section shall not apply to:

(a) Editorial endorsement by any newspaper, radio or television station, or other recognized news medium.

(b) Publication by a party committee advocating the candidacy of its nominees.

(4) Any person who willfully violates the provisions of this section is subject to the civil penalties prescribed in s. 106.265.

History.—s. 8, ch. 26870, 1951; s. 1, ch. 61-145; s. 21, ch. 65-379; s. 57, ch. 71-136; s. 30, ch. 73-128; s. 52, ch. 77-175.
Note.—Former s. 104.37.

106.144 Endorsements by certain groups and organizations.—

(1) Any group, club, association, or other organization, except organizations affiliated with political parties regulated by chapter 103, which intends to endorse the candidacy of one or more candidates for public office, or which endorses or opposes any referendum, by means of political advertisements shall, prior to publishing, issuing, broadcasting, or otherwise distributing such advertisement, file a statement as provided by this section with the officer or officers provided in this section. Such statement shall be filed with the officer before whom each candidate that the organization intends to endorse qualified for office pursuant to law. Each statement shall contain the following information:

(a) The date the organization was chartered and the number of members during the most recent 12 months and how many of these members, if any, have paid dues;

(b) A list of current officers or directors of such organization and a statement as to their method of selection;

(c) A statement of the procedures used by such organization in determining which candidates to endorse;

(d) If political advertisements for endorsement purposes are to be paid from funds other than the dues of the membership of the organization, a statement describing the sources of such funds; and

(e) The amount of funds paid to the organization by candidates for public office, including payments in the form of dues, and the name of, and office sought by, each such candidate.

(2) Any officer, director, or other person acting on behalf of an organization who willfully violates the provisions of subsection (1) is subject to the civil penalties prescribed in s. 106.265.

History.—s. 31, ch. 73-128; s. 53, ch. 77-175.
Note.—Former s. 104.373.

106.15 Certain acts prohibited.—

(1) No person shall pay money or give anything of value for the privilege of speaking at a political meeting in the furtherance of his candidacy, nor shall anyone speaking for such a person pay money or give anything of value for such privilege.

(2) If any corporation, partnership, or other business entity is convicted of knowingly and willfully violating this section, it shall be fined not more than $10,000. If it is a domestic corporation, partnership, or other business entity, in addition to such fine and penalty, it may be dissolved; if it is a foreign or nonresident corporation, partnership, or other business entity, its right to do business in this state may be declared forfeited.

(3) Any officer, partner, employee, agent, or attorney or other representative of a corporation, partnership, or other business entity who knowingly and willfully aids or abets in a violation of this section shall be guilty of a misdemeanor of the first degree and punished as provided in s. 775.082 or s. 775.083.

(4) Any individual violating the provisions of this section shall be guilty of a misdemeanor in the first degree and punished as provided in s. 775.082 or s. 775.083.

History.—s. 15, ch. 73-128; s. 9, ch. 74-200; s. 1, ch. 77-174; s. 54, ch. 77-175; s. 61, ch. 79-400.

106.16 Limitation on certain rates and charges.—

(1) No person or corporation within the state publishing a newspaper or other periodical or operating a radio or television station or network of stations in Florida shall charge one candidate for state or county public office for political advertising in a county, or for political broadcasts in a county, at a rate in excess of that charged another political candidate.

(2) Violations of this section are punishable as provided in s. 106.14(3), (4), or (5).

History.—s. 16, ch. 73-128; s. 55, ch. 77-175.

106.17 Polls, surveys, etc., acts prohibited, exceptions, penalty.—

(1) No person or public officeholder, in the furtherance of his candidacy for nomination or election for public office in any election, shall himself, or by any other person or state or county executive committee or other political committee, or on behalf of any person, directly or indirectly, give, pay, or expend any money, give or pay anything of value, or authorize any expenditures or become pecuniarily liable for any political poll, survey, index, or measurement of any kind, or the publication, production, or distribution thereof, relating to candidacy for public office.

(2) No person shall solicit, either directly or indirectly, from any candidate for nomination or election for public office, or from any public officeholder, any money or thing of value for the conduct of any poll, survey, or index of measurement of any kind or the endorsement by any person, political committee, or group, or the publication, production or distribution thereof, relating to candidacy for public office.

(3) This section shall not apply to any poll conducted by the candidate himself or by a political committee when the candidate or political committee maintains complete jurisdiction over the said poll in all its aspects, including control of the manner, method, time, and advertisement thereof.

(4) No person or public officeholder, in the furtherance of his candidacy for nomination or election for public office in any election, shall use any state-owned aircraft as provided in chapter 287.

(5) No person or public officeholder, in the furtherance of his candidacy for nomination or election for public office in any election, shall use the services of any officer or employee of the state during working hours.

(6) Any person who violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 17, ch. 73-128; s. 1, ch. 77-174; s. 56, ch. 77-175.

106.18 When a candidate's name to be omitted from ballot.—

(1) The name of a candidate shall not be printed on the ballot for an election if the candidate is convicted of violating s. 106.19.

(2) Any candidate whose name is removed from the ballot pursuant to subsection (1) is disqualified as a candidate for office. If the disqualification of such candidate results in a vacancy in nomination, such vacancy shall be filled by a person other than such candidate in the manner provided by law.

(3) No certificate of election shall be granted to any candidate until all preelection reports required by s. 106.07 have been filed in accordance with the provisions of s. 106.07 or s. 106.20.

History.—s. 18, ch. 73-128; s. 57, ch. 77-175.

106.19 Violations by candidates, persons connected with campaigns, and political committees.—

(1) Any candidate; campaign manager, campaign treasurer, or deputy treasurer of any candidate; committee chairman, vice chairman, campaign treasurer, deputy treasurer, or other officer of any political committee; agent or person acting on behalf of any candidate or political committee; or other person who knowingly and willfully:

(a) Accepts a contribution in excess of the limits prescribed by s. 106.08;

(b) Fails to report any contribution required to be reported by this chapter;

(c) Falsely reports or deliberately fails to include any information required by this chapter; or

(d) Makes or authorizes any expenditure in violation of s. 106.11(3) or any other expenditure prohibited by this chapter;

is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any candidate, campaign treasurer, or deputy treasurer; any chairman, vice chairman, or other officer of any political committee; any agent or person acting on behalf of any candidate or political committee; or any other person who violates paragraphs (a), (b), or (d) of subsection (1) shall be subject to a civil penalty equal to three times the amount involved in the illegal act. Such penalty may be in addition to the penalties provided by subsection (1) and shall be paid into the General Revenue Fund of this state. The Division of Elections shall have authority to bring a civil action in circuit court to recover such civil penalty.

History.—s. 19, ch. 73-128; s. 57, ch. 77-175; s. 62, ch. 79-400.

106.20 Failure to submit reports; penalties.— If any campaign treasurer fails to submit a report required by s. 106.07, the filing officer who is to receive such report shall send a notice to the campaign treasurer by registered mail with return receipt requested, stating that such report is overdue and ordering such treasurer to file the report not later than 5 p.m. of the second business day after the notice is received. Copies of such notice shall be mailed in a like manner to the candidate or the chairman of the political committee appointing such treasurer. Any campaign treasurer who fails to submit such reports prior to the time designated in the notice is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 20, ch. 73-128; s. 57, ch. 77-175.

106.21 Certificates of election not to be issued upon conviction.—

(1) If a successful candidate is convicted of violating s. 106.19(1) prior to the issuance of his certificate of election, such certificate shall not be issued, and a vacancy shall be declared and filled as provided by law.

(2) If a successful candidate is convicted of violating s. 106.19(1) subsequent to the issuance of a certificate of election but prior to taking office, such certificate shall be rescinded by the issuing body and declared void, and a vacancy in office shall exist and be filled as provided by law.

History.—s. 21, ch. 73-128; s. 57, ch. 77-175.

106.22 Duties of the Division of Elections.—It shall be the duty of the Division of Elections to:

(1) Prescribe forms for statements and other information required to be filed by this chapter. Such forms shall be furnished by the Department of State or office of the supervisor of elections to persons required to file such statements and information with such agency.

(2) Prepare and publish manuals or brochures setting forth recommended uniform methods of bookkeeping and reporting, and including appropriate portions of the Election Code, for use by persons required by this chapter to file statements.

(3) Develop a filing, coding, and cross-indexing system consonant with the purposes of this chapter.

(4) Preserve statements and other information required to be filed with the division pursuant to this chapter for a period of 10 years from date of receipt.

(5) Prepare and publish such reports as it may deem appropriate.

(6) Make, from time to time, audits and field investigations with respect to reports and statements filed under the provisions of this chapter and with respect to alleged failures to file any report or statement required under the provisions of this chapter.

(7) Investigate apparent or alleged violations of this chapter and recommend legal disposition of the violation as provided in s. 106.25.

(8) Employ such personnel or contract for such services as are necessary to adequately carry out the intent of this chapter.

(9) Provide adequate staffing and facilities for the Florida Elections Commission created by s. 106.24.

(10) Prescribe rules and regulations to carry out the provisions of this chapter. Such rules shall be prescribed pursuant to chapter 120.

(11) Make an annual report to the Legislature concerning activities of the division and recommending improvements in the election code.

History.—s. 22, ch. 73-128; s. 57, ch. 77-175; s. 13, ch. 79-365.

106.23 Powers of the Division of Elections.—

(1) In order to carry out the responsibilities prescribed by this chapter, the Division of Elections is empowered to subpoena and bring before its duly authorized representatives any person in the state, or any person doing business in the state, or any person who has filed or is required to have filed any application, document, papers or other information with an office or agency of this state or a political subdivision thereof and to require the production of any papers, books, or other records relevant to any investigation, including the records and accounts of any bank or trust company doing business in this state. Duly authorized representatives of the division are empowered to administer all oaths and affirmations in the manner prescribed by law to witnesses who shall appear before them concerning any relevant matter. Should any witness fail to respond to the lawful subpoena of the division or, having responded, fail to answer all lawful inquiries or to turn over evidence that has been subpoenaed, the division may file a complaint before any circuit court of the state setting up such failure on the part of the witness. On the filing of such complaint, the court shall take jurisdiction of the witness and the subject matter of said complaint and shall direct the witness to respond to all lawful questions and to produce all documentary evidence in his possession which is lawfully demanded. The failure of any witness to comply with such order of the court shall constitute a direct and criminal contempt of court, and the court shall punish said witness accordingly. However, the refusal by a witness to answer inquiries or turn over evidence on the basis that such testimony or material will tend to incriminate such witness shall not be deemed refusal to comply with the provisions of this chapter.

(2) The Division of Elections shall provide advisory opinions when requested by any supervisor of elections, candidate, local officer having election-related duties, political party, political committee, committee of continuous existence, or other person or organization engaged in political activity, relating to any provisions or possible violations of Florida election laws with respect to actions such supervisor, candidate, local officer having election-related duties, political party, committee, person, or organization has taken or proposes to take. A written record of all such opinions issued by the division, sequentially numbered, dated, and indexed by subject matter, shall be retained. A copy shall be sent to said person or organization upon request. Any such person or organization, acting in good faith upon such an advisory opinion, shall not be subject to any criminal penalty provided for in this chapter. The opinion, until amended or revoked, shall be binding on any person or organization who sought the opinion or with reference to whom the opinion was sought, unless material facts were omitted or misstated in the request for the advisory opinion.

History.—s. 23, ch. 73-128; s. 3, ch. 76-233; s. 58, ch. 77-175.

106.24 Florida Elections Commission; membership; powers; duties.—

(1) There is created within the Department of State a Florida Elections Commission, hereinafter referred to as the commission. It shall be composed of seven members, including a chairman, all of whom shall be appointed by the Governor with the approval of three members of the cabinet and subject to confirmation by the Senate. Members of the commission appointed by the Governor shall serve for 4-year terms, except that, of the original appointees, three members shall be appointed for terms of 2 years each and their successors shall be appointed for full 4-year terms. The chairman of the commission shall be designated by the Governor. Vacancies on the commission shall be filled for the unexpired terms in the manner of the original appointment to the vacated position. Members of the commission may be reappointed to succeed themselves. Members of the commission shall be paid travel and per diem as provided in s. 112.061 while in performance of their duties and in traveling to, from, and upon same. Of the seven members of the commission, no more than four members shall be from the same political party at any one time.

(2) No member of the commission shall be a member of any county, state, or national committee of a political party; be an officer in any partisan political club or organization; or hold, or be a candidate for, any other public office. No person shall be

appointed as a member of the commission who has held an elective public office or office in a political party within the year immediately preceding his appointment.

(3) The commission shall convene at the call of its chairman or at the call of the Department of State. The presence of five members is required to constitute a quorum, and the affirmative vote of four of the members present is required for any action or recommendation by the commission. The commission may meet in any city of the state.

(4) The Division of Elections shall provide the necessary staff and facilities for the commission to carry out its duties pursuant to this chapter.

History.—s. 24, ch. 73-128; s. 10, ch. 74-200; s. 59, ch. 77-175; s. 63, ch. 79-400.

106.25 Reports of alleged violations to Department of State; disposition of findings.—

(1) Jurisdiction to investigate and determine violations of this chapter is vested in the Division of Elections and the Florida Elections Commission; however, nothing in this section shall limit the jurisdiction of any other officers or agencies of government empowered by law to investigate, act upon, or dispose of alleged violations of this code.

(2) The Division of Elections shall investigate and report to the Florida Elections Commission all violations of this chapter. Any person having information of any violation of this chapter shall file a sworn complaint with the Division of Elections. Such sworn complaint shall state whether a complaint of the same violation has been made to any state attorney.

(3) For the purposes of Florida Elections Commission jurisdiction, a violation shall mean the willful performance of an act prohibited by this chapter or the willful failure to perform an act required by this chapter.

(4) The division shall, by written report filed with the commission, find an apparent violation or no apparent violation of this chapter, whereupon the commission shall make a preliminary determination to consider the matter or to refer the matter to the State Attorney for the judicial circuit in which the alleged violation occurred.

(a) It shall be the duty of a state attorney receiving a complaint referred by the commission to investigate same promptly and thoroughly; to undertake such criminal or civil actions as are justified by law; and to report to the commission the results of such investigation, the action taken, and the disposition thereof.

(b) The failure or refusal of a state attorney to prosecute or to initiate action upon a complaint or a referral by the commission shall not bar further action by the commission under this chapter.

(5) All sworn complaints filed pursuant to this chapter with the Division of Elections or the Florida Elections Commission, all division investigations and investigative reports or other papers of the division or commission with respect to violations of this chapter, and all proceedings of the commission with respect to violations of this chapter shall be confidential, shall be exempt from the provisions of s. 119.07(1) and chapter 286, and shall be exempt from publication in the Florida Administrative Weekly of any notice or agenda with respect to any proceeding relating to such violations. Upon entry of an order by the commission disposing of a case before it, the entire proceedings and records relating to such case shall become a public record, except that if an order disposing of a case is entered within 30 days prior to the date of the election with respect to which the alleged violation occurred, such order and the proceedings and records relating to such case shall not become public until noon of the day following such election. When two or more persons are being investigated by the commission with respect to an alleged violation of this chapter, the commission shall not publicly enter an order disposing of the findings of the case until the disposition of the entire case has been determined. However, once the confidentiality of any case has been breached, the person or persons under investigation shall have the right to waive the confidentiality of the case, thereby opening up the proceedings and records to the public. Any person who discloses any information or matter made confidential by the provisions of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) Any person who files a complaint pursuant to this section while knowing that the allegations contained in such complaint are false or without merit shall be guilty of a misdemeanor of the first degree and punished as provided in s. 775.082 or s. 775.083.

History.—s. 25, ch. 73-128; s. 11, ch. 74-200; s. 60, ch. 77-175; s. 3, ch. 78-403.

106.26 Powers of commission; rights and responsibilities of parties; findings by commission.—

(1) The commission shall, pursuant to rules adopted and published in accordance with chapter 120, consider all matters reported to it by the Division of Elections or otherwise coming to its attention. In order to carry out its duties, the commission may, whenever required, issue subpoenas and other necessary process to compel the attendance of witnesses before it. The chairman thereof shall issue said process on behalf of the commission. The chairman or any other member of the commission may administer all oaths and affirmations in the manner prescribed by law to witnesses who shall appear before the commission for the purpose of testifying in any matter about which the commission may desire evidence. The commission, whenever required, may also compel by subpoena the production of any books, letters, or other documentary evidence it may desire to examine in reference to any matter before it. The sheriffs in the several counties shall make such service and execute all process or orders when required by the commission. Sheriffs shall be paid for these services by the commission as provided for in s. 30.231. Any person who is served with a subpoena to attend a hearing of the commission also shall be served with a general statement informing him of the subject matter of the commission's investigation or inquiry and a notice that he may be accompanied at the hearing by counsel of his own choosing.

(2) Should any witness fail to respond to the lawful subpoena of the commission or, having responded, fail to answer all lawful inquiries or to turn over evidence that has been subpoenaed, the commission may file a complaint before any circuit court of the state setting up such failure on the part of the wit-

ness. On the filing of such complaint, the court shall take jurisdiction of the witness and the subject matter of said complaint and direct the witness to respond to all lawful questions and to produce all documentary evidence in his possession which is lawfully demanded. The failure of any witness to comply with such order of the court shall constitute a direct and criminal contempt of court, and the court shall punish said witness accordingly.

(3) All witnesses summoned before the commission, other than on the request of the subject of a hearing, shall receive reimbursement for travel expenses and per diem at the rates provided in s. 112.061. However, the fact that such reimbursement is not tendered at the time the subpoena is served shall not excuse the witness from appearing as directed therein.

(4) Upon request of any person having business before the commission, and with the approval of a majority of the commission, the chairman or, in his absence, the vice chairman shall instruct all witnesses to leave the hearing room and retire to a designated place. The witness will be instructed by the chairman or, in his absence, the vice chairman not to discuss his testimony or the testimony of any other person with anyone until the hearing has been adjourned and the witness discharged by the chairman. The witness shall be further instructed that should any person discuss or attempt to discuss the matter under investigation with him after receiving such instructions he shall bring such matter to the attention of the commission. No member of the commission or representative thereof may discuss any matter or matters pertinent to the subject matter under investigation with witnesses to be called before the commission from the time that these instructions are given until the hearing has been adjourned and the witness discharged by the chairman.

(5) The commission, when interrogating witnesses as provided herein, shall cause a record to be made of all proceedings in which testimony or other evidence is demanded or adduced. This record shall include rulings of the chair, questions of the commission and its counsel, testimony or responses of witnesses, sworn written statements submitted to the commission, and all other pertinent matters. A witness at a hearing, upon his advance request and at his own expense, shall be furnished a certified transcript of all testimony taken at the hearing.

(6) Before or during a hearing, any person noticed to appear before the commission, or his counsel, may file with the commission, for incorporation into the record of the hearing, sworn written statements relevant to the purpose, subject matter, and scope of the commission's investigation or inquiry. Any such person shall, however, prior to filing such statement, consent to answer questions from the commission regarding the contents of the statement.

(7) Any person whose name is mentioned or who is otherwise identified during a hearing being conducted by the commission and who, in the opinion of the commission, may be adversely affected thereby may, upon his request or upon the request of any member of the commission, appear personally before the commission and testify on his own behalf or, with the commission's consent, file a sworn written statement of facts or other documentary evidence for incorporation into the record of the hearing. Any such person shall, however, prior to filing such statement, consent to answer questions from the commission regarding the contents of the statement.

(8) Upon the consent of a majority of its members, the commission may permit any other person to appear and testify at a hearing or submit a sworn written statement of facts or other documentary evidence for incorporation into the record thereof. No request to appear, appearance, or submission shall limit in any way the commission's power of subpoena. Any such person shall, however, prior to filing such statement, consent to answer questions from the commission regarding the contents of the statement.

(9) Any person who appears before the commission pursuant to this section shall have all the rights, privileges, and responsibilities of a witness appearing before a court of competent jurisdiction.

(10) If the commission fails in any material respect to comply with the requirements of this section, any person subject to subpoena or subpoena duces tecum who is injured by such failure shall be relieved of any requirement to attend the hearing for which the subpoena was issued or, if present, to testify or produce evidence therein; and such failure shall be a complete defense in any proceeding against such person for contempt or other punishment.

(11) Whoever willfully affirms or swears falsely in regard to any material matter or thing before the commission shall be guilty of a felony in the third degree and punished as provided by s. 775.082, s. 775.083, or s. 775.084.

(12) At the conclusion of its hearings concerning an alleged violation, the commission shall immediately begin deliberations on the evidence presented at such hearings and shall proceed to determine by affirmative vote of four of the members present whether a violation of this chapter has occurred. Such determination shall promptly be made public. The order shall contain a finding of violation or no violation, together with brief findings of pertinent facts, and the assessment of such civil penalties as are permitted by this chapter or no such assessment and shall bear the signature or facsimile signature of the chairman or vice chairman.

History.—s. 26, ch. 73-128; s. 12, ch. 74-200; s. 60, ch. 77-175; s. 4, ch. 78-403; s. 64, ch. 79-400.

106.265 Civil penalties.—

(1) The commission is authorized upon finding of violation of this chapter to impose civil penalties in the form of fines not to exceed $1,000 per count. In determining the amount of such civil penalties, the commission shall consider, among other mitigating and aggravating circumstances:

(a) The gravity of the act or omission;

(b) Any previous history of similar acts or omissions;

(c) The appropriateness of such penalty to the financial resources of the person, political committee, or committee of continuous existence; and

(d) Whether the person, political committee, or committee of continuous existence has shown good

faith in attempting to comply with the provisions of this chapter.

(2) If any person, political committee, or committee of continuous existence fails or refuses to pay to the commission any civil penalties assessed pursuant to the provisions of this section, the commission may bring an action in any circuit court of this state to enforce such penalty.

(3) Any civil penalty collected pursuant to the provisions of this section shall be deposited into the General Revenue Fund.

History.—s. 61, ch. 77-175.

106.27 Determinations by commission; legal disposition.—

(1) Criminal proceedings for violations of this chapter may be brought in the appropriate court of competent jurisdiction. Any such action brought under this chapter shall be advanced on the docket of the court in which filed and put ahead of all other actions.

(2) Civil actions may be brought for relief, including permanent or temporary injunctions, restraining orders, or any other appropriate order for the imposition of civil penalties provided by this chapter. Such civil actions shall be brought in the appropriate court of competent jurisdiction, and the venue shall be in the county in which the alleged violation occurred or in which the alleged violator or violators are found, reside, or transact business. Upon a proper showing that such person or political committee has engaged, or is about to engage, in prohibited acts or practices, a permanent or temporary injunction, restraining order, or other order shall be granted without bond by such court, and the civil fines provided by this chapter may be imposed.

(3) Civil actions may be brought to enjoin temporarily the issuance of certificates of election to successful candidates who are alleged to have violated the provisions of this chapter. Such injunctions shall issue upon a showing of probable cause that such violation has occurred. Such actions shall be brought in the circuit court for the circuit in which is located the officer before whom the candidate qualified for office.

History.—s. 27, ch. 73-128; s. 13, ch. 74-200; s. 62, ch. 77-175.

106.28 Limitation of actions.—Actions for violation of this chapter may be commenced before 2 years have elapsed from the date of the violation.

History.—s. 28, ch. 73-128.

106.29 Reports by political parties.—

(1) Each state and county executive committee of any political party regulated by chapter 103 shall file regular reports of all contributions received and all expenditures made by such committee. Such reports shall contain the same information as reports required of candidates by s. 106.07. Each state and county executive committee shall file such reports quarterly, except that, during the period from the last day for candidate qualifying until the general election, each state executive committee shall file reports on the Monday of each week, and each county executive committee shall file reports on the first Monday of each month. State executive committees shall file their reports with the Division of Elections. County executive committees shall file their reports with the supervisor of elections in the county in which such committee exists.

(2) The chairman and treasurer of each committee shall certify as to the correctness of each report filed by them on behalf of such committee. Any committee chairman or treasurer who certifies the correctness of any report while knowing that such report is incorrect, false, or incomplete is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any contribution received by a state or county committee less than 5 days before an election shall not be used or expended in behalf of any candidate, issue, or political party participating in such election.

(4) No state or county executive committee, in the furtherance of any candidate or political party, directly or indirectly, shall give, pay, or expend any money, give or pay anything of value, authorize any expenditure, or become pecuniarily liable for any expenditures prohibited by this chapter. However, the contribution of funds by one executive committee to another, to established party organizations for legitimate party or campaign purposes, or to individual candidates of that party in general elections in amounts exceeding those set forth in s. 106.08 shall not be prohibited, but all such contributions shall be recorded and accounted for in the reports of the contributor and recipient.

History.—s. 29, ch. 73-128; s. 14, ch. 74-200; s. 62, ch. 77-175; s. 65, ch. 79-400.

CHAPTER 107

CONVENTIONS FOR RATIFYING OR REJECTING PROPOSED AMENDMENTS TO CONSTITUTION OF UNITED STATES

107.01 Conventions constituted.—Whenever the Congress shall propose, to conventions in the several states, an amendment to the Constitution of the United States, for ratification or rejection, and shall not have provided the manner in which such conventions shall be constituted, the conventions in this state shall be chosen and constituted in the manner in this chapter prescribed and shall function in accordance with this chapter.

History.—s. 1, ch. 16180, 1933; CGL 1936 Supp. 319(1).

107.02 Delegates.—Conventions shall consist of 67 delegates from the state at large. Each delegate shall possess the qualifications of a member of the House of Representatives of the Legislature of this state; and each shall hold office from the date of his election and until the convention shall have discharged the duties for which it was selected.

History.—s. 2, ch. 16180, 1933; CGL 1936 Supp. 319(2).

107.03 Election of delegates.—

(1) The delegates composing the convention shall be elected at a special election which shall be held in each county of this state on a date to be fixed by the Governor, not less than 5 months and not more than 10 months after the date of the proposal by the Congress. The Governor shall issue his call for such election at least 45 days prior to the date thereof, which, as soon as issued, shall be published by the Department of State at least one time, in a newspaper of general circulation in each county. Such election shall be conducted, except as herein specified, in all respects in the manner and form prescribed by the laws of this state for holding general elections.

(2) All electors who were duly qualified to vote in the last preceding general election shall be qualified to vote in such special election without further registration. The registration books in each county shall be opened 10 days after the Governor shall issue his call and shall remain open, in each county, until and including the 10th day before the election, during which time all persons who have not been registered, though entitled to be, or who shall have become entitled to registration since the last general election, shall be permitted to register. During the time in which the registration books are required to be kept open by this section, any registered voter shall be permitted to qualify to vote in such election.

(3) Provided, that if any general election be held in this state within 1 year after the date of the proposal by the Congress, such delegates shall be chosen at such general election and all electors qualified to vote in such general election shall be qualified to vote for such delegates, unless the Governor, by his proclamation, shall require such delegates to be chosen at a special election, in which event they shall be elected as herein provided.

History.—s. 3, ch. 16180, 1933; CGL 1936 Supp. 319(3); ss. 10, 35, ch. 69-106.

107.04 Candidates file application; fee and petition for name on official ballot.—

(1) Any person desiring to become a candidate for election as a delegate to said convention shall file a sworn application with the Department of State on such form as that department shall prescribe, not less than 20 days before the date of election, in which shall be stated his name in full, his residence, his age, his color and his occupation. Such application shall also state, under oath, that the applicant is a citizen of the United States and of the state and that he is a qualified elector of the county in which he resides. The applicant may also state whether or not he favors the ratification of the proposed amendment or opposes it and whether or not he desires his name to appear upon the ballot as favoring or opposing such amendment or as unpledged.

(2) If the applicant shall request that his name appear on the ballot as favoring or as opposing the amendment, his application shall be accompanied by a qualification fee of $25 and by one or more petitions, requesting that his name be placed upon the official ballot, and signed by not fewer than 500 qualified electors. It shall be permissible for any number of qualified voters to join in one or more petitions requesting the placing on the official ballot of the names of more than one candidate but not exceeding the total number to be elected. Any applicant may withdraw his name at any time before the ballots are actually printed.

History.—s. 4, ch. 16180, 1933; CGL 1936 Supp. 319(4); ss. 10, 35, ch. 69-106.

107.05 Official ballots.—The ballots shall be prepared by the Department of State and distributed by it to the county commissioners in the several counties at least 10 days prior to such election. They shall contain the substance of the proposed amendment and in alphabetical order:

(1) The names of all candidates who shall have declared in favor of the ratification of such amendment;

(2) The names of all candidates who shall have declared against the ratification of such amendment; and

(3) The names of all candidates who shall have qualified without pledging themselves either for or against the amendment.

When delegates are elected at general elections as provided in s. 107.03, such matters shall be printed on the general election ballots. In either event, in addition to the names of unpledged candidates print-

ed on said ballots and whether there be any such names on said ballots or not, there shall be provided, under subsection (3) blank lines in equal number to the number of persons who may be elected as such delegates.

History.—s. 5, ch. 16180, 1933; CGL 1936 Supp. 319(5); ss. 10, 35, ch. 69-106.

107.06 Clerks and inspectors; compensation fixed.—The board of county commissioners of each county shall appoint clerks and inspectors of election for such special election in accordance with the general election laws, except that such appointments may be made at any time more than 5 days prior to the election; whereupon they shall publish the names of such inspectors and clerks in a newspaper printed in the county. The clerks and inspectors of election shall receive compensation at the rate of $5 per diem for each day actually and necessarily served in performing their duties as such. Such compensation, together with other lawful expenses incurred by the several boards of county commissioners, shall be paid as provided in s. 107.11, after the several boards of county commissioners shall have certified the same to the Elections Canvassing Commission and such accounts shall have been approved by such Elections Canvassing Commission.

History.—s. 6, ch. 16180, 1933; CGL 1936 Supp. 319(6); ss. 10, 35, ch. 69-106.

107.07 Canvass of returns.—Within 3 days after the date of the special elections the county commissioners shall meet and canvass the returns thereof in their respective counties and transmit the same to the Department of State. Within 14 days after the date of the special elections the Elections Canvassing Commission shall meet and canvass such returns. The commission shall thereupon declare the 67 candidates who receive the greatest number of votes in the state at large to have been elected as delegates to the convention, and shall immediately issue a certificate of election to each of such persons. In case of a tie the commission shall select the delegates from those receiving the tie votes.

History.—s. 7, ch. 16180, 1933; CGL 1936 Supp. 319(7); ss. 10, 35, ch. 69-106.

107.08 Convention time and place.—The delegates to the convention shall meet in such place as shall be provided for that purpose by the Department of State, at the state capitol at Tallahassee on the second Tuesday in the month following their election, at 12 noon. They shall thereupon constitute a convention to ratify or reject the proposed amendment to the Constitution of the United States.

History.—s. 8, ch. 16180, 1933; CGL 1936 Supp. 319(8); ss. 10, 35, ch. 69-106.

107.09 Convention powers; quorum; compensation.—

(1) The convention shall have power to ratify or reject the proposed amendment to the Constitution of the United States for which it shall have been selected; to choose a president and a secretary and all other necessary officers, clerks and attaches to fill vacancies in its membership; and to make rules governing its procedure. It shall be the sole judge of the election and qualifications of its members. A majority of the total number of delegates elected to the convention shall constitute a quorum.

(2) The delegates to such convention shall serve without compensation or expenses; but the secretary and other officers, clerks and attaches shall receive such compensation as may be fixed by the convention.

(3) The convention shall have no other power than that hereby expressly conferred or necessarily incident to the purpose of its creation; any other action attempted to be taken by it shall be utterly null, void and of no effect.

History.—s. 9, ch. 16180, 1933; CGL 1936 Supp. 319(9); s. 28, ch. 77-104.

107.10 Certification of convention action.—When the convention shall have agreed, by "yea" and "nay" vote of a majority of the total number of delegates elected, to the ratification or rejection of the proposed amendment to the Constitution of the United States, a certificate to that effect shall be executed by its president and secretary and filed with the Department of State of Florida. A copy of the minutes of its proceedings, likewise signed by such officials, shall also be filed with the Department of State. The Department of State of Florida, after the filing of such certificate, shall transmit a copy thereof, certified under the Great Seal of Florida, to the Secretary of State of the United States.

History.—s. 10, ch. 16180, 1933; CGL 1936 Supp. 319(10); ss. 10, 35, ch. 69-106.

107.11 Appropriation for expenses.—For the purpose of defraying the expenses of preparing for, conducting, holding and declaring the result of the election provided for by this chapter and also for the purpose of defraying the expenses allowed by this chapter for the holding of sessions of the convention as herein provided, to be audited by the Comptroller, there is appropriated out of the General Revenue Fund of the State of Florida a sufficient sum of money for the payment of all amounts necessary to be expended under the terms of this chapter, which sums of money shall be disbursed by the State of Florida pursuant to warrants drawn by the Comptroller upon the Treasurer for the payment of same.

History.—s. 11, ch. 16180, 1933; CGL 1936 Supp. 319(11).

TITLE X

PUBLIC OFFICERS, EMPLOYEES, AND RECORDS

CHAPTER 110

STATE EMPLOYMENT

PART I GENERAL STATE EMPLOYMENT PROVISIONS (ss. 110.105-110.129)

PART II CAREER SERVICE SYSTEM (ss. 110.201-110.233)

PART III ADMINISTRATIVE REVIEW (ss. 110.301-110.309)

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PART I

GENERAL STATE EMPLOYMENT PROVISIONS

110.105 Employment policy of the state.—

(1) It is the purpose of this chapter to establish a system of personnel management. This system shall provide means to recruit, select, train, develop, and maintain an effective and responsible work force and shall include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits, discipline, discharge, employee performance evaluations, affirmative action, and other related activities.

(2) All appointments, terminations, assignments and maintenance of status, compensation, privileges, and other terms and conditions of employment in state government shall be made without regard to age, sex, race, religion, national origin, political affiliation, marital status, or handicap, except when a specific sex, age, or physical requirement constitutes a bona fide occupational qualification necessary to proper and efficient administration.

(3) Except as expressly provided by law, there shall be no Florida residence requirement for any person as a condition precedent to employment by the state; however, preference may be given to Florida residents in hiring.

(4) This chapter contains requirements and guides for establishing and maintaining a system of personnel administration on a merit basis. The system of personnel administration shall be implemented so as to permit state agencies to be eligible to receive federal funds.

(5) Nothing in this chapter shall be construed either to infringe upon or to supersede the rights guaranteed public employees under chapter 447.

History.—s. 20, ch. 79-190.

110.107 Definitions.—As used in this chapter, unless the context otherwise requires:

(1) "Department" means the Department of Administration.

(2) "Secretary" means the Secretary of Administration.

History.—s. 20, ch. 79-190.

110.109 Productivity improvement.—

(1) In order to provide for the improvement of productivity and human resources management, the department shall have the authority to conduct agency personnel administration and management reviews to assist agencies in identifying areas of rec-

ommended improvement. A copy of any such reviews made by the department shall be submitted to the Legislature and the Auditor General.

(2) It shall be the duty of the department to assist the Governor and state agencies in making a detailed study of each of the several state agencies, with a view toward ascertaining and determining the effectiveness and efficiency of agency personnel programs and human resources management. A copy of any such study made by the department shall be submitted to the Legislature and the Auditor General.

(3) The department shall represent the public interest in the improvement of administration by providing training programs aimed at improving managerial, administrative, and technical skills.

History.—s. 20, ch. 79-190.

110.112 Affirmative action; equal employment opportunity.—

(1) It shall be the policy of the state to assist in providing the assurance of equal employment opportunity through programs of affirmative and positive action that will allow full utilization of women and minorities.

(2) Each agency head shall develop and implement affirmative action programs.

(3) An affirmative action-equal employment opportunity officer shall be appointed by each agency head.

(4) Each agency head shall report annually to the Governor on implementation, continuance, updating, and results of the agency affirmative action programs.

(5) The state, its agencies and officers shall ensure freedom from discrimination in employment as provided by the Human Rights Act of 1977, by s. 112.044, and by this chapter.

(6) Any individual claiming to be aggrieved by an unlawful employment practice may file a complaint with the Florida Commission on Human Relations as provided by s. 23.167(10).

History.—s. 20, ch. 79-190.
cf.—ss. 23.161-23.167 Human Rights Act of 1977.

110.113 Pay periods for state officers and employees.—The normal pay period for salaries of state officers and employees shall be 1 month. The Department of Banking and Finance shall issue either monthly or biweekly state warrants for salaries by budget entity as requested by the head of each state agency and approved by the Executive Office of the Governor after consultation with the Department of Banking and Finance.

History.—s. 20, ch. 79-190.

110.114 Employee wage deductions.—

(1) The state or any of its departments, bureaus, commissions, and officers are authorized and permitted, with the concurrence of the Department of Banking and Finance, to make deductions from the salary or wage of any employee or employees in such amount as shall be authorized and requested by such employee or employees and for such purpose as shall be authorized and requested by such employee or employees and shall pay such sums so deducted as directed by such employee or employees. The concurrence of the Department of Banking and Finance shall not be required for the deduction of a certified bargaining agent's membership dues deductions pursuant to s. 447.303 or any deductions required by a collective bargaining agreement.

(2) The approval of and making of approved deductions shall not require the approval or making of other requested deductions.

(3) Notwithstanding the provisions of subsections (1) and (2), the deduction of membership dues deductions as defined in s. 447.203(15) for an employee organization as defined in s. 447.203(11) shall be authorized or permitted only for an organization which has been certified as an exclusive bargaining agent pursuant to chapter 447 for a unit of state employees. Such deductions shall be subject to the provisions of s. 447.303.

(4) Records of employee requests and employer authorizations for deductions from an employee's wage or salary, or the legal authority for the deduction, shall be maintained by each employing entity.

History.—s. 20, ch. 79-190.

110.115 Employees of historical commissions; other state employment permitted.—

(1) Staff members or employees of state historical commissions are hereby permitted or authorized to teach courses and hold part-time positions at state universities and be paid compensation from more than one appropriation if such teaching or employment does not interfere with the normal duties of such commission staff members or employees. Any agreement or contract relative to such employment must have the approval of the historical commission and the president of the university.

(2) Any provision of law which prohibits the payment of salaries or compensation from more than one appropriation shall not apply to the provisions of this section.

History.—s. 20, ch. 79-190.

110.116 Personnel information system; payroll procedures.—The Department of Administration shall establish and maintain, in coordination with the payroll system of the Department of Banking and Finance, a complete personnel information system for all authorized and established positions in the state service, with the exception of employees of the Legislature. The specifications shall be developed in conjunction with the payroll system of the Department of Banking and Finance and in coordination with the Auditor General. The Department of Banking and Finance shall determine that the position occupied by each employee has been authorized and established in accordance with the provisions of s. 216.251. The Department of Administration shall develop and maintain a position numbering system that will identify each established position, and such information shall be a part of the payroll system of the Department of Banking and Finance. With the exception of employees of the Legislature, this system shall include all career service positions and those positions exempted from career service provisions, notwithstanding the funding source of the salary payments, and information regarding persons receiving payments from other sources. Necessary revisions shall be made in the personnel and payroll

procedures of the state to avoid duplication insofar as is feasible. A report shall be furnished to the head of each state agency periodically which shall include, but not be limited to, each employee's name, length of service with the state, current salary, and position classification and whether the employee is overlapped, in a multiple-filled position, or hired out-of-class. Each list shall be organized by budget entity to show the employees or vacant positions within each budget entity. This list shall be available to the Speaker of the House of Representatives and the President of the Senate upon request.

History.—s. 20, ch. 79-190.

110.117 Paid holidays.—

(1) The following holidays shall be paid holidays observed by all state branches and agencies:

(a) New Year's Day.
(b) Memorial Day.
(c) Independence Day.
(d) Labor Day.
(e) Veterans' Day, November 11.
(f) Thanksgiving Day.
(g) Friday after Thanksgiving.
(h) Christmas Day.

(i) If any of these holidays falls on Saturday, the preceding Friday shall be observed as a holiday. If any of these holidays falls on Sunday, the following Monday shall be observed as a holiday.

(2) The secretary may designate any one other working day as a paid holiday for employees in the Career Service System or may declare, when appropriate, a state day of mourning in observance of the death of a person in recognition of service rendered to the state or nation.

History.—s. 20, ch. 79-190.

110.118 Administrative leave for certain athletic competition.—

(1) As used in this section, the term "United States team" includes any group leader, coach, official, or athlete who is a member of the official delegation of the United States to world, Pan American, or Olympic competition.

(2) Any employee of the state who qualifies as a member of the United States team for athletic competition on the world, Pan American, or Olympic level in a sport contested in either Pan American or Olympic competition shall be granted administrative leave without loss of pay or other benefits or rights for the purpose of preparing for and engaging in the competition. In no event shall the paid leave under this section exceed the period of the official training camp and competition combined or 30 calendar days a year, whichever is less.

(3) The department may adopt any rule necessary to carry out the purposes of this section.

History.—s. 20, ch. 79-190.

110.121 Sick leave pool.—Each department or agency of the state which has authority to adopt rules governing the accumulation and use of sick leave for employees and which maintains accurate and reliable records showing the amount of sick leave which has been accumulated and is unused by employees may, in accordance with guidelines which shall be established by the Department of Administration, promulgate rules for the establishment of a plan allowing participating full-time employees to pool sick leave and allowing any sick leave thus pooled to be used by any participating employee who has used all of the sick leave that has been personally accrued by him. Although not limited to the following, such rules shall provide:

(1) That full-time employees shall be eligible for participation in the sick leave pool after 1 year of employment with the state or agency of the state; provided that such employee has accrued a minimum amount of unused sick leave, which minimum shall be established by rule.

(2) That participation in the sick leave pool shall, at all times, be voluntary on the part of the employees.

(3) That any sick leave pooled shall be removed from the personally accumulated sick leave balance of the employee contributing such leave.

(4) That any sick leave in the pool which leave is used by a participating employee shall be used only for the employee's personal illness, accident, or injury.

(5) That a participating employee shall not be eligible to use sick leave accumulated in the pool until all of his personally accrued sick, annual, and compensatory leave has been used.

(6) A maximum number of days of sick leave in the pool which any one employee may use.

(7) That a participating employee who uses sick leave from the pool shall not be required to recontribute such sick leave to the pool, except as otherwise provided herein.

(8) That an employee who cancels his membership in the sick leave pool shall not be eligible to withdraw the days of sick leave he has contributed to the pool.

(9) That an employee who transfers from one position in state government to another position in state government may transfer from one pool to another if the eligibility criteria of the pools are comparable or the administrators of the pools have agreed on a formula for transfer of credits.

(10) That alleged abuse of the use of the sick leave pool shall be investigated, and, on a finding of wrongdoing, the employee shall repay all of the sick leave credits drawn from the sick leave pool and shall be subject to such other disciplinary action as is determined by the agency head.

History.—s. 1, ch. 79-306.

110.122 Terminal payment for accumulated sick leave.—

(1) All state branches, departments, and agencies which have the authority to establish or approve personnel policies for employees and to employ personnel and establish the conditions of their employment shall establish policies to provide terminal "incentive" pay for accumulated and unused sick leave to each employee upon normal or regular retirement for reason other than disability or upon termination of employment, or to the employee's beneficiary if service is terminated by death, provided such retirement, termination, or death occurs after 10 years of creditable state employment.

(2) The employing entity shall establish and publish rules governing the accumulation and use of

sick leave and maintain accurate and reliable records showing the amount of sick leave which has accumulated and is unused by the employee at the time of retirement, death, or termination.

(3) The payments authorized by this section shall be determined by using the rate of pay received by the employee at the time of retirement, termination, or death, applied to the sick leave time for which the employee is qualified to receive terminal "incentive" pay under the rules adopted by the department pursuant to the provisions of this section. Rules and policies adopted pursuant to this section shall permit terminal pay for sick leave equal to one-eighth of all unused sick leave credit accumulated prior to October 1, 1973, plus one-fourth of all unused sick leave accumulated on or after October 1, 1973. However, terminal pay allowable for unused sick leave accumulated on or after October 1, 1973, shall not exceed a maximum of 480 hours of actual payment. Employees shall be required to use all sick leave accumulated prior to October 1, 1973, before using sick leave accumulated on or after October 1, 1973.

(4) The payments made pursuant to this section shall not be considered in any state-administered retirement system as salary payments and shall not be used in determining the average final compensation of an employee in any state-administered retirement system.

(5) Any employee:

(a) Who is found guilty in a court of competent jurisdiction of committing, aiding, or abetting any embezzlement or theft from the employee's employer or bribery in connection with the employment, committed prior to retirement or 10-year normal creditable termination;

(b) Whose employment is terminated by reason of the employee having admitted committing, aiding, or abetting an embezzlement or theft from his employer or by reason of bribery or for cause;

(c) Who, prior to 10-year normal creditable termination or retirement is adjudged by a court of competent jurisdiction to have violated any state law against strikes by public employees; or

(d) Who has been found guilty by a court of competent jurisdiction of violating any state law prohibiting strikes by public employees,

shall forfeit all rights and benefits under this section. An employee whose employment terminates as a result of an act committed subject to this subsection or for cause shall not be given credit for unused sick leave accumulated prior to termination should the employee be reemployed at a later date.

History.—s. 20, ch. 79-190.

110.123 State group insurance program.—

(1) TITLE.—This section may be cited as the "State Group Insurance Program Law."

(2) DEFINITIONS.—As used in this section, unless the context otherwise requires:

(a) "State group insurance program" or "program" means the package of insurance plans offered to state officers and employees, retired state officers and employees and surviving spouses of deceased state officers and employees pursuant to this section, including the state group health insurance plan and other plans required or authorized by this section.

(b) "State group health insurance plan" means the health insurance plan offered to state officers and employees, retired state officers and employees and surviving spouses of deceased state officers and employees pursuant to this section.

(c) "State officer" means any constitutional state officer, any elected state officer paid by state warrant, or any appointed state officer who is commissioned by the Governor and who is paid by state warrant.

(d) "Full-time state employees" includes all full-time employees of all branches or agencies of state government holding salaried positions and paid by state warrant or from agency funds, and employees paid from regular salary appropriations for 8 months' employment, including university personnel on academic contracts, but in no case shall "state employee" or "salaried position" include persons paid from other-personal-services (OPS) funds.

(e) "Part-time state employee" means any employee of any branch or agency of state government paid by state warrant from salary appropriations or from agency funds, and who is employed for less than the normal full-time work week established by the department or, if on academic contract or seasonal or other type of employment which is less than year-round, is employed for less than 8 months during any 12-month period, but in no case shall "part-time" employee include a person paid from other-personal-services (OPS) funds.

(f) "Retired state officer or employee" or "retiree" means any state officer or state employee who retires under a state retirement system or is placed on disability retirement, and who was insured under the state group insurance program at the time of retirement, and who will continue to receive a monthly state warrant after retirement.

(g) "Surviving spouse" means the widow or widower of a deceased state officer, full-time state employee, part-time state employee, or retiree if such widow or widower was covered as a dependent under the state group health insurance plan established pursuant to this section at the time of the death of the deceased officer, employee, or retiree. "Surviving spouse" also means any widow or widower who is receiving or eligible to receive a monthly state warrant from a state retirement system as the beneficiary of a state officer, full-time state employee, or retiree who died prior to July 1, 1979. For the purposes of this section, any such widow or widower shall cease to be a surviving spouse upon his or her remarriage.

(h) "Health maintenance organization" means an entity certified under part II of chapter 641.

(i) "State agency" or "agency" means any branch, department, or agency of state government.

(3) STATE GROUP INSURANCE PROGRAM.—

(a) There is established the state group insurance program which may include the state group health insurance plan, a group life insurance plan, and a group accidental death and dismemberment plan, and, on and after July 1, 1981, a group disability insurance plan. Furthermore, the Department of Administration is additionally authorized to establish and provide as part of the state group insurance program any other group insurance plan which is

consistent with the provisions of this section.

(b) The percentage of state contribution toward the cost of any plan in the state group insurance program shall be uniform with respect to all state employees in state collective bargaining units participating in the same plan or any similar plan. Nothing contained within this section shall prohibit the development of separate benefit plans for officers and employees exempt from collective bargaining or the development of separate benefit plans for each collective bargaining unit.

(c) Participation by individuals in the program shall be available to all state officers, full-time state employees, and part-time state employees, and such participation in the program or any plan thereof shall be voluntary. Participation in the program shall also be available to retired state officers and employees who elect at the time of retirement to continue coverage under the program, but they may elect to continue all or only part of the coverage they had at the time of retirement. A surviving spouse may elect to continue coverage only under the state group health insurance program.

(d) A person eligible to participate in the state group health insurance plan may be authorized by rules adopted by the Department of Administration, in lieu of participating in the state group health insurance plan, to exercise an option to elect membership in a health maintenance organization which is qualified in accordance with criteria established by said rules. The offer of optional membership in a health maintenance organization permitted by this paragraph may be limited or conditioned by rule as may be necessary to meet the requirements of federal law.

(e) The benefits of the insurance authorized by this section shall not be in lieu of any benefits payable under chapter 440, the Workers' Compensation Law. The insurance authorized by this law shall not be deemed to constitute insurance to secure workers' compensation benefits as required by chapter 440.

(4) PAYMENT OF PREMIUMS; CONTRIBUTION BY STATE.—

(a) Legislative authorization through the appropriations act shall be required for payment by a state agency of any part of the premium cost of participation in any group insurance plan.

(b) If a state officer or full-time state employee selects membership in a health maintenance organization as authorized by subsection (3)(d), the officer or employee shall be entitled to a state contribution toward individual and dependent membership as provided by the Legislature through the appropriations act. Any additional cost of such membership shall be borne by the officer or employee.

(c) During each policy or budget year, no state agency shall contribute a greater percentage of the premium cost for its officers or employees for any type of coverage under the state group insurance program than any other agency, nor shall any greater percentage contribution of premium cost be made for employees in one state collective bargaining unit than for those in any other state collective bargaining unit.

(d) The state contribution for a part-time permanent state employee who elects to participate in the program shall be on a pro rata basis so that the percentage of the cost contributed for the part-time permanent employee shall bear that relation to the percentage of cost contributed for a similar full-time employee that the part-time employee's normal work day bears to a full-time employee's normal work day.

(e) No state contribution for the cost of any part of the premium shall be made for retirees or surviving spouses for any type of coverage under the state group insurance program.

(f) Pursuant to the request of each state officer, full-time or part-time state employee, or retiree participating in the state group insurance program, and upon certification of the employing agency approved by the Secretary of Administration, the Comptroller shall deduct from the salary or retirement warrant payable to each participant the amount so certified and shall handle such deductions in accordance with rules established by the Secretary of Administration.

(5) DEPARTMENT OF ADMINISTRATION; POWERS AND DUTIES.—The Secretary of Administration shall be responsible for the administration of the state group insurance program. The Department of Administration shall initiate and supervise the program as established by this section. To implement this program, the department shall, subject to legislative approval:

(a) Determine the benefits to be provided and the contributions to be required for the state group insurance program. Any physician's fee schedule used in the health and accident plan shall not be available for inspection or copying by medical providers or other persons not involved in the administration of the program. However, in the determination of the design of the program, the department shall consider existing and complementary benefits provided by the Florida Retirement System and the Social Security System.

(b) Prepare, in cooperation with the Department of Insurance, the specifications necessary to implement the program.

(c) Contract on a competitive proposal basis with an insurance carrier or carriers, or professional administrator, determined by the Department of Insurance to be fully qualified, financially sound, and capable of meeting all servicing requirements. Alternatively, the Department of Administration may self-insure any plan or plans contained in the state group insurance program subject to approval based on actuarial soundness by the Department of Insurance. The department may contract with an insurance company or professional administrator qualified and approved by the Department of Insurance to administer such plan. Before entering into any contract, the Department of Administration shall advertise for competitive proposals, and such contract shall be let upon the consideration of the benefits provided in relationship to the cost of such benefits.

(d) Promulgate such rules as may be necessary to perform its responsibilities.

(6) DEPOSIT OF PREMIUMS AND REFUNDS.—Premium dollars collected and not required to pay the costs of the program, prior to being paid to the carrier insurance company, shall be invested, and

the earnings from such investment shall be deposited in a trust fund to be designated in the State Treasury and utilized for increased benefits or reduced premiums for the participants or may be used to pay for the administration of the state group insurance program. Any refunds paid the state by the insurance carrier from premium dollar reserves held by the carrier and earned on such refunds shall be deposited in the trust fund and used for such purposes.

(7) CONTINUATION OF AGENCY INSURANCE PLANS.—Nothing contained in this section shall require the discontinuation of any insurance plan provided by any state agency; however, no state or agency funds shall be contributed toward the cost of any part of the premium of such agency plans. Such agency plans shall not be deemed to be included in the state group insurance program. However, the department shall identify and analyze the various plans and benefits currently in existence in state government and prepare a report to be submitted to the 1980 Legislature.

History.—s. 20, ch. 79-190.

110.124 Retirement or transfer of employees aged 65 or older.—

(1) An employee of the state who is within the Career Service System established by part II, or who is protected by any other merit system plan or system providing for tenure, may not be retired by the agency or department in which he is employed solely because of attainment of age 65. Such employee may be retired if the agency or department specifies charges or other cause for such retirement. The attainment of age 65 or older shall not be considered as such specified cause for retirement. If an employee continues in employment beyond age 65, the agency or department shall not be required to justify such continuation in employment.

(2) Whenever any employee who has attained age 65 is retired by an agency or department, he may apply for relief from the action to the [1]Career Service Commission. The employee shall continue in employment pending the outcome of the application. If the employee continues in employment following the decision of the commission, no further action shall be taken by the agency or department to retire the employee for a period of 1 year following the date of the decision of the commission unless approved by the commission upon a showing by the agency or department that the employee's capability has changed to a sufficient extent that he is no longer able to perform any job within such agency or department.

(3) Any employee who has attained age 65 may be transferred to some job requiring less responsibility and less arduous duties by the agency or department in which he is employed when determination is made that such employee is not able to satisfactorily carry out the full duties of his position. A transfer to a different position may be accompanied by an appropriate reduction in pay. Such transfer shall be subject to appeal by the employee.

(4) If mutually agreed to by the employee and the agency or department, an employee who has attained age 65 may be reduced to a part-time position for the purpose of phasing the employee out of employment into retirement. Such an arrangement may also be required by the [1]Career Service Commission as part of its decision in any appeal arising out of this section. A reduction to a part-time position may be accompanied by an appropriate reduction in pay.

(5) In the event of transfer to another position or reduction to a part-time position, the agency or department concerned shall furnish, in writing, to the affected employee the reasons for the transfer or reduction, together with the name and classification of the employee concerned.

History.—s. 21, ch. 79-190.

[1]Note.—Words "Career Service" substituted for "Personnel" by the editors to conform to Senate Amendments 41 and 42 to Amendment 1 to CS for HB's 1604 and 1649, which deleted provisions relating to creation of a "Personnel" commission and, in effect, retained the "Career Service" designation. See Senate Journal 1979, pp. 850, 853, 870, and 871 and s. 22, ch. 79-190.

110.125 Administrative costs.—The administrative expenses and costs of operating the personnel program established by this chapter shall be paid by the various agencies of the state government, and each such agency shall include in its budget estimates its pro rata share of such cost as determined by the Department of Administration. To establish an equitable division of the costs, the amount to be paid by each agency shall be determined in such proportion as the service rendered to each agency bears to the total service rendered under the provisions of this chapter. Should any state agency become more than 90 days delinquent in payment of this obligation, the department shall certify to the Comptroller the amount due and the Comptroller shall transfer the amount due to the department from any debtor agency funds available.

History.—s. 20, ch. 79-190.

110.126 Oaths, testimony, records.—The department shall have power to administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to any investigation of personnel practices or hearing authorized by this chapter. Any person who shall fail to appear in response to a subpoena or to answer any question or produce any books or papers pertinent to any such investigation or hearing or who shall knowingly give false testimony therein shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 20, ch. 79-190.

110.127 Penalties.—

(1) Any person who willfully violates any provision of this chapter or of any rules adopted pursuant to the authority herein granted is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) The provisions of s. 112.011 to the contrary notwithstanding, any person who is convicted of a misdemeanor under this chapter shall be, for a period of 5 years, ineligible for appointment to or employment in a position in the state service and, if an employee of the state, shall forfeit his or her position.

(3) Imposition of the penalties provided in this section shall not be in lieu of any action which may

be taken or penalties which may be imposed pursuant to part III of chapter 112.
History.—s. 20, ch. 79-190.

110.129 Services to political subdivisions.—
(1) Upon request, the department may enter into formal agreements with any municipality or political subdivision of the state to furnish technical assistance to improve the system or methods of personnel administration of such municipality or political subdivision. The department shall provide such assistance within the limitations of available staff, funds, and other resources. All municipalities and political subdivisions of the state are authorized to enter into such agreements.
(2) Technical assistance may include, but shall not be limited to, technical advice, written reports, and other information or materials and may cover such subjects as management and personnel systems, central administrative and support services, employee training, and employee productivity.
(3) Technical assistance rendered to municipalities or political subdivisions pursuant to this section may be on a nonreimbursable basis or may be partly or wholly reimbursable based upon the extent, nature, and duration of the requested assistance; the extent of resources required; and the degree to which the assistance would be of use to other municipalities or political subdivisions of the state.
History.—s. 20, ch. 79-190.

PART II

CAREER SERVICE SYSTEM

110.201 Personnel rules, records, and reports.—
(1) The department shall develop and administer the establishment of uniform personnel rules, records, and reports relating to employees and positions in the career service.
(a) The department shall develop uniform forms and instructions to be used in reporting transactions which involve changes in an employee's salary, status, performance, leave, fingerprint record, loyalty oath, payroll change, appointment action, or any additional transactions as the department may deem appropriate.
(b) It shall be the responsibility of the employing agency to maintain these records and all other records and reports prescribed in applicable rules on a current basis.
(2) Each employing agency shall operate within the uniform personnel rules promulgated by the department pursuant to the provisions of this chapter. Each employing agency shall adopt rules as necessary to implement the provisions of this part and the provisions of the rules of the department, but such rules shall not prescribe any personnel policies inconsistent with the provisions of this chapter or the rules of the department. Neither the rules of the department nor the rules of an employing agency shall include any benefits for career service employees which are in excess of, or in addition to, those authorized by this chapter.
(3) The rules adopted by the department and each employing agency under this part shall comply with all federal regulations necessary to permit the state agencies to be eligible to receive federal funds.
(4) The department shall coordinate with the Governor and consult with the Administration Commission on personnel matters falling within the scope of collective bargaining and shall represent the Governor in collective bargaining negotiations and other collective bargaining matters as may be necessary. All discussions between the department and the Governor, and between the department and the Administration Commission, or between any of their respective representatives, relative to collective bargaining, shall be exempt from the provisions of s. 286.011, and all work products relative to collective bargaining developed in conjunction with such discussions shall be exempt from the provisions of chapter 119.
History.—s. 21, ch. 79-190.

110.203 Definitions.—For the purpose of this part and the personnel affairs of the state:
(1) "State agency" or "agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch or the judicial branch of state government as defined in chapter 216.
(2) "Position" means the work, consisting of duties and responsibilities, assigned to be performed by an officer or employee.
(3) "Full-time position" means a position authorized for the entire normally established work period, daily, weekly, monthly, or annually.
(4) "Part-time position" means a position authorized for less than the entire normally established work period, daily, weekly, monthly, or annually.
(5) "Class of positions" means all positions which are sufficiently similar as to kind or subject matter of work, level of difficulty or responsibilities, and qualification requirements of the work to warrant the same treatment as to title, pay range, and other personnel transactions.
(6) "Series" means a group of classes which are sufficiently similar in kind of work performed to warrant similar titles, but sufficiently different in level of responsibility to warrant different levels and rates of pay.

(7) "Common class" means a class utilized by more than one state agency.

(8) "Single-agency class" means a class utilized exclusively by one state agency.

(9) "Title of position" or "class title" means the official name assigned to a position or class of positions.

(10) "Classification plan" means a document which formally describes the concepts, rules, and regulations and class specifications utilized in the classification and reclassification of positions in the career service.

(11) "Pay plan" means a document which formally describes the philosophy, methods, procedures, and salary schedule for compensating employees for work performed.

(12) "Salary schedule" means an official document which contains a complete list of classes and their assigned salary ranges.

(13) "Salary range" means the minimum salary, the maximum salary, and intermediate rates which are payable for work in a specific class of positions.

(14) "Authorized position" means a position included in an approved budget. In counting the number of authorized positions, part-time positions may be converted to full-time equivalents.

(15) "Established position" means an authorized position which has been classified in accordance with a classification and pay plan as provided by law.

(16) "Position number" means the identification number assigned to an established position.

(17) "Reclassification" means changing an established position in one class in a series to a higher or lower class in the same series or to a class in a different series which is the result of a natural change in the duties and responsibilities of the position.

(18) "Promotion" means moving an employee from a position in one class to a different position in another class having a greater degree of responsibility and a higher maximum salary.

(19) "Demotion" means moving an employee from a position in one class to a different position in another class having a lesser degree of responsibility and a lower maximum salary.

(20) "Transfer" means moving an employee from one geographic location of the state to a different geographic location in excess of 50 miles from the employee's current work location.

(21) "Reassignment" means moving an employee from a position in one class to a different position in the same class or a different class having the same degree of responsibility and the same maximum salary.

(22) "Dismissal" means the action taken by an agency against an employee to separate him from the career service.

(23) "Suspension" means the action taken by an agency against an employee to temporarily relieve him of his duties and place him on leave without pay.

(24) "Layoff" means termination of employment due to abolishment of positions necessitated by a shortage of funds or work, or a material change in the duties or organization of an agency.

(25) "Employing agency" means any agency authorized to employ personnel to carry out the responsibilities of the agency under the provisions of chapter 20 or other statutory authority.

History.—s. 21, ch. 79-190.

110.205 Career service; exemptions.—

(1) CAREER POSITIONS.—The career service to which this part applies shall include all positions not specifically exempted by this part, any other provisions of the Florida Statutes to the contrary notwithstanding.

(2) EXEMPT POSITIONS.—The exempt positions which are not covered by this part include the following:

(a) Officers elected by popular vote and persons appointed to fill vacancies in such offices and the personal secretary of each such officer. However, the department shall set the salary for each of these secretarial positions unless the salary is otherwise fixed by law.

(b) Officers and employees of the Legislature.

(c) Members of boards and commissions and the head of each state agency, however selected. However, the department shall set the salary of these positions unless otherwise fixed by law.

(d) Judges, referees, and receivers.

(e)1. The Chancellor of the University System and the presidents of state colleges and universities. However, the salaries for such positions shall be set by the Board of Regents, any provisions of the Florida Statutes to the contrary notwithstanding.

2. Members of the teaching and research faculty of the State University System and comparable administrative and professional positions as determined by the Board of Regents.

(f) Patients or inmates in state institutions.

(g) Any person paid from other-personal-services appropriations.

(h) A maximum of 10 policy-making positions, in addition to those specified in this subsection, in the offices of the Secretary of State, the Attorney General, the Comptroller, the Treasurer, the Commissioner of Education, and the Commissioner of Agriculture, as designated by such officer, and 10 such policy-making positions, in addition to these specified in this subsection, in each of the other departments, as designated by the head of each such department, plus any additional positions which are established for a limited period of time for the purpose of conducting a special study, project, or investigation. However, the employing agency shall advise the department in writing of each position to be exempted, and each such exemption shall be subject to the approval of the department as being policy-making or being established for a limited period of time. The department shall set the salary unless otherwise fixed by law.

(i) All employees in the Governor's general and executive offices and at the Governor's mansion and the head of each separate budget entity, as defined in chapter 216, assigned to the Governor. However, the department shall set the salary of these positions unless otherwise fixed by law.

(j) All officers and employees of the judicial branch. However, the department shall set the sala-

ry of these positions, unless otherwise fixed by law.

(k) The appointed secretaries, assistant secretaries, deputy secretaries, executive directors, assistant executive directors, and deputy executive directors of all departments and the personal secretary of each such officer or employee; the chief administrative officer and the deputy administrative officer of each board or commission; and, unless otherwise provided by law, the directors, assistant directors, and deputy directors of all divisions, and all chiefs of all bureaus as determined by the department to be policy-making of all departments. In any department not using the classifications of division director, assistant division director, deputy division director, or bureau chief as determined by the department to be policy-making, the department shall determine the comparable managerial positions and shall provide for their exemption. However, the department shall set the salary of these positions unless otherwise fixed by law.

(l) The institute directors of the mental health institutes authorized for Tampa and Miami for training and research in the mental health field and all faculty-type employees chiefly concerned with training, research, and program evaluation. The salaries for these positions shall be similar to the salaries provided for faculty positions in the State University System and shall be subject to the approval of the department, unless otherwise fixed by law.

(m) The personal secretary and personal assistant of each member of the Florida Public Service Commission, the executive director and deputy executive director of the Florida Public Service Commission, the commission clerk, and the hearing examiners, official reporters, and directors of the departments within the commission. The Florida Public Service Commission shall, with the prior approval of the department, set the qualifications and salary of these positions unless otherwise fixed by law.

(n) The deputy assistant secretaries, the staff directors, district administrators, assistant staff directors, Director of Management Systems, Director of Accounting Services, Director of Budget Services, Director of Revenue Management, Director of Personnel Management, Director of Training and Staff Development, Director of General Services, Director of Civil Rights Compliance, deputy district administrators, district program managers, district program coordinators, district subdistrict administrators, district administrative services directors, district attorneys, Director of Central Operation Services, and Deputy Director of Central Operations Services of the Department of Health and Rehabilitative Services. However, the Department of Administration shall set the salary of these positions unless otherwise provided by law.

(o) The academic and academic administrative personnel of the Florida School for the Deaf and the Blind. In accordance with the provisions of chapter 242, the salaries for such positions shall be set by the Board of Trustees for the Florida School for the Deaf and the Blind, subject only to the approval of the State Board of Education.

(p) Members of the senior management group created pursuant to s. 23, ch. 79-190, Laws of Florida.

(3) PARTIAL EXEMPTION OF DEPARTMENT OF LAW ENFORCEMENT.—Employees of the Department of Law Enforcement shall be subject to the provisions of s. 110.227, except in matters relating to transfer.

History.—s. 21, ch. 79-190.

110.207 Classification plan.—

(1) The department shall establish and maintain a uniform classification plan applicable to all positions in the career service and shall be responsible for the overall coordination, review, and maintenance of the plan; however, in no case shall the number of classes exceed 1,800. The Executive Office of the Governor shall prepare a plan for the reduction of classes to 1,800 and present this plan to the House of Representatives and Senate no later than March 1, 1980.

(a) The department shall develop class specifications necessary for the establishment of new classes or for the revision of existing classes and shall adopt the appropriate class title and class code for each class. Such class specifications, titles, and codes shall not constitute rules within the meaning of s. 120.52(14).

(b) The department shall be responsible for conducting periodic studies and surveys to assure that the classification plan is maintained on a current basis.

(c) The department may review in a post-audit capacity the action taken by an employing agency in classifying or reclassifying a position.

(d) The department shall effect a classification change on any classification or reclassification action taken by an employing agency if the action taken by the agency was not based on the duties and responsibilities officially assigned the position as they relate to the concepts and allocation factors contained in the official class specifications adopted by the department. Such classification change, if any, shall be made by the department within 5 months after the action was taken by the agency.

(e) Any action taken by the department in regard to the classification or reclassification of a position which affects a department headed by a cabinet officer or by the Governor and Cabinet may be reviewed by the Administration Commission, and the department's decision may be changed by a majority vote of the Administration Commission.

(f) The department shall adopt rules necessary to govern the administration of the classification plan. Such rules shall be approved by the Administration Commission prior to their adoption by the department.

(2) The employing agency shall be responsible for the day-to-day application of classification rules promulgated by the department.

(a) The employing agency shall maintain on a current basis a position description for each authorized and established position assigned the agency. The position description shall include an accurate description of assigned duties and responsibilities and other pertinent information concerning a position and shall serve as a record of the official assignment of duties to the position. Such description shall be used in the comparison of positions to assure uniformity of classifications.

(b) The employing agency shall have the authori-

ty and responsibility to classify positions authorized by the Legislature or authorized pursuant to s. 216.262; to classify positions that are added in lieu of positions deleted pursuant to s. 216.262; and to reclassify established positions. Classification and reclassification actions taken by an employing agency shall be within the classes of positions established by the department, shall be funded within the limits of currently authorized appropriations, and shall be in accordance with the uniform procedures adopted by the department. The employing agency shall notify the department prior to the effective date of any classification or reclassification action, as fixed by the agency and recorded on the position description.

History.—s. 21, ch. 79-190.

110.209 Pay plan.—

(1) The department shall establish and maintain an equitable pay plan applicable to all classes of positions in the career service and shall be responsible for the overall review, coordination, and administration of the pay plan.

(2)(a) The department shall determine the appropriate salary range for each class. Such salary range, and the assignment of ranges to positions, shall not constitute rules within the meaning of s. 120.52(14).

(b) The department shall review requests for competitive area differentials and may approve such requests if they are justified. The department shall have the authority to modify or discontinue existing competitive area differentials in response to change in the circumstances which justified the establishment of the differential.

(c) The department shall conduct wage and salary surveys as necessary for the purpose of maintaining an equitable pay plan.

(d) The department shall establish uniform policy and rates with respect to, and may delegate to the employing agencies the authority to administer, the following:

1. Shift differentials.
2. On-call fees.
3. Hazardous-duty pay.
4. Advanced appointment rates.
5. Salary increase and decrease corrections.

(e) The department may review in a post-audit capacity any action taken by an agency in administering the provisions of the pay plan.

(f) The department shall effect the appropriate corrective action when a post-audit of applicable records shows that the action taken by an employing agency in administering the provisions of the pay plan was not consistent with the rules promulgated by the department.

(g) Any action taken by the department in regard to the revision or establishment of a pay grade assignment which affects a department headed by a cabinet officer or by the Governor and Cabinet may be reviewed by the Administration Commission, and the department's decision may be changed by a majority vote of the Administration Commission.

(3) The employing agency shall be responsible for the day-to-day administration of the pay plan under the rules promulgated by the department.

(4) The department shall adopt any rules necessary to implement the provisions of this section; however, such rules shall be approved by the Administration Commission prior to their adoption by the department.

History.—s. 21, ch. 79-190.

110.211 Recruitment.—

(1) Recruiting shall be planned and carried out in a manner that assures open competition based upon current and projected employing agency needs, taking into consideration the number and types of positions to be filled and the labor market conditions, with special emphasis placed on recruiting efforts to attract minorities, women, or other groups that are underrepresented in the work force of the employing agency.

(2) Recruiting efforts to fill current or projected vacancies shall be the responsibility of the employing agency. Such efforts shall be in compliance with rules adopted by the department.

(3) The department shall provide for executive-level recruitment and a recruitment enhancement program designed to encourage individuals to seek employment with state government and to promote better public understanding of the state as an employer.

(4) Except for those classes for which examinations are given on a continuous basis, application for publicly announced vacancies shall be made directly to the employing agency in accordance with rules adopted by the department.

(5) All recruitment literature printed after July 1, 1979, involving state position vacancies shall contain the phrase "An Equal Opportunity Employer/Affirmative Action Employer."

(6) The department shall adopt any rules necessary to implement the provisions of this section; however, such rules shall be approved by the Administration Commission prior to their adoption by the department.

History.—s. 21, ch. 79-190.

110.213 Examination and selection.—

(1) The department shall have the responsibility for designating classes as competitive or noncompetitive and for determining the type of examination or selection procedure to be utilized for each class. The department shall adopt rules providing for delegation of the administration of examination activities to those employing agencies which request to be delegated such functions.

(2) Any competitive or noncompetitive selection or examination procedure utilized in state employment or examination programs shall be designed to maximize validity, reliability, and objectivity, shall be based on adequate job analysis conducted to ensure job relatedness, and shall measure the relative ability, knowledge, and skill needed for entry to a job.

(3) Selection for appointment from among the most qualified available eligibles shall be the responsibility of the employing agency in accordance with the rules adopted by the department. Such rules shall also provide procedures for selection for noncompetitive classes where job-related ranking measures are not practical or are not appropriate.

(4) Appointments to positions in competitive classes shall be made from listings of certified eligibles from registers in accordance with rules adopted

by the department. The employing agency shall assure that examination and certification requirements are met prior to the commitment of appointment to any applicant.

(5) The department shall conduct examinations and other recruitment activities for certain common classes of positions, as determined by the department, when centralized screening and placement activities are found to be more economical and effective than if carried out on a decentralized basis.

(6) The department shall adopt any rules necessary to implement the provisions of this section; however, such rules shall be approved by the Administration Commission prior to their adoption by the department.

History.—s. 21, ch. 79-190.

110.215 Examinations administered to blind and deaf persons; penalties.—

(1) The purpose of this section is to further the policy of the state to encourage and assist blind or deaf individuals to achieve maximum personal and vocational independence through useful and productive gainful employment by eliminating unwarranted barriers to their qualifying competitively for state career service jobs.

(2) As used in this section:

(a) "Blind person" means an individual having central visual acuity 20/200 or less in the better eye with correcting glasses or a disqualifying field defect in which the peripheral field has contracted to such an extent that the widest diameter or visual field subtends an angular distance no greater than 20 degrees.

(b) "Deaf person" means an individual having an 82-decibel loss of hearing and with whom manual communication is necessary to communicate.

(c) "Agency" includes each department and agency of the state.

(3)(a) The Department of Administration, with respect to all competitive examinations administered by it or any other agency to applicants for employment within the State Career Service System, shall adapt such examinations so that blind or deaf persons taking any such examinations can compete more equitably with sighted or hearing persons taking the examinations. The modifications or adaptations required by this subsection shall include, but not be limited to:

1. The provision of at least 50 percent more time to complete the examination for the blind or deaf person taking the examination, to allow for the slowness of readers or interpreters.

2. Competent reader service provided by the agency or by the appropriate blind services agency of the Department of Education or certified interpreter service provided by the agency or by the appropriate Office of Vocational Rehabilitation of the Department of Health and Rehabilitative Services, at no expense to the blind person taking the examination.

3. The exclusion from the examination of graphs, charts, tables, and questions which might, per se, be unfamiliar to a blind person or would be difficult for a blind person to interpret because of his blindness, such as, for example, estimating distances visually.

(b) Each agency shall allow a blind or deaf person taking such an examination to use any necessary special equipment, aids, or appliances including, but not limited to:

1. Note-taking equipment, such as, for example, slate and stylus or Braillewriter.

2. Computational aids, such as, for example, the cramer abacus, as a substitute for hand calculators for sighted competitors.

3. Low-vision aid devices.

(c) Blind or deaf examinees shall be given sufficient privacy to ensure good testing conditions and prevent disruption of the testing environment of others.

(d) If there are two or more blind or deaf examinees, they shall be seated either in separate rooms or far enough apart so that they do not interfere with or help one another.

(4) The examination modifications and adaptations required under the provisions of this section shall be accomplished in consultation with the appropriate blind services agency of the Department of Education or the Office of Vocational Rehabilitation of the Department of Health and Rehabilitative Services and may be accomplished in consultation with the United States Civil Service Commission for utilization of current research findings. Rules promulgated pursuant to this section shall be jointly formulated by the Department of Administration and the Department of Education.

(5) No agency shall be allowed to evade the intent and meaning of this section. Any agent or employee of an agency who intentionally violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable by a fine not to exceed $500.

History.—s. 21, ch. 79-190.

110.217 Certification, registers, appointments, and promotion.—

(1) The department shall have the responsibility for the establishment and maintenance of eligible registers and for the certification of persons who have qualified for appointment to competitive positions in the career service. However, certification may be delegated to the employing agency in accordance with rules adopted by the department.

(2) Eligibility for placement on registers shall be based on successful completion of any required examination and possession of established minimum requirements for entrance to a class, unless the applicant's qualifications are determined to be equivalent to the required minimum training and experience established for the class.

(3) Certification rules shall be established by the department to ensure that employing agencies review and give equitable consideration to an appropriate number of eligibles based on the ranking system that is adopted by the department for selection for initial entry into the career service.

(4) The employing agency shall forward to the department on a timely basis a report of all certification actions taken or shall report such actions through computer processing. Such reporting shall be in accordance with rules adopted by the department.

(5) The employing agency shall be responsible for developing an employee career advancement program which shall assure consideration of qualified

permanent employees in the agency or career service who apply. However, such program shall also include provisions to bring persons into the career service through open competition. Promotion appointments shall be subject to post-audit by the department.

(6) The department shall have the responsibility for the adoption of rules regarding demotion, reassignment, separation, promotion, original and reinstatement appointments, and status.

(7) The department shall adopt any rules necessary to implement the provisions of this section; however, such rules shall be approved by the Administration Commission prior to their adoption by the department.

History.—s. 21, ch. 79-190.

110.219 Attendance and leave; general policies.—

(1) The work day for each full-time state employee shall be 8 hours or as otherwise justified by the agency head.

(2) Overtime may be required for any employee.

(3) The granting of any leave of absence, with or without pay, shall be in writing and shall be approved by the agency head. An employee who is granted leave of absence with or without pay shall be an employee of the state while on such leave and shall be returned to the same position or a different position in the same class and same work location upon termination of the approved leave of absence. The agency head and the employee may agree in writing to other conditions and terms under which the leave is to be granted.

(4) Each agency shall keep an accurate record of all hours of work performed by each employee, as well as a complete and accurate record of all authorized leave which is approved. The ultimate responsibility for the accuracy and proper maintenance of all attendance and leave records shall be with the agency head.

(5) Rules shall be adopted by the department to implement the provisions of this section; however, such rules shall be approved by the Administration Commission prior to their adoption by the department. Such rules shall provide for, but shall not be limited to:

(a) The maximum responsibility and authority resting with each agency head to administer attendance and leave matters in the agency within the parameters of the rules adopted by the department.

(b) Continuous service with one or more state agencies without a break in service.

(c) Creditable service in which the employee is on the payroll of a state agency or during which the employee is on authorized leave without pay.

(d) Holidays as provided in s. 110.117, which shall be observed as paid holidays.

(e) Overtime provisions.

(f) Annual leave provisions.

(g) Sick leave provisions.

(h) Maternity leave provisions.

(i) Disability leave provisions.

(j) Compulsory disability leave provisions.

(k) Administrative leave provisions.

(l) Military leave provisions.

(m) Educational leave with pay provisions.

(n) Leave of absence without pay provisions.

History.—s. 21, ch. 79-190.

110.221 Maternity leave.—

(1) The state shall not:

(a) Terminate the employment of any employee in the career service because of her pregnancy.

(b) Refuse to grant to such employee maternity leave without pay for a period not to exceed 6 months. Such leave shall commence on a date determined by the employee in consultation with her doctor following notification to her employer in writing.

(c) Deny such employee the use of and payment for annual leave credits for maternity leave. Such leave shall commence on a date determined by the employee in consultation with her doctor following notification to her employer in writing.

(d) Deny such employee the use of and payment for accrued sick leave for any reason deemed necessary by a physician.

(e) Require that such employee take a mandatory maternity leave.

(2) Upon returning at the end of her leave of absence, such employee shall be reinstated to her job or to an equivalent position with equivalent pay and with seniority, retirement, fringe benefits, and other service credits accumulated prior to the leave period. Should any portion of the maternity leave be paid leave, the employee shall be entitled to accumulate all benefits granted under paid leave status.

History.—s. 21, ch. 79-190.

110.223 Meritorious service award program.—The department shall adopt and implement a program of meritorious service awards to employees who propose procedures or ideas which are adopted and which will result in eliminating or reducing state expenditures or improving operations, provided such proposals are placed in effect, or who, by their superior accomplishments, make exceptional contributions to the efficiency, economy, or other improvement in the operations of the state government. No award granted under the provisions of this section shall exceed $2,000 or 10 percent of the first year's gross savings, whichever is greater, unless a larger award is made by the Legislature, and shall be paid from the appropriation available to the state agency affected by the award or from any specific appropriation therefor.

History.—s. 21, ch. 79-190.

110.225 Florida Administrative Intern Program.—There is established within the Career Service System the Florida Administrative Intern Program which shall identify persons who have advanced administrative, managerial, or professional potential and place them in state or local agencies in an attempt to attract them to governmental employment. This program is created to provide an internship experience to foster knowledge and understanding of the governmental process and to provide assistance to state government. This program shall be

implemented by rules of the Department of Administration.

History.—s. 150, ch. 79-190.

110.227 Suspensions, dismissals, reductions in pay, demotions, layoffs, and transfers.—

(1) Any employee who has permanent status in the career service may only be suspended or dismissed for cause. Cause shall include, but not be limited to, negligence, inefficiency or inability to perform assigned duties, insubordination, willful violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime involving moral turpitude.

(2) The department shall establish rules and procedures for the suspension, reduction in pay, transfer, layoff, demotion, and dismissal of employees in the career service. Such rules shall be approved by the Administration Commission prior to their adoption by the department.

(3)(a) When a layoff becomes necessary, such layoff shall be conducted within the competitive area identified by the agency head and approved by the Department of Administration. Such competitive area shall be established taking into consideration the similarity of work; the organizational unit, which may be by agency, department, division, bureau, or other organizational unit; and the commuting area for the work affected.

(b) Layoff procedures shall be developed to establish the relative merit and fitness of employees and shall include a formula for uniform application among all employees in the competitive area, taking into consideration the type of appointment, the length of service, and the quality of performance.

(4) Any permanent career service employee subject to reduction in pay, transfer, layoff, or demotion shall be notified in writing by the agency prior to its taking such action. Such notice shall be sent by certified mail with return receipt requested. Such actions shall be appealable to the [1]Career Service Commission, pursuant to rules adopted by the department.

(5)(a) Any permanent career service employee who is subject to suspension or dismissal shall receive written notice of such action at least 10 days prior to the date such action is to be taken. Subsequent to such notice, and prior to the date the action is to be taken, the affected employee shall be given an opportunity to appear before the agency or official taking the action to answer orally and in writing the charges against him. The notice to the employee required by this paragraph shall be sent by certified mail with return receipt requested. An employee who is suspended or dismissed shall be entitled to a hearing before the [1]Career Service Commission pursuant to s. 110.309.

(b) In extraordinary situations such as when the retention of a permanent career service employee would result in damage to state property, would be detrimental to the best interest of the state, or would result in injury to the employee, a fellow employee, or some other person, such employee may be suspended or dismissed immediately, provided that written notice of such action, and the reasons therefor, are furnished to the employee within 24 hours. Such notice may be delivered to the employee personally or may be sent by certified mail with return receipt requested. Any employee who is suspended or dismissed pursuant to the provisions of this paragraph shall be entitled to a hearing before the [1]Career Service Commission pursuant to s. 110.309, except that such hearing shall be held no more than 20 days after the filing of the notice of appeal by the employee.

History.—s. 21, ch. 79-190.

[1]Note.—Words "Career Service" substituted for "Personnel" by the editors to conform to Senate Amendments 41 and 42 to Amendment 1 to CS for HB's 1604 and 1649, which deleted provisions relating to creation of a "Personnel" commission and, in effect, retained the "Career Service" designation. See Senate Journal 1979, pp. 850, 853, 870, and 871 and s. 22, ch. 79-190.

110.233 Political activities and unlawful acts prohibited.—

(1) No person shall be appointed to, demoted, or dismissed from any position in the career service, or in any way favored or discriminated against with respect to employment in the career service, because of race, color, sex, religious creed, national origin, or political opinions or affiliations.

(2) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the career service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person or for any consideration; however, letters of inquiry, recommendations, and references by public employees or public officials shall not be considered political pressure unless any such letter contains a threat, intimidation, or irrelevant, derogatory, or false information. For the purposes of this section, the term "political pressure," in addition to any appropriate meaning which may be ascribed thereto by lawful authority, shall include the use of official authority or influence in any manner prohibited by this chapter.

(3) No person shall, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the career service. The provisions of this subsection shall not apply to a private employment agency licensed pursuant to the provisions of chapter 449 when the services of such private employment agency are requested by a state agency, board, department, or commission and neither the state nor any political subdivision pays the private employment agency for such services.

(4) As an individual, each employee retains all rights and obligations of citizenship provided in the constitution and laws of the state and the constitution and laws of the United States. However, no employee in the career service shall:

(a) Hold, or be a candidate for, public or political office while in the employment of the state or take any active part in a political campaign while on duty or within any period of time during which he is expected to perform services for which he receives compensation from the state. However, when authorized by his agency head and approved by the Department of Administration as involving no interest which

conflicts or activity which interferes with his state employment, an employee in the career service may be a candidate for or hold local public office. The Department of Administration shall prepare and make available to all affected personnel who make such request a definite set of rules and procedures consistent with the provisions herein.

(b) Use the authority of his position to secure support for, or oppose, any candidate, party, or issue in a partisan election or affect the results thereof.

(5) No state employee or official shall use any promise of reward or threat of loss to encourage or coerce any employee to support or contribute to any political issue, candidate, or party.

History.—s. 21, ch. 79-190.

PART III

ADMINISTRATIVE REVIEW

110.301 Career Service Commission.—

(1) There is created within the Department of Administration the Career Service Commission, hereinafter referred to as the "commission." The commission shall consist of seven members to be appointed as follows:

(a) Members of the commission shall be citizens of the state and shall be laypersons with at least 5 years' experience in business, industry, or labor at the management level or in a recognized profession. No member of the commission shall be a member of any county, state, or national committee of a political party or an officer in any partisan political club or organization or shall hold or be a candidate for any other public office. No person shall be appointed as a member of the commission who has held an elective public office or office in a political party within the year immediately preceding his appointment.

(b) Members of the commission shall be appointed by the Governor with the approval of three members of the Cabinet and subject to confirmation by the Senate. Appointments to fill vacancies shall be made in the same manner as original appointments. Each member of the commission holding office on July 1, 1979, shall continue in office for the remainder of his term. Thereafter, appointments to the commission shall be made pursuant to the provisions of this section. Members of the commission shall be appointed for 4-year staggered terms and shall be removable from office by the Governor only for cause.

(2) The members of the commission shall receive no salary, but shall be paid an honorarium of $100 for each day spent on the work of the commission. Additionally, each member shall be reimbursed for travel expenses as provided in s. 112.061.

(3) The commission shall elect a chairman and such other officers as are provided by the rules of procedure adopted by the commission.

(4) For purposes of hearing appeals pursuant to this section, the commission is authorized to meet in panels consisting of not less than three members, and the majority vote of those members present shall be required to reach a decision.

(5) Staff to perform necessary clerical and administrative functions for the commission shall be employees of the Department of Administration. Legal counsel for the commission shall be provided by the Department of Legal Affairs or by the legal staff of the Department of Administration and shall be paid by the Department of Administration from the appropriate funds. The property, personnel, and appropriations related to the commission's specified authority, powers, duties, and responsibilities shall be provided to the commission by the Department of Administration.

(6) The commission, in the performance of its powers and duties under this part, shall not be subject to control, supervision, or direction by the Department of Administration.

(7) Upon completion of satisfactory service, a member of the commission may be awarded a suitable certificate of appreciation and recognition, not to cost in excess of $50 each.

History.—s. 22, ch. 79-190.

110.305 Commission; powers and duties.—

(1) The commission shall, in accordance with chapter 120, adopt, promulgate, amend, or rescind such rules as it deems necessary to carry out its responsibilities as specified herein.

(2) The commission shall have the power to administer oaths, subpoena witnesses, compel the production of books and papers pertinent to proceedings before it, and to enforce order during its proceedings. Any person who shall fail to appear in response to a subpoena or to answer any question or produce any books or papers pertinent to any such proceeding, who shall knowingly give false testimony therein, or who shall misbehave during a proceeding so as to disrupt or distract same, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) The commission shall hear appeals arising out of any suspension, reduction in pay, transfer, layoff, demotion, or dismissal of any permanent employee in the State Career Service System. Written notice of any such appeal shall be filed with the commission within 20 days after the date on which the notice of suspension, reduction in pay, transfer, layoff, demotion, or dismissal is received by the employee.

(4) The commission shall hear appeals, and enter such order as it deems appropriate, arising out of:

(a) Section 110.124, relating to retirement or transfer of State Career Service System employees aged 65 or older.

(b) Subsection 112.044(4), relating to age discrimination.

(c) Section 295.11, relating to reasons for not employing a preferred veteran applicant.

(5) Appeal to the commission pursuant to this part shall be the exclusive administrative review of such actions, unless an alternative procedure provided in a collective bargaining agreement is elected by the affected employee, the provisions of chapter 120 to the contrary notwithstanding.

(6) The commission, at the discretion of the

chairman, may utilize hearing officers and procedures as provided in chapter 120 in carrying out all its duties and responsibilities.

(7) Decisions issued by the commission pursuant to this part shall be final agency action which shall be reviewable pursuant to chapter 120.

History.—s. 22, ch. 79-190.

110.309 Procedure with respect to suspensions and dismissals.—

(1) A permanent employee in the State Career Service System who is suspended or dismissed by an agency or officer shall be entitled to a de novo fact-finding hearing. Such hearing shall be conducted by the commission itself, unless otherwise provided for by law.

(2) Upon a finding that just cause existed for the suspension or dismissal, the commission shall affirm the suspension or dismissal.

(3) Upon a finding that just cause did not exist for the suspension or dismissal, the commission may order the reinstatement of the employee, with or without back pay.

(4) Upon a finding that just cause for disciplinary action existed, but did not justify the severity of the action taken, the commission may, in its discretion:

(a) Reduce a dismissal to a suspension for such time as the commission may fix; or

(b) Reduce the period of a suspension.

(5) Any order of the commission issued pursuant to subsection (3) or subsection (4) shall be conclusive on the agency or officer concerned. The order may include an amount, to be determined by the commission and paid by the agency, for reasonable attorney's fees, witness fees, and other out-of-pocket expenses incurred during the prosecution of an appeal against an agency in which the commission sustains the employee.

History.—s. 22, ch. 79-190.

PART IV

VOLUNTEERS

110.501 Definitions.—As used in this act:

(1) "Volunteer" means any person who, of his own free will, provides goods or services to any state department or agency, with no monetary or material compensation.

(2) "Regular-service volunteer" means any person engaged in specific voluntary service activities on an ongoing or continuous basis.

(3) "Occasional-service volunteer" means any person who offers to provide a one-time or occasional voluntary service.

(4) "Material donor" means any person who provides funds, materials, employment, or opportunities for clients of state departments or agencies, without monetary or material compensation.

History.—s. 1, ch. 78-263; s. 24, ch. 79-190.
Note.—Former s. 112.901.

110.502 Scope of act; status of volunteers.—

(1) Every state department or state agency, through the head of the department or agency, secretary of the department, or executive director of the department, is authorized to recruit, train, and accept, without regard to requirements of the State Career Service System as set forth in part II of this chapter, the services of volunteers, including regular-service volunteers, occasional-service volunteers, or material donors, to assist in programs administered by the department or agency.

(2) Volunteers recruited, trained, or accepted by any state department or agency shall not be subject to any provisions of law relating to state employment, to any collective bargaining agreement between the state and any employees' association or union, or to any laws relating to hours of work, rates of compensation, leave time, and employee benefits, except those consistent with s. 110.504. However, all volunteers shall comply with applicable department or agency rules.

(3) Every department or agency utilizing the services of volunteers is hereby authorized to provide such incidental reimbursement consistent with the provisions of s. 110.504, including transportation costs, lodging, and subsistence, as the department or agency deems necessary to assist volunteers in performing their functions. No department or agency shall expend or authorize an expenditure therefor in excess of the amount provided for to the department or agency by appropriation in any fiscal year.

(4) Persons working with state agencies pursuant to this part shall be considered as unpaid independent volunteers and shall not be entitled to unemployment compensation.

History.—s. 2, ch. 78-263; s. 24, ch. 79-190.
Note.—Former s. 112.902.

110.503 Responsibilities of departments and agencies.—Each department or agency utilizing the services of volunteers shall:

(1) Take such actions as are necessary and appropriate to develop meaningful opportunities for volunteers involved in state-administered programs.

(2) Develop written rules governing the recruitment, screening, training, responsibility, utilization, and supervision of volunteers.

(3) Take such actions as are necessary to ensure that volunteers understand their duties and responsibilities.

(4) Take such actions as are necessary and appropriate to ensure a receptive climate for citizen volunteers.

(5) Provide for the recognition of volunteers who have offered continuous and outstanding service to state-administered programs.

(6) Recognize prior volunteer service as partial fulfillment of state employment requirements for training and experience pursuant to rules adopted by the Department of Administration.

History.—s. 3, ch. 78-263; s. 24, ch. 79-190.
Note.—Former s. 112.903.

110.504 Volunteer benefits.—

(1) Meals may be furnished without charge to regular-service volunteers serving state departments, provided the scheduled assignment extends over an established meal period, and to occasional-service volunteers at the discretion of the department head. No department shall expend or authorize any expenditure in excess of the amount provided for by appropriation in any fiscal year.

(2) Lodging, if available, may be furnished temporarily, in case of a department emergency, at no charge to regular-service volunteers.

(3) Transportation reimbursement may be furnished those volunteers whose presence is determined to be necessary to the department. Volunteers may utilize state vehicles in the performance of department-related duties. No department shall expend or authorize an expenditure in excess of the amount appropriated in any fiscal year.

(4) Volunteers shall be covered by state liability protection in accordance with the definition of a volunteer and the provisions of s. 768.28.

History.—s. 4, ch. 78-263; s. 24, ch. 79-190.
Note.—Former s. 112.904.

110.505 Department and agency reports; required information.—

(1) Each state department and agency, as a part of its annual report to the Legislature and the Governor, shall include:

(a) Information relating to the number, location, and duties of all volunteers, including regular-service volunteers, occasional-service volunteers, and material donors.

(b) Information relating to the total number of annual hours of service provided to the department or agency by all volunteers, including regular-service volunteers, occasional-service volunteers, and material donors.

(2) Prior to the development of any new program or of any budget request to the Legislature by any state department or agency, all avenues of community involvement through the use of volunteers shall be explored. Each budget request to the Legislature by any state department or agency shall be accompanied by a volunteer impact statement outlining the number and types of services which volunteers will provide during the budget period and the fiscal savings reflected by such service.

History.—s. 5, ch. 78-263; s. 24, ch. 79-190.
Note.—Former s. 112.905.

CHAPTER 111

PUBLIC OFFICERS; GENERAL PROVISIONS

111.011 Statement of contributions received by elected public officers.—

(1) When used in this section:

(a) "Elected public officer" means an individual holding an elective national, state, county, or municipal office.

(b) "Person" includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

(c) "Contribution" means any gift, donation, or payment of money the value of which is in excess of $25 to any elected public officer or to any other person on his behalf. Any payment in excess of $25 to a dinner, barbecue, fish fry, or other such event shall likewise be deemed a contribution. However, a bona fide gift to the office holder by a relative within the third degree of consanguinity for the personal use of the office holder shall not be deemed a contribution. This section shall not apply to honorary memberships in social, service, or fraternal organizations, presented to an elected public officer merely as a courtesy by such organizations.

(2)(a) Each elected public officer shall file a statement containing a list of all contributions received by him or on his behalf, if any, and expenditures from, or disposition made of, such contributions by such officer which are not otherwise required to be reported by chapter 99, with the names and addresses of persons making such contributions or receiving payment or distribution from such contributions and the dates thereof. The statement shall be sworn to by the elected public officer as being a true, accurate, and total listing of all of said contributions and expenditures.

(b) The statements shall be filed no later than 12 o'clock noon of July 15 of each year for the previous calendar year with the Department of State in the case of an elected state or national officer or with the clerk of the circuit court in the case of an elected county officer or an elected municipal officer.

(3) Any person who voted in the election at which the elected public officer was last elected may bring a civil action to enforce the provisions of this section. As a condition precedent, the person shall give 30 days' notice to such officer of his intention to file suit. Unless such officer shall comply with the provisions of this section within such 30-day period, a cause of action shall be deemed to have accrued. The court costs, expenses, and reasonable attorney fees of any person having reasonable cause to bring such civil action shall be allowed as costs against the elected public officer.

(4)(a) If any elected public officer knowingly or willfully fails to comply with this section, he is guilty of a second degree misdemeanor in office, punishable as provided in ss. 775.082 and 775.083.

(b) Failure of any public officer to comply with this section shall be grounds for removal from office, impeachment, or expulsion from the Senate or House of Representatives, as the case may be.

(5) This section shall be liberally construed so as to require full financial disclosure of all receipts and expenditures by elected public officers of contributions received by them during their term of office. This section shall be cumulative to other provisions of part III of chapter 112.

History.—ss. 1-6, ch. 70-230; s. 64, ch. 71-136; s. 1, ch. 71-159; s. 1, ch. 76-18.
cf.—Ch. 106 Campaign finances.

111.02 Perquisites.—All perquisites fixed by law accruing from the administration of any state officer shall be faithfully accounted for, reported and turned over to the State Treasurer once each month with a certificate as to the correctness of such accounting. The State Treasurer shall receive all such funds and issue his receipt to the officer transmitting the same.

History.—s. 2, ch. 6447, 1913; RGS 207; s. 2, ch. 8491, 1921; s. 2, ch. 11335, 1925; CGL 239, 478.

111.03 Detailed account of fees to be kept; monthly statements.—In all state administrative offices where fees or perquisites of any nature or character are allowed to be collected, or are collected or received by any person connected with such office, a detailed account thereof shall be kept in a book provided for that purpose and such book shall be carefully preserved and treated as a public record of the office. At the end of each month a detailed statement of such receipts shall be made and verified under the oath of the head or acting head of such office, which statement together with the amounts received during said month by any and all persons connected with such office shall be delivered to the State Treasurer, for which amounts receipts shall issue in due course and the amounts shall be placed in the General Revenue Fund of the state. The State Treasurer shall preserve the statements so delivered to him as a public record of his office. Where fees or other compensation or perquisites are allowed by law to be collected or received by any person in any

state office for any work or service done or rendered in connection with the administration of such office, such fees, perquisites and compensation shall be collected and duly accounted for as herein provided.

History.—s. 1, ch. 6448, 1913; RGS 208; CGL 240.

111.04 Officer failing to comply with law subject to removal.—Any person failing to comply with the provisions of s. 111.03 shall be regarded as having committed misfeasance in office and shall be subject to removal, suspension or discharge as provided by law.

History.—s. 2, ch. 6448, 1913; RGS 209; CGL 241.

111.05 Officer reinstated after suspension; back pay.—An officer who is lawfully entitled to resume the duties of his office after his suspension by the Governor shall suffer no loss of salary or other compensation because of his suspension. His compensation which is unpaid because of his suspension is appropriated and shall be paid from the source and in the manner in which the compensation of the office is normally paid. If funds sufficient to pay his unpaid compensation are not available in the proper source, the deficit is appropriated and shall be paid from the general funds of the state or of the political subdivision under which the office exists, as the case may be.

History.—s. 1, ch. 57-71.

111.065 Law enforcement officers, civil or criminal action against; employer payment of costs and attorney's fees.—

(1) For the purpose of this act, "law enforcement officer" means any person employed fulltime by any municipality or the state or any political subdivision thereof or any deputy sheriff whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state.

(2) The employing agency of any law enforcement officer shall have the option to pay the legal costs and reasonable attorney's fees for any law enforcement officer in any civil or criminal action commenced against such law enforcement officer in any court when the action arose out of the performance of his official duties and:

(a) The plaintiff requests dismissal of his suit; or

(b) Such law enforcement officer is found to be not liable or not guilty.

History.—s. 1, ch. 76-191.

111.07 Defense of civil actions against public officers, employees, or agents.—Any agency of the state, or any county, municipality, or political subdivision of the state is authorized to provide an attorney to defend any civil actions brought against any of its officers, employees, or agents for acts or omissions arising out of and in the scope of their employment or function, unless, in the case of a tort action, such officer, employee, or agent acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Defense of such civil actions shall include, but not be limited to, any civil rights lawsuit seeking relief personally against such officers, employees, or agents for acts or omissions under color of state law, custom, or usage, wherein it is alleged that such officer, employee, or agent has deprived another person of his rights secured under the federal constitution or laws. Legal representation of an officer, employee, or agent of a state agency may be provided by the Department of Legal Affairs. If any agency of the state or any county, municipality, or political subdivision of the state is authorized pursuant to this section to provide an attorney to defend a civil action brought against its officers, employees, or agents and fails to provide such attorney, then said agency, county, municipality, or political subdivision shall reimburse any such defendant who prevails in the action for court costs and reasonable attorney's fees.

History.—s. 1, ch. 72-36; s. 1, ch. 79-139.

111.071 Payment of judgments or settlements against officers, employees, or agents of any county, municipality, political subdivision, or certain agencies of the state.—

(1) Any county, municipality, political subdivision, or agency of the state which has been excluded from participation in the Insurance Risk Management Trust Fund is authorized to expend available funds to pay:

(a) Any final personal judgment, including damages, costs, and attorney's fees, against any officer, employee, or agent held to be personally liable in a civil or civil rights lawsuit described in s. 111.07. If the civil action arises under s. 768.28 as a tort claim, the limitations and provisions of s. 768.28 governing payment shall apply. If the action is a civil rights action arising under 42 U.S.C. s. 1983, or similar federal statutes, payments for the full amount of the judgment may be made unless the officer, employee, or agent has been determined in the final judgment to have caused the harm intentionally.

(b) Any compromise or settlement of any claim or litigation as described in paragraph (a), subject to the limitations set forth in that paragraph.

(c) Any reimbursement required under s. 111.07 for court costs and reasonable attorney's fees when the county, municipality, political subdivision, or agency of the state has failed to provide an attorney and the defendant prevails.

(2) For purposes of this section, a "final judgment" means a judgment upon completion of any appellate proceedings.

(3) This section is not intended to be a waiver of sovereign immunity or a waiver of any other defense or immunity to such lawsuits.

History.—s. 2, ch. 79-139.

111.072 Provision of insurance in anticipation of judgments or settlements against officers, employees, or agents of any county, municipality, or political subdivision.—Any county, municipality, or political subdivision is authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance for whatever coverage it may choose or to have any combination thereof in anticipation of any judgment or settlement which its officers, employees, or agents may be liable to pay pursuant to a civil or civil rights lawsuit described in s. 111.07.

History.—s. 3, ch. 79-139.

CHAPTER 112

PUBLIC OFFICERS AND EMPLOYEES; GENERAL PROVISIONS

PART I CONDITIONS OF EMPLOYMENT; RETIREMENT; PER DIEM, TRAVEL EXPENSES; ETC. (ss. 112.011-112.215)

PART II INTERCHANGE OF PERSONNEL BETWEEN GOVERNMENTS (ss. 112.24-112.31)

PART III CODE OF ETHICS FOR PUBLIC OFFICERS AND EMPLOYEES (ss. 112.311-112.326)

PART IV SUPPLEMENTAL RETIREMENT ACT FOR RETIRED MEMBERS OF STATE RETIREMENT SYSTEMS (ss. 112.351-112.362)

PART V SUSPENSION, REMOVAL, OR RETIREMENT OF PUBLIC OFFICERS (ss. 112.40-112.51)

PART VI LAW ENFORCEMENT OFFICERS (ss. 112.531-112.534)

PART VII ACTUARIAL SOUNDNESS OF RETIREMENT SYSTEMS (ss. 112.60-112.67)

PART I

CONDITIONS OF EMPLOYMENT; RETIREMENT; PER DIEM, TRAVEL EXPENSES; ETC.

112.011 Felons; removal of disqualifications for employment, exceptions.—

(1)(a) A person shall not be disqualified from employment by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime. However, a person may be denied employment by the state, any of its agencies or political subdivisions, or any municipality by reason of the prior conviction for a crime if the crime was a felony or first degree misdemeanor and directly related to the position of employment sought.

(b) A person whose civil rights have been restored shall not be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a license, permit, or certificate is required to be issued by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime. However, a person who has had his civil rights restored may be denied a license, permit, or certification to pursue, practice, or engage in an occupation, trade, vocation, profession, or business by reason of the prior conviction for a crime if the crime was a felony or first degree misdemeanor and directly related to the specific occupation, trade, vocation,

profession, or business for which the license, permit, or certificate is sought.

(2)(a) This section shall not be applicable to any law enforcement agency. However, nothing herein shall be construed to preclude a law enforcement agency, in its discretion, from adopting the policy set forth herein.

(b) This section shall not be applicable to the employment practices of any fire department relating to the hiring of firemen. An applicant for employment with any fire department with a prior felony conviction shall be excluded from employment for a period of 4 years after expiration of sentence or final release by the Parole and Probation Commission unless the applicant prior to the expiration of the 4-year period, has received a full pardon or has had his civil rights restored.

(3) Any complaints concerning the violation of this section shall be adjudicated in accordance with the procedures set forth in chapter 120 for administrative and judicial review.

History.—ss. 1-3, ch. 71-115; s. 1, ch. 73-109.
cf.—s. 940.05 Restoration of civil rights.

112.021 Florida residence unnecessary.—Except as expressly provided by law, there shall be no Florida residence requirement for any person as a condition precedent to employment by any county.

History.—s. 3, ch. 69-20; s. 23, ch. 71-355; s. 25, ch. 79-190.

112.042 No discrimination in county and municipal employment.—

(1) It shall be against the public policy of this state for the governing body of any county or municipal agency, board, commission, department, or office, solely because of the race, color, sex, religious creed, or national origin of any individual, to refuse to hire or employ, to bar, or to discharge from employment such individuals or to otherwise discriminate against such individuals with respect to compensation, hire, tenure, terms, conditions, or privileges of employment, if the individual is the most competent and able to perform the services required.

(2)(a) Any person, firm, corporation, association, or other group or body, jointly or severally, who may be aggrieved by any decision, regulation, restriction, or resolution adopted by the governing body of any county or municipal agency, board, commission, or department which is an unlawful employment practice under this section may apply to such agency, board, commission, or department at any time for a modification or rescission thereof. If such modification or rescission should be refused, any such person, firm, corporation, association or other group or body may, within 30 days after such refusal, but not thereafter, institute original proceedings for relief in the circuit court of the county.

(b) There shall be no right to apply to the court for relief on account of any order, requirement, decision, determination, or action of any county or municipal officer pursuant to this section unless there shall first have been an appeal therefrom to the governing agency, board, commission, or department to which such officer is responsible.

(3) Nothing in this section shall be construed to prohibit alternative relief through local civil service systems and boards provided for in s. 14, Art. III of the State Constitution.

History.—s. 1, ch. 69-334.

112.043 Age discrimination.—It shall be the public policy of the state that no officer or board, whether state or county, shall discriminate in the employment of any person solely on the basis of age. Persons who apply for employment with the state or any county of the state shall be selected on the basis of training, experience, mental and physical abilities, and other selection criteria established for the position. Unless age restrictions have been specifically established through published specifications for a position, available to the public, the employing authority shall give equal consideration to all applicants, regardless of age.

History.—s. 1, ch. 69-141.

112.044 Public employers, employment agencies, labor organizations; discrimination based on age prohibited; exceptions; remedy.—

(1) LEGISLATIVE INTENT; PURPOSE.—The Legislature finds and declares that in the face of rising productivity and affluence, older workers find themselves disadvantaged, both in their efforts to retain employment and in their efforts to regain employment when displaced from jobs. The setting of arbitrary age limits, irrespective of capability for job performance, has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons. In comparison to the incidence of unemployment among younger workers, the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability, is high among older workers, whose numbers are great and growing and whose employment problems are grave. In industries affecting commerce, the existence of arbitrary discrimination in employment because of age burdens commerce and the free flow of goods. It is the purpose of this act to promote employment of older persons based on ability rather than age and to prohibit arbitrary age discrimination in employment.

(2) DEFINITIONS.—For the purpose of this act:

(a) "Employer" means the state or any county, municipality, or special district or any subdivision or agency thereof. This definition shall not apply to any law enforcement agency or firefighting agency in this state.

(b) "Employment agency" means any person, including any agent thereof, regularly undertaking, with or without compensation, to procure employees for an employer, including state and local employment services receiving federal assistance.

(c) "Employee" means an individual employed by any employer.

(d) "Department" means the Department of Labor and Employment Security.

(3) PROHIBITED ACTIVITIES; EXCEPTIONS.—

(a) Except as provided in paragraph (f), it is unlawful for an employer to:

1. Fail or refuse to hire, discharge or mandatori-

ly retire, or otherwise discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment because of age.

2. Limit, segregate, or classify employees in any way which would deprive, or tend to deprive, any individual of employment opportunities, or otherwise adversely affect his status as an employee, because of age.

3. Reduce the wage rate of any employee or otherwise alter the terms or conditions of employment in order to comply with this act, unless such a reduction is with the employee's express or implied consent.

(b) Except as provided in paragraph (f), it is unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of age or to classify or refer for employment any individual on the basis of age.

(c) Except as provided in paragraph (f), it is unlawful for a labor organization to:

1. Exclude or expel from its membership, or otherwise discriminate against, any individual because of age.

2. Limit, segregate, or classify its membership, or fail or refuse to refer for employment any individual, in any way which would limit, deprive, or tend to deprive the individual of employment opportunities or which would otherwise adversely affect his status as an employee or as an applicant for employment solely because of age.

3. Cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It is unlawful:

1. For an employer to discriminate against any employee or applicant for employment;

2. For an employment agency to discriminate against any individual; or

3. For a labor organization to discriminate against any member or applicant for membership,

because such employee, applicant for employment, individual, member, or applicant for membership has opposed any practice made unlawful by this section or because the employee, applicant for employment, individual, member, or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, a proceeding, or litigation under this act.

(e) Except as provided in paragraph (f), it is unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to:

1. Employment by such employer;

2. Membership in such labor organization or any classification or referral for employment by such labor organization; or

3. Any classification or referral for employment by such employment agency,

which notice or advertisement indicates any preference, limitation, specification, or discrimination based on age.

(f) It is not unlawful for an employer, employment agency, or labor organization to:

1. Take any action otherwise prohibited under paragraphs (a), (b), (c), or (e), based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business.

2. Observe the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this act.

3. Discharge or otherwise discipline an individual for good cause.

(4) APPEAL; CIVIL SUIT AUTHORIZED.—Any employee of the state who is within the Career Service System established by chapter 110 and who is aggrieved by a violation of this act may appeal to the [1]Career Service Commission under the conditions and following the procedures prescribed in chapter 110. Any person other than an employee who is within the Career Service System established by chapter 110 who is aggrieved by a violation of this act may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this act.

(5) NOTICE TO BE POSTED.—Each employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice to be prepared or approved by the department setting forth such information as the department deems appropriate to effectuate the purposes of this act.

History.—ss. 6-8, 10, 11, ch. 76-208; s. 1, ch. 77-174; s. 7, ch. 79-7; s. 31, ch. 79-190.

[1]**Note.**—Words "Career Service" substituted for "Personnel" by the editors to conform to Senate Amendments 41 and 42 to Amendment 1 to C.S. for H.B.'s 1604 and 1649, which deleted provisions relating to creation of a "Personnel" commission and, in effect, retained the "Career Service" designation. See Senate Journal 1979, pp. 850, 853, 870, and 871 and s. 22, ch. 79-190.

112.05 Retirement; cost-of-living adjustment.—

(1)(a) Whenever any state official or state employee has attained the age of 70 years or more and has served the state as either an official or employee, or both, for as much as 20 consecutive years or more or for an aggregate time of 30 years or more, or whenever any state official or employee, irrespective of age, has served the state as either an official or employee, or both, for 30 consecutive years or more, or for as much as an aggregate of 35 years or more, such official or employee may retire from his office as such official or employee with the right to be paid, and shall be paid monthly on his own requisition during the remainder of his natural life one-half the amount of the average monthly salary received during the last 10 years of such service; and sufficient money to meet the requirements of this section is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated. Provided, that military service in the Armed Forces of the United States shall be computed as a part of the time specified hereinabove as entitling a state official or employee to the benefits of this section. This section shall apply only to persons retired or persons who are on a state payroll June 30, 1953 and remain continuously on a state payroll until eligible to retire. This section shall not affect any state official or employee who has already retired under any retirement act, except that no cabinet officer qualifying shall receive less than $4,500 per year.

(b)1. Any state official or state employee who, as of January 1, 1976, has served the state as either an official or employee, or both, for 29 consecutive years, irrespective of age, and who has a terminal or critical illness, which illness is certified by two physicians licensed in this state as terminal or critical, shall be eligible for early retirement. The benefits accruing to any such person under this section shall be reduced by five-twelfths of 1 percent for each complete month by which such retirement precedes the 30 years of service required under paragraph (a).

2. Any state official or employee eligible to retire pursuant to the provisions of this paragraph may retire from his office as such official or employee with the right to be paid, and shall be paid monthly on his own requisition during the remainder of his natural life, one-half the amount of the average monthly salary received during the last 10 years of his service, less the actuarial reduction provided for in subparagraph 1.

(2)(a) On July 1, 1974, and each July 1 thereafter, an initial cost-of-living adjustment shall be made to the monthly benefit payable to certain retirees who are retired under the provisions of this section and who are 65 years old or older on July 1 of the adjustment year. The cost-of-living adjustment provided in this subsection shall also be applicable to all persons who are retired, or who may hereafter retire, under this section, on the first July 1 following their 65th birthday and each July 1 thereafter.

(b) The initial cost-of-living adjustment authorized by this subsection shall be made by using the formula provided in, and pursuant to, the provisions of s. 121.101 for initial adjustments, except that the standard benefit for any retiree under this section shall be 48 percent of his average final compensation, regardless of his years of service.

(c) On each July 1 following the initial adjustment of a retiree's benefit, his monthly benefit shall be adjusted to an amount equal to the sum of the monthly benefit being received on June 30 immediately preceding the adjustment date, plus a percentage of this benefit, such percentage to be equal to the percentage change in the average cost-of-living index as of the date of adjustment from the average cost-of-living index for the next preceding adjustment date. However, the percentage change used to make the cost-of-living adjustment shall not exceed 3 percent for any annual adjustment date.

(d) Any retiree whose benefit has been adjusted pursuant to s. 112.362 shall not be entitled to the cost-of-living adjustment provided in this subsection until he has received the adjusted benefit provided by s. 112.362 for 1 full year.

History.—s. 1, ch. 12293, 1927; CGL 242; s. 1, ch. 17274, 1935; s. 1, ch. 20499, 1941; s. 1, ch. 22828, 1945; ss. 1, chs. 28147, 28148, 1953; s. 1, ch. 74-303; s. 1, ch. 76-212.

Note.—Former s. 121.001.

cf.—Ch. 122 State and county officers and employees retirement system.

s. 291.325 Provides cost-of-living adjustment for Confederate pensioners.

112.0501 Ratification of certain dual retirements.—

(1) Any state employee who was permitted by the Comptroller, as administrator of the retirement provisions of s. 112.05 and chapter 122, to retire under the provisions of both such statutes prior to April 23, 1969, when the Attorney General ruled that such dual retirements are prohibited by s. 122.10(3), as recodified by the Legislature in 1965, shall receive and enjoy the retirement benefits awarded to him upon his retirement, the provisions of s. 122.10(3) to the contrary notwithstanding.

(2) The exceptions granted to state retirees coming under the provisions of subsection (1) shall not apply to any state employee retiring subsequent to November 1, 1970, and the administrator of the Florida Retirement System is hereby directed to establish such rules and procedures as may be necessary to prohibit such dual retirements for members of the Florida Retirement System or any retirement system consolidated therein pursuant to s. 121.011(2).

History.—s. 1, ch. 72-202.

112.0515 Retirement or pension rights unaffected by consolidation or merger of governmental agencies.—It is hereby declared to be the policy of this state that in any consolidation or merger of governments or the transfer of functions between units of governments either at the state or local level or between state and local units, the rights of all public employees in any retirement or pension fund shall be fully protected. No consolidation or merger of governments or governmental services, either state or local, accomplished in this state shall diminish or impair the rights of any public employee in any retirement or pension fund or plan which existed at the date of such consolidation or merger and in which the employee was participating, nor shall such consolidation or merger result in any impairment or reduction in benefits or other pension rights accruing to such employee.

History.—s. 1, ch. 72-210.

112.061 Per diem and traveling expenses of public officers, employees, and authorized persons.—

(1) LEGISLATIVE INTENT.—There are inequities, conflicts, inconsistencies and lapses in the numerous laws regulating or attempting to regulate traveling expenses of public officers, employees, and authorized persons in the state. It is the intent of the Legislature:

(a) To remedy same and to establish uniform maximum rates, and limitations, with certain justifiable exceptions, applicable to all public officers, employees, and authorized persons whose traveling expenses are paid by a public agency.

(b) To preserve the standardization and uniformity established by this law:

1. The provisions of this section shall prevail over any conflicting provisions in a general law, present or future, to the extent of the conflict; but if any such general law contains a specific exemption from this section, including a specific reference to this section, such general law shall prevail, but only to the extent of the exemption.

2. The provisions of any special or local law, present or future, shall prevail over any conflicting provisions in this section, but only to the extent of the conflict.

(2) DEFINITIONS.—For the purposes of this section the following words shall have the meaning indicated:

(a) Agency or public agency—Any office, depart-

ment, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, county, city, town, village, municipality or any other separate unit of government created pursuant to law.

(b) Agency head or head of the agency—The highest policy-making authority of a public agency, as herein defined.

(c) Officer or public officer—An individual who in the performance of his official duties is vested by law with sovereign powers of government and who is either elected by the people, or commissioned by the governor and has jurisdiction extending throughout the state, or any person lawfully serving instead of either of the foregoing two classes of individuals as initial designee or successor.

(d) Employee or public employee—An individual, whether commissioned or not, other than an officer or authorized person as defined herein, who is filling a regular or full-time authorized position and is responsible to an agency head.

(e) Authorized person—

1. A person other than a public officer or employee as defined herein, whether elected or commissioned or not, who is authorized by an agency head to incur travel expenses in the performance of his official duties.

2. A person who is called upon by an agency to contribute time and services as consultant or advisor.

3. A person who is a candidate for an executive or professional position.

(f) Traveler—A public officer, public employee, or authorized person, when performing authorized travel.

(g) Travel expense, traveling expenses, necessary expenses while traveling, actual expenses while traveling, or words of similar nature—The usual ordinary and incidental expenditures necessarily incurred by a traveler.

(h) Common carrier—Train, bus, commercial airline operating scheduled flights, or rental cars of an established rental car firm.

(i) Travel day—A period of 24 hours consisting of 4 quarters of 6 hours each.

(j) Travel period—A period of time between the time of departure and time of return.

(k) Class A travel—Continuous travel of 24 hours or more away from official headquarters.

(l) Class B travel—Continuous travel of less than 24 hours which involves overnight absence from official headquarters.

(m) Class C travel—Travel for short or day trips where the traveler is not away from his official headquarters overnight.

(3) AUTHORITY TO INCUR TRAVELING EXPENSES.—

(a) All travel must be authorized and approved by the head of the agency, or his designated representative, from whose funds the traveler is paid. The head of the agency shall not authorize or approve such a request unless it is accompanied by a signed statement by the traveler's supervisor stating that such travel is on the official business of the state and also stating the purpose of such travel.

(b) Traveling expenses of travelers shall be limited to those expenses necessarily incurred by them in the performance of a public purpose authorized by law to be performed by the agency and must be within the limitations prescribed by this section.

(c) Travel by public officers or employees serving temporarily in behalf of another agency or partly in behalf of more than one agency at the same time, or authorized persons who are called upon to contribute time and services as consultants or advisors, may be authorized by the agency head. Complete explanation and justification must be shown on the travel expense voucher or attached thereto.

(d) Traveling expenses of public employees for the sole purpose of taking merit system or other job placement examinations, written or oral, shall not be allowed under any circumstances, except that upon prior written approval of the agency head, candidates for executive or professional positions may be allowed traveling expenses pursuant to this section.

(e) No later than February 1 of each year, each department, and each state agency not within a department, shall submit to the Appropriations and Governmental Operations Committees of the Senate and House of Representatives, and to such other legislative committees as the President of the Senate and Speaker of the House may designate, a report of all conventions, conferences, and meetings attended at public expense outside the state by officers and employees of such department or agency during the preceding 12 months. The report shall show:

1. The name and location of each such convention, conference, or meeting.

2. The names and positions of officers and employees who attended.

3. The purpose of the convention, conference, or meeting.

4. The total amount of public funds expended for attendance of such officers and employees.

(4) OFFICIAL HEADQUARTERS.—The official headquarters of an officer or employee assigned to an office shall be the city or town in which the office is located; except that:

(a) The official headquarters of a person located in the field shall be the city or town nearest to the area where the majority of his work is performed, or such other city, town or area as may be designated by the agency head; provided that in all cases such designation must be in the best interests of the agency and not for the convenience of the person.

(b) When any state employee is stationed in any city or town for a period of over 30 continuous workdays, such city or town shall be deemed to be his official headquarters, and he shall not be allowed per diem or subsistence, as provided in this section, after the said period of 30 continuous workdays has elapsed, unless this period of time is extended by the express approval of the agency head. A report indicating all payment of per diem or subsistence after the said period of 30 continuous workdays has elapsed approved by the agency head shall be required as a part of the report provided in paragraph (3)(e).

(c) A traveler may leave his assigned post to return home overnight, over a weekend, or during a holiday, but any time lost from his regular duties

shall be taken as annual leave and authorized in the usual manner. He shall not be reimbursed for traveling expenses in excess of the established rate for per diem allowable had he remained at his assigned post. However, when a traveler has been temporarily assigned away from his official headquarters for an approved period extending beyond 30 days, he shall be entitled to reimbursement for traveling expenses at the established rate of one round trip for each 30-day period actually taken to his home in addition to pay and allowances otherwise provided.

(5) COMPUTATION OF TRAVEL TIME FOR REIMBURSEMENT.—For purposes of reimbursement and methods of calculating fractional days of travel, the following principles are prescribed:

(a) The travel day for Class A travel shall be a calendar day (midnight to midnight). The travel day for Class B travel shall begin at the same time as the travel period. For Class A and Class B travel, the traveler shall be reimbursed one-fourth of the authorized rate of per diem for each quarter, or fraction thereof, of the travel day included within his travel period. Class A and Class B travel shall include any assignment on official business outside of regular office hours and away from regular places of employment when it is considered reasonable and necessary to stay overnight and for which travel expenses are approved.

(b) A traveler shall not be reimbursed on a per diem basis for Class C travel, but shall receive subsistence as provided in this section, which allowance for meals shall be based on the following schedule:

1. Breakfast—When travel begins before 6 a.m. and extends beyond 8 a.m.
2. Lunch—When travel begins before 12 noon and extends beyond 2 p.m.
3. Dinner—When travel begins before 6 p.m. and extends beyond 8 p.m., or when travel occurs during nighttime hours due to special assignment.

No allowance shall be made for meals when travel is confined to the city or town of the official headquarters or immediate vicinity; except assignments of official business outside of the traveler's regular place of employment if travel expenses are approved.

(6) RATES OF PER DIEM AND SUBSISTENCE ALLOWANCE.—For purposes of reimbursement rates and methods of calculation, per diem and subsistence allowances are divided into the following groups, and maximum rates to be determined by the agency head:

(a) All travelers may be allowed for subsistence when traveling to a convention or conference or when traveling outside the state in order to conduct bona fide state business, which convention, conference, or business serves a direct and lawful public purpose with relation to the public agency served by the person attending such meeting or conducting such business, either of the following:

1. Up to $40 per diem; or
2. Up to the amounts permitted in paragraph (d) of this subsection for meals, plus actual expenses for lodging at a single occupancy rate to be substantiated by paid bills therefor.

(b) The Governor, members of the cabinet, members of the Legislature, members of the Public Service Commission, Justices of the Supreme Court, and judges of the district courts of appeal, circuit courts, and county courts may receive $40 per diem while traveling on official business.

(c) All other travelers may be allowed:

1. Up to $40 per diem;
2. When lodging or meals are provided at a state institution, the traveler shall be reimbursed only for the actual expenses of lodging or meals, not to exceed the maximum provided for in this subsection.

(d) *Meals only.*—All travelers may be allowed, for subsistence while on Class C travel on official business, up to the following amounts:

1. Breakfast $2.50
2. Lunch 3.50
3. Dinner 6.00

(7) TRANSPORTATION.—

(a) All travel must be by a usually traveled route. In case a person travels by an indirect route for his own convenience any extra costs shall be borne by the traveler and reimbursement for expenses shall be based only on such charges as would have been incurred by a usually traveled route. The agency head shall designate the most economical method of travel for each trip, keeping in mind the following conditions:

1. The nature of the business.
2. The most efficient and economical means of travel (considering time of the traveler, cost of transportation and per diem or subsistence required).
3. The number of persons making the trip, and the amount of equipment or material to be transported.

(b) The Department of Banking and Finance may provide any form it deems necessary to cover travel requests for traveling on official business and when paid by the state. All outstanding transportation request books shall be canceled on or before January 1, 1964, and unused portions of such books returned to the department.

(c) Transportation by common carrier when traveling on official business and paid for personally by the traveler, shall be substantiated by a receipt therefor. Federal tax shall not be reimbursable to the traveler unless the state and other public agencies are also required by federal law to pay such tax. In the event transportation other than the most economical class as approved by the agency head is provided by a common carrier on a flight check or credit card, the charges in excess of the most economical class shall be refunded by the traveler to the agency charged with the transportation provided in this manner.

(d)1. The use of privately owned vehicles for official travel in lieu of public-owned vehicles or common carrier may be authorized by the agency head if a public-owned vehicle is not available. Whenever travel is by privately owned vehicle, the traveler shall be entitled to a mileage allowance at a fixed rate of 17 cents per mile in 1979-1980 and a mileage allowance at a fixed rate of 19 cents per mile in 1980-1981, provided the Internal Revenue Service authorizes 19 cents per mile in 1980-1981 without actual operating expense justification. If the Internal Revenue Service does not authorize 19 cents per

mile for 1980-1981 without actual operating expense justification, the Department of Administration shall seek a waiver for state employees. In the event the waiver request is unsuccessful, the Department of Administration shall pay the maximum allowable by the Internal Revenue Service without actual operating expense justification but in no case shall this be less than 17 cents per mile. The agency head shall authorize payment of the mileage allowance or the common carrier fare for such travel, whichever is appropriate. Reimbursement for expenditures related to the operation, maintenance, and ownership of a vehicle shall not be allowed when privately owned vehicles are used on public business and reimbursement is made pursuant to this paragraph, except as provided in subsection (8).

2. All mileage shall be shown from point of origin to point of destination and, when possible, shall be computed on the basis of the current map of the Department of Transportation. Vicinity mileage necessary for the conduct of official business is allowable but must be shown as a separate item on the expense voucher.

(e) Transportation by chartered vehicles when traveling on official business may be authorized by the agency head when necessary or where it is to the advantage of the agency, provided the cost of such transportation does not exceed the cost of transportation by privately owned vehicle pursuant to paragraph (d) of this subsection.

(f) The agency head may grant monthly allowances in fixed amounts for use of privately owned automobiles on official business in lieu of the mileage rate provided in paragraph (d) of this subsection. Allowances granted pursuant to this paragraph shall be reasonable, taking into account the customary use of the automobile, the roads customarily traveled, and whether any of the expenses incident to the operation, maintenance, and ownership of the automobile are paid from funds of the agency or other public funds. Such allowance may be changed at any time, and shall be made on the basis of a signed statement of the traveler, filed before the allowance is granted or changed, and at least annually thereafter. The statement shall show the places and distances for an average typical month's travel on official business, and the amount that would be allowed under the approved rate per mile for the travel shown in the statement, if payment had been made pursuant to paragraph (d) of this subsection.

(g) No contracts may be entered into between a public officer or employee, or any other person, and a public agency, in which a depreciation allowance is used in computing the amount due by the agency to the individual for the use of a privately owned vehicle on official business; provided, any such existing contract shall not be impaired.

(h) No traveler shall be allowed either mileage or transportation expense when he is gratuitously transported by another person or when he is transported by another traveler who is entitled to mileage or transportation expense. However, a traveler on a private aircraft shall be reimbursed the actual amount charged and paid for his fare for such transportation up to the cost of a commercial airline ticket for the same flight, even though the owner or pilot of such aircraft is also entitled to transportation expense for the same flight under this subsection.

(8) OTHER EXPENSES.—The following incidental traveling expenses of the traveler may be reimbursed:

(a) Taxi fare.

(b) Ferry fares; and bridge, road and tunnel tolls.

(c) Storage or parking fees.

(d) Communication expense.

(e) Convention registration fee while attending a convention or conference which will serve a direct public purpose with relation to the public agency served by the person attending such meetings. However, any meals or lodging included in the registration fee will be deducted in accordance with the allowances provided in subsection (6).

(9) RULES AND REGULATIONS.—

(a) The Department of Banking and Finance shall promulgate such rules and regulations, including, but not limited to, the general criteria to be used by a state agency to predetermine justification for attendance by state officers and employees and authorized persons at conventions and conferences, and prescribe such forms as may be necessary to effectuate the purposes of this section.

(b) Each state agency shall promulgate such additional specific rules and regulations and specific criteria to be used by it to predetermine justification for attendance by state officers and employees and authorized persons at conventions and conferences, not in conflict with the rules and regulations of the Department of Banking and Finance or with the general criteria to be used by a state agency to predetermine justification for attendance by state officers and employees and authorized persons at conventions, as may be necessary to effectuate the purposes of this section.

(10) FRAUDULENT CLAIMS.—Claims submitted pursuant to this section shall not be required to be sworn to before a notary public or other officer authorized to administer oaths but any claim authorized or required to be made under any provision of this section shall contain a statement that the expenses were actually incurred by the traveler as necessary traveling expenses in the performance of his official duties and shall be verified by a written declaration that it is true and correct as to every material matter; and any person who willfully makes and subscribes any such claim which he does not believe to be true and correct as to every material matter, or who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under the provisions of this section of a claim which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such claim, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Whoever shall receive an allowance or reimbursement by means of a false claim shall be civilly liable in the amount of the overpayment for the reimbursement of the public fund from which the claim was paid.

(11) TRAVEL AUTHORIZATION AND VOUCHER FORMS.—

(a) *Authorization forms.*—The Department of

Banking and Finance shall furnish a uniform travel authorization request form which shall be used by all state officers and employees and authorized persons when requesting approval for the performance of travel to a convention or conference. The form shall include, but not be limited to, provision for the name of each traveler, purpose of travel, period of travel, estimated cost to the state, and a statement of benefits accruing to the state by virtue of such travel. A copy of the program or agenda of the convention or conference, itemizing registration fees and any meals or lodging included in the registration fee, shall be attached to, and filed with, the copy of the travel authorization request form on file with the agency. The form shall be signed by the traveler and by the traveler's supervisor stating that the travel is to be incurred in connection with official business of the state. The head of the agency or his designated representative shall not authorize or approve such request in the absence of the appropriate signatures. A copy of the travel authorization form shall be attached to, and become a part of, the support of the agency's copy of the travel voucher.

(b) *Voucher forms.*—The Department of Banking and Finance shall furnish a uniform travel voucher form which shall be used by all state officers and employees and authorized persons when submitting traveling expense statements for approval and payment. No traveling expense statement shall be approved for payment by the comptroller unless made on the form prescribed and furnished by the department. The travel voucher form shall provide for, among other things, the purpose of the official travel and a certification or affirmation, to be signed by the traveler, indicating the truth and correctness of the claim in every material matter, that the travel expenses were actually incurred by the traveler as necessary in the performance of official duties, that per diem claimed has been appropriately reduced for any meals or lodging included in the convention or conference registration fees claimed by the traveler, and that the voucher conforms in every respect with the requirements of this section. The original copy of the executed uniform travel authorization request form shall be attached to the uniform travel voucher on file with the respective agency.

(12) ADVANCEMENTS.—Notwithstanding any of the foregoing restrictions and limitations, an agency head may make, or authorize the making of, advances to cover anticipated costs of travel to travelers. Such advancements may include the costs of subsistence and travel of any person transported in the care or custody of the traveler in the performance of his duties.

(13) DIRECT PAYMENT OF EXPENSES BY AGENCY.—Whenever an agency requires an employee to incur either Class A or Class B travel on emergency notice to the employee, such employee may request the agency to pay his expenses for meals and lodging directly to the vendor, and the agency may pay the vendor the actual expenses for his meals and lodging during the travel period, limited to an amount not to exceed that authorized for per diem for such period. The provisions of this subsection shall not be deemed to apply to any legislator or to any employee of either house of the Legislature or of the Joint Legislative Management Committee.

History.—ss. 1, 3, ch. 22830, 1945; ss. 1-3, ch. 23892, 1947; ss. 1, 3, ch. 25040, 1949; ss. 1, 3, ch. 26910, 1951; s. 1, ch. 28303, 1953; s. 1, ch. 29628, 1955; s. 1, ch. 57-230; s. 1, ch. 61-183; s. 1, ch. 61-43; s. 1, ch. 63-5; s. 1, ch. 63-192; s. 1, ch. 63-122; s. 1, ch. 63-400; ss. 2, 3, ch. 67-371; ss. 1, 2, ch. 67-2206; s. 1, ch. 69-193; s. 1, ch. 69-381; ss. 12, 23, 31, 35, ch. 69-106; s. 65, ch. 71-136; s. 1, ch. 72-213; s. 1, ch. 72-217; s. 1, ch. 72-324; s. 26, ch. 72-404; s. 1, ch. 73-169; s. 1, ch. 74-15; s. 1, ch. 74-246; s. 1, ch. 74-365; ss. 1, 2, ch. 75-33; s. 1, ch. 76-166; s. 2, ch. 76-208; ss. 1, 2, ch. 76-250; s. 1, ch. 77-174; s. 1, ch. 77-231; ss. 1, 2, ch. 77-437; s. 2, ch. 78-95; s. 51, ch. 79-190; s. 1, ch. 79-205; s. 1, ch. 79-303; s. 1, ch. 79-412.
cf.—s. 250.19 Expenses for travel on military business.

112.08 Group insurance for public officers and employees; certain volunteers.—

(1) Every local governmental unit is authorized to provide and pay out of its available funds for all or part of the premium for life, health, accident, hospitalization, or annuity insurance, or all or any kinds of such insurance, for the officers and employees of the unit and for health, accident, and hospitalization insurance for their dependents upon a group insurance plan and, to that end, to enter into contracts with insurance companies or professional administrators to provide such insurance. Before entering any contract for insurance, the governmental unit shall advertise for competitive bids, and such contract shall be let upon the basis of such bids. However, the governmental unit may undertake simultaneous negotiations with those companies which have submitted reasonable and timely bids and which are found by the governmental unit to be fully qualified and capable of meeting all servicing requirements. Each county, municipality, school board, local governmental unit, and special taxing district of the state may self-insure any plan for health, accident, and hospitalization coverage, subject to approval based on actuarial soundness by the Department of Insurance. Each shall contract with an insurance company or professional administrator qualified and approved by the Department of Insurance to administer such a plan.

(2) Each county, municipality, school board, local governmental unit, and special taxing district is authorized to commingle in a common fund, plan, or program all payments for life, health, accident, hospitalization, or annuity insurance or all or any kinds of such insurance whether paid by the governmental unit, officer or employee, or otherwise. The governmental unit may determine the portion of the cost, if any, of such fund, plan, or program to be paid by officers or employees of the governmental unit and fix the amounts to be paid by each such officer or employee as will best serve the public interest.

(3) A local governmental unit may, at its discretion, provide group insurance consistent with the provisions of this section for volunteer or auxiliary firefighters, volunteer or auxiliary law enforcement agents, or volunteer or auxiliary ambulance or emergency service personnel within its jurisdiction. No insurance provided to volunteer personnel shall be used in the computation of workers' compensation benefits or in the determination of employee status for the purposes of collective bargaining.

(4) Benefits provided under group insurance policies pursuant to subsection (3) shall not exceed benefits provided to employees under subsection (1) and ss. 112.19 and 112.191.

(5) The Department of Administration shall initiate and supervise a group insurance program providing death and disability benefits for active members of the Florida Highway Patrol Auxiliary, with coverage beginning July 1, 1978, and purchased from state funds appropriated for that purpose. The Department of Administration, in cooperation with the Department of Insurance and the Division of Purchasing of the Department of General Services, shall prepare specifications necessary to implement the program, and the Department of Administration shall receive bids and award the contract in accordance with general law.

History.—s. 1, ch. 20852, 1941; s. 1, ch. 69-300; s. 1, ch. 72-338; s. 1, ch. 76-208; s. 1, ch. 77-89; s. 50, ch. 79-40; s. 1, ch. 79-337; s. 67, ch. 79-400.

112.0801 Group insurance; retired county, municipality, community college, and school board employee participation.—Every county, municipality, community college, or district school board in the state which provides life, health, accident, hospitalization, or annuity insurance, or all of any kinds of such insurance, for the officers and employees thereof upon a group insurance plan is authorized to allow retired former personnel the option of continuing to participate in such group insurance plan provided the cost of any such continued participation in any such group insurance plan shall be entirely paid for by the retired employee.

History.—s. 2, ch. 76-151; s. 1, ch. 79-88.

112.081 Circuit judges, participation.—All circuit judges who, on July 1, 1967, are participating in an insurance program for county employees are hereby deemed to be county employees for the purpose of such participation even though there is no actual cash salary supplement received from the county.

History.—s. 4, ch. 67-301.

112.09 Evidence of election to provide insurance.—The election to exercise such authority shall be evidenced by resolution, duly recorded in the official minutes, adopted by the board of county commissioners in the case of a county, by the school board, in the case of a school district and by the members of the board, or department head if an individual, in the case of any state department, board or bureau, and by the governing body by resolution or ordinance in the case of any other governmental unit of the State of Florida.

History.—s. 2, ch. 20852, 1941; s. 1, ch. 69-300.

112.10 Deduction and payment of premiums.—Upon the request in writing of any officer or employee, the proper officials of each and every county, school board, governmental unit, department, board or bureau of the state, are hereby authorized and empowered to deduct from the wages of such officer or employee, periodically, the amount of the premium which such officer or employee has agreed to pay for such insurance, and to pay or remit the same directly to the insurance company issuing such group insurance.

History.—s. 3, ch. 20852, 1941; s. 1, ch. 69-300; s. 2, ch. 72-338.

112.11 Participation voluntary.—The participation in such group insurance by any officer or employee shall be entirely voluntary at all times. Any officer or employee may, upon any payday, withdraw or retire from such group insurance plan, upon giving his employer written notice thereof and directing the discontinuance of deductions from wages in payment of such premiums.

History.—s. 4, ch. 20852, 1941; s. 3, ch. 72-338.

112.13 Insurance additional to workers' compensation.—The insurance permitted and allowed under this law shall be in addition to, and in no manner in lieu of the provisions of the Workers' Compensation Law.

History.—s. 6, ch. 20852, 1941; s. 51, ch. 79-40.

112.14 Purpose and intent of law.—It is hereby declared to be the purpose and intent of this law to make available upon a voluntary participation basis to the several officers and employees aforesaid, the economics, protection and benefits of group insurance not available to each officer and employee as an individual. It is also the purpose and intent of this law to provide authority for the payment of premiums or charges for group insurance for county officers whose compensation is fixed by chapter 145 in addition to the compensation provided in chapter 145.

History.—s. 5, ch. 20852, 1941; s. 5, ch. 72-338.

112.151 Group hospitalization insurance for county officers and employees.—The governing body of each county in the state is authorized to provide and pay out of its available funds all or part of the premiums for hospitalization insurance coverage for the officers or employees of the county and to enter into contracts with insurance companies to provide such insurance.

History.—s. 1, ch. 78-267.

112.161 Change in position or reclassification; continuance or resumption of membership in retirement system.—

(1) Any person who is a participant in any state or county retirement system, who changes his position of employment, or who is reclassified so that under any existing law such person would participate in a different retirement system, may continue to participate and come under the same retirement system in which he participated or came under before changing positions or being reclassified so long as such person remains in the employ of the state or county and continues to make the contributions required by law. Any person who has changed positions or been reclassified heretofore may come back under and participate in the retirement system to which he belonged before such change or reclassification upon payment of all back contributions, plus 3 percent interest per annum, that he would have been required by law had he continued to participate and come under such system continuously, such election to be made and payment to be made on or before the time of retirement.

(2) The provisions of this section shall supersede any existing law relating to state and county retirement systems or pensions, provided nothing herein

shall be construed to apply to State Supreme Court Justices, as provided in chapter 25; nor to circuit judges as provided by chapter 38; nor to members of Duval County employees pension fund as provided in chapter 23259, Acts, 1945, as amended by chapter 27520, Acts, 1951, and chapter 27523, Acts, 1951.

History.—ss. 1, 2, ch. 57-752; ss. 24, 35, ch. 69-106.

112.171 Employee wage deductions.—

(1) The counties, municipalities, and special districts of the state and the departments, agencies, bureaus, commissions, and officers thereof are authorized and permitted in their sole discretion to make deductions from the salary or wage of any employee or employees in such amount as shall be authorized and requested by such employee or employees and for such purpose as shall be authorized and requested by such employee or employees and shall pay such sums so deducted as directed by such employee or employees.

(2) It is the intent and purpose of this section to vest in the public officers, agencies and commissions herein enumerated the sole power and discretion to approve or disapprove requested deductions and the approval of and making of approved deductions shall not require the approval or making of other requested deductions.

History.—s. 1, ch. 59-409; s. 26, ch. 79-190.

112.18 Firemen; special provisions relative to disability.—

(1) Any condition or impairment of health of any Florida municipal, county, port authority, special tax district, or fire control district fireman caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence. However, any such fireman shall have successfully passed a physical examination upon entering into any such service as a fireman, which examination failed to reveal any evidence of any such condition. Such presumption shall not apply to benefits payable under or granted in a policy of life insurance or disability insurance, unless the insurer and insured have negotiated for such additional benefits to be included in the policy contract.

(2) This section shall be construed to authorize the above governmental entities to negotiate policy contracts for life and disability insurance to include accidental death benefits or double indemnity coverage which shall include the presumption that any condition or impairment of health of any fireman caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death was accidental and suffered in the line of duty, unless the contrary be shown by competent evidence.

History.—s. 1, ch. 65-480; s. 1, ch. 73-125; s. 32, ch. 77-104.

112.19 Law enforcement officers, death benefits.—

(1) Whenever used in this act:

(a) The word "employer" means a state board, commission, department, division, bureau or agency, or a county or municipality.

(b) The term "criminal law" means penal statutes or penal ordinances.

(c) The term "law enforcement officer" means a full-time officer, deputy, agent or employee of an employer, whether elected at the polls, appointed or employed, whose duties require him to enforce criminal laws, make investigations relating thereto, apprehend and arrest violators thereof or transport, handle or guard persons arrested for, charged with or convicted of violations thereof.

(d) The word "insurance" means insurance procured from a stock company or mutual company or association or exchange authorized to do business as an insurer in this state.

(2)(a) The sum of $20,000 shall be paid as hereinafter provided when a law enforcement officer, while under 70 years of age and while engaged in the performance of any of the duties mentioned in paragraph (1)(c), is killed or receives bodily injury which results in the loss of his life within 180 days after being received, regardless of whether he is killed or such bodily injury is inflicted upon him intentionally or accidentally, provided that such killing is not the result of suicide and that such bodily injury is not intentionally self-inflicted. Such payment shall be in addition to any workers' compensation or pension benefits and shall be exempt from the claims and demands of creditors of such law enforcement officer.

(b) The employer of such law enforcement officer shall be liable for the payment of said sum and shall be deemed self-insured, unless it procures and maintains, or has already procured and maintains, insurance to secure such payment. Any such insurance may cover only the risks indicated above, in the amount indicated above, or it may cover those risks and additional risks and may be in a larger amount. Any such insurance shall be placed by such employer only after public bid of such insurance coverage which coverage shall be awarded to the carrier making the lowest and best bid.

(c) Such payment, whether secured by insurance or not, shall be made to the beneficiary designated by such law enforcement officer in writing, signed by him and delivered to his employer during his lifetime. If no such designation is made, then it shall be paid to his surviving child or children and wife in equal portions, and if there be no surviving child or wife, then to his estate.

(d) Payment of benefits to beneficiaries of state employees, or of the premiums to cover the risk, under the provisions of this section shall be paid from existing funds otherwise appropriated for the department.

History.—ss. 1, 2, ch. 67-408; ss. 1, 3, ch. 71-301; s. 52, ch. 79-40.

112.191 Firemen; death benefits.—

(1) Whenever used in this act:

(a) The term "employer" means a state board, commission, department, division, bureau or agency, or a county, municipality or special district.

(b) The term "fireman" means any duly employed uniformed fireman employed by an employer, whose primary duty is the prevention and extinguishing of fires, the protection of life and property therefrom, the enforcement of municipal, county, and state fire prevention codes, as well as the enforcement of any law pertaining to the prevention

and control of fires, who is a member of a duly constituted fire department of such employer, and not a volunteer fireman.

(c) The term "insurance" means insurance procured from a stock company or mutual company or association or exchange authorized to do business as an insurer in this state.

(2)(a) The sum of $20,000 shall be paid as hereinafter provided when a fireman, while under 70 years of age and while engaged in the performance of any of the duties mentioned in paragraph (1)(b), is killed or receives bodily injury which results in the loss of his life within 1 year after being received, provided that such killing is not the result of suicide and that such bodily injury is not intentionally self-inflicted. Such payment shall be in addition to any workers' compensation or pension benefits and shall be exempt from the claims and demands of creditors of such fireman.

(b) The employer of such fireman shall be liable for the payment of said sum and shall be deemed self-insured, unless it procures and maintains, or has already procured and maintained, insurance to secure such payment. Any such insurance may cover only the risks indicated above, in the amount indicated above, or it may cover those risks and additional risks and may be in a larger amount. Any such insurance shall be placed by such employer only after public bid of such insurance coverage which coverage shall be awarded to the carrier making the lowest best bid.

(c) Such payment, whether secured by insurance or not, shall be made to the beneficiary designated by such fireman in writing, signed by him and delivered to his employer during his lifetime. If no such designation is made, then it shall be paid to his surviving child or children and wife in equal portions, and if there be no surviving child or wife, then to his estate.

(d) Payment of benefits to beneficiaries of state employees, or of the premiums to cover the risk, under the provisions of this section, shall be paid from existing funds otherwise appropriated for the department.

History.—ss. 1, 2, ch. 67-443; ss. 1, 2, ch. 69-35; s. 7, ch. 69-353; ss. 2, 3, ch. 71-301; s. 1, ch. 78-7; s. 53, ch. 79-40.

112.192 State officers' compensation commission.—

(1) There is created a state officers' compensation commission composed of nine persons who are not members or employees of the legislative, judicial, or executive branches of government. The first eight members of the commission shall be appointed as follows:

(a) The Governor shall appoint one member for a term of 3 years and one member for a term of 4 years.

(b) The President of the Senate shall appoint two members for terms of 2 years.

(c) The Speaker of the House of Representatives shall appoint two members for terms of 2 years.

(d) The Chief Justice of the Supreme Court shall appoint one member for a term of 3 years and one member for a term of 4 years.

(e) The eight members appointed pursuant to paragraphs (a), (b), (c), and (d) shall appoint one member for a term of 1 year.

(2) Subsequent appointments shall be made by the same authorities who made the original appointments and, except for filling vacancies, shall be for terms as set forth in subsection (1). Vacancies shall be filled for the period of the unexpired terms.

(3) The terms of appointees appointed heretofore pursuant to paragraphs (a), (b), (c), (d), and (e) of subsection (1) for 1-year terms are terminated July 1, 1975, and new appointments shall be made pursuant to this section.

(4) Commission members shall be selected with special reference to their knowledge of compensation practices and financial matters generally. No more than six members of the same political party shall serve on the commission at the same time. No person shall be eligible to be a member of the commission who presently, or within 2 years prior to being appointed, has, on behalf of any members or employees or groups of members or employees of the legislative, judicial, or executive branches of government, or on behalf of those officers specified in subsection (8), sought to influence legislation, administrative decisions, or judicial decisions directly affecting the salaries, expense allowances, or other compensation of those members or employees of the legislative, judicial, or executive branches of government or of those officers specified in subsection (8). The appointing authority shall, in his discretion, determine whether a member is ineligible pursuant to this section, and may remove any ineligible member and appoint another member for the period of the unexpired term.

(5) Commission members shall serve without compensation but shall be entitled to receive reimbursement for traveling expenses as provided in s. 112.061.

(6) The Department of Administration shall provide staff and clerical assistance to the commission necessary to carry out its duties and make its reports.

(7) The Governor shall call the first meeting of the commission for the purpose of its organization. The commission shall select from its membership a chairman and secretary to serve for terms of 1 year. The commission shall meet a minimum of two times a year at the call of the chairman.

(8) The commission shall serve as an advisory body whose purpose is to study and evaluate trends and developments in compensating public officers in the several state governments. The commission shall make a report of its findings and recommendations to the Legislature not later than March 1 of each year, beginning March 1, 1976, regarding the salaries and expense allowances of the Governor, Lieutenant Governor, members of the cabinet, Justices of the Supreme Court, Judges of the District Court of Appeal, Judges of the Circuit Court, Judges of the County Court, State Attorneys, Public Defenders, Public Service Commissioners, constitutional officers of the several counties, and members of the Legislature.

History.—s. 1, ch. 72-233; s. 1, ch. 73-291; s. 1, ch. 73-323; s. 40, ch. 73-333;

s. 1, ch. 75-194.

112.193 State law enforcement officers retirement award.—

(1) Each state agency which employs law enforcement officers is authorized to present to each such employee who retires under any provision of a state retirement system, including medical disability retirement, one complete uniform including the badge worn by him, the employee's service revolver, if one had been issued as part of the employee's equipment, and an identification card clearly marked "RETIRED".

(2) Upon the death of a law enforcement officer, the employing agency is authorized to present to the spouse or other beneficiary of the employee, upon request, one complete uniform, not including a service revolver.

(3) Each uniform and badge presented under this section is to commemorate prior service and shall be used only in such manner as the employing agency shall prescribe by rule.

History.—s. 1, ch. 79-335.

112.21 Tax-sheltered annuities or custodial accounts for employees of governmental agencies.—A governmental agency, which means any state, county, local, or municipal governmental entity or any unit of government created or established by law, which is qualified under the United States Internal Revenue Code may provide, by written agreement between any such agency and any employee, to reduce the contract salary payable to such employee and, in consideration thereof, to pay an amount equal to the amount of such reduction to an insurance company licensed to do business in Florida; to a credit union, bank, or savings and loan association qualified to do business in Florida; or to a custodial account to be invested in regulated investment company stock to be held in such custodial account, as selected by the employee or employees, notwithstanding any other provision of law, with the concurrence of the employing agency, as premiums on an annuity contract issued in the name of such employee or as payment into a qualified custodial account established pursuant to s. 403(b) of the United States Internal Revenue Code.

(1) Any such annuity contract or custodial account shall be in such form, and be based upon such terms, as will qualify the payments thereon for tax deferment under the United States Internal Revenue Code. Such insurance annuity, savings, or investment products shall be underwritten and offered, in compliance with the applicable federal and state laws and regulations, by persons who are duly authorized by applicable state and federal authorities.

(2) The amount of such reduction shall not exceed the amount excludable from income under s. 403(b) of the United States Internal Revenue Code and amendments and successor provisions thereto and shall be considered a part of the employee's salary for all purposes other than federal income taxation.

(3) The purchase of such tax-sheltered annuity or other investment qualified under the United States Internal Revenue Code and not prohibited under the laws of this state for an employee shall impose no liability or responsibility whatsoever on the employing agency except to show that the payments have been remitted for the purposes for which deducted.

History.—s. 1, ch. 74-157; s. 1, ch. 76-78; s. 2, ch. 77-295.

112.215 Government employees; deferred compensation program.—

(1) This section shall be known and may be cited as the "Government Employees Deferred Compensation Plan Act."

(2) For the purposes of this section, the term "employee" means any person, whether appointed, elected, or under contract, providing services for the state; any state agency or county or other political subdivision of the state; or any municipality for which compensation or statutory fees are paid.

(3) In accordance with a plan of deferred compensation which has been approved as herein provided, the state or any state agency, county, municipality, or other political subdivision may, by contract or a collective bargaining agreement, agree with any employee to defer all or any portion of that employee's otherwise payable compensation and, pursuant to the terms of such approved plan and in such proportions as may be designated or directed under said plan, place such deferred compensation in savings accounts or use the same to purchase fixed or variable life insurance or annuity contracts, securities, evidence of indebtedness, or such other investment products as may have been approved for the purposes of carrying out the objectives of such plan. Such insurance, annuity, savings, or investment products shall be underwritten and offered in compliance with the applicable federal and state laws and regulations by persons who are duly authorized by applicable state and federal authorities.

(4)(a) The State Treasurer, with the approval of the State Board of Administration, shall establish such plan or plans of deferred compensation for state employees, including all such investment vehicles or products incident thereto, as may be available through, or offered by, qualified companies or persons, and may approve one or more such plans for implementation by and on behalf of the state and its agencies and employees.

(b) If the State Treasurer deems it advisable, he shall have the power, with the approval of the State Board of Administration, to create a trust or other special funds for the segregation of funds or assets resulting from compensation deferred at the request of employees of the state or its agencies and for the administration of such program.

(c) The State Treasurer, with the approval of the State Board of Administration, may delegate responsibility for administration of the plan to a person he determines to be qualified, compensate such person, and, directly or through such person or pursuant to a collective bargaining agreement, contract with a private corporation or institution to provide such services as may be part of any such plan or as may be deemed necessary or proper by the State Treasurer or such person, including, but not limited to, providing consolidated billing, individual and collective record keeping and accountings, and asset purchase, control, and safekeeping.

(d) In accordance with such approved plan, and

upon contract or agreement with an eligible employee, deferrals of compensation may be accomplished by payroll deductions made by the appropriate officer or officers of state, with such funds being thereafter held and administered in accordance with the plan.

(5) Any county, municipality, or other political subdivision of the state may by ordinance adopt and establish for itself and its employees a deferred compensation program. The ordinance shall designate an appropriate official of the county, municipality, or political subdivision to approve and administer a deferred compensation plan or otherwise provide for such approval and administration. The ordinance shall also designate a public official or body to make the determinations provided for in paragraph (6)(b).

(6)(a) No deferred compensation plan of the state shall become effective until approved by the State Board of Administration and the State Treasurer is satisfied by opinion from such federal agency or agencies as may be deemed necessary that the compensation deferred thereunder and/or the investment products purchased pursuant to the plan will not be included in the employee's taxable income under federal or state law until it is actually received by such employee under the terms of the plan, and that such compensation will nonetheless be deemed compensation at the time of deferral for the purposes of Social Security coverage, for the purposes of the state retirement system, and for any other retirement, pension, or benefit program established by law.

(b) No deferred compensation plan of a county, municipality, or other political subdivision shall become effective until the appropriate official or body designated by ordinance is satisfied by opinion from such federal agency or agencies as may be deemed necessary that the compensation deferred thereunder and/or the investment products purchased pursuant to the plan will not be included in the employee's taxable income under federal or state law until it is actually received by such employee under the terms of the plan, and that such compensation will nonetheless be deemed compensation at the time of deferral for the purposes of Social Security coverage, for the purposes of the retirement system of the appropriate county, municipality, or political subdivision, and for any other retirement, pension, or benefit program established by law.

(7) The deferred compensation programs authorized by this section, and any plan approved and adopted as herein provided, shall exist and serve in addition to any other retirement, pension, or benefit systems established by the state or its agencies, counties, municipalities, or other political subdivisions and shall not supersede, make inoperative, or reduce any benefits provided by the Florida Retirement System or by another retirement, pension, or benefit program established by law.

(8) There is hereby created an advisory council composed of five members, all of whom shall be employees of the state.

(a) One member shall be appointed by the Speaker of the House of Representatives and the President of the Senate jointly and shall be an employee of the legislative branch.

(b) One employee shall be appointed by the Chief Justice of the Supreme Court and shall be an employee of the judicial branch.

(c) The remaining three employees shall be employed by the executive branch and shall be appointed as follows:

1. One employee shall be appointed by the Chancellor of the State University System and shall be an employee of the university system.
2. One employee shall be appointed by the State Treasurer and shall be an employee of the State Treasurer.
3. One employee shall be appointed by the Governor and shall be an employee of the executive branch.

(9) The advisory council shall provide assistance and recommendations to the State Treasurer relating to the provisions of the plan, the insurance or investment options to be offered under the plan, and any other contracts or appointments deemed necessary by the council and the State Treasurer to carry out the provisions of this act.

(10) The financial liability of the state, county, municipality, or other political subdivision under any plan of deferred compensation shall be limited in each instance to the value of the particular insurance or annuity contract or other such investment options purchased on behalf of any employee.

History.—s. 1, ch. 75-295; s. 1, ch. 76-279.

PART II

INTERCHANGE OF PERSONNEL BETWEEN GOVERNMENTS

112.24 Intergovernmental transfer and interchange of public employees.—To encourage economical and effective utilization of public employees in this state, the temporary assignment of employees among agencies of government, both state and local, and including school districts and public institutions of higher education is authorized under terms and conditions set forth in this section. State agencies, municipalities, and political subdivisions are authorized to enter into employee interchange agreements with the Federal Government, with another state, with another municipality or political subdivision including a school district, or with a public institution of higher education. State agencies are also authorized to enter into employee interchange agreements with private institutions of higher education and other nonprofit organizations under the terms and conditions provided in this section.

(1) Details of an employee interchange program

shall be the subject of an agreement between a sending party and a receiving party. State agencies shall report such agreements to the department.

(2) The period of an individual's assignment or detail under an employee interchange program shall not exceed 2 years.

(3) Salary, leave, travel and transportation, and reimbursements for an employee of a sending party that is participating in an interchange program shall be handled as follows:

(a) An employee of a sending party who is participating in an interchange agreement may be considered as on detail to regular work assignments of the sending party or in a leave status from the sending party.

1. If on detail, an employee shall receive the same salary and benefits as if he were not on detail and he shall remain the employee of the sending party for all purposes, except that supervision during the period of detail may be governed by the interchange agreement.

2. If on leave, an employee shall have the same rights, benefits, and obligations as other employees in a leave status, subject to exceptions provided in rules for state employees issued by the department or the rules or other decisions of the governing body of the municipality or political subdivision.

(b) The assignment of an employee of a state agency either on detail or on leave of absence may be made without reimbursement by the receiving party for the travel and transportation expenses to or from the place of the assignment or for the pay and benefits, or a part thereof, of the employee during the assignment.

(c) If the rate of pay for an employee of an agency of the state on temporary assignment or on leave of absence is less than the rate of pay he would have received had he continued in his regular position, such employee is entitled to receive supplemental pay from the sending party in an amount equal to such difference.

(d) Any employee who participates in an exchange under the terms of this section who suffers disability or death as a result of personal injury arising out of and in the course of an exchange, or sustained in performance of duties in connection therewith, shall be treated, for the purposes of the sending party's employee compensation program, as an employee who sustained injury in the performance of duty, but shall not receive benefits under such program for any period for which he is entitled to, and elects to receive, similar benefits under the receiving party's employee compensation program.

(e) A sending party in this state may, in accordance with the travel regulations of such party, pay the travel expenses of an employee who is assigned to a receiving party on either detail or leave basis, but shall not pay the travel expenses of such an employee incurred in connection with his work assignments at the receiving party. If the assignment or detail will exceed 8 months, travel expenses may include expenses to transport immediate family, household goods, and personal effects to and from the location of the receiving party. If the period of assignment is 3 months or less, the sending party may pay a per diem allowance to the employee on assignment or detail.

(4)(a) When any agency, municipality, or political subdivision of this state acts as a receiving party, an employee of the sending party who is assigned under authority of this section may be given appointments by the receiving party covering the periods of such assignments, with compensation to be paid from the receiving party's funds, or without compensation, or be considered to be on detail to the receiving party.

(b) Appointments of persons so assigned may be made without regard to the laws or regulations governing the selection of employees of the receiving party.

(c) During the period of an assignment, the employee who is detailed to the receiving party shall not by virtue of such detail be considered an employee of the receiving party, except as provided in paragraph (d), nor shall he be paid a wage or salary by the receiving party. The supervision of an employee during the period of the detail may be governed by agreement between the sending party and the receiving party. A detail of an employee to a state agency may be made with or without reimbursement to the sending party by the receiving party for the pay and benefits, or a part thereof, of the employee during the period of the detail.

(d) If the sending party of an employee assigned to an agency, municipality, or political subdivision of this state fails to continue making the employer's contribution to the retirement, life insurance, and health benefit plans for that employee, the receiving party of this state may make the employer's contribution covering the period of the assignment or any part thereof.

(e) Any employee of a sending party assigned in this state who suffers disability or death as a result of personal injury arising out of and in the course of such assignment, or sustained in the performance of duties in connection therewith, shall be treated for the purpose of the receiving party's employee compensation program, as an employee who has sustained injury in the performance of duty, but shall not receive benefits under such program for any period for which he elects to receive similar benefits as an employee under the sending party's employee compensation program.

(f) A receiving party in this state may, in accordance with the travel regulations of such party, pay travel expenses of persons assigned thereto during the period of such assignments on the same basis as if they were regular employees of the receiving party.

(5) An agency may enter into agreements with private institutions of higher education in this state as the sending or receiving party as specified in subsections (3) and (4).

(6) The department is directed to study additional ways of implementing the provisions of this section and to report to the Legislature on or before December 1980 as to progress made and proposed amendments, if any, to further facilitate the tempo-

rary assignment of employees as authorized in this section.

History.—s. 149, ch. 79-190.

112.25 Declaration of policy.—The state recognizes that intergovernmental cooperation is an essential factor in resolving problems affecting this state and that the interchange of personnel between and among governmental agencies at the same or different levels of government is a significant factor in achieving such cooperation.

History.—s. 1, ch. 65-524.

112.26 Definitions.—For the purposes of this part II of chapter 112 the following words and phrases have the meanings ascribed to them in this section.

(1) "Sending agency" means any department or agency of the federal government or a state government which sends any employee thereof to another government agency under this part.

(2) "Receiving agency" means any department or agency of the federal government or a state government which receives an employee of another government under this part.

History.—s. 2, ch. 65-524.

112.27 Authority to interchange employees.—

(1) Any department, agency, or instrumentality of the state is authorized to participate in a program of interchange of employees with departments, agencies, or instrumentalities of the federal government, or another state, as a sending or receiving agency.

(2) The period of individual assignment or detail under an interchange program shall not exceed 12 months, nor shall any person be assigned or detailed for more than 12 months during any 36-month period. Details relating to any matter covered in this part may be the subject of an agreement between the sending and receiving agencies. Elected officials shall not be assigned from a sending agency nor detailed to a receiving agency.

History.—s. 3, ch. 65-524.

112.28 Status of employees of this state.—

(1) Employees of a sending agency participating in an exchange of personnel as authorized in s. 112.27 may be considered during such participation to be on detail to regular work assignments of the sending agency.

(2) Employees who are on detail shall be entitled to the same salary and benefits to which they would otherwise be entitled and shall remain employees of the sending agency for all other purposes except that the supervision of their duties during the period of detail may be governed by agreement between the sending agency and the receiving agency.

(3) Any employee who participates in an exchange under the terms of this section who suffers disability or death as a result of personal injury arising out of and in the course of an exchange, or sustained in performance of duties in connection therewith, shall be treated, for the purposes of the sending agency's employee compensation program, as an employee, as defined in such act, who has sustained such injury in the performance of such duty, but shall not receive benefits under that act for any period for which he is entitled to and elects to receive similar benefits under the receiving agency's employee compensation program.

History.—s. 4, ch. 65-524.

112.29 Travel expenses of employees of this state.—A sending agency in this state may, in accordance with the travel regulations of such agency, pay the travel expenses of employees assigned to a receiving agency on either a detail or leave basis, but shall not pay the travel expenses of such employees incurred in connection with their work assignments at the receiving agency. During the period of assignment, the sending agency may pay a per diem allowance to the employee on assignment or detail.

History.—s. 5, ch. 65-524.

112.30 Status of employees of other governments.—

(1) When any unit of government of this state acts as a receiving agency, employees of the sending agency who are assigned under authority of this part may be considered to be on detail to the receiving agency.

(2) Appointments of persons so assigned may be made without regard to the laws or regulations governing the selection of employees of the receiving agency. Such person shall be in the unclassified service of the state.

(3) Employees who are detailed to the receiving agency shall not by virtue of such detail be considered to be employees thereof, except as provided in subsection (4), nor shall they be paid a salary or wage by the receiving agency during the period of their detail. The supervision of the duties of such employees during the period of detail may be governed by agreement between the sending agency and the receiving agency.

(4) Any employee of a sending agency assigned in this state who suffers disability or death as a result of personal injury arising out of and in the course of such assignment, or sustained in the performance of duties in connection therewith, shall be treated for the purpose of sending agency's employee compensation program, as an employee, as defined in such act, who has sustained such injury in the performance of such duty, but shall not receive benefits under that act for any period for which he elects to receive similar benefits as an employee under the receiving agency's employee compensation program.

History.—s. 6, ch. 65-524.

112.31 Travel expenses of employees of other governments.—A receiving agency in this state may, in accordance with the travel regulations of such agency, pay travel expenses of persons assigned thereto under this part during the period of such assignments on the same basis as if they were regular employees of the receiving agency.

History.—s. 7, ch. 65-524.

PART III

CODE OF ETHICS FOR PUBLIC OFFICERS AND EMPLOYEES

112.311 Legislative intent and declaration of policy.—

(1) It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.

(2) It is also essential that government attract those citizens best qualified to serve. Thus, the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve. Public officials should not be denied the opportunity, available to all other citizens, to acquire and retain private economic interests except when conflicts with the responsibility of such officials to the public cannot be avoided.

(3) It is likewise essential that the people be free to seek redress of their grievances and express their opinions to all government officials on current issues and past or pending legislative and executive actions at every level of government. In order to preserve and maintain the integrity of the governmental process, it is necessary that the identity, expenditures, and activities of those persons who regularly engage in efforts to persuade public officials to take specific actions, either by direct communication with such officials or by solicitation of others to engage in such efforts, be regularly disclosed to the people.

(4) It is the intent of this act to implement these objectives of protecting the integrity of government and of facilitating the recruitment and retention of qualified personnel by prescribing restrictions against conflicts of interest without creating unnecessary barriers to public service.

(5) It is hereby declared to be the policy of the state that no officer or employee of a state agency or of a county, city, or other political subdivision of the state, and no member of the Legislature or legislative employee, shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. To implement this policy and strengthen the faith and confidence of the people of the state in their government, there is enacted a code of ethics setting forth standards of conduct required of state, county, and city officers and employees, and of officers and employees of other political subdivisions of the state, in the performance of their official duties. It is the intent of the Legislature that this code shall serve not only as a guide for the official conduct of public servants in this state, but also as a basis for discipline of those who violate the provisions of this part.

(6) It is declared to be the policy of the state that public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public. They are bound to uphold the Constitution of the United States and the State Constitution and to perform efficiently and faithfully their duties under the laws of the federal, state, and local governments. Such officers and employees are bound to observe, in their official acts, the highest standards of ethics consistent with this code and the advisory opinions rendered with respect hereto regardless of personal considerations, recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern.

History.—s. 1, ch. 67-469; s. 1, ch. 69-335; s. 1, ch. 74-177; s. 2, ch. 75-208.

112.312 Definitions.—As used in this part, unless the context otherwise requires:

(1) "Advisory body" means any board, commission, committee, council, or authority, however selected, whose total budget, appropriations, or authorized expenditures constitute less than 1 percent of the budget of each agency it serves or $100,000, whichever is less, and whose powers, jurisdiction, and authority are solely advisory and do not include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relating to its internal operations.

(2) "Agency" means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university.

(3) "Business entity" means any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

(4) "Candidate" means any person who has filed a statement of financial interest and qualification papers, has subscribed to the candidate's oath as re-

quired by s. 99.021, and seeks by election to become a public officer. This definition expressly excludes a committeeman regulated by chapter 103 and persons seeking any other office or position in a political party.

(5) "Commission" means the Commission on Ethics created by s. 112.320 or any successor to which its duties are transferred.

(6) "Conflict" or "conflict of interest" means a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.

(7) "Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his public duties.

(8) "Disclosure period" means the taxable year for the person or business entity, whether based on a calendar or fiscal year, immediately preceding the date on which, or the last day of the period during which, the financial disclosure statement required by this part is required to be filed.

(9)(a) "Gift," for purposes of ethics in government and financial disclosure required by law, means real property or tangible or intangible personal property, of material value to the recipient, which is transferred to a donee directly or in trust for his benefit or by any other means.

(b) For the purposes of subsection (a), "intangible personal property" means property as defined in s. 192.001(11)(b).

(10) "Indirect" or "indirect interest" means an interest in which legal title is held by another as trustee or other representative capacity, but the equitable or beneficial interest is held by the person required to file under this part.

(11) "Material interest" means direct or indirect ownership of more than 5 percent of the total assets or capital stock of any business entity. For the purposes of this act indirect ownership shall not include ownership by a spouse or minor child.

(12) "Materially affected" means involving an interest in real property located within the jurisdiction of the official's agency or involving an investment in a business entity, a source of income or a position of employment, office, or management in any business entity located within the jurisdiction or doing business within the jurisdiction of the official's agency which is or will be affected in a substantially different manner or degree than the manner or degree in which the public in general will be affected or, if the matter affects only a special class of persons, then affected in a substantially different manner or degree than the manner or degree in which such class will be affected.

(13) "Ministerial matter" means action that a person takes in a prescribed manner in obedience to the mandate of legal authority, without the exercise of the person's own judgment or discretion as to the propriety of the action taken.

(14) "Person or business entities provided a grant or privilege to operate" includes state and federally chartered banks, state and federal savings and loan associations, cemetery companies, insurance companies, mortgage companies, credit unions, small loan companies, alcoholic beverage licensees, pari-mutuel wagering companies, utility companies, and entities controlled by the Public Service Commission or granted a franchise to operate by either a city or county government.

(15) "Represent" or "representation" means actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client.

(16) "Source" means the name, address, and description of the principal business activity of a person or business entity.

(17) "Value of real property" means the most recently assessed value in lieu of a more current appraisal.

History.—s. 2, ch. 67-469; ss. 11, 12, ch. 68-35; s. 8, ch. 69-353; s. 2, ch. 74-177; s. 1, ch. 75-196; s. 1, ch. 75-199; s. 3, ch. 75-208; s. 4, ch. 76-18; s. 1, ch. 77-174.

112.313 Standards of conduct for public officers and employees of agencies.—

(1) DEFINITION.—As used in this section, unless the context otherwise requires, the term "public officer" shall include any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(2) SOLICITATION OR ACCEPTANCE OF GIFTS.—No public officer or employee of an agency or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service:

(a) That would cause a reasonably prudent person to be influenced in the discharge of official duties.

(b) That is based upon any understanding that the vote, official action, or judgment of the public officer, employee, or candidate would be influenced thereby.

(3) DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his official capacity as a purchasing agent, or public officer acting in his official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his own agency from any business entity of which he or his spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or his spouse or child, or any combination of them, has a material interest. Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to his own agency, if he is a state officer or employee, or to any political subdivision or any agency thereof, if he is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business. This subsection shall not affect or be construed to prohibit contracts entered into prior to:

(a) October 1, 1975.

(b) Qualification for elective office.

(c) Appointment to public office.

(d) Beginning public employment.

(4) UNAUTHORIZED COMPENSATION.—No public officer or employee of an agency or his spouse or minor child shall, at any time, accept any compen-

sation, payment, or thing of value when such public officer or employee knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer or employee was expected to participate in his official capacity.

(5) SALARY AND EXPENSES.—No public officer shall be prohibited from voting on a matter affecting his salary, expenses, or other compensation as a public officer, as provided by law.

(6) MISUSE OF PUBLIC POSITION.—No public officer or employee of an agency shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others. This section shall not be construed to conflict with s. 104.31.

(7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—

(a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.

1. When the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by this section.

2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

(b) This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.

(8) DISCLOSURE OR USE OF CERTAIN INFORMATION.—No public officer or employee of an agency shall disclose or use information not available to members of the general public and gained by reason of his official position for his personal gain or benefit or for the personal gain or benefit of any other person or business entity.

(9) DISCLOSURE OF SPECIFIED INTERESTS.—

(a) If a public officer or employee of an agency is an officer, director, partner, proprietor, associate, or general agent (other than a resident agent solely for service of process) of, or owns a material interest in, any business entity which is granted a privilege to operate in this state, he shall file a statement disclosing such facts no later than 45 days after becoming an officer or employee or after the acquisition of such position or material interest. The statement shall give the name, address, and principal business activity of the business entity and shall state the position held with such business entity or the fact that a material interest is owned and the nature of said interest. New appointees to public office or new public employees shall file the statement required herein, if applicable, no later than 30 days after their appointment or after the date their employment begins.

(b) A person seeking to qualify as a candidate for nomination or election to any office shall file a like statement along with, and as a part of, the required qualification papers. The statement shall be filed with the Department of State if the individual is seeking a state office or is a state officer or employee. Persons seeking to qualify as a candidate for nomination or election to office within a political subdivision of the state, the duties and jurisdiction of which are limited to said political subdivision, and officers and employees of such subdivisions, shall file their statements with the Clerk of the Circuit Court of the county in which they are principally employed or are residents.

(10) EMPLOYEES HOLDING OFFICE.—

(a) No employee of a state agency or of a county, municipality, special taxing district, or other political subdivision of the state shall hold office as a member of the governing board, council, commission, or authority, by whatever name known, which is his employer while, at the same time, continuing as an employee of such employer.

(b) The provisions of this subsection shall not apply to any person holding office in violation of such provisions on the effective date of this act. However, such a person shall surrender his conflicting employment prior to seeking reelection or accepting reappointment to office.

(11) PROFESSIONAL AND OCCUPATIONAL LICENSING BOARD MEMBERS.—No officer, director, or administrator of a Florida state, county, or regional professional or occupational organization or association, while holding such position, shall be eligible to serve as a member of a state examining or licensing board for the profession or occupation.

(12) EXEMPTION.—The requirements of subsections (3) and (7) as they pertain to persons serving on advisory boards may be waived in a particular instance by the body which appointed the person to the advisory board, upon a full disclosure of the

transaction or relationship and an affirmative vote in favor of waiver by two-thirds vote of that body. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or relationship by the appointee. In addition, no person shall be held in violation of subsection (3) or subsection (7) if:

(a) Within a city or county the business is transacted under a rotation system whereby the business transactions are rotated among all qualified suppliers of the goods or services within said city or county.

(b) The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and:

1. The official or his spouse or child has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder;

2. The official or his spouse or child has in no way used or attempted to use his influence to persuade the agency or any personnel thereof to enter such a contract other than by the mere submission of the bid; and

3. The official, prior to or at the time of the submission of the bid, has filed a statement with the Department of State, if he is a state officer or employee, or with the Clerk of the Circuit Court of the county in which the agency has its principal office, if he is an officer or employee of a political subdivision, disclosing his, or his spouse's or child's, interest and the nature of the intended business.

(c) The purchase or sale is for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier.

(d) An emergency purchase or contract which would otherwise violate a provision of subsection (3) or subsection (7) must be made in order to protect the health, safety, or welfare of the citizens of the state or any political subdivision thereof.

(e) The business entity involved is the only source of supply within the political subdivision of the officer or employee, and there is full disclosure of the officer's or employee's interest in the business entity to the governing body of the political subdivision.

(f) The total amount of the subject transaction does not exceed $500.

History.—s. 3, ch. 67-469; s. 2, ch. 69-335; ss. 10, 35, ch. 69-106; s. 3, ch. 74-177; ss. 4, 11, ch. 75-208; s. 1, ch. 77-174; s. 1, ch. 77-349.

112.3141 Additional standards of conduct for public officers.—

(1) In addition to the provisions of this part which are applicable to legislators and legislative employees by virtue of their being public officers or employees, the conduct of members of the Legislature and legislative employees shall be governed by the ethical standards provided in the respective rules of the Senate or House of Representatives which are not in conflict herewith.

(2) No full-time legislative employee shall be otherwise employed during the regular hours of his primary occupation, except with the written permission of the presiding officer of the house by which he is employed, filed with the Clerk of the House of Representatives or with the Secretary of the Senate, as may be appropriate. Employees of joint committees must have the permission of the presiding officers of both houses. This section shall not be construed to contravene the restrictions of s. 11.26.

History.—ss. 4, 8, ch. 74-177; s. 5, ch. 75-208.

112.3143 Voting conflicts.—No public officer shall be prohibited from voting in his official capacity on any matter. However, any public officer voting in his official capacity upon any measure in which he has a personal, private, or professional interest and which inures to his special private gain or the special gain of any principal by whom he is retained shall, within 15 days after the vote occurs, disclose the nature of his interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

History.—s. 6, ch. 75-208.

112.3145 Disclosure of financial interests and clients represented before agencies.—

(1) For purposes of this section, unless the context otherwise requires:

(a) "Local officer" means:

1. Every person who is elected to office in any political subdivision of the state, and every person who is appointed to fill a vacancy for an unexpired term in such an elective office.

2. Any appointed member of a board, commission, authority, community college district board of trustees, or council of any political subdivision of the state, excluding any member of an advisory body. A governmental body with land-planning, zoning, or natural resources responsibilities shall not be considered an advisory body.

3. Any person holding one or more of the following positions, by whatever title, including persons appointed to act directly in such capacity, but excluding assistants and deputies unless specifically named herein: clerk of the circuit court; clerk of the county court; county or city manager; political subdivision chief; county or city administrator; county or city attorney; chief county or city building inspector; county or city water resources coordinator; county or city pollution control director; county or city environmental control director; county or city administrator, with power to grant or deny a land development permit; chief of police; fire chief; city or town clerk; district school superintendent; community college presidents; or a purchasing agent having the authority to make any purchase exceeding $100 for any political subdivision of the state or any entity thereof.

(b) "Specified employee" means:

1. Public counsel created by chapter 350; an assistant state attorney; an assistant public defender; a full-time state employee who serves as counsel or assistant counsel to any state agency; a deputy commissioner; and a hearing examiner.

2. Any person employed in the office of the Governor or in the office of any member of the cabinet, if that person is exempt from the career service system, except persons employed in clerical, secretarial, or similar positions.

3. Each appointed secretary, assistant secretary,

deputy secretary, executive director, assistant executive director, or deputy executive director of each state department, commission, board, or council; unless otherwise provided, the division director, assistant division director, deputy director, bureau chief, and assistant bureau chief of any state department or division; or any person having the power normally conferred upon such persons, by whatever title.

4. The superintendent or institute director of a mental health institute established for training and research in the mental health field; the superintendent or director of any major state institution or facility established for training, treatment, or rehabilitation; or any person having the power normally conferred on such persons by whatever title.

5. Business managers, purchasing agents, finance and accounting directors, personnel officers, and grants coordinators for any state agency, or persons having the power normally conferred upon such persons, by whatever title.

6. The Auditor General; the Sergeant-at-Arms and Secretary of the Senate; the Sergeant-at-Arms and Clerk of the House of Representatives; the Executive Director of the Joint Legislative Management Committee; the Director of Statutory Revision; and the staff director of each committee of the Legislature.

7. Each employee of the Commission on Ethics.

8. Any full-time state employee who, in addition to his regular duties, accepts compensation which in the aggregate exceeds $250 for consultations with other state agencies or with other government or business entities.

(c) "State officer" means:

1. All elected public officers, to include those elected to the United States Senate and House of Representatives, not covered elsewhere in this part and any person who is appointed to fill a vacancy for an unexpired term in such an elective office.

2. An appointed member of each board, commission, authority, or council having statewide jurisdiction, excluding a member of an advisory body.

3. A member of the Board of Regents; the Chancellor and Vice Chancellor of the State University System; and the president of a state university.

(2)(a) A person seeking nomination or election to a state or local elective office shall file a statement of financial interests together with, and at the same time he files, his qualifying papers.

(b) Each state or local officer and each specified employee shall file a statement of financial interests no later than 12 o'clock noon of July 15 of each year, including the July 15th following the last year he is in office. Each state or local officer who is appointed and each specified employee who is employed shall file a statement of financial interests within 30 days from the date of appointment or, in the case of specified employees, from the date on which the employment begins, except that any person whose appointment is subject to confirmation by the Senate shall file prior to confirmation hearings or within 30 days from the date of appointment, whichever comes first.

(c) State officers and specified employees shall file their statements of financial interests with the Secretary of State. Local officers shall file their statements of financial interests with the Clerk of the Circuit Court of the county in which they are principally employed or are residents. Persons seeking to qualify as candidates for public office shall file their statements of financial interests with the officer before whom they qualify.

(3) The statement of financial interests for state officers, specified employees, local officers, and persons seeking to qualify as candidates for state or local office shall be filed even if the reporting person holds no financial interests requiring disclosure, in which case the statement shall be marked "not applicable." Otherwise, the statement of financial interests shall include:

(a) All sources of income in excess of 5 percent of the gross income received during the disclosure period by the person in his own name or by any other person for his use or benefit, excluding public salary. However, this shall not be construed to require disclosure of a business partner's sources of income. The person reporting shall list such sources in descending order of value with the largest source first.

(b) All sources of income to a business entity in excess of 10 percent of the gross income of a business entity in which the reporting person held a material interest and from which he received an amount which was in excess of 10 percent of his gross income during the disclosure period and which exceeds $1,500. The period for computing the gross income of the business entity is the fiscal year of the business entity which ended on, or immediately prior to, the end of the disclosure period of the person reporting.

(c) The location or description of real property in this state, except for residences and vacation homes, owned directly or indirectly by the person reporting, when such person owns in excess of 5 percent of the value of such real property, and the general description of any intangible personal property worth in excess of 10 percent of such person's total assets. For the purposes of this paragraph indirect ownership shall not include ownership by a spouse or minor child.

(d) A list of all persons, business entities, or other organizations, and the address and a description of the principal business activity of each, from whom he received a gift or gifts from one source, the total of which exceeds $100 in value during the disclosure period. The person reporting shall list such benefactors in descending order of value with the largest listed first. Gifts received from a parent, grandparent, sibling child, or spouse of the person reporting, or from a spouse of any of the foregoing; gifts received by bequest or devise; gifts disclosed pursuant to s. 111.011; or campaign contributions which were reported as required by law need not be listed. For purposes of this paragraph a debt on which a preferential rate of interest substantially below the rate charged under the then customary and usual circumstances is charged shall be deemed a gift of an amount equal to the amount represented by the difference between the preferential and customary rate charged on the debt.

(e) Every debt which in sum equals more than the reporting person's net worth.

(4) Each state officer, local officer, and specified employee shall file a quarterly report of the names of clients represented for a fee or commission, except

for appearances in ministerial matters, before agencies at his level of government. For the purposes of this part, agencies of government shall be classified as state level agencies or agencies below state level. The report shall be filed only when a reportable representation is made during the calendar quarter and shall be filed no later than 15 days after the last day of the quarter. Representation before any agency shall be deemed to include representation by such officer or specified employee or by any partner or associate of the professional firm of which he is a member and of which he has actual knowledge. For the purposes of this subsection, "representation before any agency" shall not include appearances before any court or commissioners or deputy commissioners of industrial claims or representations on behalf of one's agency in his official capacity. Such term shall not include the preparation and filing of forms and applications merely for the purpose of obtaining or transferring a license based on a quota or a franchise of such agency or a license or operation permit to engage in a profession, business, or occupation, so long as the issuance or granting of such license, permit, or transfer does not require substantial discretion, a variance, a special consideration, or a certificate of public convenience and necessity.

(5) The Secretary of State shall by mail send a copy of the forms required to be filed by this part, together with a notice of the filing deadlines, to each state officer and specified employee no later than 30 days prior to the filing deadlines. The agency head shall send said forms and notice to each local officer no later than 30 days prior to the filing deadlines. However, the requirements of this subsection shall not apply to candidates or to the first filing required of any state officer, specified employee, or local officer.

(6) A public officer who has filed a disclosure for any calendar or fiscal year shall not be required to file a second disclosure for the same year or any part thereof, notwithstanding any requirement of this act, except that any public officer who qualifies as a candidate for public office shall file a copy of his disclosure with the officer before whom he qualifies as a candidate at the time he qualifies.

History.—s. 5, ch. 74-177; ss. 2, 6, ch. 75-196; s. 2, ch. 76-18; s. 1, ch. 77-174; s. 63, ch. 77-175; s. 54, ch. 79-40.

112.3146 Public records.—The statements required by ss. 112.313, 112.3141, and 112.3145 shall be public records within the meaning of s. 119.01.

History.—s. 6, ch. 74-177.

112.3147 Forms.—

(1) All information required to be furnished by ss. 112.313, 112.3141, and 112.3145(4) shall be on forms prescribed by the Commission on Ethics.

(2) The Commission on Ethics shall prescribe a form for the disclosure of information pursuant to s. 112.3145(3) for use by persons not required to file a statement of contributions pursuant to s. 111.011.

(3) The Commission on Ethics and the Department of State shall jointly prescribe a form for use by elected public officers, on which form both the information required to be furnished by s. 111.011 and the information required to be furnished by s. 112.3145(3) shall be disclosed.

History.—s. 7, ch. 74-177; s. 3, ch. 76-18.

112.316 Construction.—It is not the intent of this part, nor shall it be construed, to prevent any officer or employee of a state agency or county, city, or other political subdivision of the state or any legislator or legislative employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge by such officer, employee, legislator, or legislative employee of his duties to the state or the county, city, or other political subdivision of the state involved.

History.—s. 6, ch. 67-469; s. 2, ch. 69-335.

112.317 Penalties.—

(1) Violation of any provision of this part, including, but not limited to, any failure to file any disclosures required by this part or violation of any standard of conduct imposed by this part, in addition to any criminal penalty involved, shall, pursuant to applicable constitutional and statutory procedures, constitute grounds for, and may be punished by, one or more of the following:

(a) In the case of a public officer:

1. Impeachment.
2. Removal from office.
3. Suspension from office.
4. Public censure and reprimand.
5. Forfeiture of no more than one-third salary per month for no more than 12 months.
6. A civil penalty not to exceed $5,000.
7. Restitution of any pecuniary benefits received because of the violation committed.

(b) In the case of an employee or a person designated as a public officer by this part who otherwise would be deemed to be an employee:

1. Dismissal from employment.
2. Suspension from employment for not more than 90 days without pay.
3. Demotion.
4. Reduction in salary level.
5. Forfeiture of no more than one-third salary per month for no more than 12 months.
6. A civil penalty not to exceed $5,000.
7. Restitution of any pecuniary benefits received because of the violation committed.
8. Public censure and reprimand.

(c) In the case of a candidate who violates the provisions of s. 112.3145, disqualification from being on the ballot.

(2) In any case in which the commission finds a violation of this part and recommends a civil penalty or restitution penalty, the Attorney General shall bring a civil action to recover such penalty. No defense may be raised in the civil action to enforce the civil penalty or order of restitution that could have been raised by judicial review of the administrative findings and recommendations of the commission by certiorari to the District Court of Appeal.

(3) The penalties prescribed in this part shall not be construed to limit or to conflict with:

(a) The power of either house of the Legislature

to discipline its own members or impeach a public officer.

(b) The power of agencies to discipline officers or employees.

(4) Any violation of this part by a public officer shall constitute malfeasance, misfeasance, or neglect of duty in office within the meaning of s. 7, Art. IV of the State Constitution.

(5) By order of the Governor, upon recommendation of the commission, any elected municipal officer who violates any provision of this part may be suspended from office and the office filled by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the Governor. The Senate may, in proceedings prescribed by law, remove from office, or reinstate, the suspended official, and for such purpose the Senate may be convened in special session by its president or by a majority of its membership.

(6) Any person who willfully discloses, or permits to be disclosed, his intention to file a complaint, the existence or contents of a complaint which has been filed with the commission, or any document, action, or proceeding in connection with a confidential preliminary investigation of the commission, before such complaint, document, action, or proceeding becomes a public record as provided herein shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7) In any case in which the commission finds probable cause to believe that a complainant has committed perjury in regard to any document filed with, or any testimony given before, the commission, it shall refer such evidence to the appropriate law enforcement agency for prosecution and taxation of costs.

(8) In any case in which the commission determines that a person has filed a complaint against a public officer or employee with a malicious intent to injure the reputation of such officer or employee and in which such complaint is found to be frivolous and without basis in law or fact, the complainant shall be liable for costs plus reasonable attorney's fees incurred by the person complained against. If the complainant fails to pay such costs voluntarily within 30 days following such finding and dismissal of the complaint by the commission, the commission shall forward such information to the Department of Legal Affairs, which shall bring a civil action to recover such costs.

History.—s. 7, ch. 67-469; s. 1, ch. 70-144; s. 2, ch. 74-176; s. 8, ch. 74-177; s. 2, ch. 75-199; s. 7, ch. 75-208.

112.3175 Remedies; contracts voidable.—Any contract which has been executed in violation of this part is voidable:

(1) By any party to the contract.

(2) In any circuit court, by any appropriate action, by:

(a) The commission.

(b) The Attorney General.

(c) Any citizen materially affected by the contract and residing in the jurisdiction represented by the officer or agency entering into such contract.

History.—s. 8, ch. 75-208.

112.3191 Short title.—This act shall be known and cited as "The John J. Savage Memorial Act of 1974."

History.—s. 1, ch. 74-176.

112.320 Commission created; purpose.—There is created a Commission on Ethics, the purpose of which is to serve as guardian of the standards of conduct for the officers and employees of the state, and of a county, city, or other political subdivision of the state, as defined in this part.

History.—s. 2, ch. 74-176.

112.321 Membership, terms, etc.—

(1) The commission shall be composed of nine members. Four of these members shall be appointed by the Governor, no more than two of whom shall be from the same political party, subject to confirmation by the Senate. One member appointed by the Governor shall be a former city or county official. Two members shall be appointed by the Speaker of the House and two members shall be appointed by the President of the Senate. Neither the Speaker of the House nor President of the Senate shall appoint more than one member from the same political party. No member may hold any public employment. All members shall serve 2-year terms, except that four of the initial members appointed by the Governor shall serve 1-year terms. All succeeding appointments shall be for 2 years. Members of the commission shall receive no salary, but shall receive travel and per diem as provided in s. 112.061. The members of the commission shall elect a chairman from their number, who shall serve as chairman for a 1-year term and may not succeed himself as chairman. No member shall serve more than two full terms in succession. Any member of the commission may be removed for cause by majority vote of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court.

(2) The commission shall employ, and set the compensation of, an executive director, and he shall be provided with the necessary office space, assistants, and secretaries as required.

History.—s. 2, ch. 74-176; s. 3, ch. 75-199.

112.322 Duties and powers of commission.—

(1) It is the duty of the Commission on Ethics to receive and investigate sworn complaints of violation of the code of ethics as established in this part, including investigation of all facts and parties materially related to the complaint at issue.

(2)(a) Any public officer or employee may request a hearing before the Commission on Ethics to present oral or written testimony in response to allegations made against such person that he or she violated the code of ethics established in this part, provided a majority of the commission members present and voting consider that the allegations are of such gravity as to affect the general welfare of the state and the ability of the subject public officer or employee effectively to discharge the duties of the office. If the allegations made against the subject public officer or employee are made under oath, then he or she shall also be required to testify under oath.

(b) Upon completion of any investigation initiat-

ed under this subsection, the commission shall make a finding and public report as to whether any provision of the code of ethics has been violated by the subject official or employee. In the event that a violation is found to have been committed, the commission shall recommend appropriate action to the agency or official having power to impose any penalty provided by s. 112.317.

(c) All proceedings conducted pursuant to this subsection shall be public meetings within the meaning of chapter 286, and all documents made or received in connection with the commission's investigation thereof shall be public records within the meaning of chapter 119.

(d) Any response to a request of a public official or employee shall be addressed in the first instance to the official or employee making the request.

(3)(a) Every public officer, candidate for public office, or public employee, when in doubt about the applicability and interpretation of this part to himself in a particular context, may submit in writing the facts of the situation to the Commission on Ethics with a request for an advisory opinion to establish the standard of public duty. Any public officer or employee who has the power to hire or terminate employees may likewise seek an advisory opinion from the commission as to the application of the provisions of this part to any such employee or applicant for employment. An advisory opinion shall be rendered by the commission, and all of said opinions shall be numbered, dated, and published without naming the person making the request, unless such person consents to the use of his name.

(b) Said opinion, until amended or revoked, shall be binding on the conduct of the officer, employee, or candidate who sought the opinion or with reference to whom the opinion was sought, unless material facts were omitted or misstated in the request for the advisory opinion.

(4) The commission has the power to subpoena, audit, and investigate. The commission may subpoena witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other items relevant to the performance of the commission's duties or exercise of its powers. In the case of a refusal to obey a subpoena issued to any person, the commission may make application to any circuit court of this state which shall have jurisdiction to order the witness to appear before the commission and to produce evidence, if so ordered, or to give testimony touching on the matter in question. Failure to obey the order may be punished by the court as contempt. Witnesses shall be paid mileage and witnesses fees as authorized for witnesses in civil cases.

(5) The commission may recommend that the Governor initiate judicial proceedings in the name of the state against any executive or administrative state, county, or municipal officer to enforce compliance with any provision of this part or to restrain violations of this part, pursuant to s. 1(b), Art. IV of the State Constitution, and the Governor may without further action initiate such judicial proceedings.

(6) The commission is authorized to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of its duties. The Department of Legal Affairs shall, upon request, provide legal and investigative assistance to the commission.

(7) It shall be the further duty of the commission to submit to the Legislature from time to time a report of its work and recommendations for legislation deemed necessary to improve the code of ethics and its enforcement.

History.—s. 2, ch. 74-176; s. 4, ch. 75-199; s. 1, ch. 76-89; s. 1, ch. 77-174.

112.324 Procedures on complaints of violations.—

(1) Upon a written complaint executed on a form prescribed by the commission and signed under oath or affirmation by any person, the commission shall investigate any alleged violation of this part in accordance with procedures set forth herein. Within 5 days after receipt of a complaint by the commission, a copy shall be transmitted to the alleged violator. All proceedings, the complaint, and other records relating to the preliminary investigation as provided herein, including a dismissal of the complaint, shall be confidential either until the alleged violator requests in writing that such investigation and records be made public records or the preliminary investigation is completed, notwithstanding any provision of chapters 119, 120 or 286. In no event shall a complaint under this part against a candidate in any general, special, or primary election be filed or any intention of filing such a complaint be disclosed on the day of any such election or within the 5 days immediately preceding the date of the election.

(2) A preliminary investigation shall first be undertaken by the commission to determine if the facts alleged in the complaint constitute probable cause to believe that a violation has occurred. If, upon completion of the preliminary investigation, the commission finds no probable cause to believe that this part has been violated, the commission shall dismiss the complaint, and the complaint, unless prohibited by subsection (3), shall become a matter of public record, together with a written statement of the findings of the preliminary investigation and a summary of the facts which the commission shall send to the complainant and the alleged violator. If the commission finds from the preliminary investigation probable cause to believe that this part has been violated, it shall so notify the complainant and the alleged violator in writing. Such notification and all documents made or received in the disposition of the complaint shall then become public records. Upon request submitted to the commission in writing, any person who the commission finds probable cause to believe has violated any provision of this part shall be entitled to a public hearing. Such person shall be deemed to have waived the right to public hearing if the request is not received within 14 days following the mailing of the probable cause notification required by this subsection. However, the commission may on its own motion require a public hearing and may conduct such further investigation as it deems necessary.

(3) If, upon completion of its preliminary investigation of a complaint against an impeachable officer or member of the Legislature, the commission finds insufficient evidence to establish probable cause to

believe a violation of this part has occurred, it shall dismiss the complaint. All evidence and material shall be kept in strict confidentiality by the commission after a complaint is dismissed. The information may be disclosed only upon written request by an appropriate legislative committee. Upon finding sufficient evidence to establish probable cause to believe a violation by such officer has occurred, the commission shall forward the complaint by certified mail to the President of the Senate or the Speaker of the House, whichever is applicable, who shall refer the complaint to the appropriate committee for investigation and action which shall be governed by the rules of its respective house. The complaint and all records relating to the preliminary investigation shall become public records upon referral by the Speaker or President to the appropriate committee. It shall be the duty of the committee to report its final action upon the complaint to the commission within 90 days of the date of transmittal to the respective house. If, for any reason, the committee to which the complaint is referred feels that it cannot or should not investigate the complaint, it may return the complaint to the commission which shall conduct a full investigation and report its findings to the committee for appropriate action. Upon request of the committee, the commission shall submit a recommendation as to what penalty, if any, should be imposed.

(4) If, in cases pertaining to complaints other than complaints against impeachable officers or members of the Legislature, upon completion of a full and final investigation by the commission, the commission finds that there has been a violation of this part, it shall be the duty of the commission to report its findings and recommend appropriate action to the proper disciplinary official or body as follows, and such official or body shall have the power to invoke the penalty provisions of this part:

(a) The Governor, in any case concerning officers who can be removed or suspended by the Governor.

(b) The head of the agency, in any case concerning a state officer or employee not covered in paragraph (a).

(c) The governing body or appointing official of an officer or employee of a county, city, or other political subdivision of the state not otherwise covered in paragraph (a).

(d) The Secretary of State, in any case concerning a candidate whose name is placed on the ballot by certification of the Secretary of State only when the commission recommends removal of said candidate from the ballot for a violation of s. 112.3145.

(e) The city commission or city council, in any case concerning a candidate for municipal office only when the commission recommends removal of said candidate from the ballot for a violation of s. 112.3145.

(f) The county commission, in any case concerning a candidate for county office only when the commission recommends removal of said candidate from the ballot for a violation of s. 112.3145.

(5) In addition to reporting its findings to the proper disciplinary body or official, the commission shall report these findings to the State Attorney or any other appropriate official or agency having authority to initiate prosecution when violation of criminal law is indicated.

(6) Notwithstanding the foregoing procedures of this section, a sworn complaint against any member or employee of the Commission on Ethics for violation of this part shall be filed with the President of the Senate and the Speaker of the House of Representatives. Each presiding officer shall appoint three members of their respective bodies to a special joint committee who shall investigate the complaint. The members shall elect a chairman from among their number. If the special joint committee finds insufficient evidence to establish probable cause to believe a violation of this part has occurred, it shall dismiss the complaint. If, upon completion of its preliminary investigation, the committee finds sufficient evidence to establish probable cause to believe a violation has occurred, the chairman thereof shall transmit such findings to the Governor who shall convene a meeting of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court to take such final action on the complaint as they shall deem appropriate, consistent with the penalty provisions of this part. Upon request of a majority of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court, the special joint committee shall submit a recommendation as to what penalty, if any, should be imposed.

History.—s. 2, ch. 74-176; s. 5, ch. 75-199.

112.3241 Judicial review.—Any final action by the commission taken pursuant to this part shall be subject to review in a District Court of Appeal upon the petition of the party against whom an adverse opinion, finding, or recommendation is made. In any case in which the Governor, upon the recommendation of the commission, has the power to suspend an officer or employee, the court may enter a supersedeas order staying the power of the Governor to suspend pending the disposition of the appellate proceeding. However, this section shall not be construed to limit the Governor's power to suspend a municipal official indicted for crime.

History.—s. 6, ch. 75-199.

112.326 Additional requirements by political subdivisions not prohibited.—Nothing in this act shall prohibit the governing body of any political subdivision from imposing upon its own local officers additional or more stringent disclosure requirements than those specified in this part.

History.—s. 5, ch. 75-196.

PART IV

SUPPLEMENTAL RETIREMENT ACT FOR RETIRED MEMBERS OF STATE RETIREMENT SYSTEMS

112.351 Short title.—This act shall be known and cited as the "Florida Supplemental Retirement Act for Retired Members of State Retirement Systems."

History.—s. 1, ch. 67-276.

112.352 Definitions.—The following words and phrases as used in this act shall have the following meaning unless a different meaning is required by the context:

(1) "Funds" shall mean the special trust funds in the State Treasury created under each of the retirement laws covered by this act.

(2) "Retired member" shall mean any person who had both attained age 65 and retired prior to January 1, 1966, and is receiving benefits under any of the following systems:

(a) State and County Officers and Employees Retirement System, created by authority of chapter 122.

(b) Supreme Court Justices, District Court of Appeal Judges and Circuit Judges Retirement System, created by authority of chapter 123.

(c) Teachers' Retirement System of the state, created by authority of chapter 238; or

(d) Highway Patrol Pension Trust Fund, created by authority of chapter 321.

(3) "Joint annuitant" means any person named by a retired member under the applicable system to receive any retirement benefits due and payable from the system after his death.

(4) "System" shall mean any of the retirement systems specified in subsection (2).

(5) "Social security benefit" shall mean the monthly primary insurance amount, computed in accordance with the Social Security Act from which is derived the monthly benefit amount, which the retired member is receiving, entitled to receive, or would be entitled to receive upon application to the Social Security Administration, without taking into account any earned income which would cause a reduction in such amount. For purposes of this act, the social security benefit of:

(a) A retired member who is not insured under the Social Security Act shall be zero, and

(b) A deceased retired member who was insured under the Social Security Act shall be the primary insurance amount from which is derived the monthly benefit amount which he was receiving or entitled to receive in the month immediately preceding his date of death.

(6) "Retirement benefit" means the monthly benefit which a retired member or joint annuitant is receiving from a system.

(7) "Division" means the Division of Retirement of the Department of Administration.

(8) "Base year" means the year in which a retired member actually retired from a system or the year in which he attained age 65, if later.

History.—s. 2, ch. 67-276; ss. 31, 35, ch. 69-106; s. 35, ch. 71-377; s. 1, ch. 73-326.

112.353 Purpose of act.—The purpose of this act is to provide a supplement to the monthly retirement benefits being paid to, or with respect to, retired members under the retirement systems specified in s. 112.352(2) and any permanently and totally disabled retired member who became thus disabled in the line of duty and while performing the duties incident to his employment, such supplement to be approximately equal to the excess of the increase in social security benefits that the retired member would have received had he been covered for maximum benefits under the Social Security Act at age 65 or at date of retirement, whichever is later, over the amount of increase he has previously received or is entitled to receive by virtue of coverage under the Social Security Act.

History.—s. 3, ch. 67-276.

112.354 Eligibility for supplement.—Each retired member or, if applicable, a joint annuitant, except any person receiving survivor benefits under the teachers' retirement system of the state in accordance with s. 238.07(16), shall be entitled to receive a supplement computed in accordance with s. 112.355 upon:

(1) Furnishing to the Division of Retirement evidence from the Social Security Administration setting forth the retired member's social security benefit or certifying the noninsured status of the retired member under the Social Security Act, and

(2) Filing written application with the Division of Retirement for such supplement.

History.—s. 4, ch. 67-276; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

112.355 Supplement amount.—

(1) The supplement amount shall be calculated in the following manner, based on the retired member's social security benefit and the table of values below:

TABLE OF VALUES

Base Year	I	II	III	IV
Prior to 1951	$57.00	$34.00	$58.00	$102.00
1951-1952	33.00	24.00	69.00	113.00
1953-1954	28.00	19.00	69.00	113.00
1955-1958	16.00	14.00	81.00	125.00
1959-1965	9.00	4.00	92.00	136.00

(2) The supplement amount for a retired member whose social security benefit is less than $44 shall be equal to (a) minus the product of (b) and (c) where:

(a) Is the value shown in column I of the table of values for the retired member's base year,

(b) Is the value shown in column II of the table of values for the retired member's base year, and

(c) Is the retired member's social security benefit divided by $44, subject to the provisions of subsection (4).

(3) The supplement amount for a retired member whose social security benefit is $44 or more shall be equal to the product of paragraphs (a) and (b) of this

subsection where:

(a) Is the difference between the value shown in column I and column II of the table of values for the retired member's base year, and

(b) Is the value shown in column IV of the table of values for the retired member's base year minus the retired member's social security benefit, such difference divided by the value shown in column III of the table of values. In no event shall (b), as calculated in the previous sentence, be less than zero; subject to the provisions of subsection (4).

(4) The supplement amount for any retired member of, if applicable, a joint annuitant, who is receiving a retirement benefit of lesser amount than the normal retirement benefit to which the retired member was entitled at time of retirement because of his early retirement or election of an optional form of payment, shall be reduced to an amount equal to the product of paragraphs (a) and (b) of this subsection where:

(a) Is the reduced retirement benefit such member or joint annuitant is receiving divided by the normal retirement benefit to which the retired member was entitled at retirement, and

(b) Is the supplement amount computed in accordance with subsection (2) or (3), whichever is applicable.

(5) The supplement amount calculated in accordance with this section shall be rounded to the nearest dollar.

History.—s. 5, ch. 67-276.

112.356 Payment of supplement.—Any supplement due and payable under this act shall be paid by the division or under the direction and control of the division, based on information furnished by the retired member, or a joint annuitant, and the administrator of the system under which retirement benefits are being paid, beginning on the first day of the month coincident with or next following the later of the effective date of this act and the date of approval of the application for supplement by the division, and payable thereafter on the first day of each month in the normal or optional form in which retirement benefits under the applicable system are being paid; provided, however, that if application for supplement is made subsequent to December 31, 1967, not more than 6 retroactive monthly supplements shall be paid.

History.—s. 6, ch. 67-276; ss. 31, 35, ch. 69-106.

112.357 Appropriation.—There is hereby appropriated annually from the respective retirement trust fund from which the retired member is receiving his normal retirement benefit, an amount necessary to provide the benefits hereunder, and the amount necessary for the effective and efficient administration of this act.

History.—s. 7, ch. 67-276.

112.358 Administration of system.—The Division of Retirement shall make such rules and regulations as are necessary for the effective and efficient administration of this act and the cost to pay the expenses of such administration is hereby appropriated out of the appropriate retirement fund.

History.—s. 8, ch. 67-276; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

112.359 Benefits exempt from taxes and execution.—The benefits provided for any person under the provisions of this act are exempt from any state, county or municipal tax of the state and shall not be subject to assignment, execution or attachment or to any legal process whatsoever.

History.—s. 9, ch. 67-276.

112.360 Amendments.—References in this act to state and federal laws are intended to include such laws as they now exist or may hereafter be amended.

History.—s. 10, ch. 67-276.

112.361 Additional and updated supplemental retirement benefits.—

(1) SHORT TITLE.—This section shall be known and cited as "The 1969 Florida Supplemental Retirement Act."

(2) DEFINITIONS.—As used in this section, unless a different meaning is required by the context:

(a) "Funds" means the special trust funds in the State Treasury created under each of the retirement laws covered by this section.

(b) "Retired member" means any person:

1. Who either:

a. Had both attained age 65 and retired for reasons other than disability prior to January 1, 1968; or

b. Had retired because of disability prior to January 1, 1968, and who, if he had been covered under the Social Security Act, would have been eligible for disability benefits under Title II of the Social Security Act; and

2. Who is receiving benefits under any of the following systems:

a. State and County Officers and Employees Retirement System created by authority of chapter 122;

b. Supreme Court Justices, District Court of Appeal Judges and Circuit Judges Retirement System created by authority of chapter 123;

c. Teachers' Retirement System of the state created by authority of chapter 238; or

d. Highway Patrol Pension Trust Fund created by authority of chapter 321.

In addition, "retired member" includes any state official or state employee who retired prior to January 1, 1958, and is receiving benefits by authority of s. 112.05.

(c) "Joint annuitant" means any person named by a retired member under the applicable system to receive any retirement benefits due and payable from the system after his death.

(d) "System" means any of the retirement systems specified in paragraph (b), including that pursuant to s. 112.05.

(e) "Social security benefit" means the monthly primary insurance amount, computed in accordance with the Social Security Act, from which is derived the monthly benefit amount which the retired member is receiving, entitled to receive, or would be enti-

tled to receive upon application to the Social Security Administration, without taking into account any earned income which would cause a reduction in such amount. For purposes of this section:

1. The social security benefit of a retired member who is not insured under the Social Security Act shall be zero, and

2. The social security benefit of a deceased retired member who was insured under the Social Security Act shall be the primary insurance amount from which is derived the monthly benefit amount which he was receiving or entitled to receive in the month immediately preceding his date of death.

(f) "Retirement benefit" means the monthly benefit which a retired member or joint annuitant is receiving from a system.

(g) "Division" means the Division of Retirement of the Department of Administration.

(3) PURPOSE OF SECTION.—The purpose of this section is to provide a supplement to the monthly retirement benefits being paid to, or with respect to, retired members under the retirement systems specified in subsection (2)(b), such supplement to be approximately equal to the excess of the increase in social security benefits that the retired member would have received as a result of the 1967 amendments to the Social Security Act had he been covered for maximum benefits under the Social Security Act at age 65 or at date of retirement, whichever is later, over the amount of increase he has previously received or is entitled to receive as a result of the 1967 amendments to the Social Security Act by virtue of coverage under the Social Security Act.

(4) ELIGIBILITY FOR SUPPLEMENT.—Each retired member or, if applicable, a joint annuitant, except any person receiving survivor's benefits under the Teachers' Retirement System of the state in accordance with s. 238.07(16), shall be entitled to receive a supplement computed in accordance with subsection (5), upon:

(a) Furnishing to the division evidence from the Social Security Administration setting forth the retired member's social security benefit or certifying the noninsured status of the retired member under the Social Security Act, and

(b) Filing written application with the division for such supplement.

(5) SUPPLEMENT AMOUNT.—

(a) The supplement amount for any retired member who is receiving the full normal retirement benefit to which he was entitled at time of retirement shall be equal to $18 minus 11½ percent of the member's social security benefit.

(b) The supplement amount for any retired member or, if applicable, a joint annuitant, who is receiving a retirement benefit of lesser amount than the normal retirement benefit to which the retired member was entitled at time of retirement because of his early retirement or election of an optional form of payment, shall be reduced to an amount equal to the product of subparagraphs 1. and 2. where:

1. Is the reduced retirement benefit such member or joint annuitant is receiving divided by the normal retirement benefit to which the retired member was entitled at retirement; and

2. Is the supplement amount computed in accordance with paragraph (a) of this subsection.

(c) The supplement amount calculated in accordance with this subsection shall be rounded to the nearest dollar.

(6) PAYMENT OF SUPPLEMENT.—Any supplement due and payable under this section shall be paid by the division or under the direction and control of the division, based on information furnished by the retired member, or a joint annuitant, and the administrator of the system under which retirement benefits are being paid, beginning on the first day of the month coincident with or next following the later of:

(a) July 1, 1969, or

(b) The date of approval of the application for supplement by the division,

and payable thereafter on the first day of each month in the normal or optional form in which retirement benefits under the applicable system are being paid. However, no retroactive monthly supplements shall be paid for any period prior to the date specified in this paragraph.

(7) APPROPRIATION.—

(a) There is hereby appropriated annually from the respective retirement trust fund from which the retired member is receiving his retirement benefit an amount necessary to provide the benefits hereunder and the amount necessary for the effective and efficient administration of this section.

(b) Amounts necessary to provide for benefits and expenses hereunder on behalf of retired members receiving benefits pursuant to s. 112.05 are hereby annually appropriated out of any moneys in the State Treasury not otherwise appropriated which amount out of the general revenue fund shall not exceed $50,000 annually.

(8) ADMINISTRATION OF SYSTEM.—The Division of Retirement shall make such rules and regulations as are necessary for the effective and efficient administration of this section, and the cost to pay the expenses of such administration is hereby appropriated out of the appropriate fund pursuant to subsection (7).

(9) BENEFITS EXEMPT FROM TAXES AND EXECUTION.—The benefits provided for any person under the provisions of this section are exempt from any state, county, or municipal tax and shall not be subject to assignment, execution, or attachment or to any legal process whatsoever.

(10) AMENDMENTS.—References in this section to state and federal laws are intended to include such laws as they now exist or may hereafter be amended.

History.—s. 1, ch. 69-126; ss. 31, 35, ch. 69-106; s. 36, ch. 71-377; s. 1, ch. 73-326.

112.362 Recomputation of retirement benefits.—

(1)(a) A member of any state-supported retirement system who has already retired, who is over 65 years of age, who has not less than 10 years of creditable service, and who is not entitled to the minimum benefit provided for in paragraph (b), upon application to the administrator of his retirement system, may have his present monthly retirement benefits

recomputed and receive a monthly retirement allowance equal to $8 multiplied by the total number of years of creditable service. Effective July 1, 1979, this minimum monthly benefit shall be equal to $9.50 multiplied by the total number of years of creditable service, and thereafter said minimum monthly benefit shall be recomputed as provided in paragraph (5)(a). No present retirement benefits shall be reduced under this computation.

(b) A member of any state-supported retirement system who has already retired under a retirement plan or system which does not require its members to participate in social security pursuant to a modification of the federal-state social security agreement as authorized by the provisions of chapter 650, who is over 65 years of age, and who has more than 15 years of creditable service, upon application to the administrator, may have his present monthly retirement benefits recomputed and receive a monthly retirement allowance equal to $8 multiplied by the first 15 years of creditable service and $10 multiplied by every additional year of creditable service thereafter. No present retirement benefits shall be reduced under this computation. The minimum monthly benefit provided by this paragraph shall not apply to any member or the beneficiary of any member who retires after June 30, 1978.

(c) A member of any state-supported retirement system who, during the period July 1, 1975, through June 30, 1976, was on the retired payroll with more than 15 years of creditable service, was over 65 years of age, and was not eligible for the $10 minimum benefit provided by paragraph (b) shall receive the $8 minimum benefit provided by paragraph (a) retroactive to the date such retired person would first have been eligible for the $8 minimum benefit under the provisions of this section, had said section not been amended by chapter 75-242. Such retroactive $8 minimum benefit shall also be payable to the beneficiary or surviving spouse of a member who, if living, would have qualified for this retroactive minimum benefit.

(2)(a) A retired member of any state-supported retirement system who is over 65 years of age and who possesses the creditable service requirements contained in paragraph (1)(a) or paragraph (1)(b), or the surviving spouse or beneficiary of said member who, if living, would be over 65 years of age, if such spouse or beneficiary is receiving a retirement benefit, upon proper application to the administrator, shall have his monthly retirement benefit recomputed and may receive a retirement benefit as provided in either paragraph (1)(a) or paragraph (1)(b) and, if a retirement option has been elected by the member, multiplied by the actuarial reduction factor relating to such retirement option and, if the member is deceased, multiplied by the percentage of the benefit payable to the surviving spouse or beneficiary. No present retirement benefits shall be reduced under this computation.

(b) A member of any state-supported retirement system who retires after July 1, 1975, and who is over 65 years of age at the time of his retirement may be entitled to the benefit recalculation options provided by either paragraph (1)(a) or paragraph (1)(b).

(3) A member of any state-supported retirement system who has already retired under a retirement plan or system which does not require its members to participate in social security pursuant to a modification of the federal-state social security agreement as authorized by the provisions of chapter 650, who is over 65 years of age, and who has not less than 10 years of creditable service, or the surviving spouse or beneficiary of said member who, if living, would be over 65 years of age, upon application to the administrator, may have his present monthly retirement benefits recomputed and receive a monthly retirement allowance equal to $10 multiplied by the total number of years of creditable service. Effective July 1, 1978, this minimum monthly benefit shall be equal to $10.50 multiplied by the total number of years of creditable service, and thereafter said minimum monthly benefit shall be recomputed as provided in paragraph (5)(a). This adjustment shall be made in accordance with s. 112.362(2). No retirement benefits shall be reduced under this computation. Retirees receiving additional benefits under the provisions of this subsection shall also receive the cost-of-living adjustments provided by the appropriate state-supported retirement system for the fiscal year beginning July 1, 1977, and for each fiscal year thereafter. The minimum monthly benefit provided by this paragraph shall not apply to any member or the beneficiary of any member who retires after June 30, 1978.

(4)(a) Effective July 1, 1979, any person who is retired under a state-supported retirement system with not less than 10 years of creditable service, who is 65 years of age or over, and who is not receiving or entitled to receive federal social security benefits shall, upon application to the Division of Retirement, be entitled to receive a minimum monthly benefit equal to $14.50 multiplied by the member's total number of years of creditable service and adjusted by the actuarial factor applied to the original benefit for optional forms of retirement. Thereafter, said minimum monthly benefit shall be recomputed as provided in paragraph (5)(a). Application for this minimum monthly benefit shall include certification by the retired member that he or she is not receiving and is not entitled to receive social security benefits and written authorization for the Division of Retirement to have access to information from the Federal Social Security Administration concerning the member's entitlement to or eligibility for social security benefits. The minimum benefit provided by this paragraph shall not be paid unless and until the application requirements of this paragraph are satisfied.

(b) Effective July 1, 1978, the surviving spouse or beneficiary who is receiving or entitled to receive a monthly benefit from the account of any deceased retired member who had completed at least 10 years of creditable service and who, if living, would be age 65 or over shall, upon application to the Division of Retirement, be entitled to receive the minimum monthly benefit described in paragraph (a), adjusted by the actuarial factor applied to the optional form of benefit payable to said surviving spouse or beneficiary, provided said person is not receiving or entitled to receive federal social security benefits. Appli-

cation for this minimum monthly benefit shall include certification by the surviving spouse or beneficiary that he or she is not receiving and is not entitled to receive social security benefits and written authorization for the Division of Retirement to have access to information from the Federal Social Security Administration concerning such person's entitlement to or eligibility for social security benefits. The minimum benefit provided by this paragraph shall not be paid unless and until the application requirements of this paragraph are satisfied.

(c) The minimum benefits authorized by this subsection shall be payable from the first day of the month following the month during which the retired member becomes or would have become age 65.

(5)(a) Effective July 1, 1979, the dollar factors (*i.e.* $9.50, $10.50, or $14.50) used in determining the minimum benefits provided by this section shall be adjusted by an amount derived by multiplying said dollar factors by the percentage change in the average cost-of-living index since the previous July 1, not to exceed 3 percent. Each July 1 thereafter, the adjusted dollar factors used in determining the minimum benefits provided by this section shall continue to be adjusted by an amount derived by multiplying the current adjusted dollar factors by the percentage change in the average cost-of-living index since the previous July 1, not to exceed 3 percent for any annual adjustment.

(b) "Average cost-of-living index" as of any July 1 date means the average of the monthly Consumer Price Index figures for the 12-month period from April 1 through March 31 immediately prior to the adjustment date, relative to the United States as a whole, issued by the Bureau of Labor Statistics of the United States Department of Labor.

(6) The funds necessary to pay the minimum monthly benefits provided by this section up to $8 multiplied by the total number of years of creditable service are hereby annually appropriated from the retirement trust fund from which the original benefits are paid and from the General Revenue Fund for persons retired under s. 112.05. The funds necessary to pay all additional costs of providing the minimum benefits authorized by this section are hereby annually appropriated from the General Revenue Fund.

History.—s. 1, ch. 70-224; s. 1, ch. 72-282; ss. 1-3, ch. 75-242; ss. 1, 2, ch. 76-228; s. 1, ch. 77-241; s. 1, ch. 78-364; s. 6, ch. 79-377.

PART V

SUSPENSION, REMOVAL, OR RETIREMENT OF PUBLIC OFFICERS

112.40 Disposition of order of suspension.—An order of suspension by the Governor, upon its execution, shall be delivered to the Department of State. The department shall forthwith deliver copies by registered mail, or otherwise as it may be advised, to the officer suspended, the Secretary of the Senate, and the Attorney General. The order of suspension shall be effective upon the filing of the same with the department of state. No further communication by the Governor with the Senate shall be necessary to permit the Senate to act.

History.—s. 1, ch. 69-277; ss. 10, 35, ch. 69-106.

112.41 Contents of order of suspension; Senate's select committee; special examiner.—

(1) The order of the Governor, in suspending any officer pursuant to the provisions of s. 7, Art. IV of the State Constitution, shall specify facts sufficient to advise both the officer and the Senate as to the charges made or the basis of the suspension.

(2) The Senate shall conduct a hearing in the manner prescribed by rules of the Senate adopted for this purpose.

(3) The Senate may provide for a select committee to be appointed by the Senate in accordance with its rules for the purpose of hearing the evidence and making its recommendation to the Senate as to the removal or reinstatement of the suspended officer.

(4) The Senate may, in lieu of the use of a select committee, appoint a special examiner or a special master to receive the evidence and make recommendations to the Senate.

History.—s. 2, ch. 69-277.

112.42 Period during which grounds may have occurred.—The Governor may suspend any officer on any constitutional ground for such suspension that occurred during the existing term of the officer or during the next preceding 4 years.

History.—s. 3, ch. 69-277; s. 1, ch. 71-333.

112.43 Prosecution of suspension before Senate.—All suspensions heard by the Senate, a select committee, master, or examiner in accordance with rules of the Senate shall be prosecuted by the Governor, his legal staff, or an attorney designated by the Governor. Should the Senate, or the select committee appointed by the Senate to hear the evidence and to make recommendations, desire private counsel, either the Senate or the select committee shall be entitled to employ its own counsel for this purpose. Nothing herein shall prevent the Senate or its select committee from making its own investigation and presenting such evidence as its investigation may reveal. The Governor may request the advice of the Department of Legal Affairs relative to the suspension order prior to its issuance by the Governor. Following the issuance of the suspension order, either the Senate or the select committee may request the Department of Legal Affairs to provide counsel for

the Senate to advise on questions of law or otherwise advise with the Senate or the select committee, but the Department of Legal Affairs shall not be required to prosecute before the Senate or the committee and shall, pursuant to the terms of this section, act as the legal advisor only.

History.—s. 4, ch. 69-277; s. 33, ch. 77-104.

112.44 Failure to prove charges; attorney's fees.—In the event any officer suspended by the Governor shall not be removed by the Senate, he shall be reinstated, and the Senate may provide that the county, district, or state, as the case may be, shall pay reasonable attorney's fees and costs of the reinstated officer upon his exoneration. Part V of chapter 112 shall constitute sufficient authority for the payment of such attorney's fees and costs as the officer may reasonably have incurred in his own defense.

History.—s. 5, ch. 69-277.

112.45 Senate's report; results of prosecution.—

(1) The Secretary of the Senate shall, as soon as reasonably possible following the action of the Senate, file with the Department of State a report of the action of the Senate, including an order signed by the President and the Secretary specifying the action taken by the Senate. The action of the Senate shall become effective immediately upon the filing of the order with the Department of State, and the Department of State shall forthwith deliver copies of such order to the Governor, the officer involved, and the governing body of the county, district, or state, as the case may be. Any such order or any certified copy thereof, under the signature of the Secretary of State, may be recorded in the public records of any county in this state.

(2) The date of delivery of the order to the Department of State shall be the effective date of the removal or reinstatement, as the case may be, and, should the official be reinstated, he shall be entitled to reimbursement for such pay and emoluments of office from the date of his suspension to that date, as though he had never been suspended, and the order of the Senate, or a certified copy thereof, shall constitute the authority of the county, district, or state, to make such payment for reimbursement.

History.—s. 6, ch. 69-277; ss. 10, 35, ch. 69-106.

112.46 Period during which suspension will lie.—Any officer subject to suspension by the Governor pursuant to the State Constitution shall be subject to such suspension from the date provided by law for such officer to take office whether or not the Governor has executed and delivered the commission of office to the said officer. It is the intent of this part to provide that the formal execution of a commission by the Governor and a delivery thereof to the officer is a ministerial duty not necessary either to the performance of the duties of that officer or to the susceptibility to suspension of that officer. However, nothing in this part shall prohibit or preclude any officer claiming title to any office from seeking a judicial determination of his right to such office, regardless of the issuance or nonissuance of a commission to such office.

History.—s. 7, ch. 69-277.

112.47 Hearing before Senate select committee; notice.—The Senate shall afford each suspended official a hearing before a select committee, master, or examiner, and shall notify such suspended official of the time and place of the hearing sufficiently in advance thereof to afford such official an opportunity fully and adequately to prepare such defenses as the official may be advised are necessary and proper, and all such defenses may be presented by the official or by his attorney. In the furtherance of this provision the Senate shall adopt sufficient procedural rules to afford due process both to the Governor in the presentation of his evidence and to the suspended official, but in the absence of such adoption, this section shall afford a full and complete hearing, public in nature, as required by the State Constitution. However, nothing in this part shall prevent either the select committee or the Senate from conducting portions of the hearing in executive session if the Senate rules so provide.

History.—s. 8, ch. 69-277.

112.48 Suspension when Senate not in session.—The Governor may suspend any officer at any time, whether or not the Senate is in session. However, the Senate need not hear or determine the question of the suspension of the officer during any regular session.

History.—s. 9, ch. 69-277.

112.49 Persons exercising powers and duties of county officers subject to suspension by Governor.—In the administration of any city-county merger or city-county charter, or any such form of government which provides for the merging of the powers, duties and functions of any municipal and county governments, any officer, official or employee of such merged government who exercises the powers and duties of a county officer, whether he shall be elected or appointed, shall be deemed to be a county officer and therefore subject to the power of the Governor under the State Constitution to suspend officers. If the charter or other authority under which any city-county merger is accomplished shall provide means for the suspension or removal of such officers, then the power to suspend shall be concurrent in the city-county government and in the Governor.

History.—s. 2, ch. 71-333.

112.50 Governor to retain power to suspend public officers.—Whenever any state, county, or municipal officer is made subject to suspension or removal by the terms of any statute or municipal charter, the power of the Governor to suspend officers shall not be affected by such statutory or charter provisions, and the power to suspend shall reside concurrently in the Governor and in the statutory or charter authority.

History.—s. 3, ch. 71-333.

112.51 Municipal officers; suspension; removal from office.—

(1) When any grand jury shall present or return a true bill against any elected or appointed municipal official as a result of actions of such official arising directly or indirectly out of or pertaining to his official conduct or duties, the Governor shall have the power to suspend such municipal official from office. Suspension of such official by the Governor shall create a temporary vacancy in such office during suspension.

(2) Any temporary vacancy in office created by suspension of an official under the provisions of this section shall be filled by a temporary appointment to such office for the period of such suspension. Such temporary appointment shall be made in the same manner and by the same authority by which permanent vacancies for such office are filled as provided by law. If no provision for filling permanent vacancies in such office is provided by law, such temporary appointment shall be made by the Governor.

(3) No municipal official who has been suspended from office under this section may perform any official act, duty or function during his suspension, receive any pay or allowances during his suspension, or be entitled to any of the emoluments or privileges of his office during suspension.

(4) If the municipal official is adjudged guilty of any of the charges contained in the indictment for reason of which he was suspended under the provisions of this section, the Governor shall remove such municipal official from office.

(5) If the municipal official is acquitted or cleared of the charges contained in the indictment for reason of which he was suspended under the provision of this section, then the Governor shall forthwith revoke the suspension and restore such municipal official to office, and he shall be entitled to and be paid full back pay and such other emoluments or allowances to which he would have been entitled for the full period of time of his suspension. If during his suspension the term of office of such municipal official expired and a successor was either appointed or elected, then such back pay, emoluments, or allowances shall only be paid for the duration of the term of office during which the municipal official was suspended under the provisions of this section, and he shall not be reinstated.

History.—s. 1, ch. 67-66; s. 1, ch. 69-256; s. 3, ch. 73-129.
Note.—Former s. 166.16.

PART VI

LAW ENFORCEMENT OFFICERS

112.531 Definitions.—As used in this act:

(1) "Law enforcement officer" means any person, other than a chief of police, employed full time by any municipality or this state or any political subdivision thereof, whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state.

(2) "Employing agency" means any municipality or the state or any political subdivision thereof which employs law enforcement officers as defined above.

History.—s. 1, ch. 74-274; s. 1, ch. 75-41; s. 34, ch. 77-104.

112.532 Law enforcement officers' rights.—All law enforcement officers employed by any employing agency shall have the following rights and privileges:

(1) RIGHTS OF LAW ENFORCEMENT OFFICERS WHILE UNDER INVESTIGATION.—Whenever a law enforcement officer is under investigation and subject to interrogation by members of his agency for any reason which could lead to disciplinary action, demotion, or dismissal, such interrogation shall be conducted under the following conditions:

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer is on duty, unless the seriousness of the investigation is of such a degree that immediate action is required.

(b) The interrogation shall take place either at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer or agency.

(c) The law enforcement officer under investigation shall be informed of the rank, name, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by and through one interrogator at any one time.

(d) The law enforcement officer under investigation shall be informed of the nature of the investigation prior to any interrogation, and he shall be informed of the name of all complainants.

(e) Interrogating sessions shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary.

(f) The law enforcement officer under interrogation shall not be subjected to offensive language or be threatened with transfer, dismissal, or disciplinary action. No promise or reward shall be made as an inducement to answer any questions.

(g) The formal interrogation of a law enforcement officer, including all recess periods, shall be recorded, and there shall be no unrecorded questions or statements.

(h) If the law enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, he shall be completely informed of all his rights prior to the commencement of the interrogation.

(i) At the request of any law enforcement officer under investigation, he shall have the right to be represented by counsel or any other representative of his choice, who shall be present at all times during such interrogation whenever the interrogation relates to the officer's continued fitness for law enforcement service.

(2) COMPLAINT REVIEW BOARDS.—A complaint review board shall be composed of three mem-

bers: One member selected by the chief administrator of the agency; one member selected by the aggrieved officer; and a third member to be selected by the other two members. Agencies having more than 100 law enforcement officers shall utilize a five-member board with two members being selected by the administrator, two members being selected by the aggrieved officer, and a fifth member being selected by the other four members. The board members shall be law enforcement officers selected from any state, county, or municipal agency within the county.

(3) CIVIL SUITS BROUGHT BY LAW ENFORCEMENT OFFICERS.—Every law enforcement officer shall have the right to bring civil suit against any person, group of persons, or organization or corporation, or the head of such organization or corporation, for damages, either pecuniary or otherwise, suffered during the performance of the officer's official duties or for abridgment of the officer's civil rights arising out of the officer's performance of official duties.

(4) NOTICE OF DISCIPLINARY ACTION.—No dismissal, demotion, transfer, reassignment, or other personnel action which might result in loss of pay or benefits or which might otherwise be considered a punitive measure shall be taken against any law enforcement officer unless such law enforcement officer is notified of the action and the reason or reasons therefor prior to the effective date of such action.

(5) RETALIATION FOR EXERCISING RIGHTS.—No law enforcement officer shall be discharged; disciplined; demoted; denied promotion, transfer, or reassignment; or otherwise discriminated against in regard to his employment, or be threatened with any such treatment, by reason of his exercise of the rights granted by this part.

History.—s. 2, ch. 74-274.

112.533 Receipt and processing of complaints.—Every agency employing law enforcement officers shall establish and put into operation a system for the receipt, investigation, and determination of complaints received by such employing agency from any person.

History.—s. 3, ch. 74-274.

112.534 Failure to comply.—If any agency employing law enforcement officers fails to comply with the requirements of this part, a law enforcement officer employed by such agency who is personally injured by such failure to comply may apply directly to the circuit court of the county wherein such employing agency is headquartered and permanently resides for an injunction to restrain and enjoin such violation of the provisions of this part and to compel the performance of the duties imposed by this part.

History.—s. 4, ch. 74-274; s. 35, ch. 77-104; s. 1, ch. 78-291.

PART VII

ACTUARIAL SOUNDNESS OF RETIREMENT SYSTEMS

112.60 Short title.—This part may be cited as the "Florida Protection of Public Employee Retirement Benefits Act."

History.—s. 1, ch. 78-170.

112.61 Legislative intent.—It is the intent of the Legislature in implementing the provisions of s. 14 of Art. X of the State Constitution, relating to governmental retirement systems, that such retirement systems or plans be managed, administered, operated, and funded in such a manner as to maximize the protection of public employee retirement benefits. This act hereby establishes minimum standards for the operation and funding of public employee retirement systems and plans.

History.—s. 1, ch. 78-170; s. 13, ch. 79-183.

112.62 Application.—The provisions of this part are applicable to any and all units, agencies, branches, departments, boards, and institutions of state, county, special district, and municipal governments which participate in, operate, or administer a retirement system or plan for public employees, funded in whole or in part by public funds. The provisions of this part supplement and, to the extent there are conflicts, prevail over the provisions of existing laws and local ordinances relating to such retirement systems or plans.

History.—s. 1, ch. 78-170.

112.625 Definitions.—As used in this act:

(1) "Retirement system or plan" means any employee pension benefit plan supported in whole or in part by public funds, provided such plan is not:

(a) An employee benefit plan described in s. 4(a) of the Employee Retirement Income Security Act of 1974, which is not exempt under s. 4(b)(1) of such act;

(b) A plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(c) A coverage agreement entered into pursuant to s. 218 of the Social Security Act;

(d) An individual retirement account or an individual retirement annuity within the meaning of s. 408, or a retirement bond within the meaning of s. 409, of the Internal Revenue Code of 1954;

(e) A plan described in s. 401(d) of the Internal Revenue Code of 1954; or

(f) An individual account consisting of an annuity contract described in s. 403(b) of the Internal Revenue Code of 1954.

(2) "Plan administrator" means the person so designated by the terms of the instrument or instruments, ordinance, or statute under which the plan is operated. If no plan administrator has been designated, the plan sponsor shall be considered the plan administrator.

(3) "Enrolled actuary" means an actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries.

(4) "Benefit increase" means a change or amendment in the plan design or benefit structure which results in increased benefits for plan members or beneficiaries.

(5) "Governmental entity" means the state, for the Florida Retirement System, and the municipality or special district which is the employer of the member of a local retirement system or plan.

(6) "Pension or retirement benefit" means any benefit, including a disability benefit, paid to a member or beneficiary of a retirement system or plan as defined in subsection (1).

(7) "Statement value" means the amortized value of bonds and the market value of stocks as of a particular reporting date.

(8) "Named fiduciary" means the person or persons so designated by the terms of the instrument or instruments, ordinance, or statute under which the plan is operated.

History.—s. 14, ch. 79-183.

112.63 Actuarial reports and statements of actuarial impact; review.—

(1) Each retirement system or plan subject to the provisions of this act shall have regularly scheduled actuarial reports prepared and certified by an enrolled actuary. The actuarial report shall consist of, but shall not be limited to, the following:

(a) Adequacy of employer and employee contribution rates in meeting levels of employee benefits provided in the system and changes, if any, needed in such rates to achieve or preserve a level of funding deemed adequate to enable payment through the indefinite future of the benefit amounts prescribed by the system, which shall include a valuation of present assets, based on statement value, and prospective assets and liabilities of the system and the extent of unfunded accrued liabilities, if any.

(b) A plan to amortize any unfunded liability pursuant to s. 112.64 and a description of actions taken to reduce the unfunded liability.

(c) A description and explanation of actuarial assumptions.

(d) A schedule illustrating the amortization of unfunded liabilities, if any.

(e) A comparative review illustrating the actual salary increases granted and the rate of investment return realized over the 3-year period preceding the actuarial report with the assumptions used in both the preceding and current actuarial reports.

(f) A statement by the enrolled actuary that the report is complete and accurate and that in his opinion the techniques and assumptions used are reasonable and meet the requirements and intent of this act.

(2) The frequency of actuarial reports shall be at least every 3 years commencing from the last actuarial report of the plan or system or October 1, 1980, if no actuarial report has been issued within the 3-year period prior to October 1, 1979. The results of each actuarial report shall be filed with the plan administrator within 60 days of certification. Thereafter, the results of each actuarial report shall be made available for inspection upon request. Additionally, each retirement system or plan covered by this act which is not administered directly by the Department of Administration through the Division of Retirement shall furnish a copy of each actuarial report to the Division of Retirement within 60 days of receipt from the actuary.

(3) No unit of local government shall agree to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body, and prior to the last public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system, consistent with the actuarial review, and has furnished a copy of such statement to the division. Such statement shall also indicate whether the proposed changes are in compliance with s. 14, Art. X of the State Constitution and with s. 112.64.

(4) Upon receipt, pursuant to subsection (2), of an actuarial report, or upon receipt, pursuant to subsection (3), of a statement of actuarial impact, the division shall review and comment on the actuarial valuations and statements. If the division finds that the actuarial valuation is not complete, accurate, or based on reasonable assumptions, or if the division does not receive the actuarial report or statement of actuarial impact, the division shall notify the local government and request appropriate adjustment. If, after a reasonable period of time, a satisfactory adjustment is not made, the affected local government or the division may petition for a hearing under the provisions of s. 120.57. If the hearing officer recommends in favor of the division, the division shall perform an actuarial review or prepare the statement of actuarial impact. The cost to the division of performing such actuarial review or preparing such statement shall be charged to the governmental entity of which the employees are covered by the retirement system or plan. If payment of such costs is not received by the division within 60 days after receipt by the governmental entity of the request for payment, the division shall certify to the Comptroller the amount due, and the Comptroller shall pay such amount to the division from any funds payable to the governmental entity of which the employees are covered by the retirement system or plan. If the hearing officer recommends in favor of the local retirement system and the division performs an actuarial review, the cost to the division of performing the actuarial review shall be paid by the division.

(5) Payments made to the fund as required by this chapter shall be based on the normal and past service costs contained in the state-accepted version of the most recent actuarial valuation.

(6) Beginning July 1, 1980, each retirement system or plan of a unit of local government shall maintain, in accurate and accessible form, the following information:

(a) For each active and inactive member of the system, a number or other means of identification; date of birth; sex; date of employment; period of credited service, split, if required, between prior service and current service; and occupational classification.

(b) For each active member, current pay rate, cumulative contributions together with accumulated interest, if credited, age at entry into system, and current rate of contribution.

(c) For each inactive member, average final compensation or equivalent and age at which deferred benefit is to begin.

(d) For each retired member and other beneficiary, a number or other means of identification, date of birth, sex, beginning date of benefit, type of retirement and amount of monthly benefit, and type of survivor benefit.

History.—s. 1, ch. 78-170; s. 15, ch. 79-183.

112.64 Administration of funds; amortization of unfunded liability.—

(1) Employee contributions shall be deposited in the retirement system or plan on at least a monthly basis. Employer contributions shall be deposited on at least a quarterly basis; provided that any revenues received from any source by an employer which are specifically collected for the purpose of allocation for deposit into a retirement system or plan shall be so deposited within 30 days of receipt by the employer. All employers and employees participating in the Florida Retirement System and other existing retirement systems which are administered by the Division of Retirement shall continue to make contributions on at least a monthly basis.

(2) From and after October 1, 1980, for those plans in existence on October 1, 1980, the total contributions to the retirement system or plan shall be sufficient to meet the normal cost of the retirement system or plan and to amortize the unfunded liability, if any, within 40 years; however, nothing contained in this subsection shall permit any retirement system or plan to amortize its unfunded liabilities over a period longer than that which remains under its current amortization schedule.

(3) For a retirement system or plan which comes into existence after October 1, 1980, the unfunded liability, if any, shall be amortized within 40 years of the first plan year.

(4) The net increase, if any, in unfunded liability under the plan arising from significant plan amendments adopted shall be amortized within 30 plan years.

(5) If the amortization schedule for unfunded liability is to be based on a contribution derived in whole or in part from a percentage of the payroll of the system or plan membership, the assumption as to payroll growth shall not exceed the average payroll growth for the 3 years prior to the development of the amortization schedule unless a transfer, merger, or consolidation of government functions or services occurs, in which case the assumptions for payroll growth may be adjusted and may be based on the membership of the retirement plan or system subsequent to such transfer, merger, or consolidation.

(6) Nothing contained in this section shall result in the allocation of chapter 175 or chapter 185 premium tax funds to any other retirement system or plan or for any other use than the exclusive purpose of providing retirement benefits for firefighters or police officers.

History.—s. 1, ch. 78-170; s. 16, ch. 79-183.

112.65 Limitation of benefits.—

(1) The normal retirement benefit or pension payable to a retiree who becomes a member of any retirement system or plan and who has not previously participated in such plan, on or after January 1, 1980, shall be limited in the following manner:

(a) If such member does not receive social security benefits, his pension benefit shall not exceed 100 percent of his average final compensation.

(b) If such member receives social security benefits, the sum of the member's pension benefit and the primary social security benefit the member receives shall not exceed 100 percent of the member's average final compensation.

(c) Nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.

(d) As used in this section, the term "social security benefits" shall not apply to social security benefits earned exclusively through nongovernmental employment or by a surviving beneficiary.

(e) As used in this section, the term "average final compensation" means the average of the member's earnings, excluding payments for accumulated leave, compensatory time, and overtime, over a period of time which the governmental entity has established by statute, charter, or ordinance.

(2) No member of a retirement system or plan covered by this part who is not now a member of such plan shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from another retirement system or plan; provided that this restriction does not apply to social security coverage or benefits.

History.—s. 1, ch. 78-170; s. 17, ch. 79-183.

112.656 Fiduciary duties; certain officials included as fiduciaries.—

(1) A fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan.

(2) Each retirement system or plan shall have one or more named fiduciaries with authority to control and manage the administration and operation of the retirement system or plan. However, the plan administrator, and any officer, trustee, and custodian, and any counsel, accountant, and actuary of the retirement system or plan who is employed on a full-time basis, shall be included as fiduciaries of such system or plan.

(3) A retirement system or plan may purchase insurance for its named fiduciary to cover liability or

losses incurred by reason of act or omission of the fiduciary.

History.—s. 18, ch. 79-183.

112.658 Auditor General to determine compliance of the Florida Retirement System.—

(1) The Auditor General shall determine, through the examination of actuarial reviews, financial statements, and the practices and procedures of the Division of Retirement, the compliance of the Florida Retirement System with the provisions of this act.

(2) The Auditor General is authorized to employ, as necessary, an independent consulting actuary to assist in the determination of compliance.

(3) The Auditor General shall employ the same actuarial standards to monitor the Division of Retirement as the Division of Retirement uses to monitor local governments.

History.—s. 18, ch. 79-183.

112.66 General provisions.—The following general provisions relating to the operation and administration of any retirement system or plan covered by this part shall be applicable:

(1) The provisions of each retirement system or plan shall be contained in a written plan description which shall include a report of pertinent financial and actuarial information on the solvency and actuarial soundness of the plan. Such plan description shall be furnished to a member of the system or plan upon initial employment or participation in such plan and, thereafter, on an annual basis.

(2) Each retirement system or plan shall provide for a plan administrator.

(3) Any provision in a legal agreement, contract, or instrument which purports to relieve a fiduciary of a retirement system or plan from responsibility or liability is void as being against public policy.

(4) A civil action may be brought by a member or beneficiary of a retirement system or plan to recover benefits due to him under the terms of his retirement system or plan, to enforce his rights, or to clarify his rights to future benefits under the terms of the retirement system or plan.

(5) The governmental entity responsible for the administration and operation of a retirement system or plan may sue or be sued as an entity.

(6) There shall be timely adequate written notice given to any member or beneficiary whose claim for benefits under the terms of his retirement system or plan has been denied, setting forth the specific reasons for such denial. Unless otherwise provided by law, the terms of the retirement system or plan shall provide for a full and fair review in those cases when a member or beneficiary has had his claim to benefits denied.

(7) The assets and liabilities of a retirement system or plan shall remain under the ultimate control of the governmental unit responsible for the retirement system or plan, unless an irrevocable trust has been or is established for the purpose of managing and controlling the retirement system or plan, in which case the board of trustees shall have ultimate control over the assets and liabilities of the retirement system or plan. Nothing herein shall absolve the governmental unit from being ultimately responsible for the payment of its contribution to a retirement system or plan nor remove from the governmental unit the ultimate authority to adjust benefits consistent with the Florida Statutes and the retirement system or plan; however, nothing contained herein shall be construed to permit the creation of such irrevocable trust except by special act of the Legislature.

(8) The instrument or instruments, ordinance, or statute under which a retirement system or plan operates shall provide that all assets of such retirement system or plan shall be held in trust by the board of trustees or, when an irrevocable trust does not exist, by the governmental entity.

(9) No plan shall discriminate in its benefit formula based on color, national origin, sex, or marital status. Nothing herein shall preclude a plan from actuarially adjusting benefits or offering options based on sex, age, early retirement, or disability.

History.—s. 1, ch. 78-170; s. 20, ch. 79-183.

112.665 Duties of Division of Retirement.—

(1) The Division of Retirement of the Department of Administration shall:

(a) Gather, catalog, and maintain complete, computerized data information on all public employee retirement systems or plans in the state, based upon a review of audits, reports, and other data pertaining to the systems or plans;

(b) Receive and comment upon all actuarial reviews of retirement systems or plans maintained by units of local government;

(c) Cooperate with local retirement systems or plans on matters of mutual concern and provide technical assistance to units of local government in the assessment and revision of retirement systems or plans;

(d) Issue an annual report to the Legislature and to the Governor detailing its activities, findings, and recommendations concerning all governmental retirement systems, which report shall be made public and may include legislation proposed to carry out such recommendations; and

(e) Adopt reasonable rules to administer the provisions of this part.

(2) The division may subpoena actuarial witnesses, review books and records, hold hearings, and take testimony. A witness shall have the right to be accompanied by counsel.

History.—s. 19, ch. 79-183.

112.67 Special acts prohibited.—Pursuant to s. 11(a)(21), Art. III of the State Constitution, the Legislature hereby prohibits special laws or general laws of local application in conflict with the requirements of this part.

History.—s. 2, ch. 78-170.

Note.—Ch. 78-170 was passed by the requisite three-fifths vote in each house. See s. 11(a)(21), Art. III, State Constitution.

CHAPTER 113

COMMISSIONS

113.01 Fee for commissions issued by Governor.—A fee of $10 is prescribed for the issuance of each commission of every kind issued by the Governor of the state and attested by the Secretary of State; except that no fee shall be required for issuance of commissions to officers of the Florida National Guard; and, except that no fee shall be required for the issuance of a commission as a notary public to a veteran of the Spanish American War, World War I, World War II, the Korean War or one who serves from August 4, 1964, to the date of cessation of hostilities in the Vietnam conflict, as determined by the United States Government, who has a disability rating by the United States of 50 percent or more; such disability being subject to verification by the Secretary of State who shall have authority to adopt reasonable procedures to implement this act.

History.—s. 1, ch. 14669, 1931; s. 1, ch. 15925, 1933; s. 1, ch. 17133, 1935; CGL 1936 Supp. 460(1), (4), 479(1); s. 1, ch. 28296, 1953; s. 2, ch. 65-256; s. 1, ch. 67-460.

cf.—ss. 15.08, 15.09 Commission fees.
s. 117.01 Appointment, application, fee, term of office, powers, bond and oath—notary public.

113.02 Fee to be paid before commissions issued.—No commission shall be issued by the Governor or attested by the Secretary of State or bear the seal of the state until the fee fixed and required by s. 113.01 shall first be paid as therein provided.

History.—s. 2, ch. 14669, 1931; CGL 1936 Supp. 460(2).

113.03 Disposition of proceeds.—All fees shall be paid by the Secretary of State into the State Treasury and shall be used for such purposes as the Legislature may determine.

History.—s. 3, ch. 14669, 1931; CGL 1936 Supp. 460(3).

113.04 Fidelity bond premiums.—When any state officer or employee is required by statute or by the head of any state department to secure and give a fidelity bond, the premium therefor shall be paid from the necessary and regular expense account of the department to which such officer or employee shall be attached.

History.—s. 1, ch. 17755, 1937; CGL 1940 Supp. 459(1).

113.05 No commission to issue until bond filed, etc.—No commission shall be issued by the Governor of this state to any person who is by law required to give bond before he shall enter upon the duties of his office until after such bond shall have been duly executed, approved and filed in the office where it is required by law to be deposited, and official notice thereof given to the Governor.

History.—s. 1, ch. 227, 1849; RS 212; s. 1, ch. 5178, 1903; GS 296; RGS 394; CGL 459.

113.051 Grants and commissions.—All grants and commissions shall be in the name and under the authority of the State of Florida, sealed with the great seal of the state, signed by the Governor, and countersigned by the Secretary of State.

History.—Former s. 14, Art. IV of the Constitution of 1885, as amended; converted to statutory law by s. 10, Art. XII of the Constitution as revised in 1968.

113.06 Record of commission, oath and acceptance.—Every commission issued by the Governor shall be recorded in the office of the Secretary of State in a book of commissions and an index made thereof, and the oath of office of the person named in said commission shall be endorsed on said commission, and accompanying the commission there shall be transmitted to each officer a printed acceptance of said commission, and his oath of office, which shall be subscribed and taken by such officer, and returned to the office of the Secretary of State and filed therein, and a note thereof made on the record of said commission by the Secretary of State.

History.—s. 2, ch. 12, 1845; RS 213; GS 297; RGS 395; CGL 460.

113.07 Bond by surety company; when required.—

(1) In all cases where public officials, not honorary, either state, county or district, are now, or shall hereafter be, required to post fidelity or performance bonds, all such bonds shall be written by surety companies authorized by law to do business in the state.

(2) The provisions of this law shall not apply to deputy sheriffs, notaries public, or special process servers appointed to serve process under the provisions of s. 48.021.

(3) No such official shall be qualified to hold office or perform the duties thereof until such surety bond has been filed.

(4) The cost of the premium on such bond shall be paid out of the General Revenue Fund of the state or out of the county or out of the various districts, depending upon the class in which such officer belongs. In the event any excess premium over the base premium rate should be charged in the procurement of the bonds herein provided for, such excess premium shall be paid by the individual officer or official.

History.—ss. 1-4, ch. 20523, 1941; s. 2, ch. 76-263.

cf.—s. 198.07 Appointment of agents by Department of Revenue.

113.071 Sureties upon official bonds.—The sureties upon the official bonds of all state, county, and municipal officers shall be residents of, and have sufficient visible property unencumbered within the state, not exempt from sale under legal process, to make good their bonds; and the sureties upon the official bonds of all county and municipal officers shall reside within the county where their principals

upon such bonds reside, and shall have sufficient visible and unencumbered property in such county, that is not exempt from sale under legal process, to make good their liability on such bonds. Any duly organized and responsible guarantee or surety company, either foreign or domestic, lawfully doing business in this state, may become and be accepted as surety on all such official bonds.

History.—Former s. 13, Art. XVI of the Constitution of 1885, as amended; converted to statutory law by s. 10, Art. XII of the Constitution as revised in 1968.

CHAPTER 114

VACATING OFFICE

114.01 Office deemed vacant in certain cases.—

(1) A vacancy in office shall occur:

(a) Upon creation of an office.

(b) Upon the death of the incumbent officer.

(c) Upon removal of the officer from office.

(d) Upon the resignation of the officer and acceptance thereof by the Governor.

(e) Upon the succession of the officer to another office.

(f) Upon the officer's unexplained absence for 60 consecutive days.

(g) Upon the officer's failure to maintain the residence required of him by law.

(h) Upon the failure of a person elected or appointed to office to qualify for office within 30 days from the commencement of the term of office.

(i) Upon the refusal of the person elected or appointed to accept the office.

(j) Upon the conviction of the officer of a felony as defined in s. 10, Art. X of the State Constitution.

(k) Upon final adjudication, in this state or in any other state, of the officer to be mentally incompetent.

(l) Upon the rendition of a final judgment of a circuit court of this state declaring void the election or appointment of the incumbent to office.

(2) With respect to paragraphs (b) and (f)-(k) of subsection (1), the Governor shall file an executive order with the Secretary of State setting forth the facts which give rise to the vacancy, and he shall include in such order the title of the office, the name of the incumbent officer or person who held the office, and the date on which the vacancy in office occurred. The office shall be considered vacant as of the date specified in the executive order or, in absence of such a date, as of the date the executive order is filed with the Secretary of State.

History.—s. 1, ch. 1633, 1868; RS 214; GS 298; RGS 396; CGL 461; s. 25, ch. 71-355; s. 1, ch. 77-235.

114.02 Absence from state of certain officers.—When any officer of the executive branch other than a cabinet officer desires to be absent from the state for a period of 60 consecutive days or more, he shall be permitted to do so upon notifying the Governor in writing of his intention, but he shall return to the state and to the performance of his duties whenever requested by the Governor to do so, and upon his failure so to do the Governor may declare his office vacant pursuant to s. 114.01.

History.—Ch. 1749, 1870; RS 215; GS 299; RGS 397; CGL 462; s. 2, ch. 77-235.

114.03 Certain executive officers not to absent themselves from the state.—The Secretary of State, Attorney General, Comptroller, Treasurer, Commissioner of Education, and Commissioner of Agriculture shall reside at the capital, and no member of the cabinet shall absent himself from the state for a period of 60 consecutive days or more without the consent of the Governor and a majority of the Cabinet. If a Cabinet officer should refuse or fail to comply with and observe the requirements of this section, his office may be deemed vacant pursuant to paragraph (f) or paragraph (g) of s. 114.01(1), as appropriate.

History.—Ch. 1845, 1871; RS 216; GS 300; RGS 398; CGL 463; s. 1, ch. 69-300; s. 2, ch. 77-235.

114.04 Filling vacancies.—Except as otherwise provided in the State Constitution, the Governor shall fill by appointment any vacancy in a state, district, or county office, other than a member or officer of the Legislature, for the remainder of the term of an appointive officer and for the remainder of the term of an elective office, if there is less than 28 months remaining in the term; otherwise, until the first Tuesday after the first Monday following the next general election. With respect to any office which requires confirmation by the Senate, the person so appointed may hold an ad interim term of office subject to the provisions of s. 114.05. Each secretary or division director of a department of the executive branch who is required by law to be appointed by the Governor and confirmed by the Senate shall serve at the pleasure of the Governor, unless otherwise provided by law, and the appointment of such person shall run concurrently with the term of the Governor making the appointment. In the event a Governor is elected to a second term of office pursuant to s. 5, Art. IV, of the State Constitution, each secretary or division director so appointed shall be reappointed or, at the discretion of the Governor, replaced by a new appointee. Reappointments to the same office shall be subject to confirmation by the Senate as provided in s. 114.05.

History.—s. 2, ch. 1633, 1868; RS 217; GS 301; RGS 399; CGL 464; s. 1, ch. 70-385; s. 2, ch. 77-235; s. 68, ch. 79-400.

114.05 Issuance of letter of appointment; confirmation by the Senate; refusal or failure to confirm.—

(1) When a vacancy in office is filled by appointment which requires confirmation by the Senate:

(a) The Governor shall issue and transmit to the [1][Department] of State for filing a letter of appointment. The letter shall contain the legal authority under which the appointment is made, the proper designation of the office, the full name and address of the appointee, the term of office to which the appointment is made, and the effective date of the appointment, which date shall be on or after the date of recording of the letter of appointment. The [1][Department] of State shall promptly file the letter and transmit to the appointee an oath of office, questionnaire for executive appointment, and bond form

when required. Upon receipt of the questionnaire, oath of office, and bond if required, the [1][Department] of State shall transmit to the appointee a certificate of appointment, under seal, certifying that the appointment was made of the appointee to the office, for the term indicated in the letter of appointment. The certificate shall also provide that the appointment is subject to confirmation by the Senate at the next regular session of the Legislature following the effective date of the appointment.

(b) The Department of State shall distribute and cause to be prepared and submitted by each appointee a biographical questionnaire, verified under oath or affirmation, in the form prescribed by the President of the Senate. The department shall transmit the completed questionnaire and a copy of the certificate of appointment to the President of the Senate or his designee within 30 days from the receipt by the department of the letter of appointment. Upon receipt of the certificate, the President of the Senate shall lay the appointment before the Senate for confirmation in accordance with this section and the applicable Senate rules.

(c) If the Senate confirms the appointment, the fact of such confirmation shall be spread upon the pages of the Journal of the Senate, and thereafter a certificate of Senate confirmation shall be issued by the President of the Senate and attested to by the Secretary of the Senate. A true copy of this certificate shall be filed with the [1][Department] of State, and the original thereof shall be delivered to the appointee. Upon receipt by him of the certificate of Senate confirmation, the [1][Department] of State shall cause a commission to be prepared and transmitted to the Governor for signature. After the commission has been duly signed, countersigned, and sealed, it shall be delivered to the appointee. The commission shall specify, among the other things prescribed in paragraph (a), the date on which the appointment was confirmed and the expiration date of the term of office.

(d) If the Senate refuses to confirm the appointment, the fact of such refusal or rejection shall be spread upon the pages of the Journal of the Senate, and thereafter a certificate of refusal to confirm shall be issued, attested, filed, and delivered in accordance with paragraph (c). Unless an earlier date is specified in the motion to refuse to confirm, the ad interim term of the appointee whose appointment has been rejected by the Senate shall end at the adjournment of the session of the Senate at which the vote on his confirmation was taken. An appointee whose appointment to office has been rejected by the Senate shall hold over until his successor is appointed and qualified, but the period of such holdover shall not exceed 30 days from the adjournment of the session of the Senate. No person whose appointment to office has been rejected by the Senate shall be eligible for appointment to the same office for 1 year after the date of filing of the certificate of refusal to confirm.

(e) If the Senate votes to take no action or if for any other reason [2][it] fails to consider an appointment during the regular session immediately following the effective date of the appointment, the failure to act shall be noted in the pages of the Journal of the Senate, and thereafter a certificate, stating that the Senate voted to take no action or failed to consider the appointment, shall be issued, attested, filed, and delivered in accordance with paragraph (c). With respect to appointments on which the Senate fails to act during the regular session of the Legislature immediately following the effective date of the appointment, a vacancy in office shall exist upon the adjournment sine die of the Legislature. The appointee shall hold over until his successor is appointed and qualified; however, such period of holding over shall not exceed 45 days. The appointee may be reappointed.

(f) If the Senate voted to take no action or for any other reason failed to consider an appointment during the regular session immediately following the effective date of the appointment and the appointee was thereupon reappointed to the same office, and if the Senate votes to take no action or for any other reason fails to consider the reappointment of the same person to the same office during the regular session immediately following the effective date of the reappointment, the reappointment of such person to such office shall be deemed to have been rejected, and the office shall become vacant upon the adjournment sine die of the regular session immediately following the effective date of the reappointment, and the appointee shall not hold over in that office or be eligible for reappointment in that office for 1 year thereafter.

(2) Upon request, any agency of government in this state is authorized to provide information to the Senate or the appropriate Senate standing or select committee or subcommittee thereof. Upon request of the Senate President or the appropriate Senate standing or select committee or subcommittee thereof, the Department of Law Enforcement shall make and cause to be furnished to the Senate President or the appropriate Senate standing or select committee or subcommittee thereof the results of an inquiry or investigation involving the criminal history relating to any person whose appointment to office is subject to Senate confirmation.

(3) Notwithstanding anything contained herein to the contrary, the Senate may, upon the affirmative vote of a majority of those present, consider an appointment at any time it is in session.

History.—s. 3, ch. 77-235; s. 10, ch. 79-8.

[1]**Note.**—Bracketed word substituted by the editors for the word "Secretary."

[2]**Note.**—Bracketed word inserted by the editors.

CHAPTER 115

LEAVES OF ABSENCE TO OFFICIALS

115.01 Leave of absence for military service.—Any county or state official of the state, subject to the provisions and conditions hereinafter set forth, may be granted leave of absence from his office, to serve in the volunteer forces of the United States, or in the National Guard of the state, or in the regular Army or Navy of the United States, when the same shall be called into active service of the United States during war between the United States and a foreign government.

History.—s. 1, ch. 7393, 1917; RGS 400; CGL 465.

115.02 Governor to grant application; proviso.—When any such officer shall volunteer or be called into the service of the United States during war, the Governor shall, upon application being made by such officer, grant such officer leave of absence during the time he shall be retained in such military service; provided, such service shall not extend beyond the term of office of such officer, in which event the office shall be filled by election at the expiration thereof.

History.—s. 2, ch. 7393, 1917; RGS 401; CGL 466.

115.03 Appointment of deputy; bond.—Before applying for such leave of absence as above mentioned, such officer shall appoint a capable and competent deputy to take over and perform the duties of the office, and the bond of such officer shall be in full force during the remainder of his term of office, in addition to which such deputy shall be required to furnish good and sufficient bond in a sum of not more than one-half of the amount of the bond of the officer appointing him as such deputy, for the faithful performance of such duties.

History.—s. 3, ch. 7393, 1917; RGS 402; CGL 467.
cf.—s. 113.04 Payment of premium on bond.

115.04 Apply to certain officers.—The provisions of ss. 115.01-115.06 shall only apply to such officers as are now authorized by law to appoint deputies.

History.—s. 4, ch. 7393, 1917; RGS 403; CGL 468.

115.05 Duties of deputy.—Any deputy qualifying under the provisions of ss. 115.01-115.06 shall perform all of the duties that may devolve upon the officer appointing him, and he shall sign all official papers and documents in the name of the officer so appointing him as such deputy, and his said acts as such deputy shall in all respects be as binding as if performed by the officer appointing such deputy.

History.—s. 5, ch. 7393, 1917; RGS 404; CGL 469.

115.06 Reassumption of duties.—Upon his being mustered out of the service of the United States, such officer granted leave under s. 115.01 shall immediately enter into the duties of his office for the remainder of the term for which he was elected.

History.—s. 6, ch. 7393, 1917; RGS 405; CGL 470.

115.07 Officers' and employees' leave of absence.—All officers or employees of this state, or of the several counties or municipalities of this state, who are commissioned reserve officers or reserve enlisted personnel in the United States military or naval service or members of the National Guard, shall be entitled to leave of absence from their respective duties, without loss of pay, time or efficiency rating, on all days during which they shall be engaged in field or coast defense exercise or other training ordered under the provisions of the United States military or naval training regulations for such personnel when assigned to active duty; provided that leaves of absence granted as a matter of legal right under the provisions of this section shall not exceed 17 days in any one annual period; provided, further, that leaves of absence for additional or longer periods of time without pay for assignment to duty with civilian conservation corps units or other functions of a military character may be granted in the discretion of employing or appointing authority of any state, county or municipal employee and when so granted shall have the force and effect of other leaves of absence authorized by this section.

History.—s. 1, ch. 17975, 1937; CGL 1940 Supp. 470(1); s. 1, ch. 26852, 1951.
cf.—s. 250.48 Leaves of absence.

115.08 Definitions.—

(1) The term "active military service" as used in this law shall signify active duty in the Florida defense force or federal service in training or on active duty with any branch of the Army of the United States, the United States Navy, the Marine Corps of the United States, the Coast Guard of the United States, and service of all officers of the United States Public Health Service detailed by proper authority for duty either with the army or the navy, and shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) The term "period of active military service" as used in this law shall begin with the date of entering upon active military service, and shall terminate

with death or a date 30 days immediately next succeeding the date of release or discharge from active military service, or upon return from active military service, whichever shall occur first.

History.—s. 2, ch. 20718, 1941.

115.09 Leave to public officials for military service.—All state and county officials in the state, and all others who hold office under the government of the state, and who are officers or enlisted men either in the Florida Defense Force, the National Guard, the Naval Militia, Marine Corps, Unorganized Militia, United States Army Reserve, United States Navy Reserve, United States Marine Corps Reserve, United States Coast Guard Reserve, or officers or enlisted men in any other class of the militia, or district school officers, and all municipal officials in the state, may, subject to the provisions and conditions hereafter set forth, be granted leave of absence from their respective offices and duties to perform active military service, the first 30 days of any leave of absence to be with full pay and the remainder without pay.

History.—ss. 1, chs. 20718, 20863, 1941; s. 1, ch. 69-300.

115.10 Leave to be granted by Governor.—Application for such leave of absence shall be made to the Governor of the state and may be granted or denied by the Governor in his discretion, as the public interest may require.

History.—s. 3, ch. 20718, 1941.

115.11 Leave not to extend beyond term of office.—In the event that the term of office of an official on leave shall expire during such leave, the office of that official shall be filled by election or appointment as may be required by law; provided, however, that said official on leave shall have the right to qualify and become a candidate for such office, and, if nominated or elected shall have the same rights and privileges herein accorded to an incumbent.

History.—s. 4, ch. 20718, 1941.

115.12 Rights during leave.—During such leave of absence such official shall be entitled to preserve all seniority rights, efficiency ratings, promotional status and retirement privileges. The period of active military service shall, for purposes of computation to determine whether such person may be entitled to retirement under the laws of the state, be deemed continuous service in the office of said official. While absent on such leave without pay, said official shall not be required to make any contribution to any retirement fund.

History.—s. 5, ch. 20718, 1941.

115.13 Resumption of official duties.—Upon said officer terminating his active military service, he shall immediately enter upon the duties of his office for the unexpired portion of the term for which he was elected or appointed.

History.—s. 6, ch. 20718, 1941.

115.14 Employees.—All employees of the state, and of the several counties of the state, and of the municipalities or political subdivisions of the state, may, in the discretion of the employing authority of such employee, be granted leave of absence under the terms of this law, and upon such leave of absence being granted, said employee shall enjoy the same rights and privileges as are hereby granted to officials under this law, insofar as may be.

History.—s. 7, ch. 20718, 1941.

115.15 Adoption of federal law for employees.—The provisions of section 8 of chapter 720 Acts of Congress of the United States, approved September 16, 1940 (Title 50 App. Section 308, U. S. C. A.), insofar as it relates to the reemployment of public employees granted a leave of absence on active military duty under this law, shall be applicable in this state and the refusal of any state, county, or municipal official to comply therewith shall subject him to removal from office.

History.—s. 8, ch. 20718, 1941.

CHAPTER 116

POWERS AND DUTIES OF OFFICERS

116.01 Payment of public funds into treasury.—

(1) Every state and county officer within this state authorized to collect funds due the state or county shall pay all sums officially received by the officer into the state or county treasury not later than 7 working days from the close of the week in which the officer received the funds. Funds received by the county officer on behalf of the state shall be deposited directly to the account of the State Treasury not later than 7 working days from the close of the week in which the officer received the funds.

(2) No officer shall hereafter be entitled to receive any commission or compensation for collecting said funds when the officer fails or refuses to pay over the same not later than 7 working days from the close of the week in which the officer received the funds.

(3) Nothing herein shall require officers to pay into the state or county treasury those funds which are required by law or court order, or by the purpose for which they are collected, to be held and disbursed for a particular purpose in a manner different from that set forth in subsection (1).

History.—ss. 1, 2, ch. 6205, 1911; RGS 406; CGL 471; s. 1, ch. 76-224.
cf.—s. 219.07 Disbursements of public funds collected.

116.015 Receipt of counterfeit money in the course of operation of public office.—Whenever a state or county officer who has unknowingly received into the public funds of his office any counterfeit currency discovers that fact, the officer shall furnish a written report of the matter to the appropriate state attorney, including such information as the state attorney may request. The officer shall not be personally liable, but shall be entitled to charge such loss as an expense against any available funds of his office, provided the amount of such charge does not exceed the face value of the currency so received.

History.—s. 1, ch. 76-117.

116.02 Payment of commissions on unremitted funds prohibited; penalty.—It is unlawful for any state or county officer or any board of county officers, required to audit the accounts of officers under the laws of this state, to approve or pay any commissions on funds collected and not paid over as required by s. 116.01 and any officer violating the provisions of this section, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 3, ch. 6205, 1911; RGS 5328; CGL 7461; s. 66, ch. 71-136.

116.03 Officers to report fees collected.—Each state and county officer who receives all or any part of his compensation in fees or commissions, or other remuneration, shall keep a complete report of all fees and commissions, or other remuneration collected by him, and shall make a report to the Department of Banking and Finance of all such fees and commissions, or other remuneration, annually on December 31 of each and every year. Such report shall be made upon forms to be prescribed from time to time by the department, and shall show in detail the source, character and amount of all his official expenses and the net amount that the office has paid up to the time of making such report. All officers

shall make out, fill in and subscribe and properly forward to the department such reports, and swear to the accuracy and competency of such reports.

History.—ss. 1, 2, ch. 6815, 1915; RGS 407; CGL 472; s. 1, ch. 24198, 1947; ss. 12, 35, ch. 69-106.

cf.—s. 298.401 Tax collectors and property appraisers; compensation; general drainage; service.

116.04 Failure of officer to make sworn report of fees.—Any officer who shall fail or refuse to make, subscribe and swear, or to file with the Department of Banking and Finance a report of all fees, commissions or other remuneration collected by him, as required by law, or if any officer shall knowingly or willfully make false or incomplete reports, or in any report violate any of the provisions of s. 116.03 he shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 6815, 1915; RGS 5356; CGL 7491; ss. 12, 35, ch. 69-106; s. 67, ch. 71-136.

116.05 Examination and publication by Department of Banking and Finance.—The Department of Banking and Finance shall have examined and verified any of the reports received under s. 116.03 whenever in its judgment the same may be necessary, and the department shall cause the matter and things in each of said reports to be published one time in a newspaper published in the county in which such report originated, in such form as it shall direct, and the expense of such publication shall be paid by the county commissioners of such county.

History.—s. 3, ch. 6815, 1915; RGS 408; CGL 473; ss. 12, 35, ch. 69-106.

116.06 Summary of reports; certain officers not required to report fees.—A summary of all such reports shall be included by the Department of Banking and Finance in its annual report to the Governor, except that jurors and notaries public shall not be required to make such reports as provided for in s. 116.03.

History.—s. 4, ch. 6815, 1915; RGS 409; CGL 474; ss. 12, 35, ch. 69-106; s. 2, ch. 73-47.

116.07 Account books to be kept by sheriffs and clerks.—All sheriffs and clerks of the circuit court and ex officio clerks of the boards of county commissioners of this state, shall keep books of account and of record in accordance with forms to be approved by the Auditor General, except such books and forms as are now otherwise provided for by law.

History.—s. 1, ch. 5176, 1903; GS 814; RGS 410; CGL 475; s. 8, ch. 69-82.

116.08 County commissioners to furnish books.—The county commissioners shall furnish the books provided for in s. 116.07.

History.—s. 2, ch. 5176, 1903; GS 815; RGS 411; CGL 476.

116.09 Penalty for failure.—Any officer who shall neglect or refuse to comply with the duties imposed by s. 116.07 shall be subject to suspension from office by the Governor.

History.—s. 4, ch. 5176, 1903; GS 817; RGS 412; CGL 477.

116.111 Restriction on employment of relatives.—

(1) In this section, unless the context otherwise requires:

(a) "Agency" means:

1. A state agency, except institutions under the jurisdiction of the Division of Universities of the Department of Education;

2. An office, agency, or other establishment in the legislative branch;

3. An office, agency, or other establishment in the judicial branch;

4. A county;

5. A city; and

6. Any other political subdivision of the state, except district school boards and community college districts;

(b) "Public official" means an officer, including a member of the Legislature, the Governor, and a member of the cabinet, or employee of an agency in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency; and

(c) "Relative" with respect to a public official, means an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(2)(a) A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

(b) Mere approval of budgets shall not be sufficient to constitute "jurisdiction or control" for the purposes of this section.

(3) Except as provided herein, an individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid to an individual so appointed, employed, promoted, or advanced.

(4) An agency may prescribe regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited by this section.

(5) Legislators' relatives may be employed as pages or messengers during legislative sessions.

History.—ss. 1-3, ch. 69-341; ss. 15, 35, ch. 69-106; s. 70, ch. 72-221.

116.12 State officials' and employees' purchase of motor vehicles.—It shall be unlawful for any state officer or employee to purchase or contract for the purchase of any motor vehicle for the use of himself or another to be paid for out of funds of the state or any department thereof unless a specific

appropriation directly and expressly authorizing the purchase of such motor vehicle has been made, and it shall be unlawful for the Comptroller of the state to issue or pay any warrant in violation of this section. For the purpose of this section an appropriation for the purchase of motor vehicles shall not be deemed to be expressly made by the Legislature unless an item authorizing the purchase of such motor vehicle in specific terms has been mentioned in the appropriation out of which the same is proposed to be made. This section shall extend to and include the purchase of motor vehicles of all kinds, provided this section shall not apply to purchase of motor vehicles by the Division of Road Operations of the Department of Transportation.

History.—s. 1, ch. 13810, 1929; CGL 1936 Supp. 1363(1); s. 1, ch. 20716, 1941; s. 7, ch. 22858, 1945; ss. 23, 35, ch. 69-106.

116.13 Sale of property by heads of state institutions without permission prohibited.—The superintendents of state asylums, and the presidents and principals of all state educational institutions are prohibited from selling or otherwise disposing of property belonging to the state, except in cases where they have previously obtained permission from their respective boards of commissioners or trustees.

History.—s. 1, ch. 4181, 1893; GS 3493; RGS 5373; CGL 7507.

116.14 Receipts required from purchasers of state property.—Upon the sale of any state property by the superintendent and presidents of state institutions as provided by law, they shall take receipt for the same from the purchaser, which receipt shall be forwarded, together with the proceeds of the sale, to the State Treasurer.

History.—s. 2, ch. 4181, 1893; GS 3494; RGS 5374; CGL 7508.

116.15 Penalty for violation of ss. 116.13 and 116.14.—Any violation of ss. 116.13 and 116.14 shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.083.

History.—s. 3, ch. 4181, 1893; GS 3495; RGS 5375; CGL 7509; s. 68, ch. 71-136.

116.161 Motor vehicles; purchase by Division of Universities, Department of Health and Rehabilitative Services, and Department of Corrections.—

(1) The Division of Universities of the Department of Education, the Department of Health and Rehabilitative Services, and the Department of Corrections are hereby authorized, subject to the approval of the Department of General Services, to purchase automobiles, trucks, tractors, and other automotive equipment for the use of institutions under the management of said Division of Universities, Department of Health and Rehabilitative Services, and Department of Corrections.

(2) The Department of Corrections shall, prior to purchasing motor vehicles, seek to procure the motor vehicles from those vehicles renovated pursuant to correctional work programs of the Department of Corrections.

History.—s. 12A, ch. 20980, 1941; s. 7, ch. 22071, 1943; s. 6, ch. 22827, 1945; s. 6, ch. 23915, 1947; s. 5, ch. 25370, 1949; s. 6, ch. 26859, s. 2, ch. 26971, 1951; s. 2, ch. 63-204; ss. 2, 3, ch. 67-371; ss. 15, 19, 22, 35, ch. 69-106; s. 1, ch. 77-120; s. 1, ch. 77-300; s. 6, ch. 79-3.

cf.—s. 116.12 State officials' and employees' purchase of motor vehicles.

116.21 Unclaimed bond money; limitation.—

(1) The sheriffs and clerks of the courts of the various counties of the state are hereby authorized at their discretion on or before September 25 of each and every year hereafter to pay into the fine and forfeiture fund of their respective counties any or all unclaimed bond and evidence moneys in their hands or custody by virtue of their office as sheriff or clerk, which unclaimed bond and evidence money came into their hands in cases which have been finally disposed of or bonds estreated and no information filed, or defendant bound over and no information filed, or in which no case has been made, prior to January 1 of the preceding year and for which moneys claim has not been made.

(2) The sheriffs and clerks of the various courts of the respective counties may, during the month of July of each year, hereafter make and compile a list of any or all unclaimed bond and evidence moneys which came into their hands as provided in subsection (1) above. Such compilation shall list in addition to the name of the defendant, the names of such bondsmen, if known, and shall specify the respective amounts of such unclaimed bonds or evidence moneys. Such list or compilation shall be published one time during the month of July in a newspaper of general circulation in the county served by such sheriff or clerk and said notice shall specify that unless such bond moneys or evidence moneys are claimed on or before September 1 after such publication that same shall be declared forfeited to such county. Proof of such publication shall be made by the publisher of such newspaper and shall be filed and recorded in the minutes of the county commissioners of such county.

(3) Persons having or claiming any interest in said funds or any portion of them shall file their written claims with the sheriff or clerk of the court of the county having custody of such funds within the time specified by said notice and shall make sufficient proof to said sheriff or clerk of his ownership and upon so doing shall be entitled to receive any part of the moneys so claimed. Unless claim is filed within such time as aforesaid, all claims in reference thereto are forever barred.

(4) The cost of publishing the notices as required by subsection (2) shall be paid by the county commissioners, and the sheriff or the clerk shall receive as compensation the regular fee allowed by statute for the collection of fines, fees and costs adjudged to the state upon the amounts remitted to the fine and forfeiture fund. Upon such payment to the fine and forfeiture fund, the sheriff or clerk shall be released and discharged from any and all further responsibility or liability in connection therewith.

History.—ss. 1-4, ch. 22050, 1943.

116.22 Definitions; forfeiture of personal property in custody of clerks of various courts.—In construing this act and each and every section, word, phrase or part thereof, where the context per-

mits, the term "personal property" or "chattels personal" shall include all property of any kind except real estate and anything permanently attached thereto.

History.—s. 1, ch. 61-380.

116.23 Forfeiture of personal property or chattels personal in the custody and control of the clerk of the circuit court.—

(1) All personal property or chattels personal listed, used, offered, or received in evidence at the trial of any criminal or quasi-criminal case in any circuit court or county court wherein a verdict or judgment was returned or entered, and the time for taking an appeal from said verdict or judgment having expired and said property not having been disposed of and a claim not having been made or filed therefor within 60 days from the time for taking an appeal shall be subject to forfeiture under the provisions of this act as hereinafter set forth.

(2) All personal property and chattels personal in the custody and control of the clerk of any circuit court or the clerk of any county court having criminal jurisdiction, and of any judge of any such state court not having a clerk, and said property having been in the custody and control of said clerk or judge for 7 years or more and not having been disposed of, and no claim for said property having been made or filed for the same during said time, shall be subject to forfeiture as hereinafter set forth.

History—s. 2, ch. 61-380; s. 20, ch. 73-334.

116.24 Disposition and appraisal of personal property or chattels personal held by the clerk of the circuit court under this chapter.—

(1) The clerk of the county court shall, at the expiration of 60 days after the expiration of the time for taking an appeal from any verdict or judgment entered in any criminal or quasi-criminal case, deliver to the clerk of the circuit court of the county where said trial occurred all personal property or chattels personal listed, used, offered, or received as evidence at said trial and not previously disposed of. Said clerk of the county court shall also within 60 days deliver and turn over to the clerk of the circuit court any and all personal property or chattels personal that have been held or been in possession of said clerk or judge for 7 or more years and not previously disposed of. All of the personal property and chattels personal above-mentioned shall be subject to forfeiture under the provisions of this act.

(2) When the clerk of the county court delivers the property mentioned in subsection (1) to the clerk of the circuit court, there shall also be delivered with said property a report or return setting forth the following information: Style and number of the case; the name and address of each defendant; the offense charged; the verdict or judgment rendered and entered; an itemized list of all property listed, used, offered, or received in evidence at the trial of said case, with the appraised value thereof (said appraisal may be made by the clerk or judge or under his direction); the names of the owners of the property and all lienholders, with their respective addresses; and, if any of the property is a motor vehicle subject to registration, then the names and addresses of the owner and lienholder, if any, as evidenced by a certificate of title as shown by the record of the Department of Highway Safety and Motor Vehicles. Said report or return, when filed with the clerk of the circuit court, shall become a part of the records of said case.

(3) The clerk of the circuit court of each judicial circuit in this state shall, 60 days after the expiration of the time for taking an appeal from any verdict or judgment entered in any criminal or quasi-criminal case tried in the circuit court, make and file in said case a report or return setting forth the information called for in subsection (1) and when said report or return is made it shall become part of the records thereof. The said clerk shall also make and file in the office of the clerk of the circuit court within 60 days a report or return showing all personal property or chattels personal that have been held or have been in possession of the said clerk for 7 or more years, setting forth in said report the information called for in the report or return mentioned in subsection (1) and when said report or return is filed it shall become a part of the records in said case.

(4) It shall be the duty of the clerk of the circuit court after the property herein mentioned is delivered to him, to keep it until disposed of as hereinafter provided.

History.—s. 3, ch. 61-380; s. 6, ch. 65-190; ss. 24, 35, ch. 69-106; s. 20, ch. 73-334.

116.25 Proceedings for forfeiture, notice of holding and order to show cause.—

(1) The report or return heretofore mentioned that is filed with or made by the clerk of the circuit court shall be taken and considered as the state's petition or libel in rem for the forfeiture of the property therein described, of which the circuit court of the county wherein the case was tried shall have jurisdiction, without regard to value. The report or return shall be sufficient as a petition or libel, notwithstanding the fact that it may contain no formal prayer or demand for forfeiture, it being the intention of the legislature that forfeiture may be decreed without a formal prayer or demand therefor. The return may be amended at any time before final judgment, provided a copy of said amendment shall be furnished to any person, firm or corporation that has filed a claim to the property prior to the filing of the amendment. In event an amendment is filed to the report or return, then the court may allow time for the claimant or any person, firm or corporation who may have filed a claim prior to said amendment to reply to the amended report or return.

(2) Upon the filing of said report or return, the clerk of the circuit court shall issue a citation, directed to all persons, firms and corporations owning, having or claiming an interest in or lien upon the property held by said clerk, giving notice that he holds said property and directing that all persons, firms or corporations owning, having or claiming any interest therein or lien thereon, to file their claim to, on, or in said property within the time fixed in said citation, as to persons, firms and corporations not personally served, and within 20 days from personal service of said citation, when personal service is had. Personal service shall be made on all parties in Florida having liens noted upon a certificate of title as shown by the records in the Department of

Highway Safety and Motor Vehicles.

(3) The citation may be in, or substantially in, the following form:

IN THE CIRCUIT COURT IN AND FOR ..... COUNTY, FLORIDA.

IN RE: FORFEITURE OF THE FOLLOWING DESCRIBED PROPERTY (Then set out description of property to be forfeited)

THE STATE OF FLORIDA

TO: ALL PERSONS, FIRMS, AND CORPORATIONS OWNING, HAVING OR CLAIMING ANY INTEREST IN OR LIEN ON THE ABOVE-DESCRIBED PROPERTY.

YOU AND EACH OF YOU are hereby notified that the above-described property is held in the custody of the Clerk of the above Court, under and by virtue of the Laws of Florida, Acts of 1961, and is now in the possession of said Clerk of the above County. YOU AND EACH OF YOU are hereby further notified that a Petition, under said Chapter has been filed in the above-styled Court, seeking the forfeiture of the above-described property. YOU AND EACH OF YOU ARE HEREBY DIRECTED AND REQUIRED to file your claim, if any you have, and show cause, on or before the ..... day of ....., 19....., if not personally served with process herein, and within twenty days from personal service, if personally served with process herein, why the said property should not be forfeited pursuant to the Laws of Florida, Acts of 1961. Should you fail to file your claim as herein directed judgment will be entered against you in due course. Persons not personally served with process may obtain a copy of the Petition to forfeiture filed herein from the undersigned Clerk of Court.

WITNESS my hand and official seal of the above-mentioned Court at ....., Florida, this ..... day of ....., 19.....

(Clerk of the above-mentioned Court)

(COURT SEAL)

By (Deputy clerk)

(4) Such citation shall be returnable, as to persons served constructively, as therein directed, not less than 21 nor more than 30 days from the posting or publication thereof, and as to those personally served with process within 20 days from service thereof. A copy of the petition shall be served with the process when personally served. Personal service of process may be made in the same manner as a summons in chancery.

(5) If the appraised value of the property held is shown by the return to be $500 or less, the above citation shall be served on all persons, firms or corporations not personally served by posting said citation at three public places in the county; one of which shall be at the front door of the courthouse; if the value of the property is more than $500 the citation shall be published for 2 consecutive weeks in some newspaper of general circulation in the county where the property is held, if there be such a newspaper published in the county and if not, then notice of publication shall be made by certificate of the clerk if publication is made by posting, and by affidavit as provided in chapter 50, if made by publication in a newspaper, which affidavit or certificate shall be filed in said cause and become a part of the record thereof. Failure of the record to show proof of publication shall not affect any judgment made in the cause unless it shall affirmatively appear that no such publication was made.

History.—s. 4, ch. 61-380; s. 2, ch. 73-299; s. 36, ch. 77-104.

116.26 Delivery of property to claimant.—Any person, firm or corporation filing a claim in the cause, which claim shall state fully his right, title, claim or interest, in and to the held property, may, at any time after said claim is filed with the clerk of court, obtain possession of the held property by filing a petition therefor with the clerk of the circuit court and posting with him, to be approved by said clerk, a surety bond, payable to the governor of the state in twice the amount of the value of said property as fixed in the return to or by the clerk of the circuit court, with a corporate surety duly authorized to transact business in this state as surety, conditioned upon his paying to said clerk the value of the property together with all costs of the proceedings, if judgment of forfeiture be entered. Upon posting of such bond with the clerk and the release of the property to the applicant the cause shall proceed to final judgment in the same manner as it would have had no such bond been filed, except that any execution to be issued in the cause pursuant to judgment may run against and be enforced against the person posting said bond and his surety.

History.—s. 5, ch. 61-380.

116.27 Proceedings when no claim is filed.—When no claim is filed in the cause within the time required, the clerk shall enter a default against all persons, firms and corporations, claiming or having any interest in and to the property held by the clerk and the cause may then proceed in the same manner as a common law action after default, and final judgment shall be entered therein ex parte, except as may be herein otherwise provided.

History.—s. 6, ch. 61-380.

116.28 Proceedings when claim is filed.—When one or more claims are filed in the cause, the cause shall be tried upon the issues made thereby, with the petition for forfeiture, with any affirmative defenses being deemed denied without further pleadings. Judgment by default shall be entered against all other persons, firms and corporations owning, claiming or having an interest in and to the property held, after which the cause shall proceed as in other common law cases; except claimant shall prove to the satisfaction of the court, that he did not know or have any reason to believe, at the time his right, title, interest, or lien arose, that the property was being used for or in connection with the violation of any of the statutes and laws of this state; and further that at said time there was no reasonable reason to believe that the said property might be used for such purpose. Where the owner of the property has been convicted of a violation of the statutes and laws of

this state and said property had been offered or received in evidence at the trial for said violation, then such conviction and the offering or receiving of said property in evidence at such trial shall be prima facie evidence that the claimant had reason to believe that the property might be used for or in connection with a violation of a criminal statute and law of this state, and it shall be incumbent upon such claimant to satisfy the court that he was without knowledge of such violation. Trial of all such causes shall be without a jury, except in such cases as a trial by jury may be guaranteed by the state constitution and in such cases trial by jury shall be deemed waived unless demanded in the claim when filed.

History.—s. 7, ch. 61-380.

116.29 Judgment of forfeiture.—

(1) On final hearing the report or return of the clerk of the circuit court or the clerk of any other court heretofore mentioned, or the judge of any court not having a clerk as heretofore referred to, shall be taken as prima facie evidence that the property therein described, and delivered to the clerk of the circuit court was, or had been used in, or in connection with the violation of some law of the state, and shall be sufficient predicate for a judgment of forfeiture in absence of other proofs and evidence. The burden shall be upon the claimant to show that the property was not so used or if so used that the claimant had no knowledge of such violation and no reason to believe that the property so held was, would be or had been used for the violation of a statute or law of the state.

(2) Where such property is encumbered by a lien or retain title agreement under circumstances wherein the lien holder had no knowledge that the property was, had been or would be used in violation of the statutes and laws, and no reasonable reason to believe that it might be so used, then the court may declare a forfeiture of all other rights, titles and interests; subject however, to the lien of such innocent lien holder, or may direct the payment of such lien from the proceeds of any sale of the said property. The proceedings and the judgment of forfeiture shall be in rem and shall be primarily against the property itself.

(3) Upon the entry of a judgment of forfeiture the court shall determine the disposition to be made of the property, which may include the destruction, sale, and allocation thereof to some governmental agency, function or use, or otherwise as the court may determine. Sales of such property may be at a public or private sale, as the court may determine and direct, to the highest and best bidder therefor for cash, after public notice as the court may direct, which notice shall be not less than 10 nor more than 30 days after the date of such forfeiture order. Notice of such sale shall be published once only at least 7 days prior to the sale.

(4) Where the property has been delivered to a claimant upon the posting of a bond the court shall determine the value of the property, or portion thereof subject to forfeiture, and shall enter judgment against the principal and surety of the bond in such amount for which execution shall issue in the usual manner. Upon the application of any claimant the court may fix the value of the forfeitable interest in the held property and permit the claimant to redeem the property upon the payment of a sum equal to said value and costs, which sum shall be disposed of as would the proceeds of a sale of property under a judgment of forfeiture.

History.—s. 8, ch. 61-380.

116.30 Disposition of proceeds of forfeiture.—All sums received from a sale or other disposition of the held property shall be paid into the fine and forfeiture fund and shall become a part thereof.

History.—s. 9, ch. 61-380.

116.31 Fees for services; expenses.—

(1) The fee of any clerk of court for preparing the report or return taken and considered as the state's petition or libel in rem shall be $5. The fee of the clerk of the circuit court in connection with services of said clerk in the forfeiture proceedings contemplated by this chapter shall be $10. The fees of all other officers shall be those provided by law for like services in other cases and matters. The fees provided by this section shall be paid from the general fund or the fine and forfeiture fund of the county.

(2) The reasonable cost of posting the citation or of publication as required by this chapter and the cost for the safekeeping of property in the custody of the clerk of the court shall be paid from the general fund or the fine and forfeiture fund of the county.

History.—s. 10, ch. 61-380.

116.32 State attorney to represent state.— Upon the filing of the return or report with or by the clerk of the circuit court, the clerk of the circuit court shall furnish the state attorney with a copy thereof and a copy of the citation and the state attorney shall represent the state in the forfeiture proceedings. The Department of Legal Affairs shall represent the state in all appeals from judgments of forfeiture to the supreme court. The state may appeal any judgment denying forfeiture in whole or in part or that may be otherwise adverse to the state.

History.—s. 11, ch. 61-380; ss. 11, 35, ch. 69-106.

116.33 Exercise of police power.—It is deemed by the legislature of the state, that this act is necessary for the more efficient and speedy method of forfeiture of property that is held by the clerks of the circuit court of Florida, and a lawful exercise of the police power of the state for the protection of the public welfare of the people of the state. All the provisions of this act shall be liberally construed for the accomplishment of the purposes herein mentioned. This act is to be considered as cumulative and not an exclusive method of forfeiture.

History.—s. 12, ch. 61-380.

116.34 Facsimile signatures.—

(1) SHORT TITLE.—This act may be cited as the "Uniform Facsimile Signature of Public Officials Act."

(2) DEFINITIONS.—As used in this section:

(a) "Public security" means a bond, note, certificate of indebtedness, or other obligation for the payment of money, issued by this state or by any of its departments, agencies, public bodies, or other in-

strumentalities or by any of its political subdivisions.

(b) "Instrument of payment" means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.

(c) "Instrument of conveyance" means an instrument conveying any interest in real property.

(d) "Authorized officer" means any official of this state or any of its departments, agencies, public bodies, or other instrumentalities or any of its political subdivisions whose signature to a public security, instrument of conveyance or instrument of payment is required or permitted.

(e) "Facsimile signature" means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

(3) USE OF FACSIMILE SIGNATURE.—Any authorized officer, after filing with the Department of State his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

(a) Any public security or instrument of conveyance, provided that at least one signature required or permitted to be placed thereon shall be manually subscribed.

(b) Any instrument of payment.

(c) Any official order, proclamation or resolution; provided, however, that this shall not apply to the signing of legislative bills or veto messages.

Upon compliance with this act by the authorized officer, his facsimile signature has the same legal effect as his manual signature.

(4) METHOD OF USE OF FACSIMILE SEAL.—When the seal of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

(5) VIOLATION AND PENALTY.—Any person who knowingly, without authorization or with intent to defraud, uses on any of the documents referred to in subsection (3), a facsimile signature, or any reproduction of it, of any authorized officer, or any facsimile seal, or any reproduction of it, of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions, shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) UNIFORMITY OF INTERPRETATION.—This section shall be so construed as to effectuate its general purpose to make uniform the law of states which enact it.

History.—ss. 1-6, ch. 63-441; ss. 10, 35, ch. 69-106; s. 69, ch. 71-136.

116.35 Notary public commissions; employees of state and county agencies.—Each agency, board, commission or department of the state and of the several counties of the state is hereby authorized to pay the cost of securing a notary public commission for any employee of such agency, board, commission or department. Such cost is declared to be an expense of such agency, board, commission or department and shall be expended from the budget thereof. The chief administrative officer of each such agency, board, commission or department shall determine the number of notaries public necessary for the proper administration of such agency, board, commission or department. All fees collected by such notaries public as hereinafter provided shall become fee receipts of the state or the several counties and shall be deposited in the general fund from which the budget of such agency, board, commission or department is allocated.

History.—s. 1, ch. 67-282.

116.36 Notary public commissions; municipal employees.—Each agency, board, commission or department of each of the several municipalities of the state is hereby authorized to pay the cost of securing a notary public commission for any employee of such agency, board, commission or department. Such cost is declared to be an expense of such agency, board, commission or department and shall be expended from the budget thereof. The chief administrative officer of each such agency, board, commission or department shall determine the number of notaries public necessary for the proper administration of such agency, board, commission or department. All fees collected by such notaries public as hereinafter provided shall become fee receipts of such municipality and shall be deposited in the general fund thereof.

History.—s. 2, ch. 67-282.

116.37 Notary public commissions; elected officers.—In all cases where such agency, board, commission or department is under the direction of one or more elected officers such officer or officers may become notaries public in like manner as provided in the case of employees as aforesaid.

History.—s. 3, ch. 67-282.

116.38 Notary fees.—

(1) Except as is hereinafter provided, all such notaries shall collect fees for their services as notaries performed in connection with such agency, board, commission or department at the rates provided for under chapter 117; provided, however, that in any case wherein a certain fee shall be provided by law for such service then in that event such fee as provided by law shall be collected.

(2) No notary fee shall be charged or collected by such notaries in connection with such agency, board, commission or department, in connection with or incidental to the issuance of motor vehicle license tags or titles.

(3) No notary public fees shall be charged by such notaries for notarizing loyalty oaths which are required by law.

(4) The chief administrative officer of any such agency, board, commission or department may, upon determining that such service should be performed as a public service, authorize such service to be performed free of charge.

History.—ss. 4-7, ch. 67-282.

CHAPTER 117

NOTARIES PUBLIC

117.01 Appointment, application, fee, term of office, powers, bond and oath.—

(1) The Governor may appoint as many notaries public as he shall deem necessary, each of whom shall be at least 18 years of age, a citizen of the United States, and a permanent resident of the state.

(2) Application for appointment shall be signed by the applicant, accompanied by a fee of $15 and the oath and bond required by subsection (4), and be in the following form:

APPLICATION FOR APPOINTMENT AS NOTARY PUBLIC STATE OF FLORIDA

Miss
Mr.
Mrs.
NAME (Type or print your legal name in which commission will issue)

HOME ADDRESS (Street) (City) (State)
BUSINESS ADDRESS (Street) (City) (State)
HOME PHONE ..... BUSINESS PHONE .....
ARE YOU A PERMANENT RESIDENT OF FLORIDA? .....
ARE YOU A CITIZEN OF THE U.S.? YES ..... NO ..... (Citizenship required)
DATE OF BIRTH (Month) (Day) (Year)
(Must be over 18)
IS THIS A RENEWAL? YES ..... NO .....
EXPIRATION DATE .....
(If yes, give date present commission expires)
HAVE YOU EVER BEEN CONVICTED OF A FELONY? YES ..... NO .....
IF SO, HAVE YOUR CIVIL RIGHTS BEEN RESTORED? YES ..... NO .....
(If answer is yes, please submit restoration papers.)

(Legal Signature of Applicant)

SIGNATURES OF TWO CHARACTER WITNESSES WHO PERSONALLY KNOW APPLICANT AND WILL VOUCH FOR HIS OR HER GOOD MORAL CHARACTER, REQUIRED:
1. (Name) (Street) (City) (State)
2. (Name) (Street) (City) (State)
THE ABOVE FACTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

(Signature of Applicant)

(3) Said notaries public shall hold their respective offices for 4 years and shall use and exercise such office of notary public for such places and within the boundaries of the state, to whose protestations, attestations, and other instruments of publication due credence shall be given. The Governor may remove any notary public for cause.

(4) Every notary public shall, prior to his or her executing the duties of said office, give bond to the Governor for the time being, in the penalty of $1,000, conditioned for the due discharge of his said office, and also take an oath that he will honestly, diligently, and faithfully discharge the duties of a notary public. Said bond shall be approved and filed with the Department of State. Such bond shall be executed by a surety company for hire, duly authorized to transact business in Florida. Said bond must be approved by the Department of Banking and Finance before issuance of the commission.

(5) No person shall obtain nor use a notary public commission in other than his legal name, and it shall be deemed unlawful for a notary public to notarize his own signature. Any person applying for a notary public commission may be required to submit proof of his identity to the Department of State if so requested. Any person violating the provisions of this subsection shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—Sept. 13, 1822; RS 218; s. 1, ch. 4544, 1897; GS 302; RGS 413; CGL 479; s. 1, ch. 21765, 1943; s. 1, ch. 63-138; s. 1, ch. 65-256; ss. 1, 2, ch. 67-54; ss. 10, 12, 35, ch. 69-106; s. 70, ch. 71-136; s. 1, ch. 75-161; s. 6, ch. 77-121.
cf.—s. 113.01 Fee for commissions issued by Governor.
Ch. 137 Bonds of county officers.

117.02 Women eligible.—

(1) Women 18 years of age or older are eligible to appointment by the Governor as notaries public, and to hold and exercise the office thereof upon the same terms and conditions, and with the same powers and emoluments, as notaries now appointed by the Governor.

(2) Any woman who is commissioned as a notary public and subsequently changes her name by marriage or any other method may continue to hold her commission under the name in which it was issued until said commission shall have expired. Upon expiration, she shall then apply for a new commission using her legal name.

History.—s. 1, ch. 4742, 1899; GS 303; RGS 414; CGL 480; s. 2, ch. 63-138; s. 2, ch. 75-161; s. 7, ch. 77-121.

117.03 May administer oaths.—In all cases in which it may be necessary to the due and legal execution of any writing or document whatever to be attested, protested, or published under the seal of his office, any notary public may administer an oath and make certificate thereof; and any person making a false oath before a notary public shall be guilty of perjury and be subject to the penalties, forfeitures,

and disabilities that are prescribed by law in cases of willful and corrupt perjury.

History.—Sept. 13, 1822; RS 219; GS 304; RGS 415; CGL 481; s. 20, ch. 73-334.

117.04 May solemnize marriages and take acknowledgments.—Notaries public are authorized to solemnize the rites of matrimony and to take renunciation and relinquishment of dower and the acknowledgments of deeds and other instruments of writing for record, as fully as other officers of this state are; and for so doing they shall be allowed the same fees as allowed by law to other officers for like services.

History.—s. 2, ch. 1127, 1860; RS 220; GS 305; RGS 416; CGL 482; s. 20, ch. 73-334.

117.05 Fees.—The fees of notaries public shall be as follows: For protesting bills of exchange, promissory notes, noting protest of captain of vessel and all other papers necessary to be protested, both for nonacceptance and nonpayment, including the entering and registering of same, issuing certificates with seal, all necessary notices and postage and each and every act necessary to perfect such protest, $2; administering each oath, 10 cents; attending at a demand, tender or deposit and noting the same, $1; each certificate with seal thereto, 50 cents; each order for survey, 50 cents; copying any paper necessary to be copied, the same as allowed Clerks of the Circuit Court.

History.—Ch. 3874, 1889; RS 221; GS 306; RGS 417; CGL 483.
cf.—s. 116.06 Certain officers not required to report fees.
ss. 116.35-116.38 State, county and municipal governmental units; commissions, fees.
s. 320.04 Motor vehicle licenses; service charge.

117.06 Validity of acts prior to April 1, 1903.—Any and all notarial acts that were done by any notary public in the state prior to April 1, 1903, which would have been valid had not the term of office of the notary public expired, are declared to be valid.

History.—s. 1, ch. 5217, 1903; GS 307; RGS 418; CGL 484.

117.07 Must state time of expiration of commission; and affix seal.—

(1) Every notary public in the state shall add to his official signature to any certificate of acknowledgment made before him a statement of the time of the expiration of his commission as notary public in words and figures as follows: "My commission expires (Herein insert the date when the commission expires.)"

(2) A notary seal shall be affixed to all documents notarized, which may be of the rubber stamp or impression type and shall include the words "Notary Public—State of Florida at Large." The seal must also include the name of the notary public and be round in shape and separate from the expiration stamp.

History.—s. 1, ch. 5218, 1903; GS 308; RGS 419; CGL 485; s. 3, ch. 63-138; s. 1, ch. 72-8; s. 3, ch. 75-161.

117.08 Notary public acting after expiration of commission.—Every notary public in this state who shall take any acknowledgment of any instrument as a notary public, or who makes any certificate as such, after the expiration of his commission, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 5218, 1903; GS 3496; RGS 5376; CGL 7510; s. 71, ch. 71-136.

117.09 Penalties.—

(1) Every notary public in the state shall require reasonable proof of the identity of the person whose signature is being notarized and such person must be in the presence of the notary public at the time the signature is notarized. Any notary public violating the above provision shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. It shall be no defense under this section that the notary public acted without intent to defraud.

(2) Any notary public in this state who shall falsely or fraudulently take any acknowledgment of any instrument as a notary public or who falsely or fraudulently makes any certificate as a notary public or who falsely takes or receives an acknowledgment of the signature on any written instrument shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 4, ch. 63-138; s. 72, ch. 71-136.

CHAPTER 118

COMMISSIONER OF DEEDS

118.01 Appointment and power to take acknowledgments.—The Governor may name, appoint and commission one or more commissioners in each of such of the states and territories of the United States, the District of Columbia, and in any foreign country, as he may deem expedient; and such commissioner shall continue in office for 4 years, and shall have authority to take the acknowledgment and proof of the execution of any deed, mortgage or other conveyance of any lands, tenements or hereditaments lying or being in this state, and any contract, letter of attorney, or any other writing under seal to be used or recorded in this state, and such acknowledgment or proof taken or made in the manner directed by the laws of this state and certified by any one of the said commissioners before whom the same shall be taken or made under his seal, which certificate shall be endorsed on or annexed to said deed or instrument aforesaid, shall have the same force and effect, and be as good and available in law for all purposes, as if the same had been made or taken before the proper officer of this state.

History.—s. 1, Jan. 28, 1831; RS 222; s. 1, ch. 4757, 1899; GS 309; RGS 420; CGL 486.

118.02 May administer oaths.—Every commissioner appointed by virtue of this chapter may administer an oath to any person who shall be willing and desirous to make such oath before him, and such affidavit made before such commissioner shall be as good and effectual to all intents and purposes as if taken by any magistrate resident in this state and competent to take the same.

History.—s. 2, Jan. 28, 1831; RS 223; GS 310; RGS 421; CGL 487.

118.03 Oath of office.—Every commissioner appointed as aforesaid before he shall proceed to perform any duty under and by virtue of this law shall take and subscribe an oath before a notary public in the city or county in which such commissioner shall reside, well and faithfully to execute and perform all the duties of such commissioner under and by virtue of the laws of this state, which oath shall be filed in the office of the Department of State.

History.—s. 3, Jan. 28, 1831; RS 224; GS 311; RGS 422; CGL 488; ss. 10, 35, ch. 69-106; s. 37, ch. 77-104.

118.04 Official acts validated.—Any and all official acts heretofore done by any commissioner of deeds, whose commission is more than 4 years old are declared valid.

History.—s. 4, ch. 4757, 1899; GS 312; RGS 423; CGL 489.

CHAPTER 119

PUBLIC RECORDS

119.01 General state policy on public records.—It is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person.

History.—s. 1, ch. 5942, 1909; RGS 424; CGL 490; s. 1, ch. 73-98; s. 2, ch. 75-225.

119.011 Definitions.—For the purpose of this chapter:

(1) "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(2) "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(3)(a) "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

(b) "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

(c) "Criminal intelligence information" and "criminal investigative information" shall not include:

1. The time, date, location, and nature of a reported crime;

2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.07(3)(h);

3. The time, date, and location of the incident and of the arrest;

4. The crime charged;

5. Documents given or required by law or agency rule to be given to the person arrested; and

6. Informations and indictments except as provided in s. 905.26.

(d) The word "active" shall have the following meaning:

1. Criminal intelligence information shall be considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.

2. Criminal investigative information shall be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

In addition, criminal intelligence and criminal investigative information shall be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation.

(4) "Criminal justice agency" means any law enforcement agency, court, or prosecutor. The term also includes any other agency charged by law with criminal law enforcement duties, or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties.

History.—s. 1, ch. 67-125; s. 2, ch. 73-98; s. 3, ch. 75-225; ss. 1, 2, ch. 79-187.
cf.—ss. 943.46-943.465 Florida RICO (Racketeer Influenced and Corrupt Organization) Act.

119.012 Records made public by public fund use.—If public funds are expended by an agency defined in subsection 119.011(2) in payment of dues or membership contributions to any person, corporation, foundation, trust, association, group, or other organization, then all the financial, business and membership records pertaining to the public agency from which or on whose behalf the payments are

made, of the person, corporation, foundation, trust, association, group, or organization to whom such payments are made shall be public records and subject to the provisions of s. 119.07.

History.—s. 3, ch. 75-225.

119.02 Penalty.—Any public official who shall violate the provisions of subsection 119.07(1) shall be subject to suspension and removal or impeachment and, in addition, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 5942, 1909; RGS 425; CGL 491; s. 1, ch. 17173, 1935; CGL 1936 Supp. 7520(6); s. 73, ch. 71-136; s. 6, ch. 75-225.

119.021 Custodian designated.—The elected or appointed state, county, or municipal officer or officers charged by law with the responsibility of maintaining the office having public records shall be the custodian thereof.

History.—s. 2, ch. 67-125.

119.031 Keeping records in safe places; copying or repairing certified copies.—Insofar as practicable, custodians of public records shall keep them in fireproof and waterproof safes, vaults or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever any state, county or municipal records are in need of repair, restoration or rebinding, the head of such state agency, department, board or commission, the board of county commissioners of such county or the governing body of such municipality may authorize that the records in need of repair, restoration or rebinding be removed from the building or office in which such records are ordinarily kept for the length of time required to repair, restore or rebind them. Any public official who causes a record book to be copied shall attest it and shall certify on oath that it is an accurate copy of the original book. The copy shall then have the force and effect of the original.

History.—s. 3, ch. 67-125.

119.041 Destruction of records regulated.—No public official may mutilate, destroy, sell, loan or otherwise dispose of any public record without the consent of the Division of Archives, History and Records Management of the Department of State.

History.—s. 4, ch. 67-125; ss. 10, 35, ch. 69-106.

119.05 Disposition of records at end of official's term.—Whoever has the custody of any public records shall, at the expiration of his term of office, deliver to his successor, or if there be none, to the Division of Archives, History and Records Management of the Department of State, all records, books, writings, letters and documents kept or received by him in the transaction of his official business.

History.—s. 5, ch. 67-125; ss. 10, 35, ch. 69-106.

119.06 Demanding custody.—Whoever is entitled to the custody of public records shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him. Any person unlawfully possessing public records shall upon demand of any person and within 10 days deliver such records to their lawful custodian unless just cause exists for failing to deliver such records.

History.—s. 6, ch. 67-125.

119.07 Inspection and examination of records; exemptions.—

(1)(a) Every person who has custody of public records shall permit the records to be inspected and examined by any person desiring to do so, at reasonable times, under reasonable conditions, and under supervision by the custodian of the records or his designee. The custodian shall furnish copies or certified copies of the records upon payment of fees as prescribed by law or, if fees are not prescribed by law, upon payment of the actual cost of duplication of the copies. Unless otherwise provided by law, the fees to be charged for duplication of public records shall be collected, deposited, and accounted for in the manner prescribed for other operating funds of the agency.

(b) In the case of records produced under this act, when the nature or volume of records is such as to require extensive clerical or supervisory assistance by personnel of the agency involved, the agency may charge, in addition to the actual cost of duplication, a reasonable charge, approved by the Department of Administration, for the provision of such clerical or supervisory personnel.

(2)(a) Any person who has custody of public records and who asserts that an exemption provided in subsection (3) or in general or special law applies to a particular record shall delete or excise from the record only that portion of the record for which an exemption is asserted and shall produce for inspection and examination the remainder of such record.

(b) In any action in which an exemption is asserted pursuant to paragraph (e), paragraph (f), [1]or paragraph (g) of subsection (3), the record or records shall be submitted in camera to the court for a de novo inspection. In the case of an exemption asserted pursuant to paragraph (d) of subsection (3), an in camera inspection shall be discretionary with the court. If the court finds no basis for the assertion of the exemption, it shall order the records to be disclosed.

(3)(a) All public records which are presently provided by law to be confidential or which are prohibited from being inspected by the public, whether by general or special law, shall be exempt from the provisions of subsection (1).

(b) All public records referred to in ss. 198.09, 199.222, 228.093, 257.261, 288.075, 624.311(2), 624.319(3) and (4), 657.061(3), 658.10(3), and 794.03 are exempt from the provisions of subsection (1).

(c) Examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment shall be exempt from the provisions of subsection (1). However, an examinee shall have the right to review his own completed examination.

(d) Active criminal intelligence information and active criminal investigative information are ex-

empt from the provisions of subsection (1).

(e) Any information revealing the identity of confidential informants or sources is exempt from the provisions of subsection (1).

(f) Any information revealing surveillance techniques or procedures or personnel is exempt from the provisions of subsection (1).

(g) Any information revealing undercover personnel of any criminal justice agency is exempt from the provisions of subsection (1).

(h) Any criminal intelligence information or criminal investigative information including the photograph, name, address, or other fact or information which reveals the identity of the victim of any sexual battery as defined by chapter 794 or child abuse as defined by chapter 827 is exempt from the provisions of subsection (1).

(i) Any criminal intelligence information or criminal investigative information which reveals the personal assets of the victim of a crime, other than property stolen or destroyed during the commission of the crime, is exempt from the provisions of subsection (1).

(j) All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is exempt from the provisions of subsection (1).

(k) The home addresses, telephone numbers, and photographs of law enforcement personnel; the home addresses, telephone numbers, photographs, and places of employment of the spouses and children of law enforcement personnel; and the names and locations of schools attended by the children of law enforcement personnel are exempt from the provisions of subsection (1).

(4) Nothing herein shall be construed to exempt from subsection (1) records made part of a court file and not specifically closed by order of court except as provided in paragraphs (e), (f), and (g) of subsection (3).

(5) The provisions of this section are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state and a defendant in a criminal prosecution.

History.—s. 7, ch. 67-125; s. 4, ch. 75-225; s. 2, ch. 77-60; s. 2, ch. 77-75; s. 2, ch. 77-94; s. 2, ch. 77-156; s. 2, ch. 78-81; ss. 2, 4, 6, ch. 79-187.

[1]**Note.**—The word "or" was substituted for "and" by the editors.

cf.—s. 213.072 Records of the Department of Revenue confidential.
s. 240.331 Direct support organizations; use of property; audit; status.

119.072 Criminal intelligence or investigative information obtained from out-of-state agencies.—Whenever criminal intelligence information or criminal investigative information held by a non-Florida criminal justice agency is available to a Florida criminal justice agency only on a confidential or similarly restricted basis, the Florida criminal justice agency may obtain and use such information in accordance with the conditions imposed by the providing agency.

History.—s. 3, ch. 79-187.

119.08 Photographing public records.—

(1) In all cases where the public or any person interested has a right to inspect or take extracts or make copies from any public record, instruments or documents, any person shall hereafter have the right of access to said records, documents or instruments for the purpose of making photographs of the same while in the possession, custody and control of the lawful custodian thereof, or his authorized deputy.

(2) Such work shall be done under the supervision of the lawful custodian of the said records, who shall have the right to adopt and enforce reasonable rules governing the said work. Said work shall, where possible, be done in the room where the said records, documents or instruments are by law kept, but if the same in the judgment of the lawful custodian of the said records, documents or instruments be impossible or impracticable, then the said work shall be done in such other room or place as nearly adjacent to the room where the said records, documents and instruments are kept as determined by the lawful custodian thereof.

(3) Where the providing of another room or place is necessary, the expense of providing the same shall be paid by the person desiring to photograph the said records, instruments or documents. While the said work hereinbefore mentioned is in progress, the lawful custodian of said records may charge the person desiring to make the said photographs for the services of a deputy of the lawful custodian of said records, documents or instruments to supervise the same, or for the services of the said lawful custodian of the same in so doing at a rate of compensation to be agreed upon by the person desiring to make the said photographs and the custodian of the said records, documents or instruments, or in case the same fail to agree as to the said charge, then by the lawful custodian thereof.

History.—s. 8, ch. 67-125.

119.09 Assistance of the Division of Archives, History and Records Management of the Department of State.—The Division of Archives, History and Records Management of the Department of State shall have the right to examine into the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, creating, filing and making available the public records in their custody. When requested by the division, public officials shall assist the division in the preparation of an inclusive inventory of public records in their custody to which shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records and the division, establishing a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the division shall (subject to the availability of necessary space, staff and other facilities for such purposes) make available space in its records center for the filing of semicurrent records so scheduled and in its archives for noncurrent records of permanent value and shall render such other assistance as needed, including the microfilming of records so scheduled.

History.—s. 9, ch. 67-125; ss. 10, 35, ch. 69-106.

119.092 Registration by federal employer's registration number.—Each state agency which registers or licenses corporations, partnerships, or other business entities shall include, by July 1, 1978,

within its numbering system, the federal employer's identification number of each corporation, partnership, or other business entity registered or licensed by it. Any state agency may maintain a dual numbering system in which the federal employer's identification number or the state agency's own number is the primary identification number; however, the records of such state agency shall be designed in such a way that the record of any business entity is subject to direct location by the federal employer's identification number. The Department of State shall keep a registry of federal employer's identification numbers of all business entities, registered with the Division of Corporations, which registry of numbers may be used by all state agencies.

History.—s. 1, ch. 77-148.

119.10 Violation of chapter a misdemeanor.—Any person willfully and knowingly violating any of the provisions of this chapter shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 10, ch. 67-125; s. 74, ch. 71-136.

119.11 Accelerated hearing; immediate compliance.—

(1) Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.

(2) Whenever a court orders an agency to open its records for inspection in accordance with this chapter, the agency shall comply with such order within 48 hours, unless otherwise provided by the court issuing such order, or unless the appellate court issues a stay order within such 48-hour period. The filing of a notice of appeal shall not operate as an automatic stay.

(3) A stay order shall not be issued unless the court determines that there is substantial probability that opening the records for inspection will result in significant damage.

History.—s. 5, ch. 75-225.

119.12 Attorney's fees.—

(1) Whenever an action has been filed against an agency to enforce the provisions of this chapter and the court determines that such agency unreasonably refused to permit public records to be inspected, the court shall assess a reasonable attorney's fee against such agency.

(2) Whenever an agency appeals a court order requiring it to permit inspection of records pursuant to this chapter and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such agency.

History.—s. 5, ch. 75-225.

CHAPTER 120

ADMINISTRATIVE PROCEDURE ACT

120.50 Exception to application of chapter.—This chapter shall not apply to:

(1) The Legislature.

(2) The courts.

History.—s. 1, ch. 74-310; s. 3, ch. 77-468; s. 1, ch. 78-162.

120.51 Short title.—This chapter may be known and cited as the "Administrative Procedure Act."

History.—s. 1, ch. 74-310.

120.52 Definitions.—As used in this act:

(1) "Agency" means:

(a) The Governor in the exercise of all executive powers other than those derived from the Constitution.

(b) Each other state officer and each state department, departmental unit described in s. 20.04, commission, regional planning agency, board, district, and authority, including, but not limited to, those described in chapters 160, 163, 298, 373, 380, and 582, except any legal entity or agency created in whole or in part pursuant to chapter 361, part II.

(c) Each other unit of government in the state, including counties and municipalities, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.

Neither the Industrial Relations Commission nor the deputy commissioners shall, in the adjudication of workers' compensation claims, be considered an agency or part of an agency for the purposes of this act.

(2) "Agency action" means the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any denial of a request made under s. 120.54(5).

(3) "Agency head" means the person or collegial body in a department or other governmental unit statutorily responsible for final agency action.

(4) "Committee" means the Administrative Procedures Committee.

(5) "Division" means the Division of Administrative Hearings of the Department of Administration.

(6) "Educational unit" means a local school district, a community college district, the Florida School for the Deaf and Blind, or a unit of the State University System other than the Board of Regents.

(7) "License" means a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

(8) "Licensing" means the agency process respecting the issuance, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license or imposition of terms for the exercise of a license.

(9) "Order" means a final agency decision which does not have the effect of a rule and which is not excepted from the definition of a rule, whether affirmative, negative, injunctive, or declaratory in form. An agency decision shall be final when reduced to writing and filed with the person designated by the agency as clerk. The clerk shall indicate the date of filing on the order.

(10) "Party" means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding.

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(d) Any county representative, agency, department, or unit funded and authorized by state statute or county ordinance to represent the interests of the consumers of a county, when the proceeding involves

the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the representative, agency, department, or unit to represent the class of interested persons. The authorizing resolution shall apply to a specific proceeding and to appeals and ancillary proceedings thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

Prisoners as defined in s. 944.02(5) shall not be considered parties for the purposes of obtaining proceedings under s. 120.54(16) or s. 120.57, nor shall parolees be considered parties for these purposes when the proceedings relate to the revocation of parole.

(11) "Person" means any person described in s. 1.01, any unit of government in or outside the state, and any agency described in subsection (1).

(12) "Proposed order" means the advance text, under s. 120.58(1)(e), of the order which a collegial agency head plans to enter as its final order. When a hearing officer assigned by the division conducts a hearing, the recommended order is the proposed order.

(13) "Recommended order" means the official recommendation of a hearing officer assigned by the division to an agency or of any other duly authorized presiding officer, other than an agency head or member thereof, for the final disposition of a proceeding under s. 120.57.

(14) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. The term does not include:

(a) Internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum.

(b) Legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with an agency action.

(c) The preparation or modification of:

1. Agency budgets.

2. Contractual provisions reached as a result of collective bargaining.

3. Agricultural marketing orders under chapter 573 or chapter 601.

4. Curricula by an educational unit.

(d) Agency action which has the effect of altering established hunting or fishing seasons when such action is adequately noticed in the area affected through publishing in a newspaper of general circulation or through notice by broadcasting in an electronic media.

(e) Any tests, test scoring criteria, practices, or procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 229.57, s. 232.245, s. 232.246, or s. 232.247.

History.—s. 1, ch. 74-310; s. 1, ch. 75-191; s. 1, ch. 76-131; s. 1, ch. 77-174; s. 12, ch. 77-290; s. 2, ch. 77-453; s. 1, ch. 78-28; s. 1, ch. 78-425; s. 1, ch. 79-20; s. 55, ch. 79-40; s. 1, ch. 79-299.

120.53 Adoption of rules of procedure and public inspection.—

(1) In addition to other requirements imposed by law, each agency shall:

(a) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.

(b) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures, including a list of all forms and instructions used by the agency in its dealings with the public. The list of forms and instructions shall include the title of each form or instruction and a statement of the manner in which the form or instruction may be obtained without cost.

(c) Adopt rules of procedure appropriate for the presentation of arguments concerning issues of law or policy, and for the presentation of evidence on any pertinent fact that may be in dispute.

(d) Adopt rules for the scheduling of meetings, hearings, and workshops, one of which shall be that an agenda shall be prepared by the agency in time to insure that a copy of the agenda may be received at least 7 days before the event by any person in the state who requests a copy and who pays the reasonable cost of the copy. The agenda shall contain the items to be considered, in the order of presentation. After the agenda has been made available, change shall be only for good cause, as determined by the person designated to preside, and stated in the record. Notification of such change shall be at the earliest practicable time. The agenda for a special meeting of a district school board under authority of s. 230.16 shall be prepared upon the calling of the meeting, but not less than 48 hours prior to such meeting. In addition, each agency shall give notice of meetings, hearings, and workshops in the same manner as that prescribed for rulemaking in subsection 120.54(1), except that the notice requirement shall not apply to emergency meetings. The notice shall include a statement of the general subject matter to be considered and shall be given not less than 7 days before the event.

(2) Each agency shall make available for public inspection and copying, at no more than cost:

(a) All rules formulated, adopted, or used by the agency in the discharge of its functions.

(b) All agency orders.

(c) A current subject-matter index, identifying for the public any rule or order issued or adopted after January 1, 1975.

All rules adopted pursuant to this act shall be indexed within 90 days. The Department of State shall by rule establish uniform indexing procedures.

(3) No agency rule or order is valid for any purpose until it has been made available for public inspection as herein required unless the person or party against whom enforcement is sought has actual knowledge of it.

(4) An agency may comply with paragraphs (2)(b) and (c) by designating by rule an official reporter which publishes and indexes by subject matter each agency order rendered after a proceeding which affects substantial interests has been held.

History.—s. 1, ch. 74-310; s. 2, ch. 75-191; s. 2, ch. 76-131; s. 2, ch. 79-299.

120.54 Rulemaking; adoption procedures.—

(1) Prior to the adoption, amendment, or repeal of any rule not described in subsection (9), an agency shall give notice of its intended action, setting forth a short and plain explanation of the purpose and effect of the proposed rule, a summary of the proposed rule, the specific legal authority under which its adoption is authorized, and a summary of the estimate of the economic impact of the proposed rule on all persons affected by it. The notice shall contain the location where the text of the proposed rule or economic impact statement can be obtained if such text is not included in the notice.

(a) Except as otherwise provided in this paragraph, the notice shall be mailed to the committee, to all persons named in the proposed rule, and to all persons who have made requests of the agency for advance notice of its proceedings at least 14 days prior to such mailing. The agency shall also give such notice as is prescribed by rule to those particular classes of persons to whom the intended action is directed. Notice of intent by an educational unit to adopt, amend, or repeal any rule not described in subsection (9) shall be made:

1. By publication in a newspaper of general circulation in the affected area;

2. By mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule; and

3. By posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified.

Such publication, mailing, and posting of notice shall occur at least 14 days prior to the intended action.

(b) The notice shall be published in the Florida Administrative Weekly not less than 21 days prior to the intended action, except that notice of actions proposed by educational units or units of government with jurisdiction in only one county or a part thereof need not be published in the Florida Administrative Weekly or transmitted to the committee. The proposed rule shall be available for inspection and copying by the public at the time of the publication of notice.

(2)(a) Each agency, prior to the adoption, amendment, or repeal of any rule, shall provide information on its proposed action by preparing a detailed economic impact statement. The economic impact statement shall include:

1. An estimate of the cost to the agency of the implementation of the proposed action, including the estimated amount of paperwork;

2. An estimate of the cost or the economic benefit to all persons directly affected by the proposed action;

3. An estimate of the impact of the proposed action on competition and the open market for employment, if applicable; and

4. A detailed statement of the data and method used in making each of the above estimates.

(b) If an economic impact statement is required before an agency takes action on an application or petition by any person, the statement shall be prepared within a reasonable time after the application is made or the petition is filed.

(c) Failure to provide an adequate statement of economic impact is grounds for holding the rule invalid; however, beginning October 1, 1978, no rule shall be declared invalid for want of an adequate statement of economic impact unless the issue is raised in an administrative or judicial proceeding within 1 year of the effective date of the rule to which the statement applies.

(3) If the intended action concerns any rule other than one relating exclusively to organization, procedure, or practice, the agency shall, on the request of any affected person received within 14 days after the date of publication of the notice, give affected persons an opportunity to present evidence and argument on all issues under consideration appropriate to inform it of their contentions. Prisoners, as defined in s. 944.02(5), may be limited by the Department of Corrections to an opportunity to submit written statements concerning intended action on any department rule. The agency may schedule a public hearing on the rule and, if requested by any affected person, shall schedule a public hearing on the rule. Any material pertinent to the issues under consideration submitted to the agency within 14 days after the date of publication of the notice shall be considered by the agency and made a part of the record of the rulemaking proceeding.

(4)(a) Any substantially affected person may seek an administrative determination of the invalidity of any proposed rule on the ground that the proposed rule is an invalid exercise of delegated legislative authority.

(b) The request seeking a determination under this subsection shall be in writing and must be filed with the division within 14 days after the date of publication of the notice. It must state with particularity facts sufficient to show that the person challenging the proposed rule would be substantially affected by it and facts sufficient to show the invalidity of the proposed rule.

(c) Immediately upon receipt of the petition, the division shall forward copies of the petition to the agency whose rule is challenged, the Department of State, and the committee. Within 10 days after receiving the petition, the division director, if he determines that the petition complies with the above requirements, shall assign a hearing officer who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn. Within 30 days after conclusion of the hearing, the hearing officer shall render his decision and state the reasons therefor in writing. The division shall forthwith transmit copies of the hearing officer's decision to the Department of State and to the committee. The hearing officer may declare the proposed rule wholly or partly invalid. The proposed rule or provision of a proposed rule declared invalid shall be withdrawn from the com-

mittee by the adopting agency and shall not be adopted. No rule shall be filed for adoption until 21 days after the notice required by subsection (1) or until the hearing officer has rendered his decision, as the case may be. However, the agency may proceed with all other steps in the rulemaking process. In the event part of a proposed rule is declared invalid, the adopting agency may, in its sole discretion, withdraw the proposed rule in its entirety. The agency whose proposed rule has been declared invalid in whole or part shall give notice of the decision in the first available issue of the Florida Administrative Weekly.

(d) Hearings held under this provision shall be conducted in the same manner as provided in s. 120.57 except that the hearing officer's order shall be final agency action. The agency proposing the rule and the person requesting the hearing shall be adversary parties. Other substantially affected persons may join the proceeding as parties or intervenors on appropriate terms which will not substantially delay the proceedings. Failure to proceed under this subsection shall not constitute failure to exhaust administrative remedies.

(5) Any person regulated by an agency or having a substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by s. 120.53. The petition shall specify the proposed rule and action requested. Not later than 30 calendar days after the date of filing a petition, the agency shall initiate rulemaking proceedings under this act, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

(6) In rulemaking proceedings, the agency may recognize any material which may be judicially noticed, and it may provide that materials so recognized shall be incorporated into the record of the proceeding. Before the record of any proceeding is completed, all parties shall be provided a list of such materials and given a reasonable opportunity to examine them and offer written comments thereon or written rebuttal thereto.

(7) Each rule adopted shall be accompanied by a reference to the specific rulemaking authority pursuant to which the rule was adopted and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented, interpreted, or made specific.

(8) Each rule adopted shall contain only one subject and shall be preceded by a concise statement of the purpose of the rule and reference to the rules repealed or amended, which statement need not be printed in the Florida Administrative Code. No rule shall be amended by reference only. Amendments shall set out the amended rule in full in the same manner as required by the constitution for laws.

(9)(a) If an agency finds that an immediate danger to the public health, safety, or welfare requires emergency action, the agency may adopt any rule necessitated by the immediate danger by any procedure which is fair under the circumstances and necessary to protect the public interest, provided that:

1. The procedure provides at least the procedural protection given by other statutes, the Florida Constitution, or the United States Constitution.

2. The agency takes only that action necessary to protect the public interest under the emergency procedure.

3. The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. In any event, notice of emergency rules, other than those of educational units or units of government with jurisdiction in only one county or a part thereof, shall be published in the first available issue of the Florida Administrative Weekly. The agency's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.

(b) Rules pertaining to the public health, safety, or welfare shall include, but not be limited to, those rules pertaining to perishable agricultural commodities.

(c) An emergency rule adopted under this subsection may not be effective for a period longer than 90 days and shall not be renewable. However, the agency may take identical action by normal rulemaking procedures.

(d) Subject to applicable constitutional and statutory provisions, an emergency rule becomes effective immediately on filing, or at a date less than 20 days thereafter if specified in the rule, if the adopting agency finds that such effective date is necessary because of immediate danger to the public health, safety, or welfare.

(10) The Administration Commission shall promulgate one or more sets of model rules of procedure which shall be reviewed by the committee and filed with the Department of State. On filing with the department, the appropriate model rules shall be the rules of procedure for each agency subject to this act to the extent that each agency does not adopt a specific rule of procedure covering the subject matter contained in the model rules applicable to that agency. An agency may seek modification of the model rules of procedure to the extent necessary to conform to any requirement imposed as a condition precedent to receipt of federal funds or permit persons in this state to receive tax benefits under federal law or as required for the most efficient operation of the agency as determined by the Administration Commission. The reasons for the modification shall be published in the Florida Administrative Weekly. Agency rules adopted to comply with ss. 120.53 and 120.565 must be in substantial compliance with the model rules.

(11)(a) The adopting agency shall file with the committee, at least 21 days prior to the proposed adoption date, a copy of each rule it proposes to adopt, a detailed written statement of the facts and circumstances justifying the proposed rule, a copy of the estimate of economic impact required by subsection (1), a statement of the extent to which the proposed rule establishes standards more restrictive than federal standards or a statement that the proposed rule is no more restrictive than federal standards or that a federal rule on the same subject does not exist, and the notice required by subsection (1). After the final public hearing on the proposed rule,

or after the time for requesting a hearing has expired, the adopting agency shall file any changes in the proposed rule and the reasons therefor with the committee or advise the committee that there are no changes. In addition, when any change is made in a proposed rule other than a technical change, the adopting agency shall provide a detailed statement of such change by certified mail or actual delivery to any person who requests it in writing at the public hearing. The agency shall file the change with the committee, and provide the statement of change to persons requesting it, at least 7 days prior to filing the rule for adoption. Educational units, other than units of the State University System, and local units of government with jurisdiction in only one county or part thereof shall not be required to make filings with the committee. This paragraph shall not apply to emergency rules adopted pursuant to subsection (9). However, agencies, other than those listed herein, adopting emergency rules shall file a copy of each emergency rule with the committee.

(b) If the adopting agency is required to publish its rules in the Florida Administrative Code, it shall file with the Department of State three certified copies of the rule it proposes to adopt, a summary of the rule, a summary of any hearings held on the rule, and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required above, in the office of the agency head, and such rules shall be open to the public pursuant to s. 120.53(2). Filings shall be made not less than 21 days or more than 90 days after the notice required by subsection (1), if no public hearing is held. If a public hearing is held, the adopting agency shall file within 21 days after receipt of all material authorized to be submitted at the hearing or after receipt of the transcript, if one is made, whichever is later. If a public hearing is held and no material is authorized to be submitted and no transcript is made, filings shall be made not less than 21 days or more than 90 days after the notice required in subsection (1). At the time a rule is filed, the agency shall certify that the time limitations prescribed by this subsection have been complied with and that there is no administrative determination pending on the rule. The department shall reject any rule not filed within the prescribed time limits or upon which an administrative determination is pending.

(12)(a) The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the rule, or on a date required by statute. Rules not required to be filed with the Department of State shall become effective when adopted by the agency head or on a later date specified by rule or statute.

(b) After the notice required in subsection (1) and prior to adoption, the agency may withdraw the rule in whole or in part, or may make such changes in the rule as are supported by the record of public hearings held on the rule, technical changes which do not affect the substance of the rule, changes in response to written material relating to the rule received by the agency within 14 days after the notice and made a part of the record of the proceeding, or changes in response to a proposed objection by the committee. After adoption and before the effective date, a rule may be modified or withdrawn only in response to an objection by the committee or may be modified to extend the effective date by not more than 60 days when the committee has notified the agency that an objection to the rule is being considered. The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published and shall notify the Department of State if the rule is required to be filed with the Department of State. After a rule has become effective, it may be repealed or amended only through regular rulemaking procedures.

(13) If the committee disapproves a proposed rule and the agency does not modify the rule, the committee shall file with the Department of State a notice of the disapproval detailing with particularity its objection to the rule. The Department of State shall publish this notice in the Florida Administrative Weekly and shall publish, as a history note to the rule when it is published in the Florida Administrative Code, a reference to the committee's disapproval and to the issue of the Weekly in which the full text thereof appears.

(14) No agency has inherent rulemaking authority; nor has any agency authority to establish penalties for violation of a rule unless the Legislature, when establishing a penalty, specifically provides that the penalty applies to rules. However, an agency may adopt rules necessary to the proper implementation of a statute prior to the effective date of the statute, but the rules may not be enforced until the statute upon which they are based is effective.

(15) The rulemaking provisions of this chapter shall not apply to compensation appeals referees.

(16) Rulemaking proceedings shall be governed solely by the provisions of this section unless a person timely asserts that his substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that the rulemaking proceeding is not adequate to protect his interests, it shall suspend the rulemaking proceeding and convene a separate proceeding under the provisions of s. 120.57. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed.

History.—s. 1, ch. 74-310; s. 3, ch. 75-191; s. 3, ch. 76-131; ss. 1, 2, ch. 76-276; s. 1, ch. 77-174; s. 13, ch. 77-290; s. 3, ch. 77-453; s. 2, ch. 78-28; s. 2, ch. 78-425; s. 7, ch. 79-3; s. 3, ch. 79-299; s. 69, ch. 79-400.

120.545 Committee review of agency rules.—(1) As a legislative check on legislatively created authority, the committee shall examine each proposed rule, except for those proposed rules exempted by paragraph 120.54(11)(a), and its accompanying material, and may examine any existing rule, for the purpose of determining whether the rule is within the statutory authority upon which it is based, whether the rule is in proper form, and whether the notice given prior to its adoption was sufficient to

give adequate notice of the purpose and effect of the rule. If the committee objects to a proposed or existing rule, it shall, within 5 days of the objection, certify the fact to the agency whose rule has been examined and include with the certification a statement detailing its objections with particularity.

(2) Within 30 days of receipt of the objection, if the agency is headed by an individual, or within 45 days of receipt of the objection, if the agency is headed by a collegial body, the agency shall:

(a) If the rule is a proposed rule:

1. Modify the rule to meet the committee's objection;

2. Withdraw the rule in its entirety; or

3. Refuse to modify or withdraw the rule.

(b) If the rule is an existing rule:

1. Notify the committee that it has elected to amend the rule to meet the committee's objection and initiate the amendment procedure;

2. Notify the committee that it has elected to repeal the rule and initiate the repeal procedure; or

3. Notify the committee that it refuses to amend or repeal the rule.

(3) If the agency elects to modify a proposed rule to meet the committee's objection, it shall make only such modifications as are necessary to meet the objection and shall resubmit the rule to the committee. The agency shall give notice of its election to modify a proposed rule to meet the committee's objection in the first available issue of the Florida Administrative Weekly, but shall not be required to conduct a public hearing. If the agency elects to amend an existing rule to meet the committee's objection, it shall notify the committee in writing and shall initiate the amendment procedure by giving notice in the next available issue of the Florida Administrative Weekly. The committee shall give priority to rules so modified or amended when setting its agenda.

(4) If the agency elects to withdraw a proposed rule as a result of a committee objection, it shall notify the committee, in writing, of its election and shall give notice of the withdrawal in the next available issue of the Florida Administrative Weekly. The rule shall be withdrawn without a public hearing, effective upon publication of the notice in the Florida Administrative Weekly. If the agency elects to repeal an existing rule as a result of a committee objection, it shall notify the committee, in writing, of its election and shall initiate rulemaking procedures for that purpose by giving notice in the next available issue of the Florida Administrative Weekly.

(5) If an agency elects to amend or repeal an existing rule as a result of a committee objection, it shall complete the process within 90 days after giving notice in the Florida Administrative Weekly.

(6) Failure of the agency to respond to a committee objection to a proposed rule within the time prescribed in subsection (2) shall constitute withdrawal of the rule in its entirety. In this event, the committee shall notify the Department of State that the agency, by its failure to respond to a committee objection, has elected to withdraw the proposed rule. Upon receipt of the committee's notice, the Department of State shall publish a notice to that effect in the next available issue of the Florida Administrative Weekly. Upon publication of the notice, the proposed rule shall be stricken from the files of the Department of State and the files of the agency.

(7) Failure of the agency to respond to a committee objection to an existing rule within the time prescribed in subsection (2) shall constitute a refusal to repeal the rule.

(8) If the committee objects to a proposed or existing rule and the agency refuses to modify, amend, withdraw, or repeal the rule, the committee shall file with the Department of State a notice of the objection, detailing with particularity its objection to the rule. The Department of State shall publish this notice in the Florida Administrative Weekly and shall publish, as a history note to the rule in the Florida Administrative Code, a reference to the committee's objection and to the issue of the Weekly in which the full text thereof appears.

History.—s. 4, ch. 76-131; s. 1, ch. 77-174.

120.55 Publication.—

(1) The Department of State shall:

(a) Conduct a systematic and continuing study of the rules of this state for the purpose of reducing their number and bulk and removing redundancies and unnecessary repetitions and make such changes in style and form as are required by paragraph (d).

(b) Publish in a permanent compilation entitled "Florida Administrative Code" all rules adopted by each agency, citing the specific rulemaking authority pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(8), and complete indexes to all rules contained in the code. Supplementation shall be made as often as practicable, but at least monthly. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or to the Florida School for the Deaf and the Blind and university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect their validity or effectiveness. The department shall publish, at the beginning of the section of the code dealing with an agency that files copies of its rules with the department, a summary or listing of all rules of said agency excluded from publication in the code and a statement as to where said rules may be inspected or examined. The department shall also publish, at the beginning of the section of the code dealing with an agency, any exemptions granted that agency pursuant to s. 120.63, including the termination date of the exemption and a statement whether the exemption can be renewed pursuant to s. 120.63(2)(b).

(c) Publish a weekly publication entitled the "Florida Administrative Weekly," which shall contain:

1. A summary of, and an index to, all rules filed during the preceding week.

2. All hearing notices required by subsection 120.54(1), showing the time, place, and date of the hearings and the summaries of all rules proposed for consideration.

3. All notices of meetings, hearings, and workshops conducted in accordance with the provisions of paragraph 120.53(1)(d), including a statement of the

manner in which a copy of the agenda may be obtained.

4. A notice of each request for authorization to amend or repeal an existing model rule or for the adoption of new model rules.

5. A notice of each request for exemption from any provision of this chapter.

6. Notice of petitions for declaratory statements or administrative determinations.

7. A summary of each objection to any rule filed by the Administrative Procedures Committee during the preceding week.

8. Any other material required or authorized by law or deemed useful by the department.

(d) Prescribe by rule the style and form required for rules submitted for filing and establish the form for their certification.

(e) Correct grammatical, typographical, and like errors not affecting the construction or meaning of the rules and insert history notes.

(f) Remove from the code any rules the authority for which has been repealed.

(g) Before making any change in any rules as provided in paragraph (a), (e), or paragraph (f), obtain the advice and consent of the affected agency.

(h) Make copies of the Florida Administrative Code available for sale at no more than cost and copies of the Florida Administrative Weekly available on an annual subscription basis for not more than $25 per year.

(i) Charge each agency using the Florida Administrative Weekly a space rate computed to cover all costs related to the Florida Administrative Weekly.

(2) Each agency shall print or distribute copies of its rules, citing the specific rulemaking authority pursuant to which each rule was adopted, at its own expense or purchase copies for distribution from the Department of State.

(3)(a) The Department of State shall furnish the Florida Administrative Code and the Florida Administrative Weekly, without charge and upon request, as follows:

1. One set to each federal and state court having jurisdiction over the residents of the state; each Florida senator, congressman, and state legislator; the Legislative Library; each state university library; the State Library; and each standing committee of the Senate and House of Representatives.

2. Two sets to each state department.

3. Three sets to the library of the Supreme Court of Florida, the library of each state district court of appeal, the division, the library of the Attorney General, each law school library in Florida, the Secretary of the Senate, and the Clerk of the House.

4. Ten sets to the committee.

(b) The Department of State shall furnish one copy of the Florida Administrative Weekly, at no cost, to the depository libraries of the Florida State Library, each clerk of the circuit court, and each state department, for posting for public inspection.

(4)(a) There is hereby created in the State Treasury a revolving fund to be known as the Department of State's "Publication Revolving Trust Fund."

(b) All fees and moneys collected by the Department of State under this chapter shall be deposited in the revolving trust fund for the purpose of paying for the publication and distribution of the Florida Administrative Code and the Florida Administrative Weekly and for associated costs incurred by the department in carrying out this chapter.

(c) The unencumbered balance in the revolving trust fund at the beginning of each fiscal year shall not exceed $100,000, and any excess shall be transferred to the General Revenue Fund.

(d) It is the intent of the Legislature that the Florida Administrative Weekly be supported entirely from funds collected for subscriptions to and advertisements in the Florida Administrative Weekly. To that end, the Department of State is authorized to add a surcharge of 10 percent to any charge relating to the Florida Administrative Weekly until such time as the Publication Revolving Trust Fund has transferred to the General Revenue Fund an amount equal to all funds appropriated to the trust fund.

History.—s. 1, ch. 74-310; s. 1, ch. 75-107; s. 4, ch. 75-191; s. 5, ch. 76-131; s. 1, ch. 77-174; s. 4, ch. 77-453; s. 3, ch. 78-425; s. 4, ch. 79-299.

120.56 Administrative determination of rule by hearing officer.—

(1) Any person substantially affected by a rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

(2) The petition seeking an administrative determination under this section shall be in writing and shall state with particularity facts sufficient to show the person seeking relief is substantially affected by the rule and facts sufficient to show the invalidity of the rule. The petition shall be filed with the division which shall, immediately upon filing, forward copies of the petition to the agency whose rule is challenged, the Department of State, and the committee. Within 10 days after receiving the petition, the division director shall, if he determines that the petition complies with the above requirements, assign a hearing officer who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn.

(3) Within 30 days after the hearing, the hearing officer shall render his decision and state the reasons therefor in writing. The division shall forthwith transmit copies of the hearing officer's decision to the Department of State and to the committee. The hearing officer may declare all or part of a rule invalid. The rule or part thereof declared invalid shall become void when the time for filing an appeal expires or at a later date specified in the decision. The agency whose rule has been declared invalid in whole or part shall give notice of the decision in the Florida Administrative Weekly in the first available issue after the rule has become void.

(4) Challenges to the validity of an emergency rule shall be subject to the following time schedules. Within 7 days after receiving the petition, the division director shall, if he determines that the petition complies with subsection (2), assign a hearing officer who shall conduct a hearing within 14 days thereafter, unless the petition is withdrawn. Within 14 days after the hearing, the hearing officer shall render his decision and otherwise comply with the provisions of subsection (3) not inconsistent herewith.

(5) Hearings held under this provision shall be

conducted in the same manner as provided in s. 120.57 except that the hearing officer's order shall be final agency action. The petitioner and the agency whose rule is attacked shall be adversary parties. Other substantially affected persons may join the proceedings as parties or intervenors on appropriate terms which shall not unduly delay the proceedings. Failure to proceed under this section shall not constitute failure to exhaust administrative remedies.

History.—s. 1, ch. 74-310; s. 5, ch. 75-191; s. 6, ch. 76-131; s. 1, ch. 77-174; s. 4, ch. 78-425.

120.565 Declaratory statement by agencies.—Each agency shall provide by rule the procedure for the filing and prompt disposition of petitions for declaratory statements. A declaratory statement shall set out the agency's opinion as to the applicability of a specified statutory provision or of any rule or order of the agency as it applies to the petitioner in his particular set of circumstances only. The agency shall give notice of each petition and its disposition in the Florida Administrative Weekly, except that educational units shall give notice in the same manner as provided for rules in s. 120.54(1)(a), and transmit copies of each petition and its disposition to the committee. Agency disposition of petitions shall be final agency action.

History.—s. 6, ch. 75-191; s. 7, ch. 76-131; s. 5, ch. 78-425; s. 5, ch. 79-299.

120.57 Decisions which affect substantial interests.—The provisions of this section shall apply in all proceedings in which the substantial interests of a party are determined by an agency. Unless waived by all parties, subsection (1) shall apply whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, subsection (2) shall apply in all other cases.

(1) FORMAL PROCEEDINGS.—

(a) A hearing officer assigned by the division shall conduct all hearings under this subsection, except for:

1. Hearings before agency heads or a member thereof other than an agency head or a member of an agency head within the Department of Professional and Occupational Regulation;

2. Hearings before the Unemployment Appeals Commission in unemployment compensation appeals, unemployment compensation appeals referees, special deputies pursuant to s. 443.15, and the Public Service Commission or its examiners;

3. Hearings regarding drivers' licensing pursuant to chapter 322;

4. Hearings conducted within the Department of Health and Rehabilitative Services in the execution of those social and economic programs administered by the former Division of Family Services of said department prior to the reorganization effected by chapter 75-48, Laws of Florida;

5. Hearings in which the division is a party, in which case an attorney assigned by the Administration Commission shall be the hearing officer;

6. Hearings which involve student disciplinary suspensions or expulsions and which are conducted by educational units;

7. Hearings of the Public Employees Relations Commission in which a determination is made of the appropriateness of the bargaining unit, as provided in s. 447.307; and

8. Hearings held by the Department of Agriculture and Consumer Services pursuant to chapter 601.

(b) In cases to which this subsection is applicable, the following procedures shall apply:

1. Requests for hearings shall be granted or denied within 15 days of receipt.

2. All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days; however, the 14-day notice requirement may be waived with the consent of all parties. In preliminary hearings for the revocation of parole, no less than 7 days' notice shall be given. In parole revocation hearings pursuant to ss. 949.10 and 949.11, reasonable notice of not less than 5 days shall be given. In hearings involving student disciplinary suspensions or expulsions conducted by educational units, the 14-day notice requirement may be waived by the agency head or the hearing officer without the consent of the parties. The notice shall include:

a. A statement of the time, place, and nature of the hearing.

b. A statement of the legal authority and jurisdiction under which the hearing is to be held.

c. A reference to the particular sections of the statutes and rules involved.

d. A short and plain statement of the matters asserted by the agency and by all parties of record at the time notice is given. If the agency or any party is unable to state the matters in sufficient detail at the time initial notice is given, the notice may be limited to a statement of the issues involved, and thereafter, upon timely written application, a more definite and detailed statement shall be furnished not less than 3 days prior to the date set for the hearing.

3. Except for proceedings conducted as prescribed in s. 120.54(4) or s. 120.56, all petitions or requests for hearings under this section shall be filed with the agency. If the agency elects to request a hearing officer from the division, it shall notify the division within 10 days of receipt of the petition or request, requesting the assignment of a hearing officer and, with the concurrence of the division, set the time, date, and place of the hearing. On request of any agency, the division shall assign hearing officers with due regard to the expertise required for the particular matter. Any party may request the disqualification of any hearing officer by filing an affidavit with the division prior to the taking of evidence at a hearing, stating the grounds with particularity.

4. All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to any order or hearing officer's recommended order, and to be represented by counsel. When appropriate, the general public may be given an opportunity to present oral or written communications. If the agency proposes to consider such material, then all parties shall be given an opportunity to cross-examine or challenge or rebut it.

5. The record in cases governed by this subsec-

tion shall consist only of:

a. All notices, pleadings, motions, and intermediate rulings;

b. Evidence received or considered;

c. A statement of matters officially recognized;

d. Questions and proffers of proof and objections and rulings thereon;

e. Proposed findings and exceptions;

f. Any decision, opinion, proposed or recommended order, or report by the officer presiding at the hearing;

g. All staff memoranda or data submitted to the hearing officer during the hearing or prior to its disposition, after notice of the submission to all parties, except communications by advisory staff as permitted under s. 120.66(1), if such communications are public records;

h. All matters placed on the record after an ex parte communication pursuant to s. 120.66(2); and

i. The official transcript.

6. The agency shall accurately and completely preserve all testimony in the proceeding, and, on the request of any party, it shall make a full or partial transcript available at no more than actual cost.

7. Findings of fact shall be based exclusively on the evidence of record and on matters officially recognized.

8. Except as provided in subparagraph 12., the hearing officer shall complete and submit to the agency and all parties a recommended order consisting of his findings of fact, conclusions of law, interpretation of administrative rules, recommended penalty, if applicable, and any other information required by law or agency rule to be contained in the final order. The agency shall allow each party at least 10 days in which to submit written exceptions to the recommended order.

9. The agency may adopt the recommended order as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the recommended order, but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept or reduce the recommended penalty in a recommended order, but may not increase it without a review of the complete record. In the event a court reverses an agency's order, the court in its discretion may award attorney's fees and costs to the aggrieved prevailing party.

10. If the hearing officer assigned to a hearing becomes unavailable, the division shall assign another hearing officer who shall use any existing record and receive any additional evidence or argument, if any, which the new hearing officer finds necessary.

11. A hearing officer who is a member of an agency head may participate in the formulation of the agency's final order, provided he has completed all his duties as hearing officer.

12. In applications for a license or mergers pursuant to title XXXVII or title XXXVIII which are referred by the agency to the division for hearing pursuant to this section, the hearing officer shall complete and submit to the agency and to all parties a written report consisting of findings of fact and rulings on evidentiary matters. The agency shall allow each party at least 10 days in which to submit written exceptions to the report.

(2) INFORMAL PROCEEDINGS.—In cases to which subsection (1) does not apply:

(a) The agency shall, in accordance with its rules of procedure:

1. Give reasonable notice to affected persons or parties of the agency's action, whether proposed or already taken, or of its decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.

2. Give affected persons or parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing officer written or oral evidence in opposition to the agency's action or refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction.

3. If the objections of the persons or parties are overruled, provide a written explanation within 7 days.

(b) The record shall only consist of:

1. The notice and summary of grounds;

2. Evidence received or considered;

3. All written statements submitted by persons and parties;

4. Any decision overruling objections;

5. All matters placed on the record after an ex parte communication pursuant to subsection 120.66(2); and

6. The official transcript.

(3) Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order.

(4) This section shall not apply to agency investigations preliminary to agency action.

History.—s. 1, ch. 74-310; s. 7, ch. 75-191; s. 8, ch. 76-131; s. 1, ch. 77-174; s. 5, ch. 77-453; ss. 6, 11, ch. 78-95; s. 6, ch. 78-425; s. 8, ch. 79-7.

120.58 Agency action; evidence, record and subpoenas.—

(1) In agency proceedings for a rule or order:

(a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. This paragraph applies only to proceedings under s. 120.57.

(b) An agency or its duly empowered presiding officer or a hearing officer has the power to swear witnesses and take their testimony under oath, to issue subpoenas upon the written request of any party or upon its own motion, and to effect discovery on the written request of any party by any means avail-

able to the courts and in the manner provided in the Florida Rules of Civil Procedure. However, no agency or its duly empowered presiding officer or any hearing officer has the authority to issue any subpoena or order directing discovery to any member or employee of the Legislature when the subpoena or order commands the production of documents or materials or compels testimony relating to the legislative duties of the member or employee. Any subpoena or order directing discovery directed to a member or an employee of the Legislature shall show on its face that the testimony sought does not relate to legislative duties.

(c) Any public employee subpoenaed to appear at an agency proceeding shall be entitled to per diem and travel expenses at the same rate as that provided for state employees under s. 112.061 if travel away from such public employee's headquarters is required. All other witnesses appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as is provided in civil actions in circuit courts of this state. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement, and in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

(d) Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(e) If a majority of those who are to render the final order have not heard the case or read the record, a decision adverse to a party other than the agency itself shall not be made until a proposed order is served upon the parties and they are given an opportunity to file exceptions and present briefs and oral arguments to those who are to render the decision. The proposed order shall contain necessary findings of fact and conclusions of law and a reference to the source of each. The proposed order shall be prepared by the individual who conducted the hearing, if available, or by one who has read the record. The parties by written stipulation may waive compliance with this paragraph. The provisions of this paragraph shall not apply in the granting of parole or preliminary hearings for the revocation of parole.

(f) A party shall be permitted to conduct cross-examination when testimony is taken or documents are made a part of the record.

(2) Any person subject to a subpoena or order directing discovery may, before compliance and on timely petition, request the agency having jurisdiction of the dispute to invalidate the subpoena or order on the ground that it was not lawfully issued, is unreasonably broad in scope, or requires the production of irrelevant material, but the decision of the agency on any such request shall not be proposed agency action governed by s. 120.57.

(3) An agency may seek enforcement of a subpoena or order directing discovery issued under the authority of this act by filing a petition for enforcement, pursuant to s. 120.69, in the circuit court of the judicial circuit wherein the person failing to comply with the subpoena or order resides. A failure to comply with an order of the court shall result in a finding of contempt of court. However, no person shall be in contempt while the subpoena or order is being challenged under subsection (2). In the absence of agency action on the default within 30 days, the party requesting the subpoena or order may bring proceedings in an appropriate court for enforcement of the subpoena or order, and a failure to comply with an order of the court shall result in a finding of contempt of court.

History.—s. 1, ch. 74-310; s. 8, ch. 75-191; s. 9, ch. 76-131; s. 7, ch. 78-425.

120.59 Orders.—

(1) The final order in a proceeding which affects substantial interests shall be in writing or stated in the record and include findings of fact and conclusions of law separately stated, and it shall be rendered within 90 days:

(a) After the hearing is concluded, if conducted by the agency,

(b) After a recommended order is submitted to the agency and mailed to all parties, if the hearing is conducted by a hearing officer, or

(c) After the agency has received the written and oral material it has authorized to be submitted, if there has been no hearing.

The 90-day period may be waived or extended with the consent of all parties.

(2) Findings of fact, if set forth in a manner which is no more than mere tracking of the statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record which support the findings. If, in accordance with agency rules, a party submitted proposed findings of fact or filed any written application or other request in connection with the proceeding, the order shall include a ruling upon each proposed finding and a brief statement of the grounds for denying the application or request.

(3) If an agency head finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, it shall recite with particularity the facts underlying such finding in the final order, which shall be appealable or enjoinable from the date rendered.

(4) Parties shall be notified either personally or by mail of any order, and, unless waived, a copy of the final order shall be delivered or mailed to each party or to his attorney of record.

History.—s. 1, ch. 74-310; s.1, ch. 77-174.

120.60 Licensing.—

(1) Unless otherwise provided by statute enacted subsequent to the effective date of this act, licensing is subject to the provisions of s. 120.57.

(2) When an application for a license is made as required by law, the agency shall conduct the proceedings required with reasonable dispatch and with due regard to the rights and privileges of all affected parties or aggrieved persons. Within 30 days after receipt of an application for a license, the agency shall examine the application, notify the applicant of any apparent errors or omissions, and request any additional information the agency is permitted by law to require. Failure to correct an error or omission or to supply additional information shall not be

grounds for denial of the license unless the agency timely notified the applicant within this 30-day period. The agency shall notify the applicant if the activity for which he seeks a license is exempt from the licensing requirement and return any tendered application fee within 30 days after receipt of the original application or within 10 days after receipt of the timely requested additional information or correction of errors or omissions. Every application for license shall be approved or denied within 90 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions unless a shorter period of time for agency action is provided by law. The 90-day or shorter time period shall be tolled by the initiation of a proceeding under s. 120.57 and shall resume 10 days after the recommended order is submitted to the agency and the parties. Any application for a license not approved or denied within the 90-day or shorter time period, within 15 days after conclusion of a public hearing held on the application, or within 45 days after the recommended order is submitted to the agency and the parties, whichever is latest, shall be deemed approved and, subject to the satisfactory completion of an examination, if required as a prerequisite to licensure, the license shall be issued. The Public Service Commission, when issuing a license, and any other agency, if specifically exempted by law, shall be exempt from the time limitations within this subsection. Each agency, upon issuing or denying a license, shall state with particularity the grounds or basis for the issuance or denial of same, except where issuance is a ministerial act. On denial of a license application on which there has been no hearing, the denying agency shall inform the applicant of any right to a hearing pursuant to s. 120.57.

(3) The provisions of subsection (2) notwithstanding, every application for a certificate of authority as required by s. 624.401 shall be approved or denied within 180 days after receipt of the original application. Any application for such a certificate of authority not approved or denied within the 180-day period, or within 30 days after conclusion of a public hearing held on the application, shall be deemed approved, subject to the satisfactory completion of conditions required by statute as a prerequisite to license.

(4) In proceedings for the issuance, denial, renewal, or amendment of a license or approval of a merger pursuant to title XXXVII or title XXXVIII:

(a)1. The Department of Banking and Finance shall have published in the Florida Administrative Weekly notice of the application within 21 days of receipt.

2. Within 21 days of publication of notice, any person may request a hearing, which upon request shall be conducted pursuant to s. 120.57 except that the Department of Banking and Finance shall by rule provide for participation by the general public; however, failure to request a hearing within 21 days of publication of notice shall constitute waiver of any right to a hearing.

(b) Should a hearing be requested pursuant to subparagraph 2. of paragraph (a), the applicant or licensee shall publish at his own cost a notice of the hearing in a newspaper of general circulation in the area affected by the application. The Department of Banking and Finance may by rule specify the format and size of such notice.

(c) Notwithstanding subsection (2), every application for license for a new bank, new trust company, new credit union, or new savings and loan association, and every application for acquisition of majority control of a bank, trust company, or savings and loan association involving a foreign national, shall be approved or denied within 180 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions. Any application for such a license or for acquisition of such control not approved or denied within the 180-day period or within 30 days after conclusion of a public hearing on the application, whichever is the latest, shall be deemed approved subject to the satisfactory completion of conditions required by statute as a prerequisite to license and approval of insurance of accounts for a new bank, a new savings and loan association, or a new credit union by the appropriate insurer.

(5) When a licensee has made timely and sufficient application for the renewal of a license which does not automatically expire by statute, the existing license shall not expire until the application has been finally acted upon by the agency or, in case the application is denied or the terms of the license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(6) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency has given reasonable notice by certified mail or actual service to the licensee of facts or conduct which warrant the intended action and the licensee has been given an opportunity to show that he has complied with all lawful requirements for the retention of the license. If the agency is unable to obtain service by certified mail or by actual service, constructive service may be made in the same manner as is provided in chapter 49.

(7) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, it shall show compliance in its order with the requirements imposed by s. 120.54(9) on agencies making emergency rules. Summary suspension, restriction, or limitation may be ordered, but a formal suspension or revocation proceeding under this section shall also be promptly instituted and acted upon.

(8) If the Administration Commission grants an exemption from any provision of this section as provided in s. 120.63, the exemption shall be for a single application only and shall not be renewable.

(9) This section shall not apply to certification of employee organizations pursuant to s. 447.307.

History.—s. 1, ch. 74-310; s. 10, ch. 76-131; s. 1, ch. 77-174; ss. 6, 9, ch. 77-453; s. 57, ch. 78-95; s. 8, ch. 78-425; s. 1, ch. 79-142; s. 6, ch. 79-299.

120.61 Official recognition.—When official recognition is requested, the parties shall be notified

and given an opportunity to examine and contest the material.

History.—s. 1, ch. 74-310.

120.62 Agency investigations.—

(1) No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law. Every person who responds to a request or demand by any agency or representative thereof for written data or an oral statement shall be entitled to a transcript of his oral statement at no more than cost.

(2) Any person compelled to appear, or who appears voluntarily, before any hearing officer or agency in an investigation or in any agency proceeding has the right, at his own expense, to be accompanied, represented, and advised by counsel or by other qualified representatives.

History.—s. 1, ch. 74-310.

120.63 Exemption from act; Division of Pari-mutuel Wagering.—

(1) Upon application of any agency, the Administration Commission may exempt any process or proceeding governed by this act from one or more requirements of this act:

(a) When the agency head has certified that the requirement would conflict with any provision of federal law or rules with which the agency must comply;

(b) In order to permit persons in the state to receive tax benefits or federal funds under any federal law; or

(c) When the commission has found that conformity with the requirements of the part or parts of this act for which exemption is sought would be so inconvenient or impractical as to defeat the purpose of the agency proceeding involved or the purpose of this act and would not be in the public interest in light of the nature of the intended action and the enabling act or other laws affecting the agency.

(2) The commission may not exempt an agency from any requirement of this act pursuant to this section until it establishes alternative procedures to achieve the agency's purpose which shall be consistent, insofar as possible, with the intent and purpose of the act.

[1](a) Prior to the granting of any exemption authorized by this section, the commission shall hold a public hearing after notice given as provided in subsection 120.54(1). Upon the conclusion of the hearing, the commission, through the Executive Office of the Governor, shall issue an order specifically granting or denying the exemption and specifying any processes or proceedings exempted and the extent of the exemption; transmit to the committee and to the Department of State a copy of the petition, a certified copy of the order granting or denying the petition, and a copy of any alternative procedures prescribed; and give notice of the petition and the commission's response in the Florida Administrative Weekly.

(b) An exemption and any alternative procedure prescribed shall terminate 90 days following adjournment sine die of the then-current or next regular legislative session after issuance of the exemption order, or upon the effective date of any subsequent legislation incorporating the exemption or any partial exemption related thereto, whichever is earlier. The exemption granted by the commission shall be renewable upon the same or similar facts not more than once. Such renewal shall terminate as would an original exemption.

History.—s. 1, ch. 74-310; s. 11, ch. 76-131; s.1, ch. 77-53; s. 8, ch. 77-453; s. 87, ch. 79-190; s. 7, ch. 79-299; s. 70, ch. 79-400.

[1]Note.—Senate Amendment 21 to C.S. for H.B.'s 1604 and 1649 purported to amend this paragraph in its entirety, but actually republished only a portion thereof. The entire paragraph is set out here in the belief that the legislative intent was not to repeal the omitted portion, which begins after the word "specifying." See 1979 Senate Journal, pp. 859, 860.

120.633 Division of Pari-mutuel Wagering; partial exemption from hearing and notice requirements.—The Division of Pari-mutuel Wagering is exempted from the hearing and notice requirements of s. 120.57(1)(a) and (b), but only for stewards, judges, and boards of judges when the hearing is to be held for the purpose of the imposition of fines or suspensions as provided by rules of the Division of Pari-mutuel Wagering, but not for revocations, and only upon violations (1) through (6) below. The Division of Pari-mutuel Wagering shall adopt rules establishing alternative procedures, including a hearing upon reasonable notice, for the following violations:

(1) Horse riding, harness riding, greyhound interference, and jai alai game actions in violation of chapters 550 and 551.

(2) Application and usage of drugs and medication to horses, greyhounds, and jai alai players in violation of chapters 550 and 551.

(3) Maintaining or possessing any device which could be used for the injection or other infusion of a prohibited drug to horses, greyhounds, and jai alai players in violation of chapters 550 and 551.

(4) Suspensions under reciprocity agreements between the Division of Pari-mutuel Wagering and regulatory agencies of other states.

(5) Assault or other crimes of violence on premises licensed for pari-mutuel wagering.

(6) Prearranging the outcome of any race or game.

History.—s. 1, ch. 77-53; s. 7, ch. 79-299.
Note.—Former s. 120.63(3).

120.65 Hearing officers.—

(1) There is hereby created the Division of Administrative Hearings within the Department of Administration, to be headed by a director who shall be appointed by the Administration Commission and confirmed by the Senate. The division shall be exempt from the provisions of chapter 216. The Department of Administration shall provide administrative support and service to the division. The division shall not be subject to control, supervision, or direction by the Department of Administration.

(2) The division shall employ full-time hearing officers to conduct hearings required by this chapter or other law. No person may be employed by the division as a full-time hearing officer unless he has been a member of The Florida Bar in good standing for the preceding 5 years.

(3) If the division cannot furnish a division hearing officer promptly in response to an agency request, the director shall designate in writing a quali-

fied full-time employee of an agency other than the requesting agency to conduct the hearing. The director shall have the discretion to designate a hearing officer who is a qualified full-time employee of an agency other than the requesting agency which is located in that part of the state where the parties and witnesses reside.

(4) The director shall have the discretion to designate qualified laypersons to conduct hearings. If a layperson is so designated, the director shall assign a hearing officer to assist in the conduct of the hearing and to rule upon proffers of proof, questions of evidence, disposition of procedural requests, and similar matters.

(5) By rule, the division may establish:

(a) Further qualifications for hearing officers and shall establish procedures by which candidates will be considered for employment or contract.

(b) The manner in which public notice will be given of vacancies in the staff of hearing officers.

(c) Procedures for the assignment of hearing officers.

(6) The division is authorized to provide hearing officers on a contract basis to any governmental entity to conduct any hearing not covered by this section.

(7) The division shall have the authority to adopt reasonable rules to carry out the provisions of this act.

History.—s. 1, ch. 74-310; s. 9, ch. 75-191; s. 14, ch. 76-131; s. 9, ch. 78-425; s. 46, ch. 79-190.

120.66 Ex parte communications.—

(1) In any proceeding under s. 120.57, no ex parte communication relative to the merits, threat, or offer of reward shall be made to the agency head, after the agency head has received a recommended order, or to the hearing officer by:

(a) An agency head or member of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter.

(b) A party to the proceeding or any person who, directly or indirectly, would have a substantial interest in the proposed agency action, or his authorized representative or counsel.

Nothing in this subsection shall apply to advisory staff members who do not testify on behalf of the agency in the proceeding or to any rulemaking proceedings under s. 120.54.

(2) A hearing officer who is involved in the decisional process and who receives an ex parte communication in violation of subsection (1) shall place on the record of the pending matter all written communications received, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall also advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, if such party requests the opportunity for rebuttal within 10 days after notice of such communication. The hearing officer may, if he deems it necessary to eliminate the effect of an ex parte communication received by him, withdraw from the proceeding, in which case the division shall assign a successor.

(3) Any person who makes an ex parte communication prohibited by subsection (1), and any hearing officer who fails to place in the record any such communication, is in violation of this act and may be assessed a civil penalty not to exceed $500 or be subjected to such other disciplinary action as his superiors may determine.

History.—s. 1, ch. 74-310; s. 10, ch. 75-191; s. 12, ch. 76-131; s. 1, ch. 77-174; s. 10, ch. 78-425.

120.68 Judicial review.—

(1) A party who is adversely affected by final agency action is entitled to judicial review. For purposes of this section, a district school board, whose decision is reviewed under the provisions of s. 231.36 and whose final action is modified by a superior administrative decision, shall be a party entitled to judicial review of the final action. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2) Except in matters for which judicial review by the supreme court is provided by law, all proceedings for review shall be instituted by filing a petition in the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides. Review proceedings shall be conducted in accordance with the Florida Appellate Rules.

(3) The filing of the petition does not itself stay enforcement of the agency decision, but if the agency decision has the effect of suspending or revoking a license, supersedeas shall be granted as a matter of right upon such conditions as are reasonable, unless the court, upon petition of the agency, determines that a supersedeas would constitute a probable danger to the health, safety, or welfare of the state. The agency may also grant a stay upon appropriate terms, but, whether or not the action has the effect of suspending or revoking a license, a petition to the agency for a stay shall not be a prerequisite to a petition to the court for supersedeas. In any event, the order shall specify the conditions, if any, upon which the stay or supersedeas is granted.

(4) Judicial review of any agency action shall be confined to the record transmitted and any additions made thereto in accordance with subsection (6).

(5) The record for judicial review shall consist of the following:

(a) The agency's written document expressing the order, the statement of reasons therefor, if issued, and the record under s. 120.57, if review of proceedings under that section is sought.

(b) The agency's written document expressing the action, the statement of reasons therefor, if issued, and the materials considered by the agency under s. 120.54, if review is sought of proceedings under that section.

(c) The agency's written document expressing the action, and other written documents identified by the agency as having been considered by it before its action and used as a basis for its action, if review is sought of proceedings under s. 120.56 or s. 120.565 or if there has been no proceeding under s. 120.54 or s. 120.57.

(6) When there has been no hearing prior to

agency action and the reviewing court finds that the validity of the action depends upon disputed facts, the court shall order the agency to conduct a prompt, factfinding proceeding under this act after having a reasonable opportunity to reconsider its determination on the record of the proceedings.

(7) The reviewing court shall deal separately with disputed issues of agency procedure, interpretations of law, determinations of fact, or policy within the agency's exercise of delegated discretion.

(8) The court shall remand the case for further agency action if it finds that either the fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure. Failure of any agency to comply with s. 120.53 shall be presumed to be a material error in procedure.

(9) If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(a) Set aside or modify the agency action, or

(b) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(10) If the agency's action depends on any fact found by the agency in a proceeding meeting the requirements of s. 120.57 of the act, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by competent substantial evidence in the record.

(11) If the agency's action depends on facts determined pursuant to subsection (6), the court shall set aside, modify, or order agency action if the facts compel a particular action as a matter of law, or it may remand the case to the agency for further examination and action within the agency's responsibility.

(12) The court shall remand the case to the agency if it finds the agency's exercise of discretion to be:

(a) Outside the range of discretion delegated to the agency by law;

(b) Inconsistent with an agency rule, an officially stated agency policy, or a prior agency practice, if deviation therefrom is not explained by the agency; or

(c) Otherwise in violation of a constitutional or statutory provision;

but the court shall not substitute its judgment for that of the agency on an issue of discretion.

(13)(a) The reviewing court's decision may be mandatory, prohibitory, or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may:

1. Order agency action required by law, order agency exercise of discretion when required by law, set aside agency action, remand the case for further agency proceedings, or decide the rights, privileges, obligations, requirements, or procedures at issue between the parties, and

2. Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

(b) If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(14) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency's action.

History.—s. 1, ch. 74-310; s. 13, ch. 76-131; s. 38, ch. 77-104; s. 1, ch. 77-174; s. 11, ch. 78-425.

120.69 Enforcement of agency action.—

(1) Except as otherwise provided by statute:

(a) Any agency may seek enforcement of an action by filing a petition for enforcement, as provided in this section, in the circuit court where the subject matter of the enforcement is located.

(b) A petition for enforcement of any agency action may be filed by any substantially interested person who is a resident of the state. However, no such action may be commenced:

1. Prior to 60 days after the petitioner has given notice of the violation of the agency action to the head of the agency concerned, the attorney general, and any alleged violator of the agency action.

2. If an agency has filed, and is diligently prosecuting, a petition for enforcement.

(c) A petition for enforcement filed by a nongovernmental person shall be in the name of the State of Florida on the relation of the petitioner, and the doctrines of res judicata and collateral estoppel shall apply.

(d) In an action brought under paragraph (b), the agency whose action is sought to be enforced, if not a party, may intervene as a matter of right.

(2) A petition for enforcement may request declaratory relief; temporary or permanent equitable relief; any fine, forfeiture, penalty, or other remedy provided by statute; any combination of the foregoing; or, in the absence of any other specific statutory authority, a fine not to exceed $1,000.

(3) After the court has rendered judgment on a petition for enforcement, no other petition shall be filed or adjudicated against the same agency action, on the basis of the same transaction or occurrence, unless expressly authorized on remand. The doctrines of res judicata and collateral estoppel shall apply, and the court shall make such orders as are necessary to avoid multiplicity of actions.

(4) In all enforcement proceedings:

(a) If enforcement depends on any facts other than those appearing in the record, the court may ascertain such facts under procedures set forth in subsection 120.68(6).

(b) If one or more petitions for enforcement and a petition for review involving the same agency action are pending at the same time, the court considering the review petition may order all such actions transferred to and consolidated in one court. Each party shall be under an affirmative duty to notify the court when it becomes aware of multiple proceedings.

(c) Should any party willfully fail to comply with

an order of the court, the court shall punish him in accordance with the law applicable to contempt committed by a person in the trial of any other action.

(5) In any enforcement proceeding the respondent may assert as a defense the invalidity of any relevant statute, the inapplicability of the administrative determination to respondent, compliance by the respondent, the inappropriateness of the remedy sought by the agency, or any combination of the foregoing. In addition, if the petition for enforcement is filed during the time within which the respondent could petition for judicial review of the agency action, the respondent may assert the invalidity of the agency action.

(6) Notwithstanding any other provision of this section, upon receipt of evidence that an alleged violation of an agency's action presents an imminent and substantial threat to the public health, safety, or welfare, the agency may bring suit for immediate temporary relief in an appropriate circuit court, and the granting of such temporary relief shall not have res judicata or collateral estoppel effect as to further relief sought under a petition for enforcement relating to the same violation.

(7) In any final order on a petition for enforcement the court may award to the prevailing party all or part of the costs of litigation and reasonable attorney's fees and expert witness fees, whenever the court determines that such an award is appropriate.

History.—s. 1, ch. 74-310.

120.70 Annual report.—Not later than February 1 of each year, the division shall issue a written report to the Administrative Procedures Committee and the Administration Commission, including at least the following information:

(1) A summary of the extent and effect of agencies' utilization of hearing officers, court reporters, and other personnel in proceedings under this act.

(2) Recommendations for change or improvement in the Administrative Procedure Act or any agency's practice or policy with respect thereto.

History.—s. 1, ch. 74-310.

120.71 Disqualification of agency personnel.—

(1) Notwithstanding the provisions of s. 112.3143, any individual serving alone or with others as an agency head shall be disqualified from serving in an agency proceeding for bias, prejudice, interest, or other causes for which a judge may be recused. If the disqualified individual holds his position by appointment, the appointing power may appoint a substitute to serve in the matter from which the individual is disqualified. If the individual is an elected official, the Governor may appoint a substitute to serve in the matter from which the individual is disqualified.

(2) Any agency action taken by a duly appointed substitute for a disqualified individual shall be as conclusive and effective as if agency action had been taken by the agency as it was constituted prior to any substitution.

History.—s. 1, ch. 74-310; s. 12, ch. 78-425.

120.72 Legislative intent; prior proceedings and rules; exception.—

(1)(a) The intent of the Legislature in enacting this complete revision of chapter 120 is to make uniform the rulemaking and adjudicative procedures used by the administrative agencies of this state. To that end, it is the express intent of the Legislature that chapter 120 shall supersede all other provisions in the Florida Statutes, 1977, relating to rulemaking, agency orders, administrative adjudication, licensing procedure, or judicial review or enforcement of administrative action for agencies as defined herein to the extent such provisions conflict with chapter 120, unless expressly provided otherwise by law subsequent to January 1, 1975, except for marketing orders adopted pursuant to chapters 573 and 601.

(b) Unless expressly provided otherwise, a reference in any section of the Florida Statutes to chapter 120 or to any section or sections or portion of a section of chapter 120 shall hereby include, and shall be understood as including, all subsequent amendments to chapter 120 or to the referenced section or sections or portions of a section.

(2) All administrative adjudicative proceedings conducted pursuant to any provision of the Florida Statutes which were begun prior to January 1, 1975, shall be continued to a conclusion, including judicial review, under the provisions of the Florida Statutes, 1973, except that administrative adjudicatory proceedings which have not progressed to the stage of a hearing may, with the consent of all parties and the agency conducting the proceeding, be conducted in accordance with the provisions of this act as nearly as is feasible.

(3) Notwithstanding any provision of this chapter, all public utilities and companies regulated by the Public Service Commission shall be entitled to proceed under the interim rate provisions of chapter 364 or the procedures for interim rates contained in chapter 74-195, Laws of Florida, or as otherwise provided by law.

(4)(a) All prior rules not adopted following a public hearing as provided by statute shall be void and unenforceable after October 1, 1975, and shall be stricken from the files of the Department of State and from the files of the adopting agency.

(b) Any rule in effect on, or filed with the Department of State prior to, January 1, 1975, except one adopted following a public hearing as provided by statute, shall be forthwith reviewed by the agency concerned on the written request of a person substantially affected by the rule involved and this provision. The agency concerned shall initiate the rulemaking procedures provided by this act within 90 days after receiving such written request. If the agency concerned fails to initiate the rulemaking procedures within 90 days, the operation of the rule shall be suspended. This provision shall control s. 120.54(5).

(c) All existing rules shall be indexed by January 1, 1975.

History.—s. 3, ch. 74-310; s. 1, ch. 76-207; s. 1, ch. 77-174; s. 57, ch. 78-95; s.

13, ch. 78-425.

120.721 Effect of chapter 75-22, Laws of Florida, on rules.—Any rule or regulation of a public agency involved in or affected by the reorganization of the executive agencies as set forth in chapter 75-22, Laws of Florida, which was valid when adopted under the authority granted by the Legislature to adopt such rule, to the extent it is not inconsistent with chapter 75-22, Laws of Florida, shall remain in effect until it expires by its terms or is specifically repealed or revised as provided by law.

History.—s. 23, ch. 75-22.

120.722 Legislative intent of chapter 78-95, Laws of Florida. —

(1) The primary purpose of chapter 78-95, Laws of Florida, is to repeal or amend various provisions of the Florida Statutes containing procedural language superseded or made redundant by chapter 120 (the Administrative Procedure Act). Chapter 78-95 is designed to place the provisions affected into conformity with chapter 120, except where expressly noted to the contrary.

(2) Any section or subunit of a section repealed by an act of any session shall remain repealed despite any amendment in chapter 78-95. Any act of the 1978 legislative session, other than one resulting from a reviser's bill, that amends any provision affected by chapter 78-95 shall supersede chapter 78-95 to the extent that such amendment conflicts with chapter 78-95.

(3) Deletions of references to chapter 120 in chapter 78-95 do not imply that chapter 120 is not applicable; except where expressly noted otherwise, references to chapter 120 are deleted as unnecessary and repetitious.

(4) Failure of chapter 78-95 to amend or repeal any provision in the Florida Statutes does not imply that that provision is not in conflict with, superseded by, or unnecessary in light of chapter 120.

History.—s. 1, ch. 78-95.

120.73 Circuit court proceedings; declaratory judgments.—Nothing in this chapter shall be construed to repeal any provision of the Florida Statutes which grants the right to a proceeding in the circuit court in lieu of an administrative hearing or to divest the circuit courts of jurisdiction to render declaratory judgments under the provisions of chapter 86.

History.—s. 11, ch. 75-191; s. 14, ch. 78-425.

CHAPTER 121

FLORIDA RETIREMENT SYSTEM

121.011 Florida Retirement System.—

(1) SHORT TITLE.—This chapter shall be known and cited as the "Florida Retirement System Act."

(2) CONSOLIDATION OF EXISTING SYSTEMS AND LAWS.—

(a) Any officer or employee who is elected, appointed, or employed by the state or any subdivision thereof on or after December 1, 1970, shall not be eligible for membership, rights, or any privileges under chapters 122 (State and County Officers and Employees' Retirement System) and 238 (retirement system for school teachers) and those sections of chapter 321 pertaining to highway patrol pensions and pension trust fund.

(b) The chapters or retirement system laws named in paragraph (a) are hereby consolidated as separate instruments appended to the "Florida Retirement System Act" established by this chapter, and the administration of said chapters or retirement systems shall be consolidated with the administration of the Florida Retirement System established by this chapter.

(3) PRESERVATION OF RIGHTS.—

(a) The rights of members of the retirement systems established by chapters 122, 238, and 321 shall not be impaired, nor shall their benefits be reduced by virtue of any part of this chapter, except that if an eligible member of a retirement system established by chapters 122, 238, or 321, elects between April 15, 1971 and June 1, 1971, inclusive, to transfer to the Florida Retirement System, he shall be transferred to the Florida Retirement System on June 1, 1971 and shall be subject to the provisions of the Florida Retirement System established by this chapter and at retirement have his benefits calculated in accordance with the provisions of s. 121.091.

(b) The rights of members of any retirement system established by local or special act or municipal ordinance shall not be impaired, nor shall their benefits be reduced by virtue of any part of this chapter, except that if an eligible member of any such retirement system elects to transfer to the Florida Retirement System in a referendum held in accordance with this chapter by the governing body administering such local retirement system, he shall be transferred to the Florida Retirement System on the date that his unit is accepted for membership therein and shall be subject to the provisions of the Florida Retirement System established by this chapter and at retirement have his benefits calculated in accordance with the provisions of s. 121.091. However, the governing body shall vest the rights of employees of any existing local retirement system not electing to transfer to the Florida Retirement System. However, when any county, now or hereafter authorized by law to take over and perform the functions of a municipality, exercises such power and takes over functions heretofore performed by a municipality, and as a result thereof municipal employees become county

employees and are paid salaries from county funds, such employees who are members, and elect to continue to be members, of a municipal retirement system shall not be eligible to participate in the Florida Retirement System unless said municipality elects to bring its employees under the Florida Retirement System. Such employees whose pension or retirement rights are otherwise preserved, who by merger, transfer, or assignment of governmental units or functions become county employees, shall not lose their municipal pension or retirement rights or any reserves accrued to their benefit during their period of employment with a municipality, and the county is authorized to pay into such municipal retirement system during the period that such employees remain as county employees the sums of money previously paid by the municipality for the benefits of such employees and may make appropriate deductions from the employees' salaries to preserve their retirement benefits. However, such employees shall not have their pension contribution increased above the percentage previously being deducted by the municipality on behalf of such employees at the time they became county employees.

(c) Any member of the Supreme Court Justices, District Courts of Appeal Judges, and Circuit Judges' Retirement System, chapter 123, who terminates his service as a justice or judge and accepts employment covered under this chapter and elects to transfer to the Florida Retirement System rather than retain his vested rights under chapter 123 may transfer to the Florida Retirement System. All contributions of such member, including matching contributions, shall be transferred from the judicial retirement trust fund to the system trust fund, and his normal retirement benefit shall conform with s. 121.091 from November 30, 1970, or from date of transfer thereafter. Any justice or judge electing to transfer to the Florida Retirement System pursuant to the provisions of this paragraph may, at any time prior to retirement, pay for and receive credit for any service performed in any position covered by the existing systems as defined in this chapter for which he has not already received credit. The amount of such payments and the credit received for such service shall be the same as required for a member to obtain credit for prior service pursuant to s. 8(2), chapter 70-112, Laws of Florida, appearing as s. 121.081(2). Any justice or judge who elects to transfer to the Florida Retirement System as provided herein and who retires under the provisions of this chapter shall be eligible for judicial service pursuant to the applicable provisions of law if he has had no less than 5 years of judicial service at the time of his retirement.

(d) The rights of members of the retirement system established by this chapter shall not be impaired by virtue of the conversion of the Florida Retirement System to an employee noncontributory system. As of July 1, 1974, the rights of members of the retirement system established by this chapter are declared to be of a contractual nature, entered into between the member and the state, and such rights shall be legally enforceable as valid contract rights and shall not be abridged in any way.

(e) Any member of the Florida Retirement System or any member of an existing system under chapter 121 on July 1, 1975, who is not retired and who is, has been, or shall be, suspended and reinstated without compensation shall receive retirement service credit for the period of time from his date of suspension to his date of reinstatement, upon the member paying into the Retirement System Trust Fund the total cost of providing said retirement credit. The cost to the member shall be the total employer contributions plus the total employee contributions, if applicable, paid to the Retirement Trust Fund for the pay period immediately preceding the period of suspension, prorated for the said period of suspension, plus interest thereon at a rate of 4 percent per annum compounded annually until July 1, 1975, and 6.5 percent interest thereafter until paid. If permitted by federal law, the member may pay into the Social Security Trust Fund the total cost, if any, of providing social security coverage for the period of suspension if any social security payments have been made by the employer for the benefit of the member during such period. Should there be any conflict as to payment for social security coverage, the payment for retirement service credit shall be made and retirement service credit granted regardless of such conflict.

(f) The rights under an existing system of any former member of such system who has become a member of the Florida Retirement System, either by affirmative choice during any transfer period or by operation of the compulsory participation provisions of s. 121.051(1), are limited to those rights that existed and were exercised in such system at the time participation in the system ceased. The rights of such member after transfer shall be subject to the provisions of the Florida Retirement System established by this chapter, and at retirement the member shall have his benefit calculated in accordance with s. 121.091. The provisions of this paragraph are declaratory of the legislative intent upon the original enactment of this chapter and are hereby deemed to have been in effect from such date.

History.—s. 1, ch. 70-112; s. 1, ch. 71-82; s. 1, ch. 71-353; s. 1, ch. 74-302; s. 1, ch. 75-160; s. 1, ch. 77-174; s. 25, ch. 79-164; s. 4, ch. 79-377.

121.021 Definitions.—The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(1) The masculine pronoun whenever used in this chapter shall include the feminine.

(2) "Existing systems" means the State and County Officers and Employees' Retirement System, the retirement system for school teachers, and the highway patrol pensions and pension trust fund, which are consolidated in s. 121.011(2). On and after July 1, 1972, the term "existing systems" shall also include the retirement system for justices and judges established by chapter 123 and as consolidated with the Florida Retirement System in s. 121.046.

(3) "System" means the general retirement system established by this chapter to be known and cited as the "Florida Retirement System."

(4) "Division" means the Division of Retirement of the Department of Administration.

(5) "Administrator" means the director of the Division of Retirement.

(6) "Actuary" or "state retirement actuary" means a fellow of the Society of Actuaries or a member of the American Academy of Actuaries or an organization of which one or more members is a fellow of the Society of Actuaries or a member of the American Academy of Actuaries or both.

(7) "City" means any municipality duly incorporated under the laws of the state, if such municipality is eligible to participate under chapter 210 (tax on cigarettes).

(8) "Unit" means any department, division, or subdivision of a city or any classification of city employees approved for social security coverage, as such, by the United States Department of Health, Education and Welfare, not based on age, sex, or other classification resulting in higher than average costs for retirement benefits.

(9) "Special district" means an autonomous district or public body created by or pursuant to an act of the Legislature.

(10) "Employer" means any agency, branch, department, institution, university, institution of higher education, or board of the state, or any county agency, branch, department, board, district school board, or special district of the state, or any city of the state which participates in the system for the benefit of certain of its employees.

(11) "Officer or employee" means any person receiving salary payments for work performed in a regularly established position and, if employed by a city or special district, employed in a covered group.

(12) "Member" means any officer or employee who is covered or who becomes covered under this system in accordance with this chapter. On and after December 1, 1970, all new members and those members transferring from existing systems shall be divided into two classes: "special risk members" (special risk officers or employees) and "regular members" (other than special risk officers or employees).

(13) "Disability in line of duty" means an injury or illness arising out of and in the actual performance of duty required by a member's employment during his regularly scheduled working hours or irregular working hours as required by the employer. The administrator may require such proof as he deems necessary as to the time, date, and cause of any such injury or illness, including evidence from any available witnesses. Workers' compensation records under the provisions of chapter 440 may also be used.

(14) "Death in line of duty" means death arising out of and in the actual performance of duty required by a member's employment during his regularly scheduled working hours or irregular working hours as required by the employer. The administrator may require such proof as he deems necessary as to the time, date, and cause of death, including evidence from any available witnesses. Workers' compensation records under the provisions of chapter 440 may also be used.

(15)(a) Until October 1, 1978, "special risk member" means any officer or employee whose application is approved by the administrator and who receives salary payments for work performed as a peace officer; law enforcement officer; policeman; highway patrolman; custodial employee at a correctional or detention facility; correctional agency employee whose duties and responsibilities involve direct contact with inmates, but excluding secretarial and clerical employees; fireman; or an employee in any other job in the field of law enforcement or fire protection if the duties of such person are certified as hazardous by his employer.

(b) Effective October 1, 1978, "special risk member" means a member of the Florida Retirement System who is designated as a special risk member by the division in accordance with s. 121.0515. Such member must be employed as a law enforcement officer, a firefighter, or a correctional officer and must meet certain other special criteria as set forth in s. 121.0515.

(16) "Date of participation" means the date on which the officer or employee becomes a member.

(17) "Creditable service" of any member means the sum of his past service, prior service, military service, workers' compensation credit, and future service allowed within the provisions of this chapter if all required contributions have been paid and all other requirements of this chapter have been met. However, in no case shall a member receive credit for more than a year's service during any 12-month period. Service as applied to a teacher or a nonacademic employee of a school board shall be based on contract years of employment or school term years of employment, as provided in chapters 122 and 238, rather than 12-month periods of employment.

(18) "Past service" of any member means the number of years and complete months and any fractional part of a month, recognized and credited by an employer and approved by the administrator, during which he was in the active employ of an employer prior to his date of participation.

(19) "Prior service" under this chapter means:

(a) Service for which the member had credit under one of the existing systems and received a refund of his contributions upon termination of employment. Prior service shall also include that service between December 1, 1970, and the date the system becomes noncontributory for which the member had credit under the Florida Retirement System and received a refund of his contributions upon termination of employment. After the date the Florida Retirement System becomes noncontributory, prior service shall also include that service for which the member had credit under the noncontributory provisions upon termination of employment.

(b) Service with an employer under another system prior to an employee's membership in the Florida Retirement System, during which service the employee was not a member of an existing retirement system and did not make any retirement contributions, provided such service would have otherwise been creditable under the Florida Retirement System.

(c) Service as described in paragraph (b) for which no contributions were made due to the fact that the employee made a written rejection of the Florida Retirement System. If such person withdraws his rejection he may purchase retirement credit for all his service during the period of rejection, provided such service would have otherwise been creditable under the Florida Retirement Sys-

tem. Any governmental entity may contribute up to 50 percent of the amount required to purchase any prior service under (b) and (c).

(20) "Military service" of any member means actual "wartime service" in the Armed Forces of the United States, as defined by the Veterans' Administration, or "wartime service" in the Allied Forces, not to exceed 4 years, if credit for such service has not been granted under any other federal or state system, and provided such service is not used in any other retirement system, as provided in s. 121.111.

(21) "Future service" of any member means service subsequent to date of the member's participation and may include authorized leaves of absence as provided in s. 121.121.

(22) "Compensation" means the monthly salary paid a member, including overtime payments and bonuses paid from a salary fund, as reported by the employer on the wage and tax statement (Internal Revenue Service form W-2) or any similar form. When a member's compensation is derived from fees set by statute, compensation shall be the total cash remuneration received from such fees. Under no circumstances shall compensation include fees paid professional persons for special or particular services.

(23) "Annual compensation" means the total compensation paid a member during a year. A "year" is 12 continuous months.

(24) "Average final compensation" means the average annual compensation of the 5 best years of the last 10 years of creditable service prior to retirement, termination, or death. However, if requested by the member, "average final compensation" shall mean the 5 best years of the member's total years of creditable service prior to retirement, termination, or death. For disability benefits, "average final compensation" means the average annual compensation of the total number of years of creditable service, not to exceed 5 if less than 10 years of creditable service have been completed. However, a member of the Legislature may use the average of the 5 years of highest compensation out of the last 10 years of creditable service prior to becoming a member of the Legislature. Each year used in the calculation of average final compensation shall commence on an annual calendar anniversary of the date of determination of such average final compensation. The payment for accumulated sick leave, whether paid as salary or otherwise, shall not be used in the calculation of the average final compensation.

(25) "Average monthly compensation" means one-twelfth of average final compensation.

(26) "Accumulated contributions" means the sum of:

(a) A member's contributions, without interest, subsequent to December 1, 1970; and

(b) The single sum amount the member would have received if he was covered by an existing system prior to December 1, 1970 and had terminated membership in such system on November 30, 1970, subject to reduction on account of benefit payments as provided under certain options.

(27) "Pension" means monthly payments to a retiree derived as provided in this chapter.

(28) "Beneficiary" means any person in receipt of a pension or other benefit as provided by this chapter.

(29) "Normal retirement date" means the first day of any month following the date a member attains one of the following statuses:

(a) Completes 10 or more years of creditable service and attains age 62;

(b) Completes 30 years of creditable service, which may include a maximum of 4 years of military service credit, so long as such credit is not claimed under any other system, regardless of age; or

(c) If a special risk member:

1. Completes 10 or more years of creditable service and attains age 55;

2. Completes 25 continuous years of creditable service, regardless of age; or

3. Completes 25 years of creditable service, which may include a maximum of 4 years of military service credit, and attains age 52.

"Normal retirement age" is attained on the "normal retirement date."

(30) "Early retirement date" means the first day of the month following the date a member completes 10 years of creditable service and elects to receive retirement benefits in accordance with this chapter. Such benefits shall be based on average monthly compensation and creditable service as of the member's early retirement date, and the benefit so computed shall be reduced by five-twelfths of 1 percent for each complete month by which the early retirement date precedes his normal retirement date as provided in s. 121.091(3).

(31) "Actuarial equivalent" means a benefit of equal value when computed at regular interest upon the basis of the mortality tables adopted by the administrator.

(32) "State agency" means the Division of Retirement of the Department of Administration within the provisions and contemplation of chapter 650.

(33) "Agreement" means that certain agreement entered into October 23, 1951 between the State of Florida and the Federal Security Administrator. (Chapter 650 implements the procedure to provide for social security coverage.)

(34) "Covered group" means the officers and employees of an employer who become members under this chapter. "Covered group" applies also when the employer is a special district or city for which coverage under this chapter is applied for by the employer and approved for social security coverage by the United States Secretary of Health, Education, and Welfare and approved by the administrator for membership under this chapter. Members of the [1]Municipal Firemen's Pension Trust Fund or the Municipal Police Officers' Retirement Trust Fund, established in accordance with chapters 175 and 185, respectively, shall be considered eligible for membership under this chapter only after holding a referendum and by affirmative majority vote electing coverage under this chapter.

(35) "Social security coverage" means old-age, survivors, disability, and health insurance, as provided by the Federal Social Security Act.

(36) "System Trust Fund" means the trust fund established in the State Treasury by this chapter for

the purpose of holding and investing the contributions paid by members and employers and paying the benefits to which members or their beneficiaries may become entitled. Other trust funds may be established in the State Treasury to administer the "System Trust Fund."

(37) "Social Security Trust Fund" means the trust fund established in the State Treasury by this chapter for the purpose of receiving the contributions paid by members and employers for payment to the Secretary of the Treasury. Other trust funds may be established to administer the "Social Security Trust Fund."

(38) "Continuous service" means creditable service as a member, beginning with the first day of employment with an employer covered under a state-administered retirement system consolidated herein and continuing for as long as the member remains in an employer-employee relationship with an employer covered under this chapter. An absence of 1 calendar month or more from an employer's payroll shall be considered a break in continuous service, except for periods of absence during which an employer-employee relationship continues to exist and such period of absence is creditable under this chapter or under one of the existing systems consolidated herein. A withdrawal of contributions will constitute a break in service. Continuous service shall also include past service purchased under this chapter, provided such service is continuous within this definition and the rules established by the administrator. The administrator may establish administrative rules and procedures for applying this definition to creditable service authorized under this chapter.

History.—s. 2, ch. 70-112; s. 1, ch. 72-122; s. 1, ch. 72-347; s. 2, ch. 72-388; s. 2, ch. 73-312; s. 1, ch. 73-326; s. 42, ch. 73-333; s. 2, ch. 74-302; s. 1, ch. 74-328; s. 3, ch. 75-248; s. 1, ch. 76-226; s. 1, ch. 77-174; ss. 1, 4, ch. 77-467; ss. 1, 6, ch. 77-469; s. 1, ch. 78-308; s. 56, ch. 79-40.

'**Note.**—The Municipal Firemen's Pension Trust Fund was renamed the Municipal Firefighters' Pension Trust Fund by s. 3, ch. 79-380.

cf.—s. 121.052 Membership class of certain elected state officers.

121.025 Administrator; powers and duties.—The director of the Division of Retirement shall be the administrator of the retirement and pension systems assigned or transferred to the Division of Retirement by law and, upon delegation of such authority by the Secretary of Administration, shall have the authority to sign the contracts necessary to carry out the duties and responsibilities assigned by law to the Division of Retirement.

History.—s. 1, ch. 75-248.

121.031 Administration of system; appropriation.—The Department of Administration, through the Division of Retirement, shall make such rules as are necessary for the effective and efficient administration of this system. The funds to pay the expenses for such administration are hereby appropriated from interest earned on investments made by the Board of Administration for the Retirement and Social Security Trust Funds and the assessments allowed under chapter 650. The administrator shall cause an actuarial study of the system to be made at least once every 5 years and report the results of such study to the next session of the Legislature following completion of the study.

History.—s. 3, ch. 70-112; s. 2, ch. 75-248.

121.045 Consolidation of liabilities and assets; existing systems.—

(1) Effective December 1, 1970, the existing systems and the Florida Retirement System shall be consolidated and the system shall assume:

(a) All liabilities related to the payment of benefits to members and their beneficiaries; and

(b) All obligations in regard to funding and administering benefits accrued for the benefit of members, beneficiaries, and survivors.

(2) The administrator or trustees, where there may be a conflict in law, of the respective trust fund or funds held under the existing systems shall, as of December 1, 1970, cause to be transferred to the system trust funds all assets, including moneys, securities, and other property accumulated to date, as well as all liabilities and obligations connected therewith. Upon such transfer of assets, liabilities, and obligations, the administrator shall become the trustee of any trust fund or funds transferred to this system.

History.—s. 4, ch. 70-112.

121.046 Merger of the Judicial Retirement System into the Florida Retirement System Act.—

(1) Any person who is elected or appointed to office in this state as Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge on or after July 1, 1972 shall not be eligible for membership, rights, or any privileges under chapter 123, the Judicial Retirement System, unless such justice or judge is already a member of said retirement system when elected or appointed to such office.

(2) Chapter 123, the Judicial Retirement System, is hereby merged as a separate instrument appended to chapter 121, the "Florida Retirement System Act," and the administration of said chapter 123, the Judicial Retirement System, shall be merged into the administration of the Florida Retirement System.

(3) The rights of members of the Judicial Retirement System established by chapter 123 shall not be impaired, nor shall their benefits be reduced, by virtue of any provision of this act or any provision of the Florida Retirement System Act, except that if a member of the Judicial Retirement System, otherwise eligible, elects, prior to June 30, 1973, to transfer to the Florida Retirement System, he shall be transferred to the Florida Retirement System and, from the date his transfer becomes effective, shall be subject to the provisions of the Florida Retirement System established by chapter 121, together with any relevant provisions of this act and shall have his benefits calculated accordingly.

(4) Any member of the Judicial Retirement System who elects to transfer to the Florida Retirement System, and every Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge who is elected or appointed to judicial office on or after July 1, 1972 who is not already a member of the Judicial Retirement System when elected or appointed to such office, shall be subject to the provisions of chap-

ter 121 and of this act which are not in conflict or inconsistent with the provisions of Art. V of the State Constitution, and any retired member on temporary judicial assignment shall continue to receive his retirement benefits and such other compensation as may be authorized by s. 25.073, and Art. V of the State Constitution.

(5)(a) Effective July 1, 1972, the Judicial Retirement System established by chapter 123 shall be merged into chapter 121, the Florida Retirement System Act, and the Florida Retirement System shall assume:

1. All liabilities related to the payment of benefits to members and their beneficiaries;

2. The administration and payment of benefits now accrued or which may accrue in the future for the benefit of members, beneficiaries and survivors; and

3. All obligations in regard to funding, including any actuarial deficit which may now or hereafter exist in the Judicial Retirement System.

(b) To effectuate the merger required by this section, the director of the Division of Retirement, as administrator of the retirement systems hereby merged, shall, as of July 1, 1972, cause to be transferred to the Florida Retirement System all assets, including money, securities, and other property held for the judicial retirement system, as well as all liabilities and obligations of said system. Upon such transfer of assets, liabilities, and obligations, the administrator shall become the trustee of any trust fund or funds transferred to the Florida Retirement System.

History.—ss. 1, 3, ch. 72-345.

121.051 Participation in the system.—

(1) COMPULSORY PARTICIPATION.—

(a) The provisions of this law shall be compulsory as to all officers and employees, except legislators who meet the requirements of s. 121.052(1)(c), who are employed on or after December 1, 1970, of an employer other than those referred to in paragraph (2)(b), and each officer or employee, as a condition of employment, shall become a member of the system as of his date of employment, except that a person who is retired from any state retirement system and is reemployed on or after December 1, 1970, shall not be permitted to renew his membership in any state retirement system except as provided in s. 121.091(4)(e), for a person who recovers from disability, and s. 121.091(9)(d), for a person who is elected to public office. Officers and employees of the University Athletic Association, Inc., a nonprofit association connected with the University of Florida, employed on and after July 1, 1979, shall not participate in any state-supported retirement system.

(b) After June 30, 1978, the compulsory participation provisions of paragraph (a) shall not be construed to require participation in the Florida Retirement System by a member of an existing system who is reemployed after terminating his employment, or who otherwise interrupts his employment under an existing system, provided he leaves his accumulated contributions on deposit under the existing system. Such member shall continue to have membership in the existing system upon reemployment or resumption of employment and shall not be permitted to become a member of the Florida Retirement System, except by transferring to the Florida Retirement System as authorized by paragraph (2)(a) or s. 121.052(1) or by being reemployed after terminating his employment and receiving a refund of his accumulated contributions made to the existing system.

(2) OPTIONAL PARTICIPATION.—

(a)1. Any officer or employee who is a member of an existing system, except any officer or employee of any nonprofit professional association or corporation, may elect, if eligible, to become a member of this system at any time between April 15, 1971, and June 1, 1971, inclusive, by notifying his employer in writing of his desire to transfer membership from the existing system to this system. Any officer or employee who was a member of an existing system on December 1, 1970, and who did not elect to become a member of this system shall continue to be covered under the existing system subject to the provisions of s. 121.045. A person who has retired under any state retirement system shall not be eligible to transfer to the Florida Retirement System created by this chapter subsequent to such retirement. Any officer or employee who, prior to July 1, 1947, filed a written rejection of membership in a state retirement system and who continues employment without participating in the Florida Retirement System may withdraw his rejection in writing and, if otherwise eligible, participate in the Florida Retirement System and purchase prior service in accordance with this chapter. Any former member of an existing system who was permitted to transfer to the Florida Retirement System while employed by the University Athletic Association, Inc., a nonprofit association connected with the University of Florida, during this or subsequent transfer periods, contrary to the provisions of this paragraph, is hereby confirmed as a member of the Florida Retirement System, the provisions of this paragraph to the contrary notwithstanding.

2. Any member transferring from the existing system under chapter 238 shall retain his rights to survivor benefits under said chapter through November 30, 1975, or until fully insured for disability benefits under social security, whichever is the earliest date, and thereafter no such rights shall exist.

3. Any officer or employee who is a member of an existing system on April 15, 1972, and who was eligible to transfer to this system under the provisions of subparagraph 1., but who elected to remain in the existing system, may elect, if eligible under the Social Security Act, 42 U.S.C. s. 418(d)(6)(F), to become a member of this system at any time between April 15, 1972, and June 30, 1972, inclusive, by notifying his employer in writing of his desire to transfer membership from an existing system to this system. Such transfer shall be subject to the following conditions:

a. All persons electing to transfer to the Florida Retirement System under this subparagraph shall be transferred on July 1, 1972, and shall thereafter be subject to the provisions of the Florida Retirement System retroactively to November 30, 1970, and at retirement have their benefits calculated in accordance with the provisions of s. 121.091.

b. Social security coverage incidental to such

elective membership in the Florida Retirement System shall be effective November 30, 1970, and all amounts required from a member for retroactive social security coverage shall, at the time such election is made, be deducted from the individual account of the member, and the difference between the amount remaining in the individual account of such member and the total amount which such member would have contributed had he become a member of the Florida Retirement System on November 30, 1970, shall be paid into the system trust fund and added to his individual account prior to July 1, 1975, or by his date of retirement, if earlier. Interest at the rate of 8 percent per annum, compounded annually until paid, shall be charged on any balance remaining unpaid on said date.

c. There is appropriated out of the system trust fund into the Social Security Contribution Trust Fund the amount required by federal laws and regulations to be contributed with respect to social security coverage for the years after November 30, 1970, of the members of an existing system who transfer to the Florida Retirement System in accordance with this subparagraph and who qualify for retroactive social security coverage. The amount paid from this appropriation with respect to the employees of any employer shall be charged to the employing agency. There shall be credited against this charge the difference between the matching contributions actually made for the affected employees from November 30, 1970, to June 30, 1972, and the amount of matching contributions that would have been required under the Florida Retirement System.

d. The net amounts charged the employing agencies for employees transferring to the Florida Retirement System under this subparagraph shall be paid to the system trust fund prior to July 1, 1975. Interest at the rate of 8 percent per annum, compounded annually until paid, shall be charged on any balance remaining unpaid on said date.

e. The administrator shall request such modification of the state's agreement with the Social Security Administration, or any referendum required under the Social Security Act governing social security coverage, as may be required to implement the provisions of this law. Retroactive social security coverage for service with an employer prior to November 30, 1970, shall not be provided for any member who was not covered under the agreement as of November 30, 1970.

4. Any officer or employee who was a member of an existing system on December 1, 1970, and who is still a member of an existing system, except any officer or employee of any nonprofit professional association or corporation, may elect, if eligible, to become a member of this system at any time between September 1, 1974, and November 30, 1974, inclusive, by notifying his employer in writing of his desire to transfer membership from the existing system to this system. This decision to transfer or not to transfer shall become irrevocable on November 30, 1974. All members electing to transfer during the transfer period shall become members of the Florida Retirement System on January 1, 1975, and shall be subject to the provisions of the Florida Retirement System on and after that date. Any officer or employee who was a member of an existing system on December 1, 1970, and who does not elect to become a member of this system shall continue to be covered under the existing system, subject to the provisions of s. 121.045. Any member transferring from the Teachers' Retirement System of Florida under chapter 238 to the Florida Retirement System on January 1, 1975, shall retain his rights to survivor benefits under chapter 238 from January 1, 1975, through December 31, 1979, or until fully insured for disability benefits under the Social Security Act, whichever is the earliest date, and thereafter no such rights shall exist.

5.a. Any officer or employee who was a member of an existing system on December 1, 1970, and who is still a member of an existing system, except any officer or employee of any nonprofit professional association or corporation, may elect, if eligible, to become a member of this system at any time between September 1, 1978, and November 30, 1978, inclusive, by notifying his employer in writing of his desire to transfer membership from the existing system to this system. This decision to transfer or not to transfer shall become irrevocable on November 30, 1978. All members electing to transfer during the transfer period shall become members of the Florida Retirement System on January 1, 1979, and shall be subject to the provisions of the Florida Retirement System on and after that date. Any officer or employee who was a member of an existing system on December 1, 1970, and who does not elect to become a member of this system shall continue to be covered under the existing system, subject to the provisions of s. 121.045. Any member transferring from the Teachers' Retirement System under chapter 238 to the Florida Retirement System on January 1, 1979, shall retain his rights to survivor benefits under chapter 238 from January 1, 1979, through December 31, 1983, or until fully insured for disability benefits under the federal Social Security Act, whichever is the earliest date, and thereafter no such rights shall exist.

b. Any deficit, as determined by the state actuary, accruing to the Survivors' Benefit Trust Fund of the Teachers' Retirement System and resulting from the passage of chapter 78-308, Laws of Florida, shall become an obligation of the Florida Retirement Trust Fund.

(b)1. The governing body of any city or special district in the state may elect to participate in the system upon proper application to the administrator and may cover all or any of its units as approved by the Secretary of Health, Education and Welfare and the administrator.

2. Any city or special district that has an existing retirement system covering the employees in the units which are to be brought under the Florida Retirement System may participate only after holding a referendum in which all employees in the affected units have the right to participate. Only those employees electing coverage under the Florida Retirement System by affirmative vote in said referendum shall be eligible for coverage under this chapter, and those not participating or electing not to be covered by the Florida Retirement System shall remain in their present systems and shall not be eligible for

coverage under this chapter. After said referendum is held, all future employees shall be compulsory members of the Florida Retirement System.

3. The governing body of any city or special district complying with subparagraph 1. may elect to provide, or not provide, benefits based on past service of officers and employees as described in s. 121.081(1). However, if such employer elects to provide past service benefits, such benefits shall be provided for all officers and employees of its covered group.

4. Once this election is made and approved it may not be revoked, and all present officers and employees electing coverage under this chapter and all future officers and employees shall be compulsory members of the Florida Retirement System.

(3) SOCIAL SECURITY COVERAGE.—Social security coverage shall be provided for all officers and employees who become members under the provisions of subsection (1) or (2). Any modification of the present agreement with the Social Security Administration, or referendum required under the Social Security Act, for the purpose of providing social security coverage for any member shall be requested by the state agency in compliance with the applicable provisions of the Social Security Act governing such coverage. However, retroactive social security coverage for service prior to December 1, 1970, with the employer shall not be provided for any member who was not covered under the agreement as of November 30, 1970.

(4) INFORMATION REQUIRED.—The employer shall furnish the administrator with such information as he may request for the proper enrollment of officers and employees in the system.

(5) RIGHTS LIMITED.—

(a) Participation in the system shall not give any member the right to be retained in the employ of the employer or, upon dismissal, to have any right or interest in the fund other than herein provided.

(b) No member who has caused a shortage in a public account, when such shortage is certified by the auditor general or a certified public accountant, may retire or receive any benefits under this chapter so long as such shortage exists.

(6) SEASONAL STATE EMPLOYMENT; BLIND VENDING FACILITY OPERATORS.—

(a) Seasonal state employment shall be included under this chapter, and the time limit and procedure for claiming same as set forth in s. 122.07 shall continue under this chapter for those members transferring to this system and for all new members.

(b)1. All blind or partially sighted persons who are now employed or licensed by the Division of Blind Services as vending facility operators, or who may hereafter be so licensed or employed, are hereby declared to be state employees within the meaning of this chapter, and all vending facility operators licensed and employed after December 1, 1970, shall be compulsory members in compliance with this chapter.

2. Blindness shall not be deemed a retirement disability within the provisions of this chapter for such members as are contemplated by this paragraph.

(7) JOINT REPRESENTATIVES; FEDERAL CIVIL SERVICE.—All state and county cooperative extension personnel holding appointments by the United States Department of Agriculture for extension work in agriculture and home economics in the state shall be joint representatives of the University of Florida and the United States Department of Agriculture unless otherwise expressly provided in the project agreement. Such personnel shall be deemed governed by the requirements of Federal Civil Service, as written in the agreement between the University of Florida and the United States Department of Agriculture. Such personnel so governed by the requirements of Federal Civil Service shall be prohibited from participating in any retirement or social security program or act administered by the state except those members covered under s. 238.13, as of November 30, 1970.

History.—s. 5, ch. 70-112; s. 1, ch. 72-182; s. 1, ch. 72-340; s. 1, ch. 72-344; s. 1, ch. 73-268; s. 3, ch. 74-302; s. 1, ch. 75-152; s. 1, ch. 77-174; s. 21, ch. 77-259; s. 2, ch. 77-469; s. 3, ch. 78-308; s. 1, ch. 79-375; s. 1, ch. 79-377.

121.0515 Special risk membership; legislative intent; criteria; designation and removal of special risk classification.—

(1) LEGISLATIVE INTENT.—In creating the special risk class of membership within the Florida Retirement System, it is the intent and purpose of the Legislature to recognize that persons employed in certain categories of law enforcement, firefighting, and criminal detention positions are required as one of the essential functions of their positions to perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity, and that such persons, because of diminishing physical and mental faculties, may find that they are not able, without risk to the health and safety of themselves, the public, or their coworkers, to continue performing such duties and thus enjoy the full career and retirement benefits enjoyed by persons employed in other positions and that, if they find it necessary, due to the physical and mental limitations of their age, to retire at an earlier age and usually with less service, they will suffer an economic deprivation therefrom. Therefore, as a means of recognizing the peculiar and special problems of this class of employees, it is the intent and purpose of the Legislature to establish a class of retirement membership that awards more retirement credit per year of service than that awarded to other employees; however, nothing contained herein shall require ineligibility for special risk membership upon reaching age 55.

(2) CRITERIA.—A member, to be designated as a special risk member, must meet the following criteria:

(a) The member must be employed as a law enforcement officer and be certified in compliance with s. 943.14, or be on temporary waiver as provided by s. 943.14 until certified; however, sheriffs and elected police chiefs shall be excluded from meeting the certification requirements of this paragraph. In addition, the member's duties and responsibilities must include the pursuit, apprehension, and arrest of law violators or suspected law violators, or the member must be the supervisor or command officer of a member or members who have such responsibilities; provided, however, administrative support per-

sonnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel, shall not be included;

(b) The member must be employed as a firefighter and be certified, or required to be certified, in compliance with s. 633.35 and be employed solely within the fire department of the employer or agency of state government. In addition, the member's duties and responsibilities must include on-the-scene fighting of fires or direct supervision of fire fighting units, or the member must be the supervisor or command officer of a member or members who have such responsibilities; provided, however, administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel, shall not be included; or

(c) The member must be employed as a correctional officer and be certified in compliance with s. 944.585. In addition, the member's primary duties and responsibilities must be the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, or while on work detail outside the facility, or while being transported; provided, however, administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel, shall not be included; however, superintendents and assistant superintendents shall participate in the special risk class.

(3) PROCEDURE FOR DESIGNATING.—

(a) Any member of the Florida Retirement System employed by a county, city, or special district who feels that he meets the criteria set forth in this section for membership in the special risk class may request that his employer submit an application to the division requesting that the division designate him as a special risk member. If the employer agrees that the member meets the requirements for special risk membership, he shall submit an application to the division in behalf of the employee containing a certification that the member meets the criteria for special risk membership set forth in this section and such other supporting documentation as may be required by administrative rule. The division shall, within 90 days, either designate or refuse to designate the member as a special risk member. If the employer declines to submit the member's application to the division or if the division does not designate the member as a special risk member, the member or the employer may appeal to the State Retirement Commission, as provided in s. 121.23, for designation as a special risk member.

(b)1. Applying the criteria set forth in this section, the Department of Administration shall specify which current and newly created classes of positions under the uniform classification plan established pursuant to chapter 110 entitle the incumbents of positions in those classes to membership in the special risk class. Only employees employed in the classes so specified shall be special risk members.

2. When a class is not specified by the department as provided in subparagraph 1., the employing agency may petition the State Retirement Commission for approval in accordance with s. 121.23.

(4) REMOVAL OF SPECIAL RISK MEMBERSHIP.—Any member who is a special risk member on October 1, 1978, and who fails to meet the criteria for special risk membership established by this section shall have his special risk designation removed and thereafter shall be a regular member and shall earn only regular membership credit. The division shall have the authority to review the special risk designation of members to determine whether or not those members continue to meet the criteria for special risk membership.

History.—s. 2, ch. 78-308.

121.052 Membership class of certain elected state officers.—

(1)(a) There is hereby established a separate class of members within the Florida Retirement System, established by this chapter, to be known and cited as "Elected State Officers' Class."

(b) Participation in the Elected State Officers' Class shall be compulsory for any Governor, Lieutenant Governor, cabinet officer, supreme court justice, district court of appeal judge, circuit judge, state attorney, [1]or public service commissioner assuming office, either by election or appointment, on or after July 1, 1972, or for any county court judge assuming office, either by election or appointment, on or after October 1, 1974, who is not already a member of any existing system, the Judicial Retirement System, or the regular or special risk classes of the Florida Retirement System when elected or appointed to such office. Effective July 1, 1979, no public service commissioner shall be eligible for membership in the Elected State Officers' Class, and on that date any public service commissioner who is a member of the Elected State Officers' Class shall be removed from that class, shall become a member of the regular class, and shall thereafter be subject to the benefits and provisions of the regular class. Any public service commissioner who is removed from the Elected State Officers' Class on July 1, 1979, shall retain any retirement credit earned in the Elected State Officers' Class as of that date.

(c)1. Any legislator elected to office after July 1, 1980, who is a participant, or is intending to participate, in any plan qualified under Subchapter D, Chapter 1, Subtitle A of the Internal Revenue Code of 1954, as amended and in effect on January 1, 1979, shall have the option of participating in the Elected State Officers' Class of the Florida Retirement System or not participating in the Florida Retirement System in any manner. Any legislator so elected shall have a period of 6 months, commencing with the date of election, to notify the administrator, in writing, of his desire to withdraw from the Elected State Officers' Class; unless and until such time as said legislator makes timely withdrawal herein, he shall be a participant in the Elected State Officers' Class.

2. Any legislator elected to office on or before July 1, 1980, who is a member of the Florida Retirement System shall remain in the system unless such legislator is a participant, or is intending to participate, in any plan qualified under Subchapter D, Chapter 1, Subtitle A of the Internal Revenue Code of 1954, as amended and in effect on January 1, 1979,

and unless, prior to January 1, 1981, such legislator indicates to the administrator his desire to withdraw from participation in any class of the Florida Retirement System.

3. Upon receipt of a request from a legislator to withdraw from participation or upon the election of the legislator to withdraw from the Florida Retirement System pursuant to subparagraph 1., the administrator shall refund all moneys contributed by the legislator to the system during his period of participation in the system, unless the legislator has a vested right under the Florida Retirement System, in which case the member shall not receive a refund of contributions.

(d) On and after July 1, 1972, participation in the Elected State Officers' Class shall be optional within the time provided herein for any Governor, Lieutenant Governor, cabinet officer, legislator, supreme court justice, district court of appeal judge, circuit judge, state attorney, [1]or public service commissioner who is already a member of any existing system, the Judicial Retirement System, or the regular or special risk classes of the Florida Retirement System when elected or appointed to such office, except that, effective July 1, 1979, no public service commissioner shall be eligible for membership in The Elected State Officers' Class. Participation in the Elected State Officers' Class shall be optional within the time provided herein for any county court judge who assumed office prior to October 1, 1974. After July 1, 1980, participation in the Elected State Officers' Class shall be optional for legislators within the time provided in paragraph (c), provided such legislators meet the requirements in paragraph (c). Any such officer may, upon application to the administrator of the Florida Retirement System within 1 year from the date he first becomes eligible to be a member of the Elected State Officers' Class by virtue of the office he holds, except for legislators, who shall apply to the administrator within the time period provided in paragraph (c), transfer to and participate in the Elected State Officers' Class, subject to the following provisions:

1. He shall transfer and carry with him such retirement credit as he has accumulated in the retirement system or class within the Florida Retirement System from which he transfers; and

2. He may purchase additional retirement credit in the Elected State Officers' Class for all creditable service as an officer within the purview of this class, which service he has accumulated in the retirement system or class within the Florida Retirement System from which he transfers, upon the payment into the system trust fund of a sum equal to the difference between 8 percent of the gross salary he received for the period of his tenure in the office, or 8 percent of $1,000 per month, whichever is greater, for which he seeks additional retirement credit and the actual amount of his retirement contributions for such period, based on such salary, plus interest thereon at the rate of 4 percent per annum compounded annually from the date of such service until July 1, 1975, and 6.5 percent per annum thereafter until date of payment. An amount equal to the member's contributions and interest payments shall be paid to the system trust fund from the General Revenue Fund. A county court judge or any other member of the Elected State Officers' Class may purchase additional retirement credit for service prior to January 1, 1973, as a county judge, judge of a court of record, judge of a criminal or civil court of record, or judge of any metropolitan court established pursuant to s. 6, Art. VIII of the State Constitution, provided an amount equal to the member's contributions and interest payments shall be paid to the system trust fund by the county or by the individual. Service as a county court judge from January 1, 1973, to October 1, 1974, may be purchased as additional retirement credit in the Elected State Officers' Class by all members of this class having such service, in the same manner as other additional retirement credit is purchased in this class.

(e) Any officer who is eligible to be a member of the Elected State Officers' Class, but for whom the time period provided in paragraph (d) has expired without his having transferred to the Elected State Officers' Class, shall be permitted to elect, in writing, from October 1, 1978, through December 31, 1978, to transfer to, and become a member of, this class on January 1, 1979, and be subject to the benefits and provisions of the Elected State Officers' Class on and after that date. After December 31, 1978, no such election may be made.

(f) Any Governor, Lieutenant Governor, cabinet officer, supreme court justice, district court of appeal judge, circuit judge, county court judge, state attorney, public service commissioner, or public defender who is eligible to be a member of the Elected State Officers' Class, but for whom the time period provided in paragraph (d) has expired without his having transferred to the Elected State Officers' Class, shall be permitted to elect, in writing, from July 1, 1977, through September 30, 1977, to transfer under the provisions of paragraph (d) to the Elected State Officers' Class on October 1, 1977, and be subject to the benefits and provisions of such class on and after that date.

(2) Members of the Elected State Officers' Class shall be subject to social security coverage as provided by the Federal Social Security Act. The administrator shall make such modification to the agreement between the state and the Federal Social Security Administrator, made pursuant to the provisions of chapter 650, hold any referendum, or take any other action as may be required to provide social security coverage for said members.

(3)(a) The definitions set forth in s. 121.021 and all other provisions of chapter 121 shall apply to the Elected State Officers' Class, except when the definitions and provisions are in conflict with, or are superseded or modified by, the provisions of this section.

(b) A member of the Elected State Officers' Class shall have the same normal retirement date as defined in s. 121.021(29) for a regular member of the Florida Retirement System, except that only 8 years of creditable service in this class shall be needed to attain the normal retirement date specified in s. 121.021(29)(a). Any public service commissioner who is removed from the Elected State Officers' Class on July 1, 1979, after attaining at least 8 years of creditable service in that class shall be considered to have

reached normal retirement age upon attaining the age required in s. 121.021(29)(a).

(c) The average final compensation of a member of the Elected State Officers' Class shall be as defined in s. 121.021(24) or the average annual compensation of the 5 best of the last 8 years of service if the member has less than 10 years of creditable service at the time of retirement, termination, or death.

(4)(a) From and after October 1, 1978, and except as provided in paragraph (b), the employer paying the salary of a member of the Elected State Officers' Class shall withhold 8 percent of his gross salary, which shall constitute the contribution of said member with respect to retirement and other benefits payable to members of this class, and one-half of the entire contribution of the member required for social security coverage. The employer withholding such contributions shall set aside the funds necessary to pay the matching contributions required pursuant to s. 121.061 and shall contribute an amount equal to 10.57 percent of such member's gross compensation and one-half of the entire contribution with respect to the member's social security coverage.

(b) From and after October 1, 1978, the employer paying the salary of any member of the Elected State Officers' Class who is a Governor, Lieutenant Governor, cabinet officer, supreme court justice, district court of appeal judge, circuit judge, county court judge, state attorney, public service commissioner, or [1]public defender shall contribute an amount equal to 16.78 percent of such member's gross compensation and shall withhold 4 percent of such member's gross compensation, the sum of which shall constitute the entire contribution with respect to such member. The employer shall, however, withhold one-half of the entire contribution of the member required for social security coverage. Effective July 1, 1979, any member of the Elected State Officers' Class who is a public service commissioner shall be removed from this class, shall become a regular member on that date, and shall be subject to the contribution provisions of s. 121.071 which pertain to regular members.

(c) From and after October 1, 1979, the employer paying the salary of any member of the Elected State Officers' Class who is a supreme court justice, district court of appeal judge, circuit judge, county court judge, or state attorney shall contribute an amount equal to 20.78 percent of such member's gross compensation, which shall constitute the entire contribution with respect to such member. The employer shall, however, withhold one-half of the entire contribution of the member required for social security coverage.

(d) Elected State Officers' Class members' contributions and matching contributions received from state employers shall be deposited by the administrator in the system trust fund and Social Security Trust Fund of the Florida Retirement System.

(5)(a) A member of the Elected State Officers' Class who is a supreme court justice, district court of appeal judge, circuit judge, or county court judge shall receive retirement credit of 3⅓ percent of average final compensation, and all other members shall receive retirement credit of 3 percent of average final compensation, for each year of creditable service in such class.

(b) Upon attaining his normal retirement date, a member of the Elected State Officers' Class, upon application to the administrator, shall receive a monthly benefit which shall commence on the last day of the month of retirement and be payable on the last day of each month thereafter during his lifetime. The amount of such monthly benefit shall be the total percentage of retirement credit received by the member multiplied by his average monthly compensation, but in no event shall such benefit exceed the member's average final compensation. The total percentage of retirement credit received by a member shall be the sum of the retirement credit he earns as a member of the Elected State Officers' Class and in each category of employment together with any retirement credit he acquires for wartime military service.

(c) The benefit provisions of subsections (2), (3), (4), (5), (6), (7), (8), (9), and (11) of s. 121.091, as they relate respectively to benefits payable for dual normal retirement ages, early retirement, disability retirement, termination of employment, optional forms of retirement, death benefits, designations of beneficiaries, employment after retirement, and method of computing actuarial equivalent, shall also apply to members of the Elected State Officers' Class, except that only 8 years of creditable service in this class shall be needed to attain the benefits specified in subsections (3), (5), and (7) of such section. The provisions of all subsections referred to in this paragraph shall be construed in such manner to make them compatible with the provisions of this act.

(d) The provisions of ss. 121.101 and 121.111, respectively, relating to the cost-of-living adjustment of retirement benefits and retirement credit for wartime military service, shall apply to members of the Elected State Officers' Class. Creditable service for actual wartime service, as authorized by s. 121.111(2), not exceeding 4 years, shall be acquired and paid for as provided in said subsection. Upon payment by the member of 4 percent of gross salary plus accrued interest, retirement credit shall be granted at the rate of 1.6 percent for each year of creditable service acquired under said subsection.

(6)(a) Any member of the Elected State Officers' Class who ceases to fill an office covered by this class and who is employed in a position covered by the Florida Retirement System may receive credit in the Florida Retirement System for any retirement credit which he earns under this class, and such credit shall be granted at the rate of 3⅓ percent for service as a supreme court justice, district court of appeal judge, circuit judge, or county court judge, or at the rate of 3 percent credit if his service was in any other office, for each year of creditable service in such class.

(b) Any member of the Elected State Officers' Class who leaves office or otherwise terminates his membership in the retirement system for any reason other than death or retirement and who does not come under the provisions of paragraph (a) shall be subject to the termination benefit provisions of s. 121.091(5).

(7) The administrator shall make such rules and regulations as are necessary for the effective and efficient administration of the Elected State Officers' Class.

(8) There is hereby annually appropriated from the General Revenue Fund and the system trust fund sufficient amounts to make such payments as are provided by this section.

History.—ss. 2, 4, ch. 72-345; s. 1, ch. 72-359; s. 1, ch. 74-215; s. 1, ch. 75-296; s. 1, ch. 76-240; s. 1, ch. 77-464; s. 1, ch. 77-285; s. 4, ch. 78-308; s. 26, ch. 79-164; s. 2, ch. 79-375; s. 2, ch. 79-377.

[1]Note.—The deletion by chapter 79-377 of the words, "public defender," from paragraphs (1)(a) and (b), thereby eliminating the provisions for participation by public defenders in the Elected State Officers' Class under this section, may have been inadvertent, for the words, "public defender," were not also deleted from paragraph (4)(b), which continues to provide for contributions to be made by public defenders and their employers for such participation.

121.053 Optional participation in the Elected State Officers' Class for retired members of any existing system.—

(1) Any member who retires under any existing system as defined in s. 121.021(2), and who receives a benefit thereof, and who serves in an office covered by the Elected State Officers' Class for a period of at least 8 years, shall be entitled to receive an additional retirement benefit, any law to the contrary notwithstanding, under the Elected State Officers' Class of the Florida Retirement System, as follows:

(a) Such member shall notify the administrator of his intent to purchase 8 or more years of creditable service under the Elected State Officers' Class, s. 121.052, and shall pay 8 percent of all salary received in the period being claimed, plus 4 percent interest compounded annually from first year of service claimed until July 1, 1975, and 6.5 percent interest compounded annually thereafter, until full payment is made to the Florida Retirement Trust Fund; however, such member may purchase retirement credit under the Elected State Officers' Class only for such service as an Elected State Officer.

(b) The above amount shall be matched by the employer and paid into the Florida Retirement Trust Fund.

(2) Upon attaining his normal retirement date and payment of the amount specified in paragraphs (a) and (b), and upon application to the administrator of his intent to retire, the member shall receive a monthly benefit under this section, in addition to any benefits already being received, which shall commence on the last day of the month of retirement and be payable on the last day of the month thereafter during his lifetime. The amount of such monthly benefit shall be the total percentage of retirement credit purchased under this section multiplied by the member's average monthly compensation as an elected state officer, adjusted according to the option selected at retirement under s. 121.091(6).

History.—s. 4, ch. 77-469.

121.054 Retirees precluded from joining other systems.—Any member who retires under chapter 121 shall be prohibited from joining any other state or local government supported retirement system in Florida. No city, county, subdivision, or taxing district of the State of Florida can require as a condition of employment that the employee join or participate in any pension or retirement plan or program if said employee is eligible for, or is receiving, benefits under chapter 121.

History.—s. 3, ch. 77-467.

121.061 Funding.—

(1) Commencing December 1, 1970, all employers withholding contributions required of members under this chapter for purposes of providing retirement benefits and social security benefits to or on behalf of such members shall budget, set aside, and pay over to the administrator, for deposit into the proper retirement and social security trust funds, matching payments for retirement and social security contributions as required by this chapter.

(2)(a) Should any employer other than a state employer fail to make the retirement and social security contributions, both member and employer contributions, required by this chapter, then, upon request by the administrator, the Department of Revenue or the Department of Banking and Finance, as the case may be, shall deduct the amount owed by the employer from any funds to be distributed by it to the county, city, special district, or consolidated form of government. The amounts so deducted shall be transferred to the administrator for further distribution to the trust funds in accordance with this chapter.

(b) Should any employer for whom the city or county tax collector collects taxes, fail to make the retirement and social security contributions required by this chapter, the tax collector, at the request of the administrator and upon receipt of a certificate from the administrator showing the amount owed by the employer, shall deduct the amount so certified from any taxes collected for the employer and remit the amount to the administrator for further distribution to the trust funds in accordance with this chapter.

(c) The governing body of each county, city, special district, or consolidated form of government participating under this chapter or the administrator, acting individually or jointly, is hereby authorized to file and maintain an action in the courts of the state to require any employer to remit any retirement or social security member contributions or employer matching payments due the retirement or social security trust funds under the provisions of this chapter.

(d) Should the income of any constitutional fee officer, in any year, be insufficient to make the matching payments required by this chapter, the board of county commissioners shall provide such fee officer sufficient funds to make these required payments when due.

(3) The appropriations provided each state agency, beginning with the 1970-1971 fiscal year and each fiscal year thereafter, shall include sufficient amounts to pay the matching contributions for social security and retirement as required by this chapter. No state agency, whether its funds are provided by state appropriations or otherwise, shall employ any person or maintain any person on its payroll unless it has allotted for such person sufficient funds to meet these required payments. Should a state agency fail to make such payments, the administrator

shall report same to the Governor and certify the amount due the system trust funds to the Executive Office of the Governor. If arrangements cannot be made for the state agency to pay said amount due, then the amount due is hereby appropriated and shall be paid from the General Revenue Fund of the state.

History.—s. 6, ch. 70-112; s. 1, ch. 70-439; s. 2, ch. 72-295; s. 88, ch. 79-190.
cf.—s. 121.052 Membership class of certain elected state officers.

121.071 Contributions.—Contributions to the system shall be made as follows:

(1) Until January 1, 1975, regular members shall contribute each pay period at the rate of 4 percent of gross compensation and special risk members shall contribute each pay period at the rate of 8 percent of gross compensation. Effective January 1, 1975, regular members and special risk members shall make no contribution to the system.

(2) Until January 1, 1975, each employer shall contribute an amount equal to the total of its member contributions, made under subsection (1), each pay period. Effective January 1, 1975, and until October 1, 1978, each employer shall contribute 9 percent of gross compensation each pay period for each of its regular members, and 13 percent of gross compensation each pay period for each of its special risk members. Effective October 1, 1978, each employer shall contribute 9.10 percent of gross compensation each pay period for each of its regular members, and 13.95 percent of gross compensation each pay period for each of its special risk members.

(3)(a) Effective January 1, 1975, each employer shall accomplish the increased contribution required by subsection (2) by a procedure in which no employee's gross salary shall be reduced.

(b) Upon termination of employment for any reason other than retirement, a member shall be entitled to a full refund of the contributions he has made prior or subsequent to his participation in the noncontributory plan, subject to the restrictions otherwise provided in this chapter.

(4) Contributions for social security by each member and each employer, in the amount required for social security coverage as now or hereafter provided by the Federal Social Security Act, shall be in addition to contributions specified in subsections (2) and (3).

(5) Contributions made in accordance with subsections (2), (3), and (4) shall be paid by the employer into the system trust funds in accordance with rules promulgated by the administrator pursuant to chapter 120. Such contributions are due and payable no later than the 25th day of the month immediately following the month during which the payroll period ended. The division may by rule establish a different due date, which shall supersede the date specified herein; however, said date shall not be established earlier than the 20th day of the month immediately following the month during which the payroll period ended. Contributions received in the offices of the Division of Retirement of the Department of Administration after said date shall be considered delinquent, and, in the case of retirement contributions due under subsections (2) and (3), each employer shall be assessed a delinquent fee of 0.5 percent of the contributions due for each calendar month or part thereof that said contributions are delinquent. Delinquent social security contributions shall be assessed a delinquent fee as authorized by s. 650.05(4).

History.—s. 7, ch. 70-112; ss. 4, 13, ch. 74-302; s. 1, ch. 74-376; s. 2, ch. 77-467; s. 5, ch. 78-308.
cf.—s. 121.052 Membership class of certain elected state officers.

121.081 Past service; prior service; contributions.—Conditions under which past service or prior service may be claimed and credited are:

(1)(a) Past service, as defined in s. 121.021(18), may be claimed as creditable service by officers or employees of a city or special district that become a covered group under this system. The governing body of a covered group in compliance with s. 121.051(2)(b) may elect to provide benefits with respect to past service earned prior to January 1, 1975, in accordance with this chapter, and the cost for said past service shall be established by applying the following formula: The member contribution for both regular and special risk members shall be 4 percent of the gross annual salary for each year of past service claimed, plus 4 percent employer matching contribution, plus 4 percent interest thereon compounded annually, figured on each year of past service, with interest compounded from date of annual salary earned until July 1, 1975, and 6.5 percent interest compounded annually thereafter until date of payment. Once the total cost for a member has been figured to date, then after July 1, 1975, 6.5 percent compounded interest shall be added each June 30 thereafter on any unpaid balance until the cost of said past service liability is paid in full. The following formula shall be used in calculating past service earned prior to January 1, 1975: (Annual gross salary multiplied by 8 percent) multiplied by the 4 or 6.5 percent compound interest table factor, as may be applicable. The resulting product equals cost to date for each particular year of past service.

(b) Past service earned after January 1, 1975, may be claimed by officers or employees of a city or special district that become a covered group under this system. The governing body of a covered group may elect to provide benefits with respect to past service earned after January 1, 1975, in accordance with this chapter, and the cost for said past service shall be established by applying the following formula: The employer shall contribute 9 percent of the employee's gross salary for each year of past service claimed, plus 6.5 percent interest thereon, compounded annually, figured on each year of past service, with interest compounded from date of annual salary earned until date of payment.

(c) Should the employer not elect to provide past service for the member, then the member may claim and pay same, based on paragraphs (a) and (b).

(d) Employment prior to January 1, 1968 in the Cuban Refugee Assistance Program administered by the Florida State Department of Public Welfare or the Florida State Board of Health shall be deemed to be included in "past service" as defined in s. 121.021(18), for the purposes of the Florida Retirement System, any other provisions of law notwithstanding and regardless of the fund from which such employment was paid. If credit for such service has not been granted under any other state or federal system, any member of the Florida Retirement Sys-

tem or any system consolidated therein shall be entitled to receive past service credit for his period of employment in the Cuban Refugee Assistance Program prior to January 1, 1968, in the manner provided in this subsection. However, in no event will eligibility for "past service" be established unless required contributions are paid into the Florida Retirement System for such period of "past service" and such contributions are not paid from general revenue funds of the state.

(e) Past service, as defined in s. 121.021(18), may be claimed as creditable service by a member of the Florida Retirement System who formerly was an officer or employee of a city or special district, notwithstanding the status or form of the retirement system, if any, of said city or special district and irrespective of whether officers or employees of said city or special district now or hereafter become a covered group under the Florida Retirement System. Such member may claim creditable service and be entitled to the benefits accruing to the regular class of members as provided for the past service claimed under this paragraph by paying into the retirement trust fund an amount equal to the total actuarial cost of providing the additional benefit resulting from such past service credit, discounted by the applicable actuarial factors to date of retirement.

(f) Whenever any employee of a governmental entity who is participating in a local retirement system of the governmental entity becomes eligible to participate in the Florida Retirement System by virtue of the consolidation or merger of governments or the transfer of functions between units of government, either at the state or local level or between state and local units of government, in which the resulting unit of government becomes or remains an employer as defined in this chapter, said employee shall elect either to continue to participate in the local retirement system or to become a member of the Florida Retirement System. Should any employee elect to continue to participate in the local retirement system, his employer shall make contributions to the local retirement system at the required rates, but in no event shall the rate of contributions made by the employer to the local retirement system exceed the combined rate of retirement contributions and social security contributions paid by the employer to the Florida Retirement System on behalf of an employee who is a regular member of the Florida Retirement System.

(g) When any person, either prior to this act or hereafter, becomes entitled to and does participate in one of the retirement systems consolidated within or created by this chapter through the consolidation or merger of governments or the transfer of functions between units of government, either at the state or local level or between state and local units, or through the assumption of functions or activities by a state or local unit from an employing entity which was not an employer under the system, and such person becomes a member of the Florida Retirement System, such person shall be entitled to receive "past service" credit as defined in s. 121.021(18) for the time such person performed services for, and was an employee of, said state or local unit or other employing entity prior to the transfer, merger, consolidation, or assumption of functions and activities. Past service credit allowed by this paragraph shall also be available to those persons who became members of an existing system (as defined in s. 121.021[2]) prior to December 1, 1970, through the transfer, merger, consolidation, or assumption of functions and activities set forth in this paragraph and who subsequently become members of the Florida Retirement System. However, in no event will credit for the past service be granted until contributions are made in the manner provided in this subsection. Such contributions and accrued interest shall not be paid from any state funds.

(h) Any person who was enrolled on May 15, 1976, in a state retirement system administered under this chapter and who was, on that date, an officer or employee of a consolidated government which by virtue of its charter had elected status as a municipality for purposes of state retirement systems administered under this chapter and who had not withdrawn his contributions shall be deemed to have become a member of that system as of the date he began to participate therein, whether employed by the consolidated government or a preceding interim government on that date, and shall be entitled to retain his membership in that system so long as he continues to be an officer or employee of the consolidated government, regardless of the fact that the consolidated government and interim government were not "employers" as defined in s. 121.021(10). Any person who was enrolled before May 15, 1976, in a state retirement system administered under this chapter and who was, during the period of enrollment, an officer or employee of a consolidated government which by virtue of its charter had elected status as a municipality for purposes of state retirement systems administered under this chapter, who terminated employment with the consolidated government, and who had not withdrawn his contributions shall be deemed to have been a member of the retirement system in which he was enrolled during the period of such enrollment and employment by that consolidated government and during any period of enrollment and employment by any interim government which performed the functions of the consolidated government prior to its creation, regardless of the fact that the consolidated government and interim government were not "employers" as defined in s. 121.021(10). However, in no event shall credit be granted for service rendered in such employment prior to May 15, 1976, unless the contributions required for such credit were paid prior to May 15, 1976.

(i) Notwithstanding any of the provisions of this subsection, no past service credit may be purchased under this chapter for any service which is used to obtain a benefit from any local retirement system.

(j) An employee of a state agency who was a member of a state-administered retirement system and who was granted educational leave with pay pursuant to a written educational leave-with-pay policy may claim such period of educational leave as past service subject to the following conditions:

1. The educational leave must have occurred prior to December 31, 1971;

2. The member must have completed at least 10

years of creditable service excluding the period of the educational leave;

3. The employee must have returned to employment with a state agency employer who participated in the retirement system, which return was immediately upon termination of the educational leave, and must have remained on the employer's payroll for at least 30 calendar days following his return to employment;

4. The employee must be a member of the Florida Retirement System at the time he claims such service;

5. Not more than 24 months of creditable service may be claimed for such period of educational leave with pay;

6. The service shall not be claimed under any other state or federal retirement system; and

7. The member shall pay to the retirement trust fund for claiming such past service credit an amount equal to 8 percent of his gross annual salary immediately prior to the educational leave with pay for each year of past service claimed, plus 4 percent interest thereon compounded annually each June 30 from first year of service claimed until July 1, 1975, and 6.5 percent interest thereafter on the unpaid balance compounded annually each June 30 until paid.

(2) Prior service, as defined in s. 121.021(19), may be claimed as creditable service under the Florida Retirement System after a member has been reemployed for 12 continuous months. The member shall not be permitted to make any contributions for prior service until after the 12-month period. The required contributions for claiming the various types of prior service are:

(a) For prior service performed prior to the date the system becomes noncontributory for the member and for which the member had credit under one of the existing retirement systems and received a refund of contributions upon termination of employment, the member shall contribute 4 percent of all salary received during the period being claimed, plus 4 percent interest compounded annually from date of refund until July 1, 1975, and 6.5 percent interest compounded annually thereafter, until full payment is made to the Retirement Trust Fund.

(b) For prior service performed prior to the date the system becomes noncontributory for the member and for which the member had credit under the Florida Retirement System and received a refund of contributions upon termination of employment, the member shall contribute at the rate that was required of him during the period of service being claimed, on all salary received during such period, plus 4 percent interest compounded annually from date of refund until July 1, 1975, and 6.5 percent interest compounded annually thereafter, until the full payment is made to the Retirement Trust Fund.

(c) For service performed after the Florida Retirement System becomes noncontributory for the member, and for which the member had credit under the Florida Retirement System at date of termination of employment, the member shall not be required to make any contributions in order to receive prior service credit, but such credit shall not be granted until the member has been reemployed for 12 continuous months.

(d) For prior service as defined in s. 121.021(19)(b) and (c) during which no contributions were made because the member did not participate in a retirement system, the member shall contribute 9 percent of all salary received during such period or 9 percent of $100 per month during such period, whichever is greater, plus 4 percent interest compounded annually from the first year of service claimed until July 1, 1975, and 6.5 percent interest compounded annually thereafter, until full payment is made to the Retirement Trust Fund.

History.—s. 8, ch. 70-112; s. 27, ch. 71-355; s. 1, ch. 72-168; s. 1, ch. 74-158; s. 5, ch. 74-302; s. 1, ch. 75-260; s. 2, ch. 76-226; s. 3, ch. 77-469; s. 5, ch. 79-377.

121.091 Benefits payable under the system.—

(1) NORMAL RETIREMENT BENEFIT.—Upon attaining his normal retirement date, the member, upon application to the administrator, shall receive a monthly benefit which shall commence on the last day of the month of retirement and be payable on the last day of each month thereafter during his lifetime. The amount of monthly benefit shall be determined as the product of A and B, subject to the adjustment of C, if applicable, when:

(a) A is 1.60 percent of his average monthly compensation, up to his normal retirement age. The first year after his normal retirement age, A is 1.63 percent of his average monthly compensation. The second year after his normal retirement age, A is 1.65 percent of his average monthly compensation. The third year after his normal retirement age, A is 1.68 percent of his average monthly compensation. A shall not exceed 1.68 percent of his average monthly compensation, except that for all creditable years of special risk service, A is 2 percent of his average monthly compensation for all creditable years prior to October 1, 1974, for which additional retirement credit has not been purchased, and 3 percent of his average monthly compensation until October 1, 1978, when all years of creditable service thereafter as a special risk member shall be worth 2 percent of his average monthly compensation; however, the normal retirement benefit, including any past or additional retirement credit, may not exceed 100 percent of the average final compensation.

(b) B is the number of his years and any fractional part of a year of creditable service earned subsequent to November 30, 1970, and

(c) C is the normal retirement benefit credit brought forward as of November 30, 1970, by a former member of an existing system. Such normal retirement benefit credit shall be determined as the product of A and B when A is the percentage of average final compensation which the member would have been eligible to receive if he had attained his normal retirement date as of November 30, 1970, all in accordance with the existing system under which the member is covered on November 30, 1970, and B is average monthly compensation as defined in s. 121.021(25). However, any member of an existing retirement system who is eligible to retire and who does retire, become disabled, or die prior to April 15, 1971, may have his retirement benefits calculated on the basis of the best 5 of the last 10 years of service.

(2) BENEFITS PAYABLE FOR DUAL NORMAL RETIREMENT AGES.—In the event a mem-

ber shall accumulate retirement benefits to commence at different normal retirement ages by virtue of his having performed duties for an employer which would entitle him to benefits as both a regular member and special risk member, the amount of benefits payable shall be computed separately with respect to each such age and the sum of such computed amounts shall be paid as provided in this section.

(3) EARLY RETIREMENT BENEFIT.—Upon retirement on his early retirement date, the member shall receive an immediate monthly benefit which shall commence the last day of the month of his retirement date and be payable on the last day of each month thereafter during his lifetime. The amount of each monthly payment shall be computed in the same manner as for a normal retirement benefit, in accordance with subsection (1) of this section, but based on average monthly compensation and creditable service as of the member's early retirement date, and the benefit so computed shall be reduced by five-twelfths of 1 percent for each complete month by which the early retirement precedes his normal retirement date.

(4) DISABILITY RETIREMENT BENEFIT.—

(a) *Disability retirement date.*—A member who becomes totally and permanently disabled, as defined in paragraph (b), after completing 5 years of creditable service, or a member who becomes totally and permanently disabled in line of duty regardless of service, shall be entitled to a monthly disability benefit. The disability retirement date for such member shall be the first day of the month which coincides with or next follows the date the administrator approves payment of disability retirement benefits.

(b) *Total and permanent disability.*—A member shall be considered totally and permanently disabled if, in the opinion of the administrator, he is prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee. The decision of the administrator on these questions shall be final and binding.

(c) *Proof of disability.*—The administrator, before approving payment of any disability retirement benefit, shall require proof that the member is totally and permanently disabled as provided herein, which proof shall include the certification of the member's total and permanent disability by two licensed physicians of the state and such other evidence of disability as the administrator may require.

(d) *Disability retirement benefit.*—A member, upon retirement on his disability retirement date, shall receive a monthly benefit which shall commence on the last day of the month of his disability retirement and shall be payable on the last day of each month thereafter during his lifetime and continued disability. The amount of each monthly payment shall be computed in the same manner as for a normal retirement benefit, in accordance with subsection (1) of this section, but based on the member's average monthly compensation and creditable service as of his disability retirement date, subject to the following conditions:

1. If the member's disability occurred in the line of duty, his monthly benefit shall not be less than 42 percent of his average monthly compensation as of his disability retirement date; or

2. If the member's disability occurred other than in the line of duty, his monthly benefit shall not be less than 25 percent of his average monthly compensation as of his disability retirement date. The minimum monthly benefit allowed in this subparagraph shall not apply to an officer or employee who has attained normal retirement age.

(e) *Recovery from disability.*—The administrator may require periodic reexaminations at the expense of the retirement fund, and:

1. If the administrator finds that a member who is receiving disability benefits is, at any time prior to his normal retirement date, no longer disabled, the administrator shall direct that the benefits be discontinued. The decision of the administrator on this question shall be final and binding.

2. If the member, described in subparagraph 1., who recovers from such disability prior to his normal retirement date does not reenter the employ of an employer and had not completed 10 years of creditable service as of his disability retirement date, he shall be entitled to the excess, if any, of his accumulated contributions over the total disability benefits received up to his date of recovery.

3. If the member, described in subparagraph 1., who recovers from such disability prior to his normal retirement date does not reenter the employ of an employer but had completed 10 or more years of creditable service as of his disability retirement date, he may elect to receive:

a. The excess, if any, of his accumulated contributions over the total disability benefits received up to his date of recovery, or

b. A deferred benefit commencing on the last day of the month of his normal retirement date which shall be payable on the last day of the month thereafter during his lifetime. The amount of such monthly benefit shall be computed in the same manner as for a normal retirement benefit, in accordance with subsection (1) of this section, but based on average monthly compensation and creditable service as of the member's disability retirement date.

4. If the member recovers from disability and reenters employment of an employer within 6 months after his recovery, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability benefit payment and ending with the date he reentered employment will not be considered as creditable service for the purpose of computing benefits. The term "accumulated contributions" for such member wherever used in this section after such recovery shall mean the excess of a member's accumulated contributions as of his disability retirement date over total disability benefits received under paragraph (d).

(f) *Nonadmissible causes of disability.*—A member shall not be entitled to receive any disability retirement benefit if his disability is a result of any of the following:

1. Injury or disease sustained by the member while willfully participating in a riot, civil insurrection, or other act of violence or while committing a felony;

2. Injury or disease sustained by the member after his employment has terminated; or

3. Intentional, self-inflicted injury.

(g) *Disability retirement of justice or judge by order of Supreme Court.*—

1. If a member is a Justice of the Supreme Court, Judge of a District Court of Appeal, Circuit Judge, or Judge of a County Court who has served for 10 years or more as an elected constitutional judicial officer, including service as a judicial officer in any court abolished pursuant to Article V of the State Constitution, and who is retired for disability by order of the supreme court upon recommendation of the Judicial Qualifications Commission pursuant to the provisions of Art. V of the State Constitution, his monthly benefit shall not be less than two-thirds of his monthly compensation as of his disability retirement date.

2. Should any justice or judge who is a member of the Florida Retirement System be retired for disability by order of the Supreme Court upon recommendation of the Judicial Qualifications Commission pursuant to the provisions of Art. V of the State Constitution, then all contributions to his account and all contributions made on his behalf by his employer shall be transferred to and deposited in the General Revenue Fund of the state, and there is hereby appropriated annually out of the General Revenue Fund, to be paid into the Florida Retirement System Fund, an amount necessary to pay the benefits of all justices and judges retired from the Florida Retirement System pursuant to Art. V of the State Constitution.

(5) TERMINATION BENEFITS.—

(a) A member whose employment is terminated for any reason other than death or retirement prior to the completion of 10 years of creditable service shall be entitled to the return of his accumulated contributions as of his date of termination.

(b) A member whose employment is terminated for any reason other than death or retirement after the completion of 10 years of creditable service may elect to receive a deferred monthly benefit which shall commence on the last day of the month of his normal or early retirement and shall be payable on the last day of each month thereafter during his lifetime. The amount of monthly benefit shall be computed in the same manner as for a normal retirement benefit in accordance with subsection (1) of this section or early retirement benefit in accordance with s. 121.021(30), but based on average monthly compensation and creditable service as of his date of termination.

(c) In lieu of the deferred monthly benefit provided in paragraph (b), the terminated member may elect to receive a lump sum amount equal to his accumulated contributions as of his date of termination.

(d) If any retired member dies without having received in benefit payments an amount equal to his accumulated contributions, there shall be payable to his designated beneficiary an amount equal to the excess, if any, of the member's accumulated contributions over the total monthly payments made to the member prior to his date of death.

(e) A member shall be deemed a terminated member only at such time as he is no longer employed by an employer.

(f) Any member who has been found guilty by a verdict of a jury, or by the court trying the case without a jury, of committing, aiding, or abetting any embezzlement or theft from his employer, bribery in connection with the employment, or other felony specified in chapter 838, committed prior to retirement, or who has entered a plea of guilty or of nolo contendere to such crime, or any member whose employment is terminated by reason of his admitted commitment, aiding, or abetting of an embezzlement or theft from his employer, bribery, or other felony specified in chapter 838, shall forfeit all rights and benefits under this chapter, except the return of his accumulated contributions as of his date of termination.

(g) Any elected official who is convicted by the Senate of an impeachable offense shall forfeit all rights and benefits under this chapter, except the return of his accumulated contributions as of the date of his conviction.

(h) Any member who, prior to retirement, is adjudged by a court of competent jurisdiction to have violated any state law against strikes by public employees, or who has been found guilty by such court of violating any state law prohibiting strikes by public employees, shall forfeit all rights and benefits under this chapter, except the return of his accumulated contributions as of the date of his conviction.

(6) OPTIONAL FORMS OF RETIREMENT BENEFITS.—

(a) A member shall elect, prior to the receipt of his first monthly retirement payment, to receive the retirement benefits to which he is entitled under subsections (1), (2), or (3) of this section in accordance with one of the following options:

1. The maximum retirement benefit payable to the member during his lifetime.

2. A decreased retirement benefit payable to the member during his lifetime and, in the event of his death within a period of 10 years after his retirement, the same monthly amount shall be payable for the balance of such 10-year period to his beneficiary or, in case the beneficiary is deceased, in accordance with subsection (8) of this section as though no beneficiary had been named.

3. A decreased retirement benefit which shall be payable during the joint lifetime of both the member and his joint annuitant and which shall continue after the death of either during the lifetime of the survivor in the same amount.

4. A decreased retirement benefit which shall be payable during the joint lifetime of the member and his joint annuitant and which shall continue after the death of either during the lifetime of the survivor in an amount equal to 66⅔ percent of the amount which was payable during the joint lifetime of the member and his joint annuitant.

(b) The benefit payable under any option stated above shall be the actuarial equivalent, based on tables adopted by the administrator for this purpose, of the amount to which the member was otherwise entitled.

(c) A member who elects the option in subparagraph 2. of paragraph (a) shall, in accordance with

subsection (8) of this section, designate a person to receive the benefits payable in the event of his death. Such person shall be the beneficiary of the member.

(d) A member who elects the option in subparagraph 3. or subparagraph 4. of paragraph (a) shall, on a form provided for that purpose, designate his spouse or other dependent to receive the benefits which continue to be payable upon the death of the member. Such person shall be the joint annuitant of the member. If, after benefits have commenced under the option in subparagraph 3. or subparagraph 4., the retired member desires to change his designation of a joint annuitant, he may do so only if his first designated joint annuitant is alive and can show evidence of good health which shall be substantiated by a statement from a physician licensed in this state. A member desiring to change his designation of a joint annuitant shall file with the division a notarized "change of joint annuitant" form. Upon receipt of a completed "change of joint annuitant" form, the division shall adjust the member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the benefit to which the member was otherwise entitled under the option in subparagraph 1. of paragraph (a), taking into consideration the benefits that have already been paid at the time the member elects to change his designation of a joint annuitant. The consent of a retired member's first designated joint annuitant to any such change shall not be required.

(e) The election of an option shall be null and void if either the member, designated beneficiary, or designated joint annuitant shall die before benefits commence.

(f) A member who elects to receive benefits under the option in subparagraph 3. of paragraph (a) may designate one or more qualified persons, either a spouse or other dependent, as his joint annuitant to receive the benefits after his death in whatever proportion he so assigns to each person named as joint annuitant. The division shall adopt appropriate actuarial tables and calculations necessary to ensure that the benefit paid is the actuarial equivalent of the benefit to which the member is otherwise entitled under the option in subparagraph 1. of paragraph (a).

(7) DEATH BENEFITS.—

(a) If the employment of a member is terminated by reason of his death prior to the completion of 10 years of creditable service, there shall be payable to his designated beneficiary the member's accumulated contributions.

(b) If the employment of a member is terminated by reason of his death subsequent to the completion of 10 years of creditable service but prior to his actual retirement, it shall be assumed that the member retired as of his date of death in accordance with subsection (1) of this section if eligible for normal retirement benefits, subsection (2) of this section if eligible for benefits payable for dual normal retirement or subsection (3) of this section if eligible for early retirement benefits, having elected in accordance with subsection (6) of this section, the optional form of payment most favorable to his beneficiary, as determined by the administrator. However, the value of the benefit determined under this paragraph shall not be less than the value of the benefit determined under paragraph (a) of this subsection. The monthly benefit provided in this paragraph shall be paid to the member's beneficiary (spouse or other dependent) for his or her lifetime.

(c)1. The surviving spouse of any member killed in the line of duty may receive a monthly pension equal to one-half of the monthly salary being received by the member at the time of death for the rest of the surviving spouse's lifetime, unless said surviving spouse remarries, in which case the pension shall terminate on the date of remarriage; or, in lieu of the above, the surviving spouse may elect to receive the benefit provided in paragraph (b) of this subsection.

2. If the surviving spouse of a member killed in the line of duty dies prior to remarriage, the monthly payments which would have been payable to such surviving spouse had such surviving spouse lived shall be paid for the use and benefit of such member's child or children under 18 years of age and unmarried until the 18th birthday of the member's youngest child.

3. If a member killed in the line of duty leaves no surviving spouse but is survived by a child or children under 18 years of age, the benefits provided by subparagraph 1., normally payable to a surviving spouse, shall be paid for the use and benefit of such member's child or children under 18 years of age and unmarried until the 18th birthday of the member's youngest child.

(d) The surviving spouse or other dependent of any member whose employment is terminated by death shall, upon application to the administrator, be permitted to pay the required contributions for any service performed by the member which could have been claimed by the member at the time of his death. Such service shall be added to the creditable service of the member and shall be used in the calculation of any benefits which may be payable to the surviving spouse or other surviving dependent.

(e) Notwithstanding any other provisions in this chapter to the contrary, if any member who has accumulated at least 10 years of creditable service dies and the surviving spouse receives a refund of the accumulated contributions made to the retirement trust fund, such spouse may pay to the Division of Retirement an amount equal to the sum of the amount of the deceased member's accumulated contributions previously refunded plus interest at 4 percent compounded annually each June 30 from the date of refund to the date of repayment and receive the monthly retirement benefit as provided in paragraph (b).

(f) The designated beneficiary who is the surviving spouse or other dependent of a member whose employment is terminated by death subsequent to the completion of 10 years of creditable service but prior to actual retirement may elect to receive a deferred monthly benefit as if the member had lived and had elected a deferred monthly benefit, as provided in s. 121.091(5)(b), calculated on the basis of the average final compensation and creditable service of the member at his death and the age the member would have attained on the commencement date of

the deferred benefit elected by his beneficiary, paid in accordance with option 3 of s. 121.091(6)(a).

(8) DESIGNATION OF BENEFICIARIES.—Each member may, on a form provided for that purpose, signed and filed with the division, designate a choice of one or more persons, named sequentially or jointly, as his beneficiary who shall receive the benefits, if any, which may be payable in the event of his death pursuant to the provisions of this chapter. If no beneficiary is named in the manner provided above, or if no beneficiary designated by the member survives him, the administrator shall direct the payment of such benefits to the spouse of the deceased, if living. If the member's spouse is not alive at his death, any payments to which he was entitled shall be paid to the living children of the member or on their behalf if under 18 years of age. If no children survive, any remaining benefits shall be payable to the member's father or mother, if living; otherwise, to the legal representative of the member's estate.

(9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

(a) Any person who has accepted and is receiving retirement compensation under this chapter may be employed by an employer only if the employer is unable to employ a qualified individual who has not retired, and such employment shall not affect the rights of such retired member under this retirement system, including, without limiting the general terms thereof, his right to receive his retirement allowance. Said total employment, by one or more employers, is limited and shall not exceed employment in excess of 500 hours during any one calendar year without suspending his retirement benefits as provided in paragraph (c) of this subsection, except when a longer period of employment is requested by the employer and approved by the administrator.

(b) The employment by an employer of any retiree of any state retirement system shall have no effect on the average final compensation or years of creditable service of such retiree, nor shall any deduction for retirement or social security contributions be made from the compensation received by such retiree with respect to such employment, unless such persons desire to utilize paragraph (d) of this subsection or paragraph (e) of subsection (4).

(c) Any person receiving retirement compensation under this chapter who is employed by an employer covered under this chapter in excess of 500 hours, as provided in paragraph (a) of this subsection, shall furnish timely notice in writing to the employer by which he is being or becoming employed and to the administrator of the fact that he is or would be receiving retirement compensation and employment compensation or salary at the same time. Should he fail to do so, and should he receive and retain both benefits and compensation in excess of that provided in paragraph (a) of this subsection, he shall forfeit all of the benefits of this chapter until full restitution has been made to the trust fund of all such excess benefits with interest at 10 percent compounded annually from date of receipt to date of repayment.

(d) Any person who has previously retired and who is holding public office on or after July 1, 1969, may have his membership in the Florida Retirement System reinstated by making the necessary contributions to the retirement fund for the period of reemployment. Any person electing this alternative shall not be eligible for retirement compensation during the period of employment. During this period of employment, such contributions shall be included in the computation of the employee's average final compensation, and his years of creditable service.

(e) Any person who has retired and subsequently is elected or appointed to an elective public office which is covered by the Florida Retirement System and who does not elect to reinstate his membership in the Florida Retirement System as authorized in paragraph (d) shall continue to receive his retirement benefits in addition to the compensation of the elective office to which he is elected or appointed without regard to the time limitations otherwise provided in this subsection.

(10) FUTURE BENEFITS BASED ON ACTUARIAL DATA.—It is the intent of the legislature that future benefit increases enacted into law in this chapter shall be financed concurrently by increased contributions or other adequate funding, and such funding shall be based on sound actuarial data as developed by the actuary or state retirement actuary, as provided in ss. 121.021(6) and 121.192.

(11) A member who becomes eligible to retire and has accumulated the maximum benefit of 100 percent of average final compensation may continue in active service, and, if upon the member's retirement the member elects to receive a retirement compensation pursuant to subsection (2), subsection (6), or subsection (7), the actuarial equivalent percentage factor applicable to the age of such member at the time the member reached said maximum benefit and to the age, at said time, of the member's spouse shall determine the amount of benefits to be paid.

History.—s. 9, ch. 70-112; s. 1, ch. 71-22; s. 1, ch. 72-332; s. 1, ch. 72-334; s. 2, ch. 72-344; s. 3, ch. 72-345; s. 3, ch. 72-388; ss. 6, 7, ch. 74-302; s. 2, ch. 74-328; s. 2, ch. 74-376; s. 1, ch. 75-86; s. 1, ch. 77-286; s. 6, ch. 78-308; s. 3, ch. 79-375.

121.101 Cost-of-living adjustment of benefits.—

(1) The purpose of this section is to provide cost-of-living adjustments commencing January 1, 1971, to the monthly benefits payable to certain retirees who are 65 years old or older or who retire on disability, or to their beneficiaries, as provided herein.

(2) The terms used in this section are defined as follows:

(a) "Average cost-of-living index" as of an adjustment date means the average of the monthly consumer price index figures for the 12-month period from April 1 through March 31 immediately prior to the adjustment date, relative to the United States as a whole, issued by the Bureau of Labor Statistics of the United States Department of Labor.

(b) "Base benefit" means the total monthly benefit payable to a retiree or beneficiary in accordance with existing laws as of June 30, 1970, or date of retirement, if later.

(c) "Standard benefit" means the monthly benefit calculated in accordance with s. 121.091 as for normal retirement, early retirement, or disability retirement, and adjusted, if an optional form of benefit payment was elected by the member, in the same ratio as his original benefit payment was adjusted.

Such determination shall be made on the assumptions that:

1. Creditable service is the number of years of service for which benefits are provided by the system under which benefits are being paid; and

2. Average final compensation is the compensation base on which benefits being paid were determined.

(d) "Initial benefit" means the first monthly benefit payable to a retiree or beneficiary in accordance with the laws governing the determination of such benefit at time of retirement or earlier death.

(3) On January 1, 1971, the administrator shall adjust the benefit of all retirees who, as of June 30, 1970, had attained age 65 or who had retired on account of disability and the benefit of all beneficiaries of deceased members who would have attained age 65 as of June 30, 1970. The amount of benefit payable to such person for the 6-month period commencing January 1, 1971, shall be the greater of A and B when:

(a) A is the member's base benefit; and

(b) B is the sum of the member's initial benefit and a percentage of the member's standard benefit, such percentage to be equal to the percentage change in the average cost-of-living index over the period between the date of actual retirement and June 30, 1970.

(4) On July 1, 1971, and each July 1 thereafter through July 1, 1973, the administrator shall adjust the benefit of all retirees who, as of the date of adjustment, have attained age 65 or who have retired on account of disability and the benefit of all beneficiaries of deceased members who would have attained age 65 as of the adjustment date. The amount of benefit payable to such person for the 12-month period commencing on the adjustment date, shall be the greater of C and D when:

(a) C is the member's base benefit; and

(b) D is the sum of the member's initial benefit and a percentage of the member's standard benefit, such percentage to be equal to the percentage change in the average cost-of-living index over the period between the date of retirement and date of adjustment, ignoring changes in the cost-of-living index which are greater than 3 percent for any year after June 30, 1970. If a retiree or beneficiary of a deceased retiree qualifies for a cost-of-living adjustment within 12 months subsequent to the member's date of retirement, the percentage change in the average cost-of-living index used in the calculation of his initial adjustment shall be determined by interpolation from the average cost-of-living index for the two nearest adjustment dates. On and after July 1, 1974, the adjustment to retirement benefits provided in this subsection shall be applied only when a retiree first qualifies for and receives his cost-of-living adjustment and shall be considered his initial adjustment. After the initial adjustment has been applied to a retiree's retirement benefit, all subsequent cost-of-living adjustments shall be made as provided in subsections (5), (6), and (7).

(5) On July 1, 1974, and each July 1 thereafter, the benefit of each retiree and annuitant who has received his initial cost-of-living adjustment under this section shall be adjusted as follows: The adjusted monthly benefit shall be the sum of the monthly benefit being received on June 30 immediately preceding the adjustment date and a percentage of this benefit, such percentage to be equal to the percentage change in the average cost-of-living index as of the date of adjustment from said index for the next preceding adjustment date. However, in no event shall the percentage for the annual cost-of-living adjustment exceed 3 percent for any annual adjustment date.

(6) On July 1, 1974, and each July 1 thereafter, the benefit of each retiree and annuitant whose benefit has been adjusted pursuant to s. 112.362 for 1 full year prior to the adjustment date shall be adjusted by using the procedures set forth in subsection (5).

(7) In no event shall a retiree's or annuitant's monthly retirement benefit be reduced by the application of this section below the benefit he was receiving as of July 1, 1970, or at date of retirement, if later, nor shall his benefit be reduced below the minimum monthly benefit provided him under s. 112.362.

(8) The base benefit, initial benefit, and standard benefit of a retiree who elected an optional form of benefit payment which provided for a percentage of the benefit to be continued to a beneficiary after his death shall be reduced at the death of the retiree by application of the stated percentage. In no case, however, shall the total monthly benefit payable to a retiree be less than his base benefit.

History.—s. 10, ch. 70-112; s. 8, ch. 74-302.

121.111 Credit for actual "wartime service."—

(1) Creditable service of any member shall also include military service as defined in s. 121.021(20) if:

(a) The member was in the active employ of an employer immediately prior to such service and was granted official military leave of absence and is legally entitled to reemployment under the provisions of the Universal Military Training Service Act or other law applicable to such reemployment and if said member shall apply for and be reemployed within 1 year from his date of discharge or separation from active military service; and

(b) The member makes the required contributions for service credit during such period, based on his rate of monthly compensation as of his date of entry into wartime service plus 4 percent interest on such contributions compounded annually from the due date of the contribution until July 1, 1975, and 6.5 percent interest compounded annually thereafter until the payment is made to the proper retirement trust fund.

(2) Any member as defined in s. 121.021(12), who has military service as defined in s. 121.021(20) but is ineligible to claim same under subsection (1) of this section may receive creditable service if:

(a) The member has completed a minimum of 10 years creditable service of employment; and

(b) The member pays into the proper retirement trust fund 4 percent of gross salary, based on his first year of salary subsequent to July 1, 1945, that he has credit for under this system, he would have paid for this period of service had he been a member, plus 4 percent interest thereon, compounded annually

from date of first creditable service under this chapter until July 1, 1975, and 6.5 percent interest compounded annually thereafter until the payment is made to the proper retirement trust fund.

(3) Creditable service not to exceed 4 years under this subsection shall be credited as provided in s. 121.091(1).

History.—s. 11, ch. 70-112; s. 9, ch. 74-302.

121.112 Participation in system by legislators elected pursuant to chapter 63-1X, Laws of Florida.—Any state official elected to fill a full term of office under the Reapportionment Act of 1963, chapter 63-1X, Laws of Florida, may pay into the system trust fund the amount of contribution he would have paid had he been elected in November, 1962, and receive service credit on retirement for a full 2-year or 4-year term.

History.—s. 2, ch. 72-267.

cf.—s. 121.052 Membership class of certain elected state officers.

121.113 Participation in system by spouses of certain elected officials.—

(1) In the event any elected official dies in office subsequent to July 1, 1970 who would have had 10 years of creditable service in any state-administered contributory retirement system had he lived to complete the term of office in which he was serving at the time of his death, his spouse may elect to leave his retirement contributions in the retirement trust fund and pay such additional amounts into said fund as the deceased member would have paid plus the matching contributions that would have been paid had he lived to complete 10 years of creditable service. Any spouse electing to make such additional contributions to any state retirement system shall be eligible to receive the monthly benefit that is payable to the surviving spouse of a member who dies after accumulating ten years of creditable service.

(2) If a deceased member's surviving spouse coming under the provisions of subsection (1) has previously received a refund of the member's contributions made to the retirement trust fund, such spouse may, at any time prior to July 1, 1972, pay to the Division of Retirement an amount equal to the sum of the amount of the deceased member's contributions previously refunded together with interest at 4 percent compounded annually on the amount of such refunded contributions from date of refund to date of payment plus such additional contributions as may be required under subsection (1) in order to qualify for 10 years of creditable service. Any surviving spouse electing to make the payments required herein shall be eligible to receive the monthly benefit that is payable to the surviving spouse of a member who dies after accumulating 10 years of creditable service.

History.—s. 1, ch. 72-267; s. 3, ch. 72-345.

121.121 Future service to include authorized leaves of absence.—Future service of any member as defined in s. 121.021(21) shall also include authorized leaves of absence if:

(1) The member has completed a minimum of 10 years of creditable service, excluding periods of leave of absence.

(2) The leave of absence is authorized in writing by the employer of the member and approved by the administrator.

(3) The leave does not exceed 12 months at any one time nor 24 months in total during his employment.

(4) The member makes the required contributions for service credit during the leave of absence, which shall be 8 percent until January 1, 1975, and 9 percent thereafter of his rate of monthly compensation in effect immediately prior to the commencement of such leave for each month of such period, plus 4 percent interest until July 1, 1975, and 6.5 percent interest thereafter on such contributions, compounded annually from the due date of the contribution to date of payment.

History.—s. 12, ch. 70-112; s. 10, ch. 74-302.

121.125 Credit for workers' compensation payments.—A member of the retirement system created by this chapter who has been eligible or becomes eligible to receive workers' compensation payments for an injury or illness occurring during his employment while a member of any state retirement system shall be subject to the following provisions:

(1) If the member receives no salary payments for the period of time he receives workers' compensation payments, upon his return to active employment, he shall receive full retirement credit for the period for which workers' compensation payments were received. No employee or employer contributions shall be required in order for the member to receive retirement credit for such period. Such credit shall be based on the member's rate of monthly compensation immediately prior to his receiving workers' compensation payments; or

(2) If the member receives partial salary for the period of time he receives workers' compensation payments, the required employee contributions shall be deducted from his partial salary each pay period, and, upon his return to active employment, he shall receive full retirement credit for the period for which workers' compensation payments were received. Such credit shall be based on the member's rate of monthly compensation immediately prior to his receiving workers' compensation payments; or

(3) If the member is retained in full-pay status in lieu of receiving workers' compensation payments, the required employee contributions shall be deducted from his salary each pay period and he shall receive retirement credit for such period in the same manner he would have received credit had he not been injured or incapacitated.

History.—s. 2, ch. 72-347; s. 57, ch. 79-40.

121.131 Benefits exempt from taxes and execution.—The benefits accrued to any person under the provisions of this chapter and the accumulated contributions, securities, or other investments in the trust funds hereby created are exempt from any state, county, or municipal tax of the state and shall not be subject to assignment, execution, or attachment or to any legal process whatsoever.

History.—s. 13, ch. 70-112.

121.135 Reports and surveys relative to local and state retirement systems.—

(1) Commencing in the year 1980, and every third year thereafter, the Division of Retirement of the Department of Administration shall make a report to the Legislature regarding the actuarial conditions of locally administered retirement plans or systems operated by the political subdivisions of the state and the compliance of such retirement plans or systems with the provisions of this act.

(2) The Department of Administration, through its Division of Retirement, shall make to each regular session of the Legislature a written report on the operation and condition of the state-administered retirement systems.

History.—s. 3, ch. 72-345; s. 2, ch. 77-286; s. 21, ch. 79-183.

121.141 Appropriation.—There is hereby annually appropriated from the System Trust Fund or the Social Security Trust Fund a sufficient amount to make such payments as are provided in this chapter.

History.—s. 14, ch. 70-112.

121.151 Investments.—The Board of Administration, created by authority of the State Constitution, shall invest and reinvest available system funds in accordance with the provisions of ss. 215.44-215.53.

History.—s. 15, ch. 70-112.

121.161 Amendments.—References in this chapter to state or federal laws or agreements are intended to include such laws as they now exist or may hereafter be amended.

History.—s. 16, ch. 70-112.

121.181 Effective date.—For the purpose of activating and implementing the Florida Retirement System this chapter shall take effect on December 1, 1970, but for all other purposes it shall take effect July 1, 1970.

History.—s. 19, ch. 70-112.

121.1815 Special pensions to individuals; administration of laws by Department of Administration.—All powers, duties, and functions related to the administration of laws providing special pensions to individuals, including chapter 18054, Laws of Florida, 1937; chapter 26788, Laws of Florida, 1951, as amended by chapter 57-871, Laws of Florida; chapter 26836, Laws of Florida, 1951; and chapter 63-953, Laws of Florida, are vested in the Department of Administration and shall be assigned to the Division of Retirement. All laws hereinafter enacted by the Legislature pertaining to special pensions for individuals shall be administered by said division, unless contrary provisions are contained in such law.

History.—s. 31, ch. 69-106; s. 4, ch. 71-355; s. 2, ch. 72-295; s. 3, ch. 72-345; s. 1, ch. 75-256; s. 2, ch. 77-124.

121.191 Special acts prohibited.—After July 1, 1972, there shall not be enacted any special act or general law of local application which proposes to amend, alter, or contravene the provisions of any state-administered retirement system or any state-supported retirement system established by general law.

History.—s. 1, ch. 72-388.

Note.—S.B. 943, which became ch. 72-388, was passed by a three-fifths vote in both houses, thereby investing this section with the special quality prescribed by s. 11(a)(21), Art. III, State Const.

121.192 State retirement actuary.—The Division of Retirement may employ an actuary, as defined in s. 121.021(6). Such actuary shall, together with such other duties as the director of retirement may assign him, be responsible for:

(1) Advising the director of retirement on actuarial matters of the state's retirement systems.

(2) Making periodic valuations of the retirement systems.

(3) Coordinating the report to the legislature on the actuarial condition of the retirement systems, as required by s. 121.135.

(4) Providing actuarial analyses to the legislature concerning proposed changes in the retirement systems.

(5) Assisting the director of retirement in developing a sound and modern retirement system.

History.—s. 11, ch. 74-302.

121.20 Voluntary retirement with half pay authorized for elective officers of cities or towns; appropriation.—

(1) The intent of the Legislature is to authorize and direct each city and town to provide a system of retirement for elected officials, but it is further the intent that each city or town may determine whether the system shall be contributory or noncontributory.

(2)(a) From and after June 3, 1939, whenever any elective officer of any city or town of this state has held any elective offices of such city or town for a period of 20 years or more consecutively, or for a period of 20 years or more consecutively, except for one period not exceeding 6 months, such elective officer may voluntarily resign or retire from such elective office with the right to be paid, and he shall be paid on his own requisition by such city or town during the remainder of his natural life, a sum equal to one-half of the full amount of the annual or monthly salary that such city or town was authorized by law to pay said elective officer at the time of his resignation or retirement; and such city and town shall appropriate and provide in its annual budget sufficient moneys to meet the requirements of this section when no other plan is available for elected local officials. In cases in which an elective officer during any term of office entered or enters and served or serves in the Armed Forces of the United States during any period during which the United States was or shall be engaged in war and thereafter was or shall be appointed or again elected to the same elective office prior to discharge from such service in the Armed Forces, such time of service in the Armed Forces shall not be construed to be a break in consecutive service and shall be counted in determining the years of consecutive service of such elective officer.

(b) The provisions of this subsection shall not operate to preclude any elected officer from retiring under, and receiving benefits pursuant to, the provisions of this section as it existed prior to October 1,

1973, if such officer had, prior to that date, completed the required 20 years of service or been elected to a term upon the expiration of which he completes the required 20 years of service.

(3) Each city or town may by ordinance establish a contributory retirement system for those officials defined in subsection (2). The rules for participation, the amount of the official's contributions, and the method of appropriation and payment may be determined by ordinance of the city or town.

History.—s. 1, ch. 19247, 1939; CGL 1940 Supp. 2998(1); s. 1, ch. 57-805; s. 1, ch. 65-455; s. 1, ch. 72-280; s. 4, ch. 73-129; s. 1, ch. 74-231.
Note.—Former s. 165.25.

121.22 State Retirement Commission; creation; membership; compensation.—

(1) There is created within the Department of Administration a State Retirement Commission composed of seven members: One member who is retired under a state-supported retirement system administered by the Division of Retirement; two members from different occupational backgrounds who are active members in a state-supported retirement system which is administered by the Division of Retirement; and four members who are not retirees, beneficiaries, or members of a state-supported retirement system which is administered by the Division of Retirement.

(2) Appointments to the commission shall be made by the Governor, subject to confirmation by the Senate. The initial appointment of members shall be as follows: Two members shall be appointed for terms to expire December 31, 1977; two members shall be appointed for terms to expire December 31, 1978; and three members shall be appointed for terms to expire December 31, 1979. As the terms of the initial members expire, their successors shall be appointed for 4-year terms. Each member shall serve until his successor is appointed and confirmed, and a member may be appointed to succeed himself. Should a vacancy occur, it shall be filled by appropriate appointment by the Governor for the period of the unexpired term.

(3) No person shall serve as a member who holds an elective public office of the state or any political subdivision thereof or who holds any office in, or serves as an agent for, a political party. No person shall be appointed to the commission who has not been a citizen of Florida for at least 3 years immediately prior to his appointment.

(4) The Governor may suspend a member of the commission only for cause, subject to removal or reinstatement by the Senate.

History.—s. 1, ch. 75-248.

121.23 Disability retirement and special risk membership applications; Retirement Commission; powers and duties; judicial review.—The provisions of this section shall apply to all proceedings respecting applications for disability retirement, reexamination of retired members receiving disability benefits, and applications for special risk membership in the Florida Retirement System.

(1) In accordance with the rules of procedure adopted by the Department of Administration through the Division of Retirement, the administrator shall:

(a) Give reasonable notice of his proposed action, or his decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.

(b) Give affected members, or their counsel, an opportunity to present to the division written evidence in opposition to the proposed action or refusal to act or a written statement challenging the grounds upon which the administrator has chosen to justify his action or inaction.

(c) If the objections of the member are overruled, provide a written explanation within 20 days.

(2) Unless the member accepts the decision of the administrator as final and binding, he shall be entitled to a hearing before the State Retirement Commission pursuant to s. 120.57(1). For the purpose of the said hearings, the commission shall be an agency head as defined by s. 120.52(3).

(a) The Retirement Commission shall have the authority to issue orders as a result of a hearing that shall be binding on all parties to the dispute. The Retirement Commission may order any action that it deems appropriate.

(b) Any person who fails to appear in response to a subpoena, answer any question, or produce any evidence pertinent to any hearing or who knowingly gives false testimony therein is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The exercise by the Retirement Commission of the powers, duties, and functions prescribed by this section shall be reviewable by the District Court of Appeal in the appellate district where the Division of Retirement maintains its headquarters.

(4) The exercise by the Retirement Commission of the powers, duties, and functions prescribed by this section shall be reviewable by the judiciary on the grounds that:

(a) The commission did not afford a fair and equitable hearing in accordance with chapter 120;

(b) The decision of the commission was not in accordance with existing statutes or rules and regulations promulgated thereunder; or

(c) The decision of the commission was not based on substantial evidence.

The court shall not, however, substitute its judgment for that of the commission as to the weight of the evidence on any disputed finding of fact where the decision of the commission was supported by substantial evidence; nor shall the court substitute its judgment for that of the commission on an issue of discretion.

History.—s. 1, ch. 75-248; s. 5, ch. 78-95.

121.24 Conduct of commission business; legal and other assistance; compensation.—

(1) The commission shall conduct its business within the following guidelines:

(a) A quorum shall consist of four members, and the concurring vote of four members shall be required to reach a decision, issue orders, and conduct the business of the commission.

(b) The commission shall elect a chairman and such other officers as it deems necessary. The chairman shall conduct the meetings and hearings of the commission and shall take whatever action is neces-

sary to ensure that the business of the commission is conducted in an equitable, orderly, and expeditious manner. All parties shall abide by the chairman's decisions, unless the chairman is overruled by a majority of members present.

(2) Legal counsel for the commission may be provided by the Department of Legal Affairs or by the Department of Administration, with the concurrence of the said commission, and shall be paid by the Department of Administration from the appropriate funds.

(3) The Division of Retirement shall furnish administrative and secretarial assistance to the commission and shall provide a place where the commission may hold its meetings.

(4) The members of the commission shall be paid an honorarium of $50 for each day spent on the work of the commission. In addition to the honorarium, each member shall receive per diem and travel expenses as provided in s. 112.061. The official headquarters of each member, for purpose of calculating per diem and travel expenses, shall be his permanent home address. Members of a state-administered retirement system who are appointed to the commission shall have their work on the commission considered as part of their regular job assignments and shall not be required to take leave while engaged in the commission's business. The receipt of an honorarium shall have no effect on the retirement benefits of a retired member of the commission.

History.—s. 1, ch. 75-248.

121.30 Statements of purpose and intent and other provisions required for qualification under the Internal Revenue Code of the United States.—Any other provisions in this chapter to the contrary notwithstanding, it is specifically provided that:

(1) The purpose of this chapter is to provide pension benefits for the exclusive benefit of the member employees or their beneficiaries.

(2) No part of the principal or income of the trust fund created hereunder shall be used or diverted for purposes other than for the exclusive benefit of the member employees or their beneficiaries and for the payment of administrative cost.

(3) Forfeitures, if any, shall not be applied to increase the benefits any member employee would otherwise receive under this chapter.

(4) Upon termination or partial termination, upon discontinuance of contributions, abandonment, or merger, or upon consolidation or amendment of this chapter, the rights of all affected employees to benefits accrued as of the date of any of the foregoing events, or the amounts credited to the account of any member employee, shall be and continue thereafter to be nonforfeitable except as otherwise provided by law.

(5) No benefit hereunder shall exceed the maximum amount allowable by law for qualified pension plans under existing or hereafter-enacted provisions of the Internal Revenue Code of the United States.

(6) The provisions of this section are declaratory of the legislative intent upon the original enactment of this chapter and are hereby deemed to have been in effect from such date.

History.—s. 1, ch. 78-108.

CHAPTER 122

STATE AND COUNTY OFFICERS AND EMPLOYEES' RETIREMENT SYSTEM

122.01 State and County Officers and Employees' Retirement System; consolidation; divisions.—

(1) Former chapter 121, the State Officers and Employees' Compulsory Retirement System, and former chapter 134, the County Officers and Employees' Compulsory Retirement System, are hereby consolidated and shall be known as the "State and County Officers and Employees' Retirement System."

(2) Any person who is employed after the effective date of this chapter, (July 1, 1955), by a county having a retirement system shall be a compulsory member of this retirement system unless he becomes a member of a local county retirement system at the time of employment.

(3) The rights of members of the retirement system established by former chapters 121 and 134, Florida Statutes, shall not be impaired, nor shall their benefits be reduced by virtue of any part of this chapter.

(4)(a) The State and County Officers and Employees' Retirement System shall be deemed to be divided into two divisions to be designated division A and division B.

1. Division A of this system shall consist of those members of the system who were employed prior to July 1, 1963, who did not elect to become members of division B; and ss. 122.01-122.13, 122.15, 122.16, 122.18 to 122.20, inclusive and ss. 122.34 to 122.35, inclusive shall control with respect to division A and membership therein.

2. Division B of this system, established for the purposes and within the contemplation of section 218(d)(6) of the Federal Social Security Act [42 USCA s. 418(d)(6)] for the purpose of affording to the members of said division B the opportunity to obtain Federal Social Security coverage, shall consist of those members of the system who elected to or were required to become members of division B, as hereinafter provided, and ss. 122.21-122.24, 122.26 to 122.321 shall control with respect to division B and membership therein.

(b) Notwithstanding any provision to the contrary contained in this chapter, s. 122.34 shall apply with respect to sheriffs and "high hazard" deputy sheriffs, as provided for herein, to the extent that the provisions of such sections are at variance or in conflict with the sections otherwise applicable, and with respect to members who are classified as "high hazard" members as hereinafter defined, the provisions of ss. 122.03, 122.08, 122.27, and 122.28 shall be subject to the provisions of s. 122.34.

(5) Notwithstanding any provision contained herein to the contrary, the provisions of this chapter relating to age for retirement under s. 122.08 shall be subject to amendment or modification by subsequent legislation at any time and all other provisions of this chapter relating to the administration of the system or to the duties, rights, privileges, requirements, and benefits of those persons who become members on or after July 1, 1963, shall be subject to amendment, modification, deletion or substitution by act of the 1965 Legislature of the state and all such legislation shall apply retroactively to July 1, 1963, with respect to those persons who become members on or after July 1, 1963; provided, however, that such legislation shall not set the age for retire-

ment, as specified in s. 122.08(1) to exceed the age of 65 years, nor shall such legislation affect any benefit which becomes payable to, or with respect to, such members prior to July 1, 1965.

History.—ss. 1, 25, 26, ch. 29801, 1955; s. 1, ch. 57-382; ss. 1, 2, ch. 63-555; s. 1, ch. 67-447; s. 1, ch. 69-127; s. 28, ch. 71-355.

122.02 Definitions.—The following words and phrases as used in this chapter shall have the following meaning unless a different meaning is plainly required by the context:

(1) "State and county officers and employees" shall include all full-time officers or employees who receive compensation for services rendered from state or county funds, or from funds of drainage districts or mosquito control districts of a county or counties, or from funds of the State Board of Administration or from funds of closed bank receivership accounts or from funds of any state institution or who receive compensation for employment or service from any agency, branch, department, institution or board of the state, or any county of the state, for service rendered the state or county from funds from any source provided for their employment or service regardless of whether the same is paid by state or county warrant or not; provided that such compensation in whatever form paid shall be specified in terms of fixed monthly salaries by the employing state or county agency or state or county official and shall not include amounts allowed for professional employees for special or particular service or for subsistence or traveling expenses; provided further the division shall prescribe appropriate procedure for contribution deduction out of such compensation in accordance with the provisions of this chapter, provided further that such officers and employees defined herein shall not include those officers and employees excepted from the provisions by s. 122.18 of this law.

(2) "Average final compensation" shall mean the average salary of the 10 best contributing years of the last 15 years prior to retirement, or the career average since July 1, 1945, whichever is greater. A year shall be 12 running months. In the event that an officer or employee has not contributed to the retirement trust fund for at least 10 years, then the average final compensation shall mean the average salary of the last 10 years' service.

(3) "Salary" shall mean the fixed monthly compensation paid officers and employees, and where officers' or employees' compensation is derived from fees set by statute, salary shall be the total cash remuneration received from such fees. Under no circumstances shall salary include fees paid professional persons for special or particular services.

(4)(a) In determining the aggregate number of years of service of any officer or employee, the time of military service between 1939 and 1946 by the employee on leave of absence shall be added to the years of state or county service. Credit for any other military service shall not exceed 4 years; provided that those individuals who were employed by the War Manpower Commission in Florida (or on military leave from the War Manpower Commission) prior to November 16, 1946, by the National Reemployment Service in Florida subsequent to June 30, 1933, the Florida State Employment Service subsequent to June 30, 1935, or in the readjustment allowance or employment service departments of the Veterans' Administration in Florida between July 1, 1944 and January 1, 1950, and who continued in employment with the state or any county without more than one interruption in the performance of service, this interruption not to exceed 5 years, shall be entitled to credit for continuous service for all such employment with the named agency or department, and shall have such time added to their aggregate number of years of service; provided further, that any such employee claiming such credit shall pay into the State and County Officers and Employees' Retirement Trust Fund an amount equivalent to the amount which would have been placed in the fund had such employee been paying into the fund from July 1, 1945, on the basis of the wages paid to such employee by the Federal Government, plus interest thereon at the rate of 3 percent compounded annually until July 1, 1975, and thereafter at the rate of 6.5 percent interest compounded annually until date of payment; and provided further, that such persons shall furnish proper proof from the governmental agency showing the payment of wages for such service and that such persons are not claiming and have not been allowed credit for such service in a federal or any other retirement system, except those persons formerly with the War Manpower Commission who, prior to 1961, received federal service credit. Leave of absence shall be construed to cover any officer or employee of the state or county who was serving as such during the calendar year of 1940, or any time subsequent thereto, and who resigned his employment in time of war or national emergency to enter military service and who thereafter returned to his former employment with the state or county as soon as possible after release from military service.

(b) Any person claiming prior service credit under the provisions of this subsection shall pay into the State and County Officers and Employees' Retirement Trust Fund a contribution equal to 5 percent of the earnings received during the period being claimed, plus 3 percent interest thereon compounded annually, such interest to commence and run from July 1, 1945, with respect to service prior thereto and from dates of employment with respect to service subsequent to June 30, 1945, and such interest shall continue to be figured at the rate of 3 percent until July 1, 1975, on which date and thereafter such interest shall be figured at the rate of 6.5 percent interest, compounded annually until date of payment.

(5) If compensation for accumulated annual leave is due and payable and is paid to the surviving spouse and the necessary contribution is made to the retirement trust fund, time for accumulated annual leave, not to exceed 30 working days, shall be added to the aggregate number of years service and to the member's age, provided such time is needed to make the member eligible for retirement benefits at the time of death, in which event the retirement benefits shall be computed on the basis of the retirement age specified in ss. 122.08(1) and 122.08(2)(a) if the member died prior to July 1, 1963, or on the basis of a retirement age of 65 years if the member died on or

after July 1, 1963. Otherwise aggregate number of years of service shall mean the total number of years, and fractional parts of years, of service of any officer or employee omitting intervening years and fractional parts of years, when such officer or employee may not be employed by the state or county. Provided that any nonacademic employee of a school board shall receive a full year's service credit for all years under the following conditions:

(a) Provided all necessary contributions have been made to the retirement trust fund.

(b) Provided the employee is employed and receives salary for the full school year.

(6) "Division" means the Division of Retirement of the Department of Administration.

History.—s. 2, ch. 29801, 1955; ss. 1-3, ch. 57-364; s. 1, ch. 57-813; s. 2, ch. 61-119; s. 1, ch. 61-469; s. 1, ch. 61-422; s. 1, ch. 63-453; s. 3, ch. 63-555; s. 8, ch. 65-484; ss. 1, 2, ch. 67-412; ss. 31, 35, ch. 69-106; s. 39, ch. 71-377; s. 1, ch. 73-326; s. 3, ch. 74-328.

122.03 Contributions; participants; prior service credit.—

(1)(a) From and after July 1, 1955, the officer or board paying salaries to officers or employees entitled to the benefits of this law shall deduct 6 percent from each installment of salary of each officer or employee so long as such officer or employee shall hold office, or be employed and said amount so deducted shall be deposited in a special trust fund hereby established in the state treasury, to be known as the "State and County Officers and Employees' Retirement Trust Fund." Provided further, whenever any county now or hereafter authorized by law to take over and perform the functions of a municipality, exercises such power and takes over functions heretofore performed by a municipality, and as a result thereof municipal employees become county employees and are paid salaries from county funds, such employees who are members and continue to be members of a municipal retirement system shall not be eligible to participate in the State and County Officers and Employees' Retirement Trust Fund. Such employees, whose pension or retirement rights are otherwise preserved, who by merger, transfer or assignment of governmental units or functions, become county employees, shall not lose their municipal pension or retirement rights, or any reserves accrued to their benefit during their period of employment with a municipality and the county is authorized to pay into such municipal retirement system during the period that such employees remain as county employees the sums of money previously paid by the municipality for the benefits of such employees, and may make appropriate deductions from the employees' salaries to preserve their retirement benefits. Provided further, such employees who by merger, transfer or assignment of government units or functions, become county employees shall have 6 months from the date they become county employees to elect to remain in the retirement system of which they were members as municipal employees or become compulsory members of the State and County Officers and Employees' Retirement System. Such employees becoming compulsory members of the State and County Officers and Employees' Retirement System shall be classed as new members of the State and County Officers and Employees' Retirement System and any service rendered by such employees as municipal officers or employees, prior to becoming compulsory members of the State and County Retirement System, shall not be allowed.

(b) This subsection shall not apply to members covered under s. 122.32, when transferred to state employment by statute on or after July 1, 1967. Should such employees be transferred by statute, they shall be transferred from division A to division B with service credit under division A up until date of transfer and service credit under division B thereafter.

(2) Any officer or employee who held office or was employed by the state or a county of the state on July 1, 1945 or October 1, 1950 and has been holding office or has been continuously employed from April 1, 1955:

(a) May receive credit for prior service rendered subsequent to 1945;

(b) Credit for service rendered prior to July 1, 1945 shall be continuous except that one period of absence not more than 5 years shall be allowed, and in computing such service credit, the period of absence shall not be creditable service.

(c) Provided any person receiving prior service credit under (a) or (b) pays into the retirement trust fund the amount he would have paid had he been a member since July 1, 1945, plus interest compounded annually from date of service to date of payment at the rate of 3 percent for any period of time before July 1, 1975, and at the rate of 6.5 percent compounded annually for any period of time after and including July 1, 1975; however, no officer or employee shall make contributions under this section for less than 10 years or for his total service being claimed, whichever is less.

(3) Any officer or employee claiming prior service under subsection (2) of this section shall make the required payment on or before the time of actual retirement.

(4) Any officer or employee who formerly rejected the provisions of the retirement law may elect to become a member of the retirement system at any time. Any person becoming a member under this subsection shall not receive any prior service credit.

(5) Any state or county officer or employee who prior to becoming a state or county officer or employee was a member of the Department of Public Safety Pension Fund, and who is not receiving retirement benefits under said fund, shall be a compulsory member of the State and County Officers and Employees' Retirement System, and if any such state or county officer or employee has not received a refund from the Department of Public Safety Pension Fund, the amount he has paid into said fund, plus the amount the state has paid into said fund to match the employee's payment, shall be transferred from the Department of Public Safety Pension Fund to the State and County Officers and Employees' Retirement Trust Fund, or if such person has received a refund from the Department of Public Safety Pension Fund, then any such state or county officer or employee shall, within 24 months from the time such person becomes a state or county officer or employee, or within 24 months from July 1, 1963, whichever is the later date, pay into the State and

County Officers and Employees' Retirement Trust Fund 5 percent of the salary he has received from the Department of Public Safety, beginning with July 1, 1945, to June 30, 1955, inclusive and from July 1, 1955, 6 percent of the salary he has received from the Department of Public Safety, plus 3 percent per annum interest thereon. Thereupon the total time spent with the Department of Public Safety since its creation in chapter 19551, Acts of 1939, shall be added to and computed with such person's service as a state or county officer or employee. No state or county officer or employee who is receiving benefits under the Department of Public Safety Pension Fund shall be eligible to become a member of the State and County Officers and Employees' Retirement Trust Fund.

(6) Any officer or employee who held office or was employed by the state or a county of the state continuously from May 1, 1959, and who has not previously received credit for, or is not eligible to claim credit for, prior years of service under subsection (2); or any officer or employee who holds office or is employed by the state or a county of the state on June 1, 1961, and is continuously employed; or any officer or employee who holds office or is employed by the state or county of the state after June 1, 1961, and who is continuously employed for 3 years, during which period of time no back payments may be made:

(a) May claim credit for all prior years of service under the conditions hereinafter set forth.

(b) Credit for service prior to July 1, 1955, may be allowed, provided a contribution of 5 percent of all salary received in the period being claimed, plus interest compounded annually from date of service to date of payment at the rate of 3 percent for any period of time before July 1, 1975, and at the rate of 6.5 percent for any period of time after and including July 1, 1975, is made to the State and County Officers and Employees' Retirement Trust Fund on or before the time of actual retirement.

(c) Credit for service subsequent to July 1, 1955, may be allowed, provided a contribution of 6 percent of all salary received in the period being claimed, plus interest compounded annually from date of service to date of payment at the rate of 3 percent for any period of time before July 1, 1975, and at the rate of 6.5 percent for any period of time after and including July 1, 1975, is made to the State and County Officers and Employees' Retirement Trust Fund on or before the time of actual retirement.

(d) Prior service allowance may be made only for those periods in which state or county records of service and salary are available, or at least three affidavits and such other information as might be required by the division to meet the provisions of this law.

(7) A member of the retirement system created by this chapter who has been eligible or becomes eligible to receive workers' compensation payments for an injury or illness occurring during his employment while a member of any state retirement system shall be subject to the following provisions:

(a) If the member receives no salary payments for the period of time he receives workers' compensation payments, upon his return to active employment, he shall receive full retirement credit for the period for which workers' compensation payments were received. No employee or employer contributions shall be required in order for the member to receive retirement credit for such period. Such credit shall be based on the member's rate of monthly compensation immediately prior to his receiving workers' compensation payments;

(b) If the member receives partial salary for the period of time he receives workers' compensation payments, the required employee contributions shall be deducted from his partial salary each pay period, and, upon his return to active employment, he shall receive full retirement credit for the period for which workers' compensation payments were received. Such credit shall be based on the member's rate of monthly compensation immediately prior to his receiving workers' compensation payments; or

(c) If the member is retained in full-pay status in lieu of receiving workers' compensation payments, the required employee contributions shall be deducted from his salary each pay period, and he shall receive retirement credit for such period in the same manner by which he would have received credit had he not been injured or incapacitated.

(8) Any widow of a county official or former county official, who was formerly employed full time in the office of the county official and who is presently employed by the said county official or is a county official of any such county and who did not receive compensation for a period of more than 10 years as such employee, may receive credit for retirement purposes as provided for in this chapter by:

(a) Contributing to the said retirement trust fund on a salary computed on the basis of one-third of the compensation received by the said county official for the period of time the said employee did not receive any compensation, and interest on said contribution shall be paid at the rate of 3 percent per annum from July 1, 1945.

(b) Submitting affidavits from one assistant auditor general and two county officials or former county officials from any such county to substantiate said employment.

(9) The surviving spouse or other dependent of any member whose employment is terminated by death shall, upon application to the director of the Division of Retirement of the Department of Administration, be permitted to pay the required contributions for any service performed by the member which could have been claimed by the member at the time of his death. Such service shall be added to the creditable service of the member and shall be used in the calculation of any benefits which may be payable to the surviving spouse or other surviving dependent.

History.—s. 3, ch. 29801, 1955; s. 1, ch. 57-350; ss. 1, 2, ch. 57-363; s. 1, ch. 57-1986; s. 1, ch. 59-203; s. 1, ch. 59-285; s. 1, ch. 59-303; s. 2, ch. 61-119; s. 1, ch. 61-291; s. 1, ch. 61-434; s. 9, ch. 63-555; s. 8, ch. 65-484; s. 8, ch. 69-82; ss. 31, 35, ch. 69-106; s. 1, ch. 69-124; s. 1, ch. 69-128; s. 1, ch. 69-1753; s. 2, ch. 72-334; s. 3, ch. 72-345; s. 3, ch. 72-347; s. 4, ch. 74-328; s. 58, ch. 79-40.

122.04 Compulsory participation.—The provisions of this law shall be compulsory as to all persons who enter the employment of the state or county of the state on or after July 1, 1947, and there shall be deducted from the salary of every officer and employee who thereafter enters the employment of the

state or county of the state 6 percent as provided for in s. 122.03. All persons entering the service of the state or county of the state after July 1, 1947 shall be considered new employees or new officers and no prior service of such employees or officers shall be computed as part of their aggregate number of years of service under this law, except employees in military service on leave of absence who return immediately from military service to the service of the state or county of the state. Provided further that any person who is employed after the effective date of this chapter by a county having a retirement system shall be a compulsory member of this retirement system unless he becomes a member of its local retirement system.

History.—s. 4, ch. 29801, 1955.

122.05 Legislator services included.—

(1) The aggregate days of service heretofore or hereafter rendered the State Legislature as a member of the Senate or House of Representatives by any participants of the State and County Officers and Employees' Retirement System shall be computed as a part of the aggregate years of state or county service of such participant in said retirement system, and it shall be the duty of state officials administering the provisions of said system to allow any such participant such legislative service, together with other service rendered by such participant to the state or county.

(2) The division and state officials administering said retirement system shall make the contribution deductions required by law from the compensation hereafter received by any of the said participating members of the Legislature for service rendered the State Legislature in the same manner as in the case of other state employment.

(3) Any member of the Legislature on the effective date of this chapter may claim credit for all prior service as such member by paying into the State and County Officers and Employees' Retirement Trust Fund the required amount as computed by the division, plus 3 percent interest compounded annually until July 1, 1975, and thereafter at the rate of 6.5 percent interest compounded annually until date of payment and upon making such payment shall be entitled to receive credit for his full terms as such legislator. Provided further that any member of the Legislature who previously had vested rights under the retirement law would not have his benefits accumulated at the time he takes office as such legislator reduced by virtue of such service as a legislator.

(4) Any member of the Legislature who had vested rights under the retirement law, prior to becoming a member of the Legislature, may use the average salary of the best 10 years of the last 15 years of creditable service earned prior to becoming a member of the Legislature.

(5) Any member of the Legislature who is a member of any state and county retirement system on the effective date, or any future member of the Legislature, may pay into any state and county retirement trust fund, based on his prior or future service, 45 percent of his salary for the first 10 years of service, 60 percent of his salary for the second 10 years, and 75 percent of his salary for the third 10 years, said salary to be considered during his total service, $100 per month. In computing the retirement benefit for such members of the Legislature, the average final compensation shall be the amount that a 6-percent contribution would have applied to produce the contribution required above.

History.—s. 5, ch. 29801, 1955; s. 1, ch. 59-461; s. 2, ch. 61-119; s. 1, ch. 67-581; ss. 31, 35, ch. 69-106; s. 5, ch. 74-328.

122.051 Eligibility of retired state employee for Legislature; compensation.—Any retired state employee who is presently drawing retirement benefits under any state retirement system may, as any other citizen, serve in the Legislature without affecting in any way his retirement status or the receipt of retirement funds while a member of the Legislature. Such person may be paid the salary of a legislator, and per diem and mileage in connection with his official legislative duties in addition to his retirement benefits during his term of legislative service except that service as a legislator after retirement shall not increase retirement benefits.

History.—s. 1, ch. 65-476.

122.06 Legislative employee services included.—

(1) Aggregate days of attache service heretofore or hereafter rendered the State Legislature by any participant of the State and County Officers and Employees' Retirement System shall be computed as a part of the aggregate years of state service of such participant in said retirement system, and it shall be the duty of state officials administering the provisions of said system to allow any such participant such legislative attache service, together with other service rendered by such participant to the state or county.

(2) The division and other state officials administering said retirement system shall make the contribution deductions required by law from the compensation hereafter received by any of the said participating attaches for service rendered the State Legislature in the same manner as in the case of other state employment.

History.—ss. 6, 7, ch. 29801, 1955; ss. 31, 35, ch. 69-106.

122.061 Hospital districts and county hospital corporations; officers and employees included.—

(1) Boards of hospital districts and county hospital corporations may elect to bring employees of such districts or corporations under the provisions of the retirement law. Once this election is made it may not be revoked and all present and future employees shall be compulsory members of the State and County Officers and Employees' Retirement System.

(2) All boards of hospital districts and county hospital corporations who now have officers and employees participating in the State and County Officers and Employees' System will continue to have such coverage as provided by this chapter. The presumption being that such boards have elected to come under the law.

(3) The rights of any officer or employee who is a member of the State and County Officers and Employees' Retirement System or who is receiving benefits under the provisions of this chapter, by virtue

of Attorney General's opinion and Comptroller's rulings rendered prior to the declaratory decree of the Circuit Court of the Second Judicial Circuit of Florida, March, 1957, shall not be impaired or reduced.

History.—ss. 1-4, ch. 57-47; s. 1, ch. 67-612.

122.07 Seasonal state employment included; time limit and procedure for claiming.—

(1) Any seasonal state employee who works for and draws compensation from the state, or any of its departments, for a period of more than 6 months during the fiscal year, that is, from July 1 of any year to June 30 of the following year, inclusive, but who works the remainder or a part of such fiscal year in the same or a similar capacity for another state or department thereof, may receive credit for the actual time employed by another state or department thereof, provided that such employee shall comply with the conditions hereinafter specified.

(2) Any state employee in the classification set forth in s. 122.01 may elect to receive credit as a state employee under the State and County Officers and Employees' Retirement System and shall thereupon within 30 days after the end of each fiscal year file with the division upon a form to be provided by the division a statement under oath stating his name and permanent address within this state; the nature of his employment in the state during said fiscal year, giving the dates of commencement and termination thereof; the nature of his work within the state, together with his compensation from the state during said period, together with a statement that he was employed in employment of the same character out of the state during the remainder of such fiscal year; and such other information as may, in the opinion of the division, be necessary or appropriate in the carrying out of this section. Such statement shall be accompanied by a cash payment to the division by such employee of an amount equal to 6 percent, plus the state's percentage of contribution, of the salary drawn by such employee during his last full month of employment by the state, or any department thereof, for each month during said fiscal year for which such employee was not employed by the state, or any department thereof, but was employed by some other state. The division shall thereupon examine said statement, and if the same complies with this law, the division shall thereupon deposit said payment in said retirement trust fund and shall advise such person that he is entitled to credit for said additional contribution under said State and County Officers and Employees' Retirement System. The fiscal year herein referred to shall be from July 1 to June 30 of the succeeding calendar year.

(3) If such person fails, or does not elect, to file said statement and make said tender within 30 days after the end of such fiscal year, such employee shall forfeit any right to credit for such time of unemployment in Florida.

(4) Notwithstanding any other provision of this section, any member who would have been entitled to receive credit under this section had such member claimed such credit within the time prescribed in subsection (2) may receive credit under this section for any period to which such member would have been so entitled if such member files, prior to July 1, 1979, the required statement and cash payment, plus interest compounded annually from the date such statement was required to have been filed under subsection (2) to the date of payment at the rate of 3 percent for any period of time before July 1, 1975, and at the rate of 6.5 percent for any period of time after June 30, 1975; provided however, that members purchasing out-of-state service pursuant to this section shall not claim such service in any other retirement system.

History.—s. 8, ch. 29801, 1955; s. 2, ch. 61-119; ss. 31, 35, ch. 69-106; s. 1, ch. 78-279; s. 27, ch. 79-164.

122.08 Requirements for retirement; classifications.—There shall be two retirement classifications for all state and county officers and employees participating herein as hereafter provided in this section:

(1) Any state or county officer or employee who has attained normal retirement age, which shall be age 60 for persons who had become a member prior to July 1, 1963, and age 62 for persons who had or shall become a member on or after July 1, 1963, and has accumulated at least 10 years' service in the aggregate within the contemplation of this law, and who has made or makes contributions to the State and County Officers and Employees' Retirement Trust Fund for 5 or more years as prescribed in this law, may voluntarily retire from office or employment and be entitled to receive retirement compensation, the amount of which shall be 2 percent for each year of service rendered, based upon the average final compensation, payable in equal monthly installments, upon his own requisition. Requisition requirements shall be set by the division.

(2)(a) Any state or county officer or employee who has attained the age of 55 or more and has accumulated at least 10 years' service in the aggregate within the contemplation of this law and who has made or makes contributions to the State and County Officers and Employees' Retirement Trust Fund for 5 or more years as prescribed by this law but who is not eligible to retire in accordance with subsection (1) may elect to retire and receive a reduced benefit, which would be the actuarial equivalent of the benefits provided in subsection (1).

(b) Any county officer or employee who has served as sheriff or a full-time deputy sheriff for the last 10 years or more of his employment and has attained the age of 50 or more and accumulated at least 10 years' service in the aggregate within the contemplation of this law, and who has made or makes contributions to the State and County Officers and Employees' Retirement Trust Fund for 5 or more years, as prescribed by this law, but who is not eligible to retire in accordance with subsection (1) may elect to retire and receive a reduced benefit, which would be the actuarial equivalent of the benefits provided in subsection (1).

(3) Any state or county officer or employee shall have the right at any time prior to receipt of his first monthly installment of retirement compensation to elect to receive a reduced retirement compensation with the provisions that if such officer or employee dies after retirement compensation installments have commenced the excess if any of his total contributions made to the retirement trust fund, without interest, over the total retirement compensation re-

ceived by him shall be paid in accordance with the beneficiary designation of this law. The amount of such reduced retirement compensation shall be the actuarial equivalent of the amount of such retirement compensation otherwise payable to him.

(4) Any state or county officer or employee shall have the right at any time prior to receipt of his or her first monthly installment of retirement compensation to elect to receive a reduced retirement compensation with the provision that the surviving spouse shall continue to draw such reduced retirement compensation, or one-half thereof if so designated, so long as such spouse shall live. The amount of such reduced retirement compensation shall be the actuarial equivalent of the amount of such retirement compensation otherwise payable such officer or employee. Any state or county officer or employee who becomes eligible for retirement and continues to hold office or be employed shall be construed to have selected the option herein which will afford the surviving spouse the greatest amount of benefits. Should such officer or employee die before retiring, his surviving spouse shall be entitled to receive either the accumulated contributions of such officer or employee at the date of death or the reduced retirement compensation to which the surviving spouse would have been entitled under such option, calculated on the assumption that such officer or employee retired on the date of his death; provided, that for all those persons who become members of the retirement system on or after July 1, 1963, the amount of retirement compensation otherwise payable to the member at his date of death shall be determined on the basis of a retirement age of 62 years. Any officer or employee shall have the right at the time of retirement to change the option so provided; and, should the option be changed or not at the time of retirement, such option shall be effective immediately upon retirement and thereafter may not be revoked.

(5) Tables for computing the actuarial equivalent shall be approved by the division.

(6) Any person retiring under the disability provision of this chapter shall not be entitled to the options of subsection (4).

(7) No state or county official or employee who has a shortage in his accounts, as certified by the auditor general, may retire or receive any benefits under this chapter so long as such shortage exists.

(8) Any member of the retirement system whose rights have been preserved under s. 122.01(3), and who has had 30 years of service may exercise the option provided for in subsection (4) as it applies to persons who are eligible for normal retirement benefits.

(9) Notwithstanding any other provision in this chapter to the contrary, the following provisions shall apply to any officer or employee who has accumulated at least 10 years of service and dies;

(a) If the deceased member's surviving spouse has previously received a refund of the member's contributions made to the retirement trust fund, such spouse may pay to the division an amount equal to the sum of the amount of the deceased member's contributions previously refunded and interest at 3 percent compounded annually on the amount of such refunded contributions from the date of refund until July 1, 1975, and thereafter at the rate of 6.5 percent interest compounded annually to the date of payment to the division, and by so doing be entitled to receive the monthly retirement benefit provided in paragraph (c).

(b) If the deceased member's surviving spouse has not received a refund of the deceased member's contributions, such spouse shall, upon application to the division, receive the monthly retirement benefit provided in paragraph (c).

(c) The monthly benefit payable to the spouse described in paragraphs (a) or (b) shall be the amount which would have been payable to the deceased member's spouse, assuming that the member retired on the date of his death and had selected the option in subsection (4) which would afford the surviving spouse the greatest amount of benefits, such benefit to be based on the ages of the spouse and member as of the date of death of the member. Such benefit shall commence on the first day of the month following the payment of the aforesaid amount to the division, if paragraph (a) is applicable, or on the first day of the month following the receipt of the spouse's application by the division, if paragraph (b) is applicable.

History.—s. 9, ch. 29801, 1955; ss. 3-5, ch. 57-363; s. 1, ch. 57-210; s. 1, ch. 59-465; s. 2, ch. 61-119; s. 4, ch. 63-555; ss. 1, 2, 8, ch. 65-484; s. 8, ch. 69-82; ss. 31, 35, ch. 69-106; s. 1, ch. 69-132; s. 1, ch. 72-330; ss. 6, 10, ch. 74-328.

122.09 Disability retirement; medical examinations.—Whenever any officer or employee of the state or county of the state has service credit as such officer or employee for 10 years within the contemplation of this law, the last 5 years of which, except for a single break not to exceed 1 year, must be continuous, unbroken service and who is regularly contributing to the State and County Officers and Employees' Retirement Trust Fund and shall while holding such office or employment become permanently and totally disabled, physically or mentally, or both, from rendering useful and efficient service as such officer or employee, such officer or employee may retire from his office or employment, and upon such retirement he shall be paid, so long as his permanent and total disability continues, on his own monthly requisition, from the State and County Officers and Employees' Retirement Trust Fund hereinafter established, retirement compensation as provided in s. 122.08; provided that no officer or employee retiring under this section shall receive less than 50 percent of his average final compensation not to exceed $75, provided further that the minimum benefits shall not apply to an officer or employee who has attained the age of 60 or is receiving disability payments from social security. No officer or employee of the state and county of the state shall be permitted to retire under the provisions of this section until examined by a duly qualified physician or surgeon or board of physicians and surgeons, to be selected by the Governor for that purpose, and found to be disabled in the degree and in the manner specified in this section. Any officer or employee retiring under this section shall be examined periodically by a duly qualified physician or surgeon or board of physicians and surgeons to be selected by the Governor for that purpose and paid from the retirement

trust fund herein provided for, at such time as the Department of Administration shall direct to determine if such total disability has continued and in the event it be disclosed by said examination that said total disability has ceased to exist, then such officer or employee shall forthwith cease to be paid benefits under this section. Reference to s. 122.08 is for the purpose of computing benefits only. Any person heretofore retired under this section shall be eligible to qualify for the minimum benefits provided herein; however, minimum benefits shall not be paid retroactively.

History.—s. 10, ch. 29801, 1955; s. 4, ch. 57-364; s. 2, ch. 61-119; ss. 2, 3, ch. 67-371; s. 1, ch. 69-121; s. 1, ch. 69-326; ss. 31, 35, ch. 69-106.

122.10 Separation from service; refund of contributions.—

(1) Should any officer or employee leave the service of the state before accumulating aggregate time of 10 years toward retirement, such officer or employee shall be entitled to a refund of 100 percent of his contributions made to the retirement trust fund without interest, provided however that any such officer or employee may leave such contributions in said retirement trust fund for a period not exceeding 5 years pending reemployment, and upon reemployment by the state or county within those 5 years receive credit for such prior service. Any such officer or employee who fails to be reemployed by the state or a county of the state within those 5 years shall be refunded 100 percent of his contributions to the retirement trust fund, without interest, and all prior service credit shall be forfeited should he be reemployed at a later date. Should any officer or employee who has 10 or more years service within the contemplation of this law leave the service of the state and county, such officer or employee may leave said contributions in the retirement trust fund and receive the same retirement benefits as provided for current employees in s. 122.08, provided however that such officer or employee shall have made contributions as required by this law, or such officer or employee may elect to accept a refund of 100 percent of his contributions to the fund, without interest. Any officer or employee who accepts such refund shall be forever barred from receiving prior service credit under the provisions of this law. No officer or employee who has received benefits under this law shall be entitled to a refund.

(2) Any former members of the state or county retirement systems established by former chapters 121 and 134, that terminated their service after 10 or more years of service and received a refund of 50 percent of their retirement contributions may, upon written request to the division, receive a refund of any balance credited to their account provided they are not members of the state and county retirement system under this chapter.

(3) Any person who hereafter elects to receive retirement benefits under s. 112.05, shall not be entitled to the retirement benefit of this chapter, except for the refund of his contributions to the retirement trust fund as provided in this section; likewise any person who elects to receive retirement benefits under this chapter shall thereby become ineligible to receive retirement benefits under s. 112.05.

(4) Should any officer or employee elect to receive a refund as provided in this section, his application for refund shall be submitted in the manner prescribed by the regulations adopted by the division and shall accompany the payroll certification, submitted to the division, on which he was last paid prior to termination. The division shall pay the entire refund due within 45 days after the first day of the month subsequent to receipt of such application for refund and said payroll certification.

(5) Notwithstanding any other provision in this chapter to the contrary, any officer or employee who has accumulated an aggregate of 25 or more years of service and terminates his employment and elects to receive a refund of his contributions made to the retirement trust fund in accordance with this section may, at any time prior to July 1, 1970, pay to the division an amount equal to the sum of: The amount of his contributions previously refunded and interest at 3 percent compounded annually on the amount of his refunded contributions from the date of refund to the date of payment to the division. Upon the payment of such amount, the former member of the retirement system shall be reinstated and shall receive the monthly retirement benefit to which he is entitled under this section, such benefit to commence on the latter of the first day of the month following the payment by the reinstated member of the aforestated amount to the division or the date he otherwise would have been entitled to such benefits. The division, at its discretion, may require that such retirement benefits be paid under one of the optional forms of payment (described in s. 122.08) as chosen by the division.

History.—s. 11, ch. 29801, 1955; s. 2, ch. 59-461; s. 2, ch. 61-119; s. 7, ch. 63-555; s. 1, ch. 67-285; ss. 31, 35, ch. 69-106; s. 1, ch. 69-133.
cf.—s. 112.0501 Ratification of certain dual retirements.

122.11 Reemployment after refund.—Any state or county officer or employee whose contributions have been refunded as provided in s. 122.10 and who is subsequently reemployed by the state or a county of the state shall be treated as those persons who enter employment of the state or a county of the state the first time as provided in s. 122.03; provided, however, if any former member complies with s. 122.03(6) and receives service credit for 20 or more years for service rendered prior to June 1, 1961, such member shall not lose his rights under s. 122.01(3).

History.—s. 12, ch. 29801, 1955; s. 1, ch. 67-577.

122.12 Designation of beneficiary; death of participant; forfeiture of contributions after benefits paid; survivor benefits.—

(1) Any officer or employee may file, in writing, a designation of beneficiary and it shall be the duty of the division to refund 100 percent, without interest, of the contributions made to the retirement trust fund by such deceased officer or employee to such designated beneficiary. The officer or employee shall have the privilege of changing, in writing, the designated beneficiary at any time. Upon failure to designate a beneficiary, the refund shall be made to the persons in the same order as designated in s. 222.15, for wages due deceased employees. If the deceased officer or employee has received any benefits under this law, no refund shall be made unless such officer

or employee has elected to accept benefits under s. 122.08(3) or (4).

(2) Provided further any heir who received a refund under s. 10 of chapter 22938, Laws of 1945, or s. 10 of chapter 22831, Laws of 1945, shall be entitled to receive any accumulated retirement contributions credited to the deceased officer or employee's account.

History.—s. 13, ch. 29801, 1955; s. 5, ch. 57-364; s. 2, ch. 61-119; ss. 31, 35, ch. 69-106.

122.13 Administration of law; appropriation.—The Division of Retirement of the Department of Administration shall make such rules and regulations as are necessary for the effective administration of this chapter, and the cost is hereby annually appropriated and shall be paid into the State and County Officers and Employees Retirement Trust Fund out of the Intangible Tax Fund in the State Treasury in the amount necessary to administer efficiently the state and county retirement law. At the end of each fiscal year, beginning with the fiscal year 1959-60, the administrative cost of the state and county retirement system for the fiscal year just ended shall be refunded to the General Revenue Fund from interest earned on investments made subsequent to June 30, 1959.

History.—s. 14, ch. 29801, 1955; s. 2, ch. 59-285; s. 2, ch. 61-119; ss. 2, 3, ch. 67-371; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

122.15 Benefits exempt from taxes and execution.—

(1) The pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this chapter and the accumulated contributions and the cash securities in the funds created under this chapter are hereby exempted from any state, county or municipal tax of the state and shall not be subject to execution or attachment or to any legal process whatsoever and shall be unassignable.

(2) This subsection shall have no effect upon this section except that the division may, upon written request from the retired member, deduct premiums for group hospitalization insurance from the retirement benefit paid such retired member.

History.—s. 16, ch. 29801, 1955; s. 1, ch. 59-305; ss. 31, 35, ch. 69-106.

122.16 Employment after retirement.—

(1) Any retired person who is receiving retirement compensation under this chapter may be employed by an employer who participates in any state retirement system only if the employer is unable to employ a qualified individual who has not retired. Such employment shall not affect the employee's right to receive retirement benefits, provided said total employment, by one or more employers, does not exceed employment in excess of 500 hours during any one calendar year, unless a longer period of employment is requested by the employer and approved by the Director of the Division of Retirement.

(2) The employment of any retiree referred to in subsection (1) shall have no effect on the average final compensation or years of creditable service of such retiree.

(3) Any retired person who is employed, as provided in subsection (1), in excess of 500 hours shall furnish timely notice in writing to the employer by which he is being or becoming employed and to the Director of the Division of Retirement of the fact that he is, or will be, receiving retirement compensation and salary at the same time. The Director of the Division of Retirement shall cause such retiree's benefits to be suspended for such period of employment in excess of 500 hours in a calendar year. Should the retiree fail to notify the Director of the Division of Retirement as required by this section and should he receive and retain both benefits and compensation in excess of that provided in subsection (1), he shall forfeit all of the benefits of this chapter until full restitution has been made to the retirement trust fund of all such excess benefits with interest at 10 percent compounded annually from date of receipt to date of repayment.

(4) The provisions of this section shall also apply to any member who retired prior to July 1, 1972 and who is employed or becomes employed in a position covered by chapter 121. However, any retired person who, prior to July 1, 1972, was required to suspend his retirement benefits because of such reemployment shall not be entitled to receive any retroactive payment of such suspended benefits.

History.—s. 17, ch. 29801, 1955; s. 6, ch. 57-364; s. 1, ch. 57-803; s. 1, ch. 57-1982; s. 2, ch. 61-119; s. 8, ch. 65-484; ss. 31, 35, ch. 69-106; s. 1, ch. 72-335; s. 3, ch. 72-345.

cf.—Ch. 121 Florida Retirement System.

122.18 Certain officers and employees not covered.—This chapter shall not apply to Justices of the Supreme Court or Judges of the Circuit Court who are members of another state retirement system applicable to Supreme Court Judges or Circuit Judges, nor shall it apply to members of the Teachers' Retirement System or members of the Department of Public Safety Retirement System and shall not operate to repeal ss. 25.101, 38.14, 38.19, 112.05, 238.01-238.16 and 321.02-321.23, nor to affect the rights of any person enjoying the benefits or entitled to enjoy the benefits of such sections.

History.—ss. 19, 20, ch. 29801, 1955.

cf.—s. 121.046 Merger of Judicial Retirement System into Florida Retirement System.

s. 121.052 Membership class of certain elected state officers.

Ch. 123 Retirement of Supreme Court Justices, District Court of Appeal Judges, and Circuit Court Judges.

122.19 Change of positions; election of retirement systems; exceptions.—

(1)(a) Any person who is a participant in any state or county retirement system, who changes his position or employment, or who is reclassified so that under any existing law such person would participate in a different retirement system, may continue to participate and come under the same retirement system in which he participated or came under before changing positions or being reclassified so long as such person remains in the employ of the state or county and continues to make the contributions required by law.

(b) Any member of the Duval County Employees Pension Fund who becomes an elected state or county official, certified by the Department of State, may become a member of the State and County Officers and Employees' Retirement System as a new member upon assuming office, however, no prior service shall be allowed unless such official withdraws from the Duval County Employees Pension Fund, the

same to be certified by Duval County, and complies with s. 122.03.

(2) The provisions of this section shall supersede any existing law relating to state and county retirement systems or pensions, provided nothing herein shall be construed to apply to State Supreme Court Justices, or Circuit Judges who are members of another state retirement system applicable to Supreme Court Justices or Circuit Judges, nor to members of the Department of Public Safety Retirement System nor to members of Duval County Employees' Pension Fund as provided in chapter 23259, Acts of 1945, as amended by chapters 27520 and 27523, Acts of 1951.

History.—s. 21, ch. 29801, 1955; s. 1, ch. 63-568; ss. 10, 35, ch. 69-106.

122.20 Blind vending-stand operators; participation by.—

(1) All blind or partially sighted persons who are now employed or licensed by the Florida Council for the Blind as vending-stand operators or who may hereafter be so licensed or employed are hereby declared to be state employees within the meaning of the State and County Officers and Employees' Retirement System, and except as hereinafter provided shall be entitled to all the rights and benefits of other state employees thereunder.

(2) Vending-stand operators who are employed on June 15, 1953 shall have the privilege of rejecting the provisions of this law provided that written notice of the employees' rejection shall be filed with the proper state officials within a period of 60 days from June 15, 1953. After such period all employees who have not filed a written rejection as provided herein shall be deemed to have made a final and irrevocable decision to participate in the State Officers and Employees' Retirement System.

(3) Blindness shall not be deemed a retirable disability within the provisions of the state and county retirement system for such employees as are contemplated by this section.

(4) Participation in the State Officers and Employees' Retirement System shall be compulsory for all vending-stand operators licensed and employed after June 15, 1953.

History.—s. 22, ch. 29801, 1955.

122.21 Activation of division B.—Sections 122.21-122.24, 122.26 to 122.321, inclusive, shall control with respect to division B of this system and membership therein, and shall prescribe the method for activating such division.

History.—s. 2, ch. 57-382.

122.22 Applicable law.—Sections 122.01-122.13, 122.15, 122.16, 122.18 to 122.20, inclusive, in relation to administration of division B and to duties, rights, privileges and benefits of members of this division under this system, shall apply to said division B and membership therein, except to the extent that the provisions of ss. 122.21-122.24, 122.26 to 122.321, inclusive, may be at variance or in conflict therewith.

History.—s. 2, ch. 57-382.

122.23 Definitions.—In addition to those definitions set forth in s. 122.02 the following words and phrases used in ss. 122.21-122.24, 122.26 to 122.321, inclusive, shall have the respective meanings set forth unless a different meaning is plainly required by the context:

(1) "System"—the general retirement system provided by this chapter, with its two divisions.

(2) "Social security coverage"—old age and survivors insurance as provided by the Federal Social Security Act.

(3) "Division"—the Division of Retirement of the Department of Administration.

(4) "Agreement"—the modification of that certain agreement entered into October 23, 1951, between the State of Florida and the Secretary of Health, Education and Welfare, pursuant to s. 650.03, which makes available to members of division B of this system the provisions of said agreement.

(5) "State agency"—Division of Retirement of the Department of Administration within the provisions and contemplation of chapter 650.

History.—s. 2, ch. 57-382; s. 1, ch. 65-151; ss. 31, 35, ch. 69-106; s. 40, ch. 71-377; s. 1, ch. 73-326.

122.24 Membership in division B.—Officers and employees, within the contemplation of this system, may become members of division B of this system in the manner and under circumstances as follows:

(1) An officer or employee who is a member of this system on June 19, 1957 or who becomes such a member after June 19, 1957, and prior to execution of the agreement in pursuance of affirmative referendum as hereinafter provided, may transfer to this division by electing to do so in writing filed with the administrator. While membership in division B shall date from the filing of such election with the administrator, for the purposes of contributions to the system and benefits to members under division B, membership in division B shall take effect upon the date of execution of the agreement.

(2) A person who becomes a member of this system after execution of the agreement shall become a member of division B of the system.

(3)(a) A person who is in a position covered by this system and who is not a member of this system but is eligible to become a member thereof shall, but only for the purposes of subsection 218(d) of the Social Security Act (other than paragraph (8) of said subsection), be regarded as a member of this system. If such person becomes a contributing member of this system after December 31, 1957, he shall become a member of division B as required by subsection (2) of this section. In addition he may, under the conditions prescribed by section 218(d) (6) (E) of the Social Security Act, and if still in a position covered by this system, obtain division B coverage effective January 1, 1956, or the date he first occupied a position covered by this system, whichever is the later, by filing a written request therefor with the administrator by December 1, 1959, and paying the contributions and interest incident to such coverage.

(b) Under the conditions prescribed by section 218(d)(6)(F) of the Social Security Act, a person who was a member of division A of this system on Decem-

ber 31, 1957, and who is still such a member, may transfer to division B of this system by filing a written request therefor with the administrator by December 1, 1959. Social security coverage incidental to such elective membership in division B shall be effective as of January 1, 1956, or the date such person became a member of this system, whichever is the later.

(c) Under conditions prescribed by section 218(d)(6)(F) of the Social Security Act, any person who was a member of division A of this system on December 31, 1957, and who still is a member of division A, may transfer to division B of this system by filing a written request therefor with the administrator in accordance with, subject to and within the time specified in the agreement or modification thereof between the state and the Secretary of Health, Education and Welfare permitting such transfer. Social security coverage incidental to such elective membership in division B shall be effective as of January 1, 1956, or the date such person became a member of this system, whichever is later, but in no event earlier than the effective date specified in the agreement or modification thereof. All amounts required from a member for retroactive social security coverage shall, at the time such election is made, be deducted from the individual account of the member and the difference between the amount remaining in the individual account of such member and the total amount which such member would have contributed had he become a member of division B as of January 1, 1956, shall be paid into the retirement fund, and added to his individual account, prior to July 1, 1970, or by his date of retirement if earlier. If such payment is made after July 1, 1970, the member shall be required to pay interest at the rate of 10 percent of the unpaid balance compounded annually each June 30 from July 1, 1972 to the date of repayment.

(4) Any highway patrolman who becomes disabled to the extent that he is no longer qualified for the highway patrol and is retired from the highway patrol on account of disability but is able to render useful and efficient service to the state may be employed by the state or a county of the state and upon such employment become a member of the state and county retirement system under division B. Any highway patrolman who has retired from the highway patrol and is subsequently employed by the state or a county of the state shall be eligible to participate under social security in the same manner as any other state or county employee.

History.—s. 2, ch. 57-382; s. 3, ch. 59-285; s. 4, ch. 65-484; s. 1, ch. 69-215; s. 29, ch. 71-355; s. 1, ch. 72-341.

122.26 Funds.—There shall be paid into the state and county officers and employees retirement trust fund, provided in former s. 122.17, contributions by members of division B for benefits payable to members under this system, and all amounts appropriated for such purpose by the state. There is hereby created in the state treasury a fund to be known as the social security contribution trust fund, into which shall be deposited contributions required of members for social security coverage, and such amounts as may be appropriated by the state for that purpose.

History.—s. 2, ch. 57-382; s. 2, ch. 61-119.

122.27 Contributions.—From and after the date of the execution of the agreement, the officer or board paying the salary of a member of division B shall withhold the following from such salary:

(1) Four percent of such salary, which shall constitute the contribution of the member to this system with respect to retirement and other benefits payable under this system. The officer or board so withholding such percentage of salary shall without delay deposit the same in the State and County Officers and Employees' Retirement Trust Fund.

(2) The percentage of such salary which shall constitute the contribution of the member required for social security coverage as now or hereafter fixed by relevant federal statutes. The officer or board so withholding such percentage of salary shall deposit the same without delay in the Social Security Contribution Trust Fund.

(3) Any contributions made by a member of division B during the calendar years 1956 and 1957, for state and county retirement contributions, in excess of 4 percent of the member's total salary shall be returned to the member on the effective date of the member's retirement or applied to any shortage which may exist in the member's retirement account.

History.—s. 2, ch. 57-382; s. 4, ch. 59-285; s. 2, ch. 61-119.

122.28 Benefits.—The relevant provisions of ss. 122.01-122.13, 122.15, 122.16, 122.18 to 122.20, inclusive, fixing or relating to eligibility for retirement, retirement compensation, and other benefits payable to members or for the account of members of this system in relation to members in division A hereof, shall apply with equal force and effect to members of division B, with the following exceptions:

(1) For the period of service of the member prior to the effective date of his social security coverage hereunder, retirement benefits shall be computed on average final compensation at the rate of 2 percent for each year of service rendered prior to such effective date and as provided in s. 122.08. For the period of membership in division B the member's retirement compensation shall be computed on average final compensation at the rate of 1½ percent for each year of service rendered after the effective date of said social security coverage.

(2) Members of division B retiring under the disability provisions of this chapter shall receive not less than 20 percent of their average final compensation.

(3) For those persons who become members of the retirement system on or after July 1, 1963, the amount of such retirement compensation shall not exceed that amount which when added to the member's estimated annual primary insurance amount under social security coverage equals 80 percent of his average final compensation. The estimated annual primary insurance amount of the member shall be determined by the administrator on the basis of the social security coverage in effect on the member's retirement date, assuming that payment of such primary insurance amount shall commence at

the later of the member's 65th birthday or actual age of retirement, and that the member earned his average final compensation in each year between his date of retirement and his 65th birthday for those members retiring prior to age 65.

History.—s. 2, ch. 57-382; s. 5, ch. 63-555.

122.29 Records and reports.—The administrator shall maintain accurate accounts of each member of division B; and shall maintain said accounts in such manner, form and detail as shall meet the requirements of the Federal Social Security Act and regulations in relation to the social security coverage of such member. The administrator shall from time to time make such reports as may be required by relevant federal laws and regulations relating to the social security coverage of the members of this system.

History.—s. 2, ch. 57-382.

122.30 Appropriations.—

(1) There is hereby annually appropriated from the intangible tax fund of the state to the division as the state agency designated in chapter 650, a sum not to exceed $10,000 to defray the expenses of such agency in connection with its continuing duties in relation to the social security coverage provided by this law.

(2) If under the agreement social security coverage is retroactively applicable to members of division B, there is appropriated out of the State and County Officers and Employees' Retirement Trust Fund and into the Social Security Contribution Trust Fund the amount required by applicable federal laws and regulations to be paid with respect to periods prior to date of execution of the agreement.

(3) There is appropriated a sufficient amount out of the State and County Officers and Employees' Retirement Trust Fund to the administrator to make payments to members of division B as provided.

(4) There is appropriated out of the Social Security Contribution Trust Fund for payment into the contribution fund established by s. 650.06, from time to time, such amounts as may be required for the social security coverage of the members of division B.

(5) In addition to amounts appropriated by other provisions of this chapter or other laws to defray cost of administration of this system, there is hereby appropriated out of the Intangible Tax Fund of the state for use of the division in its administration of the two divisions of this system, the sum of $100,000, or so much thereof as may be required for that purpose.

(6) If in any fiscal year the amounts provided in this chapter to be paid into the State and County Officers and Employees' Retirement Trust Fund by the state for members in divisions A and B of this system, and the amount required to be paid by the state into the Social Security Contribution Trust Fund for the members in division B of this system, as herein provided, shall exceed the amount available for such purposes in the Intangible Tax Fund, until the date of adjournment of the first session of the Legislature subsequent to the occurring of such deficiency, there is appropriated from the General Revenue Fund of the state and payable into the State and County Officers and Employees' Retirement Trust Fund and the Social Security Contribution Trust Fund, or either of said latter funds, an amount equal to such deficiency.

(7) There is hereby appropriated out of the State and County Officers and Employees' Retirement Trust Fund and into the Social Security Contribution Trust Fund the amount required by applicable federal laws and regulations to be paid with respect to 1956, 1957, 1958, and 1959 social security coverage of the members of this system who transfer from division A to division B thereof between July 1, 1959, and December 1, 1959, and of the deemed members of this system who became contributing members after December 31, 1957, and who, by December 1, 1959, qualify for retroactive social security coverage.

(8) There is hereby appropriated out of the State and County Officers and Employees' Retirement Trust Fund and into the Social Security Contribution Trust Fund the amount required by federal laws and regulations with respect to social security coverage for years after 1955 of the members of this system who transfer from division A to division B in accordance with s. 122.24(3)(c) and qualify for retroactive social security coverage.

History.—s. 2, ch. 57-382; ss. 5, 7, ch. 59-285; s. 2, ch. 61-119; s. 5, ch. 65-484; s. 1, ch. 67-411; ss. 9, 47, ch. 69-353; ss. 31, 35, ch. 69-106; s. 30, ch. 71-355; s. 43, ch. 73-333.

122.31 Future amendments.—Where in this law reference is made to state and federal laws, it shall be understood that such references are intended to include such laws as they now exist or may hereafter be amended.

History.—s. 2, ch. 57-382.

122.32 Repealer.—It is the legislative intent that members of this system be provided with social security coverage only in pursuance of the method prescribed herein for becoming members of division B, anything in chapter 650 to the contrary notwithstanding, provided however that the officials and employees of any county or counties which have prior to June 19, 1957, elected to accept social security under the provisions of chapter 650 shall not be affected hereby; provided further, all present and future employees of such counties shall remain in or become members of division A as provided in s. 122.01 of the State and County Officers and Employees' Retirement System; and chapter 29968, Acts of 1955, chapter 410, Florida Statutes, are hereby repealed; and provided, that nothing contained in the provisions of this law shall repeal or in any way affect chapter 23259, Laws of 1945, as amended.

History.—s. 2, ch. 57-382.

122.321 County officers and employees; division B.—Effective July 1, 1969, the provisions of s. 122.32 relative to future officials and employees of any county which elected to accept social security under the provisions of chapter 650 prior to June 19, 1957, shall be of no further force and effect. On and after July 1, 1969, all new and future officers and employees of any county coming under the provisions of s. 122.32 shall become members of division

B unless some new consolidated state retirement system becomes effective on that date.

History.—s. 1, ch. 69-129; s. 44, ch. 73-333.

122.34 Special provisions for certain sheriffs and full-time deputy sheriffs.—

(1)(a) In addition to sheriffs and full-time deputy sheriffs, the provisions of this section shall apply with respect to members who are officers or full-time employees of the state or the several counties of the state whose duties are to enforce the criminal laws of the state, except for those officers or full-time employees holding office or employed on or before July 1, 1963, who were then 55 years old or older and who elected in writing, and filed with the Comptroller within 90 days after July 1, 1963, their rejection to this section and except those officers or full-time employees, excluding present "high hazard" members, holding office or employed on or before July 1, 1967, who are then 55 years old or older and who elect in writing, filed with the Comptroller within 90 days after July 1, 1967, to reject this section, and such members who do not so elect to reject this section hereinafter shall be referred to as "high hazard" members.

(b) Only those members who are full-time criminal law enforcement officers or agents, as certified by the employing authority, who perform duties according to rule, order, or established custom as full-time criminal law enforcement officers or agents shall be certified to the division as "high hazard" members, and only such members will be approved by the division.

(c) The Division of Retirement of the Department of Administration shall make such rules and regulations as are necessary for the effective administration of the intent of this section.

(2) All "high hazard" members shall contribute 2.5 percent of each installment of salary, to the State and County Officers and Employees' Retirement Trust Fund, which percentage shall be in addition to the percentage required in s. 122.03, or in s. 122.27 whichever is applicable.

(3) Any "high hazard" member who has been classified within the contemplation of this section as a "high hazard" member for the last 10 years or more of his employment and who is serving as a "high hazard" member, and who has made the additional contributions to the State and County Officers and Employees' Retirement Trust Fund provided in subsection (2) for a period of not less than 5 years or who makes total additional contributions in amount equal to 5 years of additional contribution based on his then current rate of salary, may retire under s. 122.08(1) or s. 122.28, whichever is applicable, if the "high hazard" member has attained normal retirement age which shall be 55 for persons who had become a member prior to July 1, 1963, and age 57 for persons who had or shall become a member on or after July 1, 1963. For the purpose of estimating the annual primary insurance amount under social security coverage under s. 122.28(3) for such "high hazard" member, the administrator shall estimate the primary insurance amount as the amount the member shall be entitled to receive at the later of age 62 or his retirement age.

(4) Any "high hazard" member within the contemplation of this section who has been classified as a "high hazard" member for the last 8 years or more of his employment, who is serving as a "high hazard" member, and who has made the additional contributions to the State and County Officers and Employees' Retirement Trust Fund provided in subsection (2) for a period of not less than 5 years or who makes total contributions in amount equal to 5 years of contributions based on his then current rate of earnings may retire under s. 122.08(2)(b) or s. 122.28, whichever is applicable, if the "high hazard" member has attained the age of 50 years or more and is not eligible to retire in accordance with the provisions of subsection (3).

(5) Any "high hazard" member who becomes eligible to retire under any other section of this chapter shall not receive a refund of the additional 2.5 percent contributions provided for in this section unless he requests in writing to the division a lump sum refund of all his contributions to the State and County Officers and Employees' Retirement Trust Fund in lieu of monthly retirement benefits. However, any "high hazard" member who changes position or is reclassified or otherwise becomes ineligible for classification as a "high hazard" member for any reason before retiring, or before becoming eligible to retire under any other section of this chapter shall lose all benefits under this section and may receive a refund of the additional 2.5 percent contribution without interest or leave the additional 2.5 percent contribution in the State and County Officers and Employees' Retirement Trust Fund pending reclassification as a "high hazard" member; provided further, should any member receive a refund and be reinstated as a "high hazard" member, he shall pay into the State and County Officers and Employees' Retirement Trust Fund the full amount refunded plus 3 percent interest compounded annually from date of refund until July 1, 1975, and thereafter at the rate of 6.5 percent interest compounded annually to date of repayment. Should such member apply for another refund before such payment is made, the interest on the first refund shall be deducted from the second refund, interest to be figured from date of first refund through date of second application for refund, at 3 percent interest compounded annually until July 1, 1975, and thereafter at the rate of 6.5 percent interest compounded annually.

(6)(a) The widow of any "high hazard" member hereafter killed in the line of duty shall receive a monthly pension equal to one-half the monthly salary drawn by the deceased member at the time of death for the rest of her life, unless she remarries, in which case the pension shall terminate at the date of her remarriage.

(b) Any sums of money which would have accrued to such widow had she lived until the 18th birthday of such "high hazard" member's youngest child shall accrue, share and share alike, for the use and benefit of such member's child or children under 18 years of age and unmarried during such minority. Such sums, as the same would have accrued to such widow, shall be paid to the legal guardian of the estate of such child or children, or either of them, during such minority to age 18 years.

(c) In determining the amount of pension to be

received under this section, the benefits received in the form of workers' compensation and social security shall be considered, and the total monthly compensation shall not exceed one-half of the salary received by the deceased "high hazard" member at the time of his death. Should such total compensation exceed one-half of the monthly salary drawn by the deceased member at the time of his death, the pension herein provided for shall be reduced by the amount of such excess.

(7) Any "high hazard" member who becomes totally disabled as a result of occupation while in the performance of duty shall be retired and shall receive, in addition to the award made to him under the Workers' Compensation Law, an annual pension payable monthly in an amount equal to not less than 45 percent of the annual salary of the member at the time of his disability, and he shall continue to receive the said pension so long as such disability exists.

(8) Any "high hazard" member who becomes partially disabled as a result of occupation while in the performance of duty shall be retired and shall receive, in addition to the award made to him under the Workers' Compensation Law, an annual pension payable monthly in an amount equal to not less than 35 percent of the annual salary of the member at the time of his disability, and he shall continue to receive the said pension so long as such disability exists.

(9) The term "total disability" shall be construed to mean any "high hazard" member who has been declared permanently totally disabled under the provisions of chapter 440 as a result of occupation while in the performance of duty.

(10) The term "partial disability" shall be construed to mean any "high hazard" member who has been declared permanently partially disabled under the provisions of chapter 440 as a result of occupation while in the performance of duty.

(11) No "high hazard" member shall be permitted to receive benefits under this section until examined by a duly qualified physician or surgeon, or board of physicians and surgeons, to be selected by the Governor for that purpose, and found to be disabled in the degree and in the manner specified in this section. At such time as the Department of Administration shall direct, any "high hazard" member receiving disability benefits under this section shall submit to a medical examination to determine if such disability has continued, and the cost of such examination shall be paid from the retirement trust fund herein provided for; and in the event it be declared by said examination that said disability has cleared, such member shall be ordered to return to active duty with the same rank and salary that he had at the time of disability. Any such member who shall fail to return to duty following such order shall forfeit all rights and claims under this law. Every "high hazard" member retiring under this provision shall be paid so long as his permanent total or partial disability continues, on his own requisition.

History.—s. 6, ch. 63-555; ss. 6, 7, ch. 65-484; ss. 1, 2, ch. 67-193; ss. 2, 3, ch. 67-371; s. 1, ch. 69-347; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326; s. 7, ch. 74-328; s. 1, ch. 77-174; s. 59, ch. 79-40.

122.35 Funding.—

(1) Commencing July 1, 1967, for all state agencies and commencing October 1, 1967, for all other agencies with employees who are members under this chapter, former ss. 122.17 and 122.30(4) shall be of no further force and effect and each officer or board paying salaries to members and withholding contributions required of members under this chapter for purposes of providing retirement benefits and social security benefits to or on behalf of such members, shall budget, set aside and pay over to account B of the intangible tax trust fund, herein created, matching payments in the following specified amounts:

(a) An amount equal to the amount of member contributions paid to the State and County Officers and Employees' Retirement Trust Fund as specified in ss. 122.03 and 122.27 but excluding any additional contributions required of "high hazard" members under s. 122.34; and

(b) An amount equal to the amount of member contributions paid to the Social Security Contribution Trust Fund as specified in s. 122.27.

(2) The monthly payments required by subsection (1) shall be payable within 10 days after the first day of each calendar month after July 1, 1967, for all state agencies and October 1, 1967, for all other agencies. The state funds required to be paid hereunder shall be provided and paid from the sources as set forth in subsections (3) and (4).

(3) The appropriations provided each state agency, beginning with the 1967-69 biennium and each biennium thereafter, shall include sufficient amounts to pay the matching contributions for social security and retirement as required by this section and the matching contributions for retirement required of state agencies under s. 238.11(1)(a). No state agency, whether its funds are provided by state appropriation or not, shall employ any person or maintain any person on its payroll unless it has allotted for such person sufficient funds to meet these required payments.

(4) Effective October 1, 1967, the proceeds of the intangible tax collections of the state remaining after the payment of administrative expenses, commissions which are applicable, and other costs incident to its collection shall be set aside into an account designated as account B of the Intangible Tax Trust Fund, which account shall also receive all of the matching payments for retirement and social security remitted by each officer or board as provided in subsection (1). The amounts received and deposited into account B of the Intangible Tax Trust Fund are appropriated and shall be used for the following purposes and paid out on the priority basis as shown below:

(a) First, from the funds accumulated in account B there shall be transferred:

1. To the Social Security Contribution Trust Fund, an amount equal to the social security contributions remitted by each officer or board to said fund as specified in s. 122.27.

2. To the State and County Officers and Employees' Retirement Fund, an amount equal to the retirement contributions withheld from the salaries of members and remitted by each officer or board to

said fund as required by ss. 122.03 and 122.27, but excluding any additional contributions required of "high hazard" members under s. 122.34; provided, however, that during the 1967-69 biennium the amount transferred to said account shall not exceed the total amount received in account B from the various state and county agencies for retirement matching purposes.

(b) After the retirement and social security contributions of all members have been matched as provided in paragraph (a), the balance remaining in account B of the Intangible Tax Trust Fund shall be distributed as follows:

1. Each county shall receive each fiscal year ending June 30 an allocation in an amount equal to 55 percent of the total net intangible taxes collected and remitted to the Department of Revenue by the tax collector of the county during the prior fiscal year.

a. Commencing October 1, 1967, and every October 1 thereafter and continuing on the first day of each subsequent month through June 30 of each fiscal year each board of county commissions of the several counties of the state shall receive an allocation from account B of the Intangible Tax Trust Fund. This allocation shall not include the school boards of the several counties of the state. The amount of said monthly allocation shall be equal to the average amount required to be matched by the Intangible Tax Trust Fund for the corresponding months during the 1966-67 fiscal year as computed by the Comptroller, or one-twelfth of the Comptroller's estimate of the county's allocation, whichever is smaller, and an adjustment to reconcile the monthly allocations with the actual amount to be received pursuant to paragraph (b) 1. of this subsection, shall be made not later than 60 days after the end of the fiscal year.

b. Each county, county agency and school board shall pay all matching cost for retirement and social security as required by this act and s. 238.11(1), notwithstanding the provisions of any other law.

2. The balance remaining in account B of the Intangible Tax Trust Fund after the retirement and social security contributions have been matched and the allocations to each county have been paid as provided in this act, shall be paid over to the General Revenue Fund of the state.

(c) The amounts allocated to the several counties from account B of the Intangible Tax Trust Fund shall be paid by the Department of Revenue to the respective boards of county commissioners who shall deposit same in the general fund of the county, and may expend them for any lawful county purpose. These amounts may be used to assist any county officer or agency within the county including school boards to make the matching payments for retirement and social security as required by law. Provided, however, should the income of any constitutional fee officer in any year be insufficient to make the matching payments required by this act, the boards of county commissioners shall provide such fee officer sufficient funds from the allocation received under this law to make these required payments.

(d) Should any officer or board other than a state officer or board fail to make the retirement and social security contributions required herein, the Department of Revenue shall deduct the amount owed by the officer or board from the allocation accruing to the credit of the county affected, or the Department of Revenue shall deduct the amount owed from any other funds to be distributed by him to the officer or board using the procedure he shall deem most appropriate. The amounts so deducted shall remain in or be transferred to account B of the Intangible Tax Trust Fund for further distribution in accordance with this subsection.

(e) Should any officer or board other than a state officer or board, for whom the tax collector collects taxes, fail to make the retirement and social security contributions required by this act, the tax collector, at the request of the Department of Revenue and upon receipt of a certificate from him showing the amount owed account B by the officer or board, shall deduct the amount so certified from any taxes collected for the officer or board and remit the amount to the Department of Revenue for deposit in account B of the Intangible Tax Trust Fund.

(f) The boards of county commissioners of each county and the Department of Revenue, acting individually or jointly, are hereby authorized to file and maintain action in the courts of this state against any county agency to require it to remit any retirement or social security matching payments due account B of the Intangible Tax Trust Fund under the provisions of this law.

History.—s. 8, ch. 63-555; s. 1, ch. 67-411; ss. 2, 3, ch. 67-371; ss. 21, 31, 35, ch. 69-106; s. 1, ch. 69-300; s. 8, ch. 69-353; s. 40, ch. 77-104.

122.351 Funding by local agencies.—Commencing on July 1, 1969, all county and local agencies covered under the provisions of s. 122.35 shall accumulate and be responsible for the payment of social security and retirement matching costs as required under s. 122.35, from the intangible tax allocation of that county and any other source available to the local governmental units, except that all agencies, other than the school boards, shall be given credit for 50 percent of their 1967-1969 actual employer matching cost, actual cost being that cost in cash actually paid by the employer for matching retirement and social security into the fund by the agency for said biennium. The above credit of 50 percent shall be calculated by the director of the Division of Retirement.

History.—s. 1, ch. 70-993; s. 1, ch. 73-326; s. 41, ch. 77-104.

122.355 Statements of purpose and intent and other provisions required for qualification under the Internal Revenue Code of the United States.—Any other provisions in this chapter to the contrary notwithstanding, it is specifically provided that:

(1) The purpose of this chapter is to provide pension benefits for the exclusive benefit of the member employees or their beneficiaries.

(2) No part of the principal or income of the trust fund created hereunder shall be used or diverted for purposes other than for the exclusive benefit of the member employees or their beneficiaries and for the payment of administrative cost.

(3) Forfeitures, if any, shall not be applied to increase the benefits any member employee would oth-

erwise receive under this chapter.

(4) Upon termination or partial termination, upon discontinuance of contributions, abandonment, or merger, or upon consolidation or amendment of this chapter, the rights of all affected employees to benefits accrued as of the date of any of the foregoing events, or the amounts credited to the account of any member employee, shall be and continue thereafter to be nonforfeitable except as otherwise provided by law.

(5) No benefit hereunder shall exceed the maximum amount allowable by law for qualified pension plans under existing or hereafter-enacted provisions of the Internal Revenue Code of the United States.

(6) The provisions of this section are declaratory of the legislative intent upon the original enactment of this chapter and are hereby deemed to have been in effect from such date.

History.—s. 1, ch. 78-108.

CHAPTER 123

SUPREME COURT JUSTICES, DISTRICT COURTS OF APPEAL JUDGES, AND CIRCUIT JUDGES RETIREMENT SYSTEM

123.01 Supreme Court Justices, District Court of Appeal Judges, and Circuit Judges Retirement System established; divisions.—

(1) A retirement system for Supreme Court Justices, District Court of Appeal Judges, and Circuit Judges of the state is hereby established, which shall be administered by and under the supervision of the Division of Retirement of the Department of Administration.

(2) The Judicial Retirement System shall be deemed to be divided into three divisions, to be designated division A, division B, and division C, for the purposes and within the contemplation of s. 218(d)(6) of the Federal Social Security Act (42 USCA s. 418(d)(6)), for the purpose of affording to members of said divisions B and C the opportunity to obtain federal social security coverage.

(a) Division A of this system shall consist of those members of the system who are members as of July 1, 1963, and who do not elect to become members of division B, as hereinafter provided. Sections 123.01 to 123.21, inclusive, shall control with respect to division A and membership therein.

(b) Division B of this system shall include those members, as of July 1, 1963, who elect to become members of division B, as hereinafter provided. Sections 123.22 to 123.33, inclusive, shall control with respect to division B and membership therein.

(c) Division C of this system shall include those persons who are required to become members of said division, as hereinafter provided. Sections 123.34 to 123.43, inclusive, shall control with respect to division C and membership therein.

History.—s. 1, ch. 29838, 1955; s. 1, ch. 57-422; s. 1, ch. 63-462; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

cf.—s. 121.046 Merger of the judicial retirement system into Florida Retirement System.
s. 121.052 Membership class of certain elected state officers.

123.02 Salary deductions; transfer of contributions paid under ss. 25.122 and 38.17.—

(1) From and after July 1, 1963, there shall be deducted from the salary of each Supreme Court Justice, District Court of Appeal Judge and Circuit Judge covered by the provisions of this chapter an amount equal to 8 percent of the total salary of such participant, including all amounts paid by any county of this state, so long as he shall hold office. The amounts deducted shall be deposited in the Judicial Retirement Trust Fund in the State Treasury.

(2) The amount contributed under ss. 25.122 and 38.17 by any such judge or justice accepting the provisions of this chapter shall be transferred to the Judicial Retirement Trust Fund. There is hereby appropriated out of any funds in the General Revenue Fund in the State Treasury not otherwise appropriated a sufficient amount to meet the requirements of this section.

(3) There is hereby annually appropriated and

shall be paid into the Judicial Retirement Trust Fund out of any funds in the State Treasury not otherwise appropriated an amount equal to the total amount paid into the said fund by all participating justices and judges.

History.—s. 2, ch. 29838, 1955; s. 2, ch. 57-422; s. 2, ch. 61-119; s. 2, ch. 63-462.

123.03 Transfer from other retirement systems; acceptance by nonmembers; payment of back contributions.—

(1) Any Supreme Court Justice, District Court of Appeal Judge, or any Circuit Judge now a member of the Circuit Judges' Retirement System or member of any other retirement system authorized by state law for Florida state or county officers or employees and in office on July 1, 1959, may, at his option, become a participant under this chapter in the following manner: On or before January 1, 1960, such Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge shall notify the State Comptroller, in writing, of his election to come within the provisions of this chapter and shall pay into the State Treasury an amount equal to the difference between 6 percent of his salary including all amounts paid by any county of this state from July 1, 1955, to the date of said notification and the amount of any contributions theretofore made by him for the same period of time under the provisions of s. 25.122 or s. 38.17 plus 3 percent interest per annum thereon.

(2) Any Supreme Court Justice or Circuit Judge in office on the effective date of this chapter who is not a member of any State Retirement System, or who has failed to make the necessary payments into any such system to enable him to receive full credit for all service as such Supreme Court Justice or Circuit Judge may, at his option, elect to come within the provisions of this chapter and receive, under the provisions hereof, the full benefits of this chapter for his entire service as such justice or judge by paying into the Judicial Retirement Trust Fund, on or before January 1, 1956, a sum equal to 2 percent of his total salary, including any supplement from any county, received as such justice or judge while not a member of any state retirement system or a sum equal to 2 percent of such total salary received during any period during which he failed to make the necessary payments into any such system.

(3) Any Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge who, prior to becoming a Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge, was a member of any other retirement system authorized by state law for Florida state or county officers or employees, and who is not receiving retirement benefits under said fund, may be a member of the Supreme Court Justices, District Court of Appeal Judges, and Circuit Judges Retirement System, and if any such Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge has not received a refund from the retirement system authorized by state law for Florida state or county officers or employees, the amount he has paid into the said fund shall be transferred from the retirement system authorized by state law for Florida State or County Officers or Employees' Fund to the Judicial Retirement Trust Fund, or if such Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge has received a refund from the retirement system authorized by state law for Florida state or county officers or employees, then any such Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge shall within 24 months from the time such person becomes a Supreme Court Justice, District Court of Appeal Judge or Circuit Judge or within 24 months from the time this chapter becomes a law, whichever is the later date, pay into the Judicial Retirement Trust Fund 5 percent of the salary he has received from the state and county as an officer or employee beginning with July 1, 1945, plus 3 percent interest per annum thereon. Thereupon the total time spent as a state or county officer or employee shall be added to and computed with such person's service as a Supreme Court Justice, District Court of Appeal Judge or Circuit Judge as provided for in this chapter. Provided further that the service credit as a state or county officer or employee shall be computed at 2 percent. No Supreme Court Justice, District Court of Appeal Judge or Circuit Judge who is receiving benefits under any other retirement system authorized by state law for Florida State or County Officers or Employees Pension Trust Fund shall be eligible to become a member of the Supreme Court Justices, District Court of Appeal Judges and Circuit Judges Retirement System.

(4) The total time spent by any Supreme Court Justice or District Court of Appeal Judge or Circuit Judge, electing to take the benefits of this chapter, as a state or county officer or employee prior to July 1, 1945, without regard to previous membership in or contribution to any other retirement system for such period of time, shall be added to and computed with such person's service as a Supreme Court Justice or District Court of Appeal Judge or Circuit Judge as provided by this chapter; provided, also, that service as a state or county officer or employee subsequent to July 1, 1945, may be credited as provided herein if such justice or judge pays into the Judicial Retirement Trust Fund, 5 percent of the salary he has received as such state or county officer or employee between July 1, 1945, and July 1, 1955, and 6 percent of the salary he has received as such state or county officer or employee since July 1, 1955, plus 3 percent interest compounded annually thereon until July 1, 1975, and thereafter 6.5 percent interest compounded annually until date of payment. The annual service credit provided for in this subsection shall also be computed at 2 percent. Any justice or judge electing to take the benefits of this subsection shall do so on or before January 1, 1960, and shall on or before said date, notify the Comptroller in writing of such election. Said notice to the Comptroller shall be accompanied with full payment of said required contribution for prior service rendered subsequent to July 1, 1945.

(5) Any Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge who was a member of another retirement system on January 1, 1965, may transfer such membership to division C of the Judicial Retirement System and receive membership credit thereunder; provided, however, that for the period prior to such date of transfer he shall pay into the judicial retirement fund an amount equal to

the difference between the retirement contributions which he would have made to the Judicial Retirement System had such member been covered by the system from the date when he was first eligible, and the amount of any contributions theretofore made by him to another retirement system authorized by state law for state or county officers or employees, plus 3 percent interest compounded annually thereon until July 1, 1975, and thereafter 6.5 percent interest compounded annually until date of payment. Such transfer shall be accomplished prior to December 31, 1965.

(6) A member of the retirement system created by this chapter who has been eligible or becomes eligible to receive workers' compensation payments for an injury or illness occurring during his employment while a member of any state retirement system shall be subject to the following provisions:

(a) If the member receives no salary payments for the period of time he receives workers' compensation payments, upon his return to active employment, he shall receive full retirement credit for the period for which workers' compensation payments were received. No employee or employer contributions shall be required in order for the member to receive retirement credit for such period. Such credit shall be based on the member's rate of monthly compensation immediately prior to his receiving workers' compensation payments;

(b) If the member receives partial salary for the period of time he receives workers' compensation payments, the required employee contributions shall be deducted from his partial salary each pay period, and, upon his return to active employment, he shall receive full retirement credit for the period for which workers' compensation payments were received. Such credit shall be based on the member's rate of monthly compensation immediately prior to his receiving workers' compensation payments; or

(c) If the member is retained in full-pay status in lieu of receiving workers' compensation payments, the required employee contributions shall be deducted from his salary each pay period, and he shall receive retirement credit for such period in the same manner by which he would have received credit had he not been injured or incapacitated.

History.—s. 3, ch. 29838, 1955; s. 3, ch. 57-422; s. 1, ch. 59-233; s. 2, ch. 61-119; s. 1, ch. 65-490; s. 4, ch. 72-347; s. 8, ch. 74-328; s. 1, ch. 77-174; s. 60, ch. 79-40.
cf.—s. 25.122 Notice by justice taking advantage of act; deductions from salary.
s. 38.17 Deductions, from salary of circuit judges; election.

123.04 Qualifications for retirement.—

(1) Any person electing to take the benefits of this chapter who has attained the age of 60 years, and who has served as a Supreme Court Justice, or District Court of Appeal Judge, or Circuit Judge for at least 10 years in the aggregate, or had 10 years of otherwise creditable service either before or after passage of this law and who has served as a Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge, and any person electing to take the benefits of this chapter who, without regard to his age, was serving in an elected term of office as Supreme Court Justice or Circuit Judge on July 1, 1955, and thereafter during said term of office completed at least 20 years of service in the aggregate, may resign or retire with the right to be paid, and shall be paid on his own requisition in equal monthly installments during the remainder of his natural life, from the Judicial Retirement Trust Fund, retirement compensation in accordance with the table of benefits provided in this chapter or as provided in s. 123.13.

(2) A board to consist of the Governor, the State Comptroller, and the State Treasurer shall be authorized and empowered to invest in bonds of the United States, in bonds the payment of which is secured by s. 16 of Art. IX of the Constitution of 1885, as adopted by the 1968 revised Constitution or by s. 9, Art. XII of said revision, in bonds the payment of which is secured by s. 18 of Art. XII of the Constitution of 1885, as adopted by s. 9, Art. XII of the 1968 revised Constitution, in county bonds containing a pledge of the full faith and credit of the county or district involved, provided that such bonds are approved by the State Board of Administration as to legal and fiscal sufficiency, in bonds of the Florida State Improvement Commission or any other state agency, which have been approved as to legal and fiscal sufficiency by the State Board of Administration and which contain a sole pledge of the 80 percent surplus 2 cents second gasoline tax accruing under the provisions of s. 16 of Art. IX of the Constitution of 1885, as adopted by the 1968 revised Constitution, or of s. 9, Art. XII of said revision, or in such other securities in which domestic life insurance companies are permitted to invest by Florida law any of the funds of the Judicial Retirement Trust Fund as they may deem necessary and feasible.

(3) Any Justice of the Supreme Court, District Court of Appeal Judge, or Circuit Judge who has attained the age of 55 years or more, but less than 60 years and has accumulated at least 10 years' service in the aggregate within the contemplation of this law, and who has made or makes contributions to the Judicial Retirement Trust Fund for 5 or more years of creditable service as prescribed by this law may elect to retire and receive a reduced benefit which would be the actuarial equivalent of the benefits provided in subsection (1).

History.—s. 4, ch. 29838, 1955; s. 4, ch. 57-422; s. 1, ch. 59-420; s. 2, ch. 59-233; s. 2, ch. 61-119; s. 18, ch. 69-216.
cf.—s. 123.40 Benefits, division C.
s. 340.21 Bonds eligible for investment.

123.05 Termination of service prior to retirement; refund; reassumption of service.—

(1) Any person who has served as a Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge, or both, for an aggregate period of less than 10 years, either before or after the passage of this chapter, and whose service is terminated, may, at his option, either receive from the state a refund, without interest, of all contributions made by him under this chapter during said period, or leave said contributions in the Judicial Retirement Trust Fund for a period not to exceed 7 years after termination of service and upon reassumption of office as a Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge receive credit for such previous period of service in computing his aggregate number of years of service.

(2) Any person who has served as a Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge, or both, for an aggregate period not less

than 10 years, either before or after the passage of this chapter, and whose service is terminated, may, at his option, either receive from the state a refund, without interest, of all contributions made by him under this chapter during said period or leave said contributions in the Judicial Retirement Trust Fund and receive retirement benefits as provided by this chapter upon attaining 60 years of age.

(3) Should any justice or judge leave the service of the state before accumulating aggregate time of 10 years toward retirement, such justice or judge shall be entitled to a refund of 100 percent of his contributions made to the Retirement Trust Fund, without interest provided however that any such justice or judge may leave such contributions in said Judicial Retirement Trust Fund for a period not exceeding 7 years, and upon reassumption of office as a Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge within those 7 years receive credit for such prior service. Any such justice or judge who fails to resume office as such judge or justice within those 7 years shall only be entitled to a refund of 100 percent of his contribution to the retirement fund, without interest, and all prior service shall be forfeited should he resume office as such justice or judge at a later date.

(4) Any person who has served as a Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge and who returns to state or county service shall, upon the termination of his services as such justice or judge, have the right to transfer to any state or county retirement system provided by law, provided such justice or judge has not received any benefits under this law. Such justice or judge so returning to state or county service and electing to transfer to another retirement system shall receive the same percentage credit for each year's service as such justice or judge as allowed by the system transferred to.

History.—s. 5, ch. 29838, 1955; s. 5, ch. 57-422; s. 2, ch. 61-119.

123.051 Special retirement.—

(1) Any person who has served as a Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge for a period of 5 years but less than 10 years, or who has at least 5 years but less than 10 years creditable service either before or after passage of this law may retire from active judicial service under the provisions of this section.

(2) Any Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge electing to retire under this section shall be subject to the following:

(a) He shall be eligible for assignment to active judicial service in accordance with s. 2(b), Art. V of the State Constitution.

(b) He shall receive no monthly retirement benefits or other benefits payable from Judicial Retirement Trust Fund, and his heirs or estate shall receive no payments from said fund, except as provided in paragraph (c).

(c) The total of his retirement contributions made pursuant to this chapter shall remain in the retirement trust fund during the remainder of his life. Upon his death, the heirs, legatees, beneficiary, or personal representative of such deceased justice or judge shall be entitled to 100 percent of the contributions made to the retirement trust fund by such deceased justice or judge, without interest.

(d) He shall not have practiced law in this state for a period of 6 months prior to assignment, nor shall he be permitted to practice law in this state for a period of 6 months after assignment.

(3) Justices and judges who have heretofore retired from active service shall be eligible for assignment in accordance with paragraph (2)(a) if otherwise qualified under the provisions of this section.

History.—s. 1, ch. 70-256; s. 3, ch. 73-299.

123.06 Retirement benefits; basis.—

(1) Any Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge who has become eligible for retirement in accordance with the provisions of this chapter shall be entitled to receive, and shall receive, retirement compensation the annual amount of which shall be 3⅓ percent of his average final compensation, as the term is herein defined, for each year of service rendered as such Supreme Court Justice, District Court of Appeal Judge or Circuit Judge or any combination of years served as such justice or judge, but in no event to exceed annually his average final compensation; provided, each Supreme Court Justice in office on July 1, 1957 shall receive retirement compensation, the annual amount of which shall be 5 percent of his average final compensation, as the term is herein defined for each year of service rendered as a Justice of the Supreme Court, but in no event to exceed his final compensation.

(2) The average final compensation as used in this chapter shall mean the average cash compensation received from the state and county as salary for the best 10 years of the last 15 years of service, except when the person is entitled to retire or is 65 years of age on June 24, 1970 or retires by reason of disability or dies in office, in which cases the average final compensation shall be computed on the best 5 years of the last 10 years of service. A year shall mean 12 consecutive months.

History.—s. 6, ch. 29838, 1955; s. 6, ch. 57-422; s. 2, ch. 70-199.
cf.—s. 123.29 Benefits, division B.
s. 123.40 Benefits, division C.

123.07 Reduced retirement benefits with excess to beneficiary.—

(1) Any Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge shall have the right at any time prior to receipt of his or her first monthly installment of retirement compensation to elect to receive a reduced retirement compensation with the provision that the surviving spouse shall continue to draw such reduced retirement compensation (or one-half thereof if so designated) so long as he or she shall live. The amount of such reduced retirement compensation shall be the actuarial equivalent of the amount of such retirement otherwise payable such Supreme Court Justice, District Court of Appeal Judge or Circuit Judge.

(2) Any Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge shall have the right at the time of retirement but prior to receipt of his first monthly installment of retirement compensation to elect to receive a reduced retirement compensation with the provision that if such justice or judge dies after retirement compensation installments

have commenced, the excess, if any, of his total contributions made to the retirement trust fund, without interest, over the total retirement compensation received by him shall be paid in accordance with the beneficiary designated in the office of the Division of Retirement of the Department of Administration, or in the absence of such designation to his lawful heirs. The amount of such reduced retirement compensation shall be the actuarial equivalent of the amount of such retirement compensation otherwise payable to him.

(3) Any Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge who becomes eligible for retirement may select one of the options provided in this section and continue to hold office or be employed. Should such Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge die before retiring, his surviving spouse shall be entitled to receive either the accumulated contributions of such Supreme Court Justice, District Court of Appeal Judge or Circuit Judge at the date of death or the reduced retirement compensation to which the surviving spouse would have been entitled to under such option, calculated on the assumption that such Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge retired on his date of death. Any Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge shall have the right at any time prior to actually retiring to change the option selected. The selection of an option under this section will become effective immediately after date of selection. Provided further that should the option be changed at the time of retirement, such option shall become effective immediately upon retirement.

(4) Tables for computing the actuarial equivalent shall be approved by the division.

(5) Any Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge who becomes eligible to make a selection of an option for the benefit of surviving spouse shall be construed to have selected the option as provided in said section which will afford the surviving spouse the greatest amount of benefit.

(6) Any Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge who becomes eligible to retire and has accumulated the maximum benefit of 100 percent of average final compensation may continue in active service and, if upon his or her retirement he or she elects to receive a reduced retirement compensation pursuant to subsection (1), the actuarial equivalent percentage factor applicable to the age of such justice or judge at the time he or she reached said maximum benefit and applicable to the age at said time of his or her spouse shall determine the amount of benefits to be paid; provided, however, that should such justice or judge marry or remarry between the time of reaching said maximum benefit and his or her retirement, the actuarial equivalent factor applicable to his or her age at the time of such marriage or remarriage and applicable to the age at said time of his or her spouse shall determine the amount of benefits to be paid. Average final compensation shall be computed from the date of retirement.

(7) Notwithstanding any other provisions in this chapter to the contrary, if any member who has accumulated at least 10 years of service dies, the following provisions shall apply:

(a) If the deceased member's surviving spouse has previously received a refund of the member's accumulated contributions made to the retirement trust fund, such spouse may pay to the Division of Retirement an amount equal to the sum of the amount of the deceased member's accumulated contributions previously refunded and interest at 3 percent compounded annually until July 1, 1975, and thereafter 6.5 percent interest compounded annually, on the amount of such refunded contributions from the date of refund to the date of payment to the division and receive the monthly retirement benefit provided in paragraph (c).

(b) If the deceased member's surviving spouse has not received a refund of the deceased member's contributions, such spouse shall, upon application to the division within 30 days of the death of the member, receive the monthly retirement benefit provided in paragraph (c).

(c) The monthly benefit payable to the spouse described in paragraph (a) or (b) shall be the actuarial equivalent of the amount which would have been payable to the deceased member's spouse, assuming that the member retired on the date of his death and had selected the option in this section which would afford the surviving spouse the greatest amount of benefits, such benefit to be based on the ages of the spouse and member as of the date of death of the member. Such benefit shall commence on the first day of the month following the payment of the aforesaid amount to the division, if paragraph (a) is applicable, or on the first day of the month following the receipt of the spouse's application by the division, if paragraph (b) is applicable.

(8) The surviving spouse or other dependent of any member whose employment is terminated by death shall, upon application to the director of the Division of Retirement of the Department of Administration, be permitted to pay the required contributions for any service performed by the member which could have been claimed by the member at the time of his death. Such service shall be added to the creditable service of the member and shall be used in the calculation of any benefits which may be payable to the surviving spouse or other surviving dependent.

History.—s. 7, ch. 29838, 1955; s. 7, ch. 57-422; s. 3, ch. 59-233; s. 2, ch. 61-119; s. 1, ch. 67-208; s. 1, ch. 69-131; ss. 31, 35, ch. 69-106; s. 1, ch. 70-382; s. 3, ch. 72-334; s. 3, ch. 72-345; s. 9, ch. 74-328.

123.08 Disability retirement; periodic physical examination.—Whenever any Supreme Court Justice, or Circuit Judge of the state has served as justice or judge for not less than 10 years within the contemplation of this law, the last 5 years of which must be continuous unbroken service, and who is regularly contributing to the Judicial Retirement Trust Fund and shall while holding such office become permanently and totally disabled, physically or mentally, from rendering useful and efficient service as justice or judge, such justice or judge may retire from his office or employment, and upon such retirement he shall be paid, so long as his permanent and total disability continues, on his own monthly requisition, from the Judicial Retirement Trust

Fund hereinafter established, retirement compensation as provided in this law. Every justice or judge retiring under this section shall not receive less that 25 percent of his average final compensation. No justice or judge shall be permitted to retire under the provisions of this section until examined by a duly qualified physician or surgeon, or board of physicians and surgeons, to be selected by the Governor for that purpose and found to be disabled in the degree and in the manner specified in this section. Any justice or judge retiring under this section shall be examined periodically by a duly qualified physician or surgeon or board of physicians and surgeons to be selected by the Governor for that purpose. Any judge or justice who shall, in the opinion of said physician or surgeon recover fully from such permanent and total disability shall forthwith cease to be paid benefits under this section. No judge retiring hereunder shall be entitled to the options contained in s. 123.07.

History.—s. 8, ch. 29838, 1955; s. 24, ch. 57-1; s. 2, ch. 61-119.
cf.—ss. 123.17-123.19 which also provide for disability retirement.

123.10 Reassumption of office after refund.—Any justice or judge whose contributions have been refunded as provided in s. 123.05 and who subsequently reassumes office as such justice or judge shall be treated as those justices or judges assuming office the first time as provided herein.

History.—s. 10, ch. 29838, 1955.

123.11 Death prior to or after retirement; refund or forfeiture of benefits.—Should any justice or judge die before retiring under the provisions of this law, the heirs, legatees, beneficiaries or personal representatives of such deceased justice or judge of the state shall be entitled to a refund of 100 percent, without interest, of the contributions made to the retirement trust fund by such deceased justice or judge. Any justice or judge may file, in writing, a designation of beneficiary and it shall be the duty of the Division of Retirement of the Department of Administration to pay the refund provided for herein for the deceased justice or judge to such designated beneficiary. The justice or judge shall have the privilege of changing in writing the designated beneficiary at any time. If the deceased justice or judge has received any benefits under this law, no refund shall be made except where this chapter expressly authorizes the same.

History.—s. 11, ch. 29838, 1955; s. 2, ch. 61-119; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

123.12 Rights under other retirement systems preserved.—Nothing herein contained shall affect the rights that any Justice of the Supreme Court, District Court of Appeal Judge, or Circuit Judge may have acquired or may hereafter acquire under any existing retirement law, and the membership of any such justice or judge in any existing and applicable retirement system shall continue to exist and remain inviolate to the same extent as if this chapter had never passed unless voluntarily renounced or subordinated in favor of the provisions of this chapter in the manner provided for under s. 123.03; provided, however, that no person while accepting retirement compensation under the terms and provisions hereof shall at the same time receive retirement compensation from the state under any other law relating to retirement of judges.

History.—s. 12, ch. 29838, 1955; s. 9, ch. 57-422.

123.13 Optional retirement benefits.—

(1) A Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge who becomes eligible for retirement in accordance with the provisions of this chapter, and who had theretofore accepted or elected to accept the provisions of s. 25.112 or s. 38.14, shall be entitled to receive and shall upon retirement receive as retirement compensation to be paid during the remainder of his natural life two-thirds of the total salary being paid to such justice or judge at the time of his retirement, or at his option receive the retirement compensation provided under the terms of this chapter.

(2) Any Supreme Court Justice who becomes eligible for retirement in accordance with the provisions of this chapter, and, who had theretofore accepted or elected to accept the provisions of s. 25.101, shall be entitled to receive and shall upon retirement receive as retirement compensation to be paid during the remainder of his natural life, 100 percent of the total salary being paid to such justice or judge at the time of his retirement, or at his option receive the retirement compensation provided under the terms of this chapter.

History.—s. 13, ch. 29838, 1955; s. 10, ch. 57-422.

123.14 Circuit judges; back contributions.—Upon the payment to the Division of Retirement of the full amount he would have been required to contribute had he duly, timely and properly made such contributions, any Circuit Judge shall be entitled to credit in the Circuit Judges' Retirement Act, established and existing by virtue of chapter 38, for all periods of prior service as a Circuit Judge of the state in the same manner and to the same extent as if he had duly, timely and properly made such contribution, and upon the making of such payments, shall have the election to continue as a member of the retirement system established under said chapter 38, or to participate under the provisions of this chapter.

History.—s. 14, ch. 29838, 1955; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

123.15 System compulsory for new justices and judges; exceptions.—The provisions of this law shall be compulsory for all Supreme Court Justices, District Court of Appeal Judges, and Circuit Judges who take office for the first time on or after July 1, 1955, and the retirement provisions in chapters 25 and 38 shall not be applicable to those justices or judges covered by this section. However, any person who shall be a member of any state retirement system at the time of his election or appointment as a Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge may elect to remain in said system, such election to be made in writing and filed with the Division of Retirement within 30 days from the date he shall assume office.

History.—s. 15, ch. 29838, 1955; s. 11, ch. 57-422; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

123.16 Appropriation.—The amounts necessary to meet the requirements of the Judicial Retirement Trust Fund, after taking into account the amount of contributions made as provided herein, shall be appropriated by the Legislature. If the amounts appropriated for this purpose are insufficient, there is hereby appropriated annually the additional amounts necessary to meet the requirements of this fund.

History.—s. 16, ch. 29838, 1955; s. 12, ch. 57-422; s. 2, ch. 61-119; s. 1, ch. 61-195.

123.17 Judicial retirement for disability.—

(1) The commission provided for in s. 12(a) of Art. V, State Constitution, may, in accordance with rules of procedure established by the Supreme Court, and after notice and hearing, retire any justice or judge for disability with compensation as hereinafter provided. Upon a determination by the commission, in accordance with its rules, that a justice or judge be retired for disability, the clerk of the commission shall forward to the Division of Retirement a certificate certifying the findings and judgment of the commission. The judgment of the commission shall contain the effective date of the disability and shall specify the retirement plan chosen by or for the retired justice or judge.

(2) A justice or judge retired by the commission for disability shall receive two-thirds of his then compensation if he has served for 10 years or more. A justice or judge retired by the commission for disability who has served less than 10 years shall receive one-third of his then compensation and in addition to said one-third shall receive an additional 3⅓ percent of his compensation at time of retirement for each year served prior to his retirement.

(3) Nothing herein contained shall affect the rights that any justice or judge may have acquired or may hereafter acquire under any existing retirement law, and a justice or judge retired by the commission for disability may advise the commission which retirement plan he desires to be retired under and the commission shall include such election in its judgment of disability. In the event the disability of the justice or judge renders him incapable of making a selection of alternative retirement plans the commission may select the plan most favorable under the circumstances of the particular case and include this selection in its judgment.

(4) Any justice or judge retired for disability shall have the right at any time prior to receipt of the first monthly installment of retirement compensation to elect to receive a reduced retirement compensation with the provision that the surviving spouse shall continue to draw such reduced retirement compensation so long as he or she shall live. The amount of such reduced retirement compensation shall be the actuarial equivalent of the amount of such retirement otherwise payable such justice or judge. In the event the disability of the justice or judge renders him incapable of making such election the commission may elect the plan most favorable under the circumstances of the particular case and include this election in its judgment.

History.—ss. 1-4, ch. 57-421; ss. 31, 35, ch. 69-106; s. 4, ch. 73-299; s. 1, ch. 73-326.

cf.—s. 123.08 Disability retirement; periodic physical examination.

123.18 Judicial retirement for disability; transfer of amounts contributed under other retirement laws.—The amounts contributed under ss. 25.122, 38.17 and 123.02 by any justice or judge accepting the retirement compensation provided in s. 123.17(2) shall be transferred to a special fund in the State Treasury, which is hereby established and designated as "The Judicial Disability Retirement Trust Fund."

History.—s. 5, ch. 57-421; s. 2, ch. 61-119.

123.19 Judicial retirement for disability; disappearance or unexplained absence.—In the event of the disappearance of a justice or judge or his unexplained absence for a period of 180 days, the commission may, in accordance with its rules, retire said justice or judge for disability. In such cases the commission shall exercise the available selections or elections as in the case of a justice or judge unable to make such choices by reason of his disability and shall incorporate same in its judgment of disability.

History.—s. 6, ch. 57-421.

123.21 Judicial retirement for disability; appropriation.—There is hereby appropriated and shall be paid annually into the Judicial Disability Retirement Trust Fund out of any funds in the State Treasury not otherwise appropriated sufficient money to meet the requirements of this law. There is hereby appropriated annually out of any funds in the State Treasury not otherwise appropriated a sufficient amount (not to exceed $750), to efficiently administer the provisions of this law.

History.—s. 8, ch. 57-421; s. 2, ch. 61-119.

123.22 Activation of division B.—Sections 123.22 to 123.33, inclusive, shall control with respect to division B of this system and membership therein, and shall prescribe the method of activating such division.

History.—s. 3, ch. 63-462.

123.23 Applicable law.—Sections 123.01 to 123.21, inclusive, in relation to administration of division B and to duties, rights, privileges, and benefits to members of this division under this system, shall apply to said division B and membership therein, except to the extent that the provisions of ss. 123.22 to 123.33, inclusive, may be at variance or in conflict therewith.

History.—s. 3, ch. 63-462.

123.24 Definitions.—The following words and phrases used in ss. 123.22 to 123.33, inclusive, shall have the respective meanings set forth unless a different meaning is plainly required by the context:

(1) "System"—the general retirement system provided by this chapter, with its three divisions.

(2) "Social security coverage"—old age and survivors insurance as provided by the Federal Social Security Act.

(3) "Division"—the Division of Retirement of the Department of Administration.

(4) "Agreement"—the modification of that certain agreement entered into October 23, 1951, between the State of Florida and the Secretary of Health, Education, and Welfare, pursuant to s.

650.03, which makes available to members of division B of this system the provisions of said agreement.

(5) "State agency"—the Division of Retirement of the Department of Administration within the provisions and contemplation of chapter 650.

History.—s. 3, ch. 63-462; ss. 31, 35, ch. 69-106; s. 41, ch. 71-377; s. 1, ch. 73-326.

123.25 Membership in division B.—

(1) Supreme Court Justices, District Courts of Appeal Judges, and Circuit Judges may become members of division B of this system in the manner and under circumstances as follows:

(a) A Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge who is a member of this system on July 1, 1963, and prior to execution of the agreement in pursuance of affirmative referendum as hereinafter provided, may transfer to division B by electing to do so in writing filed with the Division of Retirement of the Department of Administration. While membership in division B shall date from the filing of such election with the division, for the purposes of contributions to the system and benefits to members under this division, membership in division B shall take effect upon the date of execution of the agreement.

(b) A form for the election to transfer to division B shall be prescribed and furnished to the members of the system by the division. Such form shall prescribe the date by which the executed election must be returned by the members in order for such members to be eligible for participation in the referendum provided hereinafter.

(c) Executed elections received after such date shall be effective for transfer of membership to division B if returned prior to the date the agreement is entered into.

(2) Any member electing to belong to division B may withdraw therefrom prior to the date the agreement is entered into.

History.—s. 3, ch. 63-462; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

123.26 Referendum.—If by the date fixed in said form of election furnished by the administrator to the members of the system there shall have been filed with the administrator executed forms of election evidencing that not less than 10 members of this system have chosen to become members of division B, the administrator shall so notify the Governor of Florida. It is the legislative intent and request that the Governor shall thereupon provide for the holding of a referendum, to be participated in by eligible members, in pursuance of the provisions of s. 650.10, for the purpose of extending social security benefits to members of this division. Should the results of the referendum be such as to justify the Governor's making the certification provided by s. 650.10(2) and s. 218(d)(3) of the Federal Social Security Act, he is requested to make such certification, and the state agency is authorized and directed to take appropriate action under chapter 650, and in conformity with applicable Federal Social Security Laws, to accomplish the purpose of extending social security coverage to the members of division B, effective January 1, 1959, or as soon thereafter as shall be permissible under then existing federal laws and regulations.

History.—s. 3, ch. 63-462.

123.27 Funds.—There shall be paid into the Judicial Retirement System Trust Fund contributions by members of division B for benefits payable to members under the system. Contributions required of members for social security coverage shall be deposited into the Social Security Contribution Trust Fund.

History.—s. 3, ch. 63-462.

123.28 Contributions.—From and after the date of the execution of the agreement, the officer or party paying the salary of a member of division B shall withhold 8 percent of such salary, which shall constitute the contribution of the member of this division with respect to retirement and other benefits payable under the system, and in addition thereto, the entire contribution for each member required for social security coverage as now or hereafter fixed by relevant federal statutes. The officer or party so withholding such percentages shall, without delay, deposit retirement contributions into the Judicial Retirement System Trust Fund and social security contributions into the Social Security Contribution Trust Fund.

History.—s. 3, ch. 63-462.

123.29 Benefits.—The relevant provisions of ss. 123.01 to 123.21, inclusive, fixing or relating to eligibility for retirement, retirement compensation, and other benefits payable to members or for the account of members of the system in relation to members in division A, shall apply with equal force and effect to members of division B with the following exceptions:

(1) Section 123.06(1) shall read, with respect to members of division B: Any Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge who has become eligible for retirement in accordance with the provisions of this chapter shall be entitled to receive, and shall receive, retirement compensation from the Judicial Retirement Trust Fund the annual amount of which shall be 3⅓ percent of his average final compensation, as the term is herein defined, for each year of service rendered as such Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge or any combination of years served as such justice or judge. However, in no event shall such retirement compensation which may otherwise be payable between the member's date of retirement and his 65th birthday exceed his average final compensation.

(2) Such retirement compensation as may otherwise be payable subsequent to the member's 65th birthday shall not exceed that amount which, when added to his estimated annual primary insurance amount as provided under social security coverage at age 65, as determined by the Division of Retirement, equals his average final compensation. Should this limitation with respect to retirement compensation payable after the member's 65th birthday be

applicable, the amount of retirement compensation shall be adjusted accordingly.

History.—s. 3, ch. 63-462; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

123.30 Records and reports.—The Division of Retirement shall maintain accurate accounts of each member of this division and shall maintain said accounts in such manner, form and detail as shall meet the requirements of the Federal Social Security Act and regulations in relation to the social security coverage of such member. The division shall from time to time make such reports as may be required by relevant federal laws and regulations relating to the social security coverage of the members of this system.

History.—s. 3, ch. 63-462; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

123.31 Appropriation; retroactive coverage.—

(1) If under the agreement, social security coverage is retroactively applicable to members of division B, there is appropriated out of the Judicial Retirement System Trust Fund and into the Social Security Contribution Trust Fund the amount required by applicable federal laws and regulations to be paid with respect to periods prior to date of execution of the agreement.

(2) All amounts required for retroactive social security coverage for members of division B shall be charged against the individual account of such members within the Judicial Retirement System Trust Fund and shall be repaid to the Judicial Retirement System Trust Fund within 1 year from date of payment, and the officer or party paying the salary of such member shall deduct the same from the salary of the member in 12 equal monthly payments.

History.—s. 3, ch. 63-462.

123.32 Future amendments.—Where in this law reference is made to state and federal laws, it shall be understood that such references are intended to include such laws as they now exist or may hereafter be amended.

History.—s. 3, ch. 63-462.

123.33 Failure of referendum.—Should a majority of the eligible members of the Judicial Retirement System fail to vote in favor of social security coverage, the provisions of ss. 123.22 to 123.32, inclusive, shall cease to be of any effect. In such event, the members of division B shall by virtue of the force and effect of this provision be considered not to have transferred to division B and the executed election to do so, filed with the Division of Retirement, shall be considered void and of no effect, and membership in the system shall not be disturbed by reason of the election so made.

History.—s. 3, ch. 63-462; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

123.34 Activation of division C.—Sections 123.34 to 123.43, inclusive, shall control with respect to division C of this system and membership therein, and shall prescribe the method of activating such division.

History.—s. 4, ch. 63-462.

123.35 Applicable law.—Sections 123.01 to 123.21, inclusive, in relation to administration of division C and to duties, rights, privileges, and benefits to members of this division under the system, shall apply to said division C and membership therein, except to the extent that the provisions of ss. 123.34 to 123.43, inclusive, may be at variance or in conflict therewith.

History.—s. 4, ch. 63-462.

123.36 Definitions.—The following words and phrases used in ss. 123.34 to 123.43, inclusive, shall have the respective meanings set forth unless a different meaning is plainly required by the context:

(1) "System"—the general retirement system provided by this chapter with its three divisions.

(2) "Social security coverage"—old age and survivors insurance as provided by the Federal Social Security Act.

(3) "Division"—the Division of Retirement of the Department of Administration.

History.—s. 4, ch. 63-462; ss. 31, 35, ch. 69-106; s. 42, ch. 71-377.

123.37 Membership in division C.—Supreme Court Justices, District Courts of Appeal Judges, and Circuit Judges who become members of the system on or after July 1, 1963, shall become members of division C of the system.

History.—s. 4, ch. 63-462.

123.38 Funds.—There shall be paid into the Judicial Retirement System Trust Fund contributions by members of division C for benefits payable to members under the system. Contributions required of members for social security coverage shall be deposited into the Social Security Contribution Trust Fund now existing.

History.—s. 4, ch. 63-462.

123.39 Contributions.—From and after July 1, 1963, the officer or party paying the salary of a member of division C shall withhold 8 percent of such salary, which shall constitute the contribution of the member of division C with respect to retirement and other benefits payable under the system, and in addition thereto one-half of the entire contribution of the member required for social security coverage as now or hereafter is fixed by relevant federal statutes. The officer or party so withholding such contribution shall, without delay, deposit retirement contributions into the Judicial Retirement System Trust Fund and social security contributions into the Social Security Contribution Trust Fund.

History.—s. 4, ch. 63-462.

123.40 Benefits.—The relevant provisions of ss. 123.01 to 123.21, inclusive, fixing or relating to eligibility for retirement, retirement compensation, and other benefits payable to members or for the account of members of the system in relation to members in division A shall apply with equal force and effect to members of division C with the following exceptions:

(1) Section 123.04 "Qualifications for retirement" shall read with respect to members of division C:

(a) Any person electing to take the benefits of this chapter who has attained the age of 65 years,

and who has served as a Supreme Court Justice, or District Court of Appeal Judge, or Circuit Judge for at least 10 years in the aggregate, or had 10 years of otherwise creditable service either before or after passage of this law, may retire with the right to be paid, and shall be paid on his own requisition in equal monthly installments during the remainder of his natural life, from the Judicial Retirement Trust Fund, retirement compensation in accordance with s. 123.06 as it pertains to members of division C.

(b) Any Justice of the Supreme Court, District Court of Appeal Judge, or Circuit Judge who has attained the age of 55 years or more and has accumulated at least 10 years service in the aggregate within the contemplation of this law, and who has made or makes contributions to the Judicial Retirement Trust Fund for 5 or more years of creditable service as prescribed by this law may elect to retire and receive a reduced benefit which would be the actuarial equivalent of the benefits provided in paragraph (a).

(2) Section 123.06(1) "Retirement benefits; basis" shall read with respect to members of division C:

(a) Any Supreme Court Justice, District Court of Appeal Judge, or Circuit Judge who has become eligible for retirement in accordance with the provisions of this chapter shall be entitled to receive, and shall receive retirement compensation the annual amount of which shall be equal to the formula benefit hereinafter defined reduced by the annual maximum primary insurance amount as provided under social security coverage as in effect on the member's retirement date.

(b) The formula benefit is equal to 3⅓ percent of the average final compensation of the member, as the term is herein defined, for each year of service rendered as such Supreme Court Justice, District Court of Appeal Judge or Circuit Judge or any combination of years served as such justice or judge, but in no event to exceed his average final compensation.

History.—s. 4, ch. 63-462.

123.41 Records and reports.—The Division of Personnel and Retirement shall maintain accurate accounts of each member of division C; and shall maintain said accounts in such manner, form and detail as shall meet the requirements of the Federal Social Security Act and regulations in relation to the social security coverage of such member. The division shall from time to time make such reports as may be required by relevant federal laws and regulations relating to the social security coverage of the members of the system.

History.—s. 4, ch. 63-462; ss. 31, 35, ch. 69-106.

123.42 Appropriation; Social Security Contribution Trust Fund.—There is hereby annually appropriated and shall be paid into the Social Security Contribution Trust Fund out of funds in the State Treasury not otherwise appropriated, an amount equal to the total amount paid into the said fund by the members of division C.

History.—s. 4, ch. 63-462.

123.43 Future amendments.—Where in this law reference is made to state and federal laws, it shall be understood that such references are intended to include such laws as they now exist or may hereafter be amended.

History.—s. 4, ch. 63-462.

123.44 Failure of referendum by eligible members of division B.—Should a majority of the eligible members of division B of the Judicial Retirement System fail to vote in favor of social security coverage as provided in this chapter and thereby make such coverage nonapplicable to members of division C, the provisions of ss. 123.34 to 123.43, inclusive, shall cease to be of any effect. In such event, by virtue of the force and effect of this provision, persons required to become members of division C in accordance with s. 123.37 shall instead become members of the system in accordance with ss. 123.01 to 123.21, inclusive.

History.—s. 4, ch. 63-462.

123.45 Statements of purpose and intent and other provisions required for qualification under the Internal Revenue Code of the United States.—Any other provisions in this chapter to the contrary notwithstanding, it is specifically provided that:

(1) The purpose of this chapter is to provide pension benefits for the exclusive benefit of the member employees or their beneficiaries.

(2) No part of the principal or income of the trust fund created hereunder shall be used or diverted for purposes other than for the exclusive benefit of the member employees or their beneficiaries and for the payment of administrative cost.

(3) Forfeitures, if any, shall not be applied to increase the benefits any member employee would otherwise receive under this chapter.

(4) Upon termination or partial termination, upon discontinuance of contributions, abandonment, or merger, or upon consolidation or amendment of this chapter, the rights of all affected employees to benefits accrued as of the date of any of the foregoing events, or the amounts credited to the account of any member employee, shall be and continue thereafter to be nonforfeitable except as otherwise provided by law.

(5) No benefit hereunder shall exceed the maximum amount allowable by law for qualified pension plans under existing or hereafter-enacted provisions of the Internal Revenue Code of the United States.

(6) The provisions of this section are declaratory of the legislative intent upon the original enactment of this chapter and are hereby deemed to have been in effect from such date.

History.—s. 1, ch. 78-108.

TITLE XI

COUNTY ORGANIZATION AND INTERGOVERNMENTAL RELATIONS

CHAPTER 124

COMMISSIONERS' DISTRICTS

124.01 Division of counties into districts; county commissioners, etc.—

(1) There shall be five county commissioners' districts in each county, which shall be numbered one to five, inclusive, and shall be as nearly equal in proportion to population as possible.

(2) There shall be one county commissioner for each of such county commissioners' districts, who shall be elected by the qualified electors of the county, as provided by s. 1(e), Art. VIII of the State Constitution.

(3) The board of county commissioners shall from time to time, fix the boundaries of the above districts so as to keep them as nearly equal in proportion to population as possible; provided, that changes made in the boundaries of county commissioner districts pursuant to this section shall be made only in odd-numbered years.

(4) County commissioners' districts now existing shall remain as now constituted until changed by the board of county commissioners, as provided by the constitution and in this chapter.

(5) This section shall not apply to Dade County.

History.—ss. 1, 2, ch. 3723, 1887; RS 573; GS 765; RGS 1469; CGL 2147; s. 1, ch. 24108, 1947; s. 1, ch. 59-459; s. 8, ch. 69-216.

124.02 Notice of change of boundaries of district to be given by publication.—

(1) Whenever the boundaries of existing county commissioners' districts are, from time to time, changed by the board of county commissioners, it shall cause an accurate description of the boundaries of such districts, as changed, to be entered upon its minutes and a certified copy thereof to be published once each week for 4 consecutive weeks (four publications being sufficient) in a newspaper published in said county.

(2) If there be no newspaper published in such county, then three copies of said minutes shall be posted for 4 consecutive weeks in three different and conspicuous places in such county, one of which shall be at the front door of the courthouse.

(3) Proof of such publication or posting shall be entered on the minutes of the board. The publication or posting of such copy shall be for information only and shall not be jurisdictional.

History.—s. 5, ch. 3723, 1887; RS 575; GS 766; RGS 1470; CGL 2148; s. 1, ch. 24108, 1947.

124.03 Description of district boundaries to be furnished Department of State.—Whenever the boundaries of existing county commissioners' districts are, from time to time, changed by the board, it shall cause its clerk to forthwith furnish the Department of State with a certified copy of its minutes, reflecting the description of the boundaries of the district, as changed, which shall record a description of such boundaries in its office in a book kept for that purpose.

History.—s. 6, ch. 3723, 1887; RS 576; GS 767; RGS 1471; CGL 2149; s. 1, ch. 24108, 1947; ss. 10, 35, ch. 69-106.

CHAPTER 125

COUNTY GOVERNMENT

PART I COUNTY COMMISSIONERS; POWERS AND DUTIES (ss. 125.001-125.59)

PART II SELF-GOVERNMENT (ss. 125.60-125.69)

PART III COUNTY ADMINISTRATION (ss. 125.70-125.74)

PART IV OPTIONAL COUNTY CHARTERS (ss. 125.80-125.88)

PART I

COUNTY COMMISSIONERS; POWERS AND DUTIES

125.001 Board meetings; notice.—Upon the giving of due public notice, regular and special meetings of the board may be held at any appropriate public place in the county.

History.—s. 3, ch. 71-305.

125.01 Powers and duties.—

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power shall include, but shall not be restricted to, the power to:

(a) Adopt its own rules of procedure, select its officers, and set the time and place of its official meetings.

(b) Provide for the prosecution and defense of legal causes in behalf of the county or state and retain counsel and set their compensation.

(c) Provide and maintain county buildings.

(d) Provide fire protection.

(e) Provide hospitals, ambulance service, and health and welfare programs.

(f) Provide parks, preserves, playgrounds, recreation areas, libraries, museums, historical commissions, and other recreation and cultural facilities and programs.

(g) Prepare and enforce comprehensive plans for the development of the county.

(h) Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.

(i) Adopt, by reference or in full, and enforce building, housing, and related technical codes and regulations.

(j) Establish and administer programs of housing, slum clearance, community redevelopment, conservation, flood and beach erosion control, air pollution control, and navigation and drainage, and coop-

erate with governmental agencies and private enterprises in the development and operation of such programs.

(k) Provide and regulate waste and sewage collection and disposal, water supply, and conservation programs.

(l) Provide and operate air, water, rail, and bus terminals, port facilities, and public transportation systems.

(m) Provide and regulate arterial, toll, and other roads, bridges, tunnels and related facilities; eliminate grade crossings; provide and regulate parking facilities; and develop and enforce plans for the control of traffic and parking.

(n) License and regulate taxis, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire operating in the unincorporated areas of the county.

(o) Establish and enforce regulations for the sale of alcoholic beverages in the unincorporated areas of the county pursuant to general law.

(p) Enter into agreements with other governmental agencies within or outside the boundaries of the county for joint performance, or performance by one unit in behalf of the other, of any of either agency's authorized functions.

(q) Establish, and subsequently merge or abolish those created hereunder, municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which may be provided fire protection, law enforcement, beach erosion control, recreation service and facilities, water, streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation, and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only. It is hereby declared to be the intent of the Legislature that this paragraph is the authorization for all counties to levy additional taxes, within the limits fixed for municipal purposes, within such municipal service taxing units under the authority of the second sentence of s. 9(b), Art. VII of the State Constitution.

(r) Levy and collect taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit, and special assessments, borrow and expend money, and issue bonds, revenue certificates, and other obligations of indebtedness, which power shall be exercised in such manner, and subject to such limitations, as may be provided by general law. There shall be no referendum required for the levy by a county of ad valorem taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit.

(s) Make investigations of county affairs; inquire into accounts, records, and transactions of any county department, office, or officer; and, for these purposes, require reports from any county officer or employee and the production of official records.

(t) Adopt ordinances and resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law.

(u) Create civil service systems and boards.

(v) Require every county official to submit to it annually, at such time as it may specify, a copy of his operating budget for the succeeding fiscal year.

(w) Perform any other acts not inconsistent with law which are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law.

(x) Employ an independent accounting firm to audit any funds, accounts, and financial records of the county and its agencies and governmental subdivisions. Not less than five copies of each complete audit report, with accompanying documents, shall be filed with the clerk of the circuit court and maintained there for public inspection. The clerk shall thereupon forward one complete copy of the audit report with accompanying documents to the Auditor General, who shall retain the same as a public record for 10 years from receipt thereof.

(y) Place questions or propositions on the ballot at any primary election, general election, or otherwise called special election, when agreed to by a majority vote of the total membership of the legislative and governing body, so as to obtain an expression of elector sentiment with respect to matters of substantial concern within the county. No special election may be called for the purpose of conducting a straw ballot.

(2) The board of county commissioners shall be the governing body of any municipal service taxing or benefit unit created pursuant to paragraph (q) of subsection (1).

(3)(a) No enumeration of powers herein shall be deemed exclusive or restrictive, but shall be deemed to incorporate all implied powers necessary or incident to carrying out such enumerated powers, including, specifically, authority to employ personnel, expend funds, enter into contractual obligations, and purchase or lease and sell or exchange real or personal property.

(b) The provisions of this section shall be liberally construed in order to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution.

(4) The legislative and governing body of a county shall not have the power to regulate the taking or possession of saltwater fish, as defined in s. 370.01, with respect to the method of taking, size, number, season, or species. However, this subsection shall not be construed to prohibit the imposition of excise taxes by county ordinance.

(5)(a) To an extent not inconsistent with general or special law, the governing body of a county shall have the power to establish, and subsequently merge or abolish those created hereunder, special districts for any part or all of the county, including incorporated areas if the governing body of the incorporated area affected approves such creation by ordinance, within which may be provided municipal services and facilities from funds derived from service charges, special assessments, or taxes within such district only. Such ordinance may be subsequently amended by the same procedure as the original enactment.

(b) The governing body of such special district may be composed of representatives of both county

government and the government of such participating municipalities.

(c) It is hereby declared to be the intent of the Legislature that this subsection is the authorization for the levy by a special district of any millage designated in the ordinance creating such a special district or amendment thereto and approved by vote of the electors under the authority of the first sentence of s. 9(b), Art. VII of the State Constitution.

(6)(a) The governing body of a municipality or municipalities by resolution, or the citizens of a municipality or county by petition of 10 percent of the qualified electors of such unit, may identify a service or program rendered specially for the benefit of the property or residents in unincorporated areas and financed from countywide revenues and petition the board of county commissioners to develop an appropriate mechanism to finance such activity for the ensuing fiscal year, which may be by taxes, special assessments, or service charges levied or imposed solely upon residents or property in the unincorporated area, by the establishment of a municipal service taxing or benefit unit pursuant to paragraph (q) of subsection (1), or by remitting the identified cost of service paid from revenues required to be expended on a countywide basis to the municipality or municipalities, within 6 months of the adoption of the county budget, in the proportion that county ad valorem taxes collected within such municipality or municipalities bears to the total amount of countywide ad valorem taxes collected by the county, or by any other method prescribed by state law.

(b) The board of county commissioners shall, within 90 days, file a response to such petition, which shall either reflect action to develop appropriate mechanisms or reject said petition and state findings of fact demonstrating that the service does not specially benefit the property or residents of the unincorporated areas.

(7) No county revenues, except those derived specifically from or on behalf of a municipal service taxing unit, special district, unincorporated area, service area, or program area, shall be used to fund any service or project provided by the county where no real and substantial benefit accrues to the property or residents within a municipality or municipalities.

History.—s. 1, ch. 1882, 1872; s. 1, ch. 3039, 1877; RS 578; GS 769; s. 1, ch. 6842, 1915; RGS 1475; CGL 2153; s. 1, ch. 59-436; s. 1, ch. 69-265; ss. 1, 2, 6, ch. 71-14; s. 2, ch. 73-208; s. 1, ch. 73-272; s. 1, ch. 74-150; ss. 1, 2, 4, ch. 74-191; s. 1, ch. 75-63; s. 1, ch. 77-33; s. 1, ch. 79-87.

cf.—ss. 125.013, 159.03 Powers re revenue bonds.
s. 455.06 Motor vehicle liability insurance.

125.0102 Sign ordinances.—Nothing in chapter 78-8, Laws of Florida, shall be deemed to supersede the rights and powers of municipalities and counties to establish sign ordinances; however, such ordinances shall not conflict with any applicable state or federal laws.

History.—s. 5, ch. 78-8.
Note.—Also published at s. 166.0425.

125.0103 Ordinances and rules imposing price controls; findings required; procedures.—

(1)(a) Except as hereinafter provided, no county, municipality, or other entity of local government shall adopt or maintain in effect an ordinance or a rule which has the effect of imposing price controls upon a lawful business activity which is not franchised by, owned by, or under contract with, the governmental agency, unless specifically provided by general law.

(b) The provisions of this section shall not prevent the enactment by local governments of public service rates otherwise authorized by law, including water, sewer, solid waste, public transportation, taxicab, or port rates.

(2) No law, ordinance, rule, or other measure which would have the effect of imposing controls on rents shall be adopted or maintained in effect except as provided herein and unless it is found and determined, as hereinafter provided, that such controls are necessary and proper to eliminate an existing housing emergency which is so grave as to constitute a serious menace to the general public.

(3) Any law, ordinance, rule, or other measure which has the effect of imposing controls on rents shall terminate and expire within 1 year and shall not be extended or renewed except by the adoption of a new measure meeting all the requirements of this section.

(4) Notwithstanding any other provisions of this section, no controls shall be imposed on rents for any accommodation used or offered for residential purposes as a seasonal or tourist unit, as a second housing unit, or on rents for dwelling units located in luxury apartment buildings. For the purposes of this section, a luxury apartment building is one wherein on January 1, 1977 the aggregate rent due on a monthly basis from all dwelling units as stated in leases or rent lists existing on that date divided by the number of dwelling units exceeds $250.

(5) No municipality, county, or other entity of local government shall adopt or maintain in effect any law, ordinance, rule, or other measure which would have the effect of imposing controls on rents unless:

(a) Such measure is duly adopted by the governing body of such entity of local government, after notice and public hearing, in accordance with all applicable provisions of the Florida and United States Constitutions, the charter or charters governing such entity of local government, this section, and any other applicable laws.

(b) Such governing body makes and recites in such measure its findings establishing the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency.

(c) Such measure is approved by the voters in such municipality, county, or other entity of local government.

(6) In any court action brought to challenge the validity of rent control imposed pursuant to the provisions of this section, the evidentiary effect of any findings or recitations required by subsection (5) shall be limited to imposing upon any party challenging the validity of such measure the burden of going forward with the evidence, and the burden of proof (that is, the risk of nonpersuasion) shall rest upon any party seeking to have the measure upheld.

History.—ss. 1-6, ch. 77-50; s. 71, ch. 79-400.

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—

(1) SHORT TITLE.—This section shall be known and may be cited as the "Local Option Tourist Development Act."

(2) APPLICATION.—The provisions contained in chapter 212, shall apply to the administration of any tax levied pursuant to this section.

(3) TAXABLE PRIVILEGES; EXEMPTIONS; LEVY; RATE.—

(a) It is declared to be the intent of the Legislature that every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, rooming house, tourist or trailer camp, or condominium for a term of 6 months or less is exercising a privilege which is subject to taxation under this section, unless such person rents, leases, or lets for consideration any living quarters or accommodations which are exempt according to the provisions of chapter 212.

(b) Subject to the provisions of this section, any county in this state may levy and impose a tourist development tax on the exercise within its boundaries of the taxable privilege described in paragraph (a), except that there shall be no additional levy under this section in any cities or towns presently imposing a municipal resort tax as authorized under chapter 67-930, Laws of Florida, and this section shall not in any way affect the powers and existence of any tourist development authority created pursuant to chapter 67-930, Laws of Florida. A county may elect to levy and impose the tourist development tax in a subcounty special district of the county. However, if a county so elects to levy and impose the tax on a subcounty special district basis, the district shall embrace all or a significant contiguous portion of the county, and the county shall assist the Department of Revenue in identifying the rental units subject to tax in the district.

(c) The tourist development tax shall be levied, imposed, and set by the governing board of the county at a rate of 1 or 2 percent of each dollar and major fraction of each dollar of the total consideration charged for such lease or rental. When receipt of consideration is by way of property other than money, the tax shall be levied and imposed on the fair market value of such nonmonetary consideration.

(d) The tourist development tax shall be in addition to any other tax imposed pursuant to chapter 212 and in addition to all other taxes and fees and the consideration for the rental or lease.

(e) The tourist development tax shall be charged by the person receiving the consideration for the lease or rental, and it shall be collected from the lessee, tenant, or customer at the time of payment of the consideration for such lease or rental.

(f) The person receiving the consideration for such rental or lease shall receive, account for, and remit the tax to the Department of Revenue at the time and in the manner provided for persons who collect and remit taxes under s. 212.03. The same duties and privileges imposed by chapter 212 upon dealers in tangible property, respecting the collection and remission of tax; the making of returns; the keeping of books, records, and accounts; and compliance with the rules of the Department of Revenue in the administration of said chapter shall apply to and be binding upon all persons who are subject to the provisions of this section. However, the Department of Revenue may authorize a quarterly return and payment when the tax remitted by the dealer for the preceding quarter did not exceed $25.

(g) The Department of Revenue shall keep records showing the amount of taxes collected, which records shall also include records disclosing the amount of taxes collected for and from each county in which the tax authorized by this section is applicable. These records shall be open to the public during the regular office hours of the Department of Revenue, as provided in s. 213.072.

(h) Collections received by the Department of Revenue from the tax, less costs of administration of this section, shall be paid and returned, on a monthly basis, to the county which imposed the tax, for use by the county in accordance with the provisions of this section. They shall be placed in the county Tourist Development Trust Fund of the respective county, which shall be established by each county as a condition precedent to receipt of such funds.

(i) The Department of Revenue, under the applicable rules of the Career Service Commission, is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature.

(j) The Department of Revenue shall promulgate such rules and shall prescribe and publish such forms as may be necessary to effectuate the purposes of this section.

(4) ORDINANCE LEVY TAX; PROCEDURE.—

(a) The tourist development tax shall be levied and imposed pursuant to an ordinance containing the county's tourist development plan prescribed under paragraph (c), enacted by the governing board of the county. The ordinance levying and imposing the tourist development tax shall not be effective unless the electors of the county or the electors in the subcounty special district in which the tax is to be levied approve the ordinance authorizing the levy and imposition of the tax, in accordance with subsection (6). The effective date of the levy and imposition of the tax shall be the first day of the month following approval of the ordinance by referendum as prescribed in subsection (6) or the first day of any subsequent month as may be specified in the ordinance. A certified copy of the ordinance shall be furnished by the county to the Department of Revenue.

(b) At least 60 days prior to the enactment of the ordinance levying the tax, the governing board of the county shall adopt a resolution establishing and appointing the members of the county's Tourist Development Council, as prescribed in paragraph (e), and indicating the intention of the county to consider the enactment of an ordinance levying and imposing the tourist development tax.

(c) Prior to enactment of the ordinance levying and imposing the tax, the county's Tourist Development Council shall prepare and submit to the governing board of the county for its approval a plan for tourist development. The plan shall set forth the anticipated net tourist development tax revenue to be derived by the county for the 24 months following

the levy of the tax; the tax district in which the tourist development tax is proposed; and a list, in the order of priority, of the proposed uses of the said tax revenue by specific project or special use as the same are authorized under subsection (5). The plan shall include the approximate cost or expense allocation for each specific project or special use.

(d) The governing board of the county shall adopt the county's plan for tourist development as part of the ordinance levying the tax. After enactment of the ordinance levying and imposing the tax, the plan of tourist development may not be substantially amended except by ordinance enacted by an affirmative vote of a majority plus one additional member of the governing board.

(e) The governing board of each county which levies and imposes a tourist development tax under this section shall appoint an advisory council to be known as the "(name of county) Tourist Development Council." The council shall be established by ordinance and composed of nine members who shall be appointed by the governing board. The chairman of the governing board of the county shall be the chairman of the council. Two members of the council shall be elected municipal officials. Three members of the council shall be owners or operators of motels, hotels, or other tourist accommodations in the county and subject to the tax. Three members of the council shall be persons who are involved in the tourist industry and who have demonstrated an interest in tourist development, but who are not owners or operators of motels, hotels, or other tourist accommodations in the county and subject to the tax. All members of the council shall be electors of the county. The members of the council shall serve for staggered terms of 4 years. The terms of office of the original members shall be prescribed in the resolution required under paragraph (b). The council shall, from time to time, make recommendations to the county governing board for the effective operation of the special projects or for uses of the tourist development tax revenue and perform such other duties as may be prescribed by county ordinance or resolution. The council shall continuously review expenditures of revenues from the Tourist Development Trust Fund and shall receive, at least quarterly, expenditure reports from the county governing board or its designee. Expenditures which the council believes to be unauthorized shall be reported to the county governing board and the Department of Revenue. The governing board and the department shall review the council's findings and take appropriate administrative or judicial action to insure compliance with this section.

(5) AUTHORIZED USES OF REVENUE.—

(a) All tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by that county for the following purposes only:

1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums within the boundaries of the county or subcounty special taxing district which approved the ordinance levying and imposing the tax by referendum pursuant to subsection (6). However, these purposes may be implemented through service contracts and leases with persons who maintain and operate adequate existing facilities;

2. To promote and advertise tourism in the State of Florida and nationally and internationally; or

3. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county.

(b) In any county in which the electors of the county or the electors of the subcounty special tax district have approved by referendum the ordinance levying and imposing the tourist development tax, the revenues to be derived from the tourist development tax may be pledged to secure and liquidate revenue bonds issued by the county for the purposes set forth in paragraph (a)1.

(6) REFERENDUM.—

(a) No ordinance enacted by any county levying the tax authorized by this section shall take effect until the ordinance levying and imposing the tax has been approved in a referendum election by a majority of the electors voting in such election in the county or by a majority of the electors voting in the subcounty special tax district affected by the tax.

(b) The governing board of the county levying the tax shall arrange to place a question on the ballot at the next regular or special election to be held within the county, substantially as follows:

.....FOR the Tourist Development Tax

.....AGAINST the Tourist Development Tax.

(c) If a majority of the electors voting on the question approve the levy, the ordinance shall be deemed to be in effect.

(d) In any case where a referendum levying and imposing the tax has been approved pursuant to this section and 15 percent of the electors in the county or 15 percent of the electors in the subcounty special district in which the tax is levied file a petition with the board of county commissioners for a referendum to repeal the tax, the board of county commissioners shall cause an election to be held for the repeal of the tax which election shall be subject only to the outstanding bonds for which the tax has been pledged.

(7) AUTOMATIC EXPIRATION ON RETIREMENT OF BONDS.—Anything in this section to the contrary notwithstanding, if the plan for tourist development approved by the governing board of the county, as amended from time to time pursuant to paragraph (4)(d), includes the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, or auditorium, the county ordinance levying and imposing the tax shall automatically expire upon the retirement of any bonds issued by the county for financing the same; however, nothing herein shall preclude that county from enacting an ordinance pursuant to the provisions of this section reimposing a tourist development tax, upon or following the expiration of the previous ordinance.

(8) PROHIBITED ACTS; ENFORCEMENT; PENALTIES.—

(a) Any person who is taxable hereunder who fails or refuses to charge and collect from the person

paying any rental or lease the taxes herein provided, either by himself or through his agents or employees, shall be, in addition to being personally liable for the payment of the tax, guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) No person shall advertise or hold out to the public in any manner, directly or indirectly, that he will absorb all or any part of the tax, that he will relieve the person paying the rental of the payment of all or any part of the tax, or that the tax will not be added to the rental or lease consideration or, when added, that it or any part thereof will be refunded or refused, either directly or indirectly, by any method whatsoever. Any person who willfully violates any provision of this subsection shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) The tax authorized to be levied by this section shall constitute a lien on the property of the lessee, customer, or tenant in the same manner as, and shall be collectible as are, liens authorized and imposed in ss. 713.67, 713.68, and 713.69.

History.—ss. 1-8, ch. 77-209; s. 3, ch. 79-359; s. 72, ch. 79-400.

125.0105 Service fee for dishonored check.—The governing body of a county may adopt a service fee of up to $5 for the collection of a dishonored check, draft, or other order for the payment of money to a county official or agency. The service fee shall be in addition to all other penalties imposed by law. Proceeds from this fee, if imposed, shall be retained by the collector of the fee.

History.—s. 2, ch. 75-56; s. 28, ch. 79-164.

125.011 Definitions.—As used in ss. 125.011-125.021:

(1) "County" means any county operating under a home rule charter adopted pursuant to ss. 10, 11 and 24 of Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word "county" within the above provisions shall include "board of county commissioners" of such county.

(2) "Project" includes any one or any combination of two or more of the following: Public mass transportation, harbor, port, shipping, and airport facilities of all kinds and includes, but is not limited to, harbors, channels, turning basins, anchorage areas, jetties, breakwaters, waterways, canals, locks, tidal basins, wharves, docks, piers, slips, bulkheads, public landings, warehouses, terminals, refrigerating and cold storage plants, railroads and motor terminals for passengers and freight, rolling stock, car ferries, boats, conveyors and appliances of all kinds for the handling, storage, inspection and transportation of freight and the handling of passenger traffic, airport facilities of all kinds for land and sea planes, including, but not limited to, landing fields, water areas for the landing and taking off of aircraft, hangars, shops, buses, trucks, and all other facilities for the landing, taking off, operating, servicing, repairing, and parking of aircraft, and the loading and unloading and handling of passengers, mail, express and freight; administration buildings, toll highways, tunnels, causeways and bridges connected therewith or incident or auxiliary thereto, and may include all property, rights, easements, and franchises relating to any such project and deemed necessary or convenient for the acquisition, construction, purchase, or operation thereof.

(3) "Cost," as applied to improvements, means the cost of constructing or acquiring improvements, as defined in subsection (2), and shall embrace the cost of all labor and materials, machinery and equipment, financing charges, engineering and legal expenses, plans, specifications, and such other expenses as may be necessary or incident to such construction or acquisition.

(4) "Cost," as applied to a project acquired, constructed, extended, or enlarged, includes the purchase price of any project acquired; the cost of improvements; the cost of construction, extension or enlargement; the cost of all lands, properties, rights, easements and franchises acquired; the cost of all machinery and equipment, financing charges, interest during construction; and, if deemed advisable, for 1 year after completion of construction, cost of investigations, audits, and engineering and legal services; and all other expenses necessary or incident to determining the feasibility or practicability of such acquisition or construction, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized and to the acquisition or construction of a project and the placing of the same in operation. Any obligation or expense incurred by the county prior to the issuance of revenue bonds under the provisions of s. 125.013 for engineering studies and for estimates of cost and of revenues, and for other technical, financial, or legal services in connection with the acquisition or construction of any project, may be regarded as a part of the cost of such project.

(5) "Board of county commissioners" includes all members of the board of county commissioners in a county whether their offices are created by the Constitution, the Legislature, or by any home rule charter.

History.—s. 1, ch. 71-249; s. 1, ch. 79-291.

125.012 Project facilities; general powers and duties.—Any county and the board of county commissioners thereof shall have the power, in addition to the powers otherwise conferred:

(1) To construct, acquire, establish, improve, extend, enlarge, reconstruct, equip, maintain, repair, and operate any project as defined in s. 125.011, either within or without the territorial boundaries of the county.

(2) Subject to the jurisdiction of the United States and the State of Florida and the general laws of Florida relating to dredging and filling, to construct, establish, and improve harbors in the county and all navigable and nonnavigable waters connected therewith; to regulate and control all such waters; to construct and maintain such canals, slips, turning basins and channels and upon such terms and conditions as may be required by the United States; and to enact, adopt and establish by resolution rules and regulations for the complete exercise of jurisdiction and control over all said waters.

(3) To acquire by grant, purchase, gift, devise,

condemnation, exchange, or in any other manner property, real or personal, or any estate or interest therein, upon such terms and conditions as said county shall by resolution fix and determine.

(4) To construct, maintain, and operate elevated toll roads and the approaches thereto, along, over, and across any public street or streets of any city, town, or municipality located within its boundaries.

(5) To appoint shipping masters for ports or harbors under its control, to determine their qualifications, and to adopt rules and regulations prescribing their duties.

(6) To license stevedores as independent contractors for hire to handle stevedoring at and in the harbors and airports in the county, to fix the terms and conditions of such licenses, and to determine the fees to be charged for same. Any and all such licenses of all persons, firms, groups or corporations so licensed shall continue at the pleasure of the county.

(7) To enter into joint arrangements with steamship lines, railroads, airlines or other transportation lines, or any common carrier, if the county deems it advantageous so to do.

(8) To make and enter into all contracts and agreements and to do and perform all acts and deeds necessary and incidental to the performance of its duties and the exercise of its powers.

(9) To fix, regulate, and collect rates and charges for the services and facilities furnished by any project under its control; to establish, limit, and control the use of any project as may be deemed necessary to insure the proper operation of the project; to impose sanctions to promote and enforce compliances; to prescribe rules and regulations and impose penalties and sanctions to insure the proper performance of the duties of any stevedore or of any shipping master and the enforcement of any rule or regulation which the county may adopt in the regulation of the ports, harbors, wharves, docks, airports, and other projects under its control.

(10) To fix the rates of wharfage, dockage, warehousing, storage, and port and terminal charges for the use of the port and harbor facilities located within or without the county and owned or operated by the county; to fix and determine the rates, tolls, and other charges for the use of harbor and airport improvements and harbor and airport facilities located within or without the county insofar as it may do so under the State Constitution and the Constitution and laws of the United States.

(11) To regulate the operation, docking, storing, and conduct of all watercraft of any kind plying or using the waterways within the county and of all aircraft of any kind operating over and within the county or utilizing any other area, field, location, or place within the county for air navigation purposes or for the repair, storage, or handling of aircraft within the county.

(12) To receive and accept from any federal agency, grants for or in aid of the construction, improvement, or operation of any project and to receive and accept contributions from any source of either money, property, labor, or other things of value.

(13) To make any and all applications required by the Treasury Department and other departments or agencies of the United States Government as a condition precedent to the establishment within the county of a free port, foreign trade zone, or area for the reception from foreign countries of articles of commerce; to expedite and encourage foreign commerce and the handling, processing, and delivery thereof into foreign commerce free from the payment of custom duties and to enter into any agreements required by such departments or agencies in connection therewith; and to make like applications and agreements with respect to the establishment within the county of one or more bonded warehouses.

(14) To enter into any contract with the government of the United States or any agency thereof which may be necessary in order to procure assistance, appropriations, and aid for the deepening, widening, and extending of channels and turning basins, the building and construction of public mass transit facilities, airport and airport facilities, slips, wharves, breakwaters, jetties, bulkheads, and any and all other harbor and air navigation improvements and facilities.

(15) To employ consulting engineers, superintendents, managers, and such other engineering, construction, and accounting experts, attorneys, employees, and agents as may be necessary in its judgment, and to fix their compensation; and to pay to the clerk of the circuit court of any county such compensation as the board of county commissioners may determine, but not to exceed $2,500 per annum, to be paid exclusively from the revenues arising from the operation of any project owned and operated under authority of ss. 125.011-125.021 for his extraordinary services rendered to such board in the performance of its duties and the exercise of its powers. Such compensation shall be in addition to any and all other compensation provided by law for the clerk of the circuit court.

(16) To make or cause to be made such surveys, investigations, studies, borings, maps, plans, drawings, and estimates of cost and revenues as it may deem necessary and to prepare and adopt a comprehensive plan or plans for the location, construction, improvement, and development of any project.

(17) To grant exclusive or nonexclusive franchises to persons, firms, or corporations for the operating of restaurants, cafeterias, bars, taxicabs, vending machines, and other concessions of a nonaeronautical nature in, on and in connection with any project owned and operated by the county. However, no exclusive franchise shall be so granted unless the board of county commissioners of said county shall award such franchise following receipt of sealed competitive bids in the manner prescribed by law, or cause to be published in a newspaper of general circulation in the county notice of the fact that it intends to grant such exclusive franchise and will at a time certain to be fixed in said notice, not less than 30 days after the publication of the notice, enter into negotiations with any interested parties as to the terms, conditions, and provisions of any such exclusive franchise. Such negotiations with any interested parties as to the terms, conditions, and provisions of any such exclusive franchise are to continue for a period of not less than 10 days before such exclusive franchise is granted.

(18) To adopt and promulgate suitable rules, regulations, and directions for the operation and conduct of any project owned or operated by the county and for the use of any such project and any facility connected therewith by others.

(19) To enter into contracts with utility companies or others for the supplying by said utility companies or others of water, electricity, or telephone service to or in connection with any project.

(20) To approve or disapprove the location, establishment, construction, and operation of privately owned airports within the county. No state airport license or state approval of an airport site shall be effective in the county without the approval of the county on the application therefor.

(21) To pledge by resolution or contract the revenues arising from the operation of any project or projects owned and operated by the county to the payment of the cost of operation, maintenance, repair, improvement, extension, or enlargement of the project or projects from the operation of which such revenues are received and for the payment of principal and interest on bonds issued in connection with any such project or projects, and to combine for financing purposes any two or more projects constructed or acquired by the county under the provisions of ss. 125.011-125.021. In any such case the board of county commissioners may adopt separate budgets for the operation of such project or projects and it shall not be necessary to include such revenues and the expenditure thereof in the general county budget except by reference and for accounting purposes only. In every such case such revenues shall be expended exclusively for the payment of the costs of operation, maintenance, repair, improvement, extension, and enlargement of the project or projects from the operation of which such revenues arise, for the performance of the county's contracts in connection with such project or projects, and for the payment of principal and interest requirements of any bonds issued in connection with the project or projects. Any surplus of such funds remaining on hand at the end of any year shall be carried forward and may be expended in the succeeding year for the payment of the costs of operation of such project or projects or for the repair, improvement, or extension thereof as the board may determine, unless such surplus has been pledged for the payment of principal and interest on bonds, as authorized in s. 125.013, in which event any such surplus shall be applied in accordance with the resolution pledging the same.

(22) To construct, own, maintain, and operate trade marts and exposition halls, and buildings for the display, exhibition and sale of goods, wares, and merchandise, which are hereby defined to be projects within the meaning of s. 125.011; to rent space in, around, or connected with such trade marts to others and to collect rents, fees, and charges therefor; to sublet the whole or any part thereof to others and to enter into contracts with others for the operation thereof on such terms and conditions as the board of county commissioners shall by resolution determine to be for the best interest of the county; to rent, let, and lease to others ground space on, in, or connected with any project owned and operated by the county for the construction, maintenance, and operation thereon of any such trade mart, exposition hall, or building; to use the proceeds arising from the operation or rental of any such trade mart or exposition hall or building or from the rental of ground space therefor to pay the expense of operation, upkeep and maintenance thereof, for advertising and publicity thereof, and for such other purposes as the board of county commissioners determines to be for the best interest of the county.

(23) To borrow money and to issue notes for any purpose or purposes for which bonds may be issued under the provisions of s. 125.013 and to refund the same; to issue notes in anticipation of the receipt of the proceeds of the sale of any such bonds; to secure an advance of credit for any such purpose or purposes under a credit agreement or other agreement with any bank or trust company or any person, firm, or corporation within or without the state; and to secure any such borrowing, notes or agreement by a pledge of all or any part of the available income or revenues to be received by the county under the provisions of ss. 125.011-125.021 or by an agreement to exercise any of the powers conferred by ss. 125.011-125.021.

(24) To publicize, advertise, and promote the activities and projects herein authorized; to make known the advantages, facilities, resources, products, attractions, and attributes of the activities and projects authorized; to create a favorable climate of opinion concerning the activities and projects authorized; to cooperate with other agencies, public and private, in accomplishing these purposes; and in furtherance thereof, to authorize expenditures for the purposes here enumerated, including meals, hospitality, and entertainment of persons in the interest of promoting and engendering good will towards the activities and projects authorized.

(25) To do all other acts and things necessary or proper in the exercise of the powers herein granted.

History.—s. 2, ch. 71-249; s. 2, ch. 79-291.

125.013 General obligation bonds; revenue bonds.—

(1) The board of county commissioners of any such county is authorized to issue general obligation bonds, revenue bonds, or other evidences of indebtedness of the county for the purpose of paying all or a part of the cost of any one or more projects as herein defined, including the cost of enlargement, expansion, or development of such project, whether the property used therefor has previously been acquired or not, and the cost of removing therefrom or relocating or reconstructing at another location, any buildings, structures, or facilities which, in the opinion of the board, constitute obstructions or hazards to the safe or efficient operation of any such project, and for the purpose of paying off and retiring any revenue bonds issued under the provisions of this section.

(2) The bonds of each issue and other evidences of indebtedness shall be dated, shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the board, and may be made redeemable before maturity, at the option of the county, at such price or prices and under such terms and conditions as may be fixed by the board prior to their issuance. Such bonds and

other evidences of indebtedness shall bear interest at a rate or rates to be fixed by the board, not to exceed 7 percent per annum. However, in the event such bonds or other evidences of indebtedness are sold at public sale pursuant to advertisement for sealed bids for their purchase, such bonds or other evidences of indebtedness shall bear interest at any rate or rates submitted by the lowest responsible bidder and approved by the board. The board shall determine the form of bonds or other evidences of indebtedness, including any interest coupons to be attached to such bonds, and the manner of execution, and shall fix the denomination or denominations thereof and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons or other evidences of indebtedness shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds or other evidences of indebtedness issued under the provisions of this section shall have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state. The bonds may be issued in coupon or registered form, or both, as the board may determine. Provision may be made for the registration of any coupon bonds as to principal alone, and also as to both the principal and interest, and for the reconversion into coupon bonds or any bonds registered as to both principal and interest. Other evidences of indebtedness may be issued in such form as the board may determine. The issuance of such bonds or other evidences of indebtedness shall not be subject to any limitations or conditions contained in any other law, and the board may sell such bonds or other evidences of indebtedness in such manner, either at public or at private sale, for such price, as it may determine to be for the best interest of the county, but no such sale shall be made at a price of less than 95 percent of par value plus accrued interest.

(3) For the payment of the principal of and the interest on any general obligation bonds of the county issued under the provisions of this section, the board is authorized and required to levy annually a special tax upon all taxable property within the county, over and above all other taxes authorized or limited by law, and in addition to the tax authorized by s. 125.016, sufficient to pay such principal and interest as the same respectively become due and payable. The proceeds of all such taxes shall, when collected, be paid into a special fund and used for no other purpose than the payment of such principal and interest. However, there may be pledged to the payment of such principal and interest the surplus of the revenues of the project or projects, after payment of the costs of operation, maintenance and repair thereof, and in the event of such pledge, the amount of the annual tax levy herein required may be reduced in any year by the amount of such revenues actually received in the preceding year and then remaining on deposit to the credit of the special fund for the payment of such principal and interest.

(4) No general obligation bonds shall be issued hereunder unless the issuance of such bonds has been approved in the manner required by the State Constitution and laws of Florida for the issuance of bonds of the county.

History.—s. 2, ch. 71-249.

125.014 Title designation of authority.—For administrative convenience, the board of county commissioners, in the exercise of the powers hereby conferred and those powers otherwise conferred, may be referred to as the county port authority or any other appropriate title duly adopted by resolution of the board of county commissioners. However, in counties to which ss. 125.011-125.021 apply which counties have adopted, or may hereafter adopt, a home rule form of government and which create or establish thereunder a port authority to conveniently administer the business and exercise the powers provided for in ss. 125.011-125.021, the words "port authority" shall apply wherever the words "county" or "board of county commissioners" are used, and such authority may exercise all the powers granted under ss. 125.011-125.021.

History.—s. 3, ch. 71-249.

125.015 Acquisition of facilities from municipalities.—Any county coming within the provisions hereof shall have the power to acquire by purchase or condemnation the docks, wharves, warehouses, and other port facilities or any project (as herein defined) of any municipality within such county. Any project owned or operated by such county and lying within the boundaries of a municipality shall be under the exclusive jurisdiction of the county and shall be without the jurisdiction of said municipality.

History.—s. 4, ch. 71-249.

125.016 Ad valorem tax.—Annually an ad valorem tax of not exceeding 1½ mills may be levied upon all property in the county, which shall be levied and collected as other county taxes are levied and collected. The taxes shall be charged to the general fund, but such revenue may be appropriated by the county for the cost of constructing, operating, maintaining, expanding, enlarging, improving, or developing any project or projects herein specified, or for the payment of the costs of removing and relocating any structures, installations, or facilities which in the opinion of the board of county commissioners may be required for the safe and efficient operation of any such projects. Said tax may be levied, collected, and expended for any of the purposes herein specified notwithstanding the cost and expense thereof which may have been incurred in a previous year, and when so collected and used the tax shall be considered to be levied, collected and used for a county purpose.

History.—s. 5, ch. 71-249.

125.0165 Discretionary sales tax; adoption; application of revenue.—

(1) Subject to the provisions of this section and pursuant to the provisions of s. 212.055, the governing authority in each charter county which adopted

a charter prior to June 1, 1976, is authorized to levy a discretionary additional 1 percent tax on all 4 percent taxable transactions under the provisions of chapter 212 for the purposes of development, construction, equipment, maintenance, operation, supportive services, and related costs of a fixed guideway rapid transit system. However, the sales amount above $1,000 of any one transaction shall not be taxable.

(2) The levying of the discretionary 1 percent tax and the creation of a rapid transit trust fund may be implemented by a majority vote of the electorate of the county. The proposal to adopt a discretionary 1 percent tax and to create a rapid transit trust fund shall be placed on the ballot in accordance with law at a time to be set at the discretion of the governing body.

(3) Revenues from the discretionary 1 percent tax shall be deposited in the rapid transit trust fund and used only for the purposes of development, construction, equipment, maintenance, operation, supportive services, and related costs of a fixed guideway rapid transit system.

History.—s. 1, ch. 76-284.

125.017 Administrative agents.—The county may employ agents, clerks, or servants to administer any project under the rules, regulations, directions, and supervision of the county, and it may exact of any agent, clerk or servant a good and sufficient bond with proper surety to secure the faithful performance of his duties and otherwise conditioned as it shall see fit.

History.—s. 6, ch. 71-249.

125.018 Rules and regulations.—All rules and regulations promulgated and all impositions and exactions made by authority hereof shall be just and reasonable and consistent with public interest, and their application shall be subject to review by certiorari in any court of proper and competent jurisdiction. All rules and regulations shall be published and dispensed by the county at cost to all applicants therefor.

History.—s. 7, ch. 71-249.

125.019 Exemption from taxation; immunity.—

(1) All powers, acts and deeds hereby conferred or authorized are found to be and made a county purpose. Each project financed under the provisions of ss. 125.011-125.021 and the income therefrom, and any bonds issued under the provisions of s. 125.013 and the income therefrom, shall at all times be free from taxation within the state. The exemption granted by this subsection shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

(2) In the exercise of the additional powers conferred by ss. 125.011-125.021 as heretofore and hereafter amended, the county and county commissioners of any such county shall have the same rights, privileges, powers and immunities of a county of the state.

History.—ss. 2, 8, ch. 71-249; s. 1, ch. 73-327.

125.021 Airport facilities; lien for landing and other fees.—

(1) The county shall have a lien upon all aircraft landing upon any airport owned and operated by it for all charges for landing fees and other fees and charges for the use of the facilities of such airport by any such aircraft, when payment of such charges and fees is not made immediately upon demand therefor to the operator or owner of the aircraft by a duly authorized employee of the county. Such lien may be enforced as provided by law for the enforcement of warehousemen's liens in this state.

(2) It is unlawful for any person to remove or attempt to remove any such aircraft from such airport after notice of the lien has been served upon the owner or operator thereof or after posting of such notice upon such aircraft. Any person who removes or attempts to remove any such aircraft from such airport after service or posting of the notice of lien as herein provided, and before payment of the amount due to the county for landing fees and charges incurred by such aircraft, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The provisions of this subsection shall not apply in cases whereby written contract fees and charges are payable at stated intervals.

History.—ss. 2, 2A, ch. 71-249.

125.031 Lease or lease-purchases of property for public purposes.—Counties may enter into leases or lease-purchase arrangements relating to properties needed for public purposes for periods not to exceed 30 years at a stipulated rental to be paid from current or other legally available funds, and may make all other contracts or agreements necessary or convenient to carry out such objective. The county shall have the right to enter into such leases or lease-purchase arrangements with private individuals, other governmental agencies, or corporations. When the term of such lease is for longer than 24 months, the rental shall be payable only from funds arising from sources other than ad valorem taxation. Such leases or lease-purchase arrangements shall be subject to approval by the board of county commissioners, and no such lease or lease-purchase contract shall be entered into without said approval.

History.—s. 1, ch. 71-240.

125.15 To sue and be sued in the name of county.—The county commissioners shall sue and be sued in the name of the county of which they are commissioners. A change in the persons composing the board of county commissioners shall not abate the suit, but it shall proceed as if such change had not taken place.

History.—ss. 1, 3, ch. 3242, 1881; RS 580; GS 773; RGS 1493; CGL 2202.

125.17 Clerk.—The Clerk of the Circuit Court for the county shall be clerk and accountant of the board of county commissioners. He shall keep their minutes and accounts, and perform such other duties as their clerk as the board may direct. He shall have custody of their seal, and shall affix the same to any paper or instrument to which it shall be proper or necessary that the same shall be affixed. And

he may give copies of writings in his custody as the clerk of said board, attested by his signature and authenticated by said seal.

History.—RS 583; GS 776; RGS 1498; CGL 2261.

125.221 Holding of court and meeting of grand jury; place other than courthouse.—In the event there is not suitable available space in the courthouse due to construction or reconstruction, destruction or other good reasons, for the holding of any court or courts now provided to be held in the county courthouse, or for the meeting of the grand jury of the county, the county commission, with the approval of the court, may designate some other place or places located in the county seat for the holding of court or courts or for the meeting of the grand jury.

History.—s. 1, ch. 29795, 1955.

125.222 Auxiliary county offices, court proceedings.—All proceedings, except trial by jury, had in any of the several counties of this state in connection with any civil, equity or criminal action may be conducted in auxiliary county offices where such offices have been established and are maintained under authorization of law, provided adequate space and facilities are available therein and provided all records of such proceedings be kept and maintained in the county offices at the county seat.

History.—s. 1, ch. 57-331.

125.27 Countywide forest fire protection; authority of the Division of Forestry; state funding; county fire control assessments; disposition.—

(1) The Division of Forestry of the Department of Agriculture and Consumer Services and the board of county commissioners of each county in this state shall enter into agreements for the establishment and maintenance of countywide fire protection of all forest and wild lands within said county, with the total cost of such fire protection being funded by state and federal funds. Each county shall, under the terms of such agreements, be assessed each fiscal year, as its share of the cost of providing such fire protection, a sum in dollars equal to the total forest and wild land acreage of the county, as determined by the Division of Forestry, multiplied by 3 cents. The forest and wild lands acreage included in such agreements shall be reviewed each year by the contracting parties and the number of forest and wild land acres and the annual fire control assessment adjusted so as to reflect the current forest acreage of the county. In the event the division and the county commissioners do not agree, the Board of Trustees of the Internal Improvement Trust Fund shall make such acreage determination. All fire control assessments received by the Division of Forestry from the several counties under agreements made pursuant to this section shall be deposited into the General Revenue Fund.

(2) The Division of Forestry may include provisions in the agreements authorized in this section, or execute separate or supplemental agreements with the several counties, county agencies, or municipalities, to provide communication services and other services directly related to fire protection within the county, other than forest fire control, on a cost reimbursable basis only, provided the rendering of such services does not hinder or impede in any way the division's ability to accomplish its primary function with respect to forest fire control.

History.—s. 5, ch. 17024, 1935; CGL 1936 Supp. 2181(23); ss. 14, 35, ch. 69-106; s. 1, ch. 72-305, s. 1, ch. 73-248.

cf.—s. 590.42 Federally funded fire protection assistance programs.

125.275 Countywide air quality protection; authority of counties designated as nonattainment areas; preemption of municipal ordinances.—

(1) The board of county commissioners of any county which is designated, in whole or in part, as a nonattainment area for air quality pursuant to state and federal law is hereby authorized and empowered, in its discretion, to provide by ordinance for countywide protection of air quality. In furtherance of this purpose, the board of county commissioners of such county shall have the following powers:

(a) To act as the local implementing authority of a nonattainment plan promulgated and adopted pursuant to state and federal law.

(b) To adopt, revise, and amend, from time to time, appropriate ordinances, rules, and regulations reasonably necessary to maintain air quality standards established pursuant to state and federal law, including the Federal Clean Air Act.

(2) It is the intent of the Legislature that the authority granted in subsection (1) shall vest in such county, and, when exercised by the county, any municipality is hereby preempted from adoption of an ordinance pertaining to air quality upon the designation set forth in subsection (1).

(3) No county is authorized by this act to promulgate any air quality standard more stringent than any state or federal standard as to any particular pollutant. Nothing herein shall be construed to modify any authority granted by an existing special act pertaining to air quality control.

History.—s. 1, ch. 78-240.

125.31 Investment of surplus public funds; regulations.—

(1) Except when another procedure is prescribed by law or by ordinance as to particular funds, the board of county commissioners shall, by resolution to be adopted from time to time, invest and reinvest any surplus public funds in their control or possession in:

(a) The Local Government Surplus Funds Trust Fund;

(b) Negotiable direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States Government at the then prevailing market price for such securities;

(c) Interest-bearing time deposits or savings accounts in banks organized under the laws of this state, in national banks organized under the laws of the United States and doing business and situated in this state, in savings and loan associations which are under state supervision, or in federal savings and loan associations located in this state and organized under federal law and federal supervision, provided that any such deposits are secured by collateral as

may be prescribed by law; or

(d) Obligations of the Federal Farm Credit Banks, Federal Home Loan Mortgage Corporation, or Federal Home Loan Bank or its district banks, including Federal Home Loan Mortgage Corporation participation certificates, or obligations guaranteed by the Government National Mortgage Association.

(2)(a) All securities purchased by any such board under the authority of this law shall be properly earmarked and immediately placed for safekeeping in a safety-deposit box in some bank or institution carrying adequate safety-deposit box insurance within such county, and no withdrawal of such securities in whole or in part shall be made from such safety-deposit box except upon authority evidenced by resolution of the board of county commissioners of such county.

(b) The board of county commissioners may also receive bank trust receipts in return for investment of surplus funds in securities. Any trust receipts received must enumerate the various securities held together with the specific number of each security held. The actual securities on which the trust receipts are issued may be held by any bank depository chartered by the United States Government or the State of Florida or their designated agents.

(3) When the money invested in such securities is needed in whole or in part for the purposes originally intended, the board of county commissioners of such county is authorized to sell such security or securities at the then prevailing market price and to pay the proceeds of such sale into the proper account or fund of the county.

(4) For the purposes of this law, the term "surplus funds" is defined as funds in any general or special account or fund of the county held or controlled by the county commissioners of such county which in reasonable contemplation will not be needed for the purposes intended within a reasonable time from the date of such investment.

(5) Any surplus public funds subject to any contract or agreement on the date of this enactment shall not be invested contrary to said contract or agreement.

(6) The provisions of this section are supplemental to any and all other laws relating to the legal investments of counties.

History.—ss. 1-4, ch. 21691, 1943; ss. 1-3, ch. 67-474; s. 1, ch. 73-83; s. 2, ch. 77-394; s. 1, ch. 79-119; s. 3, ch. 79-262.
cf.—s. 129.02 Capital budget, investment.

125.35 County authorized to sell real and personal property and to lease real property.—The board of county commissioners is expressly authorized to sell and convey any property, real or personal, and to lease real property, belonging to the county, whenever such board shall determine that it is to the best interest of the county to do so, to the highest and best bidder for the particular use it deems to be the highest and best, or, alternatively, in the case of an airport operation or facility lease, after negotiation, for such length of term and such conditions as the governing body may in its discretion determine. No sale of any real property shall be made unless notice thereof shall be published once a week for at least 2 weeks in some newspaper of general circulation published in the county, calling for bids for the purchase of the real estate so advertised to be sold. The bid of the highest bidder, in the case of a sale, complying with the terms and conditions set forth in such notice, shall be accepted unless the board of county commissioners shall reject all bids because the same are too low. The board of county commissioners may require a deposit to be made or a surety bond to be given, in such form or in such amount as the board shall determine, with each bid submitted.

History.—s. 1, ch. 23829, 1947; s. 1, ch. 70-388; s. 1, ch. 77-475.

125.37 Exchange of county property.—Whenever, in the opinion of the board of county commissioners, the county holds and possesses any real property, not needed for county purposes, and such property may be to the best interest of the county exchanged for other real property, which the county may desire to acquire for county purposes, the said board of county commissioners of any county is authorized and empowered to make such an exchange. Provided, however, before any exchange of property shall be effected, a notice, setting forth the terms and conditions of any such exchange of property, shall be first published, once a week for at least 2 weeks, in a newspaper of general circulation published in the county, before the adoption by the board of county commissioners of a resolution authorizing the exchange of properties.

History.—s. 3, ch. 23829, 1947.

125.38 Sale of county property to United States, or state.—If the United States, or any department or agency thereof, the state or any political subdivision or agency thereof, or any municipality of this state, or corporation or other organization not for profit which may be organized for the purposes of promoting community interest and welfare, should desire any real or personal property that may be owned by any county of this state or by its board of county commissioners, for public or community interest and welfare, then the United States, or any department or agency thereof, state or such political subdivision, agency, municipality, corporation or organization may apply to the board of county commissioners for a conveyance or lease of such property. Such board, if satisfied that such property is required for such use and is not needed for county purposes, may thereupon convey or lease the same at private sale to the applicant for such price, whether nominal or otherwise, as such board may fix, regardless of the actual value of such property. The fact of such application being made, the purpose for which such property is to be used, and the price or rent therefor shall be set out in a resolution duly adopted by such board. In case of a lease, the term of such lease shall be recited in such resolution. No advertisement shall be required.

History.—s. 4, ch. 23829, 1947.

125.39 Nonapplicability to county lands acquired for specific purposes.—The provisions of this law shall not be construed to cover the sale or disposition of any land conveyed to any county for a

specific purpose and containing a reversionary clause whereby said land shall revert to the grantor or grantors upon failure to use said real property for such purpose.

History.—s. 5, ch. 23829, 1947; s. 1, ch. 73-260; s. 29, ch. 73-332.

125.411 Conveyance of land by county.—

(1) Deeds of conveyance of lands, the title to which is held by any county or in the name of its board of county commissioners, may be in substantially the following form:

THIS DEED, made this ..... day of ..... 19....., by ..... County, Florida, party of the first part, and ....., party of the second part,

WITNESSETH that the said party of the first part, for and in consideration of the sum of $.....to it in hand paid by the party of the second part, receipt whereof is hereby acknowledged, has granted, bargained and sold to the party of the second part, his heirs and assigns forever, the following described land lying and being in ..... County, Florida:

.....

.....

IN WITNESS WHEREOF the said party of the first part has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chairman or Vice Chairman of said board, the day and year aforesaid.

(OFFICIAL SEAL)

ATTEST: Clerk (or Deputy Clerk of Circuit Court)

..... County, Florida

By its Board of County Commissioners

By Chairman (or Vice Chairman)

(2) No such deed of conveyance shall be required to be witnessed or acknowledged, but shall be entitled to record when properly executed.

(3) All deeds of conveyance by any county or by its board of county commissioners shall convey only the interest of the county and such board in the property covered thereby, and shall not be deemed to warrant the title or to represent any state of facts concerning the same.

(4) Any conveyance of real property executed by the board of county commissioners of any county after May 5, 1971, and before October 1, 1975, if it would have been valid had this act been in effect at the time such conveyance was executed, and the recording thereof by the Clerk of the Circuit Court are hereby validated, ratified, and confirmed.

History.—ss. 1, 2, ch. 75-26.
Note.—Former s. 125.41.

125.42 Water, sewage, gas, power, telephone and other utility lines along county roads and highways.—

(1) The board of county commissioners, with respect to property located without the corporate limits of any municipality are authorized to grant a license to any person or private corporation to construct, maintain, repair, operate and remove lines for the transmission of water, sewage, gas, power, telephone and other public utilities under, on, over, across and along any county highway or any public road or highway acquired by the county or public by purchase, gift, devise, dedication, or prescription; provided, however, said board of county commissioners shall include in any instrument granting such license adequate provisions:

(a) To prevent the creation of any obstructions or conditions which are or may become dangerous to the traveling public.

(b) To require the licensee to repair any damage or injury to the road or highway by reason of the exercise of the privileges granted in any instrument creating such license and to repair said road or highway promptly, restoring the same to a condition at least equal to that which existed immediately prior to the infliction of such damage or injury.

(c) Whereby the licensee shall hold the board of county commissioners and members thereof harmless from the payment of any compensation or damages resulting from the exercise of the privileges granted in any instrument creating such license; and

(d) In addition to the foregoing provisions, as may be reasonably necessary, for the protection of the county and the public.

(2) A license may be granted in perpetuity or for a term of years, subject, however to termination by the licensor, in event the road or highway shall be closed, abandoned, vacated, discontinued or reconstructed.

(3) This law is intended to provide an additional method for the granting of licenses and shall not be construed to repeal any law now in effect relating to the same subject.

(4) In the event of widening or repair or reconstruction of any such road the licensee shall move or remove such water, sewage, gas, power, telephone and other utility lines at no cost to said counties.

History.—ss. 1-3, ch. 23850, 1947; s. 1, ch. 57-777.

125.56 Adoption of building code; inspection fees; inspectors; etc.—

(1) The board of county commissioners of each of the several counties of the state is authorized, in its discretion, to adopt a building code to provide for the safe construction, erection, alteration, and repair of any building within its territory outside the corporate limits of any municipality. Upon a determination to consider the adoption of a building code by a majority of the members of the board of county commissioners of such county, the said board shall call a public hearing not less than 30 nor more than 60 days from the date of such determination. Notice of said public hearing shall be posted at the courthouse door for not less than 30 days prior to the date of such public hearing, published once each week for 4 consecutive weeks prior to such date in a newspaper of general circulation within such county, and said notice shall contain the time, date and place for said meeting. At said meeting the board shall hear all interested parties. Thereafter, at any regular meeting of the board of county commissioners of such county, or at any special meeting of said board called for said purpose, the board may adopt a building code consistent with the terms and purposes of this act, which shall be known thereafter as the county building code. Upon adoption, the code shall be in full force and effect throughout the unincorporated area of such county. Nothing herein contained shall be construed to prevent the board of county commissioners from amending or repealing such code at any

regular meeting of such board.

(2) The board of county commissioners of each of the several counties may provide a schedule of inspection fees in order to defer the costs of inspection and enforcement of the provisions of this act, and of any building code adopted pursuant to the terms of this act, providing said schedule of fees shall not in any event exceed ⅕ of 1 percent of the total costs of the construction, erection, alteration or repair, as the case may be, of any building or proposed building.

(3) The board of county commissioners of each of the several counties may employ a building inspector and such other personnel as it deems necessary to carry out the provisions of this act, and may pay reasonable salaries for such services.

(4) After adoption of the building code as herein provided, it shall be unlawful for any person, firm or corporation to construct, erect, alter or repair any building within the territory embraced by the terms of this act, without first obtaining a permit therefor from the appropriate board of county commissioners, or from such persons as may by resolution be directed to issue said permits, upon the payment of such reasonable fees as shall be set forth in the schedule of fees adopted by said board; said board is hereby empowered to revoke any such permit upon a determination by said board that the construction, erection, alteration or repair of the building for which permit was issued is in violation of or not in conformity with the said building code.

(5) Any person, firm or corporation violating any of the provisions of this section or any duly adopted county building code shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-5, 7, 8, ch. 63-290; s. 3, ch. 71-14; s. 76, ch. 71-136.

125.563 Abatement of water pollution and shore erosion of inland lakes.—

(1)(a) It is declared to be the legislative intent to provide for a speedy and effective procedure whereby property owners of land abutting or constituting the bottom of the small inland lakes of this state shall be able to gain relief from water pollution and shore erosion through the ordinance-making powers of the boards of county commissioners.

(b) "Small inland lakes," for the purpose of this section, shall be those inland freshwater lakes essentially at rest and essentially surrounded by land, having a water surface area at mean water level of 150 acres or less.

(2) The following activities shall constitute a nuisance on evidence indicating that the shores of the small inland lakes are being eroded or that their waters are being polluted by:

(a) Dumping of raw or treated sewage into the lake.

(b) Introduction into the lake of chemicals which threaten, rather than enhance, the natural ecosystem of the lake.

(c) Use of dynamite or other explosives in the water or in altering the shoreline.

(d) Dumping of refuse into the water or dredging or filling operations in the lake.

(e) Removal from, or addition to, the lake of sufficient quantities of water to substantially alter the water level.

(3) Owners of more than 50 percent of the land abutting the lake or constituting the bottom of privately owned lakes may file a petition with the appropriate board of county commissioners (or boards when the lake lies in more than one county) alleging that any one of the nuisances enumerated in subsection (2) exists. The petition may be informally prepared, but each owner's signature shall be acknowledged by an officer authorized to administer oaths. When the state or any of its agencies is an abutting or bottom owner, the responsible state official may sign for the state or his agency.

(4) On receipt of the petition, the chairman of the board of county commissioners shall notify the State Department of Environmental Regulation, the Board of Trustees of the Internal Improvement Trust Fund, and the Department of Natural Resources. Such agencies may submit recommendations to the board of county commissioners within 60 days of receipt of notice of the petition.

(5) On receipt of the recommendations from the state agencies listed in subsection (4), or sooner if no such recommendations are to be submitted, the board of county commissioners may determine if any of the nuisances enumerated in subsection (2) exists. If such a positive determination is made, the board may enact an ordinance to abate such nuisance in such manner as is reasonable, unless there is a compelling public purpose to permit its continuance. Violation of such ordinance shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) Nothing in this section shall be construed as restricting any general or local laws or ordinances of greater stringency or any municipal jurisdiction or powers over inland lakes, or portions thereof, within a municipality.

History.—ss. 1-6, ch. 73-147; s. 2, ch. 79-65.

125.59 Special grand jury fund.—

(1) The boards of county commissioners of the respective counties are hereby authorized to budget and expend county funds for the creation and use of a special grand jury fund.

(2) The moneys of the special grand jury fund may be used by any grand jury in the county, in their discretion, in investigating crime and enforcing the criminal laws. The grand jury may employ special investigators and special legal counsel and may pay all expenses incidental to such purposes; provided, that no expenditure shall be made without the approval of a majority of the members of the grand jury, whose vote shall be recorded in the minutes of the grand jury's proceedings.

(3) The moneys in the special grand jury fund shall be payable to the grand jury on their order upon a voucher being presented to the clerk of the circuit court, signed by the foreman and by a member of the grand jury designated as grand jury treasurer.

History.—s. 1, ch. 67-466.

PART II

SELF-GOVERNMENT

125.60 Adoption of county charter.—Any county not having a chartered form of consolidated government may, pursuant to the provisions of ss. 125.60-125.64, locally initiate and adopt by a majority vote of the qualified electors of the county a county home rule charter.

History.—s. 1, ch. 69-45.

125.61 Charter commission.—

(1) Following the adoption of a resolution by the board of county commissioners or upon the submission of a petition to the county commission signed by at least 15 percent of the qualified electors of the county requesting that a charter commission be established, a charter commission shall be appointed pursuant to subsection (2) within 30 days of the adoption of said resolution or of the filing of said petition.

(2) The charter commission shall be composed of an odd number of not less than 11 or more than 15 members. The members of the commission shall be appointed by the board of county commissioners of said county or, if so directed in the initiative petition, by the legislative delegation. No member of the Legislature or board of county commissioners shall be a member of the charter commission. Vacancies shall be filled within 30 days in the same manner as the original appointments.

History.—s. 2, ch. 69-45; s. 1, ch. 73-290; s. 1, ch. 74-239.

125.62 Charter commission; organization.—

(1) A charter commission appointed pursuant to s. 125.61 shall meet for the purpose of organization within 30 days after the appointments have been made. The charter commission shall elect a chairman and vice-chairman from among its membership. Further meetings of the commission shall be held upon the call of the chairman or a majority of the members of the commission. All meetings shall be open to the public. A majority of the members of the charter commission shall constitute a quorum. The commission may adopt such other rules for its operations and proceedings as it deems desirable. Members of the commission shall receive no compensation but shall be reimbursed for necessary expenses pursuant to law.

(2) Expenses of the charter commission shall be verified by a majority vote of the commission forwarded to the board of county commissioners for payment from the general fund of the county. The charter commission may employ a staff, consult and retain experts, and purchase, lease, or otherwise provide for such supplies, materials, equipment and facilities as it deems necessary and desirable. The board of county commissioners may accept funds, grants, gifts, and services for the charter commission from the state, the Government of the United States, or other sources, public or private.

History.—s. 3, ch. 69-45.

125.63 Proposal of county charter.—The charter commission shall conduct a comprehensive study of the operation of county government and of the ways in which the conduct of county government might be improved or reorganized. Within 18 months of its initial meeting, unless such time is extended by appropriate resolution of the board of county commissioners, the charter commission shall present to the board of county commissioners a proposed charter, upon which it shall have held three public hearings at intervals of not less than 10 nor more than 20 days. At the final hearing the charter commission shall incorporate any amendments it deems desirable, vote upon a proposed charter, and forward said charter to the board of county commissioners for the holding of a referendum election as provided in s. 125.64.

History.—s. 3, ch. 69-45; s. 2, ch. 73-290.

125.64 Adoption of charter; dissolution of commission.—

(1) Upon submission to the board of county commissioners of a charter by the charter commission, the board of county commissioners shall call a special election to be held not more than 90 nor less than 45 days subsequent to its receipt of the proposed charter, at which special election a referendum of the qualified electors within the county shall be held to determine whether the proposed charter shall be adopted. Notice of the election on the proposed charter shall be published in a newspaper of general circulation in the county not less than 30 nor more than 45 days before the election.

(2) If a majority of those voting on the question favor the adoption of the new charter, it shall become effective January 1 of the succeeding year or at such other time as the charter shall provide. Such charter, once adopted by the electors, may be amended only by the electors of the county. The charter shall provide a method for submitting future charter revisions and amendments to the electors of the county.

(3) If a majority of the voters disapprove the proposed charter, no new referendum may be held during the next 2 years following the date of such disapproval.

(4) Upon acceptance or rejection of the proposed charter by the qualified electors, the charter commission will be dissolved, and all property of the charter commission will thereupon become the property of the county.

History.—s. 4, ch. 69-45.

125.66 Ordinances; enactment procedure; emergency ordinances; rezoning ordinances or resolutions.—

(1) In exercising the ordinance-making powers conferred by s. 1, Art. VIII of the State Constitution, counties shall adhere to the procedures prescribed herein.

(2) The regular enactment procedure shall be as follows: The board of county commissioners at any regular or special meeting may enact or amend any ordinance, except as provided in subsection (5), if notice of intent to consider such ordinance is given at least 15 days prior to said meeting, excluding Sundays and legal holidays. Such notice shall be made by the clerk of the board of county commissioners and shall be kept in a separate book which shall be open to public inspection during the regular business hours of his office. Certified copies of ordinances or amendments thereto enacted under this regular enactment procedure shall be filed with the Department of State by the clerk of the board of county commissioners within 10 days after enactment by said board and shall take effect upon receipt of official acknowledgment from that office that said ordinance has been filed. However, any ordinance may prescribe a later effective date.

(3) The emergency enactment procedure shall be as follows: The board of county commissioners at any regular or special meeting may enact or amend any ordinance, except an ordinance or resolution which rezones private real property or an ordinance or resolution which enacts or amends land use plans, with a waiver of notice requirements by a four-fifths vote of the membership of such commission, declaring that an emergency exists and that the immediate enactment of said ordinance is necessary. Certified copies of ordinances or amendments thereto enacted under this emergency enactment procedure shall be filed with the Department of State by the clerk of the board of county commissioners as soon after enactment by said board as is practicable. An emergency ordinance enacted under this procedure shall be deemed to be filed and shall take effect when a copy has been accepted by the postal authorities of the Government of the United States for special delivery by registered mail to the Department of State.

(4) Notice as herein set forth shall mean, in addition to the provisions herein contained, publication of the title of the ordinance or amendment to be considered in a newspaper of general circulation within the county. Said notice shall state the substance of the contemplated ordinance, the same as required by s. 10, Art. III of the State Constitution.

(5) Ordinances or resolutions, initiated by the board of county commissioners or its designee, which rezone private real property shall be enacted pursuant to the following procedure:

(a) In cases in which the proposed rezoning involves less than 5 percent of the total land area of the county, the board of county commissioners shall direct its clerk to notify by mail each real property owner whose land the governmental agency will rezone by enactment of the ordinance or resolution and whose address is known by reference to the latest ad valorem tax records. The notice shall state the substance of the proposed ordinance or resolution as it affects that property owner and shall set a time and place for one or more public hearings on such ordinance or resolution. Such notice shall be given at least 30 days prior to the date set for the public hearing, and a copy of such notice shall be kept available for public inspection during the regular business hours of the office of the board of county commissioners. The board of county commissioners shall hold a public hearing on the proposed ordinance or resolution and may, upon the conclusion of the hearing, immediately adopt the ordinance or resolution.

(b) In cases in which the proposed rezoning involves 5 percent or more of the total land area of the county, the board of county commissioners shall provide for public notice and hearings as follows:

1. The board of county commissioners shall hold two advertised public hearings on the proposed ordinance or resolution. Both hearings shall be held after 5 p.m. on a weekday, and the first shall be held approximately 7 days after the day that the first advertisement is published. The second hearing shall be held approximately 2 weeks after the first hearing and shall be advertised approximately 5 days prior to the public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing.

2. The required advertisements shall be no less than one-quarter page in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county and of general interest and readership in the community pursuant to chapter 50, not one of limited subject matter. It is the legislative intent that, whenever possible, the advertisement shall appear in a newspaper that is published at least 5 days a week unless the only newspaper in the community is published less than 5 days a week. The advertisement shall be in the following form:

NOTICE OF ZONING CHANGE

The (name of local governmental unit) proposes to rezone the land within the area shown in the map in this advertisement.

A public hearing on the rezoning will be held on (date and time) at (meeting place).

The advertisement shall also contain a geographic location map which clearly indicates the area covered by the proposed ordinance or resolution. The map shall include major street names as a means of identification of the area.

3. In lieu of publishing the advertisements set out in this paragraph, the board of county commissioners may mail a notice to each person owning real property within the area covered by the ordinance or resolution. Such notice shall clearly explain the proposed ordinance or resolution and shall notify the person of the time, place, and location of both public hearings on the proposed ordinance or resolution.

History.—s. 1, ch. 69-32; ss. 10, 35, ch. 69-106; s. 1, ch. 70-422; s. 1, ch. 76-155; s. 1, ch. 77-331.

125.67 Limitation on subject and matter embraced in ordinances; amendments; enacting clause.—Every ordinance shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title. No ordinance shall be revised or amended by reference to its title only. Ordinances to revise or amend shall set out in full the revised or amended section, subsection, or paragraph of a subsection. The enacting clause of every ordinance shall read: "Be It Ordained by the Board of County Commissioners of ..... County:"

History.—s. 2, ch. 69-32.

125.68 Codification of ordinances; public record.—

(1) Counties shall maintain a current codification of all ordinances. Such codification shall be published annually by the board of county commissioners.

(2) All ordinances shall be public records, and copies of such ordinances shall be available to the public. A reasonable charge may be made for the provision of copies, but such charges shall not exceed the actual costs incidental to providing such copies.

History.—s. 3, ch. 69-32.

125.69 Penalties.—Violations of county ordinances shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the state in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and upon conviction shall be punished by a fine not to exceed $500 or by imprisonment in the county jail not to exceed 60 days or by both such fine and imprisonment.

History.—s. 3, ch. 69-234; ss. 1, 2, ch. 70-452; s. 1, ch. 79-379.

PART III

COUNTY ADMINISTRATION

125.70 Short title.—This part shall be known and may be cited as the "County Administration Law of 1974."

History.—s. 1, ch. 74-193.

125.71 Purpose.—It is the legislative intent that it is necessary to authorize a form of county administration that best assures an adequate and efficient provision of services to the citizens in this state, that provides for coordinated administration of county departments to better protect the health, welfare, safety, and quality of life of the residents in each of the more urbanized counties, and that places in the hands of a county administrator the multitude of details which must necessarily arise from the operation of a county as a unit of local government and, thus, enables the board of county commissioners to perform freely, without unnecessary interruption, its fundamental intended purpose of making policies within the framework of law applicable to county government in this state. It is the further legislative intent to provide a formula and structure for the economic and efficient conduct of county affairs by making the county administrator established by this act responsible for handling of all things necessary to accomplish and bring to fruition the policies established by the board of county commissioners.

History.—s. 1, ch. 74-193.

125.72 Application of the part.—The provisions of this part may apply to any county in this state which has not adopted a charter form of county government upon passage of a county ordinance by the governing body of such county expressly adopting this part.

History.—s. 1, ch. 74-193.

125.73 County administrator; appointment, qualifications, compensation.—

(1) Each county to which this part applies shall appoint a county administrator, who shall be the administrative head of the county and shall be responsible for the administration of all departments of the county government which the board of county commissioners has authority to control pursuant to this act, the general laws of Florida, or other applicable legislation.

(2) The county administrator shall be qualified by administrative and executive experience and ability to serve as the chief administrator of the county. He shall be appointed by an affirmative vote of not less than three members of the board of county commissioners and may be removed at any time by an affirmative vote, upon notice, of not less than three members of the board, after a hearing if such be requested by the county administrator. The administrator need not be a resident of the county at the time of his appointment, but during his tenure in office he shall reside within the county.

(3) The compensation of the administrator shall be fixed by the board of county commissioners unless otherwise provided by law.

(4) The office of county administrator shall be deemed vacant if the incumbent moves his residence from the county or is, by death, illness, or other casualty, unable to continue in office. A vacancy in the office shall be filled in the same manner as the original appointment. The board of county commissioners may appoint an acting administrator in the case of vacancy or temporary absence or disability until a successor has been appointed and qualified or the administrator returns.

History.—s. 1, ch. 74-193.

125.74 County administrator; powers and duties.—

(1) The administrator may be responsible for the administration of all departments responsible to the board of county commissioners and for the proper administration of all affairs under the jurisdiction of the board. To that end, the administrator may, by way of enumeration and not by way of limitation, have the following specific powers and duties to:

(a) Administer and carry out the directives and policies of the board of county commissioners and

enforce all orders, resolutions, ordinances, and regulations of the board to assure that they are faithfully executed.

(b) Report to the board on action taken pursuant to any directive or policy within the time set by the board and provide an annual report to the board on the state of the county, the work of the previous year, and any recommendations as to actions or programs he deems necessary for the improvement of the county and the welfare of its residents.

(c) Provide the board, or individual members thereof, upon request, with data or information concerning county government and to provide advice and recommendations on county government operations to the board.

(d) Prepare and submit to the board of county commissioners for its consideration and adoption an annual operating budget, a capital budget, and a capital program.

(e) Establish the schedules and procedures to be followed by all county departments, offices, and agencies in connection with the budget and supervise and administer all phases of the budgetary process.

(f) Prepare and submit to the board after the end of each fiscal year a complete report on the finances and administrative activities of the county for the preceding year and submit his recommendations.

(g) Supervise the care and custody of all county property.

(h) Recommend to the board a current position classification and pay plan for all positions in county service.

(i) Develop, install, and maintain centralized budgeting, personnel, legal, and purchasing procedures.

(j) Organize the work of county departments, subject to an administrative code developed by the administrator and adopted by the board, and review the departments, administration, and operation of the county and make recommendations pertaining thereto for reorganization by the board.

(k) Select, employ, and supervise all personnel and fill all vacancies, positions, or employment under the jurisdiction of the board. However, the employment of all department heads shall require confirmation by the board of county commissioners.

(l) Suspend, discharge, or remove any employee under the jurisdiction of the board pursuant to procedures adopted by the board.

(m) Negotiate leases, contracts, and other agreements, including consultant services, for the county, subject to approval of the board, and make recommendations concerning the nature and location of county improvements.

(n) See that all terms and conditions in all leases, contracts, and agreements are performed and notify the board of any noted violation thereof.

(o) Order, upon advising the board, any agency under his jurisdiction as specified in the administrative code to undertake any task for any other agency on a temporary basis if he deems it necessary for the proper and efficient administration of the county government to do so.

(p) Attend all meetings of the board with authority to participate in the discussion of any matter.

(q) Perform such other duties as may be required of him by the board of county commissioners.

(2) It is the intent of the Legislature to grant to the county administrator only those powers and duties which are administrative or ministerial in nature and not to delegate any governmental power imbued in the board of county commissioners as the governing body of the county pursuant to s. 1(e), Art. VIII of the State Constitution. To that end, the above specifically enumerated powers are to be construed as administrative in nature, and in any exercise of governmental power the administrator shall only be performing the duty of advising the board of county commissioners in its role as the policy-setting governing body of the county.

History.—s. 1, ch. 74-193.

PART IV

OPTIONAL COUNTY CHARTERS

125.80 Short title.—This part shall be known and may be cited as the "Optional County Charter Law."

History.—s. 2, ch. 74-193.

125.81 Definitions.—As used in this part, the following words and terms shall have the meanings ascribed to them in this section except when the context clearly indicates otherwise:

(1) "County charter" means the charter by which county government in this state may exercise all powers of local self-government not inconsistent with general law and as adopted by a vote of the electors of the county.

(2) "Form of county government" is that form adopted by the electors providing for the operation of a county government operating under a charter which shall be provided in the charter.

(3) "Officer" means all officials of county government operating under a charter which shall be provided in the charter.

History.—s. 2, ch. 74-193.

125.82 Charter adoption by ordinance.—As a supplemental and alternative way to the provisions of ss. 125.60-125.64, inclusive, the board of county commissioners may propose by ordinance a charter consistent with the provisions of this part and provide for a special election pursuant to the procedures

established in s. 125.64 without regard to the time limitation contained in subsection 125.64(3).
History.—s. 2, ch. 74-193.

125.83 County charters; general provisions.—
(1) A county charter may prescribe one of the optional forms of government herein authorized, and shall clearly define the responsibility for legislative and executive functions in accordance with the provisions of this chapter.
(2) The county charter shall require all elective offices to be filled only by qualified voters of the county. All appointed offices may be filled by nonresidents of the county; however, the charter may require that, upon appointment, such officers shall reside in the county during their tenure in office.
(3) The county charter shall define "vacancy in office" and provide methods for filling such vacancy.
(4) The county charter shall provide that the salaries of all county officers shall be provided by ordinance and shall not be lowered during an officer's term in office.
(5) The county charter shall provide a schedule for the transfer of governmental functions into the charter form of government as adopted.
History.—s. 2, ch. 74-193.

125.84 County charters; optional forms.— Any county desiring to adopt a county charter shall provide for one of the following optional forms of government:
(1) COUNTY EXECUTIVE FORM.—The county executive form shall provide for governance by an elected board of commissioners and an elected county executive and such other officers as may be duly elected or appointed pursuant to the charter. The elected county executive shall exercise the executive responsibilities assigned by the charter and shall, in addition, approve each ordinance by signing it or allowing it to become approved without signature by failing to veto it or may veto any ordinance by returning it to the clerk of the board within 10 days of passage with a written statement of his objections. If two-thirds of the members of the board present and voting and constituting a quorum shall, upon reconsideration, vote for the ordinance, the executive's veto shall be overridden and the ordinance shall become law in 10 days or at such other time as may be provided in the ordinance or by resolution of the board, without the executive's signature.
(2) COUNTY MANAGER FORM.—The county manager form shall provide for governance by an elected board of commissioners and an appointed county manager and such other officers as may be duly elected or appointed pursuant to the charter. The county manager shall be appointed by, and serve at the pleasure of, the board and shall exercise the executive responsibilities assigned by the charter.
(3) COUNTY CHAIRMAN-ADMINISTRATOR PLAN.—The county chairman-administrator plan shall provide for governance by an elected board of commissioners, presided over by an elected chairman who shall vote only in case of tie, and an appointed county administrator and such other officers as may be duly elected or appointed pursuant to the charter. The county administrator shall be appointed by, and serve at the pleasure of, the chairman. The chairman shall exercise, in conjunction with the administrator, the executive responsibilities assigned by the charter.
History.—s. 2, ch. 74-193.

125.85 County charters; executive responsibilities.— The executive responsibilities and power of the county shall be assigned to, and vested in, the appropriate executive officer, pursuant to the optional form adopted under s. 125.83, and shall consist of the following powers and duties:
(1) Report annually, or more often if necessary, to the board of commissioners and to the citizens on the state of the county, the work of the previous year, recommendations for action or programs for improvement of the county, and the welfare of its residents;
(2) Prepare and submit to the board for its consideration and adoption an annual operating budget, a capital budget, and a capital program; establish the schedules and procedures to be followed by all county departments, offices, and agencies in connection therewith; and supervise and administer all phases of the budgetary process;
(3) Administer and carry out the directives and policies of the board of county commissioners and enforce all orders, resolutions, ordinances, and regulations of the board, the county charter, and all applicable general law, to assure that they are faithfully executed;
(4) Supervise the care and custody of all county property, institutions, and agencies;
(5) Supervise the collection of revenues, audit and control all disbursements and expenditures, and prepare a complete account of all expenditures;
(6) Review, analyze, and forecast trends of county services and finances and programs of all boards, commissions, agencies, and other county bodies and report and recommend thereon to the board;
(7) Develop, install, and maintain centralized budgeting, personnel, legal, and purchasing procedures as may be authorized by the administrative code;
(8) Negotiate contracts, bonds, or other instruments for the county, subject to board approval; make recommendations concerning the nature and location of county improvements; and execute services determined by the board;
(9) Assure that all terms and conditions imposed in favor of the county or its inhabitants in any statute, franchise, or other contract are faithfully kept and performed;
(10) Supervise, direct, and control all county administrative departments;
(11) Appoint, with the advice and consent of the board, all appointed departmental heads, who shall serve at his pleasure, and employ, pursuant to appropriation and the administrative code, such personnel as necessary to administer county functions and services;
(12) Order, at his discretion, any agency under his jurisdiction as specified in the administrative code to undertake any task for any other agency on a temporary basis if he deems it necessary for the proper and efficient administration of the county

government to do so; and

(13) Any other power or duty which may be assigned by county charter or by ordinance or resolution of the board.

History.—s. 2, ch. 74-193; s. 1, ch. 77-174.

125.86 County charters; legislative responsibilities.—The legislative responsibilities and power of the county shall be assigned to, and vested in, the board of county commissioners and shall consist of the following powers and duties:

(1) Advise and consent to all appointments by the executive for which board confirmation is specified;

(2) Adopt or enact, in accordance with the procedures provided by general law, ordinances and resolutions it deems necessary and proper for the good governance of the county;

(3) Appoint a clerk to the board who shall serve at its pleasure and keep the records and minutes of the board;

(4) Approve the annual operating and capital budgets and any long-term capital or financial program;

(5) Conduct continuing studies in the operation of county programs and services and take action on programs for improvement of the county and the welfare of its residents;

(6) Adopt, and amend as necessary, a county administrative code to govern the operation of the county;

(7) Adopt, pursuant to the provisions of the charter, such ordinances of countywide force and effect as are necessary for the health, safety, and welfare of the residents. It is the specific legislative intent to recognize that a county charter may properly determine that certain governmental areas are more conducive to uniform countywide enforcement and may provide the county government powers in relation to those areas as recognized and as may be amended from time to time by the people of that county; and

(8) All other powers of local self-government not inconsistent with general law as recognized by the Constitution and laws of the state and which have not been limited by the county charter.

History.—s. 2, ch. 74-193.

125.87 Administrative code; adoption and amendment.—

(1) Following the organization of the first board of county commissioners elected pursuant to a charter, the board of commissioners shall adopt an administrative code organizing the administration of the county government and setting forth the duties and responsibilities and powers of all county officials and agencies pursuant to the provisions of the charter.

(2) The administrative code shall be effective upon adoption or as otherwise provided therein, and all existing agencies shall assume the form, perform the duties, and exercise the power granted them under the administrative code and shall do so in the manner prescribed.

History.—s. 2, ch. 74-193.

125.88 Civil service.—

(1) Upon adoption of an administrative code and also upon the adoption of a charter, all officers and employees in the classified service of the county shall be transferred to the department, division, or agency to which the functions, powers, and duties in which they were engaged are allocated under the administrative code. Such transfer shall be without examination or diminution of existing compensation, pension or retirement rights, privileges, or obligations of any such officer or employee existing immediately prior to the referendum at which the charter was adopted. It is the intent of the Legislature that the adoption of any plan required by the charter shall not adversely affect the civil service tenure, pension, seniority, or promotional rights of any county officer or employee in the classified service.

(2) The board of county commissioners of any county adopting a charter may, by ordinance, administer the merit system through a county department of civil service unless otherwise provided by the charter. Such administration shall include classification, recruitment, examination, establishment of eligibility lists, grievances, compensation, and other conditions of employment pursuant to law.

History.—s. 2, ch. 74-193.

CHAPTER 127

RIGHT OF EMINENT DOMAIN TO COUNTIES

127.01 Counties delegated power of eminent domain.—

(1) All counties of the state are delegated authority to exercise the right and power of eminent domain; that is, the right to appropriate property, except state or federal, for any county purpose; and the absolute fee simple title to all property so taken and acquired shall vest in such county, unless the county seeks to condemn a particular right or estate in such property.

(2) Provided, however, that no county shall have the right to condemn any lands outside its own county boundaries, for parks, playgrounds, recreational centers or other recreational purposes; and provided, further, that in all actions now pending or which hereafter may be instituted by a county to acquire title, by eminent domain, to any lands for parks, playgrounds, recreational centers, or other recreational purposes, the party or parties, whose lands are sought to be taken shall, in such condemnation suit have the right to present an issue before the court as to the necessity for the proposed taking, and the amount of land required for the purpose sought, and thereupon it shall be the duty of the court to receive and hear all relevant testimony on the issues created, and the court shall determine such issues as other issues of fact and law are determined before the court in equity, without regard to or presumption in favor of any prior determination by the county commissioners or the exercise of discretion by them. Only land for the taking of which there is a public necessity as determined in accordance with this subsection shall be condemned for any of the purposes referred to in this subsection. Any party shall have the right of appeal, with supersedeas, as is now provided by law for appeals generally.

History.—s. 1, ch. 7338, 1917; RGS 1503; CGL 2281; s. 1, ch. 22802, 1945; s. 18, ch. 63-559; s. 5, ch. 73-299.
cf.—Ch. 73 Eminent Domain.

127.02 County commissioners may authorize acquirement of property by eminent domain.— The board of county commissioners may, by resolution, authorize the acquirement by eminent domain of property, real or personal, for any county use or purpose designated in such resolution.

History.—s. 2, ch. 7338, 1917; RGS 1504; CGL 2282.
cf.—Ch. 73 Eminent Domain.

CHAPTER 129

COUNTY ANNUAL BUDGET

129.01 Budget system established.—There is hereby established a budget system for the control of the finances of the boards of county commissioners of the several counties of the state, as follows:

(1) There shall be prepared, approved, adopted, and executed, as prescribed in this chapter, for the fiscal year ending September 30, 1952, and for each fiscal year thereafter, an annual budget for such funds as may be required by law or by sound financial practices and generally accepted accounting principles. The budget shall control the levy of taxes and the expenditure of money for all county purposes during the ensuing fiscal year.

(2) Each budget shall conform to the following general directions and requirements:

(a) The budget shall be prepared, summarized, and approved by the board of county commissioners of each county.

(b) The budget shall be balanced; that is, the total of the estimated receipts, including balances brought forward, shall equal the total of the appropriations and reserves. It shall conform to the uniform classification of accounts prescribed by the appropriate state agency. The receipts division of the budget shall include 95 percent of all receipts reasonably to be anticipated from all sources, including taxes to be levied, and 100 percent of the amount of the balances both of cash and liquid securities, estimated to be brought forward at the beginning of the fiscal year. The appropriation division of the budget shall include itemized appropriations for all expenditures authorized by law, contemplated to be made, or incurred for the benefit of the county, during the said year and the provision for the reserves authorized by this chapter. Both the receipts and appropriation divisions shall reflect the approximate division of expenditures between countywide expenditures and noncountywide expenditures and the division of county revenues derived from or on behalf of the county as a whole and county revenues derived from or on behalf of a municipal service taxing unit, special district, unincorporated area, service area, program area, or otherwise not received for or on behalf of the county as a whole.

(c) Provision may be made for the following reserves:

1. A reserve for contingencies may be provided in a sum not to exceed 10 percent of the total of the budget.

2. A reserve for cash balance to be carried over may be provided for the purpose of paying expenses from October 1, of the ensuing fiscal year until the time when the revenues for that year are expected to be available. This reserve may be not more than 20 percent of the total receipts and balances of the budget; provided that for the bond interest and sinking fund budget, this reserve may be not more than the total maturities of debt (both principal and interest) that will occur during the ensuing fiscal year, plus the sinking fund requirements, computed on a straight line basis, for any outstanding obligations to be paid from the fund.

(d) An appropriation for "outstanding indebtedness" shall be made to provide for the payment of vouchers which have been incurred in and charged against the budget for the current year or a prior year, but which are expected to be unpaid at the beginning of the ensuing year for which the budget is being prepared. The appropriation for the payment of such vouchers shall be made in the same fund for which the expenses were originally incurred.

(e) Any surplus arising from an excess of the estimated cash balance over the estimated amount of unpaid obligations to be carried over in a fund at the end of the current fiscal year may be transferred to any of the other funds of the county, and the amount so transferred shall be budgeted as a receipt to such other funds; provided, that no such surplus in a fund raised for debt service shall be transferred to another fund, except to a fund raised for the same purposes in the same territory, unless the debt of such territory has been extinguished in which case it may be transferred to any other fund raised for that territory; provided, further, that no such surplus in a capital outlay reserve fund may be transferred to another fund until such time as the projects for which such capital outlay reserve fund was raised have been completed and all obligations paid.

History.—s. 1, ch. 6814, 1915; RGS 1524; CGL 2302; s. 1, ch. 26874, 1951; ss. 12, 35, ch. 69-106; s. 5, ch. 73-349; s. 1, ch. 77-165; s. 1, ch. 78-132; s. 1, ch. 78-157.

129.011 Consolidation of funds.—

(1) In order to simplify and otherwise improve the accounting system provided by law and to facilitate a better understanding of the fiscal operation of the county by the general public, the board of county commissioners may, by resolution duly adopted, consolidate any of its separate budgetary funds into a single general fund, except that the road and bridge tax shall be levied under s. 336.59 and all revenue and expenditures of the county transportation trust fund established pursuant to s. 339.083 shall be shown as a separate budgetary fund.

(2) Subsequent to the consolidation of any budgetary funds as provided in subsection (1), the maxi-

mum permitted tax millage of the combined fund shall be the total amount authorized by law for the separate funds so consolidated.

(3) This section is deemed to be in the general public interests and it is the intent of the Legislature that the provisions hereof shall be liberally construed to accomplish the purposes contained herein.

History.—ss. 1, 2, 4, ch. 70-282; s. 2, ch. 77-165.

129.02 Requisites of budgets.—Each budget shall conform to the following specific directions and requirements:

(1) General fund budget shall contain an estimate of receipts by source, including any taxes now or hereafter authorized by law to be levied for any countywide purpose, except those countywide purposes provided for in the budgets enumerated below, any tax millage limitation to the contrary notwithstanding, and including any balance brought forward as provided herein; and an itemized estimate of expenditures that will need to be incurred to carry on all functions and activities of the county government now or hereafter authorized by law, except those functions and activities provided for in the budgets enumerated below, and of unpaid vouchers of the general fund; also of the reserve for contingencies and of the balances, as hereinbefore provided, which should be carried forward at the end of the year.

(2) The County Transportation Trust Fund budget shall contain an estimate of receipts by source and balances as provided herein, and an itemized estimate of expenditures that need to be incurred to carry on all work on roads and bridges in the county except that provided for in the capital outlay reserve fund budget and in district budgets pursuant to this chapter, and of unpaid vouchers of the County Transportation Trust Fund; also of the reserve for contingencies and the balance, as hereinbefore provided, which should be carried forward at the end of the year.

(3) The fine and forfeiture fund budget shall contain an estimate of receipts by source and balances as provided herein, and an itemized estimate of expenditures that need to be incurred to carry on all criminal prosecution as provided in s. 142.01, and all other law enforcement functions and activities of the county now or hereafter authorized by law, and of indebtedness of the fine and forfeiture fund; also of the reserve for contingencies and the balance, as hereinbefore provided, which should be carried forward at the end of the year.

(4)(a) Capital outlay reserve fund budget shall contain an estimate of receipts by source, including any taxes authorized by law to be levied for that purpose, and including any balance brought forward as provided for herein; and an itemized estimate of expenditures for capital purposes to give effect to general improvement programs. It shall be a plan for the expenditure of funds for capital purposes, showing as income the revenues, special assessments, borrowings, receipts from sale of capital assets, free surpluses, and down payment appropriation to be applied to the cost of a capital project or projects, expenses of issuance of obligations, engineering, supervision, contracts, and any other related expenditures. It may contain also an estimate for the reserves as hereinbefore provided and for a reserve for future construction and improvements. No expenditures or obligations shall be incurred for capital purposes except as appropriated in this budget, except for the preliminary expense of plans, specifications and estimates.

(b) Under the provision herein set forth, a separate capital budget may be adopted for each district in the county, or a consolidated capital budget may be adopted providing for the consolidation of capital projects of the county and the several districts within the county into one budget, treating borrowed funds and other receipts as special revenue earmarked for capital projects as separately itemized appropriation for each district project or county project, as the case may be.

(c) Any funds in the capital budget not required to meet the current construction cost of any project may be invested in any securities of the federal government or in securities of any county of the state pledging the full faith and credit of such county or pledging such county's share of the gas tax provided for in s. 16 of Art. IX of the Constitution of 1885 as adopted by the 1968 revised Constitution or in s. 9, Art. XII of said revision.

(5) A bond interest and sinking fund budget shall be made for each county and for each district within the county having bonds outstanding. The budget shall contain an estimate of receipts by source, including any taxes authorized by law to be levied for that purpose, and including any balances brought forward as provided herein; and an itemized estimate of expenditures and reserves as follows: The bond interest and principal maturities in the year for which the budget is made shall be determined and estimates for expenses connected with the payments of such bonds and coupons, commissions of the tax collector, and of the property appraiser, and expenses of refunding operations, if any are contemplated, shall be appropriated. A sufficient "cash balance to be carried over" may be reserved as set forth hereinbefore. The sinking fund requirements provided for in the said reserve may be carried over either in cash or in securities of the federal government and of the local governments in Florida, or both.

(6) Special district operating fund budget shall contain an estimate of receipts by source and balances as provided herein, and an itemized estimate of expenditures that will need to be incurred to carry on all functions and activities of each special district within the county as now or hereafter provided by law, and of the indebtedness of each special district operating fund; also of the reserves for contingencies and the balances, as hereinbefore provided, which should be carried forward at the end of the year.

History.—s. 2, ch. 6814, 1915; RGS 1525; CGL 2303; s. 2, ch. 26874, 1951; s. 10, ch. 27991, 1953; s. 18, ch. 69-216; s. 1, ch. 77-102; s. 73, ch. 79-400.

cf.—s. 104.42 Fraudulent registration, illegal voting; investigation.
s. 125.31 Investment of surplus funds.

129.021 County officer budget information.—Notwithstanding other provisions of law, the budgets of all county officers, as submitted to the board of county commissioners, shall be in sufficient detail and contain such information as the board of county commissioners may require in furtherance of their

powers and responsibilities provided in ss. 129.01(2)(b) and 125.01(1)(q) and (r) and (6).

History.—s. 2, ch. 78-132.

129.025 County budget officer.—

(1) Each board of county commissioners may designate a county budget officer to carry out the duties set forth in this chapter. Unless the board designates a different officer, the clerk of the circuit court or the county comptroller, if applicable, shall be the budget officer for the purposes of this chapter.

(2) The Legislature finds that the duties of county budget officer set forth in this chapter do not fall within the constitutional responsibilities performed by the several clerks of the circuit court as auditor and custodian of county funds. The position of county budget officer shall not constitute an office in the meaning of s. 5, Art. II of the State Constitution.

History.—s. 1, ch. 78-303.

129.03 Preparation and adoption of budget.—

(1) On or before July 1 of each year the county property appraiser shall certify to the county budget officer his estimate of the total valuations against which taxes may be levied, reasonably to be expected by him to be spread upon the general tax roll of the current year, separately of homestead real property and of nonhomestead property in the entire county and in each district in the county in which taxes are authorized by law to be levied by the board of county commissioners for funds under its control.

(a) If at any time after the certification of his estimates and before equalization of the tax roll, it shall appear to the property appraiser that the said estimates, or any of them, were in error by 10 percent or more, he shall immediately certify his revised estimate to the county budget officer, and such revised estimate shall be substituted for the original estimate at any time before the final adoption of the budget.

(b) Immediately upon the equalization of the tax roll by the board of county commissioners, the property appraiser shall certify to the board of county commissioners the actual assessed valuation of property, as prescribed above, in each district and in the entire county.

(c) In preparing the budget, the latest figure so certified shall be used as the basis for estimating the taxes to be levied, and the millage rate required to be levied, based on the latest figure thus certified and calculated as provided in this chapter, to raise the amount estimated to be received from taxes, shall be noted on each tentative budget and each official budget, on the same line with the amount estimated to be raised from taxes.

(2) On or before June 1 of each year, the sheriff, the clerk of the circuit court or county comptroller, and the supervisor of elections shall submit to the board of county commissioners a tentative budget for their respective offices for the ensuing fiscal year.

(3) On or before July 15 of each year, the county budget officer, after tentatively ascertaining the proposed fiscal policies of the board for the ensuing fiscal year, shall prepare and present to the board a tentative budget for the ensuing fiscal year for each of the funds provided in this chapter, including all estimated receipts, taxes to be levied, and balances expected to be brought forward and all estimated expenditures, reserves, and balances to be carried over at the end of the year.

(a) The board of county commissioners shall receive and examine the tentative budget for each fund and shall require such changes to be made as it shall deem necessary; provided that the budget shall remain in balance. The county budget officer's estimates of receipts other than taxes, and of balances to be brought forward, shall not be revised except by a resolution of the board, duly passed and spread on the minutes of the board; provided that the board may allocate to any of the funds of the county any anticipated receipts, other than taxes levied for a particular fund, except receipts designated or received to be expended for a particular purpose.

(b) Upon receipt of the tentative budgets and the completion of any revisions made by the board, the board shall prepare a statement summarizing all of the tentative budgets. This summary statement shall show, for each budget and the total of all budgets, the proposed tax millages, the balances, the reserves, and the total of each major classification of receipts and expenditures, classified according to the classification of accounts prescribed by the appropriate state agency. The board shall cause this summary statement to be advertised one time in a newspaper of general circulation published in the county or by posting at the courthouse door if there be no such newspaper, and the advertisement shall state that the board will meet on a day fixed in the advertisement, not earlier than 1 week and not later than 2 weeks from the date of the advertising, for the purpose of hearing requests and complaints from the public regarding the budgets. The board shall meet upon the day fixed in the advertisement, and from day to day thereafter if it deems it necessary, for the purpose of holding a public hearing and making whatever revisions in the budgets it may deem necessary, and shall thereupon tentatively adopt the budgets, and the tentative budgets shall be filed in the office of the county auditor as a public record.

(c) The budgets as finally adopted as provided herein, and all amendments thereto, shall be kept in a substantial book as a public record in the office of the county auditor. Sufficient reference in words and figures to identify the particular transactions shall be made in the minutes of the board to record its actions with reference to the budgets.

History.—s. 3, ch. 6814, 1915; RGS 1526; CGL 2304; s. 1, ch. 19115, 1939; s. 3, ch. 26874, 1951; s. 11, ch. 57-1; ss. 12, 35, ch. 69-106; s. 6, ch. 73-349; s. 1, ch. 77-102; s. 2, ch. 78-303.

129.04 Fiscal year.—The fiscal year of each county of the state shall commence on October 1, and end on September 30 of each year, and whenever the word "year" appears in this chapter, it shall be construed as meaning the fiscal year as hereby established.

History.—s. 4, ch. 6814, 1915; RGS 1527; CGL 2305.

129.05 Method of determination of millage to be levied.—After the equalization of the tax roll and the certification of the valuations by the property appraiser, and after the final adoption of the budg-

et for each fund, the board shall proceed to fix the millage rate for each fund as provided by law. The board shall determine the millage to be levied for each fund by dividing the applicable assessed valuation into an amount, 95 percent of which is the amount budgeted to be received from taxes, using the nearest ¼ of a mill or other fraction or decimal ordinarily used in the county.

History.—s. 5, ch. 6814, 1915; s. 1, ch. 7810, 1919; RGS 1528; CGL 2306; s. 1, ch. 16286, 1933; s. 7, ch. 22000, 1943; s. 4, ch. 26874, 1951; s. 1, ch. 77-102.
cf.—s. 200.011 Rate of taxation; apportionment, etc.
s. 344.26 State Board of Administration; duties concerning debt service.

129.06 Execution and amendment of budget.—

(1) Upon the final adoption of the budgets as provided in this chapter, the budgets so adopted shall regulate the expenditures of the county and district, and the itemized estimates of expenditures shall have the effect of fixed appropriations and shall not be amended or altered or exceeded except as provided in this chapter.

(a) The accrual basis of accounting shall be followed for all funds in accordance with generally accepted accounting principles.

(b) The cost of the investments provided in this chapter, or the receipts from their sale or redemption, shall not be treated as expense or income, but the investments on hand at the beginning or end of each fiscal year shall be carried as separate items at cost in the fund balances; provided, that the amounts of profit or loss received on their sale shall be treated as income or expense, as the case may be.

(2) The board at any time within a fiscal year may amend a budget for that year as follows:

(a) Appropriations for expenditures in any fund may be decreased and other appropriations in the same fund correspondingly increased by motion recorded in the minutes, provided that the total of the appropriations of the fund be not changed. The board of county commissioners, however, may establish procedures by which the designated budget officer may authorize certain intradepartmental budget amendments, provided that the total appropriation of the department shall not be changed.

(b) Appropriations from the reserve for contingencies may be made to increase the appropriation for any particular expense in the same fund, or to create an appropriation in the fund for any lawful purpose, but no expenditures shall be charged directly to the reserve for contingencies.

(c) The reserve for future construction and improvements may be appropriated by resolution of the board for the purpose or purposes for which the reserve was made.

(d) A receipt of a nature from a source not anticipated in the budget and received for a particular purpose, including but not limited to grants, donations, gifts, or reimbursement for damages, may, by resolution of the board spread on its minutes, be appropriated and expended for that purpose, in addition to the appropriations and expenditures provided for in the budget. Such receipts and appropriations shall be added to the budget of the proper fund.

(e) Increased receipts for enterprise or proprietary funds received for a particular purpose may, by resolution of the board spread on its minutes, be appropriated and expended for that purpose, in addition to the appropriations and expenditures provided for in the budget.

(3) Transfers may be made between funds only for the following purposes:

(a) To correct errors in handling receipts and disbursements.

(b) Budgeted transfers.

(4) All unexpended balances of appropriations at the end of the fiscal year shall revert to the fund from which the appropriation was made, but reserves for sinking funds and for future construction and improvements may not be diverted to other purposes.

History.—s. 6, ch. 6814, 1915; RGS 1529; CGL 2307; s. 5, ch. 26874, 1951; s. 2, ch. 78-157.

129.07 Unlawful to exceed the budget; certain contracts void; commissioners contracting excess indebtedness personally liable.—It is unlawful for the board of county commissioners to expend or contract for the expenditure in any fiscal year more than the amount budgeted in each fund's budget, except as provided herein, and in no case shall the total appropriations of any budget be exceeded, except as provided in s. 129.06, and any indebtedness contracted for any purpose against either of the funds enumerated in this chapter or for any purpose, the expenditure for which is chargeable to either of said funds, shall be null and void, and no suit or suits shall be prosecuted in any court in this state for the collection of same, and the members of the board of county commissioners voting for and contracting for such amounts and the bonds of such members of said boards also shall be liable for the excess indebtedness so contracted for.

History.—s. 7, ch. 6814, 1915; RGS 1530; CGL 2308; s. 6, ch. 26874, 1951; s. 3, ch. 78-157.

129.08 County commissioner voting to pay illegal claim or for excess indebtedness.—Each member of the board of county commissioners who knowingly and willfully votes to incur an indebtedness against the county in excess of the expenditure allowed by law or county ordinance, or to pay an illegal charge against the county, or to pay any claim against the county not authorized by law or county ordinance shall be guilty of malfeasance in office and subject to suspension and removal from office as now provided by law, and shall be guilty of a misdemeanor, and shall upon conviction be punished by a fine of not less than $100 nor more than $500 or by imprisonment in the county jail for not more than 6 months, for each offense.

History.—s. 2, ch. 6814, 1915; RGS 5332; CGL 7465; s. 4, ch. 71-14; s. 1, ch. 71-305.

129.09 County auditor not to sign illegal warrants.—Any clerk of the circuit court, acting as county auditor, who shall sign any warrant for the payment of any claim or bill or indebtedness against any county funds in excess of the expenditure allowed by law, or county ordinance, or to pay any illegal charge against the county, or to pay any claim against the county not authorized by law, or county ordinance, shall be personally liable for such

amount, and if he shall sign such warrant willfully and knowingly he shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 6814, 1915; RGS 5333; CGL 7466; s. 5, ch. 71-14; s. 78, ch. 71-136; s. 2, ch. 71-305.

CHAPTER 130

COUNTY BONDS

130.01 Purposes for which county bonds may issue.—Whenever the board of county commissioners of any county shall deem it expedient, or to the best interests of such county, to issue the county bonds of their county, for the purpose of constructing paved, macadamized, or other hard-surfaced highways, or erecting a courthouse or jail, or other public buildings, and funding the outstanding indebtedness of the county, or for any of such purposes, they shall determine by resolution to be entered in their records, what amount of bonds is required for such purpose, the rate of interest to be paid thereon, and the time when the principal and interest of such bonds shall be due and when payable.

History.—s. 1, ch. 2088, 1877; RS 591; s. 1, ch. 4711, 1899; GS 786; RGS 1531; CGL 2309.

Note.—See s. 215.685 authorizing the Board of Administration to authorize a rate of interest in excess of the maximum rate set by law.

130.012 Maximum rate of interest.—

(1) Bonds, certificates or other obligations of any type or character authorized and issued by counties, municipalities, towns, villages, districts, commissions, authorities, or any other public body or agency or political subdivision of the state may bear interest at a rate not to exceed 7½ percent per annum.

(2) All laws or parts of laws, whether special or general, in conflict herewith are expressly repealed and superseded by this section; provided, that nothing contained herein shall affect or apply to any act authorizing bonds or other obligations having a higher interest rate limitation or no interest rate limitation.

History.—ss. 1, 2, ch. 69-1739.

Note.—See s. 215.685 authorizing the Board of Administration to authorize a rate of interest in excess of the maximum rate set by law.

130.02 Commissioners may levy tax.—When any county bonds shall have been issued by the county commissioners of any county of the state, under authority of law, for the purpose of erecting a courthouse, jail, armory, or other county buildings, it shall be the duty of such county commissioners to levy annually, by tax upon taxable property in the county, a sum sufficient to pay the interest upon the said bonds, and also a sum sufficient to raise the amount annually required as a sinking fund to meet the principal of the bonds, which sinking fund shall be provided for by resolution of the board of county commissioners before the issuing of any of the said bonds.

History.—s. 1, ch. 4286, 1893; GS 787; RGS 1532; CGL 2310.

cf.—s. 288.31 Financing armories.

130.03 Election required before issuance of bonds.—Bonds shall be issued only after the same shall have been approved by the majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such county shall participate, which election shall be called and held, and the result thereof declared and recorded, in the manner prescribed by ss. 100.201-100.221, 100.241, 100.261-100.341, and 100.351, and said election or any subsequent elections for the same purpose shall be subject to all the provisions of chapter 100.

History.—s. 3, ch. 2088, 1877; RS 593; GS 789; RGS 1534; CGL 2312; s. 1, ch. 14715, 1931; CGL 1936 Supp. 457(1); s. 64, ch. 77-175.

cf.—s. 130.18 Bond election to build bridges over navigable streams.

130.04 Notice for bids and disposition of bonds.—In case the issuing of bonds shall be authorized by the result of such election, the county commissioners shall cause notice to be given by publication in a newspaper published in the county, or in some newspaper published in the same judicial circuit, if there be none published in the county, that they will receive bids for the purchase of county bonds at the clerk's office, on a date not less than 10 days nor more than 60 days from the first publication of such notice. The notice shall specify the amount of bonds offered for sale, the rate of interest, and the time when principal and installments of interest shall be due and payable. Any and all bids shall be rejected if the commissioners shall deem it to the best interest for the county so to do, and they may cause a new notice to be given in like manner inviting other bids for said bonds; provided, that when the rate of interest on said bonds exceeds 5 percent per annum, said bonds shall not be sold for less than 95 cents on the dollar, but when any bonds

have heretofore been provided for by election, and the rate of interest is 5 percent per annum, or less, that in such cases the county commissioners may accept less than 95 cents upon the dollar, in the sale of said bonds, or for any portion of said bonds not already sold; provided, however, no bonds shall be sold for less than 90 cents on the dollar.

History.—s. 6, ch. 2088, 1877; RS 596; s. 1, ch. 5200, 1903; GS 792; RGS 1537; s. 1, ch. 8551, 1921; CGL 2315; s. 1, ch. 61-113; s. 1, ch. 63-118.

130.05 Security may be required of bidders.—The county commissioners may require of all bidders for said bonds that they give security by bond, running to the county commissioners, with sureties, that the bidder will comply with the terms of the bid, and any bidder whose bid shall be accepted shall, with his sureties, be liable to the county for all damages on account of the nonperformance of the terms of his bid.

History.—s. 8, ch. 2088, 1877; RS 597; GS 793; RGS 1538; CGL 2316.

130.06 Form of bids.—All bids for bonds shall specify the amount of bonds bid for, the denomination required and the time when the bidder will comply with his bid, and shall also specify whether the bid is in current money or in evidences of indebtedness against the county.

History.—s. 9, ch. 2088, 1877; RS 598; GS 794; RGS 1539; CGL 2317.

130.07 Form of bonds.—The county commissioners may prescribe the form and the denominations of the bonds to be issued, and such bonds may be issued with or without interest coupons, as may be deemed expedient.

History.—s. 7, ch. 2088, 1877; RS 599; GS 795; RGS 1540; CGL 2318.

130.08 Disposition of proceeds.—The proceeds of all bonds sold for money shall be paid over to the county trustees, or to the other officials or boards to whom may have been transferred by law the duties and obligations formerly devolving upon said county trustees, to be distributed by them for the purposes for which such bonds were sold, and for no other purposes.

History.—s. 10, ch. 2088, 1877; RS 600; GS 796; RGS 1541; CGL 2319.

130.09 Cancellation of exchanged evidences of indebtedness.—When such bonds shall be sold or exchanged for the evidence of indebtedness of the county, such evidence shall be canceled in such manner that the same cannot again be used, and memorandum of all such evidences of indebtedness shall be made in the minutes of the board, so that the same may be identified. Such canceled vouchers shall be sealed in an enclosure and filed for future reference.

History.—s. 11, ch. 2088, 1877; RS 601; GS 797; RGS 1542; CGL 2320.

130.10 Tax for interest and sinking fund.—When any county bonds shall have been issued in pursuance of this chapter, the county commissioners shall levy annually by tax upon the taxable property in the county a sum sufficient to pay the interest of said bonds, and also a sum sufficient to meet the amount annually required to be raised as a sinking fund to meet the principal of the bonds, which sinking fund shall be provided for by resolution of the board of county commissioners before the issuing of any of the said bonds.

History.—s. 12, ch. 2088, 1877; RS 602; GS 798; RGS 1543; CGL 2321.

130.11 Bond trustees.—

(1) Unless otherwise provided by law, when the county commissioners shall have issued bonds, as aforesaid, they shall appoint by resolution of their board, to be recorded in the minutes, a financial committee of three persons, who shall be resident freeholders of the county, to be styled "Trustees of county bonds," who shall each give bond running to the chairman of the board of county commissioners and his successors in office, with sufficient securities, in such sums as may be required by the county commissioners, conditioned that the said trustee shall faithfully discharge the trust confided to him, and shall pay over and duly account for all such sums of money as may come into his hands by virtue of such trust, which said bonds shall be approved as to the form and the sufficiency of sureties by the board of county commissioners; and the county commissioners may, from time to time, as circumstances may require, demand additional security from any such trustees; or

(2) The commissioners may in like manner appoint a responsible trust company, organized and qualified to do business, under the laws of the state, with its principal place of business in such county, which shall be styled, "trustee for county bonds," and which shall give bond running to the chairman of the board of county commissioners and his successors in office, with sufficient securities in such sum as may be required by the county commissioners, conditioned that the said trustee shall faithfully discharge the trust confided to it and shall pay over and duly account for all such sums of money as may come into its hands, by virtue of such trust, which said bond shall be approved as to form and the sufficiency of sureties by the county commissioners and the county commissioners may from time to time, as circumstances may require, demand additional security from any such trustee.

(3) The county commissioners may, if they so elect, by resolution recorded in the minutes of said board, waive the requirement of a bond of such trust company, when appointed trustee of county bonds, and take and accept in lieu thereof a bond in the usual form conditioned upon the proper accounting for all moneys deposited in said trust company and the moneys received by said trust company as trustee of county bonds shall be held by it as money deposited in any other county depository and the bond required of it as such depository shall secure the proper accounting for said moneys, which bond shall be approved by the board of county commissioners as to form, amount and sufficiency of sureties.

History.—s. 13, ch. 2088, 1877; RS 603; GS 799; s. 1, ch. 7337, 1917; RGS 1544; s. 1, ch. 12425, 1927; CGL 2322; s. 7, ch. 22858, 1945.

130.12 Collector to pay taxes to trustees, etc.—All money collected to pay the interest, or for a sinking fund of said bonded debt, shall be paid over by the tax collector, or person receiving the same on account of taxes collected or property sold therefor, to the said trustees, or to the other officials or boards

to whom may have been transferred by law the duties and obligations formerly devolving upon said trustees, and the said trustees, or the said other officials or boards to whom may have been transferred by law the duties and obligations formerly devolving upon said trustees, are required to pay out of the moneys so received the interest of said county bonds, and to invest the residue in the bonds aforesaid, or if the said bonds cannot be had at par or at such premium as to said trustees or to the said other officials or boards to whom may have been transferred by law the duties and obligations formerly devolving upon said trustees, may seem reasonable and just, then such residue may be invested in United States, state, county or municipal bonds bearing interest; or in the event such bonds cannot be acquired to advantage, such funds shall be deposited in the savings department of national banks or state banks of the state, or savings banks organized and existing under the laws of this state, at the prevailing rate of interest, to be held as an accumulating fund for the ultimate redemption of said county bonds.

History.—s. 14, ch. 2088, 1877; RS 604; GS 800; s. 1, ch. 6473, 1913; RGS 1545; CGL 2323.

130.13 Annual report of trustees.—The said trustees shall annually on such day as may be required by the board of county commissioners render a report to the said board, in which they shall state the amounts of money received and for what purposes and from what sources, severally, and when received, and where and how the same has been invested, and enumerating the kind and amount of securities held therefor, describing the same separately, and such other matters as may be required by the board in order to have a full understanding; which said report shall be published at length by order of the board.

History.—s. 15, ch. 2088, 1877; RS 605; GS 801; RGS 1546; CGL 2324.

130.14 Resignation and removal of trustees.—The said trustees, or either of them, may resign at any time by a communication in writing to the board of county commissioners, and any number of said trustees may be removed for cause by the judge of the circuit court of the circuit in which the county is situated, upon petition signed by any bondholder or taxpayer, setting forth the cause of complaint; but no trustee shall be removed without notice, and an opportunity to be publicly heard, unless it appears that the accused trustee has absented himself so that notice could not be served.

History.—s. 16, ch. 2088, 1877; RS 606; GS 802; RGS 1547; CGL 2325.

130.15 Filling of vacancies in board of trustees.—In all cases where vacancies shall occur, they shall be filled by nomination by the trustees, and the confirmation by the board of county commissioners; and in case the said trustees do not, within 15 days after written notice of the existence of such vacancy, nominate a suitable person to fill such vacancy, the board of county commissioners shall nominate a suitable person to fill such vacancy, whose nomination shall be confirmed by an order of the circuit court, and the person so appointed as trustee shall give security as hereinbefore provided.

History.—s. 17, ch. 2088, 1877; RS 607; GS 803; RGS 1548; CGL 2326.

130.16 Compensation of trustees.—The said trustees shall have such compensation for their services as follows: For receiving the first $10,000, 1½ percent; for all over $10,000, one-half of 1 percent; for disbursements, the same as allowed for receiving, to be paid out of the county treasury.

History.—s. 18, ch. 2088, 1877; RS 608; GS 804; RGS 1549; CGL 2327.

130.17 Building bridges over navigable streams; determination of amount of bonds required.—Whenever a majority of the members of any board of county commissioners, in either of the counties of the state, shall vote to acquire any property, or right, or to double-deck, or parallel, or build any bridge, authorized in the transportation code; or when a petition signed by 10 percent of the duly qualified electors of any county is presented to the board of county commissioners of such county and praying any bridge be acquired, or double-decked or built, authorized by the transportation code, then such board of county commissioners shall immediately employ thoroughly competent and reliable experts who shall perform such service and give such information as required and shall be paid for such service out of the general revenue fund of such county; and such board of county commissioners shall then promptly determine the amount of county bonds required for such purposes, the rate of interest to be paid thereon, and the time when the principal and interest of such bonds shall become due and where payable.

History.—s. 3, ch. 6536, 1913; RGS 1553; CGL 2347; ss. 2, 3, ch. 73-59.

cf.—s. 336.47 County bridges, construction; joint bridges; double-decking bridges.

130.18 Calling and conduct of election for bonds to build bridges over navigable streams.—Bonds shall be issued only after the same shall have been approved by the majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such county shall participate, which election shall be called and held, and the result thereof declared and recorded, in the manner prescribed by ss. 100.201-100.221, 100.241, 100.261-100.341, and 100.351, and said election or any subsequent elections for the same purpose shall be subject to all the provisions of chapter 100.

History.—s. 4, ch. 6536, 1913; RGS 1554; CGL 2348; s. 1, ch. 14715, 1931; CGL 1936 Supp. 457(1); s. 64, ch. 77-175.

130.19 Result of election; issuance and sale of bonds.—If the election shall result "FOR BONDS" then the board of county commissioners of such county shall forthwith proceed and provide for the payment of the interest and principal of such bonds, and for the issuance, sale, disposition thereof, expenditure of proceeds realized therefrom, and for trustees therefor unless otherwise provided by law, as provided by ss. 130.03-130.16.

History.—s. 5, ch. 6536, 1913; RGS 1555; CGL 2349.

130.20 Time warrants in newly created counties.—The board of county commissioners of any newly created county may, at any time within 6 months after the date at which the law creating the county shall become effective, issue interest-bearing time warrants in an aggregate sum not exceeding the amount of one half of 1 percent of the total tax assessed valuation of such county; provided, that where such time warrants shall come within the purview of s. 12, Art. VII of the State Constitution, the said time warrants shall be issued only after the same shall have been approved by the majority of the votes cast in an election in which a majority of the owners of freeholds not wholly exempt from taxation who are qualified electors residing in such county, shall participate, which said election shall be called and held, and the result thereof declared and recorded, in the manner prescribed by chapter 102, and said election shall be subject to all the provisions of said chapter.

History.—s. 1, ch. 8518, 1921; CGL 2350; s. 1, ch. 14715, 1931; CGL 1936 Supp. 457(1); s. 15, ch. 69-216.

130.21 Time warrants in newly created counties; interest and date of maturity.—Such warrants shall bear interest at the rate of 6 percent per annum, payable annually, and shall mature on or before a date 5 years after the date of the issue of such warrants.

History.—s. 2, ch. 8518, 1921; CGL 2351.

130.22 Time warrants in newly created counties; distribution and use of proceeds.—The proceeds derived from the sale of such warrants shall be distributed by the board of county commissioners between the several funds of the county in such proportion as the county commissioners may deem expedient, and shall be used to pay the current expenses of the county, which are proper to be paid from such funds.

History.—s. 3, ch. 8518, 1921; CGL 2352.

130.23 Time warrants in newly created counties; payment of interest and creation of sinking fund.—The board of county commissioners of each county issuing such interest-bearing time warrants may pay from the general revenue fund of such county each year the accrued interest on such interest-bearing time warrants to the holders thereof, and they shall set aside from the general revenue fund of such county such sum each year as a sinking fund, which together with accrued interest thereon will be sufficient to pay at least one-fifth of the amount due and required to pay off the said warrants at the end of the said 5-year period, thereby creating a sinking fund during the said period of 5 years sufficient to pay off the entire obligation at the end of the said 5-year period.

History.—s. 4, ch. 8518, 1921; CGL 2353.

130.24 Obligations valid when signed by officers who retire before delivery.—All bonds, notes, coupons or other obligations, signed by the duly authorized officers of any county, municipality, political subdivision or any public body, board or agency of the state, shall be valid and binding obligations, although before the date of delivery, the persons signing such bonds, notes, coupons or other obligations shall have ceased to be officers of the county, municipality, political subdivision, public body, board or agency issuing the same.

History.—s. 1, ch. 8552, 1921; CGL 2354.

CHAPTER 131

REFUNDING BONDS OF COUNTIES, CITIES, ETC.

131.01 Taxing units may refund obligations.—The governing authority of any county, city, town, municipal corporation or taxing district of the state may by resolution authorize the issuance of refunding bonds for the purpose of refunding any bond, note, certificate of indebtedness or other obligation for the payment of which the credit of said county, city, town, municipal corporation or taxing district is pledged, at or prior to maturity in the manner provided in this chapter.

History.—s. 1, ch. 11855, 1927; CGL 2378.

131.02 Taxing units may refund obligations; issuance; delivery; cancellation of refunded obligations.—Said refunding bonds may be issued within 3 months prior to the date of maturity of the obligations proposed to be refunded, or if said outstanding obligations shall be callable, within 3 months prior to the callable date. Refunding bonds may be delivered under the provisions of this chapter at any time regardless of the date of maturity or optional dates of the obligations refunded, upon the surrender by the holder of a like amount of the obligations refunded. All obligations refunded under the provisions of this chapter shall be immediately canceled in such manner as the governing authority shall prescribe.

History.—s. 2, ch. 11855, 1927; CGL 2379.

131.03 Taxing units may refund obligations; form; registrar; maturity; interest; execution; sale.—Said refunding bonds may be in coupon or registered form, or may be coupon bonds with privilege of registration as to principal only or as to both principal and interest, under such terms and conditions as the governing authority may prescribe. The governing authority may designate a bank or trust company within the state to act as registrar for said bonds. All bonds issued hereunder shall mature in annual installments of not less than 3 percent of the total amount thereof, beginning not more than 3 years after date and running not longer than 25 years after date. They shall bear interest at a rate not exceeding 7½ percent per annum, payable annually or semiannually, and shall be executed in such a manner as the governing authority shall determine. Said bonds may be sold at public or private sale, and said bonds shall not be sold for less than 95 percent of their par value and accrued interest to date of delivery.

History.—s. 3, ch. 11855, 1927; CGL 2380; s. 1, ch. 73-302.

131.04 Special assessments; pledge of credit; tax; exemptions from debt limitations.—All special assessments levied on account of any improvement to finance which the obligations so refunded were issued, upon collection shall be paid into the sinking fund for the payment of the refunding bonds, and the proceeds of said special assessments shall be used for no other purpose. For the payment of all bonds issued under the provisions of this chapter, the full faith and credit of the county, city, town, municipal corporation or taxing district, shall be pledged, and there shall be levied annually upon all taxable property therein, a tax sufficient to provide for the payment of said bonds and the interest thereon at maturity. All bonds issued hereunder for the purpose of refunding obligations which are excepted from any limitation of indebtedness, shall likewise be excluded in applying any limitation of indebtedness prescribed by any statute of the state or city or town charter.

History.—s. 4, ch. 11855, 1927; CGL 2381.

131.05 Disposition of proceeds of sale.—In the event refunding bonds are issued under the provisions of this chapter prior to the date of maturity or option date of the obligations proposed to be refunded, the proceeds of said refunding bonds shall be deposited in a bank or trust company within the state, which depository shall give a surety bond, or other such bonds as are authorized by law to be accepted for securing county and city funds, satisfactory to the Department of Banking and Finance for the full amount of money so deposited, and the funds so deposited shall only be withdrawn with the approval of the department, for the purpose of paying the obligations to refund which said bonds were issued.

History.—s. 5, ch. 11855, 1927; CGL 2382; ss. 12, 35, ch. 69-106.

131.06 No other proceedings required.—No proceedings shall be required for the issuance of bonds hereunder, except such as are prescribed by this chapter, any provisions of the general laws of the state or of any special act or municipal charter applicable to the political subdivision issuing said bonds, to the contrary notwithstanding.

History.—s. 6, ch. 11855, 1927; CGL 2383.

CHAPTER 132

GENERAL REFUNDING LAW

132.01 How chapter may be cited.—This chapter may be cited as the "General Refunding Law."

History.—s. 1, ch. 15772, 1931; CGL 1936 Supp. 2383(1).

132.02 Taxing units may refund obligations.—

(1) Each county, city, town, special road and bridge district, special tax school district, and other taxing districts in this state, herein sometimes called a unit, may issue, pursuant to a resolution or resolutions of the governing body thereof (meaning thereby the board or body vested with the power of determining the amount of tax levies required for taxing the taxable property of such unit for the purpose of such unit) and either with or without the approval of such bonds at an election, except as may be required by the Constitution of the state, bonds of such unit for the purpose of refunding any or all bonds, coupons, or interest on any such bonds, or coupons or paving certificates of indebtedness or interest on any such paving certificates of indebtedness, now or hereafter outstanding, or any other funded debt, all of which are herein referred to as bonds, whether such unit created such indebtedness or has assumed, or may become liable therefor, and whether indebtedness to be refunded has matured or to thereafter become matured.

(2) In the event any such unit having outstanding bonded or other funded debt shall have been, or shall hereafter be, abolished otherwise than by annexation to, or consolidation with, a like political subdivision or district, the territory within such unit shall be deemed to be a taxing district within the meaning of this chapter, and the board of county commissioners of the county wherein such abolished unit, or any part thereof, is situate, or the governmental authority having power or authority to levy a tax for the retirement of the indebtedness to be refunded, shall be the governing body thereof, and may issue refunding bonds in behalf of such unit for the purpose of refunding its outstanding indebtedness, and may provide for the annual levy of ad valorem taxes without limitation as to rate or amount fully sufficient to pay principal of and interest on such refunding bonds, the tax to be levied on the same property which would have been taxable for payment of the outstanding indebtedness had such taxing unit not been abolished or dissolved.

(3) If the territory of such abolished unit lies in more than one county, the territory in each county shall be deemed to be a taxing district in such county and the board of county commissioners of each county within which any of such territory is situate, or the governmental authority having power or authority to levy a tax for the retirement of the indebtedness to be refunded, may issue refunding bonds as herein provided for the purpose of refunding such portion of the indebtedness of the abolished unit as shall be chargeable against the territory in said county; provided, however, that nothing in this section shall affect or limit the powers of the State Board of Administration in the issuance of refunding bonds under s. 16, Art. IX of the State Constitution of 1885 as adopted by the 1968 revised Constitution or under s. 9, Art. XII of said revision.

History.—s. 2, ch. 15772, 1931; CGL 1936 Supp. 2383(2); s. 1, ch. 22001, 1943; s. 18, ch. 69-216.

132.03 Interest; maturity; payment; right to redeem in advance.—Such resolution or resolutions shall determine the rate or rates of interest to be paid, not exceeding 7½ percent per annum, payable annually or at shorter intervals, and the maturity or maturities of the bonds which shall be at a time or times not exceeding 60 years from the date of the bonds, (except that in the issuance of bonds of taxing districts where the maturities are fixed under the Constitution, then such maturities shall be in accordance with the maturities fixed in the constitutional provision), as well as determine the medium of payment and the place or places in Florida or any other state at which the principal and interest shall be payable. In the discretion of the governing body the right to redeem all or any of the bonds at par

before maturity may be reserved upon terms and conditions to be fixed by resolution.

History.—s. 3, ch. 15772, 1931; CGL 1936 Supp. 2383(3); s. 2, ch. 73-302.

132.04 Redemption before maturity.—Any such unit may obligate itself to redeem any or all of the refunding bonds before maturity on such terms and conditions as the resolution authorizing such bonds may determine. Bonds subject to redemption shall state the manner of giving notice of intention to redeem (which may be by publication without actual notice), and when such notice has been given such bonds shall not bear interest after the date fixed in such notice of redemption, nor shall coupons maturing thereafter be valid; provided that adequate funds for their redemption shall have been provided and set aside by such unit.

History.—s. 4, ch. 15772, 1931; CGL 1936 Supp. 2383(4).

132.05 Form; execution; delivery.—The refunding bonds herein provided for may be issued in registered form, or may be coupon bonds with the privilege of registration either as to principal only or as to both principal and interest, and shall be executed in the manner and by the officials provided in the resolution authorizing same. Except one signature on each bond, the signatures on the bonds and coupons may be facsimile signatures. Bonds and coupons duly executed by officials then in office may be negotiated and delivered after such officials have ceased to hold such office. The authentication or certificate of a registrar may be required on the bonds.

History.—s. 5, ch. 15772, 1931; CGL 1936 Supp. 2383(5).

132.06 Separate series of bonds; rates of interest.—One resolution may provide for several separate series of refunding bonds. Each of such series and separate bonds of the same series may have different terms and provisions from the others. The same bonds may bear different rates of interest at different times. Bonds issued for the purpose of refunding accrued interest may be noninterest-bearing or may bear a lower rate than other bonds of the same series as may be provided in the resolution.

History.—s. 6, ch. 15772, 1931; CGL 1936 Supp. 2383(6).

132.07 Maturity date.—Such resolution may provide that all or any part of the bonds issued thereunder shall mature in annual installments beginning at such time after date and running to such time, not longer than 60 years after date as said resolution may provide.

History.—s. 7, ch. 15772, 1931; CGL 1936 Supp. 2383(7).

132.08 Exchange of bonds.—Bonds issued under this chapter may be exchanged for not less than an equal principal amount and accrued interest of indebtedness to be retired thereby, including indebtedness not yet due, if the same be then redeemable or if the holders thereof be willing to surrender the same for retirement, but otherwise shall be sold and the proceeds thereof shall be applied to the payment of such indebtedness and accrued interest due or redeemable which may be so surrendered.

History.—s. 8, ch. 15772, 1931; CGL 1936 Supp. 2383(8).

132.09 Notice of sale; bids and award; private sale.—When sold, the refunding bonds (except as otherwise expressly provided) shall be sold pursuant to the terms of a notice of sale which shall be published at least twice. The first publication to be not less than 7 days before the date fixed for the sale and to be published in a newspaper published in the unit, or if no newspaper is published in the unit, then in a newspaper published in the county, or if no newspaper is published in the county, then in a newspaper published in Tallahassee, and in the discretion of the governing body of the unit may be published in a financial newspaper in the City of New York. Such notices shall state the time and place and when and where sealed bids will be received, shall state the amount of bonds, their dates, maturities, denominations and interest rate or rates (which may be a maximum rate), interest payment dates, an outline of the terms, if any, on which they are redeemable or become payable before maturity, the amount which must be deposited with the bid to secure its performance if accepted, and such other pertinent information as the governing body of the unit may determine. The notice of sale may require the bidders to fix the interest rate or rates that the bonds are to bear subject to the terms of the notice and the maximum rate permitted by this chapter. The award of the bonds shall be made by the governing body of the unit to the bidder making the most advantageous bid which shall be determined by the governing body in its absolute and uncontrolled discretion. The right to reject all bids shall be reserved to the governing body of the unit. If no bids are received at such public sale, or if all bids are rejected, the bonds may be sold without notice at private sale at any time within one year thereafter, but such bonds shall not be sold at private sale on terms less favorable to the unit than were contained in the best bid at the prior public sale.

History.—s. 9, ch. 15772, 1931; CGL 1936 Supp. 2383(9).

132.10 Minimum sale price.—No bonds shall be sold under this chapter at less than 95 percent of par, with accrued interest to date of delivery thereof.

History.—s. 10, ch. 15772, 1931; CGL 1936 Supp. 2383(10).

132.11 Amount of refunding bonds to be sold.—In case of refunding bonds which are not exchanged for bonds outstanding but are sold, only such amount thereof shall be delivered as is necessary to provide for the payment of matured bonds and legally accrued interest and of such unmatured bonds as the holders thereof have agreed in writing to surrender upon payment of a sum not exceeding par and legally accrued interest.

History.—s. 11, ch. 15772, 1931; CGL 1936 Supp. 2383(11).

132.12 Exchange without notice.—In the case of refunding bonds which are exchanged for bonds outstanding and are not sold, such exchange may be made by the unit without the requirement of the publication of any notice thereof.

History.—s. 12, ch. 15772, 1931; CGL 1936 Supp. 2383(12).

132.13 Delivery of bonds sold.—In case of refunding bonds which are not exchanged for bonds outstanding but are sold, they shall not be delivered until payment in full has been received therefor. Pursuant to agreement between unit and purchaser made either before or after the sale of the bonds, the bonds may be delivered in deferred installments and the total purchase price shall be divided and paid on the installments as may be agreed, but delivery shall not be deferred more than 1 year after the sale.

History.—s. 13, ch. 15772, 1931; CGL 1936 Supp. 2383(13).

132.14 Exchange in lieu of sale.—As hereinbefore provided the refunding bonds instead of being sold may be exchanged for bonds or for interest on bonds or interest on overdue interest on bonds to refund which they are issued. The principal and accrued interest of the refunding bonds shall not exceed the amount of the obligations refunded.

History.—s. 14, ch. 15772, 1931; CGL 1936 Supp. 2383(14).

132.15 Provision for conditional increase of rate of interest.—If the refunding bonds bear a lower rate of interest than the bonds for which they are exchanged, either the resolution authorizing the bonds or the refunding bonds themselves may provide that the refunding bonds shall bear the lower rate of interest only so long as the unit shall not be in default of any agreement or obligations to the holders and that after any such default, or at the option of the holders after any such default, the refunding bonds shall bear the same rate of interest as the bonds for which they were exchanged. The unit may impose limitations on the right to exercise such option, and may provide that the option may only be exercised after a period of default, or by the holders of a certain amount or proportion of bonds, all as provided in the said resolution or in the refunding bonds, and if the right to the higher interest accrues may agree to substitute new bonds and coupons bearing such higher interest.

History.—s. 15, ch. 15772, 1931; CGL 1936 Supp. 2383(15).

132.16 Sinking fund.—The resolution authorizing the refunding bonds may contain an agreement on the part of the unit to provide a sinking fund for such bonds, and said resolution may provide for payments of such sinking fund, the investment thereof, the administration thereof, and the application thereof to the payment, purchase and redemption of the refunding bonds.

History.—s. 16, ch. 15772, 1931; CGL 1936 Supp. 2383(16).

132.17 Pledge of anticipated revenues.—The resolution authorizing refunding bonds may assign, pledge, or set aside as a trust for the payment of principal or interest of refunding bonds or for a sinking fund for the bonds, subject to prior liens or contract obligations, and on, or subject to, such terms and conditions as may be stated, any unpaid taxes or assessments whether due or to grow due, and any revenues due or to grow due, or proceeds of sale of improvements or properties of the unit. The resolution authorizing the bonds may contain agreement to collect and pay over the moneys derived from such source.

History.—s. 17, ch. 15772, 1931; CGL 1936 Supp. 2383(17).

132.18 Pledge of fixed portion of revenues.—The resolution authorizing the refunding bonds may pledge to the payment of principal and interest of such refunding bonds or to a sinking fund for the bonds, a fixed proportion, or a proportion to be determined from time to time as provided in said resolution, of the moneys from time to time collected either by taxation of any kind, whether upon real or personal property, or collected from other revenues or receipts of the unit, and such resolution may provide that the said fixed proportion or the proportions so determined out of each dollar collected by the unit shall be applied to the payment of the principal or interest of the refunding bonds, or be paid into or set aside as a sinking fund for the bonds.

History.—s. 18, ch. 15772, 1931; CGL 1936 Supp. 2383(18).

132.19 Priority of payment of refunding bonds.—The resolution authorizing the bonds may provide that the unit shall first set aside out of the tax collections the amount required in any year for the payment of principal and interest of refunding bonds and for the sinking fund for the bonds, before any tax collections shall be set aside or applied to the payment of any bonds of the unit that may thereafter be issued, except bonds thereafter issued to pay or refund bonds then outstanding.

History.—s. 19, ch. 15772, 1931; CGL 1936 Supp. 2383(19).

132.20 Proportionate taxes for sinking fund.—The resolution authorizing the refunding bonds may provide that in addition to all other amounts to be paid into a sinking fund for such bonds, such sums shall be levied, assessed and collected for such sinking funds as bear a stated proportion of taxes of any kind which are imposed or collected for all purposes other than the payment of refunding bonds issued pursuant to this chapter, so that for every dollar of tax imposed or collected for all such purposes a stated amount shall be imposed for the said sinking fund.

History.—s. 20, ch. 15772, 1931; CGL 1936 Supp. 2383(20).

132.21 Pledge of special assessments.—In the discretion of the governing board there may be pledged to the payment of any or all such bonds the collections or proceeds of any or all uncollected special assessments, subject, however, to any other outstanding pledge of such assessment previously made.

History.—s. 21, ch. 15772, 1931; CGL 1936 Supp. 2383(21).

132.22 Levy of ad valorem tax for payment of bonds.—

(1) In each year while any of the bonds shall be outstanding there shall be levied by or under the authority of the governing board upon all taxable property in the unit, an ad valorem tax sufficient to pay the interest and principal of such refunding bonds and any sinking funds which may be provided for by the bonds, or by the proceedings authorizing the sale, provided, however, that when there shall be in any fund or funds provided for such bonds, interest and sinking fund, an amount exceeding the

amount at that time required for such fund or funds, the ad valorem tax required by this section for the current year may be reduced in the amount of such excess.

(2) It is expressly provided that in the case of taxing districts where bonds have been issued and are outstanding, which bonds are payable exclusively out of special assessments levied for the payment of such bonds, that no authority to levy an ad valorem tax upon the property of such taxing district shall be conferred or exist under this chapter, unless the same shall be duly authorized or approved by the affirmative vote of a majority of the taxpayers who are the owners of freeholds in said unit not wholly exempt from taxation voting at an election called and held under the provisions of law relating to the issuance of bonds under s. 12, Art. VII of the State Constitution and such election shall be called within 60 days after the governing body of such taxing district shall receive a petition requesting the same signed by a number of owners of freeholds not wholly exempt from taxation equal to 25 percent of the qualified electors who are owners of such freeholds residing in such district and by the holder or holders of a majority in amount of the bonds or outstanding indebtedness to be refunded, but nothing in this chapter shall preclude the issuance of refunding bonds under this chapter when such refunding bonds are issued and are provided to be supported by the proceeds of special assessments of the same kind and character as were provided for the issue which is refunded.

History.—s. 22, ch. 15772, 1931; CGL 1936 Supp. 2383(22); s. 15, ch. 69-216.

132.23 Tax by municipalities; bonds to constitute general obligations; debt limit inapplicable.—

(1) In case of refunding bonds issued by municipalities it shall be the duty of the governing board of the municipality charged by law with determining and fixing the amount of general property taxes for any fiscal year of the municipality, to ascertain the amount of:

(a) Principal and interest of refunding bonds due in such year for which moneys are not in hand.

(b) Principal and interest of refunding bonds due prior to such year and which are then or will be in default in such year, together with interest thereon.

(c) Sinking fund payments due in such year or due prior to such year and which are then or will be in default in such year.

(d) Such additional sum as may be necessary to make up for the estimated failure to collect taxes in such year.

(2) The said governing body of the municipality shall determine and fix the total of said sums as the amount to be raised by tax in addition to all other taxes for said fiscal year. The said amount shall thereupon be apportioned against, and levied and assessed on, all property subject to taxation in the manner provided by law, for taxes for other purposes in the municipalities and shall be collected and applied to such purpose by the official of the municipality charged by law with duty of apportioning, levying, assessing, collecting and applying taxes for other purposes.

(3) The refunding bonds issued in pursuance of this chapter by municipalities shall be general and unlimited obligations of the municipalities and the full faith and credit of the municipality is hereby irrevocably pledged for their payment. The municipality and each and every official and governing board thereof shall levy, assess, apportion and collect on and from all taxable real and personal property in the municipality such taxes as shall be sufficient to pay the interest and principal of the refunding bonds as they become due and payable.

(4) No other section of this chapter or of any other law, or of any agreement or resolution made by the municipality shall be construed to limit or restrict the powers or obligations of the municipality under this chapter and the provisions of any resolution of the municipality made pursuant to this chapter shall be construed as supplemental hereto for the greater protection of the refunding bonds, and shall not be construed as limiting or restricting the application of this section.

(5) All refunding bonds issued pursuant to the provisions of this chapter shall not be subject to any limitation or indebtedness prescribed by any statutes, charter or other special act relating to the municipality.

History.—s. 23, ch. 15772, 1931; CGL 1936 Supp. 2383(23).

132.24 Elections, notice, etc.—Any election which may be held to determine whether any such refunding bonds shall be issued, if required by the Constitution of the state, shall be called, noticed and conducted, and the result thereof determined and declared as shall have been or may be required by law for the issuance of any bonds of the unit proposing to issue the bonds herein authorized; but if an election be not required by the Constitution and nevertheless be held, it may be called, noticed and conducted, and the result thereof determined and declared, in such manner as the governing body may provide by resolution. It shall not be necessary to hold any election for the issuance of any refunding bond, except in those cases in which an election is required by the Constitution of the state.

History.—s. 24, ch. 15772, 1931; CGL 1936 Supp. 2383(24).

132.25 Creation and maintenance of sinking fund.—The governing authority of any unit in contracting for the sale of any bonds may provide for the creation and maintenance of the necessary sinking fund out of proceeds of sales of lands, and levy of taxes, and proceeds of mortgages.

History.—s. 25, ch. 15772, 1931; CGL 1936 Supp. 2383(25).

132.26 Chapter supplemental and additional.—This chapter is intended as a supplemental and additional grant of power to each and all the various units of the state as hereinabove defined and shall apply as well to all municipalities whether heretofore or hereafter incorporated either under general or special act, and shall not supplant or repeal any existing powers for the issuance of funding or refunding bonds or any provisions of law of bonds issued under such powers, or for the custody of moneys provided for such payment, but shall nevertheless repeal all laws and parts of laws, general or special, so far as the same may be inconsistent with the complete exercise of any and all powers herein granted

or may deny the right to exercise any power herein granted as to the levy of taxes upon all taxable property of such unit or as to the custody of moneys provided for the payment of bonds or as to any other thing.

History.—s. 26, ch. 15772, 1931; CGL 1936 Supp. 2383(26).

132.27 Chapter complete within itself.—This chapter constitutes full authority for the things herein authorized, and no proceedings, publications, notices, consents or approval shall be required for the doing of the things herein authorized except as are herein prescribed and required. This chapter shall be deemed complete within itself, except insofar as other laws are specifically made applicable, nor shall powers hereby granted be restricted or limited by any other law.

History.—s. 27, ch. 15772, 1931; CGL 1936 Supp. 2383(27).

132.28 Chapter applicable to school districts.—In the event that any school district shall be authorized by the Constitution and laws of this state to legally issue refunding bonds the provisions of this chapter shall be deemed to apply to such school district.

History.—s. 29, ch. 15772, 1931; CGL 1936 Supp. 2383(28).

132.29 Validation.—Refunding bonds provided to be issued under this chapter shall be subject to validation and judicial proceedings in like manner and with like force and effect as bonds generally are provided to be validated by judicial proceedings under the laws of this state.

History.—s. 30, ch. 15772, 1931; CGL 1936 Supp. 2383(29).

132.30 Chapter applicable to all taxing districts.—This chapter shall apply to taxing districts of every character and description provided for under the general or special laws of this state, whether consisting of portions of a county or of territory located in more than one county.

History.—s. 31, ch. 15772, 1931; CGL 1936 Supp. 2383(30).

132.31 No other proceedings required.—No proceedings shall be required to be taken as to the issuance of any refunding bonds under this chapter except those prescribed by this chapter, any provisions of any other laws, general or special, to the contrary notwithstanding.

History.—s. 33, ch. 15772, 1931; CGL 1936 Supp. 2383(32).

132.32 Replacement of bonds.—In case any coupon bonds and the coupons thereunto appertaining, or any registered bonds, shall become mutilated or be destroyed, a new bond shall be prepared at the expense of the applicant, and be executed and delivered, of like tenor, amount, date and series in exchange and substitution for the mutilated or destroyed bond or coupons. In case of destruction the applicant for a substituted bond shall furnish to the unit satisfactory evidence of its destruction and shall also give such security and indemnity as may be required for it.

History.—s. 34, ch. 15772, 1931; CGL 1936 Supp. 2383(33).

CHAPTER 136

COUNTY DEPOSITORIES

136.01 Banks to be county depositories.—Any bank, national or state, authorized to do business in this state which will, as to the various funds hereinafter referred to, offer satisfactory inducement as to security as herein provided is hereby created and designated a county depository for the funds for which such security shall be furnished and may receive such public funds in the manner and method hereinafter provided. The funds hereinabove referred to shall include: county funds, funds of all county officers, and funds of the school board; the enumeration of said funds being herein made, not by way of limitation, but of illustration, and it being the intent hereof that all funds of such county or of the board of county commissioners or the several county officers or of the school board, shall be included.

History.—s. 2, ch. 6932, 1915; RGS 1559; s. 1, ch. 8527, 1921; CGL 2404; s. 1, ch. 14691, 1931; s. 1, ch. 19549, 1939; s. 7, ch. 24337, 1947; s. 10, ch. 26484, 1951; s. 1, ch. 59-23; s. 1, ch. 69-300.
cf.—s. 237.211 Provisions as to depositories of school funds.

136.02 Method of qualifying as depository; securities to be deposited.—

(1) Any bank as described in s. 136.01 desiring to become a county depository as herein provided shall make satisfactory deposit with or to the credit of the clerk of the circuit court of such county of securities of the kind and amount as herein authorized, conditioned that said bank insure the safekeeping, proper accounting for, and payment over to the proper authority of all money that may come into its possession by virtue of its acting as said depository, and further conditioned that it will in all respects duly and faithfully perform the duties imposed upon it by reason of acting as such depository. When a bank or banks in the county offer satisfactory inducement as to security as herein provided, the clerk of the circuit court of such county shall issue a certificate showing that said bank has qualified as a county depository, and the securities deposited by such bank as herein provided shall secure all funds, jointly and severally, that shall be deposited in such banks by the boards or officials of such county. When a bank or banks in the county qualify as a county depository as herein provided, such bank or banks shall be eligible to receive deposits of the funds of the boards or officials of such county. If at any time a bank ceases to be qualified as a county depository, the clerk of the circuit court of such county shall revoke the certificate of qualification of such bank and shall advise the applicable board or county official of such revocation, and until again qualified hereunder such bank shall not be eligible to receive or retain deposits of any of the funds herein mentioned.

(2) On the first day of each month, each county official and board maintaining funds on deposit in any such bank shall make and file with the clerk of the circuit court of such county a written report setting forth the balance of each fund on deposit in each bank in which such funds are deposited as of the close of business of the preceding month and setting forth the estimate of such officer or board of the highest balance expected to be on deposit in each such bank during the ensuing month.

(3) If at any time after a bank has qualified as a county depository as herein provided, the security furnished by it becomes insufficient or inadequate, the clerk of the circuit court of such county shall have authority, on such terms, conditions, and penalties as he may prescribe, to require other securities of the kind herein authorized in such additional amounts to be provided as he may deem necessary. If, at any time after a bank has qualified as a county depository as herein provided, the security furnished by it becomes, by reason of decreases in balances or deposits, more than sufficient to meet the requirements, the clerk of the circuit court of such county shall have the authority to authorize the security to be decreased to not less than the amount necessary to provide adequate safeguards for the funds deposited.

(4) The securities to be deposited by such banks desiring to qualify as a county depository hereunder shall consist of securities which are eligible for investment by any state bank authorized to do business in the state; provided, however, that except as to bonds or other obligations of the United States or bonds or other obligations the payment of whose principal and interest is guaranteed by the United States or federal certificates of indebtedness and Florida state and county bonds and Florida municipal general obligation bonds, the securities herein referred to shall be rated in one of the four highest classifications by a nationally recognized investment rating service.

(5) The fact that a county or municipal officer or member of a public board or body, including a district school officer and an officer of any district within a county is a stockholder or an officer or director of a bank will not bar such banks from qualifying as a depository of funds coming under the jurisdiction of any such county or municipal officer, provided it shall appear in the records of the state or county agency that the governing body of such agency has investigated and determined that such county officer or member of a public board or body as aforesaid has not favored such bank or banks over other quali-

fied banks and that there is no violation of subsection (1).

History.—s. 3, ch. 6932, 1915; RGS 1560; CGL 2405; s. 2, ch. 14691, 1931; s. 2, ch. 19549, 1939; s. 2, ch. 59-23; s. 1, ch. 59-306; s. 1, ch. 61-165; s. 1, ch. 63-112; s. 1, ch. 65-176; s. 1, ch. 67-575; ss. 12, 35, ch. 69-106; s. 1, ch. 69-300; s. 3, ch. 70-194; s. 1, ch. 79-309.
cf.—s. 659.21 Security of deposits.

136.03 County funds to be paid into depositories; triplicate receipts to be issued.—Tax collectors and all other persons having, receiving or collecting any money payable to the county funds not otherwise provided for, shall pay the same to the bank or banks qualified to receive the same. Each bank receiving any money, as provided in this chapter, shall make receipt for same in triplicate, one copy of which the said banks will carefully preserve and keep, one copy to be given to the person from whom money was received and one copy to be given to the board for which said money was received.

History.—s. 4, ch. 6932, 1915; RGS 1561; CGL 2406.

136.04 Depositories to keep demand and time deposits separate; how interest on deposits credited.—Each bank acting as a depository shall keep all daily balance accounts which are subject to immediate checking, in an account or accounts separate from all savings or time deposit accounts. Funds in a saving or time deposit account shall not be subject to check without being transferred to the checking account by order of the board or officer having control of the same. Each board or officer at all times may transfer money from one of the classes or types of accounts to another. Interest shall be paid by banks receiving savings or time deposit accounts at such rate or rates as may be agreed upon with respect to such savings or time deposit accounts by the bank and the board or officer having control of such account. All interest earned on any of such deposits shall be credited to the account and fund on which it was earned, and all interest shall be computed and credited quarterly.

History.—s. 5, ch. 6932, 1915; RGS 1562; s. 2, ch. 8527, 1921; CGL 2407; s. 3, ch. 59-23.

136.05 County board to keep set of books; overdrawing prohibited.—The board of county commissioners shall keep an accurate and complete set of books showing the amount on hand, amount received, amount expended and the balances thereof at the end of each month for each and every fund carried by said board, and no check or warrant shall ever be drawn in excess of the known balances to the credit of that fund as kept by the said board.

History.—s. 6, ch. 6932, 1915; RGS 1563; CGL 2408.

136.06 How funds drawn from depositories.—

(1) All money drawn from any depository qualified under the provisions of this chapter shall be upon a check or warrant issued by the board or officer drawing the same, said check or warrant, both as to number and amount, person to whom drawn and purpose for which drawn shall be recorded in the minutes of the board having ordered the same drawn, and each check or warrant so drawn shall be signed by the chairman of said board, attested by the clerk or secretary of said board with the corporate seal thereof affixed; however, money under the control of any school board may be withdrawn as may be otherwise provided by law.

(2) For the purpose of providing for the direct deposit of funds under the circumstances herein specified, each board or county officer authorized by law to issue checks or warrants for the withdrawal of money from a depository qualified under the provisions of this chapter is authorized to establish the form or forms of warrants for the withdrawal, payment, or disbursement of money out of such qualified depository and to change the form thereof from time to time as such board or officer deems appropriate. If authorized in writing by the payee, such warrants may provide for direct deposit of the funds to the account of the payee in any financial institution which is designated in writing by the payee and which has lawful authority to accept such deposits. The written authorization of the payee shall be filed with the appropriate board or county officer. Direct deposit of funds may be by any electronic or other medium approved by such board or officer for such purpose.

History.—s. 7, ch. 6932, 1915; RGS 1564; CGL 2409; s. 4, ch. 59-23; s. 1, ch. 69-300; s. 6, ch. 78-406.
cf.—s. 129.08 County commissioners voting to pay illegal claims, etc.
s. 129.09 County auditor not to sign illegal warrants.

136.07 Depositories to make reports; board to publish monthly statements.—Any bank acting as depository shall, at the end of each and every month, file with each board and officer for which it is a depository a report as to each account on deposit with it, showing the balances on hand at the beginning of the month, all sums received and paid out during the month, and balances on hand at the end of the month, and shall return with said report all checks or warrant or warrants properly canceled which the said bank has paid during the month; each board shall make and publish a statement quarterly regarding the names of banks and amounts deposited in such banks.

History.—s. 8, ch. 6932, 1915; RGS 1565; CGL 2410; s. 6, ch. 59-23; ss. 12, 35, ch. 69-106; s. 2, ch. 79-309.

136.08 Accounts subject to examination by authorized persons.—The accounts of each and every board and the county accounts of each and every bank acting as depository, mentioned or provided for in this chapter, shall at all times be subject to the inspection and examination by the county auditor and by the Auditor General.

History.—s. 9, ch. 6932, 1915; RGS 1566; CGL 2411; s. 8, ch. 69-82; ss. 12, 35, ch. 69-106; s. 3, ch. 79-309.

CHAPTER 137

BONDS OF COUNTY OFFICERS

137.01 Bonds required by county officers.—Each of the county officers of whom a bond is or shall be required by law, shall, before he is commissioned, give bond, with not less than two sureties, or a surety company as hereinafter specified, to the Governor of the state and his successors in office, conditioned for the faithful performance of the duties of his office, which shall be approved by the board of county commissioners and Department of Banking and Finance, and be filed with the Department of State.

History.—s. 1, ch. 3724, 1887; RS 616; GS 822; RGS 1568; CGL 2416; ss. 10, 12, 35, ch. 69-106.

137.02 Bond of tax collector.—The tax collector of each county shall give bond in a sum to be fixed by the board of county commissioners of the respective county, subject to the approval of the Department of Banking and Finance as to amount and surety. This bond shall be specifically conditioned to account duly and faithfully for all taxes collected by the tax collector. In fixing said bond the board of county commissioners shall take into consideration the amount of money likely to be in the custody of the collector at any one time.

History.—s. 5, ch. 3724, 1887; RS 617; GS 823; RGS 1569; s. 1, ch. 10033, 1925; CGL 2417; ss. 12, 35, ch. 69-106; s. 1, ch. 76-140.

137.03 Bond of property appraisers.—The county property appraiser shall give a bond, the amount of which shall be fixed by the board of county commissioners at not less than $1,000 or more than $10,000. In fixing the amount of said bond, the board of county commissioners shall take into consideration the amount of money likely to be in the custody of the property appraiser at any one time.

History.—s. 7, ch. 3724, 1887; s. 1, ch. 3844, 1889; RS 618, 619; GS 824; RGS 1570; CGL 2418; s. 1, ch. 28294, 1953; s. 3, ch. 73-47; s. 1, ch. 77-102.

137.04 County commissioners to give bond.—Each and every county commissioner of the several counties of the state, elected or appointed to such office before he is commissioned, shall be required to give a good and sufficient bond with not less than two sureties, or a surety company duly authorized under the laws of the state, in the sum of $2,000, conditioned for the faithful performance of the duties of his office, which bond shall be approved by the board of county commissioners and the Department of Banking and Finance. The premium of the bonds given with surety companies as sureties shall be paid out of the county treasury.

History.—s. 1, ch. 6477, 1913; RGS 1571; CGL 2419; ss. 12, 35, ch. 69-106.

137.05 Duty of county commissioners.—The county commissioners of the various counties of the state shall at their regular meeting in January and June of each year examine carefully as to the sufficiency of bonds of the county officers of their respective counties, and if by reason of death, assignment or insolvency of any of the sureties on the bonds of said officers, they have reason to believe that the sufficiency of said bond has become impaired, they shall at once report the same to the Governor, who shall call upon and require such officer or officers to execute and file with the proper officer a new bond for the same amount, under the same conditions as his former bond.

History.—s. 2, ch. 4413, 1895; GS 825; RGS 1572; CGL 2420.

137.06 Failure to give new bond; misfeasance.—Upon the failure of any state or county officer to give the new bond required by s. 137.05, within 60 days after he is called upon to do so, such failure on the part of any county officer shall be deemed and held to be a misfeasance within the meaning of the Constitution; and the Governor shall suspend such officer, as provided in s. 7, Art. IV of the State Constitution, and shall at once appoint a successor to fill such vacancy, who after giving the bond required and otherwise qualifying, shall take charge of the office to which he has been appointed, and perform the duties of the same until his successor shall have been elected and qualified, or the officer suspended be reinstated; and in all cases where officers are liable to impeachment under the Constitution, the failure to give the bond as hereinbefore mentioned shall constitute a ground of impeachment.

History.—s. 3, ch. 4413, 1895; GS 826; RGS 1573; CGL 2421; s. 6, ch. 69-216.

137.07 Failure to perform duties.—If the Comptroller of the state, or the boards of county commissioners of the various counties, shall fail to perform the duties required by ss. 17.19 and 137.05 respectively, they shall be liable to the state or county for any loss which may be sustained by the state or county, by reason of such failure, such sum to be recovered by suit in any county in which such Comptroller or county commissioners may reside.

History.—s. 4, ch. 4413, 1895; GS 827; RGS 1574; CGL 2422.

137.08 Sums for which sureties may be bound.—In every bond in which the amount of the bond shall not exceed $1,000, there shall be at least two sureties, each bound for the full amount of the bond. In every bond so specified in which the amount of the bond shall exceed $1,000, each surety may bind himself for a specified sum, and the aggregate amount for which the sureties shall bind themselves shall not be less than the penalty of the bond.

History.—s. 9, ch. 3724, 1887; RS 620; GS 828; RGS 1575; CGL 2423.

137.09 Justification and approval of bonds.—Each surety upon every bond of any county officer shall make affidavit that he is a resident of the county for which the officer is to be commissioned, and that he has sufficient visible property therein unencumbered and not exempt from sale under legal process to make good his bond. Every such bond shall be approved by the board of county commissioners and by the Department of Banking and Finance when they and it are satisfied in their judgment that the same is legal, sufficient and proper to be approved.

History.—s. 10, ch. 3724, 1887; RS 621; GS 829; RGS 1576; CGL 2424; ss. 12, 35, ch. 69-106.

137.10 Provisions not applicable to surety companies.—The provisions of this chapter requiring two sureties and justification by surety shall not apply where such surety is a surety company authorized to do business in this state.

History.—GS 830; RGS 1577; CGL 2425.

CHAPTER 138

COUNTY SEATS

138.01 Petition to change county seat.—The qualified electors in any county in this state wishing to change their county seat, shall present to the board of county commissioners of such county a petition signed by one-third of the qualified electors, who are taxpayers on real or personal property, praying for a change of the location of such county seat.

History.—s. 1, ch. 1890, 1872; RS 622; GS 831; s. 1, ch. 6239, 1911; RGS 1578; CGL 2426.

138.02 Commissioners to order election.—The county commissioners of any county in this state, upon receiving such petition as is specified in s. 138.01 shall order an election to be held at the several precincts of such county for the location of such county seat, giving not less than 30 days' notice thereof, and no person shall be allowed to vote in such elections except those qualified to vote under the general election laws of Florida.

History.—s. 2, ch. 1890, 1872; RS 623; GS 832; s. 2, ch. 6239, 1911; RGS 1579; CGL 2427.

138.03 Conduct and return of election.—All elections held under the provisions of this chapter shall be conducted in the manner prescribed by law for holding general elections in this state, except as herein provided, and the returns of all such elections shall be made to the county commissioners or the clerk thereof.

History.—s. 3, ch. 1890, 1872; RS 624; GS 833; s. 3, ch. 6239, 1911; RGS 1580; CGL 2428.

138.04 Names of towns, etc., for county seat to be filed with clerk.—Names of all towns, villages or cities, put forward as candidates for the county seat of any county in this state under the provisions of this chapter shall be filed with the clerk of the circuit court of such county not later than 15 days before the date set for holding said election.

History.—s. 4, ch. 6239, 1911; RGS 1581; CGL 2429.

138.05 Form of ballot.—The clerk of the circuit court of any county in this state, when the names of the towns, villages and cities required in s. 138.04 have been furnished him, shall have printed, at the expense of the county, a suitable ballot to be used in said election, said ballot to contain, in alphabetical order, the names of all such towns, villages and cities, and no other places shall be printed on the said ballots; provided, that in counties where the use of voting machines is now or may hereafter be authorized by law, the requirements of this section shall, insofar as practicable, be adapted to the use of said voting machines.

History.—s. 5, ch. 6239, 1911; RGS 1582; CGL 2430.

138.06 Canvass and result of election; contests.—The county commissioners shall, not later than 5 days after the aforesaid election is held, publicly canvass the same, and the place receiving a majority of all the votes cast shall be the county seat for the next 10 years. The result declared upon such canvass may be contested by five or more taxpayers, qualified electors who voted in such election for a candidate place other than the place declared elected, by proceeding in chancery for an injunction against the removal by the county commissioners of the county records and county offices to the place declared elected, or by mandamus to compel the removal of the county offices and records to the place alleged in such proceedings to have been elected; and the court in which any such proceeding shall be properly instituted, may inquire into the legality of such election, the qualification of electors voting therein, and render judgment or decree in favor of the place duly elected by the qualified electors, and may make such interlocutory orders or decrees, and issue such process as shall be necessary to the protection of its jurisdiction, or may be incidental to the principal relief sought; provided, that such action shall be brought within 3 years from the time of such election.

History.—Ch. 3301, 1881; RS 625; GS 834; s. 6, ch. 6239, 1911; s. 10, ch. 7838, 1919; RGS 1583; CGL 2431.

138.07 Second election when no place receives majority vote.—Should three or more places be put forward and voted for as the county seat of any county in this state, and the county commissioners of such county find that upon the canvass of the said election, as provided for in s. 138.06, that any of such places have received a majority of all the votes cast at said election, the place receiving such a majority shall be declared the county seat as aforesaid, but should the county commissioners find that no place has received a majority of all the votes cast in said election, they shall proceed at once without a petition to call a second election to be held within 30 days of the first election, and in the same manner and places as prescribed for the first election.

History.—s. 7, ch. 6239, 1911; RGS 1584; CGL 2432.

138.08 The two places receiving highest vote to be placed on ballot in second election.—Should the second election, as provided for in s. 138.07, be necessary to select the place as county seat of any county in this state, the clerk of the circuit court shall prepare the ballot as aforesaid, dropping the names or name of all places voted for in the first election except the two places receiving the highest vote in the same, and no other places shall be voted for nor shall the vote of any other place or places be counted or considered by the county commissioners in canvassing the result of such election.

History.—s. 8, ch. 6239, 1911; RGS 1585; CGL 2433.

138.09 Canvass of votes of second election; establishing county seat.—The county commissioners shall, within 5 days after the election provided for in s. 138.07 is held, meet and publicly canvass the same, and the place receiving the majority of all the votes cast shall be the county seat for the next 10 years, and the said county commissioners shall erect, as soon as possible, a courthouse and jail, and provide suitable offices for all the county officers who are required by law to keep their offices at the courthouse at the place so selected as the county seat aforesaid.

History.—s. 9, ch. 6239, 1911; RGS 1586; CGL 2434.

138.10 Counties having constructed a new courthouse within 20 years.—The provisions of this chapter shall not apply to any county having constructed a new courthouse within the past 20 years, other than a county having constructed a courthouse of wood, in which the county seat is situated, in any town or city not located on any line of railroad transportation.

History.—s. 10, ch. 6239, 1911; s. 1, ch. 6480, 1913; RGS 1587; CGL 2435.

138.11 Unlawful use of money in election to change county seat.—Any person using money, goods or chattels in any election to change the county seat of any county, to secure votes or influence for any place as the county seat of any county in this state, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 10, ch. 6239, 1911; s. 1, ch. 6480, 1913; RGS 5904; CGL 8168; s. 80, ch. 71-136.

138.12 Commissioners may expand county seat.—The board of county commissioners of any county may expand the geographical area of the county seat of its county beyond the corporate limits of the municipality named as the county seat by adopting a resolution to that effect at any regular or special meeting of the board. Such a resolution may be adopted only after the board has held not less than two public hearings on the proposal at intervals of not less than 10 or more than 20 days and after notice of the proposal and such meetings has been published in a newspaper of general circulation in the county. However, nothing herein shall be deemed to extend the boundaries of the municipality in which the county seat was previously located or annex to such municipality the territory added to the county seat.

History.—s. 1, ch. 73-320.

CHAPTER 142

FINE AND FORFEITURE FUND, COUNTY

142.01 Fine and forfeiture fund contents.—There shall be in every county of this state a separate fund to be known as the fine and forfeiture fund. Said fund shall consist of all fines and forfeitures collected in the county under the penal laws of the state, except those fines imposed under s. 775.0835(1); all costs refunded to the county; all funds arising from the hire or other disposition of convicts; and the proceeds of any special tax that may be levied by the county commissioners for expenses of criminal prosecutions. Said funds shall be paid out only for criminal expenses, fees, and costs, where the crime was committed in the county and the fees and costs are a legal claim against the county, in accordance with the provisions of this chapter.

History.—s. 1, ch. 4323, 1895; s. 1, ch. 4672, 1899; GS 961; RGS 1774; CGL 2825; s. 2, ch. 77-452.

142.02 Levy of a special tax.—The board of county commissioners of every county may levy a special tax, not to exceed 2 mills, upon the real and personal property of the respective counties, to be assessed and collected as other county taxes are assessed and collected, for such costs of criminal prosecutions.

History.—s. 1, ch. 4323, 1895; s. 1, ch. 4672, 1899; GS 962; RGS 1775; CGL 2826.

142.03 Disposition of fines, forfeitures, and civil penalties; reports.—Except as to fines, forfeitures, and civil penalties collected in cases involving violations of municipal ordinances, violations of chapter 316 committed within a municipality, or infractions under the provisions of chapter 318 committed within a municipality, in which cases such fines, forfeitures, and civil penalties shall be fully paid monthly to the appropriate municipality as provided in ss. 34.191, 316.660, and 318.21, and except as to fines imposed under s. 775.0835(1), all fines imposed under the penal laws of this state in all other cases, and the proceeds of all forfeited bail bonds or recognizances in all other cases, shall be paid into the fine and forfeiture fund of the county in which the indictment was found or the prosecution commenced, and judgment must be entered therefor in favor of the state for the use of the particular county. The county commissioners of each county shall require a full report from all clerks of county courts and Clerks of Circuit Courts once in each month, within 30 days after the expiration of said month, of the amount of fines imposed by their courts and of bonds forfeited and judgments rendered on said forfeited bonds, and into whose hands they had been paid or placed for collection, the date of conviction in each case, the term of imprisonment, and the name of the officer to whom commitment was delivered. If any clerk of court shall fail to make such report for any month, the board of county commissioners shall immediately report to the Governor any such failure or refusal, and the Governor may, in his discretion, suspend such officer or officers from office. The county commissioners may withhold any fees or costs of any officer until said officer collects and pays over to the depository legally entitled to receive the same all such fines and forfeitures or furnishes a satisfactory excuse for not doing so.

History.—s. 2, ch. 4323, 1895; s. 1, ch. 5155, 1903; GS 963; RGS 1776; CGL 2827; s. 20, ch. 73-334; s. 2, ch. 76-31; s. 2, ch. 77-452.

142.04 Clerk to issue certificate.—The Clerk of the Circuit Court shall issue a certificate under the seal of the court, and keep a stub copy of the same, to each witness appearing on the part of the state, stating therein the name of the case and the amount of compensation to which he is entitled, where the same is a claim against the county out of the fine and forfeiture fund.

History.—ss. 1, chs. 4323, 4326, 1895; GS 964; RGS 1777; CGL 2828.

142.05 Clerk not entitled to fee.—The clerk issuing the certificate shall not be entitled to receive any fee for performing the duty herein imposed. Said clerk shall make out a payroll in duplicate giving the name of each witness summoned for the state before the court, the number of days of attendance, miles traveled and the amount he is entitled to. The witness shall sign same in presence of a witness and the clerk shall certify to the correctness of the payroll.

History.—ss. 1, chs. 4323, 4326, 1895; GS 965; RGS 1778; CGL 2829; s. 1, ch. 20416, 1941.

142.06 Form of payroll.—The form of this payroll shall be prescribed by the county commissioners, and filed in the Clerk of the Circuit Court's office for the information and use of the county commissioners in reviewing the acts of the clerk issuing certificates to witnesses appearing on behalf of the state; and the county commissioners may reject any witness certificate or any portion thereof that they may deem illegal and pay into the fine and forfeiture fund the amount rejected out of any fees or costs going to the clerk issuing the certificate, in case the clerk fails to at once pay the amount.

History.—ss. 1, chs. 4323, 4326, 1895; GS 966; RGS 1779; CGL 2830.

142.07 Payrolls.—When the witness on behalf of the state appears in any case in county courts, the clerks of said courts shall make out payrolls as prescribed in the preceding section. Said payrolls shall be sworn to by said clerks and presented to the Clerk of the Circuit Court, to be filed with the said clerk. If said Clerk of the Circuit Court is satisfied of the correctness and legality of the payroll, he shall issue certificates to each witness legally and properly on said payroll for the amount due him in the same manner as for witnesses in the circuit court, and such certificates shall constitute the same claim against the county and be receivable for fines and forfeitures or any special tax levied for criminal costs.

History.—s. 5, ch. 4323, 1895; GS 967; RGS 1780; CGL 2831; s. 1, ch. 24306, 1947; s. 20, ch. 73-334.

142.08 Clerk responsible.—If any portion of said certificates are rejected by the county commissioners, the clerk of the court where the witness appeared shall be held responsible for the same, and if immediate payment is not made by said clerk, the county commissioners shall deduct the amount rejected from any fees going to said clerk.

History.—s. 5, ch. 4323, 1895; GS 968; RGS 1781; CGL 2832.

142.09 If defendant is not convicted, or dies.—If the defendant is not convicted, or the prosecution is abated by the death of the defendant, or if the costs are imposed on the defendant and execution against him is returned no property found, or if a nolle prosse be entered, in each of these cases the fees of witnesses and officers arising from criminal causes shall be paid by the county in the manner specified in ss. 142.10-142.12; provided, that when a committing magistrate holds to bail or commits a person to answer to a criminal charge and an information is not filed or an indictment found against such person, the costs and fees of such committing trial shall not be paid by the county, except the costs of executing the warrants.

History.—ss. 3, 7, ch. 4323, 1895; GS 970; RGS 1782; CGL 2833.
cf.—s. 939.14 County not to pay cost.

142.10 Officer to make out accounts as directed.—The officer shall make out his account against the county in such form as the county commissioners may require, stating the services for which the fee is charged, the title of the case in which the services were performed, and the facts which, under the provisions of s. 142.09, make the fees a good claim against the county, and present the same to the board of county commissioners with an affidavit that the same is correct.

History.—s. 8, ch. 4323, 1895; s. 2, ch. 4672, 1899; GS 971; RGS 1783; CGL 2834; s. 20, ch. 73-334.
cf.—s. 939.08 Costs to be certified by county commissioners before audit.

142.11 Powers and duties of county commissioners.—The county commissioners may reject all or any portion of any account which is not a valid claim against the county, and shall allow and pay the same only when it is just, correct and reasonable, and no constructive mileage or illegal or unnecessary item or charge in any frivolous case shall be allowed.

History.—s. 8, ch. 4323, 1895; s. 2, ch. 4672, 1899; GS 972; RGS 1784; CGL 2835.

142.12 County commissioners to audit; how payable.—The county commissioners shall audit all bills and accounts and order a warrant, signed by the chairman and countersigned by the Clerk of the Circuit Court, under the seal of the court, for the amount that they may find to be due, payable out of the fine and forfeiture fund, and a copy of all such warrants shall be kept by the Clerk of the Circuit Court.

History.—s. 8, ch. 4323, 1895; s. 2, ch. 4672, 1899; GS 973; RGS 1785; CGL 2836.

142.13 Right of officer to test validity.—Whenever any officer shall have presented to the county commissioners any bill or account against any county and such bill or account or any part thereof shall have been rejected by the county commissioners, such officer may test the validity of his said charge, bill or account, by suit against the county, and may recover a judgment for the amount or such part thereof as shall be a legal claim for services rendered in the performance of duty, with interest thereon; provided, that no such claim shall be sued on more than 1 year after its final rejection by the county commissioners.

History.—s. 2, ch. 4672, 1899; GS 975; RGS 1786; CGL 2837.

142.15 Prisoner confined in different county.—Where the prisoner is confined in the jail of a different county from the one in which the crime was committed, then the sheriff's bill for feeding such prisoner shall be presented to the board of county commissioners of the county in which the crime is alleged to have been committed, and paid by such county. If the sheriff should subsequently collect any such fees for feeding a prisoner, he shall pay the same to the county depository, to go into the fine and forfeiture fund. The county commissioners shall see that there is always set aside and retained in the fine and forfeiture fund out of the moneys collected from the special tax authorized to be collected for such fund, enough cash to pay for keeping and feeding such prisoners.

History.—s. 9, ch. 4323, 1895; ch. 4527, 1897; GS 977; RGS 1788; CGL 2839.

142.16 Change of venue.—In case of change of venue in any case, all fines and forfeitures in such case go to the county in which the indictment was found, and the fees of all officers and witnesses are a charge upon the county in which the indictment was found, in like manner as if the trial had not been removed. All costs and fees arising from the coroner's inquest shall be a charge upon the county where the inquest is held, and shall be payable from the general revenue fund of the county.

History.—s. 10, ch. 4323, 1895; GS 978; RGS 1789; CGL 2840.

142.17 Comptroller to prepare blanks.—The Comptroller shall prepare suitable blanks and forms to be used in connection with the auditing of all

claims under this chapter, and furnish the Clerks of the Circuit Courts with a printed copy of the same.

History.—s. 1, ch. 4430, 1895; GS 980; RGS 1791; CGL 2842.

142.18 Duty of county commissioners.—The county commissioners of the respective counties shall adopt forms furnished in accordance with s. 142.17, and have printed a sufficient number of said blanks for the use of the officers of their respective counties.

History.—s. 2, ch. 4430, 1895; GS 981; RGS 1792; CGL 2843.

CHAPTER 145

COMPENSATION OF COUNTY OFFICIALS

145.011 Legislative intent.—

(1) In compliance with s. 5(c), Art. II of the State Constitution, it is the intent of the Legislature to provide for the annual compensation and method of payment for the several county officers named herein.

(2) The Legislature has determined that a uniform and not arbitrary and discriminatory salary law is needed to replace the haphazard, preferential, inequitable, and probably unconstitutional local law method of paying elected county officers.

(3) It is further the intent of this Legislature to provide by general law for such uniform compensation of county officials having substantially equal duties and responsibilities, taking into account the multitude of changes that have affected these offices within the past decade.

(4) The salary schedules in this chapter are therefore based on a classification of counties according to each county's population, which the Legislature determines to be the most practical basis from which to arrive at an adequate, uniform salary system.

History.—s. 1, ch. 61-461; s. 1, ch. 67-576; s. 4, ch. 69-216; s. 1, ch. 69-346; s. 7, ch. 69-403.

145.012 Applicability.—This chapter applies to all officials herein designated in all counties of the state except those officials whose salaries are not subject to being set by the Legislature because of the provisions of a county home rule charter and except officials, other than the property appraiser who if qualified shall receive in addition to his salary the special qualification salary as provided in s. 145.10(2), of counties which have a chartered consolidated form of government as provided in chapter 67-1320, Laws of Florida.

History.—s. 2, ch. 69-346; s. 15, ch. 73-173; s. 45, ch. 73-333; s. 1, ch. 77-102.

145.021 Definitions.—As used in this chapter:

(1) "Population" means the population according to the latest annual determination of population of local governments produced by the Executive Office of the Governor in accordance with s. 23.019.

(2) "Salary," when referring to amounts payable under the schedules set forth in this chapter, means the total annual compensation to be paid to an official as personal income.

History.—s. 1, ch. 61-461; s. 3, ch. 69-346; s. 1, ch. 73-173; s. 89, ch. 79-190.

145.022 Guaranteed salary upon resolution of board of county commissioners.—

(1) Any board of county commissioners, with the concurrence of the county official involved, shall by resolution guarantee and appropriate a salary to the county official, in an amount not to exceed that specified in this chapter, if all fees collected by such official are turned over to the board of county commissioners. Copies of the resolution adopted shall be filed with the Department of Banking and Finance and the Auditor General.

(2) This section shall not apply to county property appraisers.

History.—s. 4, ch. 69-346; s. 8, ch. 69-82; ss. 12, 35, ch. 69-106; s. 16, ch. 73-172; s. 1, ch. 77-102.

145.031 Board of county commissioners.—

(1) Each member of the board of county commissioners shall receive as salary the amount indicated, based on the population of his county. In addition, compensation shall be made for population increments over the minimum for each population group, which shall be determined by multiplying the population in excess of the minimum for the grouping times the group rate.

Pop. Group	County Pop. Range Minimum	Maximum	Base Salary	Group Rate
I	-0-	9,999	$ 4,500	$0.150
II	10,000	49,999	6,000	0.075
III	50,000	99,999	9,000	0.060
IV	100,000	199,999	12,000	0.045
V	200,000	399,999	16,500	0.015
VI	400,000	999,999	19,500	0.005
VII	1,000,000		22,500	0.000

(2) No member of a governing body of a chartered county or a county with a consolidated form of government shall be deemed to be the equivalent of a county commissioner for the purposes of determining the compensation of such member under his respective charter.

History.—s. 1, ch. 61-461; s. 1, ch. 63-560; s. 1, ch. 65-356; s. 1, ch. 67-543; s. 2, ch. 67-576; s. 5, ch. 69-346; s. 2, ch. 73-173.

145.041 District school board.—

(1) Each member of the district school board

shall receive as salary the amount indicated, based on the population of his county. In addition, compensation shall be made for population increments over the minimum for each population group, which shall be determined by multiplying the population in excess of the minimum for the grouping times the group rate.

Pop. Group	County Pop. Range Minimum	Maximum	Base Salary	Group Rate
I	-0-	9,999	$3,000	$0.0500
II	10,000	49,999	3,500	0.0125
III	50,000	99,999	4,000	0.0100
IV	100,000	199,999	4,500	0.0050
V	200,000	399,999	5,000	0.0025
VI	400,000	999,999	5,500	0.0008
VII	1,000,000		6,000	0.0000

(2) This section shall not apply to those counties which, since July 1, 1964, have by referendum voted that school board members shall receive no salary.

History.—s. 1, ch. 61-461; s. 1, ch. 63-560; s. 1, ch. 65-356; s. 2, ch. 67-576; s. 5, ch. 69-346; s. 3, ch. 73-173.
cf.—s. 230.201 Compensation of members of school board.

145.051 Clerk of circuit court and county comptroller.—Each clerk of circuit court and each county comptroller shall receive as salary the amount indicated, based on the population of his county. In addition, a compensation shall be made for population increments over the minimum for each population group, which shall be determined by multiplying the population in excess of the minimum for the grouping times the group rate.

Pop. Group	County Pop. Range Minimum	Maximum	Base Salary	Group Rate
I	-0-	9,999	$14,000	$0.300
II	10,000	49,999	17,000	0.075
III	50,000	99,999	20,000	0.060
IV	100,000	199,999	23,000	0.025
V	200,000	399,999	25,500	0.015
VI	400,000	999,999	28,500	0.005
VII	1,000,000		31,500	0.000

History.—s. 1, ch. 61-461; s. 1, ch. 63-560; s. 1, ch. 65-356; s. 2, ch. 67-576; s. 5, ch. 69-346; s. 27, ch. 72-404; s. 4, ch. 73-173; s. 4, ch. 74-325.

145.071 Sheriff.—Each sheriff shall receive as salary the amount indicated, based on the population of his county. In addition, a compensation shall be made for population increments over the minimum for each group, which shall be determined by multiplying the population in excess of the minimum for the grouping times the group rate.

Pop. Group	County Pop. Range Minimum	Maximum	Base Salary	Group Rate
I	-0-	9,999	$15,000	$0.200
II	10,000	49,999	17,000	0.075
III	50,000	99,999	20,000	0.060
IV	100,000	199,999	23,000	0.025
V	200,000	399,999	25,500	0.015
VI	400,000	999,999	28,500	0.005
VII	1,000,000		31,500	0.000

History.—s. 1, ch. 61-461; s. 1, ch. 63-560; s. 1, ch. 65-356; s. 2, ch. 67-543; s. 2, ch. 67-576; s. 5, ch. 69-346; ss. 1-3, ch. 70-395; s. 5, ch. 73-173; s. 46, ch. 73-333.

145.08 Superintendent of schools.—
(1) Each superintendent of schools shall receive as salary the amount indicated, based on the population of his county. In addition, a compensation shall be made for population increments over the minimum for each population group, which shall be determined by multiplying the population in excess of the minimum for the grouping times the group rate.

Pop. Group	County Pop. Range Minimum	Maximum	Base Salary	Group Rate
I	-0-	9,999	$16,000	$0.300
II	10,000	49,999	19,000	0.075
III	50,000	99,999	22,000	0.060
IV	100,000	199,999	25,000	0.025
V	200,000	399,999	27,500	0.015
VI	400,000	999,999	30,500	0.005
VII	1,000,000		33,500	0.000

(2) On October 1, 1973, no elected superintendent shall be caused to suffer a decrease in gross salary as a result of the implementation of subsection (1).
(3) This section does not apply to a superintendent of schools appointed pursuant to the terms of s. 230.321.

History.—s. 1, ch. 61-461; s. 1, ch. 63-560; s. 1, ch. 65-356; s. 2, ch. 67-576; s. 1, ch. 67-591; s. 1, ch. 67-2234; s. 1, ch. 67-2235; s. 5, ch. 69-346; s. 6, ch. 73-173; s. 47, ch. 73-333; s. 1, ch. 74-353.

145.09 Supervisor of elections.—
(1) Each supervisor of elections shall receive as salary the amount indicated, based on the population of his county. In addition, a compensation shall be made for population increments over the minimum for each population group, which shall be determined by multiplying the population in excess of the minimum for the grouping times the group rate.

Pop. Group	County Pop. Range Minimum	Maximum	Base Salary	Group Rate
I	-0-	9,999	$8,500	$0.200
II	10,000	49,999	10,500	0.075
III	50,000	99,999	13,500	0.060
IV	100,000	199,999	16,500	0.025
V	200,000	399,999	19,000	0.015
VI	400,000	999,999	22,000	0.005
VII	1,000,000		25,000	0.000

(2) The above salaries are based upon a 5-day work week. If a supervisor does not keep his office open 5 days per week, then the salary will be prorated accordingly.
(3) The supervisor of elections in each county shall receive an increase in the base salary provided in subsection (1) of $4,300 for each population group. This increase shall be added to the total salary of the supervisor of elections as of October 1, 1978.

History.—s. 1, ch. 61-461; s. 1, ch. 63-560; s. 2, ch. 65-60; s. 1, ch. 65-356; s. 2, ch. 67-576; s. 5, ch. 69-346; s. 1, ch. 70-429; s. 7, ch. 73-173; s. 2, ch. 79-327.

145.10 Property appraiser.—
(1) Each property appraiser shall receive as salary the amount indicated, based on the population of his county. In addition, a compensation shall be made for population increments over the minimum for each population group, which shall be determined by multiplying the population in excess of the minimum for the grouping times the group rate.

Pop. Group	County Pop. Range Minimum	Maximum	Base Salary	Group Rate
I	-0-	9,999	$12,000	$0.300
II	10,000	49,999	15,000	0.075
III	50,000	99,999	18,000	0.060
IV	100,000	199,999	21,000	0.025
V	200,000	399,999	23,500	0.015
VI	400,000	999,999	26,500	0.005
VII	1,000,000		29,500	0.000

(2) Special qualification salary shall be an additional $2,000 per year to each property appraiser who has met the requirements of the Department of Revenue and has been designated a certified Florida property appraiser. Any property appraiser who is certified during a calendar year shall receive in that year a pro rata share of the special qualification salary based on the remaining period of the year. The department shall establish and maintain a certified Florida property appraiser program.

History.—s. 1, ch. 61-461; s. 1, ch. 63-560; s. 1, ch. 65-356; s. 3, ch. 67-543; s. 2, ch. 67-576; s. 1, ch. 67-594; s. 5, ch. 69-346; s. 15, ch. 73-172; s. 8, ch. 73-173; s. 1, ch. 77-102.

145.11 Tax collector.—Each tax collector shall receive as salary the amount indicated, based on the population of his county. In addition, a compensation shall be made for population increments over the minimum for each population group, which shall be determined by multiplying the population in excess of the minimum for the grouping times the group rate.

Pop. Group	County Pop. Range Minimum	Maximum	Base Salary	Group Rate
I	-0-	9,999	$12,000	$0.200
II	10,000	49,999	14,000	0.075
III	50,000	99,999	17,000	0.060
IV	100,000	199,999	20,000	0.025
V	200,000	399,999	22,500	0.015
VI	400,000	999,999	25,500	0.005
VII	1,000,000		28,500	0.000

History.—s. 1, ch. 61-461; s. 1, ch. 63-560; s. 1, ch. 65-356; s. 2, ch. 67-576; s. 5, ch. 69-346; s. 9, ch. 73-173.

145.121 Other income to be income of the office.—

(1) Except for the salary receivable under this chapter, all fees, costs, salaries, commissions, extra compensation, or any other funds which are paid or payable to a county official or to his office, either by law or on account of any service (including, for the purposes of this section, service arising out of official duties, ex officio duties, and private nonofficial acts) performed by the official for any agency or instrumentality of the state or of any county or municipality in the state, or for any officer, board, district, authority, or unit of state or local government, or for individuals, wherein any of the personnel, equipment, or space of the office is employed, shall be included as income of the office and shall not be retained by the county official as personal income. Nothing herein shall be construed as authorizing a county official to use his office or its personnel or property for a private purpose.

(2) Any board of county commissioners which prior to July 1, 1969 had not authorized an additional monthly expense allowance for the chairman of the commission may authorize such an allowance of up to $50 per month for travel and other expenses related to the performance of his duties, and compensation shall not be considered as part of the chairman's income from office.

History.—s. 7, ch. 69-346; s. 1, ch. 70-419; ss. 1, 2, ch. 70-445; s. 1, ch. 72-240; s. 14, ch. 73-173; s. 1, ch. 74-325.

145.131 Repeal of other laws relating to compensation; exceptions.—

(1) All local or special laws or general laws of local application enacted prior to July 1, 1969, which relate to compensation of county officials are repealed, except laws pertaining to travel expenses of county officers or to payment of extra compensation to the chairmen of boards of county commissioners or district school boards.

(2) After July 1, 1969, compensation of any official whose salary is fixed by this chapter shall be the subject of general law only, except that compensation of district school board members may be fixed within the salary ranges specified in s. 145.041 by special or local law, and compensation of certain school superintendents may be set by school boards in accordance with the provisions of s. 145.08.

(3) All or any portion of the payment of the costs of life, health, accident, hospitalization, or annuity insurance, as authorized in s. 112.08, for county officials and employees shall not be deemed to be compensation within the purview of this chapter; and all payments previously made from county funds for such purposes are hereby validated.

History.—s. 9, ch. 69-346; s. 1, ch. 72-111; s. 20, ch. 73-334.

145.14 Compensation of other county officials; guarantee.—

(1) Each county official whose compensation for his official duties is paid wholly or partly by fees or commissions, and whose compensation is not provided for herein shall receive as his yearly compensation for his official services from the whole or part of the fees or commissions so collected, the following sum only: all the net income from his office not to exceed $7,500 unless otherwise provided by law.

(2) With the concurrence of any county officer described by subsection (1), any board of county commissioners may by resolution guarantee and appropriate to that officer a salary not to exceed $9,600 in lieu of fees, if all fees collected are turned over to the board of county commissioners. Copies of the resolution shall be filed with the Department of Banking and Finance and the auditor general.

History.—s. 3, ch. 63-560; s. 10, ch. 69-346; s. 8, ch. 69-82; ss. 12, 35, ch. 69-106.

145.141 Deficiency to be paid by board of county commissioners.—Should any county officer have insufficient revenue from the income of his office, after paying office personnel and expenses, to pay his total annual salary, the board of county commissioners shall pay any deficiency in salary from the general revenue fund and notify the Department of Banking and Finance. The deficiency shall be listed in the comptroller's annual report of county finances and county fee officers.

History.—s. 8, ch. 69-346; ss. 12, 35, ch. 69-106.

145.16 Special laws or general laws of local application prohibited.—

(1) The Legislature declares that the preservation of statewide uniformity of county officials' salaries is essential to the fulfillment of the legislative intent expressed in this chapter and intends by this section to prevent any laws which would allow officials in individual counties to be excepted from the uniform classification provided in this chapter.

(2) Pursuant to s. 11(a)(21), Art. III of the State Constitution, the Legislature hereby prohibits special laws or general laws of local application pertaining to the compensation of the following county officials:

(a) Members of the board of county commissioners;
(b) Clerk of the circuit court;
(c) Sheriff;
(d) Superintendent of schools;
(e) Supervisor of elections;
(f) Property appraiser; and
(g) Tax collector.

History.—s. 1, ch. 69-211; s. 1, ch. 77-102.
Note.—Ch. 69-211 was passed by the requisite three-fifths vote in both houses. See s. 11(a)(21), Art. III, State Constitution.

145.17 Supplemental compensation prohibited.—The compensation provided in chapter 145 shall be the sole and exclusive compensation of the officers whose salary is established therein for the execution of their official duties, and, except as specifically provided herein, the acceptance of salary for official duties as a result of other general or special law, general law of local application, resolution, or supplement or from any other source is a misdemeanor of the first degree punishable as provided in ss. 775.082 and 775.083.

History.—s. 10, ch. 73-173.

145.18 Annual cost-of-living adjustments; limitations.—In no event shall any person receive for the execution of his powers, functions, and official duties compensation in excess of the salaries provided in this chapter, and in no event shall any person receive an increase in salary in any one fiscal year in excess of 20 percent of his total compensation for the preceding fiscal year ending June 30. However, the provisions of this section shall not apply to the special qualification salary under s. 145.10(2).

History.—ss. 11, 12, ch. 73-173; s. 1, ch. 76-80.

145.19 Annual percentage increases based on increase for State Career Service employees; limitation.—Effective the fiscal year commencing after June 30, 1979, and for each fiscal year thereafter, the salaries of all county officers listed in this chapter shall be adjusted to provide the same percentage increase in salary as the average percentage increase in State Career Service employees' salaries as determined by the Department of Administration or as provided in the General Appropriations Act; however, such increases shall not exceed 7 percent for any fiscal year. The salary increases specified in this section shall be determined independently of, and shall not affect, changes in base salary and compensation occasioned by changes in population as prescribed in this chapter.

History.—s. 1, ch. 79-327.

CHAPTER 153

WATER AND SEWER SYSTEMS

PART I COUNTY WATER SYSTEM AND SANITARY SEWER FINANCING
(ss. 153.01-153.20)

PART II COUNTY WATER AND SEWER DISTRICTS
(ss. 153.50-153.95)

PART I

COUNTY WATER SYSTEM AND SANITARY SEWER FINANCING

153.01 Short title.—This part shall be known and may be cited as the "County Water System and Sanitary Sewer Financing Law."

History.—s. 1, ch. 29837, 1955.

153.02 Definitions.—As used in this part the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(1) The word "county" shall mean any of the several counties of the state operating under the authority granted by this chapter.

(2) The term "county commission" or the word "commission" shall mean the board of county commissioners of any county operating under the powers granted by this chapter.

(3) The term "water system" shall mean and shall include any plant, wells, pipes, tanks, reservoirs, system, facility, or property used or useful or having the present capacity for future use in connection with the obtaining and supplying water for human consumption, fire protection, irrigation, consumption by business, or consumption by industry, and, without limiting the generality of the foregoing definition shall embrace all necessary appurtenances and equipment and shall include all property, rights, easements and franchises relating to any such system and deemed necessary or convenient for the operation thereof.

(4) The term "water system improvements" shall include all water pipes or lines, valves, meters, and other water-supplying equipment within the county other than such equipment as constitute a part of the water supply system and shall embrace water mains and laterals for the carrying of water to the premises connected therewith and for carrying such water from some part of the water supply system.

(5) The term "sewage disposal system" shall mean and shall include any plant, system, facility or property used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage, and, without limiting the generality of the foregoing definition shall embrace treatment plants, pumping stations, intercepting sewers, pressure lines, mains, and all necessary appurtenances and equipment and shall include all property, rights, easements and franchises relating to any such system and deemed necessary or convenient for the operation thereof.

(6) The term "sewer improvements" shall include all sanitary sewers within the county other than such mains and lines as constitute a part of a sewage disposal system, and shall embrace sewer mains and laterals for the reception of sewage from premises connected therewith and for carrying such sewage to some part of the sewage disposal system.

(7) The word "facility" shall mean such water systems, sewage disposal systems, water system improvements and/or sewer improvements or additions thereto as are defined by this chapter.

(8) The word "cost" as applied to a water supply system or extensions or additions thereto or to water supply improvements or to a sewage disposal system or extensions or additions thereto or to sewer improvements shall include the cost of construction or reconstruction, the cost of all labor, materials, machinery and equipment, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and for 1 year after completion of construction, cost of plans and specifications, surveys of estimates of costs and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction or reconstruction, administrative expense and such other expense as may be

necessary or incident to the financing herein authorized. Any obligation or expense heretofore or hereafter incurred by the county in connection with any of the foregoing terms of cost may be regarded as a part of such cost and reimbursed to the county out of the proceeds of bonds issued under the provisions of this chapter.

(9) The term "water revenue bonds" shall mean special obligations of the county which are payable solely from water service charges and which shall in no way pledge the property, credit, or general tax revenue of the county.

(10) The term "sewer revenue bonds" shall mean special obligations of the county which are payable solely from sewer service charges and which in no way pledge the property, credit, or general tax revenue of the county.

(11) The term "general obligation bonds" shall mean general obligations of the county which are payable from unlimited ad valorem taxes or from such taxes and additionally secured by a pledge of water service charges or sewer service charges or special assessments, or all of them.

(12) The word "bonds" shall include water revenue bonds, sewer revenue bonds, and general obligation bonds.

(13) The word "sewage" shall include any substance that contains any of the waste products, excrement or other discharge from the bodies of human beings or animals as well as such other wastes as normally emanate from dwelling houses.

History.—s. 2, ch. 29837, 1955.

153.03 General grant of power.—Any of the several counties of the state which may hereafter come under the provisions of this chapter as hereinafter provided is hereby authorized and empowered:

(1) To purchase and/or construct and to improve, extend, enlarge, and reconstruct a water supply system or systems or sewage disposal system or systems, or both, within such county and any adjoining county or counties and to purchase and/or construct or reconstruct water system improvements or sewer improvements, or both, within such county and any adjoining county or counties and to operate, manage and control all such systems so purchased and/or constructed and all properties pertaining thereto and to furnish and supply water and sewage collection and disposal services to any of such counties and to any municipalities and any persons, firms or corporations, public or private, in any of such counties; provided, however, that none of the facilities provided by this chapter may be constructed, owned, operated or maintained by the county on property located within the corporate limits of any municipality without the consent of the council, commission or body having general legislative authority in the government of such municipality unless such facilities were owned by the county on such property prior to the time such property was included within the corporate limits of such municipality. No county shall furnish any of the facilities provided by this chapter to any property already being furnished like facilities by any municipality without the express consent of the council, commission or body having general legislative authority in the government of such municipality.

(2) To issue water revenue bonds and/or sewer revenue bonds or general obligation bonds of the county to pay all or a part of the cost of such purchase and/or construction or reconstruction.

(3) To fix and collect rates, fees and other charges for the service and facilities furnished by any such water supply system or water system improvements and sewage disposal system or sewer improvements and to fix and collect charges for making connections with the water system of the county.

(4) To receive and accept from the federal government or any agency thereof grants for or in aid of the planning, purchase, construction, reconstruction, or financing of any facility and to receive and accept contributions from any source of either money, property, labor, or other things of value to be held, used, and applied only for the purpose for which such grants and contributions may be made.

(5) To acquire in the name of the county by gift, purchase as hereinafter provided or by the exercise of the right of eminent domain, such lands and rights and interests therein, including lands under water and riparian rights, and to acquire such personal property as it may deem necessary for the efficient operation or for the extension of or the improvement of any facility purchased or constructed under the provisions of this chapter and to hold and dispose of all real and personal property under its control; provided, however, that no county shall have the right to exercise the right of eminent domain over any such lands or rights or interests therein or any personal property owned by any municipality within the state nor to exercise such right with respect to any privately owned water supply system or sewage disposal system including without limitation ponds, streams and surface waters constituting a part thereof, provided any such system is primarily used, owned or operated by an industrial or manufacturing plant for its own use as a water supply system or in disposing of its industrial wastes.

(6) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter and to employ such consulting and other engineers, superintendents, managers, construction and accounting experts and attorneys and such other employees and agents as it may deem necessary in its judgment and to fix their compensation.

(7) Subject to the provisions and restrictions as may be set forth in the resolution hereinafter mentioned authorizing or securing any bonds issued under the provisions of this chapter to enter into contracts with the government of the United States or any agency or instrumentality thereof or with any other county or with any municipality, private corporation, copartnership, association, or individual providing for or relating to the acquisition and supplying of water and the collection, treatment and disposal of sewage.

(8) To acquire by gift or purchase at a price to be mutually agreed upon, any of the facilities or portions thereof, provided for by this chapter, which shall, prior to such acquisition, have been owned by any private person, group, firm, partnership, association or corporation; provided, however, if the price

for same cannot be agreed upon, the price shall be determined by an arbitration board consisting of three persons, one of whom shall be selected by the board of county commissioners, one shall be appointed by the private company or corporation, and the two persons so selected shall select a third member of said board; and provided, further, that in the event said board cannot agree as to the price to be paid by the said board of county commissioners, then the board of county commissioners shall exercise the right of eminent domain.

(9) To enter into agreements and contracts with building contractors erecting improvements within any duly platted subdivision within the county, the terms of which said agreements or contracts may provide that such building contractors shall install within such subdivision water mains, lines and equipment and sewer mains and lines, to be approved by the county commission, said mains and lines to run to a point or location to be agreed upon, at which said point or location said mains and lines shall be connected to the water supply system or water system improvements and/or to the sewage disposal system or sewer improvements of the county. In the event such agreements or contracts are entered into they shall provide that upon the connection of the mains or lines within the subdivision to the water or sewer facilities of the county said mains, lines and equipment running to the various privately owned parcels of land within such subdivision shall become the property of the county and shall become a part of the county water system improvements and/or sewer improvements.

(10) To restrain, enjoin or otherwise prevent any person or corporation, public or private, from contaminating or polluting (as defined in s. 387.08) any source of water supply from which is obtained water for human consumption to be used in any water supply system or water system improvement as authorized by this chapter, and to restrain, enjoin or otherwise prevent the violation of any provision of this chapter or any resolution, rule or regulation adopted pursuant to the powers granted by this chapter; provided, however, that this chapter shall not apply to or affect any existing contract that a municipality may have for water or sewage disposal without the consent of both parties to said contract but this subsection shall not authorize the institution or prosecution of any proceeding hereunder nor the adoption of any resolution, rule or regulation which shall in anywise affect the right of any industrial or manufacturing plant to discharge industrial waste into any nonnavigable or navigable waters unless such waters are now being used or are hereafter used hereunder as a source of water for human consumption and unless the industrial wastes of any such plant are not being discharged into such waters prior to the time that action is taken by the commission under this chapter to include such water as a part of any water supply system.

(11) To acquire by gift or purchase, at such price, and upon such deferred or other terms, as may be mutually agreed upon, all the capital stock of any domestic or foreign corporation which, prior to such acquisition, shall have owned or operated any of the facilities or portions thereof provided for by this chapter; to pledge the revenues from the facilities as security for payment of the purchase price for said stock; and to operate the facilities through the corporation so acquired or to dissolve said corporation and operate the facilities in any other manner authorized by law.

History.—s. 3, ch. 29837, 1955; s. 1, ch. 57-774; ss. 1, 2, ch. 57-1985; s. 1, ch. 77-187.

cf.—s. 387.08 Penalty for deposit of deleterious substance in lakes, streams, rivers, ditches, etc.

153.04 Construction of water supply systems, water system improvements, sewage disposal systems, and sewer improvements.—Whenever the county commission of any of the several counties of the state by resolution chooses to exercise the powers granted by this chapter it shall make or cause to be made such surveys, investigations, studies, borings, maps, plans, drawings and estimates of costs and of revenues as it may deem necessary to prepare or have prepared so that such county commission shall have available to it a comprehensive study and report setting forth either or both of the following:

(1) The type and estimate of costs of each water supply system, the purchase or construction of which shall be deemed by it to be desirable and feasible, together with the location thereof, and of each integral part, and also setting forth what water system improvements, if any, it deems necessary to purchase or construct to protect the health of and render fire protection to the inhabitants of the county, together with the location by terminal points and route of each such improvement, a description thereof by its material, nature, character and size and an estimate of the cost of its purchase or construction.

(2)(a) The type of treatment and estimate of cost of each sewage disposal plant or system, the purchase, or construction of which shall be deemed by the county commission to be desirable and feasible, together with the location thereof and of each integral part, and also setting forth what sewer improvements, if any, it deems necessary to purchase or construct to protect the health of the inhabitants of the county, together with the location by terminal points and route of each such improvement, a description thereof by its material, nature, character, and size and an estimate of the cost of its purchase or construction.

(b) If such study and report reveals, or if it is a fact that any parcel, plot or area of land proposed to be served by county-owned and operated facilities as contemplated by this chapter is being served or there is available to it for service such facilities which are owned and operated by private individuals, copartnerships, corporations or associations, then the county is hereby prohibited from furnishing the facilities provided by this chapter to such property without the written consent of the owner or owners of such privately owned facilities.

(c) The obtaining of such surveys, investigations, studies, borings, maps, plans, drawings and estimates is hereby declared to be a county purpose and the costs thereof may be paid out of the general funds of the county.

(d) Upon receipt of such report the county commission may authorize the purchase and/or con-

struction of such facilities as it may deem feasible and practicable.

(e) All public or private property damaged or destroyed in carrying out the powers granted by this chapter shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of the funds provided by this chapter.

(f) The state hereby consents to the use of all state lands lying under water which are necessary for the accomplishments or purposes of this chapter.

History.—s. 4, ch. 29837, 1955.

153.05 Water system improvements and sanitary sewers; special assessments.—

(1) Any county may provide for the construction or reconstruction of a facility and for the levying of special assessments upon benefited property under the provisions of this section. The initial proceeding hereunder shall be the passage at any lawful meeting of the commission of a resolution ordering the construction or reconstruction of such facility under and subject to the provisions of this section, indicating the location by terminal points and route and either giving a description of the improvements by its material, nature, character and size or giving two or more such descriptions with the direction that the material, nature, character and size shall be subsequently determined in conformity with one of such descriptions. Water system improvements or sewer improvements need not be continuous and may be in more than one locality or street. The resolution ordering any such improvement may give any short and convenient designation to each improvement ordered thereby, after which it shall be sufficient to refer to such improvement and property by such designation in all proceedings and assessments, except in the notices provided by subsections (3) and (4).

(2)(a) As soon as may be after the passage of such resolution the engineer for the county shall prepare in duplicate plans and specifications of each improvement ordered thereby and an estimate of the cost thereof. Such cost may include, in addition to the items of cost set forth in s. 153.02(8) the cost of relaying streets and sidewalks necessarily torn up or damaged and shall include the following items of incidental expense:

1. Printing and publishing of notices and proceedings, costs of abstracts of title; and

2. Any other expense necessary or proper in conducting the proceedings and work provided for in this section.

(b) If the resolution shall provide alternative descriptions of material, nature, character and size, such estimate shall include an estimate of the cost of the improvement of each such description.

(c) The engineer shall also prepare in duplicate a tentative apportionment of the estimated cost as between the county and each lot or parcel of land subject to special assessment under the resolution, such apportionment to be made in accordance with the provisions of the resolution and the provisions of subsection (6) in relation to apportionment of cost in the preliminary assessment roll. Such tentative apportionment of estimated cost shall not be held to limit or restrict the duties of the engineer in the preparation of such preliminary assessment roll. One of the duplicates of such plans, specifications and estimate and such tentative apportionment shall be filed with the clerk of the circuit court in the county and the other duplicate shall be retained by the engineer in his files, all thereof to remain open to public inspection.

(3) The county commission upon the filing with it of such plans, specifications, estimate and tentative apportionment of cost shall publish once in a newspaper published in the county a notice stating that at a regular meeting of the commission on a certain day and hour, not earlier than 10 days from such publication, the commission will hear objections of all interested persons to the confirmation of such resolution, which notice shall state in brief and general terms a description of the proposed improvement with the location thereof and shall also state that plans, specifications, estimate and tentative apportionment of cost thereof are on file in the office of such clerk. The commission shall keep a record in which shall be inscribed, at the request of any person, firm or corporation having or claiming to have an interest in any lot or parcel of land, the name and post-office address of such person, firm or corporation, together with a brief description or designation of such lot or parcel, and it shall be the duty of the commission to mail a copy of such notice to such person, firm or corporation at such address, at least 10 days before the time for the hearing as stated in such notice, but the failure of the commission to keep such record or so to inscribe any name or address or to mail any such notice shall not constitute a valid objection to holding the hearing as provided in this section or to any other action taken under the authority of this section.

(4) At the time named in such notice, or to which an adjournment may be taken by the commission, the commission shall receive any objections of interested persons and may then or thereafter repeal or confirm such resolution with such amendments, if any, as may be desired by the commission and which do not cause any additional property to be specially assessed.

(5) All objections to any such resolution on the ground that it contains items which cannot be properly assessed against property, or that it is, for any default or defect in the passage or character of the resolution or the plans or specifications or estimate, void or voidable in whole or in part, or that it exceeds the power of the commission, shall be made in writing, in person or by attorney, and filed with the commission at or before the time or adjourned time of such hearing. Any objections against the making of any improvement not so made shall be considered as waived, and if an objection shall be made and overruled or shall not be sustained, the confirmation of the resolution shall be the final adjudication of the issues presented unless proper steps shall be taken in a court of competent jurisdiction to secure relief within 10 days.

(6) Promptly after the completion of the work, the engineer for the county shall prepare a preliminary assessment roll and file same with the clerk, which roll shall contain the following:

(a) A description of the lots and parcels of land within the district, which shall include all lots and

parcels which abut upon the sides of that part of any street in which a water supply system, water system improvement or sanitary sewer, except a curb sewer, is to be constructed or reconstructed, all lots and parcels which abut upon the side or sides of any street in or along which side or sides a sanitary curb sewer shall have been constructed or reconstructed, and all lots and parcels which are served or are to be served by such water supply system, water system improvement or sanitary sewer. Such lots and parcels shall include all property, whether publicly or privately owned. There may also be given, in the discretion of the engineer, the name of the owner of record of each lot or parcel, where practicable, and in all cases there shall be given a statement of the number of feet of property so abutting, which number of feet shall be known as frontage.

(b) The total cost of the improvement, and the amount of incidental expense.

(c) An apportionment as between the county and the property included in the preliminary assessment roll of the cost of each improvement, including incidental expense, to be computed as follows:

1. To each lot or parcel of land, to the property or curb line of which a water supply lateral or sanitary sewer lateral shall have been laid, shall be apportioned the cost of such lateral or laterals.

2. To abutting property shall be apportioned according to frontage, or any other method being deemed equitable by the commission, all or any part of the cost of such water system improvements or sewer improvements as may be fixed by resolution ordering the improvements.

3. To the county shall be apportioned the remaining costs of the water system improvements or sewer improvements, unless all of such costs shall be apportioned to the abutting property; provided, however, that in the case of lots or parcels which abut on more than one street or which are served or are to be served by such water system improvements or sewer improvements although not abutting on either side of the street in which such improvement is constructed, the apportionment shall be made under such rules and regulations as the commission shall deem to be fair and equitable.

(7) The preliminary roll shall be advisory only and shall be subject to the action of the commission as hereinafter provided. Upon the filing with the commission of the preliminary assessment roll, the commission shall publish once in a newspaper published in the county a notice stating that at a meeting of the commission to be held on a certain day and hour, not less than 12 days from the date of such publication, which meeting may be a regular, adjourned or special meeting, all interested persons may appear and file written objections to the confirmation of such roll. Such notice shall state the class of the improvement and the location thereof by terminal points and route. Such meeting of the commission shall be the first regular meeting following the completion of the notice hereinabove required, unless the commission shall have provided for a special meeting for such purpose.

(8) At the time and place stated in such notice the commission shall meet and receive the objections in writing of all interested persons as stated in such notice. The commission may adjourn the hearing from time to time. After the completion thereof the commission shall either annul or sustain or modify in whole or in part the prima facie assessment as indicated on such roll, either by confirming the prima facie assessment against any and all lots or parcels described therein, or by canceling, increasing or reducing the same, according to the special benefits which the commission decides each such lot or parcel has received or will receive on account of such improvement. If any property which may be chargeable under this section shall have been omitted from the preliminary roll or if the prima facie assessment shall not have been made against it, the commission may place on such roll an apportionment to such property. The commission shall not confirm any assessment in excess of the special benefits to the property assessed, and the assessments so confirmed shall be in proportion to the special benefits. Forthwith after such confirmation, such assessment roll shall be delivered to the county property appraiser. The assessment so made shall be final and conclusive as to each lot or parcel assessed unless proper steps be taken within 10 days in a court of competent jurisdiction to secure relief. If the assessment against any property shall be sustained or reduced or abated by the court, the county property appraiser shall note that fact on the assessment roll opposite the description of the property affected thereby. The amount of the special assessment against any lot or parcel which may be abated by the court, unless the assessment upon the entire district is abated, or the amount by which such assessment is so reduced, may be, by resolution of the commission made chargeable against the county at large; or, in the discretion of the commission, a new assessment roll may be prepared and confirmed in the manner hereinabove provided for the preparation and confirmation of the original assessment roll.

(9) Any assessments may be paid at the office of the county tax collector within 30 days after the confirmation thereof, without interest. Thereafter all assessments shall be payable in equal annual installments, with interest at 8 percent per annum from the expiration of said 30 days in each of the succeeding 20 calendar years at the time or times in each year at which the general county taxes are payable; provided, however, that the commission may by resolution fix a shorter period of payment for any assessment; provided, further, that any assessment may be paid at any time before due, together with interest accrued thereon to the date of payment.

(10) All assessment shall constitute a lien upon the property so assessed from the date of confirmation of the resolution ordering the improvement, of the same nature and to the same extent as the lien for general county taxes falling due in the same year or years in which such assessment or installments thereof fall due, and any assessment or installment not paid when due shall be collectible in the same manner and at the same time as such general taxes are or may be collectible, with the same attorney's fee, interest and penalties and under the same provisions as to forfeiture and the right of the county to purchase the property assessed as are or may be

provided by law in the case of county taxes; provided, however, that no such sale of any property for general county taxes or for an installment or installments of any such assessment and no perfecting of title under any such sale shall divest the lien of any installment of such assessment not due at the time of the sale. Collection of such assessments, with such interest and with a reasonable attorney's fee and costs, but without penalties, may also be made by the county by proceedings in a court of equity to foreclose the lien of assessments as a lien for mortgages is or may be foreclosed under the laws of the state; or by an action in rem in the manner provided by law for the foreclosure and collection of ad valorem taxes; provided that any such proceedings to foreclose shall embrace all installments of principal remaining unpaid with accrued interest thereon, which installments shall, by virtue of the institution of such proceedings, immediately become and be due and payable. Nevertheless, if, prior to any sale of the property under decree of foreclosure in such proceedings, payment be made of the installment or installments which are shown to be due under the provisions of the resolution passed pursuant to subsection (9), with interest as required by said subsection and by this subsection (10) and all costs including attorney's fee, such payment shall have the effect of restoring the remaining installments to their original maturities as provided by the resolution passed pursuant to said subsection (9), and the proceedings shall be dismissed. It shall be the duty of the county to enforce the prompt collection of assessments by one or the other of the means herein provided, and such duty may be enforced at the suit of any holder of bonds issued under this chapter in a court of competent jurisdiction by mandamus or other appropriate proceedings or action. Not later than 30 days after the annual sale of property for delinquent taxes of the county, or if such property or taxes are not sold by the county, then within 60 days after such taxes become delinquent, it shall be the duty of the commission to direct the attorney or attorneys whom the commission shall then designate, to institute actions within 3 months after such direction to enforce the collection of all special assessments for local improvements made under this section and remaining due and unpaid at the time of such direction (unless theretofore sold at tax sale). Such action shall be prosecuted in the manner and under the conditions in and under which mortgages are foreclosed under the laws of the state. It shall be lawful to join in one action the collection of assessments against any or all property assessed by virtue of the same assessment roll unless the court shall deem such joinder prejudicial to the interest of any defendant. The court shall allow a reasonable attorney's fee for the attorney or attorneys of the county, and the same shall be collectible as a part of or in addition to the costs of the action. At any sale pursuant to decree in any such action, the county may be a purchaser to the same extent as an individual person or corporation, except that the part of the purchase price represented by the assessments sued upon and the interest thereon need not be paid in cash. Property so acquired by a county, including the certificate of sale thereof, may be sold or otherwise disposed of, for cash or upon terms, the proceeds of such disposition to be placed in the fund provided by subsection (11) of this section; provided, however, that no sale or other disposition thereof shall be made unless notice calling for bids therefor to be received at a stated time and place shall have been published in a newspaper published in the county one time at least 1 week prior to such disposition.

(11) All assessments and charges made under the provisions of this section for the payment of all or any part of the cost of any sewer improvement or improvements for which bonds shall have been issued under the provisions of this chapter, are hereby pledged to the payment of the principal of and the interest on such bonds and shall when collected be placed in a separate fund, properly designated, which fund shall be used for no other purpose than the payment of such principal and interest.

(12) Each school district and other political subdivision wholly or partly within the county and each public agency or instrumentality owning property within the county shall possess the same power and be subject to the same duties and liabilities in respect of assessment under this section affecting the real estate of such county, district, political subdivision, or public agency or instrumentality which private owners of real estate possess or are subject to hereunder, and such real estate shall be subject to liens for said assessments in all cases where the same property would be subject had it at the time the lien attached been owned by a private owner.

History.—s. 5, ch. 29837, 1955; s. 1, ch. 57-323; ss. 1-4, ch. 67-547; s. 2, ch. 76-148; s. 1, ch. 77-102.

cf.—s. 153.08 Creation of district; general obligation bonds.
s. 196.31 Taxes against state properties; notice.

153.06 Issuance of bonds.—

(1) The county commission is hereby authorized to provide by resolution at one time or from time to time for the issuance of either water revenue bonds, sewer revenue bonds, or general obligation bonds of the county for the purpose of paying all or any part of the cost of any one or more of the following:

(a) A water supply system or systems;
(b) Extensions and additions thereto;
(c) Water system improvements;
(d) A sewage disposal system or systems;
(e) Extensions and additions thereto; and
(f) Sewer improvements.

The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding 7½ percent per annum, shall mature at such time or times not exceeding 50 years from their date or dates as may be determined by the county commission, and may be made redeemable before maturity at the option of the county at such price or prices and under such terms and conditions as may be fixed by the county commission prior to the issuance of the bonds.

(2) The county commission shall determine the form of the bonds including any interest coupons to be attached thereto, and the manner of the execution of the bonds and shall fix the denomination or denominations of the bonds and place or places of payment of principal or interest which may be at any bank or trust company within or without the state. In case any officer whose signature or facsimi-

le of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery.

(3) All bonds issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of negotiable instruments. Bonds may be issued in coupon or in registered form or both as the county commission may determine and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to bond principal and interest.

(4) The issuance of such bonds shall not be subject to any limitations or conditions contained in any other statute and the county commission may sell such bonds in such manner either at public or private sale and for such price as it may determine to be for the best interests of the county, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than 7½ percent per annum computed with relation to the absolute maturity of the bonds in accordance with the standard tables of bond values, excluding, however, from such computations the amount of any premium to be paid on redemption of any bonds prior to maturity. Prior to the preparation of definitive bonds, the county may, under like restrictions, issue interim receipts or temporary bonds with or without coupons exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The county commission may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

(5) Bonds may be issued under the provisions of this chapter without obtaining the consent of any commission, board, bureau or agency of the state and without the proceeding or happening of any other condition or thing than those proceedings, conditions or things which are specifically required by this chapter.

(6) The proceeds of such bonds shall be used solely for the payment of costs of the water supply system or systems or the water system improvements or the sewage disposal system or systems or the sewer improvements, for the purchase, construction or reconstruction of which such bonds shall have been authorized, and shall be disbursed in such manner and under such restrictions, if any, as the county commission may provide in the authorizing resolution. If the proceeds of such bonds, by error of estimates or otherwise shall be less than such costs, additional bonds may in like manner be issued to provide the amount of such deficit and unless otherwise provided in the authorizing resolution shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such bonds shall have been issued, the surplus shall be paid into the fund provided under the provisions of this chapter for the payment of principal of and the interest on such bonds.

History.—s. 6, ch. 29837, 1955; s. 5, ch. 67-547; ss. 3, 4, ch. 73-302.

153.07 General obligation bonds.—

(1) No general obligation bonds shall be issued by county unless the issuance of such bonds shall be approved by a majority of the votes that are cast in an election in which a majority of the freeholders who are qualified electors residing in the county shall participate. Such election shall be called, noticed and conducted and the result thereof determined and declared in the manner required by law for the issuance of bonds of the county.

(2) For the payment of the principal and the interest on any general obligation bonds of the county issued under the provisions of this chapter, the county commission is hereby authorized and required to levy annually a special tax upon all taxable property within the county over and above all other taxes authorized or limited by law sufficient to pay such principal and interest as the same respectively become due and payable, and the proceeds of all such taxes shall when collected be paid into a special fund and used for no other purpose than the payment of such principal and interest; provided, however, that there may be pledged to the payment of such principal and interest the proceeds of such water service charges and/or sewer service charges, and in the event of such pledge the amount of the annual tax levy herein required may be reduced in any year by the amount of such proceeds actually received in the preceding year and then remaining on deposit to the credit of such fund for the payment of such principal and interest.

History.—s. 7, ch. 29837, 1955; s. 6, ch. 67-547.

153.08 Water and sewer district general obligation bonds.—

(1) The county commission is hereby authorized to establish within the county such water and sewer districts as it may deem necessary. For the purpose of providing for and financing the facilities provided for in this chapter, general obligation bonds may be issued covering the facilities located in such district and to be paid by general ad valorem taxes levied in and collected from such district or districts; provided, however, that no such general obligation bonds for such district or districts shall be issued by the county unless the issuance of such bonds shall be approved by a majority of the votes in an election in which a majority of the freeholders who are qualified electors residing in such district or districts shall participate. Such election shall be called, noticed and conducted and the result thereof determined and declared in the manner required by law for the issuance of bonds of the county.

(2) For the payment of the principal and interest thereon on any such general obligation bonds issued for the benefit of such district or districts issued under the provisions of this chapter the county commission is hereby authorized and required to levy annually a special tax upon all taxable property within the said district or districts over and above all other taxes authorized or limited by law sufficient to pay

such principal and interest as the same respectively becomes due and payable, and the proceeds of all such taxes shall when collected be paid into a special fund and used for no other purpose than the payment of such principal and interest; provided, however, that there may be pledged to the payment of such principal and interest the proceeds of such water service charges and/or sewer service charges and in the event of such pledge the amount of the annual tax levied herein required may be reduced in any year by the amount of such proceeds actually received in the preceding year and then remaining on deposit to the credit of such fund for the payment of such principal and interest.

(3) Revenue bonds as authorized by s. 153.09 may be issued to finance facilities located in any district created under the authority of this section.

History.—s. 8, ch. 29837, 1955; s. 2, ch. 57-323; s. 7, ch. 67-547.
cf.—s. 153.05 Special assessments; water and sewer systems.

153.09 Water revenue bonds and sewer revenue bonds.—

(1) Water revenue bonds may be used only in connection with the acquisition, construction or operation of water supply systems or water system improvements, and sewer revenue bonds may be used only in connection with the acquisition, construction and operation of sewage disposal systems and sewer improvements. Water revenue bonds and/or sewer revenue bonds issued under the provisions of this chapter shall not be deemed to constitute a pledge of the faith and credit of the county but such bonds shall be payable solely from the funds provided therefor under the provisions of this chapter. All such bonds shall contain a statement on their face substantially to the effect that the county is not obligated to pay such bonds or the interest thereon except from such funds and that the faith and the credit of the county is not pledged to the payment of the principal of or the interest on such bonds. The issuance of water revenue bonds and/or sewer revenue bonds under the provisions of this chapter shall not directly or indirectly or contingently obligate the county to levy any taxes whatever therefor or to make any appropriation for their payment except from the funds pledged under the provisions of this chapter.

(2)(a) The resolution authorizing the issuance of water revenue bonds under the provisions of this chapter shall pledge the revenues to be received but shall not convey or mortgage any water supply system or water system improvements, or any part thereof.

(b) The resolution authorizing the issuance of sewer revenue bonds under the provisions of this chapter shall pledge the revenue to be received but it shall not convey or mortgage any sewage disposal system or sewer improvements or any part thereof.

(c) Either water revenue bonds or sewer revenue bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the county commission in relation to the purchase, construction, reconstruction, improvement, maintenance, operation, repair and insurance of the water supply system or systems and the water system improvements and the sewage disposal system or systems and the sewer improvements and provisions for the custody, and safeguarding and application of all moneys, and for the employment of consulting engineers in connection with such purchase, construction, reconstruction or operation. Such resolution may set forth the rights and remedies of the bondholders and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of corporations.

(d) In addition to the foregoing, such resolution may contain such other provisions as the county commission may deem reasonable and proper for the security of bondholders. Except as in this chapter otherwise provided, the county commission may provide for the payment of the proceeds of the sale of the bonds and revenues of the water supply system or systems and of any water system improvements or of the sewage disposal system or systems and of any sewer improvements to such officer, board or depository as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine.

(3) The resolution providing for the issuance of water revenue bonds and/or sewer revenue bonds may also contain such limitations upon the issuance of additional water revenue bonds and/or sewer revenue bonds as the county commission may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution.

(4) No water revenue bonds or sewer revenue bonds shall be issued under the authority of this chapter unless the county commission shall have theretofore found and determined the estimated cost of the facilities or systems on account of which such bonds are to be issued, the estimated annual revenues of such facilities or systems, and the estimated annual cost of maintaining, repairing and operating such facilities or systems, nor unless it shall appear from such estimate that the annual revenues will be sufficient to pay such cost of maintenance, repair and operation and the interest on such bonds and the principal thereof as such interest and principal shall become due.

(5) If the approval of the issuance of water revenue bonds or sewer revenue bonds at an election of the freeholders who are qualified electors residing in the county shall be required by the constitution of the state, such election shall be called, noticed and conducted and the result thereof determined and declared as shall have been or may be required by law for the issuance of bonds of the county.

History.—s. 9, ch. 29837, 1955.

153.091 Combined systems; issuance of bonds.—

(1) Notwithstanding the provisions of s. 153.09, the county may issue water and sewer revenue bonds for the purpose of the construction, acquisition, or improvement of water supply systems or water system improvements and sewage disposal systems or sewer improvements, which have been combined by the county. Such water and sewer revenue bonds may also be issued for the purposes of the construction, acquisition or improvement of such combined

system, or any part thereof, and the refunding of any outstanding bonds or obligations theretofore issued to finance the cost of such combined system or any part thereof.

(2) In the event that the water supply system or water system improvements and sewage disposal systems and sewer improvements are combined into one water and sewer system all of the provisions of this chapter relating to water supply systems or water system improvements and sewage disposal systems and sewer improvements and water revenue bonds and sewer revenue bonds shall apply to such combined systems and water and sewer revenue bonds to the extent the same are applicable.

History.—s. 8, ch. 67-547.

153.10 Call for bids.—

(1) As soon as practicable after the authorization of bonds under the provisions of this chapter or the appropriation of moneys for the construction of water system improvements or sewer improvements, the commission shall publish once, in a newspaper published in the county, and, if the estimated cost exceeds $10,000, in a newspaper of general circulation in the state, a notice calling for sealed bids to be received by the commission on a date not earlier than 15 days from the first publication, for the construction of the work.

(2) The notice shall refer in general terms to the extent and nature of the improvement or improvements and may identify the same by the short designation indicated in the initial resolution and by reference to the plans and specifications on file. If the initial resolution shall have given two or more alternative descriptions of the improvement as to its material, nature, character and size, and if the commission shall not have theretofore determined upon a definite description, the notice shall call for bids upon each of such descriptions.

(3) Bids may be requested for the work as a whole or for any part thereof separately and bids may be asked for any one or more improvements authorized by the same or different resolutions, but any bid covering work upon more than one improvement shall be in such form as to permit a separation of cost as to each improvement.

(4) The notice shall require bidders to file with their bids either a certified check upon an incorporated bank or trust company for 2½ percent of the amount of their respective bids or a bid bond in like amount with corporate surety satisfactory to the attorney for the county to insure the execution of a contract to carry out the work in accordance with such plans and specifications and to insure the filing, at the making of such contract, of a bond in the amount of the contract price with corporate sureties satisfactory to such attorney conditioned for the performance of the work in accordance with such contract.

(5) The commission shall have the right to reject any and all bids, and if all bids are rejected the commission may readvertise.

History.—s. 10, ch. 29837, 1955; s. 2, ch. 57-774.

153.11 Water service charges and sewer service charges; revenues.—

(1)(a) The county commission shall in the resolution providing for the issuance of either water revenue bonds or sewer revenue bonds, or both, fix the initial schedule of rates, fees and other charges for the use of and for the services furnished or to be furnished by the facilities, to be paid by the owner, tenant or occupant of each lot or parcel of land which may be connected with and use any such facility by or through any part of the water system of the county.

(b) After the system or systems shall have been in operation the county commission may revise such schedule of rates, fees and charges from time to time. Such rates, fees and charges shall be so fixed and revised as to provide funds, with other funds available for such purposes, sufficient at all times to pay the cost of maintaining, repairing and operating the system or systems including the reserves for such purposes and for replacements and depreciation and necessary extensions, to pay the principal of and the interest on the water revenue bonds and/or sewer revenue bonds as the same shall become due and the reserves therefor, and to provide a margin of safety for making such payments. The county commission shall charge and collect the rates, fees and charges so fixed or revised and such rates, fees and charges shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the county or of the state or of any sanitary district or other political subdivision of the state.

(c) Such rates, fees and charges shall be just and equitable and may be based or computed upon the quantity of water consumed and/or upon the number and size of sewer connections or upon the number and kind of plumbing fixtures in use in the premises connected with the sewer system or upon the number or average number of persons residing or working in or otherwise connected with such premises or upon any other factor affecting the use of the facilities furnished or upon any combination of the foregoing factors.

(d) In cases where the amount of water furnished to any building or premises is such that it imposes an unreasonable burden upon the water supply system an additional charge may be made therefor or the county commission may if it deems advisable compel the owners or occupants of such building or premises to reduce the amount of water consumed thereon in a manner to be specified by the county commission or the county commission may refuse to furnish water to such building or premises.

(e) In cases where the character of the sewage from any manufacturing or industrial plant or any building or premises is such that it imposes an unreasonable burden upon any sewage disposal system, an additional charge may be made therefor, or the county commission may, if it deems it advisable, compel such manufacturing or industrial plant or such building or premises to treat such sewage in such manner as shall be specified by the county commission before discharging such sewage into any sewer lines owned or maintained by the county.

(2) The county commission may charge any owner or occupant of any building or premise receiving

the services of the facilities herein provided such initial installation or connection charge or fee as the commission may determine to be just and reasonable.

(3)(a) No rates, fees or charges shall be fixed under the foregoing provisions of this section until after a public hearing at which all of the users of the facilities provided by this chapter and owners, tenants and occupants of property served or to be served thereby and all others interested shall have an opportunity to be heard concerning the proposed rates, fees and charges. After the adoption by the county commission of a resolution setting forth the preliminary schedule or schedules fixing and classifying such rates, fees and charges, notice of such public hearing setting forth the schedule or schedules of rates, fees and charges shall be given by one publication in a newspaper published in the county at least 10 days before the date fixed in said notice for the hearing, which said hearing may be adjourned from time to time. After such hearing such preliminary schedule or schedules, either as originally adopted or as modified or amended, shall be adopted and put into effect and thereupon the resolution providing for the issuance of water revenue bonds and/or sewer revenue bonds may be finally adopted.

(b) A copy of the schedule or schedules of such rates, fees and charges finally fixed in such resolution shall be kept on file in the office of the clerk of the circuit court in the county and shall be open to inspection by all parties interested. The rates, fees or charges so fixed for any class of users or property served shall be extended to cover any additional property thereafter served which fall within the same class without the necessity of any hearing or notice.

(c) Any change or revision of any rates, fees or charges may be made in the same manner as such rates, fees or charges were originally established as hereinabove provided, but if such change or revision be made substantially pro rata as to all classes of service no notice or hearing shall be required.

History.—s. 11, ch. 29837, 1955.

153.12 Collection of charges.—

(1) Upon the construction of a sewage disposal system and the financing of such construction by the issuance of sewer revenue bonds under the provisions of this chapter, the owner, tenant or occupant of each lot or parcel of land within the county which abuts upon a street or other public way containing a sanitary sewer served or which may be served by such disposal system and upon which lot or parcel a building shall have been constructed for residential or commercial use and which lot or parcel shall not already be served by, or have available to it for service, a sanitary sewer, shall, if so required by the rules and regulations of the county commission or by resolution thereof, connect such building with such sanitary sewer and shall cease to use any other method for the disposal of sewage, sewage waste or other polluting matter. All such connections shall be made in accordance with rules and regulations which shall be adopted from time to time by the county commission.

(2) The county commission may provide in the resolution authorizing the issuance of water revenue bonds or sewer revenue bonds under the provisions of this chapter that the charges for the services furnished by any facility constructed or reconstructed by the county under the provisions of this chapter shall be included in single bills to be rendered for all the services furnished to the premises, and that if the amount of such charges so included shall not be paid within 30 days from the rendition of any bill, the county commission shall discontinue furnishing water to such premises and shall disconnect the same from the water supply system of the county. Any such resolution may include any or all of the following provisions, and may permit the county commission to adopt such resolution or take such other lawful action as shall be necessary to effectuate such provisions, and the county commission is hereby authorized to adopt such resolutions and to take such other action:

(a) That the county may require the owner, tenant or occupant of each lot or parcel of land within the county who is obligated to pay the rates, fees or charges for the services furnished by any facility purchased, constructed or reconstructed by the county under the provisions of this chapter to make a reasonable deposit with the county commission in advance to insure the payment of such rates, fees or charges and to be subject to application to and payment thereof if and when delinquent.

(b) That if any rates, fees or charges for the use and services of any sewage disposal system or sewer improvements by or in connection with any premises not served by the waterworks system of the county shall not be paid within 30 days after the same shall become due and payable, the owner, tenant or occupant of such premises shall cease to dispose of sewage or industrial waste originating from or on said premises by discharge thereof directly or indirectly into the sewer system of the county until such rates, fees or charges with interest, shall be paid; that if such owner, tenant or occupant shall not cease such disposal at the expiration of such 30-day period it shall be the duty of any district, private corporation, board, body or person supplying water to or selling water for use on such premises to cease supplying water to or selling water for the use on such premises within 5 days after the receipt of notice of such delinquency from the county; and that if such district, private corporation, board, body or person shall not, at the expiration of such 5-day period, cease supplying water to or selling water for use on such premises, then the county may, unless it has theretofore contracted to the contrary, shut off the supply of water to such premises.

History.—s. 12, ch. 29837, 1955.

153.13 Application of revenues.—

(1) All revenues derived from any water supply system, water system improvement, sewage disposal system or sewer improvements for either of which a single issue of water revenue bonds or sewer revenue bonds shall be issued, except such part thereof as may be required to pay the cost of maintaining, repairing and operating such system or systems and to provide reserves therefor as may be provided in the resolution authorizing the issuance of such water revenue bonds or sewer revenue bonds, shall be set aside at such regular intervals as may be provided in

such resolution and deposited for the credit of the following separate funds for the following purposes:

(a) Sinking fund for the payment of interest on and the principal of such water revenue bonds and/or sewer revenue bonds as the same shall become due, necessary charges of paying agents for paying such interest and principal, and any premium upon bonds retired by call or purchase before their maturity or respective maturities, including the accumulation of reserves for such purposes; and

(b) A fund for anticipated renewals and replacements and extraordinary repairs.

(2) The use and disposition of moneys to the credit of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the water revenue bonds and/or sewer revenue bonds and, except as may otherwise be provided in such resolution, such sinking fund shall be a fund for the benefit of all bonds without distinction or priority of one over the other.

(3) The county commission shall at the close of each fiscal year make or cause to be made a comprehensive report of its operations of the water supply system or systems and sewage disposal system or systems under its control during the preceding fiscal year, including all matters relating to rates, revenues, expenses for maintenance, repair and operation and of replacements and extensions, principal and interest retirements and the status of all funds, and there shall be set forth in such report the budget recommended by the commission for the current fiscal year. A copy of such annual report shall be filed with the clerk of the circuit court in the county and shall be open to the inspection of all interested persons. Any surplus of the gross revenues remaining at the end of any fiscal year after making the required deposits for the credit of the separate funds set forth above, and not appropriated in the budget for the then current fiscal year, shall be paid into the sinking fund.

History.—s. 13, ch. 29837, 1955.

153.14 Trust funds.—All moneys received pursuant to the authority of this chapter shall be deemed to be trust funds, to be held and applied solely as provided in this chapter. The resolution authorizing the issuance of bonds shall provide that any officer to whom, or any bank, trust company or other fiscal agent to which such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this chapter and such resolution may provide.

History.—s. 14, ch. 29837, 1955.

153.15 Remedies.—Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, except to the extent the rights herein given may be restricted by the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, mandamus or other proceeding, protect and enforce any and all rights under the laws of Florida or granted hereunder or under such resolution, and may enforce and compel the performance of all duties required by this chapter or by such resolution to be performed by the county or by the county commission, including the fixing, charging and collecting of rates, fees and charges for services and facilities furnished by the water supply system, water system improvement, sewage disposal system or sewer improvements and the levying and collecting of any special assessments.

History.—s. 15, ch. 29837, 1955.

153.16 Water revenue refunding bonds.—The county commission is hereby authorized to provide by resolution for the issuance of water revenue refunding bonds of the county for the purpose of refunding any water revenue bonds then outstanding and issued under the provisions of this chapter. The county commission is further authorized to provide by resolution for the issuance of water revenue bonds of the county for combined purposes:

(1) Paying the cost of any extension, addition or reconstruction of a water supply system or systems or water system improvements or the cost of a new water supply system or systems or water system improvements; and

(2) Refunding such water revenue bonds of the county which shall theretofore have been issued under the provisions of this chapter and shall then be outstanding and which then shall have matured or be subject to redemption or can be acquired for retirement. The issuance of such bonds, the maturities and other details thereof, the rights and remedies of holders thereof, and the rights, powers, privileges, duties and obligations of the county or of the county commission with respect to the same shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable.

History.—s. 16, ch. 29837, 1955.

153.17 Sewer revenue refunding bonds.—The county commission is hereby authorized to provide by resolution for the issuance of sewer revenue refunding bonds of the county for the purpose of refunding any sewer revenue bonds then outstanding and issued under the provisions of this chapter. The county commission is further authorized to provide by resolution for the issuance of sewer revenue bonds of the county for the combined purposes of:

(1) Paying the cost of any extension, addition or reconstruction of a sewage disposal system or systems or sewer improvements or the cost of a new sewage disposal system or systems or sewer improvements; and

(2) Refunding such sewer revenue bonds of the county which shall theretofore have been issued under the provisions of this chapter and shall then be outstanding and which then shall have matured or be subject to redemption or can be acquired for retirement. The issuance of such bonds, the maturities and other details thereof, the rights and remedies of holders thereof, and the rights, powers, privileges, duties and obligations of the county or of the county commission with respect to the same shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable.

History.—s. 17, ch. 29837, 1955.

153.18 Exemption of property from taxation.—As proper facilities for the furnishing of water for human consumption and fire protection and proper facilities for the treatment, purification and disposal of sewage are essential for the health of the inhabitants of the county and for its industrial and commercial development, and as the exercise of the powers conferred by this chapter to effect such purposes constitutes the performance of essential county functions, and is hereby declared to be a county purpose, and as the facilities constructed under the provisions of this chapter, constitute public property and are used for county purposes, the county shall not be required to pay any taxes or assessments upon any such facilities or any part thereof.

History.—s. 18, ch. 29837, 1955.

153.19 Private water supplies.—No jurisdiction hereunder shall be exercised by the board of county commissioners over any privately owned industrial water supply system or the disposition of industrial or manufacturing wastes nor shall any rule or regulation be adopted or suit instituted or prosecuted hereunder designed or intended to control or regulate the same, unless one of the following conditions exists:

(1) That prior to the utilization of any waters for the disposition of industrial or manufacturing waste, such waters were being used as a source of, or as a part of a water supply system under this chapter, or

(2) In the case of an industrial or manufacturing plant that is connected with and using any facility authorized by this chapter; but any such rule, regulation or suit shall be limited to the particular waters or the particular industrial or manufacturing plant affected by one of the above conditions; provided, however, this shall not restrain or prevent the Department of Health and Rehabilitative Services in anywise from instituting a suit or taking other action in event said plant or manufacturing company shall pollute the waters in the state as defined in s. 387.08.

History.—s. 19, ch. 29837, 1955; ss. 19, 35, ch. 69-106; s. 28, ch. 77-147.
cf.—s. 387.08 Penalty for deposit of deleterious substances in lakes, streams, rivers, ditches, etc.

153.20 Alternative method.—

(1) This chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to the powers conferred upon the commission by other laws, and shall not be regarded as in derogation of any powers now existing. This chapter being necessary for the welfare of the inhabitants of the several counties of the state shall be liberally construed to effect the purposes thereof.

(2) This chapter shall not repeal any local or special act or law conferring upon any of the several counties or county commissions the powers and duties or any of them imposed hereby, but it shall be deemed to be an alternative or additional method for such counties or county commissions to effect the purposes of this chapter.

History.—ss. 20, 22, ch. 29837, 1955.

PART II

COUNTY WATER AND SEWER DISTRICTS

project.

153.50 Short title.—This law may be known and cited as the "County Water and Sewer District Law."

History.—s. 1, ch. 59-466.

153.51 Legislative intent.—It is declared as a matter of legislative determination that the extensive growth of population and attendant industry and commerce throughout the state has given rise to public health and water supply problems of statewide concern, in that many unincorporated areas of the counties of the state are not served by water and sewer facilities normally and generally provided and maintained by the municipalities of the state or their agencies or instrumentalities or by private corporations or persons and are not otherwise adequately provided for; that many of such unincorporated areas are in extreme need of such sewage disposal and water supply facilities, and that it is the intent and purpose of this law to provide means for the counties of the state to alleviate such conditions in such unincorporated areas.

History.—s. 2, ch. 59-466.

153.52 Definitions.—As used in this law, the following words and terms shall have the following meanings, unless some other meaning is plainly intended:

(1) "District" shall mean any unincorporated contiguous area comprising part but not all of the area of any county created into and existing as a water and sewer district pursuant and subject to this law, having the rights, powers and privileges granted in this law.

(2) "Board of county commissioners" shall mean the board of county commissioners of the county in which a district created pursuant to this law is located.

(3) "District board" shall mean the board of county commissioners of any county constituting the governing body of any district as provided for in this law, and acting for and on behalf of such district as a body corporate and politic.

(4) "Sewer system" shall mean and shall include any plant, system, facility or property and additions, extensions and improvements thereto at any future time constructed or acquired as part thereof, useful or necessary or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage of any nature or originating from any source, including industrial wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resources; and without limiting the generality of the foregoing definition shall embrace treatment plants, pumping stations, lift stations, valves, force mains, intercepting sewers, laterals, pressure lines, mains and all necessary appurtenances and equipment, all sewer mains and laterals for the reception and collection of sewage from premises connected therewith, and shall include all real and personal property and any interest therein, rights, easements and franchises of any nature whatsoever relating to any such system and necessary or convenient for the operation thereof.

(5) "Water system" shall mean and include any plant, system, facility or property and additions, extensions and improvements thereto at any future time constructed or acquired as part thereof, useful or necessary or having the present capacity for future use in connection with the development of sources, treatment or purification and distribution of water for domestic or industrial use and, without limiting the generality of the foregoing, shall include dams, reservoirs, storage tanks, mains, lines, valves, pumping stations, laterals, and pipes for the purpose of carrying water to the premises connected with such system and shall include all real and personal property and any interests therein, rights, easements and franchises of any nature whatsoever relating to any such system and necessary or convenient for the operation thereof.

(6) "Cost" as applied to the acquisition and construction of a water system or a sewer system or extensions, additions or improvements thereto shall include the cost of construction or reconstruction, acquisition or purchase, the cost of all labor, materials, machinery and equipment, cost of all lands and interest therein, property, rights, easements and franchises of any nature whatsoever, financing charges, interest prior to and during construction and for not more than 2 years after completion of the construction or acquisition of such water system or sewer system or extensions, additions or improvements thereto, the creation of initial reserve or debt service funds, bond discount, cost of plans and specifications, surveys and estimates of costs and revenues, cost of engineering, financial and legal services, and all other expenses necessary or incidental in determining the feasibility or practicability of such construction, reconstruction or acquisition, administrative expenses and such other expenses as may be necessary or incidental to financing authorized by this law, and including reimbursement of the county or any other person, firm or corporation for any moneys advanced to a district for any expenses incurred by a district or county in connection with any of the foregoing items of cost, or the creation of such district.

(7) "Assessable improvements" shall mean that portion or portions of a sewer system or a water system of a local nature and of benefit to the premises or lands served thereby and particularly, without limiting the generality of the foregoing, with reference to a sewer system, shall include, without being limited to, laterals and mains for the collection and reception of sewage from premises connected therewith, local or auxiliary pumping or lift stations, treatment plants or disposal plants, and other appurtenant facilities and equipment for the collection, treatment and disposal of sewage; and with reference to a water system shall include such mains and laterals and other distribution facilities, pumping stations, and sources of supply as are of benefit to the property served by such water system together with incidental equipment and appurtenances necessary therefor.

(8) "District clerk" shall mean the clerk of the circuit court and ex officio clerk of the board of county commissioners in and for any county having or establishing a district pursuant to this law, who shall be clerk and treasurer of the district.

(9) "Revenue bonds" shall mean bonds or other obligations secured by and payable from the revenues derived from rates, fees and charges collected by a district from the users of the facilities of any water system or sewer system, or both, and which may be additionally secured by a pledge of the proceeds of special assessments levied against benefited property or by a pledge of the full faith and credit of the district, or both.

(10) "General obligation bonds" shall mean bonds or other obligations secured by the full faith and credit and taxing power of the district and payable from ad valorem taxes levied and collected on all taxable property in the district, without limitation of rate or amount, and may be additionally secured by the pledge of either or both the proceeds of special assessments levied against benefited property, or revenues derived from said water system or sewer system, or both.

(11) "Assessment bonds" shall mean bonds or other obligations secured by and payable from special assessments levied against benefited lands, and which may be additionally secured by a pledge of the full faith and credit of the district.

History.—s. 3, ch. 59-466.

153.53 Establishment of districts in unincorporated areas.—

(1) Subject to this law, the board of county commissioners of any county may establish one or more districts as it shall in its discretion determine to be necessary in the public interest. Any such district shall consist of only unincorporated contiguous areas of such county, comprising part but not all of the areas of such county. As used herein, "unincorporated areas" shall mean all lands outside of the incorporated boundaries of towns, cities, or other municipalities of the state whether existing under the general law or special act and shall include any lands, areas, or property within the district of any special tax districts, school district, or any other public corporations or bodies politic of any nature whatsoever, except municipalities.

(2)(a) As an alternative method of establishing a water and sewer system district, a petition signed by persons owning not less than 10 percent of the property within the boundaries of the proposed district may be filed with the property appraiser of the county in which said district is to be located.

(b) Said petition shall describe the territory to be included in said proposed district, the name of the district if there is one, and the general purpose for which the district is being established, as set out in ss. 153.51 and 153.52.

(c) Said petition shall request the board of county commissioners to call and provide for a referendum election to determine whether such district shall be created and further call for an election of the first board of commissioners for said district.

(d) Within 30 days after the petition is received by the property appraiser, said property appraiser shall determine whether such petition has been duly signed by the requisite number of property owners within the boundaries of the proposed district. If there is a sufficient number of valid signatures, the property appraiser shall forthwith deliver said petition to the board of county commissioners who shall within 60 days hold an election to determine if the district shall be created. The board of county commissioners shall have notice of such election published once a week for 4 successive weeks in a newspaper of general circulation within the area of the proposed district. Said notice shall describe the purpose for which the district is to be established and the territory proposed to be included in the said district. If there is no such newspaper, then notice may be posted on the courthouse door and in five conspicuous places within the proposed district.

(3)(a) At the same time the board of county commissioners receives from the property appraiser a petition and fixes the date for an election to determine if a district shall be established, said board of county commissioners may also call an election for three persons to serve as commissioners of the proposed district. The county commissioners shall also advertise in the same manner that an election is to be held for three commissioners of the proposed district and shall set out in said notice the qualifications of candidates to qualify by petition for election to said office. The board of county commissioners shall cause to be printed on the ballot for said district referendum the names of any persons qualified as candidates for the office of member of the board of commissioners of the district who have filed with the board of county commissioners a petition signed by not less than the owners of 10 percent of the property within the district. The candidate's petition shall be filed with the board of county commissioners not less than 14 days prior to said election with a qualifying fee in the amount of $25 payable to the board of county commissioners. Said fee shall be used to defray the expense of the election. Should the qualifying fees exceed the cost of the election, the surplus shall be transferred into the general operating fund of the water and sewer district if it be established or if it be rejected then said surplus shall be transferred to the general county operating fund.

(b) The supervisor of elections shall assist the board of county commissioners in preparing a list of eligible electors from a list of property owners within the proposed district to be furnished by the property appraiser, and said supervisor shall further assist the board of county commissioners with such other administrative matters pertaining to the conduct of the election as the county commission deems appropriate.

(c) The ballot to be used at said election shall be in substantially the following form:

OFFICIAL BALLOT
..... WATER AND SEWER DISTRICT
..... COUNTY, FLORIDA
SPECIAL ELECTION (Insert date)

1. Shall ..... Water and Sewer District ..... County, Florida, be created?
..... Yes
..... No

2. Make a cross mark (x) before the names of the candidates of your choice.

FOR COMMISSIONERS OF
WATER AND SEWER DISTRICT

VOTE FOR THREE WRITE-IN VOTES

.....
.....
.....
.....

Blank lines shall be placed on the ballot so that the name of any person who did not file a petition and who is otherwise qualified may be written in, in the form of an irregular or write-in vote. The inspectors and clerks for said election shall be appointed by the board of county commissioners. The ballots shall be furnished by the board of county commissioners. The board of county commissioners shall designate an appropriate polling place or polling places where said election shall be held. The inspectors and clerks shall make returns to the board of county commissioners and said board of county commissioners shall canvass said election returns and declare the results thereof at a meeting to be held as soon as practical after said election.

(d) Said district shall be established upon a favorable vote in person or by proxy of the owners of 50 percent or more of the property within the district, and the three persons receiving the highest number of votes cast for candidates shall be elected commissioners of the district until their successors are elected. Upon expiration of 20 days after the declaration of the result of said election by the board of county commissioners, such declaration of the results shall be regarded for all purposes as conclusive.

(e) At said election only persons owning property within the district shall be qualified to vote. Such vote shall be in person or by proxy. No proxy shall be effective unless acknowledged by a notary public. If the board of county commissioners shall find and determine that the result of said election is adverse to the proposition of creating a district no other election for the same purpose shall be held within 1 year thereafter.

(f) If a requisite number of votes at such special election shall favor the creation of such a district, then said board of county commissioners shall enter an order constituting the territory in which said special election was held as a district with all the powers granted to water and sewer districts under the provisions of chapter 153.

(g) Commissioners of said district shall be the owners of property within said district who are registered electors in some county in the state, at least one of whom shall reside in the county or adjoining county.

(4) Beginning with the next general election following the creation of the district, and in the general election each 4 years thereafter, the said district commissioners shall qualify by petition and be elected by the property owners of the district. The three persons receiving the highest number of votes cast in the general election shall serve 4 years and shall take office at the same time as do other county officers, on the first Tuesday after the first Monday in January next after their election, and serve on the same cycle as do other constitutional county officers.

(5) In the event of a vacancy due to any cause in any board of commissioners, the same shall be filled by appointment by a majority of the members of the board of county commissioners for the unexpired term.

(6)(a) As soon as practicable after such district commissioners have been elected and have qualified, they shall meet and organize by election from among their number a chairman, a secretary, and a treasurer. The secretary need not be a commissioner. Two members of the board shall constitute a quorum. The vote of two members shall be necessary to transact business.

(b) Each commissioner, before he assumes office, shall be required to give the Governor a good and sufficient surety bond in the sum of $2,000, the cost thereof being borne by the district, conditioned on the faithful performance of the duties of his office, said bond to be approved and filed in the same manner as is that of the board of county commissioners. The failure of any person to make and file this bond within 10 days after his election shall create a vacancy on said board.

(7) The powers and duties of the commissioners shall be the same as those of county commissioners supervising districts as provided for under subsection (1).

(8) Members of the board of commissioners shall each be paid $5 a day for each day's service; provided the per diem compensation shall not exceed the sum of $300 for each commissioner during any one year. Said members shall be reimbursed for traveling expenses incurred in the performance of their duties as provided in s. 112.061. All boards of commissioners shall hold regular monthly meetings, and special meetings as needed, in the courthouse or in an appropriate place within the district.

(9) The owners of not less than 50 percent of the property within any proposed or established water and sewer district may at any time petition for a referendum calling for any two or more of said districts which are contiguous to be combined and be supervised by a single board elected as hereinabove described. However, if the board of county commissioners shall deem such a combination to be reasonably necessary for the purpose of providing the improvements authorized by this chapter, it may approve same, subject to referendum requirements, notwithstanding that the territories to be combined and included in the new district are not contiguous. Said referendum shall be conducted in substantially the same manner as a referendum to create a single district.

(10) All projects in any district created pursuant to this section as amended by chapter 70-433, Laws of Florida, affecting lakes, streams, or navigable waters shall conform to the provisions of chapter 253.

History.—s. 4, ch. 59-466; ss. 1, 2, ch. 70-433; s. 1, ch. 76-148; s. 1, ch. 77-102.

153.54 Same; petition for; report by county commissioners.—Upon receipt of a petition duly signed by not less than 25 qualified electors who are also freeholders residing within an area proposed to be incorporated into a water and sewer district pursuant to this law and describing in general terms the proposed boundaries of such proposed district, the board of county commissioners if it shall deem it necessary and advisable to create and establish such proposed district for the purpose of constructing, establishing or acquiring a water system or a sewer

system or both in and for such district (herein called "improvements"), shall first cause a preliminary report to be made which such report together with any other relevant or pertinent matters, shall include at least the following:

(1) A general description of the proposed improvements to be made in such district.

(2) A general estimate of the cost of the proposed improvements.

(3) The present condition of water and sewer facilities in the area comprising such proposed district.

(4) Findings with respect to the necessity or reasonableness of the inclusion of lands proposed to be included within the district with reference to the benefits to be derived or able to be derived by such included lands from such proposed improvements, and the necessity or reasonableness of the exclusion of lands adjacent to or within such proposed district with reference to such benefits.

Such report shall be filed in the office of the clerk of the circuit court and shall be open for the inspection of any taxpayer, property owner, qualified elector or any other interested or affected person.

History.—s. 5, ch. 59-466.

153.55 Same; public hearing; findings of commission.—

(1) Upon submission of any such report the board of county commissioners shall hold a public hearing upon such report and the question of the creation of such district, giving at least 20 days' notice of such hearing by advertisement in a newspaper published in the county and circulating in the area of the proposed district or by posting as provided in s. 153.56 if no such newspaper be published.

(2) At such hearing any taxpayer, property owner, qualified elector or other interested or affected person may make written objections to the creation of such proposed district or the exclusion of any lands therefrom, or the inclusion of any lands therein, the desirability or the feasibility of such proposed improvements or to any other matter, which objections, if any, together with any evidence submitted therewith shall be given full and open consideration by the board of county commissioners.

(3) If upon due consideration of such preliminary report, any such objections and any other pertinent matters, such board of county commissioners shall be satisfied that the construction and acquisition of said improvements is feasible and desirable and of benefit to all the lands included in such proposed district or that certain lands shall be included or excluded, and that the creation of said district is necessary in the public interest, it shall so determine and record such findings and determination, together with an accurate description of the proposed boundaries of the proposed district and the proposed corporate name of such district, by resolution duly adopted.

(4) If the board of county commissioners shall after such hearing deem the creation of such proposed district inadvisable and not in the public interest, it shall make such a finding and determination and no further proceedings shall be taken for the creation of the proposed district under such petition; provided, however, that such finding and determination shall not be deemed to bar the creation of any proposed district at any future time in the manner provided in this law upon the filing of a new petition therefor as provided in this law.

History.—s. 6, ch. 59-466.

153.56 Call election to determine creation of district, issuance of bonds.—

(1) If the board of county commissioners shall deem that the creation of the proposed district is necessary in the public interest as provided in s. 153.55, it shall call an election for the purpose of submitting to the qualified electors residing in said proposed district the question of the creation and establishment of said district and may also submit at a separate election to be held at the same time, to the qualified electors who are freeholders residing in such district, the question of the issuance of general obligation bonds of said district to pay all or part of the cost of the proposed improvements. Said election shall be held not less than 30 days from the date of the first publication or posting of the notice thereof and such notice shall be published once a week for 4 successive weeks in a newspaper published in the county and circulating in the area of the proposed district, and if no such newspaper be published in the county and circulating in the district, such notice shall be posted in at least 10 different public places within the district.

(2) Except as otherwise provided in this law, said election shall be held and conducted pursuant to the general laws of the state applicable thereto, provided, that if the question of the issuance of general obligation bonds is to be voted upon, the election thereon shall conform to the applicable provisions of the constitution and statutes of Florida relating to freeholder elections.

(3) Said call for election of the qualified electors and notice thereof shall include a description of the proposed boundaries of said district, which need not be by metes and bounds but shall be in such detail as to give a reasonable and accurate description thereof and shall further specifically recite that said district, if created, shall be authorized:

(a) To construct or acquire a sewer system or water system or both for said district and any improvements, additions and extensions thereto and to have exclusive control and jurisdiction thereof;

(b) To finance the cost of such construction or acquisition of such improvements by the issuance of either its revenue bonds, general obligation bonds or assessment bonds, as defined in this law, or any combination thereof;

(c) Said notice shall further expressly state that such district, if created and established, shall constitute a special tax district, all the property within which shall be subject to the levy of ad valorem taxes without limitation of rate or amount to secure payment of any of its general obligations, and for the maintenance of such district within the limitations of this law.

(4) The notice of the separate election of the qualified freeholder electors, if held at the same time, shall be in substantially the form provided in the applicable statutes of Florida relating to freeholder

elections.

Such elections may be held at any time, including the dates upon which general or primary elections are held in such county.

History.—s. 7, ch. 59-466.

153.57 Ballots and election officials.—The inspectors and clerks for said election or elections shall be appointed by and the ballots to be voted shall be prepared and furnished by the board of county commissioners, which shall designate the polling place or places at which such election or elections shall be held. The inspectors and clerks shall make returns to the board of county commissioners.

History.—s. 8, ch. 59-466.

153.58 Election results; resolution of commission; publication of notice of estoppel.—

(1) Immediately after any such election or elections the board of county commissioners shall hold a meeting and shall canvass the votes cast at said election or elections and declare the results thereof by resolution.

(a) If a majority of the qualified electors who vote in said election on the creation of such district shall vote in favor of creation of said district the board of county commissioners shall by resolution declare the district duly created, and forthwith cause an estoppel notice to be published one time in a newspaper published in the county and circulating in the district, or if there be no such newspaper, posted in at least 10 public places in the district. Said notice shall recite the due creation of said district pursuant to this law and the affirmative vote of the majority of the qualified electors voting thereon at said election duly called and held; and shall further recite the substance of the provisions of said notice of election set forth in s. 153.56 and that all of the proceedings had and actions taken in the creation of said district, the holding of said election and an accurate description of said district are on file in the office of the clerk of the circuit court open to public inspection, and shall state that any action or proceeding of any kind or nature questioning the validity of the creation and establishment of said district, including but not limited to, the exclusion or inclusion of lands therein, or other pertinent matters, shall be commenced within 20 days after the first publication of such notice in the circuit court in and for the county. If no such action or proceeding shall be commenced or instituted within 20 days after the first publication or posting of such notice, then all taxpayers, property owners or persons residing within said district or any other interested parties, public, private or corporate within the county and all the persons whatsoever shall be forever barred and foreclosed from instituting or commencing any action or proceedings which question the validity of the creation and establishment of said district and the boundaries thereof.

(b) If a majority of the qualified freeholder electors residing in the district shall participate in the separate freeholder election on the question of the issuance of general obligation bonds, in the event a separate freeholders election is held at the same time as the election on the creation of the district, and a majority of such qualified freeholder electors shall vote in favor of the issuance of such general obligation bonds then such general obligation bonds shall be deemed approved, but shall not be issued unless the district shall be duly created at the election of the qualified electors referred to above.

(2) If the qualified electors who vote in said election on the creation of such district shall vote against the creation of such proposed district, a new petition pertaining to any part of the same area just considered by the board of county commissioners shall not be acted upon by the board of county commissioners until after the expiration of 9 months from the date of the election defeating the creation of said proposed district, even though such new petition shall have been filed by petitioners other than those who originally filed the petition just acted upon by the board of county commissioners, unless 25 percent of the qualified electors of the area petition to have an election.

History.—s. 9, ch. 59-466; s. 1, ch. 63-94.

153.59 Circuit court, jurisdiction.—The circuit court in and for any county so establishing a district is vested with jurisdiction in any such proceedings or suits affecting the creation of such districts and all matters pertinent thereto and shall give preference and priority to any such actions or proceedings pending in such court subject to existing statutes.

History.—s. 10, ch. 59-466.

153.60 County commissioners ex officio governing board.—The board of county commissioners of the county in which any such district is created shall be the ex officio governing board of such district. Such district shall be a body corporate and politic, exercising essential governmental functions and shall have the power to sue and be sued; to contract; to adopt and use a common seal and alter the same at pleasure; to purchase, hold, lease or otherwise acquire and convey such real property and personal property and interests therein as may be necessary or proper to carry out the purposes of this law. The Clerk of the Circuit Court shall be ex officio the clerk and treasurer of the district, and the county tax collector shall be ex officio the tax collector of the district.

History.—s. 11, ch. 59-466.

153.61 Expenses of election, etc.—The preliminary expenses for the creation and incorporation of any such district, including election expenses, expenses for legal, financial or other services in connection with the preliminary report undertaken pursuant to s. 153.54, shall be payable out of general county funds, but shall be a reimbursable expense to be paid from the proceeds of any bonds or other obligations issued by said district to accomplish the purposes of this law.

History.—s. 12, ch. 59-466.

153.62 District board; powers.—The district board for and on behalf of any district created hereunder in addition to and supplementing other powers granted in this law, is authorized and empowered:

(1) To make rules and regulations for its own government and proceedings and to adopt an official seal for the district;

(2) To employ engineers, attorneys, accountants, financial or other experts and such other agents and employees as said district board may require or deem necessary to effectuate the purposes of this law, or to contract for any of such services;

(3) To construct, install, erect, acquire and to operate, maintain, improve, extend, or enlarge and reconstruct a water system or a sewer system or both within said district and the environs thereof and to have the exclusive control and jurisdiction thereof; to issue its general obligation bonds, revenue bonds or assessment bonds, or any combination of the foregoing, to pay all or part of the cost of such construction, reconstruction, erection, acquisition or installation of such water system, sewer system or both; provided that the total amount of all general obligation indebtedness of the district issued pursuant to this law shall not exceed 15 percent of the assessed value of the taxable property in the district at the time of the creation of such district, to be ascertained by the assessed valuations for county taxes in effect at the time of the creation of such district.

(4) To levy and assess ad valorem taxes without limitation of rate or amount on all taxable property within said district for the purpose of paying principal of and interest on any general obligation bonds which may be issued for the purposes of this law, not in excess of the total amount of such general obligation bonds provided for in subsection (3).

(5) To regulate the use of sewers and the supply of water within the district and to prohibit the use and maintenance of outhouses, privies, septic tanks or other unsanitary structures or appliances.

(6) To fix and collect rates, fees and other charges to persons or property or both for the use of the facilities and services provided by any water system or sewer system or both and to fix and collect charges for making connections with any such water system or sewer system and to provide for reasonable penalties on any users or property for any such rates, fees or charges that are delinquent.

(7) To acquire in the name of the district by purchase, gift or the exercise of the right of eminent domain, such lands and rights and interest therein, including lands under water and riparian rights and to acquire such personal property as it may deem necessary in connection with the construction, reconstruction, improvement, extension, installation, erection or operation and maintenance of any water system or sewer system or both and to hold and dispose of all real and personal property under its control; provided, however nothing herein contained shall authorize the power of eminent domain to be exercised beyond the limits of the district.

(8) To exercise exclusive jurisdiction, control and supervision over any water system or sewer system or both, or any part thereof owned, operated and maintained by the district and to make and enforce such rules and regulations for the maintenance and operation of any water system or sewer system or both as may be, in the judgment of the district board, necessary or desirable for the efficient operation of any such systems or improvements in accomplishing the purposes of this law.

(9) To restrain, enjoin or otherwise prevent the violation of this law or of any resolution, rule or regulation adopted pursuant to the powers granted by this law.

(10) To join with any other district or districts, cities, towns, counties or other political subdivisions, public agencies or authorities in the exercise of common powers.

(11) To contract with municipalities or other private or public corporations or persons to provide or receive a water supply or for sewage disposal, collection or treatment.

(12) To prescribe methods of pretreatment of industrial wastes not amenable to treatment with domestic sewage before accepting such wastes for treatment and to refuse to accept such industrial wastes when not sufficiently pretreated as may be prescribed, and by proper resolution to prescribe penalties for the refusal of any person or corporation to so pretreat such industrial wastes.

(13) To require and enforce the use of its facilities whenever and wherever they are accessible.

(14) To sell or otherwise dispose of the effluent, sludge or other byproducts as a result of sewage treatment.

(15) To accomplish construction by holding hearings, advertising for construction bids, and letting contracts for all or any part or parts of the construction of any water system or sewer system or both, to the lowest responsible bidder or bidders or rejecting any and all bids at its discretion, provided that the district may purchase supplies, material and equipment as well as expend for construction work in an amount not to exceed one thousand dollars total cost of each transaction without advertising or receiving bids.

(16) To construct and operate connecting, intercepting or outlet sewers and sewer mains and pipes and water mains, conduits or pipe lines in, along or under any streets, alleys, highways or other public places or ways within the state or any municipality or political subdivision necessary for the purposes of the district.

(17) Subject to such provisions and restrictions as may be set forth in the resolution authorizing or securing any bonds or other obligations issued under the provisions of this law, to enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any county, municipality, district, authority or political subdivision, private corporation, partnership, association or individual providing for or relating to the treatment, collection and disposal of sewage, or the treatment, supply and distribution of water and any other matters relevant thereto or otherwise necessary to effect the purposes of this law, and to receive and accept from any federal agency, grants or loans for or in aid of the planning, construction, reconstruction or financing of any water system or sewer system or both and to receive and accept aid or contributions or loans from any other source of either money, property, labor or other things of value, to be

held, used and applied only for the purpose for which such grants, contributions or loans may be made.

History.—s. 13, ch. 59-466.

153.63 Revenue bonds; issuance, etc.—

(1) The district board for and on behalf of any district is authorized to provide from time to time for the issuance of revenue bonds to pay all or part of the cost of a water system or sewer system, or both, or any additions, extensions or improvements thereto. The principal of and interest on any such bonds shall be payable from the rates, fees, charges or other revenues derived from the operation of any such system or systems in the manner provided in this law and the resolution authorizing such revenue bonds and pledging such revenues. Such revenue bonds may also be additionally secured by the pledge of special assessments levied pursuant to this law, or by a pledge of the full faith and credit of said district. The revenue bonds of each issue shall be dated, shall bear interest at such rate or rates as shall not exceed 7½ percent per annum, shall mature at such time or times not exceeding 40 years from their date or dates as may be determined by the district board and may be made redeemable before maturity, at the option of the district board, under such terms and conditions and at such prices as may be fixed by the district board prior to the issuance of such bonds. The district board shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. Such authorizing resolution may further provide that such bonds may be executed manually or by the engraved, lithographed or facsimile signature of the chairman of the district board. The seal of the district may be affixed or lithographed, engraved or otherwise reproduced in facsimile on such bonds and shall be attested by the manual or facsimile signature of the district clerk; provided, however, that the signature of at least one of the officials executing such revenue bonds shall be a manual signature. In case any officer whose signature or a facsimile of whose signature shall appear on the bonds shall cease to be such officer before the delivery of such bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All revenue bonds issued under the provisions of this law shall be and constitute and have all the qualities and incidents of negotiable instruments under the law merchant and the negotiable instruments law of the state. The bonds may be issued in coupon or registered form as the district board may determine in such authorizing resolution and provision may be made for the registration of any coupon bonds as to principal alone and also as to principal and interest, and for the reconversion of coupon bonds or of any bond registered as to principal and interest. The issuance of such bonds shall not be subject to any limitations or conditions contained in any other law and the district board may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine to be for the best interests of the district, but no such sale shall be made at a price so low as to require the payment of interest on money received therefor at a rate in excess of 7½ percent per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid for the redemption of any bonds prior to maturity.

(2) The proceeds of the sale of any such bonds shall be used solely for the payment of the costs of the construction or acquisition of any water system or sewer system or both or the reconstruction or construction or acquisition of extensions, improvements and additions thereto, and shall be disbursed in such manner and under such restrictions, as the district board may provide in the authorizing resolution. Prior to the preparation or issuance of definitive revenue bonds, the district board may, under like restrictions, issue interim receipts or temporary notes or other form of such temporary obligations without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The district board may also provide for the replacement of any bonds which shall have become mutilated and be destroyed or lost upon proper indemnification. Revenue bonds may be issued under the provisions of this law without obtaining the consent of any commission, board, bureau or agency of the state, and without any other proceeding or happening of any other condition or thing than those proceedings, conditions or things which are specifically required by this law.

(3) A resolution providing for the issuance of revenue bonds may also contain such limitations upon the issuance of additional revenue bonds secured on a parity with the bonds theretofore issued, as the district board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such authorizing resolution.

(4) Revenue bonds shall not be deemed to constitute an indebtedness of the district, and shall not be included in the amount of general obligation bonds which the district is authorized to issue under any other provision of this law, unless the full faith and credit of the district is pledged as additional security for such revenue bonds.

History.—s. 14, ch. 59-466; s. 5, ch. 73-302.

153.64 Schedule of rates and fees.—

(1) The district board shall fix the initial schedule of rates, fees or other charges for the use of and the services and facilities to be furnished by any such water system or sewer system to be paid by the owner, tenant or occupant of each lot or parcel of land which may be connected with or used by any such system or systems of the district. After the system or systems shall have been in operation the district board may revise the schedule of rates, fees and charges from time to time; provided, however, that such rates, fees and charges shall be so fixed and revised so as to provide some, which, with other funds available for such purposes, shall be sufficient at all times to pay the expenses of operating and maintaining such water system or sewer system or both, including reserves for such purposes, the principal of and interest on revenue bonds as the same

shall become due and reserves therefor, and to provide a margin of safety over and above the total amount of any such payments, and to comply fully with any covenants contained in the proceedings authorizing the issuance of any bonds or other obligations of the district. The district shall charge and collect such rates, fees and charges so fixed or revised, and such rates, fees and charges shall not be subject to the supervision or regulation by any other commission, board, bureau, agency or other political subdivision or agency of the county or state.

(2) Such rates, fees and charges shall be just and equitable and uniform for users of the same class and where appropriate may be based or computed either upon the quantity of water consumed or upon the number and size of sewer connections or upon the number and kind of plumbing fixtures in use in the premises or upon the number or average number of persons residing or working in or otherwise using or occupying such premises or upon any other factor affecting the use of the facilities furnished or upon any combination of the foregoing factors as may be determined by the district board on any other equitable basis.

(3) No rates, fees or charges shall be fixed under the foregoing provisions of this section until after a public hearing at which all the users of the proposed sewer system or water system, or both, or owners, tenants or occupants served or to be served thereby and all others interested shall have an opportunity to be heard concerning the proposed rates, fees and charges. Notice of such public hearing setting forth the proposed schedule or schedules of rates, fees and charges shall be given by one publication in a newspaper published in the county and circulating in the district at least 10 days before the date fixed in such notice for the hearing, which may be adjourned from time to time. If there be no such newspaper published in the county and circulating in the district the notice of such rate hearing shall be posted as provided for in s. 153.56 regarding the posting of the notice calling the election creating the district. After such hearing such schedule or schedules, either as initially adopted, or as modified or amended, may be finally adopted.

(4) A copy of the schedule or schedules of such rates, fees or charges finally adopted shall be kept on file in the office of the district clerk and shall be open at all times to public inspection. The rates, fees or charges so fixed for any class of users or property served shall be extended to cover any additional users or properties thereafter served which shall fall in the same class, without the necessity of any hearing or notice. Any change or revision of such rates, fees or charges may be made in the same manner as such rates, fees or charges were originally established as hereinabove provided; provided however, that if such changes or revisions be made substantially pro rata as to all classes of service no hearing or notice shall be required.

History.—s. 15, ch. 59-466.

153.65 Trust funds; trustees.—The proceeds of all bonds or other obligations issued under this law and all revenues derived from the operation of any water system or sewer system for the payment of all or part of the cost of which any bonds or other obligations authorized by this law have been issued shall be and constitute trust funds, and shall be used and applied only in accordance with the proceedings authorizing the issuance of any revenue bonds, general obligation bonds or other obligations issued pursuant to this law, and the district may appoint trustees, within or without the state, under trust agreements or indentures to hold and administer the proceeds of any such bonds or other obligations or any such revenues.

History.—s. 16, ch. 59-466.

153.66 Covenants of district board with bondholders.—In addition to the other provisions and requirements of this law any resolution authorizing the issuance of revenue bonds, general obligation bonds, assessment bonds or any other obligations issued hereunder, may contain provisions and the district board is authorized to provide and may covenant and agree with the several holders of such bonds as to:

(1) Reasonable deposits with the district in advance to insure the payment of rates, fees or charges for the facilities of the system.

(2) The discontinuance of the services and facilities of any water system or sewer system, or both, for delinquent payments for either water services or sewer services, and the terms and conditions of the restoration of such service.

(3) Contracts with private or public owners of a water system or sewer system not owned and operated by the district for the discontinuance of service to any users of the water system or sewer system, as the case may be, owned and operated by the district.

(4) Limitations on the powers of the district to construct, acquire or operate, or permit the construction, acquisition or operation of any plants, structures, facilities or properties which may compete or tend to compete with any water system or sewer system.

(5) The manner and method of paying service charges and fees and the levying of penalties for delinquent payments.

(6) Subject to this law the manner and order of priority of the disposition of revenues or redemption of any bonds or other obligations.

(7) Terms and conditions for modification or amendment of any provisions or covenants in any such proceedings authorizing the issuance of bonds or other obligations.

(8) Provisions for and limitations on the appointment of a trustee for bondholders for any water system or sewer system.

(9) Provisions as to the appointment of a receiver of any sewer system or water system or both, on default of principal or interest on any such bonds or other obligations or the breach of any covenant or condition of such authorizing proceedings or the provisions and requirements of this law.

(10) Provisions as to the execution and entering into of trust agreements regarding the holding and disposition of revenues derived from such systems and the proceeds of bonds issued for the cost of acquisition or construction or improvement of a water system or sewer system or both, or for any other purposes necessary to secure any such revenue bonds.

(11) Provisions as to the maintenance of any such systems and reasonable insurance thereof.

(12) Any other matters necessary to secure such bonds and the payment of the principal and interest thereof.

All such provisions of the bond proceedings and all such covenants and agreements in addition to the other provisions and requirements of this law shall constitute valid and legally binding contracts between the district and several holders of any such bonds and shall be enforceable by any such holder or holders by mandamus or other appropriate action, suit or proceeding in law or in equity in any court of competent jurisdiction.

History.—s. 17, ch. 59-466.

153.67 Unpaid fees to constitute lien.—In the event that the fees, rates or charges for the services and facilities of any water or sewer system shall not be paid as and when due, any unpaid balance thereof and all interest accruing thereon shall be a lien on any parcel or property affected thereby. Such liens shall be superior and paramount to the interest on such parcel or property of any owner, lessee, tenant, mortgagee or other person except the lien of county taxes and shall be on a parity with the lien of any such county taxes. In the event that any such service charge shall not be paid as and when due and shall be in default for thirty days or more the unpaid balance thereof and all interest accrued thereon, together with attorneys fees and costs, may be recovered by the district in a civil action, and any such lien and accrued interest may be foreclosed or otherwise enforced by the district by action or suit in equity as for the foreclosure of a mortgage on real property.

History.—s. 18, ch. 59-466.

153.68 General obligation bonds, election; issuance, tax levy.—

(1) The district board is hereby authorized to provide by resolution from time to time for the issuance of general obligation bonds pledging the full faith and credit of the district for the payment thereof, for the purpose of paying all or part of the cost of the acquisition or construction or improvement of a water system or a sewer system or both, provided however, that the issuance of such bonds, or of any revenue bonds, assessment bonds or other obligations for which the full faith and credit of the district shall have been pledged as additional security shall have been approved at an election of the qualified electors who are freeholders residing in said district, such election to be called, noticed and conducted in the manner provided in the constitution and statutes of Florida for freeholder elections.

(2) For the payment of the principal of and the interest on any general obligation bonds of the district issued under the provisions of this law, the district board is hereby authorized and required and in such resolution authorizing the issuance of general obligation bonds shall authorize and require the levy annually of a special tax upon all taxable property within the district over and above all other taxes authorized or permitted by law sufficient to pay such principal and interest as the same shall become due and payable, and the proceeds of all such taxes, when collected, shall be paid into a special fund and used for no other purpose than the payment of such principal and interest, or reserves therefor; provided however, that there may be pledged as additional security for the payment of such principal and interest the proceeds of such rates, fees and charges made for the services and facilities of any such water system or sewer system or both, or the proceeds of special assessments levied to finance the cost of assessable improvements, or both, and in the event of such pledge or pledges the amount of the annual tax herein required may be reduced in any year subject to and in accordance with the proceedings authorizing the issuance of such general obligation bonds.

(3) In the event the full faith and credit of the district is pledged as additional security for the payment of any revenue bonds or assessment bonds issued hereunder, the district board shall in the manner set out above for general obligation bonds provide for and authorize the levy of a special tax annually on all taxable property in the district sufficient in amount to comply with the proceedings authorizing such revenue bonds or assessment bonds for which the full faith and credit of the district is pledged as additional security.

History.—s. 19, ch. 59-466.

153.69 County property appraiser ex officio tax assessor for district.—The amount of any such annual taxes so levied for general obligation bonds or as additional security for revenue bonds or assessment bonds shall be certified by the district board to the property appraiser of the county who shall be ex officio tax assessor for the district, and such taxes shall be levied and collected in the same manner as other general county taxes.

History.—s. 20, ch. 59-466; s. 1, ch. 77-102.

153.70 Provisions of s. 153.63 applicable to general obligation bonds.—Any general obligation bonds shall be authorized by resolution of the district board and the provisions of s. 153.63 relative to maturities, execution, rate or rates of interest, redemption prior to maturity, registration, method of sale, and all other matters in said s. 153.63 not inconsistent with the other provisions in this law relating to general obligation bonds, shall apply to any general obligation bonds issued hereunder.

History.—s. 21, ch. 59-466.

153.71 Publication of notice of issuance of bonds.—Prior to the issuance of any revenue bonds, general obligation bonds, assessment bonds or other obligations, the district board may, in its discretion, publish a notice at least once in a newspaper published in the county and circulating in the district, or posted in the manner provided in s. 153.56 if there be no such newspaper, stating the date of adoption of the resolution authorizing such obligations, and the amount, maximum rate of interest and maturity of such obligations and the purpose in general terms for which such obligations are to be issued, and further stating that any action or proceedings authorizing the issuance thereof, or of any covenants made therein, must be instituted within 20 days after the first publication of such notice, or the validity of

such obligations or proceedings or covenants shall not be thereafter questioned in any court whatsoever. If no such action or proceeding is so instituted within such 20-day period then the validity of such obligations, proceedings and covenants shall be conclusive, and all persons or parties whatsoever shall be forever barred from questioning the validity of such obligations, proceedings or covenants in any court whatsoever.

History.—s. 22, ch. 59-466.

153.72 Bonds; qualities of negotiable instruments; rights of holders.—All revenue bonds, general obligation bonds or assessment bonds issued hereunder shall be and constitute, and have all the qualities and incidents of negotiable instruments under the law merchant and the Negotiable Instruments Law of Florida, and shall not be invalid for any irregularity or defect in the proceedings for the issuance and sale thereof and shall be incontestable in the hands of bona fide purchasers for value. No proceedings in respect to the issuance of such bonds shall be necessary except such as are required by this law. The provisions of this law shall constitute an irrevocable contract between said district and the holders of any such bonds or coupons thereof issued pursuant to the provisions hereof. Any holder of such bonds may either at law or in equity, by suit, action or mandamus, enforce and compel the performance of the duties required by this law or of any of the officers or persons herein mentioned in relation to said bonds, or the levy, assessment, collection and enforcement and application of the taxes, revenues, assessments or other funds pledged for the payment of the principal and interest thereof.

History.—s. 23, ch. 59-466.

153.73 Assessable improvements; levy and payment of special assessments.—Any district may provide for the construction or reconstruction of assessable improvements as defined in s. 153.52, and for the levying of special assessments upon benefited property for the payment thereof, under the provisions of this section.

(1) The initial proceeding under this section shall be the passage by the district board of a resolution ordering the construction or reconstruction of such assessable improvements, indicating the location by terminal points and routes and either giving a description of the improvements by its material, nature, character and size or giving two or more descriptions with the directions that the material, nature, character and size shall be subsequently determined in conformity with one of such descriptions. Sewer or water improvements need not be continuous and may be in more than one locality or street. The resolution ordering any such improvement may give any short and convenient designation to each improvement ordered thereby, and the property against which assessments are to be made for the cost of such improvement may be designated as an assessment district, followed by a letter or number or name to distinguish it from other assessment districts, after which it shall be sufficient to refer to such improvement and property by such designation in all proceedings and assessments, except in the notices required by this section.

(2)(a) As soon as possible after the passage of such resolution the engineer for the district shall prepare in duplicate plans and specifications for each improvement ordered thereby and an estimate of the cost thereof. Such cost shall include, in addition to the items of cost as defined in this law, the cost of relaying streets and sidewalks necessarily torn up or damaged and the following items of incidental expenses:

1. Printing and publishing notices and proceedings.
2. Costs of abstracts of title, and
3. Any other expense necessary or proper in conducting the proceedings and work provided for in this section, including the estimated amount of discount, if any, upon the sale of assessment bonds or any other obligations issued hereunder for which such special assessments are to be pledged. If the resolution shall provide alternative descriptions of material, nature, character and size, such estimate shall include an estimate of the cost of the improvement of each such description.

(b) The engineer shall also prepare in duplicate a tentative apportionment of the estimated total cost of the improvement as between the district and each lot or parcel of land subject to special assessment under the resolution, such apportionment to be made in accordance with the provisions of the resolution and in relation to apportionment of cost provided herein for the preliminary assessment roll. Such tentative apportionment of total estimated cost shall not be held to limit or restrict the duties of the engineer in the preparation of such preliminary assessment roll. One of the duplicates of such plans, specifications and estimates and such tentative apportionment shall be filed with the district clerk and the other duplicate shall be retained by the engineer in his files, all thereof to remain open to public inspection.

(3) The district clerk upon the filing with him of such plans, specifications, estimates and tentative apportionment of cost shall publish once in a newspaper published in the county and circulating in the district, or posted as provided in s. 153.56 if there be no such newspaper, a notice stating that at a meeting of the district board on a certain day and hour, not earlier than 15 days from such publication or posting, the district board will hear objections of all interested persons to the confirmation of such resolution, which notice shall state in brief and general terms a description of the proposed assessable improvements with the location thereof, and shall also state that plans, specifications, estimates and tentative apportionment of cost thereof are on file with the district clerk. The district clerk shall keep a record in which shall be inscribed, at the request of any person, firm or corporation having or claiming to have any interest in any lot or parcel of land, the name and post-office address of such person, firm or corporation, together with a brief description or designation of such lot or parcel, and it shall be the duty of the district clerk to mail a copy of such notice to such person, firm or corporation at such address, at least 10 days before the time for the hearing as stated in such notice, but the failure of the district clerk to keep such record or so to inscribe any name or

address or to mail any such notice shall not constitute a valid objection to holding the hearing as provided in this section or to any other action taken under the authority of this section.

(4) At the time named in such notice, or to which an adjournment may be taken by the district board, the district board shall receive any objections of interested persons and may then or thereafter repeal or confirm such resolution with such amendments, if any, as may be desired by the district board and which do not cause any additional property to be specially assessed.

(5) All objections to any such resolution on the ground that it contains items which cannot be properly assessed against property, or that it is, for any default or defect in the passage or character of the resolution or the plans or specifications or estimate, void or voidable in whole or in part, or that it exceeds the power of the district board, shall be made in writing in person or by attorney, and filed with the district clerk at or before the time or adjourned time of such hearing. Any objections against the making of any assessable improvements not so made shall be considered as waived, and if any objection shall be made and overruled or shall not be sustained, the confirmation of the resolution shall be the final adjudication of the issues presented unless proper steps shall be taken in a court of competent jurisdiction to secure relief within 20 days.

(6)(a) Whenever any resolution providing for the construction or reconstruction of assessable improvements and for the levying of special assessments upon benefited property for the payment thereof shall have been confirmed, as hereinabove provided, or at any time thereafter, the district board may issue assessment bonds payable out of such assessments when collected. Said bonds shall mature not later than 2 years after the last installment in which said special assessments may be paid, as provided in subsection (11), and shall bear interest at not exceeding 7½ percent per annum. Such assessment bonds shall be executed, shall have such provisions for redemption prior to maturity, shall be sold in the manner and be subject to all of the applicable provisions contained in s. 153.63 for revenue bonds, except as the same are inconsistent with the provisions of this section. The amount of such assessment bonds for any assessable improvement, prior to the confirmation of the preliminary assessment roll provided for in subsection (10), shall not exceed 70 percent of the estimated amount of the cost of such assessable improvements which are to be specially assessed against the land and real estate to be specially benefited thereby, as shown in the estimates of the engineer for the district referred to in subsection (2). The amount of such assessment bonds for any assessable improvement to be issued, after the confirmation of the preliminary assessment roll provided for in subsection (10), including any assessment bonds theretofore issued, shall not exceed the amount of special assessments actually confirmed and levied by the district board as provided in subsection (10).

(b) Such assessment bonds shall be payable from the proceeds of the special assessments levied for the assessable improvement for which such assessment bonds are issued; provided, however, that any district may pledge the full faith and credit of such district for the payment of the principal of and interest on such assessment bonds if the issuance of such assessment bonds shall be approved by the qualified electors who are freeholders residing in said district in the manner provided in the constitution and statutes of Florida.

(7) After the passage of the resolution authorizing the construction or reconstruction of assessable improvements has been confirmed as provided in subsection (4), the district may publish at least once in a newspaper published in the county and circulating in the district, or post in the manner provided in s. 153.56 if there be no such newspaper, a notice calling for sealed bids to be received by the district board on a date not earlier than 15 days from the first publication for the construction of the work, unless in the initial resolution the district board shall have declared its intention to have the work done by district forces without contract. The notice shall refer in general terms to the extent and nature of the improvement or improvements and may identify the same by the short designation indicated in the initial resolution and by reference to the plans and specifications on file. If the initial resolution shall have given two or more alternative descriptions of the assessable improvements as to its material, nature, character and size, and if the district board shall not have theretofore determined upon a definite description, the notice shall call for bids upon each of such descriptions. Bids may be requested for the work as a whole or for any part thereof separately and bids may be asked for any one or more of such assessable improvements authorized by the same or different resolutions, but any bid covering work upon more than one improvement shall be in such form as to permit a separation of cost as to each improvement. The notice shall require bidders to file with their bids either a certified check drawn upon an incorporated bank or trust company in such amount or percentage of their respective bids, as the district board shall deem advisable, or a bid bond in like amount with corporate surety satisfactory to the district board to insure the execution of a contract to carry out the work in accordance with such plans and specifications and insure the filing at the making of such contract, of a bond in the amount of the contract price with corporate surety satisfactory to the district conditioned for the performance of the work in accordance with such contract. The district board shall have the right to reject any or all bids, and if all bids are rejected the district board may readvertise or may determine to do the work by the district forces without contract.

(8) Promptly after the completion of the work, the engineer for the district, who is hereby designated as the official of the district to make the preliminary assessment of benefits from assessable improvements, shall prepare a preliminary assessment roll and file the same with the district clerk which roll shall contain the following:

(a) A description of abutting lots and parcels of land or lands within the district which will benefit from such assessable improvements and the amount of such benefits to each such lot or parcel of land.

Such lots and parcels shall include the property of the county and any school district or other political subdivision. There shall also be given the name of the owner of record of each lot or parcel where practicable, and in all cases there shall be given a statement of the number of feet of property so abutting, which number of feet shall be known as the frontage.

(b) The total cost of the improvement and the amount of incidental expense.

(9) The preliminary roll shall be advisory only and shall be subject to the action of the district board as hereinafter provided. Upon the filing with the district clerk of the preliminary assessment roll, the district clerk shall publish at least once in a newspaper published in the county, and circulating in the district, or if there be no such newspaper, post in the manner provided in s. 153.56, a notice stating that at a meeting of the district board to be held on a certain day and hour, not less than 15 days from the date of such publication or posting, which meeting may be a regular, adjourned or special meeting, all interested persons may appear and file written objections to the confirmation of such roll. Such notice shall state the class of the assessable improvements and the location thereof by terminal points and route.

(10) At the time and place stated in such notice the district board shall meet and receive the objections in writing of all interested persons as stated in such notice. The district board may adjourn the hearing from time to time. After the completion thereof the district board shall either annul or sustain or modify in whole or in part the preliminary assessment as indicated on such roll, either by confirming the preliminary assessment against any or all lots or parcels described therein or by canceling, increasing or reducing the same, according to the special benefits which the district board decided each such lot or parcel has received or will receive on account of such improvement. If any property which may be chargeable under this section shall have been omitted from the preliminary roll or if the preliminary assessment shall not have been made against it, the board may place on such roll an apportionment to such property. The district board shall not confirm any assessment in excess of the special benefits to the property assessed, and the assessments so confirmed shall be in proportion to the special benefits. Forthwith after such confirmation such assessment roll shall be delivered to the district clerk. The assessment so made shall be final and conclusive as to each lot or parcel assessed unless proper steps be taken within 30 days in a court of competent jurisdiction to secure relief. If the assessment against any property shall be sustained or reduced or abated by the court, the district clerk shall note that fact on the assessment roll opposite the description of the property affected thereby. The amount of the special assessment against any lot or parcel which may be reduced or abated by the court, unless the assessment upon the entire district be reduced or abated, or the amount by which such assessment is so reduced, may by resolution of the district board be made chargeable against the district at large; or, at the discretion of the district board, a new assessment roll may be prepared and confirmed in the manner hereinabove provided for the preparation and confirmation of the original assessment roll.

(11)(a) Any assessment may be paid at the office of the district clerk within 60 days after the confirmation thereof, without interest. Thereafter all assessments shall be payable in equal installments, with interest at not exceeding 8 percent per annum from the expiration of said 60 days in each of the succeeding number of years which the district board shall determine by resolution, not exceeding 20; provided however, that the district board may provide that any assessment may be paid at any time before due, together with interest accrued thereon to the date of payment, if such prior payment shall be permitted by the proceedings authorizing any assessment bonds or other obligations for the payment of which such special assessments have been pledged.

(b) All such special assessments shall be collected by the tax collector of the county in which the district is located at the same time as the ad valorem taxes of the district and general county taxes are collected by the tax collector of such county, and the district shall certify to the county tax collector in each year a list of all such special assessments and a description of and name of the owners of the properties against which such special assessments have been levied and the amounts due thereon in such year, and interest thereon, and any deficiencies for prior years.

(c) All assessments shall constitute a lien upon the property so assessed from the date of confirmation of the resolution ordering the improvement, of the same nature and to the same extent as the lien for general county taxes falling due in the same year or years in which such assessments or installments thereof fall due, and any assessment or installment not paid when due shall be collectible with such interest and with a reasonable attorney's fee and costs, but without penalties, by the district by proceedings in a court of equity to foreclose the lien of assessments as a lien for mortgages is or may be foreclosed under the laws of the state; provided that any such proceedings to foreclose shall embrace all installments of principal remaining unpaid with accrued interest thereon, which installments shall, by virtue of the institution of such proceedings, immediately become due and payable.

(d) Nevertheless, if prior to any sale of the property under decree of foreclosure in such proceedings, payment be made of the installment or installments which are shown to be due under the provisions of the resolution passed pursuant to subsection (10), and by this subsection and all costs including interest and attorney's fee, such payment shall have the effect of restoring the remaining installments to their original maturities as provided by the resolution passed pursuant to this subsection and the proceedings shall be dismissed.

(e) It shall be the duty of the district to enforce the prompt collection of assessment by the means herein provided, and such duty may be enforced at the suit of any holder of bonds issued under this law in a court of competent jurisdiction by mandamus or other appropriate proceedings or action.

(f) Not later than 30 days after the annual installments are due and payable, it shall be the duty

of the district board to direct the attorney or attorneys whom the district board shall then designate, to institute action within 2 months after such direction to enforce the collection of all special assessments for assessable improvements made under this section and remaining due and unpaid at the time of such direction. Such action shall be prosecuted in the manner and under the conditions in and under which mortgages are foreclosed under the laws of the state.

(g) It shall be lawful to join in one action the collection of assessments against any or all property assessed by virtue of the same assessment roll unless the court shall deem such joinder prejudicial to the interest of any defendant. The court shall allow a reasonable attorney's fee for the attorney or attorneys of the district, and the same shall be collectible as a part of or in addition to the costs of the action.

(h) At the sale pursuant to decree in any such action, the district may be a purchaser to the same extent as an individual person or corporation, except that the part of the purchase price represented by the assessments sued upon and the interest thereon need not be paid in cash. Property so acquired by a district may be sold or otherwise disposed of, the proceeds of such disposition to be placed in the fund provided by subsection (1) of this section; provided, however, that no sale or other disposition thereof shall be made unless the notice calling for bids therefor to be received at a stated time and place shall have been published in a newspaper published in the county and circulating in the district, or posted in the manner provided in s. 153.56 if there be no such newspaper, at least 20 days prior to such disposition.

(12) All assessments and charges made under the provisions of this section for the payment of all or any part of the cost of any assessable improvements for which assessment bonds shall have been issued under the provisions of this law, or which have been pledged as additional security for any other bonds or obligations issued under this law, shall be used only for the payment of principal of or interest on such assessment bonds or other bonds or obligations.

(13) The county in which the district is located and each school district and other political subdivision wholly or partly within the district shall possess the same power and be subject to the same duties and liabilities in respect of assessment under this section affecting the real estate of such county, school district or other political subdivision which private owners of real estate possess or are subject hereunder, and such real estate of any such county, school district and political subdivision shall be subject to liens for said assessments in all cases where the same property would be subject to such liens had it at the time the lien attached been owned by a private owner.

History.—s. 24, ch. 59-466; s. 6, ch. 73-302.

153.74 Issuance of certificates of indebtedness based on assessments for assessable improvements.—

(1) The district board may, after any assessments for assessable improvements are made, determined and confirmed as provided in s. 153.73, issue certificates of indebtedness for the amount so assessed against the abutting property or property otherwise benefited, as the case may be, and separate certificates shall be issued against each part or parcel of land assessed, which certificates shall state the general nature of the improvement for which the said assessment is made. Said certificates shall be payable in annual installments in accordance with the installments of the special assessments for which they are issued. The district board may determine the interest to be borne by such certificates at a rate no greater than 7½ percent per annum, and may sell such certificates at either private or public sale at not exceeding par and accrued interest and determine the form, manner of execution and other details of such certificates. Such certificates shall recite that they are payable only from the special assessments levied and collected from the part or parcel of land against which they are issued. The proceeds of such certificates may be pledged for the payment of principal of and interest on any revenue bonds or general obligation bonds issued to finance in whole or in part such assessable improvements, or, if not so pledged, may be used to pay the cost or part of the cost of such assessable improvements.

(2) The district may also issue assessment bonds or other obligations payable from a special fund into which such certificates of indebtedness referred to in the preceding subsection may be deposited; or, if such certificates of indebtedness have not been issued, the district may assign to such special fund for the benefit of the holders of such assessment bonds or other obligations, or to a trustee for such bondholders, the assessment liens provided for in s. 153.73(10), unless such certificates of indebtedness or assessment liens have been theretofore pledged for any bonds or other obligations authorized hereunder. In the event of the creation of such special fund and the issuance of such assessment bonds or other obligations, the proceeds of such certificates of indebtedness or assessment liens deposited therein shall be used only for the payment of the assessment bonds or other obligations issued as provided in this section. The district is hereby authorized to covenant with the holders of such assessment bonds or other obligations that it will diligently and faithfully enforce and collect all the special assessments and interest and penalties thereon for which such certificates of indebtedness or assessment liens have been deposited in or assigned to such fund, and to foreclose such assessment liens so assigned to such special fund or represented by the certificates of indebtedness deposited in said special fund, after such assessment liens have become delinquent and deposit the proceeds derived from such foreclosure, including interest and penalties, in such special fund, and to further make any other necessary covenants deemed necessary or advisable in order to properly secure the holders of such assessment bonds or other obligations.

(3) The assessment bonds or other obligations issued pursuant to this section shall have such dates of issue and maturity as shall be deemed advisable by the district board; provided, however, that the maturities of such assessment bonds or other obligation shall not be more than 2 years after the due date of the last installment which will be payable on any of the special assessments for which such assessment

liens, or the certificates of indebtedness representing such assessment liens, are assigned to or deposited in such special fund.

(4) Such assessment bonds or other obligations issued under this section shall bear interest at not exceeding 7½ percent per annum, shall be executed, shall have such provisions for redemption prior to maturity, shall be sold in the manner and be subject to all of the applicable provisions contained in s. 153.63 for revenue bonds, except as the same are inconsistent with the provisions of this section.

(5) All assessment bonds or other obligations issued under the provisions of this law, except certificates of indebtedness issued against separate parcels of land as provided in this section, shall be and constitute and have all the qualities and incidents of negotiable instruments under the law merchant and the Negotiable Instruments Law of the state.

History.—s. 25, ch. 59-466; s. 7, ch. 73-302.

153.75 Annual reports of district board.—The district board shall cause to be made at least once each year a comprehensive report of its water system or sewer system or both including all matters relating to rates, revenues, expenses of maintenance, repair and operation and renewals and capital replacements, principal and interest requirements and the status of all funds and accounts. Copies of such report shall be filed with the district clerk and shall be open to public inspection.

History.—s. 26, ch. 59-466.

153.76 Exemption from taxation.—As the exercise of the powers conferred by this law constitutes the performance of essential public functions and as any water system or sewer system or both constructed under the provisions of this law constitute public property used for public purposes such districts and all properties, revenues, or other assets thereof, and all bonds issued hereunder and the interest thereon, shall be exempt from all taxation by the state, or any political subdivision, agency or instrumentality thereof.

History.—s. 27, ch. 59-466.

153.77 District bonds as securities for public bodies.—All revenue bonds, general obligation bonds or assessment bonds issued pursuant to this law shall be and constitute legal investments for state, county, municipal and all other public funds and for banks, savings banks, insurance companies, executors, administrators, trustees and all other fiduciaries, and shall also be and constitute securities eligible as collateral security for all state, county, municipal or other public funds, subject to the restrictions and limitations of chapters 18, 136, 237, 518, 654, 656 through 661, and 665.

History.—s. 28, ch. 59-466.

153.78 Bonds as payment for services.—Any district is authorized to enter into agreements for the delivery of any revenue bonds, general obligation bonds or assessment bonds at one time or from time to time as full or partial payment for the services of any engineer or work done by any contractor who may have been retained or hired or been awarded a contract for the construction of all or any part of a water system or sewer system; provided, however, that any such bonds so delivered for payment of such services or work performed shall have been authorized and issued in the manner provided in this law and shall otherwise conform to the provisions hereof.

History.—s. 29, ch. 59-466.

153.79 Contracts for construction of improvements, sealed bids.—All contracts let, awarded or entered into by the district for the construction, reconstruction or acquisition or improvement of a water system or a sewer system or both or any part thereof, if the amount thereof shall exceed $1,000, shall be awarded only after public advertisement and call for sealed bids therefor, in a newspaper published in the county circulating in the district, or, if there be no such newspaper, then in a newspaper published in the state and circulating in the district, such advertisement to be published at least once at least 3 weeks before the date set for the receipt of such bids. Such advertisements for bids in addition to the other necessary and pertinent matter shall state in general terms the nature and description of the improvement or improvements to be undertaken and shall state that detailed plans and specifications for such work are on file for inspection in the office of the district clerk and copies thereof shall be furnished to any interested party upon payment of reasonable charges to reimburse the district for its expenses in providing such copies. The award shall be made to the responsible and competent bidder or bidders who shall offer to undertake the improvements at the lowest cost to the district and such bidder or bidders shall be required to file bond for the full and faithful performance of such work and the execution of any such contract in such amount as the district board shall determine, and in all other respects the letting of such construction contracts shall comply with applicable provisions of the general laws relating to the letting of public contracts. Nothing in this section shall be deemed to prevent the district from hiring or retaining such consulting engineers, attorneys, financial experts or other technicians as it shall determine, in its discretion, or from undertaking any construction work with its own resources, without any such public advertisement.

History.—s. 30, ch. 59-466.

153.80 Consolidation of systems.—Any water system or sewer system of a district may be combined into a single consolidated system for purposes of financing or of operation and administration, or both.

History.—s. 31, ch. 59-466.

153.81 Ad valorem maintenance tax.—In addition to the ad valorem taxes authorized to be levied to pay the principal of and interest on general obligation bonds, or as additional security for revenue bonds or assessment bonds, any district is authorized to levy a special ad valorem maintenance tax of a sufficient number of mills upon the dollar of assessed valuation of property subject to taxation in the district to pay for the maintenance and operation and other corporate purposes of said district;

provided, however, that such special maintenance tax shall in no event exceed 5 mills during any one year. Such special maintenance tax shall be levied and collected in the manner provided herein for ad valorem taxes levied and collected for debt service on bonds issued pursuant to this law.

History.—s. 32, ch. 59-466.

153.82 Handling of taxes and special assessments, district treasurer.—All ad valorem taxes or special assessments levied and collected in any district in the manner provided herein shall when received be paid over by the proper officials of the county in which the district is located to the treasurer of the district to be applied as provided in this law and in the proceedings authorizing the issuance of any bonds or other obligations pursuant to this law.

History.—s. 33, ch. 59-466.

153.83 Free water and sewer services prohibited.—The same rates, fees and charges shall be fixed and collected from any county, school district or other political subdivision using the services and facilities of the water system or sewer system, or both, as are fixed and collected from other users of such facilities in the same class. No free water or sewer services shall be rendered by the district and no discrimination shall exist in the fees, rates and charges for users of the same class.

History.—s. 34, ch. 59-466.

153.84 Contracts enforceable by bondholders.—Any contract entered into by any district shall be deemed to have been made for the benefit of any holders of bonds issued pursuant to this law to the extent necessary, and the terms of any such contract shall be enforceable by such bondholders in any appropriate legal proceeding. Any such contract if made with another public body or municipality may be enforceable without the requirement of formal consideration.

History.—s. 35, ch. 59-466.

153.85 Conveyance of property without consideration.—Any municipality or political subdivision is authorized to sell, lease, grant or convey any real or personal property to any district and any such sale, grant, lease or conveyance may be made without formal consideration.

History.—s. 36, ch. 59-466.

153.86 District approval of construction of water and sewage facilities.—No sewage disposal plant or other facilities for the collection and treatment of sewage or any water treatment plant or other facilities for the supply and distribution of water, shall be constructed within any district unless the district board shall give its consent thereto and approve the plans and specifications therefor; subject, however, to the terms and provisions of any resolution authorizing any bonds and agreements with bondholders.

History.—s. 37, ch. 59-466.

153.87 Mortgage or sale by board of district property prohibited; rights of bondholders protected.—No district board shall have power to mortgage, pledge, encumber, sell or otherwise convey all or any part of any water system or sewer system, or both, except that the district board may dispose of any part of such system or systems as may be no longer necessary for the purposes of the district. The provisions of this section shall be deemed to constitute a contract with all bondholders. All district property shall be exempt from levy and sale by virtue of an execution and no execution or other judicial process shall issue against such property nor shall any judgment against a district be a charge or lien on its property or revenues; provided, that nothing herein contained shall apply to or limit the rights of bondholders to pursue any remedy for the enforcement of any lien or pledge given by a district on revenues derived from the operation of any water system or sewer system, or both.

History.—s. 38, ch. 59-466.

153.88 Construction of law.—

(1) The provisions of this law shall be liberally construed to effect its purposes and shall be deemed cumulative, supplemental and alternative authority for the exercise of the powers provided herein. The exercise of the powers provided in this law and the issuance of bonds or other obligations hereunder shall not be subject to the limitations or provisions of any other law or laws except as expressly provided herein.

(2) Nothing herein contained shall be construed to affect any local or special act in force and effect on June 19, 1959.

History.—ss. 39, 41, ch. 59-466.

153.95 Rural water and sewer service pilot project.—

(1) The Department of Community Affairs is directed to oversee and disburse funds for the planning, administration, installation, operation, and maintenance of water and sewer facilities and services in a pilot project serving rural areas of the state. Such planning, administration, installation, operation, and maintenance shall be performed by and through the Community Water and Sewer Association, Inc., a Florida nonprofit corporation.

(2) The department shall promulgate such reasonable rules and regulations as may be necessary for the orderly, efficient, and economical administration of this project.

(3) The department shall submit a report to the Governor and Legislature regarding the progress of this project at least 90 days prior to the 1975 legislative session, at least 90 days prior to the 1976 legislative session, and at least 90 days prior to the 1977 legislative session.

History.—ss. 1-3, ch. 74-66; s. 90, ch. 79-190.

CHAPTER 154

PUBLIC HEALTH FACILITIES

PART I COUNTY PUBLIC HEALTH UNITS (ss. 154.01-154.06)

PART II COUNTY PUBLIC HEALTH TRUSTS (ss. 154.07-154.12)

PART III HEALTH FACILITIES AUTHORITIES (ss. 154.201-154.246)

PART IV HEALTH CARE RESPONSIBILITY FOR INDIGENTS (ss. 154.301-154.316)

PART I

COUNTY PUBLIC HEALTH UNITS

154.01 Health units authorized.—The several counties of the state, and cities therein, may cooperate with the Department of Health and Rehabilitative Services in the establishment and maintenance of full-time local health units in such counties for the control and eradication of preventable diseases, and inculcate modern scientific methods of hygiene, sanitation and the prevention of communicable diseases. In addition, there shall be clinic-care and health care delivery programs where there is a demonstrated need for such services.

History.—s. 1, ch. 14906, 1931; CGL 1936 Supp. 2934(22); s. 7, ch. 22858, 1945; ss. 19, 35, ch. 69-106; s. 14, ch. 75-48; s. 29, ch. 77-147.

154.02 Tax; disposition of proceeds; reports.—To enable such counties to execute the purposes of this chapter, every county in the state with a population exceeding 100,000, according to the last state census, may levy an annual tax of not exceeding ½ mill, and every county in the state with a population exceeding 40,000 according to the last state census, and not exceeding 100,000, may levy an annual tax of not exceeding 1 mill, and every county in the state with a population not exceeding 40,000 according to the last state census, may levy an annual tax not exceeding 2 mills, on the dollar on all taxable property in such county, the proceeds of which, when collected, shall be paid to the Department of Health and Rehabilitative Services for deposit with the State Treasurer. However, the board of county commissioners may elect to pay in 12 equal monthly installments. Such funds in the hands of the State Treasurer shall be known as the full-time local health unit trust funds of the county by which such funds were raised; and said funds shall be expended by the department solely for the purpose of carrying out the intent and object of this chapter in such county. The department shall render to the county commissioners of any such county providing such funds a semiannual financial statement for the disbursement thereof, so long as said moneys shall continue to be disbursed by and under the direction of the department.

History.—s. 2, ch. 14906, 1931; CGL 1936 Supp. 2934(23); s. 19, ch. 29615, 1955; s. 2, ch. 61-119; ss. 19, 35, ch. 69-106; s. 1, ch. 72-323; s. 30, ch. 77-147.

154.03 Cooperation with Department of Health and Rehabilitative Services and United States Government.—

(1) The county commissioners of any county may agree with the Department of Health and Rehabilitative Services upon the expenditure by the department in such county of any funds allotted for that purpose by the department or received by it for such purposes from private contributions or other sources, and such funds shall be paid to the State Treasurer and shall form a part of the full-time local health unit trust fund of such county, and shall be expended by the department solely for the purposes of this chapter. The department is further authorized to arrange and agree with the United States Government through its duly authorized officials for the allocation and expenditure by the United States of funds of the United States in the study of causes of disease and prevention thereof in such full-time local health units when and where established by the department under this chapter.

(2) Nothing in chapter 75-48, Laws of Florida, shall affect the powers and authorities granted to the several counties of the state and the county commissions thereof by chapter 154, except to substitute the Department of Health and Rehabilitative Services in place of the Division of Health as a party in interest in any agreements provided for in that chapter and except as provided in ss. 154.01 and 154.04.

History.—s. 3, ch. 14906, 1931; CGL 1936 Supp. 2934(24); s. 2, ch. 61-119; ss. 19, 35, ch. 69-106; s. 13, ch. 75-48; s. 31, ch. 77-147; s. 74, ch. 79-400.

154.04 Personnel of health units; duties; compensation, etc.—The personnel of the minimum full-time local health unit shall consist of a director, a public health nurse, a sanitarian, and a clerk. The director shall be either a doctor of medicine or a doctor of osteopathy. All of the members of such personnel shall be selected from those especially trained in public health administration and practice, so far as the same shall relate to the duties of their respective positions. They shall be employed by the board of county commissioners; provided, however, that no such personnel shall be employed by the board of county commissioners unless such person-

nel shall be approved by the Department of Health and Rehabilitative Services. When a vacancy occurs in the position of director of the local health unit, eligible candidates shall be presented to the board of county commissioners and, if no appointment is made within 6 months from the time of this presentation, then the Secretary of Health and Rehabilitative Services shall make the appointment. The duties of said personnel shall be fixed and determined by the department, upon the approval by the board of county commissioners. The compensation of said personnel shall be determined under the rules and regulations of the Division of Personnel of the Department of Administration. Such employees shall engage in the prevention of disease and the promotion of health in cooperation with, and under the supervision of, the department.

History.—s. 4, ch. 14906, 1931; CGL 1936 Supp. 2934(25); ss. 19, 35, ch. 69-106; s. 1, ch. 72-139; s. 2, ch. 72-323; s. 3, ch. 72-345; s. 14, ch. 75-48; s. 32, ch. 77-147.

154.05 Cooperation and agreements between counties.—Two or more counties may combine in the establishment and maintenance of a single full-time local health unit for the counties which combine for that purpose, and pursuant to such combination or agreement such counties may cooperate with one another and the Department of Health and Rehabilitative Services and contribute to a joint fund in carrying out the purpose and intent of this chapter. The duration and nature of such agreement shall be evidenced by resolutions of the board of county commissioners of such counties and shall be submitted to and approved by the department. In the event of any such agreement, a full-time local health unit shall be established and maintained by the department in and for the benefit of the counties which have entered into such an agreement; and, in such case, the funds raised by taxation pursuant to this chapter by each such county shall be paid to the State Treasurer for the account of the department and shall be known as the full-time local health unit trust fund of the counties so cooperating. Such trust funds shall be used and expended by the department for the purposes specified in this chapter in the counties which have entered into such agreement. In case such an agreement is entered into between two or more counties, the work contemplated by this chapter shall be done by a single full-time local health unit in the counties so cooperating, and the nature, extent and location of such work shall be under the control and direction of the department.

History.—s. 5, ch. 14906, 1931; CGL 1936 Supp. 2934(26); s. 2, ch. 61-119; ss. 19, 35, ch. 69-106; s. 33, ch. 77-147.

154.06 Fees and services rendered; authority.—Each local health unit may collect reasonable fees for services rendered, provided a schedule of such fees is established by the board of county commissioners, or an equivalent municipal body, and filed with the Department of Health and Rehabilitative Services. All funds collected hereunder shall be expended solely for the purpose of providing health services and facilities within the area served by the local health unit. The board of county commissioners, or its equivalent municipal body, may provide for the transmittal of funds collected under the provisions of this chapter to the state treasury for credit to the local health unit trust fund.

History.—ss. 1, 2, ch. 69-80; ss. 19, 35, ch. 69-106; s. 3, ch. 72-323; s. 34, ch. 77-147.

PART II

COUNTY PUBLIC HEALTH TRUSTS

154.07 Public health trusts; creation.—There may be created in and for each county of the state a public body corporate and politic, to be known as the "public health trust" of such county, for the purpose of exercising the powers described herein with respect to "designated facilities" as that term is hereinafter defined. No trust created hereunder shall transact any business or exercise any powers until the governing body of the county of such trust shall, by proper resolution, declare that there is a need for such trust to function and shall appoint the members thereof.

History.—s. 1, ch. 73-102.

154.08 Designated facilities; definition.—

(1) The board of trustees of each public health trust is authorized to become the operator of, and governing body for, any designated facility. The term "designated facility" shall mean any county-owned or county-operated facility used in connection with the delivery of health care, the operation, governance, or maintenance of which has been designated by the governing body of such county for transfer to the public health trust of that county.

(2) Designated facilities may include, but shall not be limited to, the following: sanatoriums, clinics, ambulatory care centers, primary care centers, hospitals, rehabilitation centers, health training facilities, nursing homes, nurses' residence buildings, infirmaries, outpatient clinics, mental health facilities, residences for the aged, rest homes, health care administration buildings, and parking facilities and areas serving health care facilities.

History.—s. 2, ch. 73-102.

154.09 Governing body; composition.—

(1) The governing body of each public health trust shall be a board of trustees consisting of not less than 7 nor more than 21 members, to be appointed for staggered terms of not more than 4 years by the governing body of the county in which such trust is located from among the residents of the county in a manner to be determined by the governing body of the county.

(2) The governing body of the county in which a public health trust is located shall have the power to remove any member of the board of trustees for cause and to fill any vacancies that may occur dur-

ing the term of any trustees for the remainder of such a term.

(3) Before entering upon the duties of the office, each member of the board of trustees shall take the prescribed oath of office. Each trustee shall give bond to the clerk of the governing body of the county for the faithful performance of the duties of said office, in a sum to be fixed by said governing body. The bond shall be issued by a surety company authorized to do business in the state as a surety. The premium on said bond shall be paid by the trust as part of the expense of the board of trustees.

(4) The board of trustees shall organize immediately after the members thereof are qualified, elect one of its members as a chairman and one of its members as a vice chairman, and designate a secretary who may or may not be a member of the board.

(5) Members of the board of trustees shall serve without compensation, but shall be entitled to necessary expenses incurred in the discharge of their duties.

(6) The board of trustees shall hold regular meetings in accordance with the bylaws of the public health trust, and the board may hold such other meetings as it deems necessary. All meetings of the board shall be public, and written minutes of the proceedings of each meeting shall be maintained by the board. All of the actions taken at said meetings shall be properly and promptly recorded.

History.—s. 3, ch. 73-102.

154.10 Relationship with board of county commissioners.—At such time as the governing body of a county shall declare the need for a public health trust to function in such county, appoint a board of trustees, and designate health care facilities pursuant to the provisions of this part, said governing body shall be authorized to transfer to the public health trust any or all of the ownership, operation, governance, or maintenance of such designated facilities. The county governing body shall, by ordinance, by contract or lease with the public health trust, or by a combination of the foregoing, provide for each of the following:

(1) A method whereby the public health trust shall account to the county governing body for all receipts and expenditures of money.

(2) A method whereby the public health trust shall request, and the county governing body may approve, the appropriation and payment of county funds to support the lawful purposes of the trust.

(3) A method whereby the public health trust shall request, and said county governing body may effectuate, the issuance of bonds or the borrowing of money, pursuant to authority vested in said governing body of the county.

(4) Compliance by the public health trust with policies for countywide health care delivery as established by the county governing body.

(5) The preservation and continuation of the benefits of county employees who became employees of the public health trust, including, but not limited to, participation by such employees in the State and County Officers and Employees' Retirement System and the Florida Retirement System. The trust may provide social security for its employees pursuant to the provisions of chapter 650 and may bring its employees under the provisions of the Florida Retirement System as authorized by chapter 121.

(6) An appellate process to be available to employees against whom disciplinary or other official action has been taken.

(7) A procedure whereby the county governing body may approve or disapprove of contracts between the board of trustees and labor unions.

(8) A method whereby the county governing body may declassify facilities as "designated facilities" and provide for the county to assume the ownership, operation, governance, or maintenance of such facilities.

History.—s. 4, ch. 73-102.

154.11 Powers of board of trustees.—

(1) The board of trustees of each public health trust shall be deemed to exercise a public and essential governmental function of both the state and the county and in furtherance thereof it shall, subject to limitation by the governing body of the county in which such board is located, have all of the powers necessary or convenient to carry out the operation and governance of designated health care facilities, including, but without limiting the generality of, the foregoing:

(a) To sue and be sued; however, this provision shall not be construed to affect in any way the laws relating to governmental immunity.

(b) To have a seal and alter the same.

(c) To make and adopt bylaws and rules and regulations for the board's guidance and for the operation, governance, and maintenance of designated facilities not inconsistent with ordinances of the county.

(d) To make and execute contracts and other instruments necessary to exercise the powers of the board.

(e) To acquire by purchase or otherwise, and to hold title to, any property, real or personal, useful to the purposes of the board.

(f) To lease, either as lessee or lessor, or rent for any number of years and upon any terms and conditions real property, except that the board shall not lease or rent, as lessor, any real property except in accordance with the requirements of s. 125.35 [F. S. 1973].

(g) To appoint a chief executive officer of the trust and to remove such an appointee.

(h) To establish rates and charges for those using the facilities of, or receiving care or assistance from, the board and to collect money pursuant thereto.

(i) To accept gifts of money, services, or real or personal property.

(j) To appoint, remove, or suspend employees or agents of the board, fix their compensation, and adopt personnel and management policies.

(k) To provide for employee benefits, including, but not limited to, the benefits required by s. 154.10(5) and those benefits provided by s. 154.12(1).

(l) To cooperate with and contract with any governmental agency or instrumentality, federal, state, municipal, or county.

(m) To adopt and amend rules and regulations for the management and use of any properties under its control.

(n) To appoint originally the staff of physicians

to practice in any designated facility owned or operated by the board and to approve the bylaws and rules to be adopted by the medical staff of any designated facility owned and operated by the board, such governing regulations to be in accordance with the standards of the Joint Commission on the Accreditation of Hospitals which provide, among other things, for the method of appointing additional staff members and for the removal of staff members.

(o) To employ certified public accountants to audit and analyze the records of the board and to prepare financial or revenue statements of the board; however, this paragraph shall not in any way affect any responsibility of the auditor general in connection with the records of the board.

(p) To employ legal counsel.

(2) A public health trust shall have no power to impose any tax or issue bonds of any nature, nor shall it have the power to require the imposition of a tax or the issuance of any bond by the governing body of the county.

History.—ss. 5, 6, ch. 73-102.

154.12 Legal status of public health trusts.—(1) Employees of a public health trust created pursuant to this part shall be considered to come within the terms of chapter 122 for purposes of inclusion in the State and County Officers and Employees Retirement System and within the terms of chapter 121, for purposes of inclusion in the Florida Retirement System.

(2) A public health trust shall be considered an agency of the state with regard to s. 732.29, relating to filing of caveats.

(3) Nothing contained in this part shall be deemed to provide an exclusive method by which counties may operate, govern, and maintain health care facilities, and counties shall be authorized to utilize any other method or means authorized by law for this purpose. Nothing contained herein shall affect the continued validity and operation of hospital districts created by special acts.

History.—ss. 7, 8, 11, ch. 73-102.

PART III

HEALTH FACILITIES AUTHORITIES

154.201 Short title.—This part shall be known and cited as the "Health Facilities Authorities Law."

History.—s. 1, ch. 74-323.

154.203 Findings and declaration of necessity.—It is declared that for the benefit of the people of this state, the increase of their commerce, welfare, and prosperity, and the improvement of their health and living conditions it is essential that the people of this state have access to adequate medical care and health facilities and that it is essential that health facilities within each county and municipality in the state be provided with appropriate additional means to assist in the development and maintenance of the public health. It is the purpose of this part to provide a measure of assistance and an alternate method to enable health facilities in each county and municipality of this state to provide the facilities and structures which are determined to be needed by the community to accomplish the purposes of this part. The necessity in the public interest of the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

History.—s. 2, ch. 74-323.

154.205 Definitions.—The following terms, whenever used in this part, shall have the following meanings unless a different meaning clearly appears from the context:

(1) "Areawide council" means an advisory comprehensive health planning council, as described and approved under all pertinent federal and state law and rules and regulations.

(2) "Authority" or "health facilities authority" means any of the public corporations created by s. 154.207 or any board, body, commission, or department of a county or municipality succeeding to the principal functions thereof or to whom the powers conferred upon each authority by this part shall be given by law.

(3) "Bonds" or "revenue bonds" means revenue bonds of the authority issued under the provisions of this part, including revenue refunding bonds, notwithstanding that the same may be secured by mortgage or the full faith and credit of a health facility.

(4) "Certificate of need" means a written advisory statement issued by the Department of Health and Rehabilitative Services, having as its basis a written advisory statement issued by an areawide council and, where there is no council, by the Department of Health and Rehabilitative Services, evidencing community need for a new, converted, expanded, or otherwise significantly modified health facility.

(5) "Clerk" means the clerk of the local agency, or the officer of the local agency, charged with the

duties customarily imposed upon the clerk thereof.

(6) "Cost," as applied to a project or any portion thereof financed under the provisions of this part, embraces:

(a) All or any part of the cost of construction and acquisition of all real property, lands, structures, real or personal property rights, rights-of-way, franchises, easements, and interest acquired or used for a project.

(b) The cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be removed.

(c) The cost of all machinery and equipment.

(d) Financing charges and interest prior to, during, and for a period of 24 months after, completion of such construction.

(e) Provisions for reserves for principal and interest and for extensions, enlargements, additions, and improvements.

(f) The cost of engineering, appraisal, architectural, accounting, financial, and legal services.

(g) The cost of plans, specifications, studies, surveys, and estimates of cost and revenues.

(h) Administrative expenses, including expenses necessary or incident to determining the feasibility or practicability of constructing the project.

(i) Such other expenses as may be necessary or incident to the construction and acquisition of the project, the financing of such construction and acquisition, and the placing of the project in operation.

(7) "Governing body" means the board, commission, or other governing body of any local agency in which the general legislative powers of such local agency are vested.

(8) "Health facility" means any private corporation organized not for profit and authorized by law to provide hospital or nursing home care services in accordance with chapter 395 or chapter 400.

(9) "Local agency" means any county or municipality existing or hereafter created pursuant to the laws of this state.

(10) "Project" means any structure, facility, machinery, equipment, or other property suitable for use by a health facility in connection with its operations or proposed operations, including, without limitation, real property therefor; a clinic, computer facility, dining hall, firefighting facility, fire prevention facility, food service and preparation facility, health care facility, long-term care facility, hospital, interns' residence, laboratory, laundry, maintenance facility, nurses' residence, nursing home, nursing school, office, parking area, pharmacy, recreational facility, research facility, storage facility, utility, or X-ray facility, or any combination of the foregoing; and other structures or facilities related thereto or required or useful for health care purposes, the conducting of research, or the operation of a health facility, including facilities or structures essential or convenient for the orderly conduct of such health facility and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended. "Project" shall not include such items as fuel, supplies, or other items which are customarily deemed to result in a current operating charge.

(11) "Real property" includes all lands, including buildings, structures, improvements, and fixtures thereon; any property of any nature appurtenant thereto or used in connection therewith; and every estate, interest, and right, legal or equitable, therein, including any such interest for a term of years.

History.—s. 3, ch. 74-323; s. 1, ch. 77-455; s. 1, ch. 78-115.

154.207 Creation of health facilities authorities.—

(1) In each local agency there may be created a public body corporate and politic to be known as the "(name of local agency) Health Facilities Authority." Each of said authorities shall be constituted as a public instrumentality, and the exercise by an authority of the powers conferred by this part shall be deemed and held to be the performance of an essential public function. Each of said authorities shall not transact any business or exercise any power hereunder until and unless the governing body of the local agency by proper ordinance or resolution shall declare that there is a need for an authority to function in such local agency. The determination as to whether there is such need for an authority to function:

(a) May be made by the governing body on its own motion.

(b) May be made by the governing body upon the filing of a petition signed by 25 residents of the local agency asserting that there is need for an authority to function in such local agency and requesting that the governing body so declare.

(2) The governing body may abolish the authority at any time by ordinance or resolution. However, the authority shall not be abolished until such time as all bonded indebtedness incurred pursuant to this part has been paid.

(3) In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of the authority, the authority shall be conclusively deemed to have been established and authorized to transact business and exercise its powers hereunder by adoption of an ordinance or resolution by the governing body declaring the need for the authority. Such ordinance or resolution shall be sufficient if it declares that there is such a need for an authority in the local agency. A copy of such ordinance or resolution duly certified by the clerk shall be admissible in evidence in any suit, action, or proceeding.

(4) The governing body of the local agency shall designate five persons who are residents of the local agency as members of the authority created for said local agency. Of the members first appointed, one shall serve for 1 year, one for 2 years, one for 3 years, and two for 4 years; in each case until his successor is appointed and has qualified. Thereafter the governing body shall appoint, for terms of 4 years each, a member or members to succeed those whose terms expire. The governing body shall fill any vacancy for an unexpired term. A member of the authority shall be eligible for reappointment. Any member of the authority may be removed by the governing body for misfeasance, malfeasance, or willful neglect of duty. Each member of the authority, before entering upon his duties, shall take and subscribe the oath or affirmation required by the State Constitution. A record

of each oath shall be filed in the Department of State and with the clerk.

(5) The authority shall annually elect one of its members as chairman and one as vice chairman.

(6) The authority shall keep a record of its proceedings and shall be custodian of all books, documents, and papers filed with it and of its minute book or journal and official seal. The authority shall cause copies to be made of all its minutes and other records and documents and shall give certificates under its official seal to the effect that such copies are true copies, and all persons dealing with it may rely upon such certificates.

(7) Three members of the authority shall constitute a quorum, and the affirmative vote of a majority of the members present at a meeting of the authority shall be necessary for any action taken by an authority. However, any action may be taken by the authority with the unanimous consent of all of its members. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the provisions of this part may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted. All meetings of the authority, as well as all records, books, documents, and papers, shall be open and available to the public in accordance with s. 286.011.

(8) The members of the authority shall receive no compensation for the performance of their duties hereunder, but each member shall be paid his necessary expenses incurred while engaged in the performance of such duties pursuant to s. 112.061.

(9) Any general or special law, rule or regulation, or ordinance of any local agency to the contrary notwithstanding, service as a member of an authority by a trustee, director, officer, or employee of a health facility shall not in and of itself constitute a conflict of interest. However, any member of the authority who is employed by, or receives income from, a health facility under consideration by the authority shall not vote on any matter related to such facility.

History.—s. 4, ch. 74-323.

154.209 Powers of authority.—The purpose of the authority shall be to assist health facilities in the acquisition, construction, financing, and refinancing of projects in any corporated or unincorporated area within the geographical limits of the local agency. For this purpose, the authority is authorized and empowered:

(1) To adopt an official seal and alter the same at pleasure.

(2) To maintain an office at such place or places in the local agency as it may designate.

(3) To sue and be sued in its own name and to plead and be impleaded.

(4) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, for the acquisition, construction, operation, or maintenance of any project.

(5) To construct, acquire, own, lease, repair, maintain, extend, expand, improve, rehabilitate, renovate, furnish, and equip projects and to pay all or any part of the costs thereof from the proceeds of bonds of the authority or from any contribution, gift, or donation or other funds made available to the authority for such purpose.

(6) To make and execute agreements of lease, contracts, deeds, mortgages, notes, and other instruments necessary or convenient in the exercise of its powers and functions under this part.

(7) To sell, lease, exchange, mortgage, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to any project, any real or personal property or interest therein.

(8) To pledge or assign any money, rents, charges, fees, or other revenues and any proceeds derived from sales of property, insurance, or condemnation awards.

(9) To fix, charge, and collect rents, fees, and charges for the use of any project.

(10) To issue bonds for the purpose of providing funds to pay all or any part of the cost of any project and to issue refunding bonds.

(11) To employ consulting engineers, architects, surveyors, attorneys, accountants, financial experts, and such other employees and agents as may be necessary in its judgment and to fix their compensation.

(12) To acquire existing projects and to reimburse any health facility for the cost of such project in accordance with an agreement between the authority and the health facility. However, no such reimbursement shall exceed the total cost of the project as determined by the health facility and approved by the authority.

(13) To acquire existing projects and to refund outstanding obligations, mortgages, or advances issued, made, or given by a health facility for the cost of such project.

(14) To charge to, and equitably apportion among, health facilities its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this part.

(15) To mortgage any project and the site thereof for the benefit of the holders of the bonds issued to finance such project.

(16) To do all things necessary to carry out the purposes of this part.

History.—s. 5, ch. 74-323; s. 1, ch. 77-174.

154.211 Payment of expenses.—All expenses incurred in carrying out the provisions of this part shall be payable solely from funds provided under the provisions of this part, and no liability or obligation shall be incurred by an authority, a local agency, or the state hereunder beyond the extent to which moneys shall have been provided under the provisions of this part.

History.—s. 6, ch. 74-323.

154.213 Agreements of lease.—In undertaking any project pursuant to this part, the authority shall first obtain a valid certificate of need evidencing need for the project and a statement that the project serves a public purpose by advancing the commerce, welfare, and prosperity of the local agency and its people. No project financed under the provisions of this part shall be operated by the authority or any other governmental agency; however, the authority may temporarily operate or cause to be operated all

or any part of a project to protect its interest therein pending any leasing of such project in accordance with the provisions of this part. The authority may lease a project or projects to a health facility for operation and maintenance in such manner as to effectuate the purposes of this part under an agreement of lease in form and substance not inconsistent herewith.

(1) Any such agreement of lease may provide, among other provisions, that:

(a) The lessee shall at its own expense operate, repair, and maintain the project or projects leased thereunder.

(b) The rent payable under the lease shall in the aggregate be not less than an amount sufficient to pay all of the interest, principal, and redemption premiums, if any, on the bonds that shall be issued by the authority to pay the cost of the project or projects leased thereunder.

(c) The lessee shall pay all costs incurred by the authority in connection with the acquisition, financing, construction, and administration of the project or projects leased, except as may be paid out of the proceeds of bonds or otherwise, including, but without being limited to: Insurance costs, the cost of administering the bond resolution authorizing such bonds and any trust agreement securing the bonds, and the fees and expenses of trustees, paying agents, attorneys, consultants, and others.

(d) The terms of the lease shall terminate not earlier than the date on which all such bonds and all other obligations incurred by the authority in connection with the project or projects leased thereunder shall be paid in full, including interest, principal, and redemption premiums, if any, or adequate funds for such payment shall be deposited in trust.

(e) The lessee's obligation to pay rent shall not be subject to cancellation, termination, or abatement by the lessee until such payment of the bonds or provision for such payment shall be made.

(2) Such lease agreement may contain such additional provisions as in the determination of the authority are necessary or convenient to effectuate the purposes of this part, including provisions for extensions of the term and renewals of the lease and vesting in the lessee an option to purchase the project leased thereunder pursuant to such terms and conditions consistent with this part as shall be prescribed in the lease. Except as may otherwise be expressly stated in the agreement of lease, to provide for any contingencies involving the damaging, destruction, or condemnation of the project leased or any substantial portion thereof, such option to purchase may not be exercised unless all bonds issued for such project, including all principal, interest, and redemption premiums, if any, and all other obligations incurred by the authority in connection with such project, shall have been paid in full or sufficient funds shall have been deposited in trust for such payment. The purchase price of such project shall not be less than an amount sufficient to pay in full all of the bonds, including all principal, interest, and redemption premiums, if any, issued for the project then outstanding and all other obligations incurred by the authority in connection with such project.

History.—s. 7, ch. 74-323.

154.215 Construction contracts.—Contracts for the construction of any project shall be awarded by the authority upon a competitive or negotiated basis, as it determines will most effectively serve the purposes of this part. The authority may, by written contract, engage the services of the lessee or prospective lessee of any project in the construction of such project and may provide in such contract that the lessee or prospective lessee may act as an agent of, or an independent contractor for, the authority for the performance of the functions described therein, subject to such conditions and requirements consistent with the provisions of this part as shall be prescribed in such contract, including such functions as the acquisition of the site and other real property for such project; the preparation of plans, specifications, and contract documents; the award of construction and other contracts upon a competitive or negotiated basis; the construction of such project, or any part thereof, directly by such lessee or prospective lessee; the inspection and supervision of construction; the employment of engineers, architects, builders, and other contractors; and the provisions of money to pay the cost thereof pending reimbursement by the authority. Any such contract may provide that the authority may, out of proceeds of bonds, make advances to or reimburse the lessee or prospective lessee for its costs incurred in the performance of such functions and shall set forth the supporting documents required to be submitted to the authority and the reviews, examinations, and audits that shall be required in connection therewith to assure compliance with the provisions of this part and such contract.

History.—s. 8, ch. 74-323.

154.217 Notes of authority.—The authority is authorized from time to time to issue its negotiable notes for any corporate purposes and renew from time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. Except as otherwise provided herein or in s. 154.219, the maximum maturity of such notes, not including renewals thereof, shall not exceed 1 year. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. All such notes shall be payable solely from the revenues of the authority, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding.

History.—s. 9, ch. 74-323.

154.219 Revenue bonds.—

(1) The authority is authorized from time to time to issue its negotiable revenue bonds for the purpose of paying all or any part of the cost of any project or projects for which a certificate of need has been obtained, or pursuant to subsections (12) and (13) of s. 154.209 for the purpose of paying all or any part of the cost of acquiring existing or completed health facilities projects. In anticipation of the sale of such revenue bonds, the authority may issue negotiable bond anticipation notes and may renew the same

from time to time, but the maximum maturity of any such note, including renewals thereof, shall not exceed 5 years from the date of issue of the original note. Such notes shall be paid from any revenues of the authority available therefor and not otherwise pledged or from the proceeds of sale of the revenue bonds of the authority in anticipation of which they were issued. The notes shall be issued in the same manner as the revenue bonds. Such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions, or limitation which a bond resolution of the authority may contain.

(2) The revenue bonds and notes of every issue shall be payable solely out of revenues derived by the authority from the sale, operation, or leasing of any project or projects, subject only to any agreements with the holders of particular revenue bonds or notes pledging any particular revenues. Notwithstanding that revenue bonds and notes may be payable from a special fund, they shall be, and be deemed to be, for all purposes, negotiable instruments, subject only to the provisions of the revenue bonds and notes for registration.

(3) The revenue bonds may be issued as serial bonds or as term bonds, or the authority, in its discretion, may issue bonds of both types. The revenue bonds shall be authorized by resolution of the members of the authority and shall bear such date or dates; mature at such time or times, not exceeding 50 years from their respective dates; bear interest at such rate or rates; be payable at such time or times; be in such denominations; be in such form, either coupon or registered, or both; carry such registration privileges; be executed in such manner; be payable in lawful money of the United States at such place or places; and be subject to such terms of redemption, including redemption prior to maturity, as such resolution or resolutions may provide. The authority shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. In case any officer whose signature, or a facsimile of whose signature, shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The authority shall also provide for the authentication of the bonds by a trustee or fiscal agent. The revenue bonds or notes may be sold at public or private sale for such price or prices as the authority shall determine. Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

(4) Any resolution or resolutions authorizing any revenue bonds or any issue of revenue bonds may contain provisions which shall be a part of the contract with the holders of the revenue bonds to be authorized, as to:

(a) Pledging of all or any part of the revenues of a project to secure the payment of the revenue bonds or of any particular issue of revenue bonds, subject to such agreements with bondholders as may then exist.

(b) The rentals, fees, and other charges to be charged, the amounts to be raised in each year thereby, and the use and disposition of the revenues.

(c) The setting aside of reserves or sinking funds and the regulation and disposition thereof.

(d) Limitations on the right of the authority to restrict and regulate the use of the project.

(e) Limitations on the purpose to which the proceeds of sale of any issue of revenue bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the revenue bonds or any issue of the revenue bonds.

(f) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds.

(g) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given.

(h) Defining the acts or omissions to act which shall constitute a default in the duties of the authority to holders of its obligations and providing the rights and remedies of such holders in the event of a default.

(i) The mortgaging of a project and the site thereof for the purpose of securing the bondholders.

(5) Neither the members of the authority nor any person executing the revenue bonds or notes shall be liable personally on the revenue bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

History.—s. 10, ch. 74-323.

154.221 Security of bondholders.—In the discretion of the authority, any bonds issued under the provisions of this part may be secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or resolution providing for the issuance of such bonds may pledge or assign the fees, rents, charges, or proceeds from the sale of any project or part thereof, insurance proceeds, condemnation awards, and other funds and revenues to be received therefor, and may provide for the mortgaging of any project or any part thereof as security for repayment of the bonds. Such trust agreement or resolution providing for the issuance of such bonds shall contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the project or projects in connection with which such bonds shall have been authorized; the fees, rents and other charges to be fixed and collected; the sale of any project, or part thereof, or other property; the terms and conditions for the issuance of additional bonds; and the custody, safeguarding, and application of all moneys. It shall be lawful for

any bank or trust company incorporated under the laws of the state which may act as depositary of the proceeds of bonds, revenues, or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the authority. Any such trust agreement or resolution shall set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the project or projects in connection with which bonds are issued or as an expense of administration of such projects, as the case may be.

History.—s. 11, ch. 74-323.

154.223 Payment of bonds.—Revenue bonds issued under the provisions of this part shall not be deemed to constitute a debt, liability, or obligation of the local agency or the state or any political subdivision thereof, or a pledge of the faith and credit of the local agency or the state or any political subdivision thereof, but shall be payable solely from the revenues provided therefor. All such revenue bonds shall contain on the face thereof a statement to the effect that the authority shall not be obligated to pay the same or the interest thereon except from the revenues of the project or the portion thereof for which they are issued and that neither the faith and credit nor the taxing power of the local agency or of the state or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue bonds under the provisions of this part shall not directly, indirectly, or contingently obligate the local agency or the state or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

History.—s. 12, ch. 74-323.

154.225 Revenues.—

(1) The authority is hereby authorized to fix and to collect fees, rents, and charges for the use of any project or projects and any part or section thereof. The authority may require that the lessee of any project or part thereof shall operate, repair, and maintain the project and bear the cost thereof and other costs of the authority in connection with the project or projects leased as may be provided in the agreement of lease or other contract with the authority, in addition to other obligations imposed under such agreement or contract.

(2) The fees, rents, and charges shall be so fixed as to provide a fund sufficient to pay the principal of, and the interest on, such bonds as the same shall become due and payable and to create reserves, if any, deemed by the authority to be necessary for such purposes. The fees, rents, charges, and all other revenues and proceeds derived from the project or projects in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary for such reserves or any expenditures as may be provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be specified in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The fees, rents, charges, and other revenues and moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in the resolution or the trust agreement, the sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

History.—s. 13, ch. 74-323.

154.227 Trust funds.—Notwithstanding any other provisions of law to the contrary, all money received pursuant to the provisions of this part, whether as proceeds from the sale of bonds, sale of property, insurance, or condemnation awards, or as revenues, shall be deemed to be trust funds, to be held and applied solely as provided in this part. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this part and such resolution or trust agreement may provide.

History.—s. 14, ch. 74-323.

154.229 Remedies.—Any holder of bonds issued under the provisions of this part or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of this state or granted hereunder or under such trust agreement or resolution authorizing the issuance of such bonds, or under any agreement of lease or other contract executed by the authority pursuant to this part, and may enforce and compel the performance of all duties required by this part or by such trust agreement or resolution to be performed by any lessee or the authority or by any officer thereof, includ-

ing the fixing, charging, and collecting of fees, rents, and charges.

History.—s. 15, ch. 74-323.

154.231 Negotiability of bonds.—All bonds issued under the provisions of this part shall have, and are hereby declared to have, all the qualities and incidents, including negotiability, of investment securities under the Uniform Commercial Code, but no provision of such code respecting the filing of a financing statement to perfect a security interest shall be deemed necessary for, or applicable to, any security interest created in connection with the issuance of any such bonds.

History.—s. 16, ch. 74-323.

154.233 Tax exemption.—The exercise of the powers granted by this part will be in all respects for the benefit of the people of this state, for the increase of their commerce, welfare, and prosperity, and for the improvement of their health and living conditions, and because the operation and maintenance of a project by a health facility will constitute the performance of an essential public function, neither the authority nor a hospital institution shall be required to pay any taxes or assessments upon or in respect of a project or any property acquired by the authority under the provisions of this part or upon the income therefrom, and any bonds issued under the provisions of this part, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the state, the local agency, and municipalities and other political subdivisions in the state, except that such income shall be subject to the tax imposed pursuant to the provisions of chapter 220. Nothing in this section shall be construed as exempting from taxation or assessments the leasehold interest of any health facility organized for profit. If any project or any part thereof shall be occupied or operated by any health facility organized for profit pursuant to any contract or lease with the authority, the property interest created by such contract or lease shall be subject to taxation to the same extent as other privately owned property.

History.—s. 17, ch. 74-323.

154.235 Refunding bonds.—

(1) The authority is hereby authorized to provide for the issuance of revenue bonds for the purpose of refunding any of its revenue bonds then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the earliest or subsequent date of redemption, purchase, or maturity of such revenue bonds.

(2) The proceeds of any such revenue bonds issued for the purpose of refunding outstanding revenue bonds may, in the discretion of the authority, be applied to the purchase or retirement at maturity or redemption of such outstanding revenue bonds either on their earliest or any subsequent redemption date, or upon the purchase or at the maturity thereof, and may, pending such application, be placed in escrow to be applied to such purchase or retirement at maturity or redemption on such date as may be determined by the authority.

(3) Any such escrowed proceeds, pending such use, may be invested and reinvested in direct obligations of the United States, in any obligations of which the principal and interest are unconditionally guaranteed by the United States, in certificates of deposit or time deposits secured by direct obligations of the United States, or in any obligations of which the principal and interest are unconditionally guaranteed by the United States, maturing at such time or times as shall be appropriate to assure the prompt payment, as to principal, interest, and redemption premium, if any, of the outstanding revenue bonds to be so refunded. The interest, income, and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding revenue bonds to be so refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, income, and profits, if any, earned or realized on the investments thereof may be returned to the authority for use by it in any lawful manner.

(4) All such revenue bonds issued for the purposes of refunding shall be subject to the provisions of this part in the same manner and to the same extent as other revenue bonds issued pursuant to this part.

History.—s. 18, ch. 74-323.

154.237 Legal investment.—Bonds issued by the authority under the provisions of this part are hereby made securities in which all public officers and public bodies of the state and its political subdivisions and all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereinafter be authorized by law.

History.—s. 19, ch. 74-323.

154.239 Reports.—Within the first 90 days of each calendar year, the authority shall make a report to the governing board of the county of its activities for the preceding calendar year. Each such report shall set forth a complete operating and financial statement covering its operations during the year.

History.—s. 20, ch. 74-323.

154.241 Issuance of bonds.—Bonds issued under the provisions of this part shall be validated in the manner prescribed by chapter 75.

History.—s. 21, ch. 74-323.

154.243 Alternate means.—This part shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws.

History.—s. 22, ch. 74-323.

154.245 Department of Health and Rehabilitative Services certificate of need required as a condition to bond validation and project construction.—Notwithstanding any provision of this part to the contrary, before any project authorized by this part is approved by the authority, and before revenue bonds are validated for the project, the Department of Health and Rehabilitative Services shall issue a certificate of need for such project, which shall be a condition precedent to the validation and issuance of any bonds hereunder, other than bonds for refunding or refinancing purposes, and to the construction of the project.

History.—s. 23, ch. 74-323; s. 2, ch. 78-115.

154.246 Validation of certain bonds and proceedings.—The Legislature finds and declares that the purpose of chapter 78-115, Laws of Florida, is, in part, to clarify the original meaning of the Health Facilities Authorities Law, and, therefore, all bonds heretofore issued and proceedings conducted pursuant thereto which would have been valid had the amendment to s. 154.245, as set forth in s. 2 of chapter 78-115, been in effect when said bonds were issued or proceedings were conducted are hereby declared valid.

History.—s. 3, ch. 78-115.

PART IV

HEALTH CARE RESPONSIBILITY FOR INDIGENTS

154.301 Short title.—This act may be cited as "The Florida Health Care Responsibility Act."

History.—s. 2, ch. 77-455.

154.302 Legislative intent.—It is the intent of the Legislature to place the ultimate financial obligation for the medical treatment of indigents on the county in which the indigent resides, for all those costs not fully reimbursed by other governmental programs or third-party payors.

History.—s. 3, ch. 77-455.

154.304 Definitions.—For the purpose of this act:

(1) "Certified indigent patient" means a patient who has been certified as indigent by the county in which he resides.

(2) "Department" means the Department of Health and Rehabilitative Services.

(3) "Hospital" means an establishment as defined in s. 395.01 and licensed by the department, except that hospitals operated by the department shall not be considered hospitals for purposes of this act.

(4) "Regional referral hospital" means any hospital that provides services to patients who reside in counties other than the county in which the hospital is located.

History.—s. 4, ch. 77-455.

154.306 Financial responsibility for out-of-county indigent patients treated at a regional referral hospital.—Ultimate financial responsibility for treatment received at a regional referral hospital by a certified indigent patient who is a resident of the State of Florida but is not a resident of the county in which the regional referral hospital is located shall be the obligation of the county of which the certified indigent patient is a resident. A county's financial responsibility for each of its resident certified indigent patients receiving treatment at a regional referral hospital shall be limited to payment for 12 days of services per admission, not to exceed 45 days per annum, at the per diem reimbursement rate currently in effect for the regional referral hospital under the medical assistance program for the needy under Title XIX of the Social Security Act, as amended. However, no county shall be required to pay for services at a regional referral hospital when such services are available at a local hospital in the county where the indigent resides, except that the county where the indigent resides shall, in all instances, be liable for the cost of treatment provided to said certified indigent at a regional referral hospital for any emergency medical condition which will deteriorate from failure to provide such treatment and when such condition is determined by the attending physician to be of an emergency nature.

History.—s. 5, ch. 77-455.

154.308 Certification of indigency for the purpose of this act; rules.—Not later than October 1, 1977, the department, in consultation with the Florida Association of County Welfare Executives, shall adopt rules which provide a statewide eligibility standard for certifying residents of each county as indigent for the purposes of this act. These rules shall further provide that certification as indigent for the purposes of this act may occur either prior to a person's admission to a regional referral hospital or subsequent to such admission, but in any event if a determination of whether a patient meets or does not meet eligibility standards for certification as indigent for the purpose of this act is not made within 30 days following notification to the county of residence of the patient's admission to a regional referral hospital, the patient shall be considered to have been a certified indigent patient upon admission. A patient certified as indigent for the purpose of this act subsequent to his or her admission to a regional referral hospital shall be considered to have been certified upon admission. Such certification shall be made by a person designated by the board of county commissioners or, in the absence of such a designated person, by the director of the full-time health unit. Furthermore, any county may establish stand-

ards of eligibility which are less restrictive than the standards adopted by the department under this section, and no county may establish standards which are more restrictive than the standards adopted by the department under this section.

History.—s. 6, ch. 77-455.

154.31 Obligation of the regional referral hospital.—As a condition of accepting the procedures of this act, each regional referral hospital in Florida shall be obligated to admit for treatment all Florida residents who meet the eligibility standards established pursuant to s. 154.308 and who meet the medical standards for admission to such institutions.

History.—s. 7, ch. 77-455.

154.312 Procedure for settlement of disputes.—All disputes between a county and a regional referral hospital shall be resolved by order as provided in chapter 120.

History.—s. 8, ch. 77-455.

154.314 Certification of the State of Florida.—In the event payment for the costs of services rendered by a regional referral hospital is not received from the responsible county within 60 days of receipt of a statement for services rendered, or if the payment is disputed and said payment is not received from the responsible county within 30 days of the date of exhaustion of all administrative and legal remedies, as provided in chapter 120, the hospital shall certify the amount due to the Comptroller, who shall forward the amount delinquent to the appropriate regional referral hospital from any funds due to the county under any revenue-sharing or tax-sharing fund established by the state, except as otherwise provided by the State Constitution.

History.—s. 9, ch. 77-455.

154.316 Admission of indigent patients.—Except in the case of an emergency, no patient shall be treated by, or admitted to, a regional referral hospital as an indigent unless and until the board of county commissioners of the county providing certification notifies the hospital that the patient is certified as an indigent and that he is approved by the board for treatment or admission.

History.—s. 10, ch. 77-455.

CHAPTER 155

COUNTY HOSPITALS

155.01 County commissioners may act as trustees of stock of hospitals.—Whenever the owners of a majority of the outstanding capital stock of a corporation created for and engaged solely in the operation of a hospital shall execute a trust deed, or deeds, conveying a majority of the capital stock of such corporation to the board of county commissioners of the county in which such hospital is located, in trust to be held and administered by such board of county commissioners as trustees with authority to vote said stock at all meetings of the stockholders of such corporation and to expend all dividends declared upon such stock in the hospitalization of the indigent citizens of the county who need hospital treatment, with provisions that should the properties of such corporation cease for a period of 6 months to be used primarily for hospital purposes or should the hospital so maintained be not maintained open to the practice of all duly licensed physicians and surgeons resident in the county where the same is located that the trust shall then, but not before, be terminated and the ownership of the stock so placed in trust shall revert to the respective persons executing the trust deed, or deeds, their heirs, legatees or assigns; the board of county commissioners may accept such trust and act as trustee thereunder.

History.—s. 1, ch. 17834, 1937; CGL 1940 Supp. 2934(28).

155.02 Rule against perpetuities inapplicable.—No such trust shall be invalid by reason of the rule against perpetuities nor shall the rights of the persons creating the same, their heirs, legatees or assigns, to receive back their stock upon the termination of said trust be impaired or denied by reason of any application of the statutes of uses or the rule against perpetuities.

History.—s. 2, ch. 17834, 1937; CGL 1940 Supp. 2934(29).

155.03 Duties of county commissioners.—Should the board of county commissioners accept such trust, it shall administer the same until the termination of the trust; providing, however, that nothing herein shall require the board of county commissioners to expend any funds of the county in the maintenance of such hospital or the administration of such trust.

History.—s. 3, ch. 17834, 1937; CGL 1940 Supp. 2934(30).

155.04 County hospitals; petition; election; establishment.—

(1) Whenever the board of county commissioners of any county in the state shall be presented with a petition signed by 5 percent of the resident freeholders of such county, asking that an annual tax may be levied for the establishment and maintenance of a public hospital at a place in the county named therein, and shall specify in said petition the maximum amount of money proposed to be expended in purchasing or building said hospital, such board of county commissioners shall submit the question to the qualified electors of the county who are freeholders at the next general election to be held in the county, or at a special election called for that purpose, first giving 30 days' notice thereof in one or more newspapers published in the county, if any be published therein, or posting written or printed notices in each precinct of the county, which notice shall include the text of the petition and state the amount of the tax to be levied upon the assessed property of the said county which tax shall not exceed 5 mills on the dollar, and be for the issue of the county bonds, to provide funds for the purchase of the site, or sites, and the erection thereon of a public hospital and hospital buildings, and for the support of same, which bonds shall be payable within 30 years, which said election shall be held at the usual places in such county for voting upon county officers, and shall be canvassed in the same manner as the vote for the county officers is canvassed. The ballots to be used in any election at which such hospital question is submitted, shall be printed with a statement substantially as follows:

For a ..... mill tax for a bond issue for a public

hospital, and for maintenance of same:

YES .....

NO .....

(2) If a majority of the freeholders who are qualified electors shall participate in said election and a majority of the votes cast at such election on the proposition so submitted shall be in favor of said tax for such bond issue, the board of county commissioners shall levy a tax so authorized, which shall be collected in the same manner as other taxes are collected, and credited to the hospital fund, and shall be paid out on the order of the hospital trustees for the purposes authorized by this law, and for no other purposes whatever.

History.—s. 1, ch. 20905, 1941; s. 1, ch. 26513, 1951.
cf.—s. 200.071 Limitation of millage; counties.

155.05 County hospitals; establishment without election.—If the county commissioners of any such county, by reason of funds on hand, or donations, or otherwise, are able to build and establish a public hospital without issuing bonds as provided in s. 155.04, then such board of county commissioners is hereby authorized and empowered to establish such public hospital and, without any election, to levy an annual tax for the maintenance thereof, such tax not to exceed 5 mills on the dollar and to be collected in the same manner as the tax provided for in s. 155.04.

History.—s. 2, ch. 20905, 1941.
cf.—s. 200.071 Limitation of millage; counties.

155.06 County hospitals; trustees; appointment, etc.—Should a majority of all votes cast upon the question be in favor of establishing such county public hospital, or should the board of county commissioners of any county establish a county public hospital as provided in s. 155.05, the Governor of the state shall immediately proceed to appoint five trustees chosen from the citizens at large from such county, with reference to their fitness for such office, who shall constitute a board of trustees for said public hospital. On the original appointment of said trustees, two of said trustees shall be appointed for a term of 1 year, one for a term of 2 years, one for a term of 3 years and one for a term of 4 years and thereafter upon the expiration of said original appointments, their successors shall be appointed by the Governor of the state for a term of 4 years.

History.—s. 3, ch. 20905, 1941.

155.07 County hospitals; organization; officers; powers; etc.—The said trustees shall, within 10 days after their appointment, qualify by taking the oath of office and organize a board of hospital trustees by the election of one of their members as chairman and one as secretary and treasurer and by the election of such other officers as they deem necessary. Such chairman shall be executive officer of the board of trustees and shall enforce and carry out all the orders of the board of trustees contained in resolutions duly adopted and entered on the minute books of the meetings of the board of trustees. He shall preside at all meetings and countersign all vouchers and warrants issued by the secretary and treasurer hereinafter provided for. In the absence of the chairman, vouchers and warrants may be countersigned by any other member of the board of trustees selected by the members of the board of trustees as chairman pro tem. In the absence of the chairman and chairman pro tem, vouchers and warrants may be countersigned by the hospital administrator or another full-time employee of the hospital as designated by the members of the board of trustees. The chairman, chairman pro tem, and such other full-time employees as may be designated by the members of the board of trustees to countersign warrants or vouchers shall give bonds in a sum to be fixed by the board of county commissioners for the faithful performance of their duties in some reputable bonding company authorized to do business in the state, and said bonds shall be made payable to the Governor of Florida and his successors in office. No member of said board of trustees shall receive any compensation for his services as such trustee, but shall be reimbursed for traveling expenses as provided in s. 112.061.

History.—s. 4, ch. 20905, 1941; s. 19. ch. 63-400; s. 1, ch. 76-21.

155.08 County hospitals; seal; evidence; etc.—The board of trustees as herein constituted shall adopt a common seal, and certification under the seal of the board of hospital trustees, signed by the chairman and attested by the secretary and treasurer, shall constitute sufficient evidence.

History.—s. 5, ch. 20905, 1941.

155.09 County hospitals; secretary; minutes; accounts; etc.—The board of trustees shall elect from its members a secretary and treasurer whose duties it shall be to keep full and correct minutes of all the proceedings of the board of trustees, and keep a separate itemized account of all the expenditures and disbursements by said board of trustees. Said minutes and accounts shall be open to public inspection at any time on demand of any taxpayer in such district. The secretary and treasurer shall give bond in a sum to be fixed by the board of county commissioners for the faithful performance of his duties in some reputable bonding company authorized to do business in the state, and said bond shall be made payable to the Governor of Florida and his successors in office.

History.—s. 6, ch. 20905, 1941.

155.10 County hospitals; rules and regulations.—The board of trustees shall make and adopt such bylaws and rules and regulations for their own guidance and for the government of the hospital as may be deemed expedient for the economic and equitable conduct thereof, not inconsistent with this law, or the ordinance of the city or town wherein such hospital is located. They shall have exclusive control of the expenditures of all moneys collected to the credit of the hospital fund.

History.—s. 7, ch. 20905, 1941.

155.11 County hospitals; deposit of moneys; bank; payments.—

(1) All moneys received for such hospital shall be deposited in any bank designated by the said board of trustees, and placed to the credit of the hospital fund and can be paid out only as bills for material supplies, equipment, wages, salaries, or other items

of expense whatsoever shall have been audited by the secretary and treasurer and approved by a majority of the members of the board of trustees in regular session. When so approved by a majority of said members, upon vouchers issued by the secretary and treasurer, warrant may be drawn for same and when countersigned by the chairman of said board of trustees or an individual designated by s. 155.07, shall be authenticated. Provided, it shall be unlawful to pay any money out of said hospital fund until the provisions of this section have been complied with.

(2) For the purpose of providing for the direct deposit of funds under the circumstances herein specified, the board of trustees is authorized to establish the form or forms of warrants, which are to be issued and countersigned as provided in this chapter, for payment or disbursement of moneys out of the hospital depository, and to change the form thereof from time to time as the board of trustees deems appropriate. If authorized in writing by the payee, county hospital warrants may provide for the direct deposit of funds to the account of the payee in any financial institution which is designated in writing by the payee and which has lawful authority to accept such deposits. The written authorization of the payee shall be filed with the board of trustees. Direct deposit of funds may be by any electronic or other medium approved by the board of trustees for such purpose.

History.—s. 8, ch. 20905, 1941; s. 1, ch. 76-21; s. 7, ch. 78-406.

155.12 County hospitals; general powers of trustees; duties; tax levies; etc.—The board of hospital trustees shall have power to appoint a suitable superintendent or matron, or both, and necessary assistants, and fix their compensation and shall also have power to remove such appointees and shall in general carry out the spirit and intent of this law in establishing and maintaining a county hospital. The board of hospital trustees shall hold meetings at least once each month and keep a complete record of all its transactions. Three members of said board shall be required to constitute a quorum for the transaction of business and two or more of said trustees shall visit and examine said hospital twice each month. The board shall, prior to July 1 of each year, file with the board of county commissioners of said county a report of their proceedings with reference to such hospital and a statement of all receipts and expenditures made during the year and shall certify to the said board of county commissioners the amount necessary for the improvement and maintenance of such public hospital, so established, during the ensuing year, and the said board of county commissioners shall, at its annual meeting for the purpose of determining the amount to be raised for all county purposes, levy a sufficient tax upon all the assessed value of the taxable property in the county as will produce the sum required by the said board of trustees' report, but said hospital levy, together with the levy necessary to liquidate the bonds aforesaid, shall not exceed 10 mills on the assessed valuation. No trustee shall have a personal, pecuniary interest, either directly or indirectly, in the purchase of any supplies for said hospital, unless the same are purchased by competitive bidding.

History.—s. 9, ch. 20905, 1941; s. 1, ch. 61-321; s. 2, ch. 76-21.
cf.—s. 200.071 Limitation of millage; counties.

155.13 County hospitals; vacancies in trustees.—Vacancies in the board of trustees occasioned by resignations, removal, or otherwise, shall be reported to the Governor of the state, who shall fill such vacancies in a like manner as the original appointments; appointees shall hold office for the remainder of the term in which the vacancy occurred.

History.—s. 10, ch. 20905, 1941.

155.14 County hospitals; bonds; maturities; interest; etc.—Whenever any county in this state shall have provided for the appointment of hospital trustees and has voted a tax for hospital purposes, as authorized by law, the said county shall issue bonds in anticipation of the collection of such tax in such sum and amounts as the board of hospital trustees shall certify to the board of county commissioners of said county to be necessary for the purpose contemplated by such tax, but such funds in the aggregate shall not exceed the amount which might be realized by said tax based on the amount which may be yielded on the property valuation of the year in which the tax is voted, and such bonds shall mature in not to exceed 30 years from date and shall be in sums of not less than $100, nor more than $1,000, drawing interest at a rate not exceeding 7½ percent per annum, payable annually or semiannually; said bonds shall be payable at the pleasure of the county after 5 years and each of said bonds shall provide that it is subject to this condition and shall not be sold for less than provided by law for other county bonds and shall be substantially in the form provided for county bonds, but subject to changes that will conform them to the provisions of this law, and be numbered consecutively and redeemable in the order of their issue.

History.—s. 11, ch. 20905, 1941; s. 2, ch. 26513, 1951; s. 8, ch. 73-302.

155.15 County hospitals; procuring lands for hospital.—If the board of hospital trustees and the owners of any property desired by them for hospital purposes, cannot agree as to the price to be paid therefor, they shall report the facts to the board of county commissioners and condemnation proceedings shall be instituted by the said board of county commissioners and prosecuted in the name of the county by the attorney for the county commissioners of such county.

History.—s. 12, ch. 20905, 1941.

155.16 County hospitals; residents; nonresidents; fees; contagious diseases; etc.—Every hospital established under this law shall be for the benefit of the inhabitants of such county and of any person falling sick or being injured or maimed within its limits, but the board of hospital trustees may extend the privileges and use of such hospital to persons residing outside of such county upon terms and conditions as such board of trustees may from time to time, by its rules and regulations, prescribe. Every such inhabitant or person who is not a pauper shall pay to such board or such officer as it shall designate, a reasonable compensation for occupancy, nursing,

care, medicine, and attendance, according to the rules and regulations prescribed by the said board. Such hospital always shall be subject to such rules and regulations as said board may adopt in order to render the use of said hospital of the greatest benefit to the greatest number; and said board may exclude from treatment and care any indigent or pay case having a communicable or contagious disease where such disease may be a detriment to the best interest of such hospital and a source of contagion or infection to the patient in its care, and all inhabitants and persons who shall willfully violate any rules and regulations of such hospital.

History.—s. 13, ch. 20905, 1941.

155.17 County hospitals; rules for physicians, nurses, etc.—When such hospital is established, the physician, nurses, attendants, the person sick therein and all persons approaching or coming within the limits of same, and all furniture and other articles used or brought there shall be subject to such rules and regulations as said board of trustees may prescribe.

History.—s. 14, ch. 20905, 1941.

155.18 County hospitals; discrimination against doctors; etc.—The board of trustees of any hospital organized under this chapter is authorized to promulgate rules and regulations governing the granting and revoking of privileges to treat patients in the hospital. Such rules shall provide that only those persons licensed to practice medicine and surgery, i.e., medical doctors and osteopathic physicians, may be granted privileges to treat patients in the hospital. Such doctors and physicians may retain their privileges so long as they comply with the rules and regulations of the board of trustees.

History.—s. 15, ch. 20905, 1941; s. 1, ch. 61-378.

155.19 County hospitals; training school for nurses.—The board of trustees may establish and maintain in connection with such hospital and as part thereof, a training school for nurses, and upon completion of the prescribed course of training shall give to such nurses who satisfactorily complete the said course, a diploma.

History.—s. 16, ch. 20905, 1941.

155.20 County hospitals; charity patients; hospital charges.—The board of hospital trustees shall have power to determine whether or not patients presented to such public hospital for treatment are subjects of charity, and shall fix the charges for occupancy, nursing, care, medicine and attendance, other than medical or surgical attendance, of those persons able to pay for same, as the board of trustees may deem just and proper, the receipts therefor to be paid by him to the hospital fund.

History.—s. 17, ch. 20905, 1941.

155.21 County hospitals; donations; etc.—Any person or persons, firm, organization, corporation or society, public or private, desiring to make donations of money, personal property or real estate for the benefit of such hospital shall have the right to vest title of the money, personal property or real estate so donated in said county, to be controlled when accepted by the board of hospital trustees of said hospital, according to the terms of the deed, gift, devise or bequest of such property.

History.—s. 18, ch. 20905, 1941.

155.22 County hospitals; purposes are public.—The purpose for which any county hospital established under the provisions of this law shall be used are hereby declared public purposes. Such purposes shall include the operation and maintenance of ambulance service in any county where the board of county commissioners so authorizes.

History.—s. 19, ch. 20905, 1941; s. 1, ch. 67-373.

155.23 County hospitals; federal loans, aid, etc.—The board of county commissioners of any county desiring to establish and maintain a hospital under the provisions of this law shall be and are hereby authorized and empowered to negotiate and make agreements with any federal agency lending or granting money for the purpose of erecting public hospitals and may match any funds so loaned or granted by such federal agency for the purpose of establishing or constructing a public hospital under the provisions of this law.

History.—s. 20, ch. 20905, 1941.

155.24 County hospitals; additional funds.—In addition to the tax which may be levied under the provisions of this law, the board of county commissioners may allocate to the hospital funds any other public moneys in possession of said board of county commissioners, not otherwise appropriated or allocated to other uses.

History.—s. 21, ch. 20905, 1941.

155.25 Levy authorized for county hospital purposes.—

(1) Whenever any board of county commissioners shall deem it necessary to erect, equip or repair a public hospital in the county or erect and equip an addition or additions to any public hospital, they shall give notice for 30 days in some newspaper published in said county, or in some newspaper published in the judicial circuit, if there be none published in the county, that at the next regular meeting of the board after the publication of said notice, such question or questions will be acted upon by said board. If, at said meeting, a majority of said board shall determine that it is necessary to erect, equip, repair or build addition or additions to such public hospital, they may levy a hospital building, repair and equipment tax not exceeding 5 mills per annum, for not more than 15 consecutive years. The tax shall be assessed and collected at the same time and in the same manner as other state and county taxes are levied and collected.

(2) The tax, levied, assessed and collected as aforesaid, shall be accumulated from year to year until utilized and expended for the public hospital purposes aforesaid.

(3) The provisions hereof shall be cumulative and in addition to all the other provisions of this chapter, and nothing herein contained shall be held to repeal, alter or amend any of the provisions of this chapter nor repeal, alter or amend any of the provisions of any special or local law.

(4) The provisions of this section shall not apply to Okaloosa County nor shall the provisions hereof confer the authority hereinabove provided for upon or to the county commissioners of said county.

History.—ss. 1-4, ch. 57-393.

CHAPTER 157

DRAINAGE BY COUNTIES

157.01 Public ditch, drain or canal.—Whenever it shall be deemed necessary or expedient, for sanitary or agricultural purposes or conducive to the public health, convenience or welfare, or public utility, or for the benefit of any lands that are low, wet, submerged or liable to become submerged, to establish a public ditch, drain or canal in any of the counties of this state by a majority of those owning the lands through which such proposed ditch, drain or canal shall run or by those owning the greater part of the lands through which such proposed ditch, drain or canal shall run, and by a majority of those owning lands or by those owning the greater part of the lands contiguous thereto, that are benefited by such ditch, drain or canal, the majority of those owning such lands or those owning the greater part of such lands as aforesaid, shall present a petition to the county commissioners of the county in which such ditch, drain or canal is to be located, with a plat of said lands, showing the general course of such proposed ditch, drain or canal, setting forth the cause for the same, its length and the lands to be benefited thereby. Upon filing such petition and plat with the county commissioners, they shall lay the same over until the next regular meeting and give notice by publication for 3 weeks, in some newspaper published in the county, of the date when they will consider said petition, citing all persons who may be interested to appear and present any reason why such petition should not be granted.

History.—s. 1, ch. 5035, 1901; GS 950; s. 1, ch. 6457, 1913; s. 1, ch. 6958, 1915; s. 1, ch. 7307, 1917; RGS 1734; CGL 2785.
cf.—s. 298.66 Penalty for obstructing public drains.

157.02 Action on petition by county commissioners.—Should the county commissioners, when the petition mentioned in s. 157.01, has been considered, deem it improper to grant the same it shall then be denied, but should they deem it proper to grant the same, they shall then enter an order of record that the said petition be granted.

History.—s. 2, ch. 5035, 1901, GS 951; s. 2, ch. 6457, 1913; RGS 1735; CGL 2786.

157.03 Commissioners to appoint committee; report of plans and estimate; letting contract; right-of-way for drains.—When the county commissioners shall order that such ditch, drain or canal, shall be established, they shall appoint a committee of three disinterested freeholders who are citizens of the county, who may employ a surveyor, and shall cause an accurate survey to be made of the proposed ditch, drain or canal, and shall establish the commencement, route, and terminus of said ditch, drain or canal, the width, length, and depth thereof, and shall make and present to the county commissioners, at their next regular meeting, or at a meeting as soon thereafter as practicable, plans, specifications and profiles for said construction, together with an estimate of the approximate cost of said ditch, drain or canal, and the annual cost of its maintenance, and upon this report of the said committee, the board of county commissioners shall advertise once a week for 3 weeks, in a newspaper published in the said county, for bids for the construction of said ditch, drain or canal, and the same shall be given to the lowest responsible bidder; provided, the board of county commissioners may, if they deem it for the best interest of all concerned, reject all bids; and in case said bids are rejected they may advertise for further bids. Whenever the survey for any proposed ditch, drain or canal, shall run through the lands of anyone who shall object thereto, the board of county commissioners may proceed to condemn the right-of-way for such ditch, drain or canal, and pay therefor out of the funds arising from the levy and assessments hereinafter provided for.

History.—s. 3, ch. 5035, 1901; GS 952; s. 3, ch. 6457, 1913; RGS 1736; CGL 2787.

157.04 Bond required before letting contract.—Before letting contract for the construction of any such ditch, drain or canal, the board of county commissioners shall require the contractor to give a good and sufficient bond payable to the Governor of the state, for the construction and completion of said work according to plans and specifications and the terms and provisions of the contract.

History.—s. 4, ch. 5035, 1901; GS 953; s. 4, ch. 6457, 1913; RGS 1737; CGL 2788.

157.05 Work done under supervision of committee; when completed, report to commissioners; payments.—The work shall be done under the supervision of the committee as hereinbefore provided, and when completed, the committee shall report the same to the board of county commissioners, who shall also inspect such work together with the engineer in charge, and approve the same before final payment is made to the contractor, and the report of said work, together with the approval of the work by the board of county commissioners and the said engineer, shall be entered upon the minutes of the board of county commissioners; provided, that the board of county commissioners may, during the progress of the said work, if they think proper to do so, make payment in installments on said work of not to exceed 80 percent of the value of the work so done, to be certified by the engineer in charge, reporting to the board of county commissioners. Such engineer shall be appointed by said committee subject to the approval of the board of county commissioners.

History.—s. 5, ch. 5035, 1901; GS 954; s. 5, ch. 6457, 1913; RGS 1738; CGL 2789.

157.06 Committee to view land before letting contract; assessment; hearing complaints; collection of tax, etc.—If said ditch, drain or canal has been ordered, but before letting the contract therefor, the committee hereinbefore provided for shall view the lands to be benefited by such ditch, drain or canal, as shown by the petition and plat presented to the board of county commissioners, and, after the cost of construction is ascertained, they shall assess each parcel according and in proportion, as it shall be benefited by said ditch, drain or canal, for all expenses that may be incurred in the construction of said ditch, drain or canal, including the interest charges, the expenses of the committee and engineer, and for any condemnation proceedings, together with their estimate of the amount per acre for annual maintenance of said ditch, drain or canal, and shall file a report of the same with the board of county commissioners, who shall at once give notice by publishing in a newspaper published in said county, once a week for 2 weeks prior to the next regular meeting, that they will, at their next regular meeting, hear complaints from the owners or agents of any lands affected, against the assessment so made, and the board of county commissioners may equalize the assessment so made, but cannot raise or lower the total amount of the assessment so made by the said committee. After hearing such complaints, if any, or equalizing the assessment, if they shall see fit to do so, they shall then turn over to the property appraiser the said assessment, with instructions to enter the same as the levy upon the lands in the regular tax assessment book; said assessment may be levied for 1 year or in yearly assessments for a period not to exceed 30 years, according as it may be deemed advisable, the manner in which the same is to be levied to be determined by the board of county commissioners and entered of record, when the same is turned over to the property appraiser. The same shall be collected by the tax collector in like manner as other taxes are collected, and made a special fund for the payment of the indebtedness incurred in the construction and annual maintenance of said ditch, drain or canal.

History.—s. 6, ch. 5035, 1901; GS 955; s. 6, ch. 6457, 1913; RGS 1739; CGL 2790; s. 1, ch. 77-102.

157.07 Where cost of construction exceeds estimated cost commissioners to assess difference.—Whenever any public drain or auxiliary thereto has been constructed, is now in process of construction, or may hereafter be constructed by the board of county commissioners, under the provisions of any law now in force, or that may hereafter be enacted, and the actual cost of the construction of said drain or auxiliary shall have exceeded or may exceed the estimated cost thereof, said board of county commis-

sioners shall assess against the lands benefited or to be benefited by said drain or auxiliary thereto, the difference between the estimated cost thereof and the actual cost thereof.

History.—s. 1, ch. 5378, 1905; RGS 1740; CGL 2791.

157.08 Assessments; validation.—After the special drainage district has been constituted and the assessments have been made and levied by the board of county commissioners, and before awarding the contract for the construction of any such ditch, drain or canal, the board of county commissioners shall, as soon as practicable, issue and sell district drainage bonds for the total amount of such assessments, less the interest charges. Said bonds shall bear interest not to exceed 7½ percent per annum, payable semiannually, with interest coupons attached thereto, and shall be issued in denominations of not exceeding $1,000. The board of county commissioners shall, in issuing and selling said bonds, and in disbursing the proceeds thereof, act in substantial conformity with the provisions of these statutes applicable to the issue and sale of bonds for the purpose of constructing hard-surfaced highways or public buildings; with the exception, that the assessments for the payment of interest and to provide a sinking fund for the payment of the bonds shall be assessed and collected only upon the taxable property within the boundary of such special drainage district; and the bond trustees shall reside in the county, but not necessarily in the drainage district, but in no case shall district bonds be issued or sold against any drainage district for a greater amount than the assessment imposed upon lands in such district, and the bonds shall be issued in such maturities as will enable them to be paid in installments from time to time as fast as substantial amounts shall accumulate from the collection of the assessments. The validity of all bonds issued under this chapter may be determined and established in the manner provided by law for the validation of bonds issued by cities and municipalities.

History.—s. 7, ch. 5035, 1901; GS 956; s. 7, ch. 6457, 1913; s. 2, ch. 6958, 1915; RGS 1741; CGL 2792; s. 9, ch. 73-302.

cf.—Ch. 75 Validation of municipal bonds.
Ch. 130 County bonds.

157.09 Compensation of committee.—The committee appointed by the county commissioners for the purpose aforesaid shall receive compensation for their services as may be agreed upon; provided, they shall not be paid more than $5 per day for time actually spent by each man.

History.—s. 9, ch. 5035, 1901; GS 958; s. 8, ch. 6457, 1913; RGS 1743; CGL 2794.

157.10 Application to lateral ditches.—The provisions of this chapter with reference to locating, surveying, cutting and maintaining the same, and every other provision of said chapter with reference to such public ditch, drain or canal, are made applicable to all lateral ditches and drains that may be deemed necessary or expedient for the drainage and benefit of lands lying in the vicinity of such public ditch, drain or canal, that may be reached, drained or benefited by lateral ditches or drains.

History.—s. 12, ch. 5201, 1903; GS 959; RGS 1744; CGL 2795.

157.11 Lateral drains may be established; commissioners may enlarge district or widen any drain; cost; proviso.—Lateral drains may be established in like manner as main ditches, drains or canals. Such lateral ditches, drains or canals may be made a part of the original plat and survey of such main ditch, drain or canal, and may be in the original petition therefor, or may be established in like manner under the provisions of this chapter, at any time after the completion of such main ditch, drain or canal. Any drain or lateral that has been constructed, or which may hereafter be constructed, under the provisions of this or any prior act, shall be and remain under the exclusive control and direction of the board of county commissioners, and no drain shall be connected therewith or cut into the same without the consent of the board of county commissioners first obtained in writing, stating how such connection shall be made, and the connection shall then be made in such manner as the said board shall direct; and any person failing to observe the direction of the board in making such connection shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The said board of county commissioners may enlarge or extend any drain and drainage district, or deepen or widen any drain, and assess the property benefited and raise the money and pay the cost thereof under the same conditions and procedure provided herein for the establishment and construction of drains; provided, that a drain may be deepened and widened upon the petition of one-fourth of the owners of property, or the owners of one-fourth of the property originally assessed for the construction thereof. Any mistake, oversight, miscalculation or error in any proceedings had under this chapter may be corrected, and shall thereafter be deemed and held as valid and binding as if the same had not occurred.

History.—s. 13, ch. 5035, 1901; GS 960; s. 9, ch. 6457, 1913; s. 3, ch. 6958, 1915; RGS 1745; CGL 2796; s. 81, ch. 71-136.

157.12 Duty of bond trustees to borrow money to pay interest on bonds until collection of first assessment; may issue notes; notes and bonds lien against lands; committee may issue notes.—Whenever any drainage district has been constituted and district drainage bonds issued by the board of county commissioners, as provided in this chapter, the bond trustees shall borrow such money as shall be found necessary to pay the semiannual installments of interest on said bonds until the collection of the first assessment levied against the lands in the drainage district, and said trustees may issue their negotiable notes, bearing interest at not more than 8 percent per annum, as evidence of and security for such loan as they may procure, and should there not be money to the credit of said drainage fund to pay any future installment of interest at the maturity thereof, the same shall be provided by the trustees in like manner; and the owner and holder of any such note or notes shall have by virtue thereof a lien against the lands in the drainage district, and the moneys raised by the assessments levied thereon for the payment of said note or notes. Bonds issued under this chapter shall be a lien upon the lands embraced within such drainage district,

and such lien shall be prior in dignity to all others except taxes. Should the committee, provided for in s. 157.03, find it necessary to raise money to meet any expense incurred in the discharge of its duties before funds shall be provided by issue and sale of bonds, as herein stipulated, then and in that event the said committee, with the approval of the board of county commissioners, may issue negotiable promissory notes for such amount as shall be found necessary, said notes to bear interest not to exceed 8 percent per annum, and the owner and holder thereof shall have a like lien and be afforded like protection as herein provided for the holder of notes issued by the bond trustees.

History.—s. 10, ch. 6457, 1913; s. 4, ch. 6958, 1915; RGS 1746; CGL 2797.

157.13 Use of surplus of bond proceeds.—Should there remain any of the proceeds of the sale of said special drainage district bonds after paying for the construction of the improvements for which said bonds were issued, such surplus shall be held by the bond trustees and paid out by them, upon the order of the board of county commissioners, for the repair and maintenance of the public ditches, drains or canals within said special drainage district.

History.—s. 11, ch. 6457, 1913; RGS 1747; CGL 2798.

157.14 Owner may pay whole tax in one sum; county commissioners may make new assessments where former assessments found illegal; time in which assessments may be questioned in collateral proceedings.—Any person owning lands assessed for the purposes hereinbefore specified, may, at any time, pay in full the total amount assessed against his property and obtain a release therefrom from the board of county commissioners, and the same shall be entered upon the minutes of the board of county commissioners, and the board of county commissioners shall instruct the property appraiser to thereafter omit the said property, so released, from further assessment for said purpose. In the event any of the assessments herein provided for shall be found to be irregular or illegal, the said board of county commissioners may make new and other assessments in accordance with the provisions of this chapter, correcting such irregularities, until the owners of the land assessed shall have paid the amount for which they are properly assessable; and in no case shall the validity of any assessment be questioned in any direct or collateral proceedings brought more than 3 months after the report of the committee assessing the lands benefited shall be filed with the board of county commissioners and equalized and approved by said board.

History.—s. 12, ch. 6457, 1913; s. 5, ch. 6958, 1915; RGS 1748; CGL 2799; s. 1, ch. 77-102.

157.15 County commissioners may issue bonds to pay scrip; decrease of assessment.—The county commissioners may, with the consent of the holder of any scrip issued under the provisions of any existing law to raise money to pay for the construction or the deepening or widening of any ditch, drain or canal, issue bonds for a corresponding or longer period, and sell the same and pay the scrip, or exchange with the holder thereof, cancel the original scrip and lower the annual assessment in accordance with the longer time the bonds may run.

History.—s. 13, ch. 6457, 1913; s. 6, ch. 6958, 1915; RGS 1749; CGL 2800; s. 43, ch. 77-104.

157.16 Enlarging drains and assessing cost.—Whenever, heretofore or hereafter, a public drain or auxiliary thereto shall have been constructed by the board of county commissioners of any county under any law now in force, or that hereafter may be in force, the said board of county commissioners upon a petition of one-fourth of the owners of the property originally assessed for said drain, shall enlarge or deepen said drain or auxiliaries thereto and assess the cost of such enlargement or deepening of said drain or auxiliaries thereto against the lands benefited thereby.

History.—s. 2, ch. 5378, 1905; RGS 1753; CGL 2804.

157.17 Assessment to maintain drains.—Whenever any public drain or auxiliaries thereto shall have been constructed by the board of county commissioners of any county under any law now in force, or that may hereafter be in force, the said board of county commissioners may assess against the lands benefited by said drain or auxiliaries thereto the necessary cost of the maintenance and repair of said drain or auxiliaries thereto.

History.—s. 3, ch. 5378, 1905; RGS 1754; CGL 2805.

157.18 Awarding contract for enlarging or repairing drains.—Whenever it shall become necessary in the opinion of the county commissioners to enlarge or deepen any drain or auxiliary thereto, heretofore constructed, or that may hereafter be constructed, or to contract for the maintenance or repair thereof, the contract for doing such work shall be let to the lowest bidder therefor, after public advertisement for such time as the county commissioners shall provide by resolution.

History.—s. 4, ch. 5378, 1905; RGS 1755; CGL 2806.

157.19 Where actual cost exceeds estimated cost; additional work; assessment for same.—Whenever during the construction of any drain or auxiliary thereto, and before the completion thereof, it shall be made evident to the board of county commissioners that the actual cost thereof will exceed the estimated cost thereof, or that further or additional work is necessary to complete said drain or auxiliary not covered or provided for in the original contract of construction, the said board of county commissioners may enter into any or all additional contracts for the additional work necessary to complete said drain or auxiliary thereto without advertising for bids thereon, and they shall make the best contract they can for the interests of the property owners, whose lands have been and will further be assessed to construct said ditch or auxiliary, and said board of county commissioners, shall make all further and necessary assessments against the lands already assessed to pay all necessary costs and

charges for the full completion of said drain or auxiliary.

History.—s. 5, ch. 5378, 1905; RGS 1756; CGL 2807.

157.20 Appointment of committee to view work and make assessments; report to commissioners; form of assessment.—Whenever it shall become necessary to raise money for any of the purposes set out in ss. 157.07 and 157.19 the board of county commissioners shall appoint three competent and disinterested persons who are citizens of the county who shall view the work and all lands benefited by said drain or auxiliaries thereto, both those lands lying immediately along said drain or auxiliaries and those adjacent thereto, and shall assess against each parcel of land according and in proportion as each shall be benefited, its proportionate share of such additional cost of such drain or auxiliary above the estimated cost thereof, which said assessment shall be reported to the county commissioners at a regular meeting of said board, which said assessment shall show each parcel of land so assessed, the amount of said assessment and the names of the several owners, unless the said owners by diligent inquiry cannot be ascertained, when the names shall be given as unknown.

History.—s. 6, ch. 5378, 1905; RGS 1757; CGL 2808.

157.21 Enlargement of drains; appointment of committee; report to commissioners; letting contract; contractor's bond; payments; assessment.—Whenever the board of county commissioners shall have determined upon a petition, filed as provided in s. 157.16, to enlarge or deepen any drain, they shall appoint a committee of the three competent and disinterested persons who are citizens of the county, who shall cause an accurate survey to be made of the proposed work, and shall establish the depth or width to which the same shall be deepened and shall make and present to the county commissioners at their next regular meeting, an estimate of the cost of said work, and upon the report of said committee to them, said county commissioners shall advertise not less than 2 weeks in a newspaper published in the county, for bids on said work, to be given to the lowest responsible bidder, with the privilege of rejecting all bids that may be offered, should the same be considered unreasonable; and in case the said bids are rejected, they may again advertise for further bids. The said board of county commissioners shall require of the person whose bid is accepted for said work a good and sufficient bond for the faithful performance of said contract, which said work shall be done under the supervision of the committee appointed as aforesaid. When the work shall be completed the committee shall certify the same to the board of county commissioners who shall also inspect such work before final payment is made to the contractor, and such confirmation with the report of the committee that the work has been done according to contract, shall be made a matter of record; provided, that nothing in this chapter shall prevent the county commissioners from making payments in installments during the progress of the work, if deemed expedient. Before letting such contract, the committee appointed by the commissioners shall view the lands to be benefited by the enlargement or deepening of said drain or auxiliary and assess each parcel according and in proportion as each shall be benefited, both those lands lying immediately along such ditch, drain or canal, and those adjacent thereto, for all the expenses that may be incurred in the enlarging or deepening of said drain and keeping the same in repair from year to year, and shall file a report of the same with the board of county commissioners, which said report shall show the several tracts of lands assessed and the names of the owners thereof, and the amounts assessed against each tract; provided, however, that if the owners of any tract cannot be ascertained by diligent inquiry, said tract shall be assessed as unknown.

History.—s. 7, ch. 5378, 1905; RGS 1758; CGL 2809.

157.22 Repairing drains; appointment of committee; report to commissioners; contract; bond; assessment, etc.—Whenever it shall become known to the board of county commissioners that it is necessary to repair any public drain or auxiliary thereto the said board of county commissioners shall appoint a committee of three competent and disinterested persons who are citizens of the county who shall ascertain the amount necessary for the repair of said work, and who shall report the same to the board of county commissioners at their next regular meeting, and upon the report of said committee to them they shall advertise not less than 30 days in a newspaper published in the county for bids on said work to be given to the lowest responsible bidder. Before letting the contract for the work, the said county commissioners shall require a sufficient bond from the contractor for the faithful performance of said work; when the work shall be completed the committee shall certify the same to the board of county commissioners who shall also inspect said work before final payment is made to the contractor, and such confirmation with the report of the committee that the work has been done according to contract shall be made a matter of record. Before letting such contract the committee appointed by the commissioners shall view the lands benefited by such drain or auxiliary and shall assess each parcel according and in proportion as each may be benefited, both those lands lying immediately along the drain or auxiliary thereto and those adjacent thereto for all the expenses that may be incurred in the repair of such drain, and shall file a report of the same with the board of county commissioners. Said report shall show each tract and parcel of land assessed, the amount of said assessment, and the names of the several owners, unless the owner cannot be ascertained by diligent inquiry, when the same may be assessed as unknown.

History.—s. 8, ch. 5378, 1905; RGS 1759; CGL 2810.

157.23 Objections to report of committee fixing assessments; notice; hearing; equalization; assessments; collection by tax collector.—Whenever the report of any committee appointed under the provisions of this chapter, showing the amount of assessment against any lands for work done, or to be done, in accordance with the provisions of this chapter shall have been filed with the board of county commissioners, they shall at once give notice by

publishing in a newspaper published in said county, for not less than 2 weeks prior to a regular meeting that they will at their next regular meeting hear complaints from the owner or agent of any real estate against the assessment so made against said property and the said county commissioners shall have the full power to equalize the assessments so made against said real estate, but cannot raise or lower the entire assessment so made by the committee so appointed by them to make said assessment and said assessment when equalized shall, by the county commissioners when they are satisfied that such assessments are just and proper, be turned over to the property appraiser with instructions to levy such assessment upon such parcels of land as aforesaid; provided, that when the assessment shall have been made under s. 157.07, s. 157.17 or s. 157.19, the notice published by the county commissioners shall only be required to contain the name of the drain or auxiliary thereto and the total amount of the assessment; and provided further, that when the assessment is made under s. 157.16, if no other lands are assessed than those assessed for the original construction of the drain or auxiliary thereto, then the notice given by the county commissioners need not contain anything but the name of said drain or auxiliary and the total amount of said assessment, but if the assessment is made under s. 157.16 and any other lands are assessed than those assessed for the original cost of the drain or auxiliary then the notice given by the county commissioners shall, in addition to the name of the drain and the total amount of the assessment give the several additional tracts of land so assessed, the owners thereof and the amount of assessment against such additional tracts of land. Said assessments may be levied for 1 year or in yearly assessments for 2, 3, 4, or 6 years, according as it may be deemed advisable and for the best interests of those concerned, and shall be collected by the tax collector in like manner as other taxes are collected, and made a special fund for the cancellation or redemption of the indebtedness incurred in the construction of said drain or auxiliary as aforesaid.

History.—s. 9, ch. 5378, 1905; RGS 1760; CGL 2811; s. 1, ch. 77-102.

157.24 Commissioners may issue interest-bearing scrip against land to borrow money or pay for work; lien on land assessed.—When any assessments under the provision of this chapter have been ordered by the county commissioners they may issue scrip bearing 6 percent interest against the lands assessed, redeemable in 1, 2, 3, 4, or 6 years, as the case may be, upon which they may borrow money with which to pay for the work aforesaid, or shall have the right to pay said scrip when issued for the cost of the work contracted for, direct to the contractor at its face value, and such scrip shall be a lien upon the lands assessed as aforesaid until such scrip shall be redeemed, and the indebtedness fully satisfied; provided, that no lien shall lie or be enforced against any tract of land for more than the amount so assessed against said tract.

History.—s. 10, ch. 5378, 1905; RGS 1761; CGL 2812; s. 43, ch. 77-104.

157.25 Compensation of committee; irregular assessment corrected.—The committee appointed by the county commissioners for the purposes aforesaid shall receive such compensation for their services as may be agreed upon. In the event any of the assessments herein provided for shall be declared illegal by any court on account of any irregularities therein, the said board of county commissioners may make new and other assessments in accordance with the provisions of this chapter, correcting said irregularities until the owners of the lands assessed shall have paid the amount for which they are properly assessable.

History.—s. 12, ch. 5378, 1905; RGS 1763; CGL 2814.

157.26 Repair and maintenance of drains under supervision of county commissioners.—All ditches, drains and canals heretofore or hereafter constructed in any county of the state under the provisions of this chapter, shall for the purpose of maintenance and repair be and remain under the supervision and control of the board of county commissioners of the county where located.

History.—s. 1, ch. 6190, 1911; RGS 1764; CGL 2815.

157.27 Proceedings for making repair to drains, etc.—When it shall be made to appear to the board of county commissioners of any county that any such ditch, drain or canal within said county is in need of repair, that fact shall be entered upon the minutes of said board and published in at least one issue of a newspaper published in said county in and with the minutes of said board, and unless good cause to the contrary shall be shown by one or more interested owners of land to be taxed for said purpose, at the next regular meeting of the board, an order may be entered directing such repairs to be made.

History.—s. 2, ch. 6190, 1911; RGS 1765; CGL 2816.

157.28 Awarding contracts for repair, etc.—If the estimated cost of repairing any such ditch, drain or canal shall not exceed the sum of $100, the board of county commissioners shall have full power to have the same done in such manner as said board may see fit; but if such estimated cost shall exceed $100, then the contract shall be let to the lowest responsible bidder after giving 4 weeks' previous notice by advertising once each week in some newspaper published in the county, or by posting in five conspicuous places in the commissioners' district in which such ditch, drain or canal shall be located, and all work done shall be subject to the approval and acceptance of the board of county commissioners.

History.—s. 3, ch. 6190, 1911; RGS 1766; CGL 2817.

157.29 Levy of tax for maintaining and repairing drains; assessment and collection of tax; sale of land for unpaid taxes.—For the purpose of paying the cost of maintaining and repairing any such ditch, drain or canal and auxiliaries thereto, the board of county commissioners of the several counties of the state, wherein any such ditch, drain or canal is, or may be, located shall, when deemed necessary, levy such tax as in the opinion of said board may be deemed necessary for said purpose, which tax shall be levied upon the same lands origi-

nally assessed for the construction of such drain; and the expense of maintenance shall be borne by said lands in the same relative proportion as the original expense of constructing said drain, and the tax so imposed shall be levied and assessed by the same officers at the same time and in the same manner as other taxes are assessed, and shall be collected by the county tax collector as other taxes are collected, and in case of default in the payment of such tax the same penalty shall obtain and the lands may be sold and conveyed in the same way that lands are sold and conveyed for the collection of other taxes, and the money so collected shall be preserved in a separate fund for the maintenance of the ditch, drain or canal for the original construction of which such lands were assessed.

History.—s. 4, ch. 6190, 1911; RGS 1767; CGL 2818.
cf.—s. 298.66 Penalty for obstructing drainage canals, etc.

157.30 Reassessment of lands where attempt to establish ditch or canal irregular.—In all cases where there has been an attempt to establish a public ditch, drain or canal, in any of the counties of this state, and the county commissioners in pursuance of such attempt have proceeded to establish a public ditch, drain or canal, but there has been a failure to comply with the law, either in respect to the proceedings prior to the action by the county commissioners, or in respect to the subsequent proceedings, the lands specially benefited by such public ditch, drain or canal shall be subject to reassessment on account of such special benefit at any time within 3 years from the final completion of the work, or if bonds or scrip shall become due, in case a former assessment shall be discovered to be defective, irregular, or not in compliance with law, or be declared by the judgment of a court to be void.

History.—s. 1, ch. 6963, 1915; RGS 1768; s. 1, ch. 9130, 1923; CGL 2819; s. 7, ch. 22858, 1945.

157.31 Notice of reassessment for drainage.—In all such cases, the board of county commissioners, upon the matter being brought to its attention, shall cause to be published in some newspaper published in the county, once a week for a period of 3 weeks, a notice substantially in the following form:

"Notice of Reassessment for Drainage.

Whereas, it has been discovered that the proceedings to establish a public ditch, drain or canal, commencing at ..... and running in a general ..... course through the following lands, viz. ..... were defective, and the assessment in pursuance thereof made was invalid, or irregular and not made in compliance with law, now, therefore, notice is hereby given to all persons interested, that the County Commissioners of ..... County, will be in session at ..... o'clock in the forenoon, at the courthouse, on the ..... day of ....., 19....., for the purpose of providing for a reassessment of the property specially benefited by the said public ditch, drain or canal, and all persons interested are hereby notified to attend on the said day, and present objections, if any, to the said reassessment, and are further notified that the board will give a hearing to all parties interested, and act on the said matter at the said meeting."

History.—s. 2, ch. 6963, 1915; RGS 1769; s. 2, ch. 9130, 1923; CGL 2820.

157.32 Reviewing complaints and making assessment against property benefited.—If it shall appear to the board, after hearing all parties interested, that the public ditch, drain or canal has been an actual special benefit to the property served by it, and that the proceedings for the establishment thereof have been carried out bona fide and without fraud, the board shall proceed to assess each parcel of land benefited thereby for the expenses incurred in the construction of such ditch, drain or canal in proportion to the benefit accruing, and thereupon the board shall give notice once a week for 2 weeks, by publishing the same in some newspaper published in the county, that at its next regular meeting it will be in session for the purpose of reviewing the assessments and hearing complaints against the same. If no such complaints are filed in writing on the first day of the meeting of the board the assessments shall stand confirmed. If complaints are filed, the board shall hear and determine the same, and, if allowed, may modify or change the former assessments so as to equitably spread the burden on the property specially benefited.

History.—s. 3, ch. 6963, 1915; RGS 1770; CGL 2821.

157.33 Issuance of scrip to take up former scrip or bonds.—After the provisions of ss. 157.30-157.32 have been complied with, the board may issue scrip or bonds, as the case may be, to be delivered to the holder or holders of scrip or bonds issued pursuant to former proceedings upon surrender of the former scrip or bonds.

History.—s. 4, ch. 6963, 1915; RGS 1771; CGL 2822; s. 43, ch. 77-104.

157.34 Reassessments to have effect as original assessment.—All assessments made pursuant to the provisions of ss. 157.30-157.32, shall have the same force and effect as is provided in cases of original assessments, and payment thereof shall be provided for and be enforced in the same manner.

History.—s. 5, ch. 6963, 1915; RGS 1772; CGL 2823.

157.35 Assessments conclusive after lapse of 6 months.—After the lapse of 6 months from the final action of the board at its meeting to hear complaints against assessments, all assessments made shall be conclusive in any proceedings at law or in equity, in any court in this state.

History.—s. 6, ch. 6963, 1915; RGS 1773; CGL 2824.

157.36 Adjustment of drainage tax liens.—Boards of county commissioners may act as a board of adjustment in settling and adjusting all delinquent drainage tax liens levied for interest and sinking fund purposes in drainage districts created and established in their respective counties of Florida, under authority of this chapter, wherein the total delinquent drainage tax liens in such respective drainage districts are in excess of their respective total debt requirements.

History.—s. 1, ch. 17458, 1935; CGL 1936 Supp. 2824(1).

CHAPTER 159

BOND FINANCING

PART I REVENUE BOND ACT OF 1953 (ss. 159.01-159.19)

PART II FLORIDA INDUSTRIAL DEVELOPMENT FINANCING ACT (ss. 159.25-159.43)

PART III INDUSTRIAL DEVELOPMENT AUTHORITIES (ss. 159.44-159.53)

PART IV HOUSING FINANCE AUTHORITIES (ss. 159.601-159.623)

PART V RESEARCH AND DEVELOPMENT AUTHORITIES (ss. 159.701-159.7095)

PART I

REVENUE BOND ACT OF 1953

159.01 Short title.—This part I of chapter 159 shall be known, and may be cited, as the "Revenue Bond Act of 1953."

History.—s. 1, ch. 28045, 1953.

159.02 Definitions.—As used in this part, the following words and terms shall have the following meanings, unless some other meaning is plainly intended:

(1) The word "municipality" shall mean any city, town, village or port authority in the state, whether incorporated by special act of the Legislature or under the general laws of the state.

(2) The word "unit" shall mean any county or municipality in the state, now or hereafter created or established.

(3) The term "governing body," as applied to a county, shall mean the board of county commissioners, and as applied to a municipality, shall mean the council, commission or other board or body in which the general legislative powers of the municipality shall be vested.

(4) The word "project" shall include all property, rights, easements, and franchises relating thereto and deemed necessary or convenient for the construction or acquisition or the operation thereof, and shall embrace waterworks systems, sewer systems, gas systems, bridges, causeways, tunnels, incinerator and solid waste disposal systems, harbor and port facilities, mass transportation systems, expressways, marinas, civic auditoriums, sports arenas, parking facilities, and theme and amusement parks.

(5) A project shall be deemed "self-liquidating" if, in the judgment of the governing body, the revenues and earnings thereof and other special funds pledged therefor as provided in this part, will be sufficient to pay the cost of maintaining, repairing and operating the project and to pay the principal and interest of revenue bonds (as hereinafter defined) which may be issued to pay the cost of such project or improvements thereof.

(6) The term "revenue bonds" shall mean the obligations issued by a unit under the provisions of this part to pay the cost of a self-liquidating project or improvements thereof or combination of one or more projects or improvements thereof, and payable from the earnings of such project, and any other special funds authorized to be pledged as additional security therefor under this part. Whenever the word "bonds" is used in this part, it shall be deemed to mean "revenue bonds," unless the specific term "general obligation bonds" is used.

(7) The word "bridge" and the word "tunnel" shall include not only the bridge or the tunnel but also all structures and equipment connected therewith and the approaches thereto and approach roads.

(8) The word "causeway" shall mean any raised road or way over and across any marshy ground, swamp, river, bay or water in the state, the bridges or tunnels and structures connected therewith, and the approaches thereto and approach roads.

(9) The term "waterworks system" shall mean and shall include water supply systems, water distribution systems and any integral part thereof, whether inside or outside the unit, and shall include but shall not be limited to reservoirs, wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filter stations, purification plants, hydrants, meters, valves and equipment.

(10) The term "harbor and port facilities" shall include docks, wharves, piers, warehouses, terminals, refrigerating plants, channels, turning basins, connecting railroads, breakwaters, causeways and

bridges, and bulkheads and equipment.

(11) The word "improvements" shall mean such repairs, replacements, additions, extensions and betterments of and to a project as are deemed necessary to place such project in proper condition for the safe, efficient and economic operation thereof, or necessary to preserve a project or to maintain adequate service to the public.

(12) The term "cost of improvements" shall mean the cost of construction or acquiring improvements as hereinabove defined and shall embrace the cost of all labor and materials, the cost of all lands, property, rights, easements and franchises acquired which are deemed necessary for such construction, the cost of all machinery and equipment, financing charges, cost of engineering and legal expenses, plans, specifications, surveys, and such other expenses as may be necessary or incident to such construction.

(13) The term "cost of a project" shall mean the cost of acquiring or constructing such project, and the cost of improvements, and shall include the cost of all labor and materials, the cost of all lands, property, rights, easements and franchises acquired, which are deemed necessary for such acquisition or construction, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for 1 year after the completion of construction, engineering and legal expenses, cost of plans, specifications, surveys, estimates of construction costs and of revenues, other expenses necessary or incident to determining the feasibility or practicability of such acquisition or construction, administrative expenses, and such other expenses as may be necessary or incident to the financing herein authorized and to such acquisition or construction and the placing of the project in operation.

(14) The term "sewer system" shall mean and include sewage disposal systems or sanitary sewer systems and any integral part thereof, whether inside or outside the unit, and shall include but shall not be limited to sewage disposal plants or facilities, sanitary sewers, pumping stations, intercepting or trunk or lateral sewers, and any other properties or works or equipment necessary for the collection, treatment and disposal of sewage and waste matter, including industrial wastes.

(15) The term "gas system" shall mean and include works and structures necessary for the production, supply and distribution of gas, manufactured or natural, for lighting, heating, refrigeration or other domestic or industrial use, whether inside or outside the unit and shall include but shall not be limited to distribution mains, meters, plants, equipment, machinery and any other property necessary for the production, supply and distribution of either manufactured or natural gas, for domestic or industrial use.

(16) The term "utilities services taxes" shall mean taxes levied and collected on the purchase or sale of utilities services pursuant to ss. 167.431 and 167.45 or any other law.

(17) The term "cigarette taxes" shall mean taxes levied and collected on the purchase or sale of cigarettes under the provisions of chapter 210 or any other law.

(18) The term "franchise taxes" shall mean payments to a municipality pursuant to the provisions of a franchise granted to a person, firm or corporation for the furnishing of utilities or other services or facilities in such municipality.

(19) The term "mass transportation system" shall mean any system for the transportation of the public by bus, rail or any other means of conveyance serving the general public and moving over prescribed routes.

(20) The term "expressways" shall mean any limited access highway where tolls are charged for use thereof.

(21) The term "marinas" shall mean any facilities for the sale, repair, rental, storage, and servicing of boats.

(22) The term "civic auditorium" shall mean any building constructed for the purpose of serving public gatherings, including but not limited to, conventions, meetings, and concerts where admission may be charged.

(23) The term "sports arena" shall mean any building or enclosed area where fees may be charged for the admission to sporting events.

(24) The term "incinerator and solid waste disposal systems" shall include any system whereby solid wastes are burned, buried, composted or any system for such disposal approved by a state pollution control agency.

(25) The term "parking facilities" shall mean any facility constructed for the purpose of vehicular parking and the use, operation and occupancy of such parking facilities and for which charges are made.

History.—s. 2, ch. 28045, 1953; ss. 1, 2, ch. 67-550; s. 1, ch. 77-351.

159.03 General powers.—The governing body of any unit in the state is hereby authorized and empowered:

(1) To acquire by purchase or to construct, or partly acquire and partly construct, and to improve, repair, reconstruct, own, operate and maintain any self-liquidating project, or any combination of one or more projects as a single project, either inside or outside or partly inside and partly outside of the boundaries of the corporate limits of such unit; provided, however, that the consent of the adjoining governmental authority must be first obtained before a project may be effected outside the boundaries of the corporate limits of such unit.

(2) To issue revenue bonds of such unit, payable from earnings and any other special funds pledged therefor as provided herein, to pay the cost of a project or improvement thereof.

(3) To fix and collect rates, fees, tolls, rentals or other charges for the services and facilities furnished by such project.

(4) To acquire in the name of the unit, either by purchase or the exercise of the right of eminent domain, such lands and rights and interests therein, including lands under water and riparian rights, and to acquire such personal property, as it may deem necessary in connection with the construction, reconstruction, improvement, extension, enlargement or operation of any project.

(5) To make and enter into all contracts and agreements necessary or incidental to the perform-

ance of its duties and the execution of its powers under this part, and to employ such consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and other employees and agents as may, in the judgment of the governing body, be deemed necessary, and to fix their compensation; provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this part.

(6) To receive and accept from any federal agency grants for or in aid of the planning, construction, reconstruction or financing of any project, and to receive and accept aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made.

History.—s. 3, ch. 28045, 1953; s. 3, ch. 67-550; s. 1, ch. 77-174.

159.04 Neither credit nor taxing power pledged.—

(1) Revenue bonds issued under the provisions of this part shall not be deemed to constitute a debt of the unit issuing the same or a pledge of the faith and credit of such unit, except as provided in s. 159.16, but such bonds shall be payable from the funds hereinafter provided therefor from revenues and any other special funds pledged for the payment of such bonds as provided herein. All such bonds shall contain a statement on their face to the effect that such unit is not obligated to pay the same or the interest thereon except from revenues and other special funds provided for in this part, and that the faith and credit of the unit are not pledged to the payment of the principal or interest of such bonds.

(2) The issuance of revenue bonds under the provisions of this part shall not directly or indirectly or contingently obligate the unit to levy or to pledge any form of ad valorem taxation whatever therefor. No holder of any such revenue bonds shall ever have the right to compel any exercise of the ad valorem taxing power on the part of such unit to pay any such bonds or the interest thereon or to enforce payment of such bonds or the interest thereon against any property of the unit, nor shall such bonds constitute a charge, lien or encumbrance, legal or equitable, upon any property of such unit, except the revenues and other special funds pledged for the payment of such revenue bonds.

History.—s. 4, ch. 28045, 1953; s. 4, ch. 67-550.

159.05 Purchase of projects.—The governing body of any unit is hereby authorized to acquire by purchase, whenever it shall deem such purchase expedient, any self-liquidating project as hereinabove defined, or any such project, wholly or partly constructed, and any franchise, easements, permits and contracts for the construction of any such project, upon such terms and at such prices as may be reasonable and can be agreed upon between such governing body and the owner thereof, title to be taken in the name of the unit. The governing body may issue revenue bonds of the unit, as hereinafter provided, to pay the cost of the acquisition of such project.

History.—s. 5, ch. 28045, 1953.

159.06 Improvement of projects purchased.—It shall be the duty of the governing body at or before the time any such project shall be acquired by purchase, to determine what repairs, replacements, additions or betterments will be necessary to place the project in safe and efficient condition for use, and to cause an estimate of the cost of such improvements to be made. The governing body shall authorize such improvements before the sale of any revenue bonds for the acquisition of such project, and the cost of such improvements shall be paid for out of the proceeds of such bonds.

History.—s. 6, ch. 28045, 1953.

159.07 Construction of projects.—The governing body of any unit is hereby authorized and empowered to construct, whenever it shall deem such construction expedient, any self-liquidating project as hereinabove defined.

History.—s. 7, ch. 28045, 1953.

159.08 Revenue bonds.—

(1) The governing body of any unit shall have the power and it is hereby authorized to provide by ordinance or resolution, at one time or from time to time, for the issuance of revenue bonds of the unit for the purpose of paying all or a part of the cost as hereinabove defined of any one or more self-liquidating projects of the same class, or any combination thereof as a single project, or of any improvements thereof. The principal and interest of such bonds shall be payable solely from the special funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding 7.5 percent per annum, shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the governing body, and may be made redeemable before maturity, at the option of the unit, at such price or prices and under such terms and conditions as may be fixed by the governing body prior to the issuance of the bonds. The governing body shall determine the form of the bonds and the interest coupons to be attached thereto, the manner of executing the bonds and coupons, and shall fix the denomination or denominations of the bonds and the place or places of payment of the principal and interest, which may be at any bank or trust company within or without the state. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All revenue bonds issued under the provisions of this part shall have and are hereby declared to be and to have all the qualities and incidents of negotiable instruments under the Negotiable Instruments Law of the state. Provision may be made for the registration of any of the bonds in the name of the owner as to principal alone and also as to both principal and interest, and for the reconversion of any of the bonds registered as to both principal and

interest into coupon bonds. Such bonds may be issued without regard to any limitation on indebtedness prescribed by any other law and shall not be included in the amount of bonds which any unit may be authorized to issue under any statute or charter. The governing body may sell such bonds in such manner and for such price as it may determine to be for the best interests of the unit, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than 7.5 percent per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on the redemption of any bonds prior to maturity. Prior to the preparation of definitive bonds, the governing body may, under like restrictions, issue interim receipts, interim certificates, or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The governing body may also provide for the replacement of any bonds which shall become mutilated, or be destroyed or lost. Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this part.

(2) The proceeds of such bonds shall be used solely for the payment of the cost of the project, and shall be disbursed in such manner and under such restrictions, if any, as the governing body may provide. If the proceeds of such bonds, by error of estimates or otherwise, shall be less than the cost of the project, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the ordinance or resolution or in the trust agreement hereinafter mentioned, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same project. If the proceeds of bonds issued for any project shall exceed the cost thereof, the surplus shall be paid into the fund hereinafter provided for the payment of the principal of and the interest on such bonds.

(3) In the event that a unit has heretofore acquired or constructed a project as hereinabove defined, and, to pay the cost of such acquisition or construction or of improvements thereof, shall have issued revenue bonds or certificates of the unit payable from the revenues of such project or any other special funds provided for herein, and in the further event that such unit shall desire to construct additions, extensions, improvements or betterments to such project or to acquire by purchase or to construct an additional project and to combine such additional project with the project theretofore purchased or constructed, and to refund such outstanding revenue bonds or certificates, such unit may provide for the issuance of a single issue of revenue bonds under the provisions of this part for the combined purposes:

(a) Of refunding such revenue bonds or certificates then outstanding if they have matured or shall then be subject to redemption or will be subject to redemption within 10 years thereafter, or can be acquired for retirement, and

(b) Of constructing such additions, extensions, improvements or betterments or of acquiring by purchase or of constructing such additional project, and the principal of and interest on such revenue bonds shall be payable from the revenues derived from the operation of the combined projects as a single project, and any other special funds pledged therefor as provided herein.

(4) The ordinance or resolution providing for the issuance of the revenue bonds and the trust agreement hereinafter mentioned, may also contain such limitations upon the issuance of additional revenue bonds as the governing body may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such ordinance or resolution or by the trust agreement hereinafter mentioned. All moneys received from any bonds issued and sold under the provisions of this part shall be applied solely for the purposes for which the bonds shall be authorized or to the sinking fund created for the payment of such bonds.

(5) No revenue bonds shall be issued by a unit under the authority of this part unless the governing body of such unit shall have theretofore found and determined:

(a) The estimated cost of the project on account of which such bonds are to be issued,

(b) The estimated annual revenues of such project, and of any other special funds provided for in this part which are to be pledged as additional security for said bonds, and

(c) The estimated annual cost of maintaining, repairing and operating the project and the interest on such bonds and the principal thereof as such interest and principal shall become due.

History.—s. 8, ch. 28045, 1953; s. 1, ch. 67-484; s. 5, ch. 67-550; s. 10, ch. 73-302.

159.09 Trust agreement.—In the discretion of the governing body, each or any issue of such bonds may be secured by a trust agreement by and between the unit and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside the state. Such trust agreement may pledge or assign the revenues to be received, but shall not convey or mortgage any project or any part thereof. Either the ordinance or resolution providing for the issuance of revenue bonds or such trust agreement may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the unit and the governing body thereof in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the project, and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the governing body. Such ordinance or resolution or such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, if any, and may restrict the individual right of action by bondholders as is customary in trust agreements

or trust indentures securing bonds or debentures of corporations. In addition to the foregoing, such ordinance or resolution or such trust agreement may contain such other provisions as the governing body may deem reasonable and proper for the security of bondholders. Except as in this part otherwise provided, the governing body may provide, by ordinance or resolution or by such trust agreement, for the payment of the proceeds of the sale of the bonds and the revenues of the project to such officer, board or depository as it may determine for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust agreement may be treated as a part of the cost of operation of the project affected by such trust agreement.

History.—s. 9, ch. 28045, 1953.

159.10 Revenues of projects.—

(1) The governing body shall fix and revise from time to time rates, fees, rentals, tolls or other charges for the use of each project or for the services and facilities furnished thereby and charge and collect the same. Such rates, fees, rentals, tolls, or other charges shall be so fixed and adjusted, in respect of the aggregate of rates, fees, rentals, tolls, or other charges from the project or projects for which a single issue of bonds is issued, as to provide a fund sufficient, together with any other special funds pledged therefor as provided in this part, to pay the cost of maintaining, repairing and operating such project or projects and the principal of and interest on the revenue bonds as the same shall become due and reserves for such purposes and all such other payments required by the proceedings authorizing the issuance of such revenue bonds. Such rates, fees, rentals, tolls and other charges shall not be subject to supervision or regulation by any state commission, board, bureau or agency.

(2) All or a sufficient amount of the revenues derived from a project or projects for which revenue bonds have been issued shall be set aside at such regular intervals as may be provided in the ordinance or resolution authorizing the issuance of the bonds or in the trust agreement securing the same, in a sinking fund which is hereby pledged to and charged with the payment of the principal and interest upon such bonds as the same shall become due, any premium upon bonds retired by call or purchase as herein provided, and for reserves therefor, and to pay the cost of maintaining, repairing and operating the project or projects and reserves therefor, all in the order of priority and manner as shall be provided in such ordinance or resolution or trust agreement. The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the ordinance or resolution authorizing the issuance of the bonds or in such trust agreement, but, except as may otherwise be provided in such ordinance or resolution or such trust agreement, such sinking fund shall be a fund for the benefit of all bonds without distinction or priority of one over another.

(3) If any county, city or town or any department, agency or instrumentality thereof elects to avail itself of the services and facilities afforded by a project financed by it under the provisions of this part, it shall pay for the same at the established rates as the charges therefor accrue, and the revenues so received shall be deemed to be a part of the revenues of such project.

History.—s. 10, ch. 28045, 1953; s. 6, ch. 67-550.

159.11 Trust funds.—All moneys received pursuant to the authority of this part, whether as proceeds from the sale of revenue bonds or as revenues, shall be deemed to be trust funds, to be held and applied solely as provided in this part. The governing body shall, in the ordinance or resolution authorizing the issuance of such bonds or in the trust agreement, provide for the payment of the proceeds of the sale of the bonds and the revenues to be received to any officer who, or to any agency, bank or trust company which, shall act as trustee of such funds, and hold and apply the same to the purposes hereof, subject to such regulations as this part and such ordinance or resolution or trust agreement may provide.

History.—s. 11, ch. 28045, 1953.

159.12 Remedies of bondholders and trustee.—Any holder of revenue bonds issued under the provisions of this part or any of the coupons attached thereto, and the trustee under the trust agreement, if any, except to the extent the rights herein given may be restricted by ordinance or resolution passed before the issuance of the bonds or by the trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the state or granted hereunder or under such ordinance or resolution or trust agreement, and may enforce and compel the performance of all duties required by this part, or by such ordinance or resolution or trust agreement, to be performed by the unit or its governing body or by any officer thereof, including the fixing, charging and collecting of rates, fees, rentals, tolls and other charges for the use of the project or for the services and facilities furnished thereby.

History.—s. 12, ch. 28045, 1953.

159.13 Revenue refunding bonds.—

(1) The governing body of any unit is hereby authorized to provide by ordinance or resolution for the issuance of revenue refunding bonds of such unit for the purpose of refunding any revenue bonds then outstanding and which shall then have matured or are then redeemable or subject to redemption within 10 years thereafter or can be acquired for retirement and issued under the provisions of this part or any other law for the purpose of paying all or a part of the cost of a project as defined in this part. The governing body of any unit is further authorized to provide by ordinance or resolution for the issuance of revenue bonds of the unit for the combined purposes of:

(a) Paying the cost of any improvements of a project or of acquiring by purchase or of constructing an additional project or projects and of;

(b) Revenue refunding bonds of the unit which shall theretofore have been issued for such project and shall then be outstanding and which shall then have matured or are then redeemable or subject to redemption within 10 years thereafter or can be acquired for retirement.

The issuance of such revenue refunding bonds, the maturities and other details thereof, the rights of the holders thereof, and the duties of the governing body and of the unit in respect to the same, shall be governed by the foregoing provisions of this part insofar as the same may be applicable.

(2) If such outstanding revenue bonds to be refunded are not immediately redeemable the issuing unit shall have power to invest the proceeds of such revenue refunding bonds in direct obligations of the United States until the first date upon which such outstanding revenue bonds are redeemable prior to maturity, not in any event later than 10 years from the date of issuance of such revenue refunding bonds.

History.—s. 13, ch. 28045, 1953; s. 7, ch. 67-550.

159.14 Alternative method.—This part shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing. This part, being necessary for the welfare of the inhabitants of the counties and municipalities of the state, shall be liberally construed to effect the purposes thereof.

History.—s. 14, ch. 28045, 1953.

159.15 Tax exemption and eligibility as investments.—

(1) It is hereby found and determined that all of the purposes for which revenue bonds are authorized to be issued by this part constitute essential governmental purposes, and all of the properties, revenues, moneys and other assets owned and used in the operation of such projects, and all revenue bonds issued hereunder and the interest thereon shall be exempt from all taxation by the state or by any county, municipality, political subdivision, agency, or instrumentality thereof. The exemption granted by this subsection shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

(2) Any revenue bonds issued hereunder shall be and constitute legal investments for all public bodies and for all banks, savings banks, guardians, insurance funds, trustees or other fiduciaries and shall be and constitute eligible securities to be deposited as collateral for the security of any state, county, municipal or other public funds.

History.—s. 8, ch. 67-550; s. 2, ch. 73-327.

159.16 Additional pledge of faith and credit.—

(1) Notwithstanding any other provision of this part, any county or municipality issuing revenue bonds hereunder for any of the purposes provided in this part, shall have power to pledge the full faith and credit and ad valorem taxing power of such county or municipality for the payment of the principal of or interest on such revenue bonds if the issuance of such revenue bonds with such additional pledge shall have approval by the qualified electors who are freeholders residing in such county or municipality in an election called, conducted and held in the manner provided in the Constitution and Statutes of Florida for the holding of freeholder elections.

(2) In the event such additional pledge is made the county or municipality shall be obligated to levy ad valorem taxes without limit as to rate or amount for the payment of the principal of and interest on such revenue bonds, and the issuance of such revenue bonds with such additional pledge of the faith and credit of such county or municipality shall not be subject to any debt limitation contained in any other law, general, special or local.

History.—s. 8, ch. 67-550.

159.17 Lien of service charges.—Any municipality issuing revenue bonds hereunder shall have a lien on all lands or premises served by any water system, sewer system or gas system for all service charges for such facilities until paid, which liens shall be prior to all other liens on such lands or premises except the lien of state, county and municipal taxes and shall be on a parity with the lien of such state, county and municipal taxes. Such liens, when delinquent for more than 30 days, may be foreclosed by such municipality in the manner provided by the laws of Florida for the foreclosure of mortgages on real property.

History.—s. 8, ch. 67-550.

159.18 Collection of charges.—

(1) Any municipality shall have power to discontinue and shut off the supplying of any or all water, gas and sewer services to any users of the facilities of a water system, gas system or sewer system of such municipality for nonpayment of service charges for any such water system, gas system or sewer system, and may covenant with the holders of any revenue bonds issued hereunder that it will not restore the supplying of any water, gas or sewer services to such delinquent users until all charges, with reasonable interest and penalties, for all water, gas and sewer services have been paid in full.

(2) Any municipality shall have power to enter into valid and legally binding contracts with any person, public or private corporation, board or other body supplying water to any premises served by the sewer system or facilities of the municipality for the shutting off and discontinuing of the supply of water to such premises as long as any charges for the sewer services or facilities of the municipality are unpaid, under such terms and conditions as shall be mutually agreed upon, including provisions for the billing and collecting of the sewer charges of the municipality by the owners of the water facilities at the same time water charges are billed and collected by such owners of the water facilities.

History.—s. 8, ch. 67-550.

159.19 Additional pledge of excise taxes.—

(1) Any municipality may pledge the proceeds of utilities services taxes, cigarette taxes, or franchise taxes, as defined herein, or any other excise taxes or other funds which such municipality is authorized to levy and collect or will have available, as additional security for the payment of the principal of and interest on any revenue bonds issued hereunder, or for reserves for such debt service.

(2) In the event of the pledge of such utilities

services taxes, cigarette taxes, franchise taxes, or other excise taxes as provided herein, such pledge shall be and constitute a valid and legally binding contract between the municipality and the holders of such revenue bonds as the case may be, and the municipality shall be obligated to continue the levy and collection of such utilities services taxes, cigarette taxes, franchise taxes, or other excise taxes in accordance with the proceedings which authorize the issuance of the revenue bonds for which such utilities services taxes, cigarette taxes, franchise taxes or other excise taxes are so pledged as additional security as long as any of said revenue bonds are outstanding and unpaid.

(3) It shall be the mandatory duty of the municipality, when it has so pledged any utilities services taxes, cigarette taxes, franchise taxes or other excise taxes as additional security for such revenue bonds to continue the levy and collection of such utilities services taxes, cigarette taxes, franchise taxes or other excise taxes in the manner provided in the proceedings authorizing the issuance of the revenue bonds for which the same are pledged, and to raise the rates of such utilities services taxes, cigarette taxes, franchise taxes and other excise taxes to the maximum rates permitted by the statutes or franchises in effect at the time of the authorization of such bonds to the full extent necessary to comply with such proceedings authorizing the issuance of such revenue bonds.

(4) The state does hereby covenant with the holders of such revenue bonds that it will not repeal or impair, or amend in any manner which will materially and adversely affect the rights of such holders, the duty and obligation and power of the municipality to levy and collect such utilities services taxes, cigarette taxes, franchise taxes or other excise taxes in accordance with the proceedings authorizing the issuance of such revenue bonds.

History.—s. 8, ch. 67-550.

PART II

FLORIDA INDUSTRIAL DEVELOPMENT FINANCING ACT

159.25 Short title.—Part II of chapter 159 shall be known and may be cited as the "Florida Industrial Development Financing Act."

History.—s. 1, ch. 69-104.

159.26 Legislative findings and purposes.—The Legislature finds and declares that, in order to improve the prosperity and welfare of the state and its inhabitants, to improve living conditions, to promote effective and efficient pollution control throughout the state, to promote the advancement of education and science, research in and the economic development of the state, and to increase purchasing power and opportunities for gainful employment, it is necessary and in the public interest to facilitate the financing of capital projects for industrial or manufacturing plants, research and development parks, and pollution-control facilities within the state; to facilitate and encourage the planning and development of these capital projects without regard to the boundaries between counties, municipalities, special districts, and other local governmental bodies or agencies in order to more effectively and efficiently serve the interests of the greatest number of people in the widest area practicable; and to otherwise effectuate the purpose of s. 10(c) of Art. VII of the State Constitution through the authorization of the issuance of revenue bonds by counties, municipalities, special districts, and other local governmental bodies or agencies for industrial or manufacturing plants, research and development parks, or pollution-control facilities to the extent that the interest on such bonds is exempt from income taxes under the then existing laws of the United States. The elimination, mitigation, abatement, control, or prevention of air and water pollution constitutes a proper public purpose. Local agencies are encouraged to facilitate the financing of the costs of pollution-control facilities by utilizing revenue bonds authorized by s. 10(c) of Art. VII to accomplish this public purpose.

History.—s. 2, ch. 69-104; s. 1, ch. 75-126; s. 2, ch. 79-101.

159.27 Definitions.—The following words and terms, unless the context clearly indicates a different meaning, shall have the following meanings:

(1) "Bonds" or "revenue bonds" means the bonds authorized to be issued by any local agency under this part, which may consist of a single bond. The term "bonds" or "revenue bonds" shall also include a single bond, a promissory note or notes, or other debt obligations evidencing an obligation to repay borrowed money together with any security instruments or agreements securing repayment of such borrowed money and payable solely from the revenue derived from the sale, operation, or leasing of any project.

(2) "Cost" as applied to any project, shall embrace:

(a) The cost of construction;

(b) The cost of acquisition of property, including rights in land and other property, both real and personal and improved and unimproved;

(c) The cost of demolishing, removing, or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which

such buildings or structures may be moved or relocated;

(d) The cost of all machinery and equipment, financing charges, interest prior to and during construction, and, if deemed advisable by the local agency, for a period not exceeding 1 year after completion of construction, the cost of engineering and architectural surveys, plans and specifications; and

(e) The cost of consultant and legal services, other expenses necessary or incident to determining the feasibility or practicability of constructing such project, administrative and other expenses necessary or incident to the construction of such project, and the financing of the construction thereof, including reimbursement to any state or other governmental agency or any lessee of such project for such expenditures made with the approval of the local agency that would be costs of the project hereunder had they been made directly by the local agency.

(3) "Governing body" means the board, commission, or other governing body of any local agency in which the general legislative powers of such local agency are vested.

(4) "Local agency" means any county or municipality existing or hereafter created pursuant to the laws of the state or any special district or other local governmental body existing or hereafter created pursuant to the laws of the state, the purpose for the creation of which could reasonably be interpreted to be consistent with the issuance of revenue bonds to finance the cost of projects within the meaning of this part.

(5) "Project" means any capital project comprising an industrial or manufacturing plant, research and development park, or pollution-control facility, including one or more buildings and other structures, whether or not on the same site or sites; any rehabilitation, improvement, renovation, or enlargement of, or any addition to, any buildings or structures for use as a factory, mill, processing plant, assembly plant, fabricating plant, industrial distribution center, repair, overhaul, or service facility, test facility or pollution-control facility, and other facilities, including research and development, for manufacturing, processing, assembling, repairing, overhauling, servicing, testing, or handling of any products or commodities embraced in any industrial or manufacturing plant, in connection with the purposes of a research and development park, or for controlling pollution; and including also the sites thereof and other rights in land therefor whether improved or unimproved, machinery, equipment, site preparation and landscaping, and all appurtenances and facilities incidental thereto, such as warehouses, utilities, access roads, railroad sidings, truck docking and similar facilities, parking facilities, dockage, wharfage, and other improvements necessary or convenient for any manufacturing or industrial plant, research and development park, or pollution-control facility.

(6) "State" means the State of Florida.

(7) "Research and development park" means a center of research and development activity consisting of research and development facilities, research institutes, testing laboratories, related business, government installations, and similar facilities, together with land, including all necessary appurtenances, rights, and franchises relating thereto with related buildings, facilities, and personal properties, but only to the extent that such facilities are incidental to the purposes of a research and development park.

History.—s. 3, ch. 69-104; s. 2, ch. 75-126; s. 3, ch. 79-101.

159.28 General powers.—Every local agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including, but without limiting the generality of the foregoing, the powers, with respect to any project or projects:

(1) To prescribe rules, regulations, and policies in connection with the performance of its functions and duties under this part;

(2) To receive, administer, and comply with conditions and requirements respecting any gift, grant, or donation of any property or money from any source, whether federal, state, or private;

(3) To make and execute agreements of lease, contracts, deeds, and other instruments necessary or convenient in the exercise of the powers and functions of the local agency under this part, including contracts with persons, firms, corporations, federal and state agencies, and other local agencies, which state agencies and other local agencies are hereby authorized to enter into contracts and otherwise cooperate with any local agency to facilitate the financing, construction, and leasing of any project;

(4) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, for the construction, operation, or maintenance of any project; provided that no project shall be financed hereunder unless the local agency shall have or shall acquire an interest in the site of the project not of less dignity than a leasehold interest, sufficient for the purpose;

(5) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to any real or personal property or interest therein;

(6) To pledge or assign any money, rents, charges, fees, or other revenues and any proceeds derived from sales of property, insurance, or condemnation awards;

(7) To issue revenue bonds of the local agency for the purpose of providing funds to pay all or any part of the cost of any project, and to issue revenue refunding bonds;

(8) To construct, acquire, own, repair, maintain, extend, improve, rehabilitate, renovate, furnish, and equip projects and to pay all or any part of the costs thereof from the proceeds of bonds of the local agency or from any contribution, gift or donation or other funds made available to the local agency for such purpose;

(9) To fix, charge, and collect rents, fees, and charges for the use of any project; and

(10) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the local agency, and to fix

and pay their compensation from funds available to the local agency therefor.

History.—s. 4, ch. 69-104.

159.285 Additional county powers.—

(1) A county shall have full power and authority to issue revenue bonds for the purpose of financing and providing funds to pay the cost of pollution-control facilities or devices, or to provide facilities for the furnishing of water or sewerage or solid-waste disposal incorporated as a part of any project whether or not the site or sites of the project are located wholly or in part outside the boundaries of the county issuing the revenue bonds. However, the ultimate owner or user of the project shall maintain the project or the owner's or user's principal place of business within the boundaries of the county issuing the revenue bonds, and the revenue bonds shall comply with the requirements of s. 10(c) Art. VII of the State Constitution.

(2) As a condition precedent to issuing revenue bonds for the purpose of financing and providing funds to pay the cost of pollution-control facilities or devices or to provide facilities for the furnishing of water or sewerage or solid-waste disposal incorporated in a project located outside the boundaries of the county as authorized by subsection (1), the board of county commissioners or industrial development authority shall determine that the proposed facilities or devices are reasonably designed and intended to eliminate, mitigate, abate, control, or prevent air or water pollution or to provide facilities for the furnishing of water or sewerage or solid-waste disposal within the meaning of the rules and regulations of the Internal Revenue Service and that the ultimate owner or user of the project involved is financially responsible and fully capable and willing to fulfill its obligations under the contractual arrangements or lease with the county governing the project, including the obligation to pay rent or contract installments in the amounts and at the times required, to operate, repair, and maintain, at its own expense, the project leased or owned, and to serve the purposes of this part and such other responsibilities as may be imposed under the lease or contract.

(3) A county issuing revenue bonds pursuant to subsection (1) for the purpose of financing and providing funds for a project located wholly or in part outside the boundaries of the county issuing the revenue bonds may, in its discretion, request the board of county commissioners or the industrial development authority for the county or counties in which the site or sites of the project are located wholly or in part to make the determination required by s. 159.29 of the county issuing the bonds. The determination by such county or counties in which the project is located wholly or in part that the criteria and requirements of s. 159.29 are met shall be final and conclusive and shall constitute satisfaction of the requirements of s. 159.29.

History.—s. 3, ch. 75-126; s. 1, ch. 77-269; s. 1, ch. 78-120.

159.29 Criteria and requirements.—In undertaking any project pursuant to this part, a local agency shall be guided by and shall observe the following criteria and requirements; provided that the determination of the local agency as to compliance with such criteria and requirements shall be final and conclusive:

(1) The project, in the determination of the local agency, shall make a significant contribution to the economic growth of the local agency in which it is to be located, shall provide gainful employment, and shall serve a public purpose by advancing the economic prosperity and the general welfare of the state and its people.

(2) No project shall be leased to any lessee which is not financially responsible and fully capable and willing to fulfill its obligations under the agreement of lease, including the obligation to pay rent in the amounts and at the times required, the obligation to operate, repair and maintain at its own expense the project leased, and to serve the purposes of this part and such other responsibilities as may be imposed under the lease. In determining financial responsibility of such lessee consideration shall be given to the lessee's ratio of current assets to current liabilities, net worth, earning trends, coverage of all fixed charges, the nature of the industry or business involved, its inherent stability, any guarantee of the obligations by some other financially responsible corporation, firm or person, and other factors determinative of the capability of the lessee, financially and otherwise, to fulfill its obligations consistently with the purposes of this part.

(3) The local agency in which the project is to be located will be able to cope satisfactorily with the impact of such project and will be able to provide, or cause to be provided when needed, the public facilities, including utilities and public services, that will be necessary for the construction, operation, repair, and maintenance of the project and on account of any increases in population or other circumstances resulting therefrom.

(4) Adequate provision shall be made for the operation, repair, and maintenance of the project at the expense of the lessee and for the payment of principal of and interest on the bonds, and for reserves therefor.

History.—s. 5, ch. 69-104.

159.30 Agreements of lease.—

(1) No project financed under the provisions of this part shall be operated by the local agency or any other governmental agency, provided that the local agency may temporarily operate or cause to be operated all or any part of a project to protect its interest therein pending any leasing of such project in accordance with this part. The local agency shall lease a project or projects to one or more persons, firms, or private corporations for operation and maintenance in such a manner as shall effectuate the purposes of this part, under an agreement of lease in form and substance not inconsistent herewith. Any such agreement of lease may provide, among other provisions, that:

(a) The lessee shall at its own expense operate, repair, and maintain the project or projects leased thereunder;

(b) The rent payable under the lease shall in the aggregate be not less than an amount sufficient to pay all of the interest, principal, and redemption premiums, if any, on the bonds that shall be issued by the local agency to pay the cost of the project or

projects leased thereunder;

(c) The lessee shall pay all other costs incurred by the local agency in connection with the financing, construction, and administration of the project or projects leased, except as may be paid out of the proceeds of bonds or otherwise, including, but without being limited to, insurance costs, the cost of administering the bond resolution authorizing such bonds and any trust agreement securing the bonds, and the fees and expenses of trustees, paying agents, attorneys, consultants and others;

(d) The term of the lease shall terminate not earlier than the date on which all such bonds and all other obligations incurred by the local agency in connection with the project or projects leased thereunder shall be paid in full, including interest, principal and redemption premiums, if any, or adequate funds for such payment shall be deposited in trust;

(e) The lessee's obligation to pay rent shall not be subject to cancellation, termination, or abatement by the lessee until such payment of the bonds or provision for such payment shall be made.

(2) Such agreement of lease may contain such additional provisions as in the determination of the local agency are necessary or convenient to effectuate the purposes of this part, including provisions for extensions of the term and renewals of the lease and vesting in the lessee an option to purchase the project leased thereunder pursuant to such terms and conditions consistent with this part as shall be prescribed in the lease; provided that, except as may otherwise be expressly stated in the agreement of lease to provide for any contingencies involving the damaging, destruction, or condemnation of the project leased or any substantial portion thereof, such option to purchase may not be exercised unless all bonds issued for such project, including all principal, interest and redemption premiums, if any, and all other obligations incurred by the local agency in connection with such project shall have been paid in full or sufficient funds shall have been deposited in trust for such payment; and provided further that the purchase price of such project shall not be less than an amount sufficient to pay in full all of the bonds, including all principal, interest and redemption premium, if any, issued for the project then outstanding and all other obligations incurred by the local agency in connection with such project.

History.—s. 6, ch. 69-104.

159.31 Tax exemption.—The exercise of the powers granted by this part in all respects will be for the benefit of the people of the state, for the increase of their industry and prosperity, and for the improvement of their health and living conditions, and for the provision of gainful employment, and will constitute the performance of essential public functions, and the local agency shall not be required to pay any taxes on any project or any other property owned by the local agency under the provisions of this part or upon the income therefrom, and the bonds issued under the provisions of this part, their transfer, and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation by the state or any local unit or political subdivision or other instrumentality of the state. Nothing in this section, however, shall be construed as exempting from taxation or assessments the leasehold interest of any lessee in any project or any other property or interest owned by any lessee, and if any project or any part thereof shall be occupied or operated by any private corporation, association, partnership, or person pursuant to any contract or lease with the local agency, the property interest created by such contract or lease shall be subject to taxation to the same extent as other privately owned property. The exemption granted by this section shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

History.—s. 7, ch. 69-104; s. 3, ch. 73-327.

159.32 Construction contracts.—Contracts for the construction of the project may be awarded by the local agency in such manner as in its judgment will best promote free and open competition, including advertisement for competitive bids in a newspaper of general circulation within the boundaries of the local agency; provided, however, that if the local agency shall determine that the purposes of this part will be more effectively served, the local agency in its discretion may award or cause to be awarded contracts for the construction of any project, or any part thereof, upon a negotiated basis as determined by the local agency. The local agency shall prescribe such bid security requirements and other procedures in connection with the award of such contracts as in its judgment shall protect the public interest. The local agency may by written contract engage the services of the lessee or prospective lessee of any project in the construction of such project and may provide in such contract that the lessee or prospective lessee may act as an agent of, or an independent contractor for, the local agency for the performance of the functions described therein, subject to such conditions and requirements consistent with the provisions of this part as shall be prescribed in such contract, including such functions as the acquisition of the site and other real property for such project, the preparation of plans, specifications and contract documents, the award of construction and other contracts upon a competitive or negotiated basis, the construction of such project, or any part thereof, directly by such lessee or prospective lessee, the inspection and supervision of construction, the employment of engineers, architects, builders, and other contractors, and the provision of money to pay the cost thereof pending reimbursement by the local agency. Any such contract may provide that the local agency may, out of proceeds of bonds, make advances to or reimburse the lessee or prospective lessee for its costs incurred in the performance of such functions, and shall set forth the supporting documents required to be submitted to the local agency and the reviews, examinations, and audits that shall be required in connection therewith to assure compliance with the provisions of this part and such contract.

History.—s. 8, ch. 69-104.

159.33 Credit of state or political subdivision not pledged.—

(1) Bonds issued under the provisions of this part shall not be deemed to constitute a debt, liability, or

obligation of the local agency or of the state or of any political subdivision thereof, or a pledge of the faith and credit of the local agency or of the state or of any such political subdivision, but shall be payable solely from the revenues provided therefor. Each bond issued under this part shall contain on the face thereof a statement to the effect that the local agency shall not be obligated to pay the same nor interest thereon except from the revenues and proceeds pledged therefor, and that neither the faith and credit nor the taxing power of the local agency or of the state or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds.

(2) Expenses incurred by the local agency in carrying out the provisions of this part may be made payable from funds provided pursuant to this part and no liability or obligation shall be incurred by the local agency hereunder beyond the extent to which moneys shall have been so provided. Any and all moneys advanced on behalf of any project, which are derived from any tax source of the local agency, shall be repaid from the bond proceeds or from the lessee to the governmental entity which advanced same.

History.—s. 9, ch. 69-104.

159.34 Bonds.—

(1) The local agency is hereby authorized to provide for the issuance, at one time or from time to time, of industrial revenue bonds of the local agency for the purpose of paying all or any part of the cost of any project or projects. The bonds shall be designated, subject to such additions or changes as the local agency deems advisable, ".....Industrial Development Revenue Bonds" (inserting in the blank space the name of the local agency which issues the bonds). The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates, and shall mature at such time or times from their date or dates as may be determined by the local agency, and may be made redeemable before maturity at the option of the local agency at such price or prices and under such terms and conditions as may be fixed by the local agency prior to the issuance of the bonds. The local agency shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The local agency may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in registered form, or both, as the local agency may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The local agency may sell such bonds in such manner, either at public or private sale, and for such price as it may determine will best effectuate the purpose of this part.

(2) Notwithstanding any other provisions in this part, revenue bonds and revenue refunding bonds may be issued under this part only to the extent that the interest thereon is exempt from income taxes under the then existing laws of the United States, and revenue bonds may be issued only if they are payable solely from revenue derived from the sale, operation, or leasing of any project or projects.

(3) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or projects, or portion or portions thereof, for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the local agency may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficiency, and unless otherwise provided in the bond resolution or in the trust agreement, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed such cost, such excess shall be deposited to the credit of the sinking fund for such bonds, or, if so provided in such resolution or trust agreement, may be applied to the payment of the cost of any additional project or projects.

(4) Prior to the preparation of definitive bonds, the local agency may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The local agency may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

(5) Bonds may be issued under the provisions of this part without obtaining, except as otherwise expressly provided in this part, the consent of any department, division, commission, board, body, bureau, or agency of the state, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions, or things which are specifically required by this part and the provisions of the resolution authorizing the issuance of such bonds or the trust agreement securing the same.

(6) A local agency may provide in any bond resolution authorizing the issuance of bonds, or trust agreement securing the same, and in any agreement of lease or other contract respecting the project, that if at any time after such bonds have been sold and delivered it is ascertained by the local agency or its designee that the interest on the bonds is no longer exempt under federal income tax laws, or that operation of the project is no longer economically or legally feasible by reason of the condemnation, damaging, or destruction of all or any part of the project or by

changes in the law, measures deemed necessary by the local agency may be taken to protect the interest of the holders of its bonds, including the acceleration of the date or dates for calling the bonds for redemption, increasing the redemption premium and the rates of interest on the bonds, or increasing the rent under any such agreement of lease. The local agency may also require financial guarantees by guarantors acceptable to the local agency that obligations of any lessee under any such agreement of lease or contract shall be performed or otherwise satisfied.

History.—s. 10, ch. 69-104.

159.35 Trust agreement.—In the discretion of the local agency, any bonds issued under the provisions of this part may be secured by a trust agreement by and between the local agency and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or resolution providing for the issuance of such bonds may pledge or assign the fees, rents, charges, proceeds from the sale of any project or part thereof, insurance proceeds, condemnation awards, and other funds and revenues to be received therefor, and may provide for the mortgaging of any project or any part thereof as security for repayment of the bonds. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the local agency in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the project or projects in connection with which such bonds shall have been authorized, the fees, rents, and other charges to be fixed and collected, the sale of any project, or part thereof, or other property, the terms and conditions for the issuance of additional bonds, and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bonds, revenues, or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the local agency. Any such trust agreement or resolution may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the local agency may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the project or projects in connection with which bonds are issued or as an expense of administration of such project or projects, as the case may be.

History.—s. 11, ch. 69-104.

159.36 Revenues.—

(1) The local agency is hereby authorized to fix and to collect fees, rents, and charges for the use of any project or projects, and any part or section thereof, and to contract with any person, partnership, association, or corporation respecting the use thereof. The local agency may require that the lessee or users of any project or any part thereof, shall operate, repair, and maintain the project and shall bear the cost thereof and other costs of the local agency in connection with the project or projects leased, as may be provided in the agreement of lease or other contract with the local agency, in addition to other obligations imposed under such agreement or contract.

(2) The fees, rents, and charges shall be so fixed as to provide a fund sufficient to pay the principal of and the interest on such bonds as the same shall become due and payable and to create reserves for such purposes. The fees, rents, and charges and all other revenues and proceeds derived from the project or projects in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary for such reserves or any expenditures as may be provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be specified in such resolution or such trust agreement in a sinking fund which is hereby pledged to and charged with the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The fees, rents, charges, and other revenues and moneys so pledged and thereafter received by the local agency shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the local agency, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the local agency. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

History.—s. 12, ch. 69-104.

159.37 Trust funds.—Notwithstanding any other provisions of law to the contrary, all money received pursuant to the provisions of this part, whether as proceeds from the sale of bonds, sale of property, insurance, or condemnation awards, or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this part. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited

shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this part and such resolution or trust agreement may provide.

History.—s. 13, ch. 69-104.

159.38 Remedies.—Any holder of bonds issued under the provisions of this part or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the state or granted hereunder or under such trust agreement or resolution authorizing the issuance of such bonds, or under any agreement of lease or other contract executed by the local agency pursuant to this part, and may enforce and compel the performance of all duties required by this part or by such trust agreement or resolution to be performed by any lessee or the local agency or by any officer thereof, including the fixing, charging, and collecting of fees, rents, and charges.

History.—s. 14, ch. 69-104.

159.39 Negotiability of bonds.—All bonds issued under the provisions of this part shall have and are hereby declared to have all the qualities and incidents, including negotiability, of investment securities under the Uniform Commercial Code of the state but no provision of such code respecting the filing of a financing statement to perfect a security interest shall be deemed necessary for or applicable to any security interest created in connection with the issuance of any such bonds.

History.—s. 15, ch. 69-104.

159.40 Bonds eligible for investment.—Bonds issued by any local agency under the provisions of this part are hereby made securities in which all public officers and public bodies of the state and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law.

History.—s. 16, ch. 69-104.

159.41 Revenue refunding bonds.—

(1) Any local agency is authorized to provide by resolution for the issuance of revenue refunding bonds of the local agency for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this part, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the local agency for either or both of the following additional purposes:

(a) Constructing improvements, additions, extensions or enlargements of the project or projects in connection with which the bonds to be refunded shall have been issued; and

(b) Paying all or any part of the cost of any additional project or projects.

The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the local agency in respect to the same shall be governed by the provisions of this part which relate to the issuance of revenue bonds, insofar as such provisions may be appropriate therefor.

(2) Revenue refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this part and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption, or payment of such outstanding bonds. Revenue refunding bonds may be issued, in the determination of the local agency, at any time on or prior to the date of maturity or maturities or the date selected for the redemption of the bonds being refunded thereby. Pending the application of the proceeds of such refunding bonds, with any other available funds, to the payment of the principal, accrued interest, and any redemption premium on the bonds being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding bonds or in the trust agreement securing the same, to the payment of any interest on such refunding bonds and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States which shall mature, or which shall be subject to redemption by the holder thereof at the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.

History.—s. 17, ch. 69-104; s. 2, ch. 77-269.

159.42 Cooperation of state.—The state, its officers, departments, divisions, and other state entities are authorized to cooperate with and provide assistance to local agencies in carrying out the purposes of this part and thereby promote the industry and economy of the state. Personnel, facilities, and property under the jurisdiction of such state officers and entities and such appropriated and other funds as from time to time may be available therefor may be used and applied pursuant to this section except to the extent prohibited by law.

History.—s. 18, ch. 69-104.

159.43 Liberal construction.—Part II of chapter 159, being necessary for the prosperity and welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof.

History.—s. 19, ch. 69-104.

PART III

INDUSTRIAL DEVELOPMENT AUTHORITIES

159.44 Definitions; industrial development authorities.—The following words and terms, unless the context clearly indicates a different meaning, shall have the following meaning:

(1) "Bonds" or "revenue bonds" means the bonds authorized to be issued by any authority under this act, which may consist of a single bond. The term "bonds" or "revenue bonds" shall also include a single bond, a promissory note or notes, or other debt obligations evidencing an obligation to repay borrowed money.

(2) "Project" means any capital project comprising an industrial or manufacturing plant, including pollution and waste control facilities, or any part thereof, and including one or more buildings and other structures, machinery, fixtures, equipment and any rehabilitation or addition to any building or structure and machinery and equipment, as defined in the Florida Industrial Development Financing Act.

(3) "Authority," "authorities" or "industrial development authority" shall mean any of the public corporations created pursuant to ss. 159.44-159.53.

(4) "Commission" shall mean the board of county commissioners or other body charged with governing the county.

(5) "Cost" as applied to a project shall embrace the cost of construction, land or rights in land, other property, both real and personal, machinery and equipment, financing charges, including interest, and all other costs necessary for placing the project in operation as defined in the Florida Industrial Development Financing Act. "Cost" shall also include the cost of financial consultants, accountants, legal services, engineering and architectural services, feasibility studies and services by other consultants and such experts as may be selected by the lessee of any such project if the cost thereof shall be paid by the lessee or be included as a cost of the project and reimbursed from proceeds of any bonds issued to finance the cost of such project.

(6) "Florida Industrial Development Financing Act" means ss. 159.25-159.43 and any amendments thereto, and the definitions contained therein shall also be applicable to ss. 159.44-159.53 and to any bonds issued pursuant thereto.

History.—s. 3, ch. 70-229.

159.45 Creation of industrial development authorities.—

(1) In each county, there is hereby created a local governmental body as a public body corporate and politic to be known as the ".....County Industrial Development Authority," hereafter referred to as "authority" or "authorities." Each of the authorities is constituted as a public instrumentality for the purposes of industrial development, and the exercise by an authority of the powers conferred by ss. 159.44-159.53 shall be deemed and held to be the performance of an essential public purpose and function. No authority shall transact any business or exercise any power hereunder until and unless the county commission by proper resolution shall declare that there is a need for an authority to function in such county. The determination as to whether there is such need for an authority to function:

(a) May be made by the commission on its own motion; or

(b) Shall be made by the commission upon the filing of a petition signed by 25 residents of the county asserting that there is need for an authority to function in such county and requesting that the commission so declare.

(2) The commission may adopt the resolution declaring that there is need for an industrial development authority in the county if it shall find that there exists a need for the development and financing of industry in the county. Such resolution shall be sufficient if it declares that there is such a need for an authority in the county. A copy of such resolution, duly certified by the clerk, shall be admissible in any suit, action, or proceeding.

(3) The aforementioned resolution shall designate five persons who are residents and electors of the county as members of the authority created for said county. Of the members first appointed, one shall serve for 1 year, one for 2 years, one for 3 years, and two for 4 years and in each case until his successor is appointed and has qualified. Thereafter, the commission shall appoint for terms of 4 years each a member or members to succeed those whose terms expire. The commission shall fill any vacancy for an unexpired term. A member of the authority shall be eligible for reappointment. Any member of the authority may be removed by the commission for misfeasance, malfeasance or willful neglect of duty. Each member of the authority before entering upon his duties shall take and subscribe the oath or affirmation required by the state constitution. A record of each such oath shall be filed with the Department of State and with the clerk.

(4) The authority shall annually elect one of its members as chairman and one as vice chairman, and may also appoint a secretary who shall serve at the pleasure of the authority and receive such compensation as shall be fixed by the authority.

(5) The secretary shall keep a record of the proceedings of the authority and shall be custodian of all books and records of the authority and of its official seal.

(6) Three members of the authority shall consti-

tute a quorum, and the affirmative vote of a majority of the members present shall be necessary for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the provisions of ss. 159.44-159.53 may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted.

(7) The members of the authority shall receive no compensation for the performance of their duties hereunder but each such member shall be paid his necessary expenses incurred while engaged in the performance of such duties.

(8) The authority may also appoint such other officers as it may deem necessary.

History.—s. 1, ch. 70-229; s. 1, ch. 70-439.

159.46 Purposes.—Industrial development authorities, as authorized by ss. 159.44-159.53, are created for the purpose of financing and refinancing capital projects, including industrial and manufacturing plants and air, water and other pollution and waste control facilities together with appurtenant facilities for the complete operation thereof as defined by, and in the manner provided by, the Florida Industrial Development Financing Act and by ss. 159.44-159.53 and for the purpose of fostering the industrial and business development of a county. Each industrial development authority shall study the advantages, facilities, resources, products, attractions, and conditions concerning the county with relation to the encouragement of industry and business to locate in said county, and shall use such means and media as the authority deems advisable to publicize and to make known such facts and material to such persons, firms, corporations, agencies, and institutions which, in the discretion of said authority, would reasonably result in encouraging desirable industry to locate in the county. In carrying out such purpose, industrial development authorities are encouraged to cooperate and work with industrial development agencies, chambers of commerce, and other local, state, and federal agencies having responsibilities in the field of industrial development.

History.—s. 2, ch. 70-229.

159.47 Powers of the authority.—The authority is authorized and empowered:

(1) To have perpetual succession as a body politic and corporate and to adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places in the county as it may designate;

(4) To sue and be sued in its own name and to plead and be impleaded;

(5) To enter into contracts for any of the purposes enumerated in ss. 159.44-159.53 and in the Florida Industrial Development Financing Act;

(6) To issue revenue bonds or other debt obligations repayable solely from revenues derived from the sale, operation, or leasing of such capital projects.

(7) To exercise all the powers in connection with the authorization, issuance, and sale of revenue bonds to finance the cost of capital projects conferred on counties, municipalities, special districts and other local governmental bodies by the Florida Industrial Development Financing Act; and all of the privileges, benefits, powers and terms of that act shall be fully applicable to authorities created pursuant to s. 159.45. Industrial development revenue bonds may be authorized, issued and sold by authorities in compliance with the criteria and requirements set forth in the Florida Industrial Development Financing Act. The bonds of each issue shall be dated, bear interest at such rate or rates, mature at such time or times, be redeemable prior to maturity at such price or prices, be in such denominations, contain such recitals, and be sold for such price or prices and in such manner as provided in the Florida Industrial Development Financing Act. Projects may be acquired, constructed, leased, operated, or sold in the manner provided in the Florida Industrial Development Financing Act, and the items of cost as enumerated therein may be included as project costs. The repayment of bonds issued by the authorities may be secured by trust agreements or security agreements as set forth in such act; and fees, rents, and charges for the use of any project or any part of any project may be collected and fixed by the authority in the manner provided in such act. All moneys received pursuant to the provisions of ss. 159.44-159.53 shall constitute trust funds as provided in the Florida Industrial Development Financing Act. The remedies provided by the Florida Industrial Development Financing Act shall also be applicable to bonds issued pursuant to ss. 159.44-159.53, and bonds of the authority may be refunded in the manner provided therein and shall be eligible for investment as provided in such act.

(8) To acquire by lease, purchase, or option real and personal property for use as sites for the location of projects as defined in the Florida Industrial Development Financing Act. Authorities shall have the power to prepare sites for industrial use, including industrial parks to be used in connection with one or more projects, and may construct thereon access roads, drainage facilities, utilities, and other improvements necessary for ultimate use by industrial projects. The acquisition, development and financing of such sites may be in the manner provided in ss. 159.44-159.53 and the Florida Industrial Development Financing Act. Authorities may also use such current funds as are available to acquire and prepare property as sites for industrial development purposes.

(9) In any case in which an addition to a project is financed or in which less than the entire project is financed or refinanced by industrial development bonds, the authority to secure the issuance and repayment of such bonds by a lease, mortgage, or other security instrument encumbering only the capital improvements which are financed by the authority. Such lease, mortgage, or other security instrument may include a security interest in both the land and personal property or may include a lease, mortgage,

or other security instrument sufficient for the purpose encumbering only the personal property, including machinery and equipment, which is being financed. In financing projects, authorities may lease such projects to the industry which is the ultimate user until the debt obligations issued for such purpose are retired, or it may sell such capital projects to the industry using the project on an installment purchase contract or other type of purchase contract with such security instruments or trust agreements as the authority shall deem adequate, in which case the transaction shall be deemed to be a sale and not a lease of such project.

History.—s. 4, ch. 70-229.

159.48 Levy of ad valorem taxes by board of county commissioners.—The exercise of the powers granted industrial development authorities is declared to be a public and county purpose. The board of county commissioners is authorized to, and may, levy ad valorem taxes in an amount not to exceed 1 mill annually for the purposes of ss. 159.44-159.53. The proceeds of such ad valorem tax shall be used to aid each industrial development authority in fostering, developing, and locating industry in the county and to pay the reasonable operating expenses of the authority to the extent that the board of county commissioners finds necessary. No ad valorem taxes shall ever be used for the purpose of paying the interest or principal on any bonds issued to finance or refinance an industrial or manufacturing project as prohibited by the state constitution.

History.—s. 5, ch. 70-229.

159.49 Credit of state or political subdivision not pledge.—

(1) The revenue bonds issued by the authority shall not be deemed to constitute a debt, liability, or obligation of any authority or county or of the state or any political subdivision, and such revenue bonds or debt obligations shall be payable solely from revenues derived from the sale, operation, or leasing of a project or projects.

(2) All bonds issued under the provisions of ss. 159.44-159.53 shall have, and are declared to have, all the qualities and incidents, including negotiability, of investment securities under the Uniform Commercial Code.

(3) Bonds may be issued under the provisions of ss. 159.44-159.53 without obtaining, except as otherwise provided in said sections, the consent of any department, commission, board, bureau, or agency of the state and without any other proceedings or the happening of any conditions except those which are specifically required by the provisions of the resolution authorizing the issuance of such bonds or the trust agreement securing the same.

History.—s. 6, ch. 70-229.

159.50 Tax exemption.—The exercise of the powers granted by ss. 159.44-159.53 in all respects will be for the benefit of the people of the state, for the increase of their industry and prosperity and the improvement of their health and living conditions, and for the provision of gainful employment and will constitute the performance of essential public functions, and the authority shall not be required to pay any taxes on any project or any other property owned by the authority under the provisions of ss. 159.44-159.53 or upon the income therefrom, and the bonds issued under the provisions of ss. 159.44-159.53, their transfer, and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation by the state or any local unit or political subdivision or other instrumentality of the state. Nothing in this section, however, shall be construed as exempting from taxation or assessments the leasehold interest of any lessee in any project or any other property or interest owned by any lessee. The exemption granted by this section shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

History.—s. 7, ch. 70-229; s. 4, ch. 73-327.

159.51 Powers of chapter supplemental.—The powers conferred by ss. 159.44-159.53 shall be in addition and supplementary to existing powers and statutes, and said sections shall not be construed as repealing any of the provisions of any other law, general or local.

History.—s. 8, ch. 70-229.

159.52 Issuance of bonds.—The bonds issued under ss. 159.44-159.53 may be validated in the manner prescribed by chapter 75.

History.—s. 9, ch. 70-229.

159.53 Construction.—Sections 159.44-159.53, being necessary for the prosperity and welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof.

History.—s. 10, ch. 70-229.

PART IV

HOUSING FINANCE AUTHORITIES

159.601 Short title.—This act shall be known and may be cited as the "Florida Housing Finance Authority Law."

History.—s. 1, ch. 78-89.

159.602 Finding and declaration of necessity.—It is found and declared that:

(1) Within this state there is a shortage of housing available at prices or rentals which many persons and families can afford, and a shortage of capital for investment in such housing. This shortage constitutes a threat to the health, safety, morals, and welfare of the residents of the state, deprives the state of an adequate tax base, and causes the state to make excessive expenditures for crime prevention and control, public health, welfare, and safety, fire and accident protection, and other public services and facilities.

(2) Such shortage cannot be relieved except through the encouragement of investment by private enterprise and the stimulation of construction and rehabilitation of housing through the use of public financing.

(3) The financing, acquisition, construction, reconstruction, and rehabilitation of housing and of the real and personal property and other facilities necessary, incidental, and appurtenant thereto are exclusively public uses and purposes for which public money may be spent, advanced, loaned, or granted and are governmental functions of public concern.

(4) The Congress of the United States has, by the enactment of amendments to the Internal Revenue Code of 1954, found and determined that housing may be financed by means of obligations issued by any state or local governmental unit, the interest on which obligations is exempt from federal income taxation, and has thereby provided a method to aid state and local governmental units to provide assistance to meet the need for housing.

(5) The provisions of this act are found and declared to be necessary and in the public interest as a matter of legislative determination.

History.—s. 2, ch. 78-89.

159.603 Definitions.—As used in this act:

(1) "Area of operation" means the area within the territorial boundaries of the county for which the housing finance authority is created, and any area outside the territorial boundaries of such county if the governing body of the county within which such outside area is located approves. The approval may be a general approval or an approval only for specified qualifying housing developments or only for a specified number of qualifying housing developments.

(2) "Bonds" means any bonds, notes, debentures, interim certificates, or other evidences of financial indebtedness issued by a housing finance authority under and pursuant to this act.

(3) "Housing finance authority" means a housing finance authority created pursuant to s. 159.604.

(4) "Housing development" means any residential building, land, equipment, facility, or other real or personal property which may be necessary, convenient, or desirable in connection therewith, including streets, sewers, water and utility services, parks, gardening, administrative, community, health, recreational, and educational facilities, and other facilities related and subordinate to moderate, middle, or lesser income housing, and also includes site preparation, the planning of housing and improvements, the acquisition of property, the removal or demolition of existing structures, the acquisition, construction, reconstruction, and rehabilitation of housing and improvements, and all other work in connection therewith, and all costs of financing, including without limitation the cost of consultant and legal services, other expenses necessary or incident to determining the feasibility of the housing development, administrative and other expenses necessary or incident to the housing development and the financing thereof (including reimbursement to any municipality, county, or entity for expenditures made with the approval of the housing finance authority for the housing development), and interest accrued during construction and for a reasonable period thereafter.

(5) "Lending institution" means any bank or trust company, mortgage banker, savings bank, credit union, national banking association, savings and loan association, building and loan association, insurance company, or other financial institution authorized to transact business in this state and which customarily provides service or otherwise aids in the financing of mortgages located in the state.

(6) "Qualifying housing development" means any housing development which a housing finance authority finds will assist in alleviating the shortage of housing in the area of operation of such authority.

(7) "Eligible persons" means persons or families, irrespective of race, creed, national origin, or sex, determined by the housing finance authority by rule to be of moderate, middle, or lesser income requiring such assistance as is made available pursuant to this act on account of insufficient personal or family income and taking into consideration such facts as:

(a) The amount of the total income of such persons and families available for housing needs.

(b) The size of the family.

(c) The cost and condition of available housing facilities.

(d) The ability of such persons and families to compete successfully in the normal, private housing market and to pay the amounts for which private enterprise is providing sanitary, decent, and safe housing.

(e) If appropriate, the standards established for various federal programs determining eligibility based on income of such persons and families.

History.—s. 3, ch. 78-89.

159.604 Creation of housing finance authorities.—

(1) Each county in this state may create by ordinance a separate public body corporate and politic, to be known as the "Housing Finance Authority" of the county for which it is created, to carry out only the powers granted in this act. A housing finance authority shall not transact any business or exercise any powers under this act until the governing body of the county for which such housing finance authority is created passes a resolution declaring the need for a housing finance authority to function to allevi-

ate a shortage of housing and capital for investment in housing in its area of operation.

(2) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of a housing finance authority, the housing finance authority shall be conclusively deemed to have been established and authorized to transact business and exercise its powers under this act upon proof of the adoption of an ordinance by the appropriate governing body declaring the need for the housing finance authority. The ordinance shall be sufficient if it declares the need for such a housing finance authority and finds that there is a shortage of housing and capital for investment in housing within its area of operation. A copy of the ordinance certified by the clerk of the circuit court shall be admissible in evidence in any suit, action, or proceeding.

(3) The county for which the housing finance authority is created may, at its sole discretion, and at any time, alter or change the structure, organization, programs, or activities of any housing finance authority, including the power to terminate such authority, subject to any limitation on the impairment of contracts entered into by such authority and subject to the limitations or requirements of this act.

History.—s. 4, ch. 78-89.

159.605 Members; employees; duties and compensation.—

(1) Each housing finance authority shall be composed of five members appointed by the governing body of the county for which the housing finance authority is created, one of whom shall be designated chairman. Not less than three of the members shall be knowledgeable in one of the following fields: Labor, finance, or commerce. The terms of the members shall be 4 years each, except that the terms of the initial members shall be as follows: Two members shall serve a term of 1 year; one member shall serve a term of 2 years; one member shall serve a term of 3 years; and one member shall serve a term of 4 years. A member of the housing finance authority shall hold office until his successor has been appointed and has qualified. Each vacancy shall be filled for the remainder of the unexpired term. A certificate of the appointment or reappointment of any member of the housing finance authority shall be filed with the clerk of the circuit court of the county, and the certificate shall be conclusive evidence of the due and proper appointment of the member. A member shall receive no compensation for his services, but shall be entitled to necessary expenses, including traveling expenses, incurred in the discharge of his duties.

(2) The powers of each housing finance authority granted by this act shall be vested in the members of the housing finance authority in office from time to time. Three members shall constitute a quorum, and action may be taken by the housing finance authority upon a vote of a majority of the members present. A housing finance authority may employ such agents and employees, permanent or temporary, as it may require and shall determine the qualifications, duties, and compensation of such agents and employees. A housing finance authority may delegate to an agent or employee such powers or duties as it may deem proper. A housing finance authority may employ its own legal counsel.

(3) Until the members of the housing finance authority are appointed, the governing body of the county for which the housing finance authority is created and the chairman of the housing finance authority shall have full authority to carry out the powers of a housing finance authority under this act; however, the governing body shall not delegate its authority to the chairman under this provision. Except as provided in this section, no member of the housing finance authority may be an officer or employee of the county for which the housing finance authority is created.

History.—s. 5, ch. 78-89.

159.606 Conflicts of interest; disclosure.—No member or employee of a housing finance authority shall acquire any interest, direct or indirect, in any qualifying housing development or in any property included or planned to be included in such a development, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any qualifying housing development. If any member or employee of a housing finance authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any qualifying housing project, he shall immediately disclose the same in writing to the housing finance authority. Such disclosure shall be entered upon the minutes of the housing finance authority. Failure so to disclose such interest shall constitute misconduct in office.

History.—s. 6, ch. 78-89.

159.607 Removal of members.—A member of a housing finance authority may be removed without cause by a three-fifths vote of the governing body of the county, or for neglect of duty or misconduct in office by a majority vote of the governing body of the county. A member may be removed only after he has been given a copy of the charges at least 10 days prior to the hearing thereon and has had an opportunity to be heard in person or by counsel. If a member is removed, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk where the certificate of appointment for such member is filed.

History.—s. 7, ch. 78-89.

159.608 Powers of housing finance authorities.—A housing finance authority shall constitute a public body corporate and politic, exercising the public and essential governmental functions set forth in this act, and shall exercise its power to borrow only for the purpose as provided herein:

(1) To sue and be sued, to have a seal and to alter the same at pleasure, to have perpetual succession, to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the housing finance authority, and to make and from time to time amend and repeal bylaws, rules, and regulations, not inconsistent with this act, to carry into effect the powers and purposes of the housing finance authority.

(2) To purchase or make commitments to pur-

chase or to make loans for such purpose, and to take assignments of, from lending institutions acting as a principal or as an agent of the housing finance authority, mortgage loans and promissory notes accompanying such mortgage loans, including federally insured mortgage loans or participations with lending institutions in such promissory notes and mortgage loans for the construction, purchase, reconstruction, or rehabilitation of the qualifying housing development or portion thereof; provided, that the proceeds of sale or equivalent moneys shall be reinvested in mortgage loans.

(3) To make loans to lending institutions under terms and conditions requiring the proceeds thereof to be used by such lending institutions for the making of new mortgages for any qualifying housing development, or portion thereof, located wholly or partially within the area of operation of such housing finance authority. Prior to making a loan to a lending institution which makes such loans or provides such financing, the lending institution must agree to use the proceeds of such loan within a reasonable period of time to make loans or to otherwise provide financing for the acquisition, construction, reconstruction, or rehabilitation of a housing development or portion thereof, and the housing finance authority must find that such loan will assist in alleviating the shortage of housing and of capital for investment in housing within its area of operation.

(4) To invest, at the direction of the lending institution, any funds held in reserves or sinking funds or any funds not required for immediate disbursement in property or securities in which lending institutions may legally invest funds subject to their control.

History.—s. 8, ch. 78-89.

159.609 Limitation.—No housing finance authority shall finance the acquisition, construction, reconstruction, or rehabilitation of any qualifying housing development for its own profit or as a source of revenue to the state or any local governmental unit.

History.—s. 9, ch. 78-89.

159.61 No power of eminent domain.—No housing finance authority shall have the power to acquire any real property by the exercise of the power of eminent domain to accomplish any of the purposes specified in this act.

History.—s. 10, ch. 78-89.

159.611 Planning, zoning, and building laws.—Each qualifying housing development shall be subject to the planning, zoning, health, and building laws, ordinances, and regulations applicable to the place in which such qualifying housing development is situate.

History.—s. 11, ch. 78-89.

159.612 Bonds.—

(1) A housing finance authority may issue revenue bonds from time to time in the discretion of the housing finance authority for the purposes of this act. A housing finance authority may also issue refunding bonds for the purpose of paying, retiring, or refunding bonds previously issued by it. A housing finance authority may issue such types of bonds as it may determine; provided that the principal and interest on such bonds are payable solely and only from:

(a) The repayment of any loans made by the housing finance authority pursuant to the provisions of s. 159.608 or purchased by the housing finance authority pursuant to s. 159.608; or

(b) The sale of any housing loans or commitments to purchase housing loans which are purchased pursuant to s. 159.608.

(2) Any bonds issued pursuant to the provisions of this act shall be secured by a mortgage or other security device.

(3) In no event shall any bonds issued pursuant to the provisions of this act be payable from the general revenues of the housing finance authority.

(4) Neither the members of a housing finance authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds issued pursuant to the provisions hereof, and the bonds shall so state on their face, shall not be a debt of the county or the state, or any political subdivision thereof; and neither the county, nor any state or political subdivision thereof, shall be liable thereon; nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of the housing finance authority.

History.—s. 12, ch. 78-89.

159.613 Form and sale of bonds.—

(1) Bonds of a housing finance authority issued pursuant to this act shall be authorized by a resolution of the housing finance authority and may be issued in one or more series and shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed by such members of the housing finance authority and in such manner, be payable in such means of payment at such places, and be subject to such terms of redemption, with or without premium, as such resolution or any trust indenture entered into pursuant to such resolution may provide. However, the provisions of s. 215.685 shall apply.

(2)(a) The bonds issued by the authority shall be sold by the authority at public sale substantially in the manner provided by s. 215.68(5)(b) and (c), unless otherwise approved by the State Board of Administration; but such requirement shall be deemed waived if the State Board of Administration has not responded in writing within 30 days from the date of application, or if the bonds are rated by at least one nationally recognized rating service in any one of the three highest classifications approved by the Comptroller of the Currency for the investment of funds of national banks, an appropriate certification and opinion of counsel pursuant to the applicable arbitrage regulations under s. 103(c) of the Internal Revenue Code are delivered simultaneously with the delivery of the bonds, and the official statement issued in connection with the sale of the bonds has been filed with the State Board of Administration prior to the closing.

(b) In the event an offer of an issue of bonds at

public sale produces no bid, or in the event all bids received are rejected, the authority is authorized to negotiate for the sale of such bonds under such rates and terms as are acceptable; however, no such bonds shall be so sold or delivered on terms less favorable than the terms contained in any bids rejected at the public sale thereof, or the terms contained in the notice of public sale if no bids were received at such public sale.

(3) In case any member of the housing finance authority whose signature appears on the bonds or coupons shall cease to be a member before the delivery of the bonds or coupons, such bonds shall, nevertheless, be valid and sufficient for all purposes, the same as if such member had remained in office until such delivery. Any provision of law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

(4) In any suit, action, or proceeding involving the validity or enforceability of any bond of a housing finance authority or the security therefor issued pursuant hereto, any such bond reciting in substance that it has been issued by the housing finance authority to assist in providing financing of a qualifying housing development to alleviate the shortage of housing in its area of operation shall be conclusively deemed to have been issued for a qualifying housing development of such character.

History.—s. 13, ch. 78-89.

159.614 Provisions of bonds and trust indentures.—In connection with the issuance of bonds and in order to secure the payment of such bonds, a housing finance authority, in addition to the other powers granted pursuant to this act, shall have power:

(1) To pledge all or any part of any payment made to the housing finance authority pursuant to any loan agreement or pursuant to a sale of any loan or loan commitment.

(2) To covenant against pledging or assigning all or any part of any payments made pursuant to any loan agreement or pursuant to the sale of any loan or loan commitment or against permitting or suffering any lien on such payments; and to covenant as to what other, or additional, debts or obligations may be incurred by the housing finance authority with respect to any qualifying housing development.

(3) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise and as to the use and disposition of the proceeds thereof; and to provide for the replacement of lost, destroyed, or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the other bonds, covenant for their redemption, and provide the terms and conditions thereof.

(4) To create or to authorize the creation of special funds for moneys held for construction costs, debt service, reserves, or other purposes; and to covenant as to the construction and disposition of the moneys held in such special funds.

(5) To prescribe the procedure, if any, by which the terms of any contract with the holder of any bonds may be amended or abrogated, the amount of the bonds the holders of which must consent thereto, and the manner in which such consent may be given.

(6) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by the housing finance authority of any covenant, condition, or obligation; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

(7) To vest in a trustee or trustees or the holders of bonds or any proportion of them the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in a trustee or trustees the right, in the event of a default by said housing finance authority, to collect the payments made pursuant to any loan agreement or pursuant to the sale of any loan or loan commitment and to dispose of such rights in accordance with the agreement of the housing finance authority with said trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees of the holders of bonds or any proportion of them may enforce any covenant or rights securing or relating to the bonds.

History.—s. 14, ch. 78-89.

159.615 Validation of bonds and proceedings.—A housing finance authority shall determine its authority to issue any of its bonds and the legality of all proceedings had or taken in connection therewith, in the same manner and to the same extent as provided in chapter 75 for the determination by a county, municipality, taxing district, or other political subdivision of its authority to incur bonded debt or to issue certificates of indebtedness and of the legality of all proceedings had or taken in connection therewith.

History.—s. 15, ch. 78-89.

159.616 Actions to contest validity of bonds.—An action or proceeding to contest the validity of any bond issued under this act, other than a proceeding pursuant to s. 159.615, must be commenced within 30 days after notification in a newspaper of general circulation within the area of the passage by the housing finance authority of the resolution authorizing the issuance of such bond.

History.—s. 16, ch. 78-89.

159.617 Remedies of an obligee of a housing finance authority.—An obligee of a housing finance authority shall have the right, in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action, or proceeding at law or in equity, to compel the housing finance authority and the members, officers, agents, or employees thereof to perform each and every term, provision, and covenant contained in any contract of the housing finance authority with or for the benefit of such obligee and to require the carrying out of any or all of the covenants and agreements of the housing finance authority and the fulfillment of all du-

ties imposed upon the housing finance authority by this act.

(2) By suit, action, or proceeding in equity, to enjoin any acts or things which may be unlawful or the violation of any of the rights of the obligee by the housing finance authority.

History.—s. 17, ch. 78-89.

159.618 Additional remedies conferrable by a housing finance authority.—A housing finance authority shall have power by resolution, trust indenture, or other contract to confer upon any obligee holding or representing a specified amount in bonds, the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in such resolution or instrument, by suit, action, or proceeding in any court of competent jurisdiction:

(1) To obtain the appointment of a receiver of any payments made pursuant to any loan agreement or sale of any loan. If such receiver is appointed, he may collect and receive all payments made pursuant to any such loan agreement or sale of any loan or loan commitment and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said housing finance authority as the court shall direct.

(2) To require the housing finance authority and the members thereof to account as if it and they were the trustees of an express trust.

History.—s. 18, ch. 78-89.

159.619 Availability of financing.—As long as a shortage of housing exists, a housing finance authority shall not unreasonably refuse to participate in the financing of any qualifying housing development upon request.

History.—s. 19, ch. 78-89.

159.62 Liabilities of a housing finance authority.—In no event shall the liabilities, whether ex contractu or ex delicto, of a housing finance authority arising from the financing of any qualifying housing development be payable from any funds other than the revenues or receipts of such qualifying housing development.

History.—s. 20, ch. 78-89.

159.621 Housing bonds exempted from taxation.—The bonds of a housing finance authority issued under this act, together with interest thereon and income therefrom, shall be exempt from all taxes. The exemption granted by this section shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

History.—s. 21, ch. 78-89.

159.622 Limitation on rates.—The intent of this legislation is that consumers receive maximum possible benefits; therefore, no lending institution receiving proceeds of bond issues pursuant to this act may loan any of the proceeds of such bond issue at the rate violative of federal arbitrage regulations.

History.—s. 24, ch. 78-89.

159.623 Construction of law.—The provisions of this act shall be liberally construed in order to effectively carry out the purposes of this act.

History.—s. 22, ch. 78-89.

PART V

RESEARCH AND DEVELOPMENT AUTHORITIES

159.701 Purposes.—Research and development authorities, as authorized by ss. 159.701-159.7095, are created for the purpose of financing and refinancing capital projects related to establishment of a research and development park, including appurtenant facilities for the complete operation thereof as defined by, and in the manner provided by, the Florida Industrial Development Financing Act and by ss. 159.701-159.7095 and for the purpose of fostering the economic development of a county.

History.—s. 4, ch. 79-101.

159.702 Definitions.—The following words and terms, unless the context clearly indicates a different meaning, shall have the following meaning:

(1) "Bonds" or "revenue bonds" means the bonds authorized to be issued by any authority under ss. 159.701-159.7095, which may consist of a single bond. The term "bonds" or "revenue bonds" shall also include a single bond, a promissory note or notes, or other debt obligations evidencing an obligation to repay borrowed money.

(2) "Project" means any capital project comprising a research and development park, or any part thereof, and including one or more buildings and other structures, machinery, fixtures, equipment, and any rehabilitation or addition to any building or structure and machinery and equipment, as defined in the Florida Industrial Development Financing Act.

(3) "Authority" or "research and development authority" means any of the public corporations created pursuant to ss. 159.701-159.7095.

(4) "Board" means the board of county commissioners or other body charged with governing the county.

(5) "Cost" as applied to a project shall embrace the cost of construction; land or rights in land; other property, both real and personal; machinery and equipment; financing charges, including interest; and all other costs necessary for placing the project in operation as defined in the Florida Industrial De-

velopment Financing Act. "Cost" shall also include the cost of financial consultants, accountants, legal services, engineering and architectural services, feasibility studies, and services by other consultants and such experts as may be selected by the lessee of any such project if the cost thereof shall be paid by the lessee or shall be included as a cost of the project and reimbursed from proceeds of any bonds issued to finance the cost of such project.

(6) "Florida Industrial Development Financing Act" means part II of this chapter and any amendments thereto, and the definitions contained therein shall also be applicable to ss. 159.701-159.7095 and to any bonds issued pursuant thereto.

(7) "Commission" means the Florida Research and Development Commission created pursuant to s. 23.147.

(8) "Contiguous counties" means counties with common borders.

History.—s. 4, ch. 79-101.

159.703 Creation of research and development authorities.—

(1) Subject to the provisions of this part, each county or group of counties may create by ordinance a local governmental body as a public body corporate and politic to be known as ".....Research and Development Authority," hereafter referred to as "authority" or "authorities." Each of the authorities is constituted as a public instrumentality for the purposes of development, operation, management, and financing of a research and development park, and the exercise by an authority of the powers conferred by ss. 159.701-159.7095 shall be deemed and held to be the performance of an essential public purpose and function. However, no authority shall transact any business or exercise any power hereunder until and unless the commission has designated the authority pursuant to the requirements of s. 23.1491(2).

(2) The governing board of the county may adopt a resolution declaring that there is need for a research and development authority in the county if it finds that there exists a need for the development and financing of a research and development park.

(3) The resolution shall designate five persons who are residents and electors of, or have their principal place of employment in, the county as members of the authority created for said county. Of the members first appointed, one shall serve for 1 year, one for 2 years, one for 3 years, and the remainder for 4 years and in each case until his succcessor is appointed and has qualified. Thereafter, the board shall appoint for terms of 4 years each a member or members to succeed those whose terms expire. The board shall fill any vacancy for an unexpired term. A member of the authority shall be eligible for reappointment. Any member of the authority may be removed by the board for misfeasance, malfeasance, or willful neglect of duty. Each member of the authority before entering upon his duties shall take and subscribe the oath or affirmation required by the State Constitution. A record of each such oath shall be filed with the Department of State and with the clerk of the circuit court.

(4) The authority shall annually elect one of its members as chairman and one as vice chairman and may also appoint a secretary who shall serve at the pleasure of the authority and receive such compensation as shall be fixed by the authority.

(5) The secretary shall keep a record of the proceedings of the authority and shall be custodian of all books and records of the authority and of its official seal.

(6) Three members of the authority shall constitute a quorum, and the affirmative vote of a majority of the members present shall be necessary for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the provisions of ss. 159.701-159.7095 may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted.

(7) The members of the authority shall receive no compensation for the performance of their duties hereunder, but each such member shall be paid his necessary expenses incurred while engaged in the performance of such duties.

(8) The authority may also appoint such other officers as it may deem necessary.

(9) If two or more contiguous counties wish to create jointly a research and development authority, the governing boards of each county shall adopt a resolution declaring that there is a need for a research and development authority for said counties, which shall be constituted in the manner prescribed by subsections (2)-(7), except that the resolution shall designate seven persons as members of the authority. Each county shall be equally represented on the authority except that the county in which the research and development park is located or in which a substantial portion is located shall be entitled to one additional member.

History.—s. 4, ch. 79-101.

159.704 Designation by Florida Research and Development Commission; procedure.—

(1) The authority shall prepare and submit to the Florida Research and Development Commission a petition requesting that the authority be designated a research and development authority.

(2) The petition shall contain, but not be limited to:

(a) The resolution of the governing board of the county constituting the authority.

(b) A concept of operation of the proposed research and development park consistent with the purposes of ss. 159.701-159.7095.

(c) A statement of affiliation with one or more state-based, accredited, public or private institutions of higher learning with research and development capabilities.

(d) Evidence of availability of a site suitable for the projected scope of operations.

(e) Evidence of the economic feasibility of the proposed research and development park.

(f) A plan for funding the development of the proposed research and development park, including a minimum financial commitment by the authority of $50,000 in liquid assets for development purposes.

(3) Upon approval of the petition and designation as a research and development authority by the

commission, the governing board of the county may by enactment of an ordinance create the authority which shall then be empowered to transact any business and exercise any power authorized by ss. 159.701-159.7095 for the purposes of development, operation, management, and financing of a research and development park.

History.—s. 4, ch. 79-101.

159.705 Powers of the authority.—The authority is authorized and empowered:

(1) To have perpetual succession as a body politic and corporate and to adopt bylaws for the regulation of its affairs and the conduct of its business.

(2) To adopt an official seal and alter the same at pleasure.

(3) To maintain an office at such place or places in the county as it may designate.

(4) To sue and be sued in its own name and to plead and be impleaded.

(5) To enter into contracts for any of the purposes enumerated in ss. 159.701-159.7095 and in the Florida Industrial Development Financing Act.

(6) To issue revenue bonds or other debt obligations repayable solely from revenues derived from the sale, operation, or leasing of such capital projects.

(7) To exercise all the powers in connection with the authorization, issuance, and sale of revenue bonds to finance the cost of capital projects conferred on counties, municipalities, special districts, and other local governmental bodies by the Florida Industrial Development Financing Act. All of the privileges, benefits, powers, and terms of said act shall be fully applicable to authorities created pursuant to ss. 159.701-159.7095. Industrial development revenue bonds may be authorized, issued, and sold by authorities in compliance with the criteria and requirements set forth in the Florida Industrial Development Financing Act. The bonds of each issue shall be dated, bear interest at such rate or rates, mature at such time or times, be redeemable prior to maturity at such price or prices, be in such denominations, contain such recitals, and be sold for such price or prices and in such manner as provided in said act. Projects may be acquired, constructed, leased, operated, or sold in the manner provided in said act, and the items of cost as enumerated therein may be included as project costs. The repayment of bonds issued by the authorities may be secured by trust agreements or security agreements as set forth in said act, and fees, rents, and charges for the use of any project or any part of any project may be collected and fixed by the authority in the manner provided in said act. All moneys received pursuant to the provisions of ss. 159.701-159.7095 shall constitute trust funds as provided in the Florida Industrial Development Financing Act. The remedies provided by said act shall also be applicable to bonds issued pursuant to ss. 159.701-159.7095, and bonds of the authority may be refunded in the manner provided therein and shall be eligible for investment as provided in said act.

(8) To acquire by lease, purchase, or option real and personal property for use as a site for the location of a research and development park project as defined in the Florida Industrial Development Financing Act. Authorities shall have the power to prepare sites for use as the location of a research and development park and may construct thereon access roads, drainage facilities, utilities, and other improvements necessary for ultimate use by research and development projects. The acquisition, development, and financing of such sites may be in the manner provided in ss. 159.701-159.7095 and the Florida Industrial Development Financing Act.

(9) In any case in which an addition to a project is financed or in which less than the entire project is financed or refinanced by industrial development bonds, to secure the issuance and repayment of such bonds by a lease, mortgage, or other security instrument encumbering only the capital improvements which are financed by the authority. Such lease, mortgage, or other security instrument may include a security interest in both the land and personal property or may include a lease, mortgage, or other security instrument sufficient for the purpose encumbering only the personal property, including machinery and equipment, which is being financed. In financing projects, authorities may lease such projects to the industry which is the ultimate user until the debt obligations issued for such purpose are retired, or it may sell such capital projects to the industry using the project on an installment purchase contract or other type of purchase contract with such security instruments or trust agreements as the authority shall deem adequate, in which case the transaction shall be deemed to be a sale and not a lease of such project.

(10) Other provisions of law to the contrary notwithstanding, to acquire by lease, without consideration, purchase, or option any lands owned, administered, managed, controlled, supervised, or otherwise protected by the state or any of its agencies, departments, boards, or commissions for the purpose of establishing a research and development park, subject to being first designated a research and development authority under the provisions of ss. 159.701-159.7095.

History.—s. 4, ch. 79-101.

159.706 Grandfather clause.—Each county designated as a research and development authority on June 30, 1979, shall be entitled to continue to be designated and shall be accorded all powers conferred to designated authorities by ss. 159.701-159.7095, except that any authority not constituted and designated under the provisions of ss. 159.701-159.7095 shall be prohibited from exercising any power to issue revenue bonds or other debt obligations pursuant to s. 159.705(6) and (7).

History.—s. 4, ch. 79-101.

159.707 Credit of state or political subdivision not pledged.—

(1) The revenue bonds issued by the authority shall not be deemed to constitute a debt, liability, or obligation of any authority or county or of the state or any political subdivision, and such revenue bonds or debt obligations shall be payable solely from revenues derived from the sale, operation, or leasing of a project or projects.

(2) All bonds issued under the provisions of ss. 159.701-159.7095 shall have, and are declared to

have, all the qualities and incidents, including negotiability, of investment securities under the Uniform Commercial Code.

(3) Bonds may be issued under the provisions of ss. 159.701-159.7095 without obtaining, except as otherwise provided in ss. 159.701-159.7095, the consent of any department, commission, board, bureau, or agency of the state and without any other proceedings or the happening of any conditions, except those which are specifically required by the provisions of the resolution authorizing the issuance of such bonds or the trust agreement securing the same.

History.—s. 4, ch. 79-101.

159.708 Tax exemption.—The exercise of all powers granted by ss. 159.701-159.7095 in all respects will be for the benefit of the people of the state, for the increase of their industry and prosperity and the improvement of their health and living conditions, and for the provision of gainful employment and will constitute the performance of essential public functions. The authority shall not be required to pay any taxes on any project or any other property owned by the authority under the provisions of ss. 159.701-159.7095 or upon the income therefrom, and the bonds issued under the provisions of ss. 159.701-159.7095, their transfer, and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation by the state or any local unit or political subdivision or other instrumentality of the state. Nothing in this section, however, shall be construed as exempting from taxation or assessments the leasehold interest of any lessee in any project or any other property or interest owned by any lessee. The exemption granted by this section shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

History.—s. 4, ch. 79-101.

159.709 Powers of ss. 159.701-159.7095 supplemental.—The powers conferred by ss. 159.701-159.7095 shall be in addition and supplementary to existing powers and statutes, and these sections shall not be construed as repealing any of the provisions of any other law, general or local.

History.—s. 4, ch. 79-101.

159.7095 Issuance of bonds.—The bonds issued under ss. 159.701-159.7095 may be validated in the manner prescribed by chapter 75.

History.—s. 4, ch. 79-101.

CHAPTER 160

REGIONAL PLANNING COUNCILS

160.01 Establishment of regional planning councils; membership, terms, compensation, etc.—

(1) Any two or more counties and municipalities are hereby authorized and empowered to create and establish a regional planning council to be composed of two representatives appointed thereto by each county commission and municipal legislative body desiring representation on such council and to appropriate moneys, in lump sum or otherwise, from their respective public funds for the purpose of carrying out the provisions of this law. Such funds shall be expended only for public purposes, and provision for annual audit thereof shall be made. Such annual audits shall be furnished to the governing bodies of each participating county and municipality for their examination. In addition, each governmental unit shall be entitled to appoint one additional representative for each 50,000 population residing within the boundaries of the municipality or county. Participating governmental units may designate to membership ex officio and without vote their chief planning officer and engineer, or either of them.

(2) Members of such regional planning council representing counties and municipalities shall receive no compensation for their services, but shall be reimbursed for traveling expenses as provided in s. 112.061.

(3) The term of office of the members of any regional planning council shall be for staggered terms of 3 years. The method of filling vacancies shall be determined by the county commissions and municipal legislative bodies desiring representation on such council.

History.—s. 1, ch. 59-369; s. 19, ch. 63-400; s. 1, ch. 69-63.

160.02 Powers of council.—Any regional planning council created hereunder shall have the following powers:

(1) To adopt rules of procedure for the regulation of its affairs and the conduct of its business, and to appoint from among its members a chairman to serve annually, provided that such a chairman may be subject to reelection.

(2) To adopt an official name and seal.

(3) To maintain an office at such place or places within the state as it may designate.

(4) To employ and to compensate such personnel, consultants, and technical and professional assistants as it shall deem necessary to exercise the powers and perform the duties set forth in this law.

(5) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this law.

(6) To hold public hearings and sponsor public forums in any part of the regional area whenever it deems it necessary or useful in the execution of its other functions.

(7) To sue and be sued in its own name.

(8) To accept and receive, in furtherance of its functions, funds, grants and service from the Federal Government or its agencies; from departments, agencies and instrumentalities of state, municipal or local government; or from private or civic sources.

(9) To receive and expend such sums of money as shall be from time to time appropriated for its use by any county or municipality represented on such council and, with the approval of the Division of Economic Development of the Department of Commerce, to act as an agency to receive and to expend federal funds for planning.

(10) To act in an advisory capacity to the constituent local governments in regional, metropolitan, county and municipal planning matters involving land use, water resources, highways, recreational areas, public schools, sewage and garbage disposal, public libraries, urban redevelopment and other matters concerning the acquisition, planning, construction, development, financing, control, use, improvement and disposition of lands, buildings, structures, facilities, goods or services in the interest of the public, or for public purposes involving the expenditure of public funds.

(11) To cooperate, in the exercise of its planning functions, with federal and state agencies in planning for civil defense.

History.—s. 2, ch. 59-369; ss. 17, 35, ch. 69-106; s. 1, ch. 73-283.

CHAPTER 161

BEACH AND SHORE PRESERVATION

PART I REGULATION OF CONSTRUCTION, RECONSTRUCTION, AND OTHER PHYSICAL ACTIVITY (ss. 161.011-161.212)

PART II BEACH AND SHORE PRESERVATION DISTRICTS (ss. 161.25-161.45)

PART I

REGULATION OF CONSTRUCTION, RECONSTRUCTION, AND OTHER PHYSICAL ACTIVITY

161.011 Short title.—This chapter parts I and II, may be known and cited as the "Beach and Shore Preservation Act."

History.—s. 1, ch. 65-408.

161.021 Definitions.—In construing these statutes, where the context does not clearly indicate otherwise, the word, phrase, or term:

(1) "Department" means the Department of Natural Resources.

(2) "Division" means the Division of Marine Resources of the Department of Natural Resources.

(3) "Beach and shore preservation," "erosion control, beach preservation and hurricane protection," "beach erosion control" and "erosion control" includes, but is not limited to, erosion control, hurricane protection, coastal flood control, shoreline and offshore rehabilitation, and regulation of work and activities likely to affect the physical condition of the beach or shore.

(4) "Coastal construction" includes any work or activity which is likely to have a material physical effect on existing coastal conditions or natural shore and inlet processes.

(5) "Inlet sediment bypassing" includes any transfer of sediment from an inlet or beach to another stretch of beach for the purpose of renourishment and beach erosion control.

(6) "Emergency" means any unusual incident resulting from natural or unnatural causes which endangers the health, safety, or resources of the residents of the state, including damages or erosion to any shoreline resulting from a hurricane, storm, or other such violent disturbance.

History.—s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 43, ch. 71-377; s. 1, ch. 78-257.

161.031 Personnel and facilities.—The Department of Natural Resources may call to its assistance temporarily, any engineer or other employee in any state agency or department or in the University of Florida or other educational institution financed wholly or in part by the state, for the purpose of devising the most effective and economical method of averting and preventing erosion, hurricane and storm damages. These employees shall not receive additional compensation, except for actual necessary expenses incurred while working under the direction of the Division of Marine Resources.

History.—s. 1, ch. 65-408; ss. 25, 35, ch. 69-106.

161.041 Permits required.—If any person, firm, corporation, county, municipality, township, special district, or any public agency shall desire to make any coastal construction or reconstruction or change of existing structures, or any construction or physical activity undertaken specifically for shore protection purposes, or other structures and physical activity including groins, jetties, moles, breakwaters, seawalls, revetments, artificial nourishment, inlet sediment bypassing, excavation or maintenance dredging of inlet channels, or other deposition or removal of beach material or construction of other

structures if of a solid or highly impermeable design, upon sovereignty lands of Florida, below the mean high waterline of any tidal water of the state, a coastal construction permit must be obtained from the Department of Natural Resources prior to the commencement of such work. Application for coastal construction permits as defined above shall be made to the Division of Marine Resources upon such terms and conditions as set by the department.

History.—s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 2, ch. 78-257.

161.0415 Citation of rule.—In addition to any other provisions within this chapter or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this chapter or such rules promulgated hereunder, cite a specific rule. If a request for information cannot be accompanied by a rule citation, failure to provide such information cannot be grounds to deny a permit.

History.—s. 1, ch. 79-161.

161.042 Coastal construction and excavation in barrier beach inlets.—The department is authorized to direct that any person, or any public body or agency, responsible for the excavation of sandy sediment as a result of any activity conducted to maintain navigable depths within or immediately adjacent to any coastal barrier beach inlet within sovereignty lands shall, after receipt of written authorization from the Department of Environmental Regulation relating to the deposition of spoil material from the excavation pursuant to chapters 253 and 403, use such sediment for beach nourishment as prescribed by the division. Requests for such authorization shall be made by the division to the Department of Environmental Regulation, and such authorization shall be granted upon issuance of water quality certification by the Department of Environmental Regulation. For any construction or excavation within or immediately contiguous to any coastal barrier beach inlet which has been permitted pursuant to s. 161.041, the department may require the permittee to supply beach profiles and conduct hydrographic monitoring of the impacted area.

History.—s. 3, ch. 78-257.

161.051 Coastal construction by persons, firms, corporations, or local authorities.—Where any person, firm, corporation, county, municipality, township, special district, or any public agency shall construct and install projects when permits have been properly issued, such works and improvements shall be the property of said person, firm, corporation, county, municipality, township, special district, or any public agency where located, and shall thereafter be maintained by and at the expense of said person, firm, corporation, county, municipality, township, special district, or other public agency. No grant under this section shall affect title of the state to any lands below the mean high watermark, and any additions or accretions to the upland caused by erection of such works or improvement shall remain the property of the state if not previously conveyed. The state shall in no way be liable for any damages as a result of erections of such works and improvements, or for any damages arising out of construction, reconstruction, maintenance, or repair thereof, or otherwise arising on account of such works or improvements.

History.—s. 1, ch. 65-408.

161.052 Coastal construction and excavation; regulation.—

(1) No person, firm, corporation, municipality, county, or other public agency shall excavate or construct any dwelling house, hotel, motel, apartment building, seawall, revetment, or other structure incidental to or related to such structure, including but not limited to such attendant structures or facilities as a patio, swimming pool, or garage, within 50 feet of the line of mean high water at any riparian coastal location fronting the Gulf of Mexico or Atlantic coast shoreline of the state, exclusive of bays, inlets, rivers, bayous, creeks, passes, and the like.

(2) A waiver or variance of the setback requirements may be authorized by the Department of Natural Resources in the following circumstances:

(a) The department may authorize an excavation or erection of a structure at any riparian coastal location as described in subsection (1) upon receipt of an application from a riparian owner and upon the consideration of facts and circumstances, including adequate engineering data concerning shoreline stability and storm tides related to shoreline topography, which, in the opinion of the Department of Natural Resources, clearly and unequivocally justify such a waiver or variance.

(b) If in the immediate contiguous or adjacent area a number of existing structures have established a reasonably continuous and uniform construction line closer to the line of mean high water than the foregoing, and if said existing structures have not been unduly affected by erosion, a proposed structure may be permitted along such line on written authorization from the Department of Natural Resources if such proposed structure is also approved by the Department of Natural Resources. However, the Department of Natural Resources shall not contravene setback requirements established by a county or municipality which are equal to, or more strict than those setback requirements provided herein.

(c) The department may authorize the construction of pipelines or piers extending outward from the shoreline, unless it determines that the construction of such projects would cause erosion of the beach in the area of such structures.

(3) The provisions of this section shall not apply to structures intended for shore protection purposes which are regulated by s. 161.041 or to structures existing or under construction on June 27, 1970.

(4) The Department of Natural Resources may by regulation exempt specifically described portions of the coastline from the provisions of this section whenever in its judgment such portions of coastline, because of their nature, are not subject to erosion of a substantially damaging effect to the public.

(5) The setback requirements as defined herein shall not apply to any riparian coastal locations fronting the Atlantic Ocean or Gulf of Mexico which have vegetation-type nonsandy shores.

(6) The setback requirements defined in subsection (1) shall not apply to any modification, mainte-

nance, or repair to any existing structure within limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure. Specifically excluded from this exemption are seawalls and any additions or enclosures added, constructed, or installed below the first dwelling floor or lowest deck of the existing structure.

(7) Any coastal structure erected, or excavation created, in violation of the provisions of this section is hereby declared to be a public nuisance, and such structure shall be forthwith removed or such excavation refilled after written notice by the Department of Natural Resources directing such removal or filling. In the event that the structure is not removed or the excavation refilled as directed within a reasonable time, the Department of Natural Resources may remove such structure or fill such excavation at its own expense. The cost thereof shall become a lien upon the property of the upland owner upon which such unauthorized structure or excavation is located.

(8) Any person violating any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083. Such person shall be deemed guilty of a separate offense for each month during any portion of which any violation of this section is committed or continued.

(9) The executive director of the department may make recommendations to the Governor and Cabinet as head of the department concerning the purchase of the fee or any lesser interest in any lands seaward of the setback requirement as environmentally endangered lands or as outdoor recreation lands.

History.—s. 1, ch. 70-231; s. 82, ch. 71-136; s. 1, ch. 75-87; s. 4, ch. 78-257.

161.053 Coastal construction and excavation; regulation on county basis.—

(1) The Legislature finds and declares that the beaches of the state, by their nature, are subject to frequent and severe fluctuations and represent one of Florida's most valuable natural resources and that it is in the public interest to preserve and protect them from imprudent construction which can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, and endanger adjacent property and the beach-dune system. In furtherance of these findings, it is the intent of the Legislature to provide that the department, acting through the division, shall establish coastal construction control lines on a county basis along the sand beaches of the state fronting on the Atlantic Ocean and the Gulf of Mexico. Such lines shall be established so as to define that portion of the beach-dune system which is subject to severe fluctuations based on a 100-year storm surge or other predictable weather conditions, and so as to define the area within which special structural design consideration is required to insure protection of the beach-dune system, any proposed structure, and adjacent properties, rather than to define a seaward limit for upland structures.

(2) Coastal construction control lines shall be established by the department only after it has been determined from a comprehensive engineering study and topographic survey that the establishment of such control lines is necessary for the protection of upland properties and the control of beach erosion. No such line shall be set until a public hearing has been held for each area involved. After the department has given consideration to the results of said public hearing, it shall, after considering ground elevations in relation to historical storm and hurricane tides, predicted maximum wave uprush, beach and offshore ground contours, the vegetation line, erosion trends, the dune or bluff line, if any exist, and existing upland development, set and establish a coastal construction control line and cause same to be duly recorded in the public records of any county and municipality affected and shall furnish the clerk of the circuit court in each county affected a survey of such line with references made to permanently installed monuments at such intervals and locations as may be considered necessary. Upon the establishment, approval, and recordation of such control line or lines, no person, firm, corporation, or governmental agency shall construct any structure whatsoever seaward thereof; make any excavation, remove any beach material, or otherwise alter existing ground elevations; drive any vehicle on, over, or across any sand dune; or damage or cause to be damaged such sand dune or the vegetation growing thereon seaward thereof except as hereinafter provided. Control lines established under the provisions of this section shall be subject to review by the department at 5-year intervals from time of establishment or at the written request of officials of affected counties or municipalities. Any riparian upland owner who feels that such line as established is unduly restrictive or prevents a legitimate use of his property shall be granted a review of the line upon written request. After such review, the department shall decide if a change in the control line as established is justified and shall so notify the person or persons making the request. The decision of the department shall be subject to judicial review as provided in chapter 120.

(3) Any coastal county or coastal municipality may establish coastal construction zoning and building codes in lieu of the provisions of this section, provided such zones and codes are approved by the department as being adequate to protect the shoreline from erosion and safeguard adjacent structures. Exceptions to locally established coastal construction zoning and building codes shall not be granted unless previously approved by the department. It is the intent of this subsection to provide for local administration of established coastal construction control lines through approved zoning and building codes where desired by local interests and where said local interests have, in the judgment of the department, sufficient funds and personnel to adequately administer the program. Should the department determine at any time that the program is inadequately administered, the department shall have authority to revoke the authority granted to the county or municipality.

(4) Except in those areas where local zoning and building codes have been established pursuant to subsection (3), a permit to alter, excavate, or construct on property seaward of established coastal

construction control lines may be granted by the department as follows:

(a) The department may authorize an excavation or erection of a structure at any riparian coastal location as described in subsection (1) upon receipt of an application from a riparian owner and upon the consideration of facts and circumstances, including adequate engineering data concerning shoreline stability and storm tides related to shoreline topography, which, in the opinion of the department, clearly justify such a permit.

(b) If in the immediate contiguous or adjacent area a number of existing structures have established a reasonably continuous and uniform construction line closer to the line of mean high water than the foregoing, and if said existing structures have not been unduly affected by erosion, a proposed structure may be permitted along such line on written authorization from the department if such proposed structure is also approved by the department. However, the department shall not contravene setback requirements or zoning or building codes established by a county or municipality which are equal to, or more strict than, those requirements provided herein.

(c) The department may authorize the construction of pipelines or piers extending outward from the shoreline, unless it determines that the construction of such projects would cause erosion of the beach in the area of such structures.

(5) Any coastal structure erected, or excavation created, in violation of the provisions of this section is hereby declared to be a public nuisance, and such structure shall be forthwith removed or such excavation shall be forthwith refilled after written notice by the department directing such removal or filling. In the event the structure is not removed or the excavation refilled within a reasonable time as directed, the department may remove such structure or fill such excavation at its own expense, and the costs thereof shall become a lien upon the property of the upland owner upon which such unauthorized structure or excavation is located.

(6) Any person who violates this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084; except that a person driving any vehicle on, over, or across any sand dune and damaging or causing to be damaged such sand dune or the vegetation growing thereon in violation of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person shall be deemed guilty of a separate offense for each month during any portion of which any violation of this section is committed or continued.

(7) The provisions of this section shall not apply to structures intended for shore protection purposes which are regulated by s. 161.041 nor to structures existing or under construction prior to the establishment of the coastal construction control line as provided herein, provided such structures shall not be materially altered except as provided in subsection (4).

(8) The department may by regulation exempt specifically described portions of the coastline from the provisions of this section when in its judgment such portions of coastline because of their nature are not subject to erosion of a substantially damaging effect to the public.

(9) Pending the establishment of coastal construction control lines as provided herein, the provisions of s. 161.052 shall remain in force. However, upon the establishment of coastal construction control lines, or the establishment of coastal construction zoning and building codes as provided in subsection (3), the provisions of s. 161.052 shall be superseded by the provisions of this section.

(10) The coastal construction control requirements defined in subsection (1) shall not apply to any modification, maintenance, or repair to any existing structure within limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure. Specifically excluded from this exemption are seawalls and any additions or enclosures added, constructed, or installed below the first dwelling floor or lowest deck of the existing structure.

(11) Concurrent with the establishment of a coastal construction control line, the executive director of the department shall make recommendations to the Governor and Cabinet as head of the department concerning the purchase of the fee or any lesser interest in any lands seaward of the control line as environmentally endangered lands or as outdoor recreation lands; and, with respect to those control lines established pursuant to this section prior to June 14, 1978, the executive director may make such recommendations.

History.—s. 1, ch. 71-280; s. 2, ch. 75-87; s. 1, ch. 77-12; s. 5, ch. 78-257; s. 29, ch. 79-164.

161.061 Coastal construction serving no public purpose, endangering human life, health, or welfare, or becoming unnecessary or undesirable.—

(1) Any coastal construction, or any structure including groins, jetties, moles, breakwaters, seawalls, revetments, or other structures if of a solid or highly impermeable design upon sovereignty lands of Florida, below the mean high waterline of any tidal water of the state, regardless of date of construction or whether a permit has been issued in accordance with part I of this chapter, which serves no public purpose, which is dangerous to or in any way endangers human life, health, or welfare, or which proves to be undesirable or becomes unnecessary, as determined by the Department of Natural Resources, shall be adjusted, altered, or removed by the abutting upland property owner after written notice by the division. Request for hearing must be filed by the owner with the department within 15 days after such notice. Adjustments, alterations, or removals required by this section shall be accomplished at no cost to the state. The decision of the department as to whether to adjust, alter, or remove such coastal construction or structure shall be final and the department shall set a reasonable time within which the adjustment, alteration, or removal shall be accomplished.

(2) In the event that the upland property owner does not adjust, alter, or remove any coastal construction, or other structure including groins, jetties, moles, breakwaters, seawalls, revetments, or other

structures if of a solid or highly impermeable design upon sovereignty lands of Florida, below the mean high waterline, when requested or directed by the department in accordance with subsection (1) of this section, the department may alter, adjust, or remove such coastal construction or structures at its own expense, and the costs thereof shall become a lien upon the property of said abutting upland property owner.

History.—s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 23, ch. 78-95.

161.071 Prosecuting officers to assist enforcement of part I of this chapter.—State attorneys, or other prosecuting officers of the state or county, and sheriffs and their deputies of the several counties of this state, shall assist the Department of Natural Resources in enforcement of part I of this chapter. The officers and their deputies shall, upon information that any persons, firms, or corporations are violating any of the provisions of part I of this chapter, report the same, together with the information in their possession relating thereto, to the department and shall cooperate with the department in carrying out the provisions of part I of this chapter. The state attorneys and other prosecuting officers of the state or any county, upon the request of the department, shall institute and maintain such legal proceedings as may be necessary to carry out the enforcement of the provisions of part I of this chapter.

History.—s. 1, ch. 65-408; ss. 25, 35, ch. 69-106.

161.081 Powers of Department of Legal Affairs.—When a permit is required under part I of this chapter and has not been issued as provided herein, any such project or physical activity shall be considered a public nuisance and the Department of Legal Affairs may at the request of the Department of Natural Resources institute proceedings to enjoin or abate such nuisance.

History.—s. 1, ch. 65-408; ss. 11, 25, 35, ch. 69-106.

161.091 Erosion Control Trust Fund Account.—

(1) There is created in the State Treasury an account to be known as the "Erosion Control Trust Fund Account." Subject to such appropriations as the Legislature may make therefor from time to time, disbursements from this account may be made by the Division of Marine Resources of the Department of Natural Resources subject to the approval of the department in order to carry out the proper state responsibilities in a comprehensive, long-range, statewide plan for erosion control, beach preservation, and hurricane protection, in accordance with the following:

(a) With regard to federal aid projects, the department is authorized to pay up to 75 percent of the nonfederal construction and maintenance costs of projects authorized for construction by the United States Congress, including biological monitoring costs, revegetation costs, and costs of monitoring post-construction shoreline changes, provided local interests shall, as project sponsor, pay:

1. The nonfederal costs for project engineering, including engineering supervision and inspection;
2. The costs for providing all required construction easements, rights-of-way, public access easements, and required vehicle parking spaces;
3. The costs of obtaining all required permits;
4. The costs of establishing erosion control lines; and
5. All other nonfederal costs.

The department is authorized to advance federal aid funds for projects authorized by the United States Congress when such funds are not made available by the Congress at the time a project is ready for construction. In such a case, the department shall request reimbursement of the authorized federal share in the cost of such projects and is authorized to accept such reimbursement and deposit same in the Erosion Control Trust Fund Account. The project sponsor shall assume full responsibility for all project costs in excess of the state-federal cost limitation.

(b) With regard to nonfederal aid projects, the department is authorized to pay up to 75 percent of the construction costs, maintenance costs, basic engineering data costs, biological monitoring costs, revegetation costs, costs of monitoring post-construction shoreline changes, and project monitoring costs of projects authorized for construction by the department, provided local interests shall, as project sponsor, pay:

1. The costs for project engineering, including engineering supervision and inspection;
2. The costs for providing all required construction easements, rights-of-way, public access easements, and required vehicle parking spaces;
3. The costs of obtaining all required permits;
4. The costs of establishing erosion control lines; and
5. All other costs.

(c) The department is authorized to pay up to 100 percent of the cost of sand-source data. The selection of a project engineer, acceptable to the department, by local interests, as project sponsor, shall be on a competitive negotiation basis as set forth in chapter 287. The project sponsor shall assume full responsibility for all project costs in excess of the state cost limitation.

(d) With regard to inlet sand transfer projects, the department is authorized to initiate and pay the entire cost of such projects when the primary purpose is beach nourishment. In the case of navigation channel construction or maintenance dredging projects, the department is authorized to pay up to 75 percent of any additional project cost, as determined by the department, involved in placing suitable sand material on nearby beaches instead of dumping such sand out at sea. However, if such sand is placed on beaches of which the state is the upland owner, the department is authorized to pay 100 percent of the additional costs.

(e) For an area to qualify for state funding, as provided in paragraphs (a) and (b), local interests shall, as project sponsor, provide permanent public access to project areas at approximately one-half mile intervals, including adequate vehicle parking areas, as determined by the department to be necessary in the public interest. Notwithstanding anything else herein, no public funds shall be spent re-

storing any beach where adequate public access to, and use of, the restored beach is not available.

(f) Local interests, as project sponsor, desiring to initiate and pay the entire cost of designing, constructing, and maintaining erosion control projects prior to the state's or, in the case of a federal aid project, the federal government's, initiating such construction may be reimbursed from state funds on the basis of the provisions of paragraphs (a), (b), and (d), provided the project is approved by the department prior to initiation, after construction and based on legislative appropriations. Such local interests shall, as project sponsor, be responsible for obtaining federal reimbursement in the case of federal aid projects.

(g) Local interests shall, as project sponsor, hold and save the state and its agencies, officers, and employees harmless from any and all liabilities which may result from the construction or operation of a project.

(h) The department is authorized to expend funds from the Erosion Control Trust Fund Account in order to alleviate emergency conditions related directly to shoreline stability, upon declaration by the Governor that a shoreline emergency of state concern exists.

(i) The department is authorized to expend funds from the Erosion Control Trust Fund Account to undertake such other erosion control, beach preservation, and hurricane protection work or activity as may be in the interest of the state, as determined by the department and subject to availability of funds as appropriated by the Legislature.

(j) The department is authorized to initiate, construct, and pay the entire costs of projects which involve shoreline of which the state is the upland owner.

(k) Twenty-five percent of any funds appropriated for implementation of this section shall be held by the department until the last quarter of the fiscal year for which the appropriation is made. This amount shall be used to meet emergencies prescribed in paragraph (h). If no such emergencies occur, then these funds may be released in the last quarter of the fiscal year in which the appropriation is made for projects.

(l) The department shall maintain a current project listing and may, in its discretion and dependent upon availability of local resources, revise the project listing.

(m) The department is authorized to pay 100 percent of the cost of studies and research it deems necessary for the state erosion control program.

(2) General revenue funds as appropriated by the Legislature shall be deposited in the Erosion Control Trust Fund Account upon appropriation. The Erosion Control Trust Fund Account and the moneys deposited therein shall be under the direct supervision and control of the department and such moneys may be disbursed by the State Treasurer from time to time upon requisition as determined by the department.

(3) Notwithstanding the provisions of s. 216.292, the Erosion Control Trust Fund Account shall not be available for transfer for any purpose other than those provided for in this section.

History.—s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 1, ch. 71-182; s. 1, ch. 72-170; ss. 1-3, ch. 74-102; s. 1, ch. 75-288; s. 1, ch. 77-379; s. 6, ch. 78-257.

161.101 State participation in federally and nonfederally authorized projects and studies relating to beach erosion control.—

(1) To carry out the beach and shore preservation programs, the department is hereby constituted as the beach and shore preservation authority for the state. In this capacity, the executive director of the department may at his own initiative take all necessary steps as soon as practicable and desirable to implement the provisions of this chapter.

(2) Whenever a beach erosion control project has been authorized by Congress for federal financial participation in accordance with any Act of Congress relating to beach erosion control in which nonfederal participation is required, it shall be the policy of the state to assist with an equitable share of such funds to the extent that funds are available, as determined by the department.

(3) The department, for itself or on behalf of any and all duly established beach and shore preservation districts and boards of county commissioners within the state, may enter into cooperative agreements and otherwise cooperate with, and meet the requirements and conditions (including, but not limited to, execution of indemnification agreements) of, federal, state, and other local governments and political entities, or any agencies or representatives thereof, for the purpose of improving, furthering, and expediting the beach and shore preservation program.

(4) The department is authorized, for and on behalf of the state, to accept such federal moneys for beach erosion control as are available and to sign all necessary agreements therefor and to do and perform all necessary acts in connection therewith to effectuate the intent and purposes of this act.

(5) The department is authorized to make application for federal participation in the cost of any beach and shore preservation program under any Acts of Congress and all amendments thereto.

(6) The department is authorized to pay up to 100 percent of the nonfederal construction and maintenance costs of projects authorized for construction by the United States Congress, including project sponsor costs as outlined in s. 161.091(1)(a), when construction and maintenance are on lands of which the state is the upland riparian owner.

(7) With regard to nonfederal aid projects the department is authorized to pay 100 percent of the project costs as outlined in s. 161.091(1)(b), (c), and (d) on lands of which the state is the upland riparian owner.

History.—s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 7, ch. 78-257.

161.111 Shore erosion emergency.—If a shore erosion emergency is declared by the governor, the state, acting through the Department of Natural Resources, may spend whatever state funds are available to alleviate shore erosion, including such funds

specifically set aside for such purposes in the erosion control account.

History.—s. 1, ch. 65-408; ss. 25, 35, ch. 69-106.

161.121 Penalty.—Unless otherwise provided in this chapter, whoever shall fail to comply with the provisions of part I is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 65-408; s. 83, ch. 71-136; s. 2, ch. 77-12.

cf.—ss. 161.052, 161.053 Coastal construction and excavation; regulation.

161.131 Construction of ss. 161.011-161.121.—The provisions of ss. 161.011-161.121 shall be liberally construed by all concerned in a manner to best accomplish the beach and shore preservation purposes and programs.

History.—s. 3, ch. 65-408.

161.141 Declaration of public policy.—Beach erosion being a serious menace to the economy and general welfare of the people of this state and having advanced to emergency proportions, it is hereby declared to be in the public interest that the Legislature make provision for publicly financed beach nourishment and restoration and erosion control projects and establish and clarify the property rights of the state and private upland owners arising from or created by such projects. The Legislature hereby declares that it is the public policy of the state to cause to be fixed and determined, pursuant to beach nourishment and restoration and erosion control projects, the boundary line between sovereignty lands of the state bordering on the Atlantic Ocean, the Gulf of Mexico, and the bays, lagoons, and other tidal reaches thereof, and the upland properties adjacent thereto. It is further declared that there is no intention on the part of the state to extend its claims to lands not already held by it or to deprive any upland or submerged land owner of the legitimate and constitutional use and enjoyment of his property. If a requested and authorized beach nourishment and restoration and erosion control project cannot reasonably be accomplished without the taking of private property, then such taking shall be made by the requesting authority by eminent domain proceedings.

History.—s. 1, ch. 70-276; s. 1, ch. 79-233.

161.151 Definitions.—As used in ss. 161.141-161.211:

(1) "Board of trustees" means the Board of Trustees of the Internal Improvement Trust Fund.

(2) "Requesting authority" means any coastal county, municipality, or beach erosion control district which requests a survey by the board of trustees under the provisions of ss. 161.141-161.211.

(3) "Erosion control line" means the line determined in accordance with the provisions of ss. 161.141-161.211 which represents the landward extent of the claims of the state in its capacity as sovereign titleholder of the submerged bottoms and shores of the Atlantic Ocean, the Gulf of Mexico, and the bays, lagoons and other tidal reaches thereof on the date of the recording of the survey as authorized in s. 161.181.

History.—s. 2, ch. 70-276; s. 1, ch. 70-439.

161.161 Procedure for approval of projects.—(1) Upon the request by written resolution of a requesting authority for a survey preliminary to the implementation of a beach erosion control project, the board of trustees shall first require the Department of Natural Resources to furnish a written recommendation approving or disapproving the requested project and, if approval be recommended, to certify in writing that:

(a) Severe beach erosion has occurred in the area encompassed by the requested survey; and

(b) The beach sought to be protected by an erosion control project has been or will be destroyed in the immediate future unless a publicly financed program is undertaken.

Upon receipt of the written recommendation and certification from the Department of Natural Resources, the board of trustees shall decide whether, in light of existing needs throughout the state, the project should be pursued. In determining the priority of projects to be undertaken, the board of trustees shall consider the relative need for protective measures, the availability of necessary equipment, and the anticipated local and federal contribution and cooperation. If the board of trustees determines that the requested project should be pursued, it shall forthwith conduct a survey of all or part of the shoreline within the jurisdiction of the requesting authority in order to establish the area of beach to be protected by the project and locate an erosion control line. However, no such line shall be fixed except in connection with an authorized beach erosion control project in which the requesting authority has secured the written consent of the owners of a majority of the lineal feet of contiguous riparian property which either abuts the requested erosion control line or would abut such line, if established at the line of mean high water, for the establishment of such a line. No provision of ss. 161.141-161.211 shall be construed as preventing a requesting authority from participating in the funding of erosion control projects or surveys undertaken in accordance with the provisions of ss. 161.141-161.211. In lieu of conducting a survey, the board of trustees may accept and approve a survey as initiated, conducted, and submitted by the requesting authority if said survey is made in conformity with the appropriate principles set forth in ss. 161.141-161.211.

(2) Upon completion of the survey depicting the area of the beach erosion control project and the proposed location of the erosion control line, the board of trustees shall give notice of the written resolution of the requesting authority, the survey, and the date on which the board of trustees will hold a public hearing for the purpose of receiving evidence on the merits of the requested project and, if approval be granted, of locating and establishing such requested erosion control line. Such notice shall be by publication in a newspaper of general circulation published in the county or counties in which the proposed beach erosion control project shall be located, not less than once a week for 3 consecutive weeks,

and by mailing copies of such notice by certified or registered mail to each riparian owner of record of upland property lying within 1,000 feet (radial distance) of the shoreline to be extended through construction of the proposed beach erosion control project, as his name and address appear upon the latest tax assessment roll, in order that any persons who have an interest in the beach erosion control project or in the location of such requested erosion control line can be present at such hearing to submit their views concerning necessity for the project and the precise location of the requested erosion control line. Such notice shall be in addition to any notice requirement in chapter 120.

(3) The board of trustees shall approve or disapprove the beach erosion control project. If approval be granted, the board shall establish the location of the erosion control line. In locating said line, the board of trustees shall be guided generally by the existing line of mean high water, bearing in mind the requirements of proper engineering in the erosion control project, the extent to which erosion or avulsion has occurred, and the need to protect existing ownership of as much upland as is reasonably possible. In the event riparian upland owners agree to furnish financial or other acceptable assistance in the beach erosion control project, the board of trustees is authorized to locate the erosion control line a sufficient distance seaward of the existing line of mean high water in order to provide for an equitable distribution of the restored beach between the state and such existing upland owners.

History.—s. 3, ch. 70-276; s. 1, ch. 70-439; s. 23, ch. 78-95; s. 2, ch. 79-233.

161.181 Recording of board of trustees' resolution and survey.—If no review is taken within the time prescribed from the decision of the board of trustees or, if review be timely taken, in the absence of a final decision of a court of competent jurisdiction preventing the implementation of a beach erosion control project or invalidating, abolishing, or otherwise preventing the establishment and recordation of the erosion control line as provided herein, the board of trustees shall file in the public records of the county or counties in which the erosion control line lies, a copy of its resolution approving the beach erosion control project and locating the erosion control line and shall also file and cause to be recorded in the book of plats of said county or counties a survey showing the area of beach to be protected and the location of the erosion control line.

History.—s. 5, ch. 70-276; s. 1, ch. 70-439; s. 3, ch. 79-233.

161.191 Vesting of title to lands.—

(1) Upon the filing of a copy of the board of trustees' resolution and the recording of the survey showing the location of the erosion control line and the area of beach to be protected as provided in s. 161.181, title to all lands seaward of the erosion control line shall be deemed to be vested in the state by right of its sovereignty, and title to all lands landward of such line shall be vested in the riparian upland owners whose lands either abut the erosion control line or would have abutted the line if it had been located directly on the line of mean high water on the date the board of trustees' survey was recorded.

(2) Once the erosion control line along any segment of the shoreline has been established in accordance with the provisions of ss. 161.141-161.211, the common law shall no longer operate to increase or decrease the proportions of any upland property lying landward of such line, either by accretion or erosion or by any other natural or artificial process, except as provided in s. 161.211(2) and (3). However, the state shall not extend, or permit to be extended through artificial means, that portion of the protected beach lying seaward of the erosion control line beyond the limits set forth in the survey recorded by the board of trustees unless the state first obtains the written consent of all riparian upland owners whose view or access to the water's edge would be altered or impaired.

History.—s. 6, ch. 70-276; s. 1, ch. 70-439; s. 3, ch. 79-233.

161.201 Preservation of common law rights.—Any upland owner or lessee who by operation of ss. 161.141-161.211 ceases to be a holder of title to the mean high waterline shall, nonetheless, continue to be entitled to all common law riparian rights except as otherwise provided in s. 161.191(2), including but not limited to rights of ingress, egress, view, boating, bathing, and fishing. In addition the state shall not allow any structure to be erected upon lands created, either naturally or artificially, seaward of any erosion control line fixed in accordance with the provisions of ss. 161.141-161.211, except such structures required for the prevention of erosion. Neither shall such use be permitted by the state as may be injurious to the person, business, or property of the upland owner or lessee; and the several municipalities, counties and special districts are authorized and directed to enforce this provision through the exercise of their respective police powers.

History.—s. 7, ch. 70-276.

161.211 Cancellation of resolution for nonperformance by board of trustees.—

(1) If for any reason construction of the beach erosion control project authorized by the board of trustees is not commenced within 2 years from the date of the recording of the board of trustees' survey, as provided in s. 161.181, or in the event construction is commenced but halted for a period exceeding 6 months from commencement, then, upon receipt of a written petition signed by those owners or lessees of a majority of the lineal feet of riparian property which either abuts or would have abutted the erosion control line if the same had been located at the line of mean high water on the date the board of trustees' survey was recorded, the board of trustees shall forthwith cause to be canceled and vacated of record the resolution authorizing the beach erosion control project and the survey locating the erosion control line, and the erosion control line shall be null and void and of no further force or effect.

(2) If the state, county, municipality, erosion control district, or other governmental agency charged with the responsibility of maintaining the protected beach fails to maintain the same and as a result thereof the shoreline gradually recedes to a point or points landward of the erosion control line as established herein, the provisions of s. 161.191(2) shall cease to be operative as to the affected upland.

(3) In the event a substantial portion of the shoreline encompassed within the erosion control project recedes landward of the erosion control line, the board of trustees, on its own initiative, may direct or request, or, upon receipt of a written petition signed by the owners or lessees of a majority of the lineal feet of riparian property lying within the erosion control project, shall direct or request, the agency charged with the responsibility of maintaining the beach to restore the same to the extent provided for in the board of trustees' recorded survey. If the beach is not restored as directed or requested by the board of trustees within a period of 1 year from the date of the directive or request, the board of trustees shall forthwith cause to be canceled and vacated of record the resolution authorizing the beach erosion control project and the survey locating the erosion control line, and the erosion control line shall be null and void and of no further force or effect.

History.—s. 8, ch. 70-276; s. 1, ch. 70-439; s. 3, ch. 79-233.

161.212 Judicial review relating to permits and licenses.—

(1) As used in this section, unless the context otherwise requires:

(a) "Agency" means any official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of state government.

(b) "Permit" means any permit or license required by this chapter.

(2) Any person substantially affected by a final action of any agency with respect to a permit may seek review within 90 days of the rendering of such decision and request monetary damages and other relief in the circuit court in the judicial circuit in which the affected property is located; however, circuit court review shall be confined solely to determining whether final agency action is an unreasonable exercise of the state's police power constituting a taking without just compensation. Review of final agency action for the purpose of determining whether the action is in accordance with existing statutes or rules and based on competent substantial evidence shall proceed in accordance with chapter 120.

(3) If the court determines the decision reviewed is an unreasonable exercise of the state's police power constituting a taking without just compensation, the court shall remand the matter to the agency which shall, within a reasonable time:

(a) Agree to issue the permit;

(b) Agree to pay appropriate monetary damages; however, in determining the amount of compensation to be paid, consideration shall be given by the court to any enhancement to the value of the land attributable to governmental action; or

(c) Agree to modify its decision to avoid an unreasonable exercise of police power.

(4) The agency shall submit a statement of its agreed-upon action to the court in the form of a proposed order. If the action is a reasonable exercise of police power, the court shall enter its final order approving the proposed order. If the agency fails to submit a proposed order within a reasonable time not to exceed 90 days which specifies an action that is a reasonable exercise of police power, the court may order the agency to perform any of the alternatives specified in subsection (3).

(5) The court shall award reasonable attorney's fees and court costs to the agency or substantially affected person, whichever prevails.

(6) The provisions of this section are cumulative and shall not be deemed to abrogate any other remedies provided by law.

History.—ss. 1-6, ch. 78-85.

Note.—Also published at ss. 253.763, 373.617, 380.085, and 403.90.

PART II

BEACH AND SHORE PRESERVATION DISTRICTS

161.25 County beach and shore preservation authority; board of county commissioners.—To carry out the beach and shore preservation program, the board of county commissioners of any county and its successors in office, as an ex officio duty, are hereby severally constituted as the beach and shore preservation authority for their county. In this capacity, any such board of county commissioners may at its own initiative take all necessary steps as soon as practicable and desirable to implement the provisions of this chapter.

History.—s. 1, ch. 65-408.

161.26 Expenses; use of county funds.—The board of county commissioners of any of the counties is authorized to use any available county funds to meet necessary expenses of its beach and shore preservation program. This may include, among other things, costs of studies, surveys, planning, engineering, coordination, negotiation, acquisition of lands, construction of works and facilities, operation and maintenance, and other activities incidental to acquisition and construction to the extent considered

proper and desirable by the board of county commissioners.

History.—s. 1, ch. 65-408.

161.27 Personnel and facilities.—In carrying out the purposes of part II of this chapter, the board of county commissioners may use to the extent feasible any personnel or facilities employed by or available to the county. In addition, the board of county commissioners may hire such personnel and contract for such services as may prove necessary or desirable.

History.—s. 1, ch. 65-408.

161.28 Comprehensive county beach and shore preservation program.—The board of county commissioners of any of the counties may, by assignments to legally qualified personnel, whose services are made available as provided in s. 161.27, initiate and carry on such studies and investigations as may be necessary to plan a logical and suitable program for comprehensive beach and shore preservation within its county. This program may incorporate all or part of the recommendations of the United States Army Corps of Engineers concerning beach and shore restoration and erosion control, if there be any, and may additionally provide to an appropriate extent for the other aspects of beach and shore preservation. In conducting its studies and making its plans for a beach and shore preservation program, the board of county commissioners shall hold sufficient public hearings to ascertain the views and feelings of affected property owners in the various localities of the county regarding the needs to be served and manner in which they should best be served. The board of county commissioners shall give proper and reasonable consideration to all evidence received in planning the beach and shore preservation program.

History.—s. 1, ch. 65-408.

161.29 Benefit categories or zones.—Upon adoption of a reasonably final plan of improvement for the beach and shore preservation program for the entire county, the board of county commissioners shall conduct, through the use of personnel competent and qualified in this field, an economic analysis of the proposed program, determining the nature and extent of benefits expected to accrue from the program and allocating these benefits to their proper recipients by categories or zones of comparable benefits, and place in the same zone areas of equal benefit, or follow such other method as may be deemed suitable for the purposes of this section. From time to time, the board of county commissioners shall conduct in the same or similar manner a new analysis to better determine and allocate actual or expected benefits.

History.—s. 1, ch. 65-408.

161.31 Establishment of districts.—

(1) Districts established under the provisions of part II of this chapter shall constitute public bodies corporate and politic, exercising public powers and all other powers and duties incident to such bodies.

(2) The board of county commissioners shall serve as the governing body for all districts created under this authority and shall proceed as expeditiously as possible to determine and implement policy and program for each such district in accordance with the overall county program, except that the board of county commissioners may receive guidance in these matters for each district from an advisory group, consisting of not less than three nor more than five persons, which the board of county commissioners may appoint from any or each such district. Members of such advisory group shall have no definite term of office but shall serve at the pleasure of the board of county commissioners.

(3) To further provide for efficient administration of the district program, the board of county commissioners may hire such additional personnel or contract for such additional services as it considers necessary or desirable in each case.

(4) A uniform ad valorem tax not to exceed 1 mill per year on all nonexempt taxable property within the district may be levied for a period of not more than 2 years to defray organizational and administrative costs of said district.

History.—s. 1, ch. 65-408; s. 3, ch. 71-14.

161.32 Existing erosion prevention district.—Part II of this chapter shall not be construed to impair the existence, powers or functions of any existing erosion prevention, beach or shore preservation districts created by special or local act; provided, however, that any such existing district may recreate and reestablish itself under the provisions of this act as if originally created and established hereunder in all respects, by resolution of its governing body adopting the provisions of chapter 161, in their entirety and thereafter shall function as a beach and shore preservation district created and established under the provisions of part II of this chapter.

History.—s. 1, ch. 65-408.

161.33 Cooperation with federal, state and other governmental entities.—

(1) The board of county commissioners, for itself or on behalf of any and all duly established beach and shore preservation districts within the county, may enter into cooperative agreements and otherwise cooperate with, and meet the requirements and conditions of, federal, state and other local governments and political entities, or any agencies or representative thereof, for the purpose of improving, furthering and expediting the beach and shore preservation program.

(2) The board of county commissioners and the Department of Natural Resources, for and on behalf of each or any district created in accordance with parts I and II of this chapter, are authorized to receive and accept from any federal agency, grants for or in aid of any beach and shore preservation program contemplated by part II of this chapter, and to receive and accept aid or contributions from any source, of money, property and other things of value. The board of county commissioners is authorized to make application for Federal participation in the cost of any beach and shore preservation program under any Acts of Congress and all amendments thereto.

History.—s. 1, ch. 65-408; ss. 25, 35, ch. 69-106.

161.34 Coordination of county preservation activities.—The board of county commissioners shall coordinate the work and activity of all districts established hereunder within the county and, to further insure harmony and consistency with the overall county beach and shore preservation plan, shall establish working liaison with each municipality and other agencies and groups involved in beach and shore preservation activity within the county.

History.—s. 1, ch. 65-408.

161.35 County shoreline; supervisory and regulatory powers of board of county commissioners.—

(1) With the consent of the Department of Natural Resources and of any municipality or other political authority involved, the board of county commissioners may regulate and supervise all physical work or activity along the county shoreline which is likely to have a material physical effect on existing coastal conditions or natural shore processes. This regulatory and supervisory authority shall specifically include, but not be limited to, installation of groins, jetties, moles, breakwaters, seawalls, revetments, and other coastal construction as defined herein. For this purpose, the board of county commissioners, with assistance as required from its professional personnel, may develop standards and criteria, issue permits and conduct inspections.

(2) All regulations and requirements prescribed by the board of county commissioners pursuant to part II of this chapter may be enforced by mandatory injunction or other appropriate action in any court of competent jurisdiction. Such regulations and requirements shall in no way affect the regulatory authority of the Department of Natural Resources.

History.—s. 1, ch. 65-408; ss. 25, 35, ch. 69-106.

161.36 General powers of authority.—In order to most effectively carry out the purposes of part II of this chapter, the board of county commissioners, as the county beach and shore preservation authority and as the governing body of each beach and shore preservation district established thereby, shall be possessed of broad powers to do all manner of things necessary or desirable in pursuance of this end; provided, however, nothing herein shall diminish or impair the regulatory authority of the Department of Natural Resources or Division of Marine Resources under s. 370.02(2), or part I of this chapter, or the Board of Trustees of the Internal Improvement Trust Fund under chapter 253. Such powers shall specifically include, but not be limited to, the following:

(1) To make contracts and enter into agreements;

(2) To sue and be sued;

(3) To acquire and hold lands and property by any lawful means;

(4) To exercise the power of eminent domain;

(5) To enter upon private property for purposes of making surveys, soundings, drillings and examinations, and such entry shall not be deemed a trespass;

(6) To construct, acquire, operate and maintain works and facilities;

(7) To make rules and regulations; and

(8) To do any and all other things specified or implied in part II of this chapter.

History.—s. 1, ch. 65-408; ss. 25, 27, 35, ch. 69-106.

161.37 Capital, operation and maintenance costs; district benefits tax levy.—

(1) To provide for the capital, operation and maintenance cost of the beach and shore preservation program, either by debt service or direct expenditure, the board of county commissioners as the governing body of each district created in accordance with part II of this chapter may levy upon all taxable property within each district an ad valorem benefits tax in any amount necessary to meet the requirements of the program but not exceeding the reasonable ability of the district to pay.

(2) The tax shall be levied upon each taxable property in proportion to benefits said property will receive as determined by the most recent economic analysis of the program as provided for under s. 161.29. General benefits shall be uniformly applied on an ad valorem basis to the entire assessed valuation of each district, while special benefits shall be assigned to groups of specific properties which shall constitute zones because of the equal or comparable benefits each included property will receive.

(3) Where the board of county commissioners levies any special benefits taxes, it shall consider the value of the property, its kind, susceptibility to improvement and the maximum annual benefits to be conferred thereon by the works or improvements in the district.

(4) The owner of lands where a special benefits tax is proposed to be levied shall be given written notice and an opportunity to be heard upon the amount of special benefits tax to be levied upon his lands. If the special benefits to all properties within any district are found to be equal or comparable, then the said district shall comprise only one tax zone. The proportional tax rate which each property within a district shall pay shall be determined by adding the general and special benefits assigned to its zone. The actual tax levy for any particular year shall depend on the revenue needs for that year.

(5) The board of county commissioners shall levy sufficient ad valorem and special benefits taxes to pay off debt service on any bonds issued. It shall be the duty of the board each year, sufficiently in advance of the preparation of the county tax roll, to establish the revenue requirements for each individual district for the fiscal year in question and certify this figure to the county property appraiser who shall then assign shares of this total to each zone within the respective district according to the proportion of total benefits previously assigned. The share of total required revenue assigned each zone shall then be collected by an ad valorem levy on each taxable property within the zone.

(6) All taxes provided for in part II of this chapter shall be levied and collected by the county in the same manner as other county taxes, and while un-

paid shall constitute a lien of equal stature and dignity with other county taxes.

History.—s. 1, ch. 65-408; s. 1, ch. 77-102.

161.38 Issuance of bonds.—

(1) The board of county commissioners, for and on behalf of each or any district created in accordance with part II of this chapter, is authorized to provide from time to time for the issuance of bonds to obtain funds to meet the costs of the beach and shore preservation program; provided, however, that such issuance shall have first been approved at a duly conducted referendum election by freeholders within the subject district as provided for by law. The bonds of each issue shall be dated, shall bear interest at rates not to exceed 7½ percent which mature at such time not to exceed 40 years from the date of issuance as determined by the board of county commissioners, and at the option of the board of county commissioners may be made redeemable before maturity under such terms and conditions and at such prices as fixed by the board of county commissioners prior to issuance.

(2) The board of county commissioners shall determine the form of such bonds, including any interest coupons to be attached thereto, the denomination of the bonds, and the place of payment of principal and interest which may be at any bank or trust company within or without the state.

(a) The resolution authorizing the issue may further provide that such bonds may be executed manually or by engraved, lithographed or facsimile signature.

(b) The appropriate seal may be affixed or lithographed, engraved or otherwise reproduced in facsimile on such bonds and shall be attested by the manual or facsimile signature of the county clerk; provided, however, that at least one of the signatures of executing officials on the bonds shall be manual. Signatures, manual or facsimile, of executing officials shall continue to be valid for all purposes whatsoever regardless of whether or not signing officials are still in office at the time bonds are actually delivered.

(c) Bonds may be issued in coupon or registered form as the board of county commissioners may decide and provision may be made for the registration of any coupon bonds as to principal alone or as to principal and interest, and for the reconversion of coupon bonds or any bond registered as to principal and interest.

(d) The issuance of bonds provided for in part II of this chapter shall not be subject to any limitations or conditions contained in any other law, and the board of county commissioners may sell such bonds in such manner, either at public or private sale and for such prices as it may determine to be in the best interests of the district concerned, but no such sale shall be made at a price so low as to require the payment of interest on money received therefor at a rate in excess of 6 percent per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding from such computation, however, the amount of any premium to be paid for the redemption of any bonds prior to maturity.

(e) Prior to the preparation or issuance of definitive bonds, the board of county commissioners may under like restrictions issue interim receipts or temporary notes or other forms of such temporary obligations with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. Such bonds may be issued under the provisions of part II of this chapter without obtaining the consent of any commission, board, bureau or agency of this state, and without any other proceeding or happening than specifically required by this chapter.

(3) All bonds issued under part II of this chapter shall constitute, and have all the qualities and incidents of, negotiable instruments under the law merchant and the Negotiable Instruments Law of Florida, and shall not be invalid for any irregularity or defect in the proceedings for the issuance and sale thereof and shall be incontestable in the hands of bona fide purchasers for value.

(4) The provisions of part II of this chapter shall constitute an irrevocable contract between the board of county commissioners and the holders of such bonds or coupons thereof issued pursuant to the provisions hereof.

(5) Any holder of such bonds issued under the provisions of part II of this chapter, and the trustee under any trustee agreement, except to the extent the rights herein given may be restricted by such trust agreement, may either at law or in equity, by suit, action or mandamus, force and compel the performance of the duties required by part II of this chapter or of any of the officers or persons herein mentioned in relation to said bonds, or the levy, assessment, collection and enforcement and application of the taxes pledged for the principal and interest thereof as provided for in s. 161.37.

(6) Bonds issued under the provisions of part II of this chapter shall not be subject to the consent or approval of any state board, commission or agency, but such bonds shall be validated in accordance with the provisions of chapter 75.

History.—s. 1, ch. 65-408; s. 11, ch. 73-302.

161.39 Cooperation between two or more counties.—

(1) When two or more counties have created one or more beach preservation districts as provided for under part II of this chapter or any other law with same or like intent, or desire to carry out programs of beach and shore preservation, and find it to be mutually beneficial, the boards of county commissioners of such counties may cooperate to any extent necessary or desirable to carry out the intent of part II of this chapter or any other law with same or like intent, in the implementation of any beach or shore preservation plan or project as defined herein. This cooperation may include but shall not be limited to cooperative participation in the nonfederal costs of federally authorized projects affecting one or more of the cooperating counties, plans or projects resulting from investigation, or studies made by any or all such counties, or other such plans or projects, which by their nature would prove to be beneficial to each such cooperating county as determined by the boards of county commissioners of each such county.

(2) The costs of any such plan or project shall be borne by each of the cooperating counties in accord-

ance with the benefits expected to accrue to each county as determined in accordance with s. 161.29, or as determined and agreed upon by the boards of county commissioners of each such cooperating county.

(3) Any county may expend funds in any other county for the purposes provided herein if in the opinion of the board of county commissioners of one county such expenditure of its funds in other counties would be beneficial to the beaches and shores of that county.

History.—s. 1, ch. 65-408.

161.40 Tax exemptions.—All properties, revenues and other assets of the board of county commissioners acting as the beach and shore preservation authority, or of any of the districts created thereby, shall, by recognition of its essential public function, be exempt from all taxation by the state or any political subdivision, agency or instrumentality thereof.

History.—s. 1, ch. 65-408.

161.41 Construction of ss. 161.25-161.40.—The provisions of ss. 161.25-161.40 shall be liberally construed by all concerned in a manner to best accomplish the beach and shore preservation purposes and programs.

History.—s. 3, ch. 65-408.

161.45 Effect of repeal of ch. 158 on districts created prior to repeal.—The county erosion districts created under the provisions of chapter 158, and presently in existence shall not be affected by the repeal of chapter 158.

History.—s. 2, ch. 65-126.

CHAPTER 163

INTERGOVERNMENTAL PROGRAMS

PART I MISCELLANEOUS PROGRAMS (ss. 163.01-163.03)

PART II COUNTY AND MUNICIPAL PLANNING FOR FUTURE DEVELOPMENT (ss. 163.160-163.3211)

PART III COMMUNITY REDEVELOPMENT (ss. 163.330-163.450)

PART IV REGIONAL TRANSPORTATION AUTHORITIES (ss. 163.565-163.572)

PART V NEW COMMUNITIES (ss. 163.601-163.633)

PART VI ADVISORY COUNCIL ON INTERGOVERNMENTAL RELATIONS (ss. 163.701-163.708)

PART I

MISCELLANEOUS PROGRAMS

163.01 Florida Interlocal Cooperation Act of 1969.—

(1) This section shall be known and may be cited as the "Florida Interlocal Cooperation Act of 1969."

(2) It is the purpose of this section to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

(3) As used in this section:

(a) "Interlocal agreement" means an agreement entered into pursuant to this section.

(b) "Public agency" means a political subdivision, agency, or officer of this state or of any state of the United States, including, but not limited to, state government, county, city, school district, single and multipurpose special district, single and multipurpose public authority, metropolitan or consolidated government, an independently elected county officer, any agency of the United States Government, and any similar entity of any other state of the United States.

(c) "State" means a state of the United States.

(4) A public agency of this state may exercise jointly with any other public agency of the state, of any other state, or of the United States Government any power, privilege, or authority which such agencies share in common and which each might exercise separately.

(5) A joint exercise of power pursuant to this section shall be made by contract in the form of an interlocal agreement, which may provide for:

(a) The purpose of such interlocal agreement or the power to be exercised and the method by which the purpose will be accomplished or the manner in which the power will be exercised.

(b) The duration of the interlocal agreement and the method by which it may be rescinded or terminated by any participating public agency prior to the stated date of termination.

(c) The precise organization, composition, and nature of any separate legal or administrative entity created thereby with the powers designated thereto, if such entity may be legally created.

(d) The manner in which the parties to an interlocal agreement will provide from their treasuries the financial support for the purpose set forth in the interlocal agreement, payments of public funds that may be made to defray the cost of such purpose, advances of public funds that may be made for the purposes set forth in the interlocal agreements and repayment thereof, and the personnel, equipment or property of one or more of the parties to the agreement that may be used in lieu of other contributions or advances.

(e) The manner in which funds may be paid to and disbursed by any separate legal or administrative entity created pursuant to the interlocal agreement.

(f) A method or formula for equitably providing for and allocating and financing the capital and operating costs, including payments to reserve funds authorized by law and payments of principal and interest on obligations. The method or formula shall be established by the participating parties to the interlocal agreement on a ratio of full valuation of real property, on the basis of the amount of services rendered or to be rendered or benefits received or conferred or to be received or conferred, or on any other equitable basis, including the levying of taxes or assessments to pay such costs on the entire area serviced by the parties to the interlocal agreement, subject to such limitations as may be contained in the constitution and statutes of this state.

(g) The manner of employing, engaging, compensating, transferring, or discharging necessary personnel, subject to the provisions of applicable civil service and merit systems.

(h) The fixing and collecting of charges, rates,

rents, or fees, where appropriate, and the making and promulgation of necessary rules and regulations and their enforcement by or with the assistance of the participating parties to the interlocal agreement.

(i) The manner in which purchases shall be made and contracts entered into.

(j) The acquisition, ownership, custody, operation, maintenance, lease, or sale of real or personal property.

(k) The disposition, diversion, or distribution of any property acquired through the execution of such interlocal agreement.

(l) The manner in which, after the completion of the purpose of the interlocal agreement, any surplus money shall be returned in proportion to the contributions made by the participating parties.

(m) The acceptance of gifts, grants, assistance funds, or bequests.

(n) The making of claims for federal or state aid payable to the individual or several participants on account of the execution of the interlocal agreement.

(o) The manner of responding for any liabilities that might be incurred through performance of the interlocal agreement and insuring against any such liability.

(p) The adjudication of disputes or disagreements, the effects of failure of participating parties to pay their shares of the costs and expenses, and the rights of the other participants in such cases.

(q) The manner in which strict accountability of all funds shall be provided for and the manner in which reports, including an annual independent audit, of all receipts and disbursements shall be prepared and presented to each participating party to the interlocal agreement.

(r) Any other necessary and proper matters agreed upon by the participating public agencies.

(6) An interlocal agreement may provide for one or more parties to the agreement to administer or execute the agreement. One or more parties to the agreement may agree to provide all or a part of the services set forth in the agreement in the manner provided in the agreement. The parties may provide for the mutual exchange of services without payment of any contribution other than such services.

(7)(a) An interlocal agreement may provide for a separate legal or administrative entity to administer or execute the agreement which may be a commission, board, or council constituted pursuant to the agreement.

(b) A separate legal or administrative entity created by an interlocal agreement shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement. The entity may, in addition to its other powers, be authorized in its own name to make and enter into contracts, to employ agencies or employees, to acquire, construct, manage, maintain, or operate buildings, works, or improvements, to acquire, hold, or dispose of property, and to incur debts, liabilities, or obligations which do not constitute the debts, liabilities, or obligations of any of the parties to the agreement.

(c) No separate legal or administrative entity created by an interlocal agreement shall possess the power or authority to levy any type of tax within the boundaries of any governmental unit participating in the interlocal agreement, to issue any type of bond in its own name, or in any way to obligate financially a governmental unit participating in the interlocal agreement. However, any separate legal entity comprised of electric utilities as defined in s. 361.11(2) and created for the purpose of exercising the powers granted by part II of chapter 361, the "Joint Power Act," may, for the purpose of financing or refinancing the costs of a joint electric power supply project as defined in said part, exercise all powers in connection with the authorization, issuance, and sale of bonds as are conferred upon municipalities by part I of chapter 159 or part II of chapter 166, or both. Any such entity may also issue bond anticipation notes, as provided by s. 215.431, in connection with the authorization, issuance, and sale of such bonds. All of the privileges, benefits, powers, and terms of part I of chapter 159 and part II of chapter 166, notwithstanding any limitations provided above, shall be fully applicable to such entity. Bonds issued pursuant to this section may be validated as provided in chapter 75. However, the complaint in any action to validate such bonds shall be filed only in the Circuit Court for Leon County. The notice required to be published by s. 75.06 shall be published only in Leon County, and the complaint and order of the circuit court shall be served only on the State Attorney of the Second Judicial Circuit and on the state attorney of each circuit in which a municipality participating in the subject bond issue lies.

(8) If the purpose set forth in an interlocal agreement is the acquisition, construction, or operation of a revenue-producing facility, the agreement may provide for the repayment or return to the parties of all or any part of the contributions, payments, or advances made by the parties pursuant to subsection (5) and for payment to the parties of any sum derived from the revenues of such facility. Payments, repayments, or returns shall be made at any time and in the manner specified in the agreement, and may be made at any time on or prior to the rescission or termination of the agreement or completion of the purposes of the agreement.

(9)(a) All of the privileges and immunities from liability; exemptions from laws, ordinances, and rules; and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agency, or employees of any public agents or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, or employees extraterritorially under the provisions of any such interlocal agreement.

(b) An interlocal agreement does not relieve a public agency of any obligation or responsibility imposed upon it by law except to the extent of actual and timely performance thereof by one or more of the parties to the agreement or any legal or administrative entity created by the agreement, in which case the performance may be offered in satisfaction of the obligation or responsibility.

(10)(a) A public agency entering into an interlo-

cal agreement may appropriate funds and sell, give or otherwise supply any party designated to operate the joint or cooperative undertaking such personnel, services, facilities, property, franchises, or funds thereof as may be within its legal power to furnish.

(b) A public agency entering into an interlocal agreement may receive grants-in-aid or other assistance funds from the United States Government or this state for use in carrying out the purposes of the interlocal agreement.

(11) Prior to its effectiveness, an interlocal agreement and subsequent amendments thereto shall be filed with the clerk of the circuit court of each county where a party to the agreement is located.

(12) Any public agency entering into an agreement pursuant to this section may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its legal power to furnish.

(13) The powers and authority granted by this section shall be in addition and supplemental to those granted by any other general, local or special law. Nothing contained herein shall be deemed to interfere with the application of any other law.

(14) This section is intended to authorize the entry into contracts for the performance of service functions of public agencies, but shall not be deemed to authorize the delegation of the constitutional or statutory duties of state, county, or city officers.

History.—ss. 1, 2, ch. 69-42; ss. 11, 18, 35, ch. 69-106; s. 1, ch. 79-24; ss. 1, 2, ch. 79-31; s. 61, ch. 79-40.

163.02 Councils of local public officials.—

(1) The governing bodies of any two or more counties, municipalities, special districts, or other governmental subdivisions of this state, or any of them, herein referred to as member local governments, may, by resolution, enter into an agreement with each other for the establishment of a council of local public officials. Any council established under the authority of this section shall be a corporation not for profit.

(2) Representation on the council shall be in the manner provided in the agreement establishing the council. The representative from each member local government shall be the elected chief executive of said local government or, if such government does not have an elected chief executive, a member of its governing body chosen by such body to be its representative. Any member may withdraw from the council upon 60 days' notice subsequent to formal action by its governing body.

(3) The local government council shall have the power to:

(a) Study such area governmental problems as it deems appropriate, including but not limited to matters affecting health, safety, welfare, education, economic conditions, and area development;

(b) Promote cooperative arrangements and coordinate action among its members; and

(c) Make recommendations for review and action to the members and other public agencies that perform local functions and services within the area.

(4) The council shall adopt bylaws designating the officers of the council and providing for the conduct of its business. The council may employ a staff, consult and retain experts, and purchase or lease or otherwise provide for such supplies, materials, equipment and facilities as it deems desirable and necessary.

(5)(a) The governing bodies of the member governments may appropriate funds to meet the necessary expenses of the council. Services of personnel, use of equipment and office space, and other necessary services may be accepted from members as part of their financial support.

(b) The council may accept funds, grants, gifts, and services from the state, from any other governmental unit, whether participating in the council or not, from the Government of the United States, and from private and civic sources.

(c) The council shall make an annual public report of its activities to each of the member local governments, and shall have its accounts audited annually.

History.—ss. 1-5, ch. 69-69.

163.03 Department of Community Affairs; local government.—

(1) The Secretary of the Department of Community Affairs shall:

(a) Supervise and administer the activities of the department and shall advise the Governor, the cabinet, and the Legislature with respect to matters affecting community affairs and local government and participate in the formulation of policies which best utilize the resources of state government for the benefit of local government;

(b) Render services to local governments by assisting, upon request, in applying for and securing federal and state funds and by assisting the Executive Office of the Governor in coordinating the activities of the state with federal programs for assistance in and solution of urban problems;

(c) Under the direction of the Governor, administer programs to apply rapidly all available aid to disaster-stricken communities and, for this purpose, provide liaison with federal agencies and other public and private agencies;

(d) When requested, administer programs which will assist the efforts of local governments in developing mutual and cooperative solutions to their common problems;

(e) Conduct programs to encourage and promote the involvement of private enterprise in the solution of urban problems;

(f) Consult with governmental, academic, and private organizations which conduct research on metropolitan and other local problems; and report to the Governor and the Legislature concerning the findings and recommendations of these organizations;

(g) Conduct continuing programs of analysis and evaluation of local governments, and recommend to the Governor programs and changes in the powers and organization of local government as may seem necessary to strengthen local governments;

(h) Provide an informational service for local governments, or interested persons, by referring inquiries to the appropriate departments and agencies of the state and federal governments for advice, as-

sistance, and available services in connection with particular problems;

(i) Assist the Governor and the cabinet in coordinating and making more effective the activities and services of those departments and agencies of the state which may be of service to units of local government;

(j) Provide consultative services and technical assistance to local officials in the fields of housing, redevelopment and renewal, local public improvement programs, planning and zoning, and other local programs; and collect and disseminate information pertaining thereto, including information concerning federal, state and private assistance programs and services;

(k) Conduct research and studies, and prepare model ordinances, charters, and codes relating to the areas referred to herein;

(l) Cooperate with other state agencies in the preparation of statewide plans relating to housing, redevelopment and renewal, human resources development, local planning and zoning, transportation and traffic, and other matters relating to the purposes of this section;

(m) Conduct a program of preservice and inservice training for local officials in technical and specialized areas of local administration, in cooperation with appropriate state agencies whose professional personnel possess specialized or technical knowledge which would be useful in conducting such training programs. Included in such programs shall be short courses in fiscal and debt management, and other areas in which the secretary determines that there is sufficient interest among local officials to warrant training programs;

(n) Perform such other functions, duties, or responsibilities as may be hereafter assigned to him by law;

(o) Accept funds from all sources to be utilized in programs designed to combat juvenile crime, including the making of contributions to the National Youth Emergency Corps; and

(p) Be authorized to accept and disburse funds from all sources in order to carry out the following programs:

1. Advisory and informational services to local governments;

2. Community development training under Title VIII of the Housing Act of 1964;

3. Local planning assistance under s. 701 of the Housing Act of 1954;

4. Statewide planning assistance under s. 701 of the Housing Act of 1954;

5. Model cities technical assistance under s. 701 of the Housing Act of 1954.

(2) It is the intent of this section, with respect to federal grant-in-aid programs that the department shall serve as the agency for disseminating information to local governments regarding the availability of federal grant-in-aid assistance to local governments in their efforts to secure federal grant-in-aid assistance, but only upon the request of such local governments; and assisting local governments in maintaining liaison and communications with federal agencies concerning federal grant-in-aid programs; provided, however that nothing contained herein shall be construed to require consent, approval, or authorization from the department as a condition to any application for or acceptance of grants-in-aid from the United States Government.

History.—s. 18, ch. 69-106; s. 1, ch. 70-121; s. 91, ch. 79-190.

PART II

COUNTY AND MUNICIPAL PLANNING FOR FUTURE DEVELOPMENT

163.160 Scope of act.—

(1) The several counties and incorporated municipalities of this state may plan for future development, adopt and amend comprehensive plans to guide future development, adopt and enforce zoning regulations, adopt and enforce subdivision regulations, adopt and enforce building, plumbing, electrical, gas, fire, safety, and sanitary codes, and establish and maintain the boards and commissions herein described for carrying out the provisions and purposes of this act. The powers authorized by this act may be employed by counties and incorporated municipalities individually or jointly by mutual agreement in accordance with the provisions of this act in such combinations as their common interests may dictate.

(2) The provisions of this act shall not be deemed to repeal or modify any local or special act relating to zoning, planning, or subdivision regulations, but the provisions herein shall be supplemental and in addition to powers that may be exercised by any governing body that has a local or special act.

History.—s. 1, ch. 69-139.

163.165 Legislative intent.—

(1) In order to preserve and enhance their present advantages, overcome their present handicaps, and prevent or minimize future problems, it is the intent of this act to enable the several counties and incorporated municipalities to plan for future development and to prepare, adopt and amend comprehensive plans to guide future development. To implement the comprehensive plans, the several counties and incorporated municipalities may adopt and enforce zoning regulations, adopt and enforce subdivision regulations, and adopt and enforce building, plumbing, electrical, gas, fire, safety, and sanitary codes.

(2) The provisions of this act in its interpretation and application are declared to be the minimum requirements necessary to promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, morals, and general welfare; to conserve the value of land, buildings, and resources; and to protect the character and maintain the stability of residential, agricultural, business, and industrial areas and to promote the orderly development of such areas.

(3) Any governing body of any county or any incorporated municipality may, but shall not be required to, exercise any of the powers set out in this act. Whenever a governing body shall elect to exercise any of the powers granted by this act, such powers shall be exercised in the manner hereinafter prescribed.

History.—s. 2, ch. 69-139.

163.170 Definitions.—As used in this act:

(1) "Area" means the complete area qualifying under the provisions of this act, whether this be all of the lands lying within the limits of an incorporated municipality, lands in and adjacent to incorporated municipalities, all unincorporated lands within a county, or areas comprising combinations of the lands in incorporated municipalities and unincorporated areas of counties.

(2) "Commission" means the planning commission appointed by the governing body or bodies adopting the provisions of this part as provided hereinafter.

(3) "Due public notice," as used in connection with the phrase "public hearing" or "hearings with due public notice," shall mean publication of notice of the time, place, and purpose of such hearing at least twice in a newspaper of general circulation in the area, with the first such publication to be at least 15 days prior to the date of the hearing and the second such publication to be at least 5 days prior to the hearing. In addition, except where the hearing applies to all of the lands within the area, similar notices setting forth the time, place, and purpose of such hearing shall be mailed to the last known address of the owners of the property involved in or directly affected by the hearing, and such notices shall also be posted in a conspicuous place or places on or around such lots, parcels, or tracts of lands as may be involved in or directly affected by the hearing. Affidavit proof of the required publication, mailing, and posting of the notice shall be presented at the hearing.

(4) "Governing body" means the board of county commissioners of a county, the commission or council of an incorporated municipality or any other chief governing body of a unit of local government, however designated, or the combination of such bodies where joint adoption of the provisions of this part is accomplished as herein provided.

(5) "Ordinance" means an official, legislative, policy-making action of a governing body. When used in relation to action by a board of county commissioners, the term means a resolution of the board of county commissioners. When used in relation to action by other governing bodies, the term means such appropriate official, legislative, policy-making action as is customarily taken by the governing body involved, regardless of the nomenclature given to such official action.

(6) "Special exception" as used in connection with the provisions of this act dealing with zoning, means a use that would not be appropriate generally or without restriction throughout the particular zon-

ing district or classification, but which, if controlled as to number, area, location, or relation to the neighborhood, would not adversely affect the public health, safety, comfort, good order, appearance, convenience, morals, and the general welfare. Such uses may be permitted in such zoning district or classification as special exceptions only if specific provisions and standards for such special exceptions are made in the zoning ordinance.

(7) "Subdivision" means the division of a parcel of land, whether improved or unimproved, into three or more contiguous lots or parcels of land, designated by reference to the number or symbol of the lot or parcel contained in the plat of such subdivision, for the purpose, whether immediate or future, of transfer of ownership or, if the establishment of a new street is involved, any division of such parcel. However, the division of land into parcels of more than 5 acres not involving any change in street lines or public easements of whatsoever kind is not to be deemed a subdivision within the meaning of this act. The term includes a resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land subdivided.

(8) "Variance" as used in connection with the provisions of this act dealing with zoning, means a modification of the zoning ordinance regulations when such variance will not be contrary to the public interest and when, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. A variance is authorized only for height, area, and size of structure or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance nor shall a variance be granted because of the presence of nonconformities in the zoning district or classification or in adjoining zoning districts or classifications.

History.—s. 3, ch. 69-139.

163.175 Areas and jurisdictions which may qualify under the provisions of this act.—

(1) MUNICIPALITIES AND ADJACENT AREAS.—Any incorporated municipality may exercise any or all of the powers granted under the provisions of this act in the total area within its corporate limits upon passage of an appropriate ordinance to that effect by the governing body. Unincorporated areas adjacent to incorporated municipalities may be added to and included in the area under municipal jurisdiction for the purposes of this act, when the governing bodies of the municipality and the county in which the area is located shall agree as to the boundaries of such additional areas, procedures for joint action, procedures for administration of ordinances and regulations applying to the area, and the manner of obtaining equitable representation on the commissions and boards provided for under this act. Such agreements shall be formally stated in appropriate official action by the governing bodies involved.

(2) COUNTIES.—Any county may exercise any of the powers granted under the provisions of this act in the total unincorporated area within its boundaries or in such unincorporated areas as are not included in any joint jurisdiction with municipalities established under the provisions of subsection (1). In order to exercise any of the powers granted under the provisions of this act, the board of county commissioners of the county shall pass an ordinance after due public notice to that effect.

(3) COMBINATIONS OF MUNICIPALITIES AND COUNTIES.—Combinations of incorporated municipalities, of counties, of an incorporated municipality or municipalities and a county or counties, or an incorporated municipality or municipalities and portions of a county or counties may jointly exercise the powers granted under the provisions of this act upon formal adoption of an official agreement by the governing bodies involved as described in subsection (1).

(4) PUBLIC HEARING.—Before any municipality or county, jointly or individually, may adopt the provisions of this act, there shall be at least one public hearing with due public notice held in the area involved at which time all affected persons shall be given an opportunity to appear and be heard.

History.—s. 4, ch. 69-139.

163.180 Commissions.—

(1) ESTABLISHMENT AND COMPOSITION.—The governing bodies of counties and incorporated municipalities are hereby empowered, individually or in combination as provided in s. 163.175, to establish commissions and appoint members thereto, the proportionate membership thereof to be as agreed upon and appointed by the governmental bodies concerned. Elected officeholders of any of the jurisdictions involved may serve only in an ex officio capacity.

(2) TERMS OF OFFICE; REMOVAL FROM OFFICE; VACANCIES.—Members of the commission shall be appointed for staggered terms of such length as may be determined jointly by the governing bodies involved and shall serve until their successors are appointed. Original appointments may be made for a lesser number of years so that the terms of the said members shall be staggered. The governing body creating the commission is authorized to remove any member of the commission for cause after written notice and public hearing. Any vacancy occurring during the unexpired term of office of any member shall be filled by the governing body concerned for the remainder of the term. Such vacancy shall be filled within 30 days after the vacancy occurs.

(3) OFFICERS, RULES OF PROCEDURE, EMPLOYEES AND SALARIES.—

(a) The commission shall elect a chairman and a vice chairman from among its members. The commission shall appoint a secretary who may be the executive director of the commission or an employee of the governing body.

(b) The commission shall meet at regular intervals to be determined by it and at such other times as the chairman or commission may determine. It shall adopt rules for the transaction of its business and keep a properly indexed record of its resolutions, transactions, findings and determinations, which record shall be a public record. All meetings of the commission shall be public.

(c) The commission may, subject to the approval of the governing body concerned and within the fi-

nancial limitations set by appropriations made or other funds available, employ such experts, technicians, and staff as may be deemed proper and pay their salaries, contractual charges and fees, and such other expenses as are necessary to conduct the work of the commission.

(d) Nothing in this act shall prevent the governing body of a county or incorporated municipality that participates in creating a commission serving two or more jurisdictions from continuing or creating its own commission. It may assign to the commission serving two or more jurisdictions any or all of the functions, powers and duties of its own commission, whereupon the functions, powers and duties so assigned shall no longer be exercised by its own commission but shall thereafter be exercised by the commission serving two or more jurisdictions.

(4) APPROPRIATIONS, FEES AND OTHER INCOME.—The governing body for the area under the jurisdiction of the commission is hereby authorized and empowered to make appropriations for salaries, fees, and expenses necessary in the conduct of the work of the commission and also to establish a schedule of fees to be charged by the commission. To accomplish the purposes and activities authorized by this act, the commission, with the approval of the governing body or bodies, has the authority to expend all sums so appropriated and other sums made available for its use from fees, gifts, state or federal grants, state or federal loans, and other sources when acceptance of such loans is approved by the governing bodies involved.

History.—s. 5, ch. 69-139.

163.185 Functions, powers, and duties of commissions.—The functions, powers, and duties of the commission shall be, in general and in addition to any functions, powers and duties set forth in the body of this act, to:

(1) Acquire and maintain such information and materials as are necessary to an understanding of past trends, present conditions, and forces at work to cause changes in these conditions. Such information and material may include maps and photographs of man-made and natural physical features of the area concerned, statistics on past trends and present conditions with respect to population, property values, economic base, land use, and such other information as is important or likely to be important in determining the amount, direction, and kind of development to be expected in the area and its various parts.

(2) Prepare, adopt, and from time to time amend and revise a comprehensive and coordinated general plan for meeting present requirements and such future requirements as may be foreseen.

(3) Establish principles and policies for guiding action in the development of the area.

(4) Conduct such public hearings as may be required to gather information necessary for the drafting, establishment and maintenance of the comprehensive plan and such additional public hearings as are specified under the provisions of this act.

(5) Make or cause to be made any necessary special studies on the location, condition, and adequacy of specific facilities in the area. These may include, but are not limited to, studies on housing, commercial and industrial conditions and facilities, public and private utilities, and traffic, transportation, and parking.

(6) Perform any other duties which lawfully may be assigned to it.

History.—s. 6, ch. 69-139.

163.190 The comprehensive plan.—

(1) COMPREHENSIVE PLAN.—When basic information for the area has been brought together, the commission shall prepare a comprehensive and coordinated general plan for the development of the area, based on existing and anticipated needs, showing existing and proposed improvements in the area and stating the principles according to which future development should proceed and the manner in which such development should be controlled. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the area which will, in accordance with existing and future needs, best promote public health, safety, comfort, order, appearance, convenience, morals, and the general welfare and which will contribute to efficiency and economy in the process of development. The comprehensive plan shall include plans for land use and may include plans for transportation, community facilities, a long-range financial program for public improvements, and such other matters as may be deemed necessary by the commission and the governing body for the purpose of meeting the objectives of this act.

(2) ADOPTION OF COMPREHENSIVE PLAN BY THE PLANNING COMMISSION.—The comprehensive plan shall be adopted by the commission either in its entirety or as substantial portions corresponding generally with functional or geographic classifications are completed. Before adoption of the comprehensive plan or any portion or portions thereof, a public hearing shall be held with due public notice by the commission. The adoption of the comprehensive plan or any portion or portions thereof, or of any amendment or additions thereto, shall be by resolution carried by the affirmative vote of a majority of the total membership of the commission. The resolution shall refer expressly to the maps, descriptive material and other matters intended by the planning commission to form the whole or part of the comprehensive plan. The action taken shall be recorded on the adopted plan or parts thereof by the identifying signatures of the secretary and the chairman of the commission, together with the date of such action, and a copy of the comprehensive plan or parts thereof shall be certified to the governing body. The officially adopted copy of the comprehensive plan or any portion thereof and any duly adopted amendments thereto shall be a part of the permanent records of the commission.

(3) ADOPTION OF COMPREHENSIVE PLAN BY GOVERNING BODY OR BODIES.—The governing body may formally adopt the comprehensive plan by appropriate official action either in its entirety or as substantial portions corresponding generally with the functional or geographic classifications are completed and adopted by the commission. Any comprehensive plan shall only become effective

upon its adoption by a majority of the membership of the governing body.

History.—s. 7, ch. 69-139.

163.195 Legal effect of comprehensive plan.—Whenever a comprehensive plan for the area or a portion of such a plan corresponding generally with a functional classification of the subject matter or a geographic classification of the area has been adopted, then and thenceforth no street, park, other public way, ground, place, or space, public building or structure not in conformity with the comprehensive plan shall be constructed, altered or authorized in the area unless the location and extent thereof shall have been submitted to the commission for a report and its statement of approval or disapproval and the reasons therefor. Within 30 days after the request for such report has been received by the commission or within such other time limit as may be agreed upon, the report shall either be made or failure of the commission to act shall be deemed approval. The commission's report may be overruled by a majority vote of the entire membership of the governing body. After a comprehensive plan for the area or a portion of such plan corresponding generally with a geographic classification of the area has been adopted by the governing body, no zoning ordinance, subdivision regulation, or code adopted under the authority of this act shall be amended until such amendment shall have been referred to the commission for review.

History.—s. 8, ch. 69-139.

163.200 Review and amendment of comprehensive plan.—At least once each year, the comprehensive plan or the completed parts thereof shall be reviewed by the planning commission to determine whether changes in the amount, kind or direction of development of the area, or other reasons make it beneficial to make additions or amendments to the plan. If the governing body desires an amendment or addition to the comprehensive plan, it may, on its own motion, direct the commission to prepare such amendment; and if such amendment is in accordance with the purposes of the comprehensive plan, the commission shall do so within a reasonable time as established by the governing body. The procedure for revising, adding to or amending the comprehensive plan shall be the same as the procedure for its original adoption.

History.—s. 9, ch. 69-139.

163.205 Zoning; ordinances; contents.—

(1) After a comprehensive plan has been prepared and adopted as provided for in ss. 163.190, 163.195, and 163.200, and for the purpose of guiding and accomplishing coordinated, adjusted, and harmonious development in accordance with existing and future needs and in order to protect, promote, and improve public health, safety, comfort, order, appearance, convenience, morals, and general welfare, the governing body of an area described under s. 163.175, in accordance with the conditions and procedures specified in this act, may enact or amend and enforce a zoning ordinance after a public hearing with due public notice. In such ordinance the governing body shall divide the entire area into districts of such number, shape, and size as may be deemed best suited to carry out the purposes of this act, and within these districts may regulate, determine, and establish:

(a) Height, number of stories, size, bulk, location, erection, construction, repair, reconstruction, alteration, and use of buildings and other structures for trade, industry, residence, and other purposes;

(b) Use of land and water for trade, industry, profession, residence, and other purposes;

(c) Size of yards, courts, and other open spaces;

(d) Percentage of lot that may be occupied;

(e) Density of population;

(f) Conditions under which various classes of nonconformities may continue, including authority to set fair and reasonable schedules for the elimination of nonconforming uses;

(g) Use and types and sizes of structures in those areas subject to seasonal or periodic flooding, so that danger to life and property in such areas will be minimized; and

(h) Performance standards for use of property and location of structures thereon.

(2) All such regulations shall be uniform throughout each district, but the regulations in one district may differ from those in other districts. For each district designated for the location of trades, callings, industries, commercial enterprises, residences, or buildings designed for specific uses, regulations may specify those uses that shall be excluded or subjected to reasonable requirements of a special nature. Uses permitted in one district may be prohibited in other districts, to the end that incompatibility of uses is minimized or eliminated. Regulations and district boundaries shall protect, promote, and improve public health, safety, comfort, order, appearance, convenience, morals, and general welfare and shall be made with reasonable consideration, among other things, to the character of the districts and their special suitability for particular uses and with a view to conserving property values and encouraging the most appropriate use of land throughout the area.

History.—s. 10, ch. 69-139.

163.210 Zoning; procedure for establishing district boundaries; adoption of regulations.—

(1) TENTATIVE REPORT BY COMMISSION.—Tentative recommendations as to the boundaries of districts and the regulations to be enforced therein may be prepared by the commission on its own initiative or at the request of the governing body. The commission shall hold public preliminary hearings and conferences at such times and places and upon such notice as it may determine to be necessary to inform itself and the public in the preparation of the tentative report. The tentative report, which shall include the proposed zoning ordinance with maps and other explanatory materials, shall be made to the governing body by the commission.

(2) ACTION BY GOVERNING BODY.—Within 30 days or such reasonable times as shall be agreed upon, the governing body or bodies of the area shall consider the tentative report of the planning commission and shall return it, with any suggestions and recommendations, to the commission so that the commission may prepare a final report. No ordi-

nance under the authority of this act shall be passed until after the final report of the commission has been received by the governing body.

(3) FINAL REPORT AND ACTION.—The commission shall then make a final report to the governing body. Such final report shall not be made by the commission until it has considered the recommendations and suggestions of the governing body and until it has held at least one public hearing, with due public notice. The commission may hold such additional hearings as it may consider desirable. After the final report has been submitted by the commission, the governing body shall afford all interested persons an opportunity to be heard with reference to the proposed zoning ordinance at a public hearing with due public notice before adopting said ordinance.

History.—s. 11, ch. 69-139.

163.215 Zoning; supplementing or amending the zoning ordinance.—

(1) The governing body may amend or supplement the regulations and districts fixed by any zoning ordinance adopted pursuant to this act after referral and recommendations of the commission. Proposed changes may be suggested by the governing body, by the commission, or by petition of the owners of 51 percent or more of the area involved in the proposed change. In the latter case, the petitioners may be required to assume the cost of public notice and other costs incidental to the holding of public hearings.

(2) The planning commission, regardless of the source of the proposed change, shall hold a public hearing or hearings thereon, with due public notice, but shall in any case, if any change is to be considered by the commission, submit in writing its recommendations on the proposed change to the governing body for official action. The governing body shall hold a public hearing thereon, with due public notice, if any change is to be considered and shall then act on the proposed change. If the recommendation of the commission is adverse to the proposed change, such change shall not become effective except by an affirmative vote of a majority of the entire membership of the governing body, after due public notice.

History.—s. 12, ch. 69-139.

163.220 Board of adjustment; creation and composition; terms; officers; etc.—

(1) CREATION AND COMPOSITION.—As part of the zoning ordinance, the governing body shall create a board of adjustment. The board of adjustment shall have not less than five nor more than ten members. Members of the board of adjustment shall be appointed by the governing body. In addition, the governing body may appoint not more than two alternate members, designating them as such. Such alternate members may act in the temporary absence or disability of any regular member, or may act when a regular member is otherwise disqualified in a particular case that may be presented to the board. No member or alternate member of the board of adjustment shall be a paid or elected official or employee of the governing body involved.

(2) TERMS OF OFFICE, REMOVAL FROM OFFICE, VACANCIES.—Members of the board of adjustment shall serve for overlapping terms of not less than 3 or more than 5 years or thereafter until their successors are appointed. Not more than a minority of the terms of such members shall expire in any one year. Any member of the board of adjustment may be removed from office for cause by the appointing governing body upon written charges and after public hearing. Any vacancy occurring during the unexpired term of office of any member shall be filled by the governing body concerned for the remainder of the term. Such vacancy shall be filled within 30 days after the vacancy occurs.

(3) OFFICERS, RULES OF PROCEDURE, EMPLOYEES AND SALARIES.—The board of adjustment shall elect a chairman and a vice chairman from among its members and shall appoint a secretary who may be an officer or employee of the governing body or of the planning commission. The board may create and fill such other offices as it may determine to be necessary for the conduct of its duties. Terms of all such offices shall be for 1 year, with eligibility for reelection. The board of adjustment shall adopt rules for transaction of its business, and shall keep a record of its resolutions, transactions, findings, and determinations, which record shall be a public record. Meetings of the board shall be held at the call of the chairman and at such times as the board may determine.

(4) APPROPRIATIONS, FEES AND OTHER INCOME.—The governing body is authorized and empowered to appropriate such funds as it may see fit for salaries, fees, and expenses necessary in the conduct of the work of the board of adjustment. The governing body is authorized to establish a schedule of fees to be charged by the board of adjustment. The board shall have the authority to expend all sums so appropriated and other sums made available for its use from fees and other sources for the purpose and activities authorized by this act.

History.—s. 13, ch. 69-139.

163.225 Board of adjustment; powers and duties.—The board of adjustment shall have the following powers and duties:

(1) To hear and decide appeals when it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance or regulation adopted pursuant to this act.

(2)(a) To hear and decide such special exceptions as the board of adjustment is specifically authorized to pass on under the terms of the zoning ordinance; to decide such questions as are involved in the determination of when special exceptions should be granted; and to grant special exceptions with appropriate conditions and safeguards or to deny special exceptions when not in harmony with the purpose and intent of this act or any ordinance enacted under the authority of this act.

(b) In granting any special exception, the board shall find that such grant will not adversely affect the public interest.

(c) In granting any special exception, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this act and any ordinance enacted under it. Violation of such conditions and safeguards, when made a part of the terms

under which the special exception is granted, shall be deemed a violation of the ordinance.

(d) The board of adjustment may prescribe a reasonable time limit within which the action for which the special exception is required shall be begun or completed or both.

(e) The zoning ordinance shall require that the board of adjustment shall confer with the planning commission in all cases involving requests for special exceptions.

(3)(a) To authorize upon appeal such variance from the terms of the ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary and undue hardship. In order to authorize any variance from the terms of the ordinance, the board of adjustment must find:

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

2. That the special conditions and circumstances do not result from the actions of the applicant;

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings, or structures in the same zoning district;

4. That literal interpretation of the provisions of the ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the ordinance and would work unnecessary and undue hardship on the applicant;

5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

6. That the grant of the variance will be in harmony with the general intent and purpose of the ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

(b) In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this act and any ordinance enacted under its authority. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the ordinance.

(c) The board of adjustment may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both.

(d) Under no circumstances except as permitted above shall the board of adjustment grant a variance to permit a use not generally or by special exception permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of the ordinance in the zoning district. No nonconforming use of neighboring lands, structures, or buildings in the same zoning district and no permitted use of lands, structures, or buildings in other zoning districts shall be considered grounds for the authorization of a variance.

History.—s. 14, ch. 69-139.

163.230 Board of adjustment; review of administrative orders.—In exercising its powers, the board of adjustment may, upon appeal and in conformity with provisions of this act, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance or regulation adopted pursuant to this act, and may make any necessary order, requirement, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of a majority of all the members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant on any matter upon which the board is required to pass under any such ordinance.

History.—s. 15, ch. 69-139.

163.235 Appeals to board of adjustment from decision of administrative official.—Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, board, or bureau of the governing body affected by any decision of an administrative official under any zoning ordinance enacted pursuant to this act. Such appeal shall be taken within 30 days after rendition of the order, requirement, decision, or determination appealed from by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The appeal shall be in the form prescribed by the rules of the board. The administrative official from whom the appeal is taken shall, upon notification of the filing of the appeal, forthwith transmit to the board of adjustment all the documents, plans, papers, or other materials constituting the record upon which the action appealed from was taken.

History.—s. 16, ch. 69-139.

163.240 Stay of work and proceedings on appeal.—An appeal to the board of adjustment stays all work on the premises and all proceedings in furtherance of the action appealed from, unless the official from whom the appeal was taken shall certify to the board of adjustment that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings or work shall not be stayed except by a restraining order which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.

History.—s. 17, ch. 69-139.

163.245 Board of adjustment; hearing of appeals.—The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing, any party may appear in person, by agent, or by attorney. Appellants may be

required to assume such reasonable costs in connection with appeals as may be determined by the governing body through action in setting of fees to be charged for appeals. For procedural purposes, an application for a special exception shall be handled by the board of adjustment as for appeals.

History.—s. 18, ch. 69-139.

163.250 Judicial review of decisions of board of adjustment.—Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any officer, department, board, commission, or bureau of the governing body, may apply to the circuit court in the judicial circuit where the board of adjustment is located for judicial relief within 30 days after rendition of the decision by the board of adjustment. Review in the circuit court shall be either by a trial de novo, which shall be governed by the Florida Rules of Civil Procedure, or by petition for writ of certiorari, which shall be governed by the Florida Appellate Rules. The election of remedies shall lie with the appellant.

History.—s. 19, ch. 69-139.

163.255 Enforcement of zoning ordinances.—

(1) The governing body shall provide for the enforcement of a zoning ordinance enacted pursuant to this act. A violation of this act or of such zoning ordinance is declared to be a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Each day such offense continues after written notice shall be deemed a separate offense. The governing body is also empowered to provide civil penalties for such violations.

(2) In case any building or structure is erected, constructed, reconstructed, altered, repaired, or maintained or any building, structure, land, or water is used in violation of this act or any ordinance or other regulation made under authority conferred hereby, the proper local authorities, in addition to other remedies, may institute any appropriate action or proceedings in a civil action in the circuit court to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, and to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, land, or water, and to prevent any illegal act, conduct of business, or use in or about such premises.

History.—s. 20, ch. 69-139; s. 84, ch. 71-136.

163.260 Regulation of subdivisions; purposes.—

(1) The public health, safety, comfort, economy, order, appearance, convenience, morals, and general welfare require the harmonious, orderly, and progressive development of land within Florida and its counties and incorporated municipalities. In furtherance of this general purpose, counties and incorporated municipalities, individually or in combination as authorized by this act, are authorized and empowered to adopt, amend, or revise and enforce measures relating to land subdivision.

(2) The regulation of the subdivision of land is intended:

(a) To aid in the coordination of land development in counties and incorporated municipalities in accordance with orderly physical patterns;

(b) To discourage haphazard, premature, uneconomic, or scattered land development;

(c) To insure safe and convenient traffic control;

(d) To encourage development of economically stable and healthful communities;

(e) To insure adequate utilities;

(f) To prevent periodic and seasonal flooding by providing protective flood control and drainage facilities;

(g) To provide public open spaces for recreation;

(h) To insure land subdivision with installation of adequate and necessary physical improvements;

(i) To insure that the citizens and taxpayers of incorporated municipalities and counties will not have to bear the costs resulting from haphazard subdivision of land and the lack of authority to require installation by the developer of adequate and necessary physical improvements;

(j) To insure to the purchaser of land in a subdivision that necessary improvements of lasting quality have been installed; and

(k) To serve as one of the several instruments of comprehensive plan implementation authorized by this act.

History.—s. 21, ch. 69-139.

163.265 Subdivision regulations; approval of subdivision plans by commission.—

(1) In any area in which a commission has been established in accordance with the provisions of this act and in which a comprehensive plan or such portion of a comprehensive plan as relates to the major street plan shall have been adopted, the governing body may designate the commission as its accredited representative for the purpose of approving subdivision plans and of approving plats, as provided in chapter 177. When so designated by ordinance, the commission shall be the agency which shall perform all or any designated portion of the functions prescribed in this act or in chapter 177 with respect to preparation of subdivision regulations, approval of subdivision plans, approval of plats, action on improvements and performance bonds relating thereto, and findings precedent to the reversion of subdivided land to acreage.

(2) When the commission has been accredited by the governing body for the approval of subdivision plans and of plats, it shall approve or disapprove subdivision plans and plats within a reasonable time after submission thereof. If a subdivision plan and plat is disapproved, the grounds for disapproval shall be stated on the records of the commission, and a statement in writing of such grounds of disapproval shall be furnished to the developer or his agent. If it is desired to hold a hearing upon any subdivision plan and plats submitted to the commission for consideration, parties in interest shall be notified by due public notice.

(3) Approval of subdivision plans and plats by the commission shall not constitute or effect an acceptance of the dedication of any street or any other ground shown upon the plat. The authority to accept dedications of land for whatsoever purpose shall be exercised exclusively by the governing body to which

the dedication is deemed to be made, and such authority may not be delegated.

History.—s. 22, ch. 69-139.

163.270 Subdivision regulations; adoption and amendment.—

(1) The commission, when accredited by the governing body for the approval of subdivision plans and plats under the provisions of this act and chapter 177, shall prepare and recommend to the governing body for adoption regulations governing the subdivision of land within the area. Before the adoption of subdivision regulations or any amendment thereto, the governing body shall hold a public hearing thereon, with due public notice. Any proposed amendment to the subdivision regulations not initiated by the commission shall be submitted by the governing body to the commission for a report and its statement of approval or disapproval and the reasons therefor. Regardless of the source of the proposal for change, the commission shall hold a public hearing or hearings thereon, with due public notice.

(2) Subdivision regulations prepared by the commission and adopted by the governing body or any amendments to such subdivision regulations may provide regulatory measures to insure the achievement of those purposes and objectives set forth in s. 163.260. Such regulatory measures may also provide:

(a) That the commission shall not approve any subdivision plan and plat unless it finds after full consideration of all pertinent data that the subdivision can be served adequately and economically with such normal public facilities and services as are suitable in the circumstances of the particular case;

(b) That the standards and requirements set out in the regulations may be modified by the commission in the case of a plan and program for a new town, a complete community or a neighborhood unit, which, in the judgment of the commission, will assure conformity with and achievement of the comprehensive plan and the purposes of this act. In granting any such modifications, the commission may require such reasonable conditions and safeguards as will secure substantially the objectives of the standards or requirements so modified;

(c) That the commission shall not approve any subdivision plan and plat unless the land included within the subdivision is suitable for the various purposes proposed in the request for subdivision approval;

(d) For the tentative or preliminary approval of the subdivision plan and plat prior to the installation of required improvements, but such tentative or preliminary approval shall not be entered on the subdivision plan and plat;

(e) That the developer may install required improvements in accordance with subdivision regulations prior to final subdivision approval. As an alternative, such regulations may provide that a surety bond, executed by a company authorized to do business in the state that is satisfactory to the governing body, payable to such governing body in sufficient amount to assure the completion of all required improvements and providing for and securing to the public the actual construction and installation of such improvements within a period required by the commission and expressed in the bond. As a further alternative to the provisions of a surety bond, such regulations may provide, in lieu of such surety bond, for a deposit of cash in an escrow account or such other collateral as the governing body may deem reasonable and proper whereby the governing body is put in a position to provide reasonable assurances for completion of the required improvements. In any event, the commission is hereby granted the power to enforce such bonds, security deposits or other collateral agreements by appropriate legal proceedings.

History.—s. 23, ch. 69-139.

163.275 Subdivision regulations; penalties for transferring lots in unrecorded subdivisions. —When a governing body has adopted subdivision regulations in accord with this act, it shall be unlawful for anyone who is the owner or agent of the owner of any land to transfer, sell, agree to sell, or negotiate to sell such land by reference to, exhibition of or other use of a plat of a subdivision of such land without having submitted a plan and plat of such subdivision for approval as required by this act and without having recorded the approved subdivision plat as required. If such unlawful use be made of a plat before it is properly approved and recorded, the owner or agent of the owner of such land shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The governing body through its legal representative may enjoin such transfer, sale, or agreement. Failure to comply with the provisions of this section shall not impair the title of land so transferred or affect the validity of the title conveyed. However, a purchaser of land sold in violation of this section shall, within 1 year from the date of purchase thereof, be entitled to bring an appropriate action to avoid such sale or to bring action against the seller for any damages which he suffers as a result of the seller's unlawful act, or both.

History.—s. 24, ch. 69-139; s. 85, ch. 71-136.

163.280 Subdivision regulations; reversion of subdivided land to acreage.—

(1) The owner of any land subdivided into lots may file for record a plat for the purpose of showing such land as acreage. Such plat and the procedure in connection therewith shall conform to the requirements of this act, regulations adopted pursuant thereto, and chapter 177, except that:

(a) No survey or certificate of any surveyor or engineer shall be required. However, the governing body may require a survey of the exterior boundaries of the land and the placing of suitable monuments along such boundaries if it finds that the last preceding survey of record is faulty or inadequate or that insufficient monuments are in position along such boundaries.

(b) No improvements shall be required, except such as may be necessary to provide equivalent access, as provided hereafter in this section.

(c) No findings need be made as to the suitability of the land or as to the provision of public facilities and services for it.

(2) The governing body may, on its own motion, order the vacation and reversion to acreage of all or any part of a subdivision within its jurisdiction, in-

cluding the vacation of streets or other parcels of land dedicated for public purposes or any of such streets or other parcels, when:

(a) The plat of the subdivision was recorded as provided by law not less than 5 years before the date of such action; and

(b) In the subdivision or part thereof, not more than 10 percent of the total subdivision area has been sold as lots by the original subdivider or his successor in title.

Such action shall be based on a finding by the governing body or by its accredited representative for the approval of subdivision plats that the proposed vacation and reversion to acreage of subdivided land conforms to the comprehensive plan of the area and that the public health, safety, economy, comfort, order, convenience, and welfare will be promoted thereby. Before acting on a proposal for vacation and reversion of subdivided land to acreage, the governing body or its accredited representative shall hold a public hearing thereon, with due public notice.

(3)(a) If land in a subdivision or part thereof is proposed for reversion to acreage, either at the instance of the governing body or by filing a plat by the owner, and such land is subject to existing zoning regulations, the governing body shall, upon recommendation of the planning commission or other board or commission dealing with the recommendations as to zoning, where such agency exists concurrently with the proceedings for vacation and reversion to acreage, or for consideration of an action on such plat, conduct proceedings for such amendment of such zoning regulations as may be deemed advisable in view of the conditions that will exist subsequent to such reversion to acreage.

(b) No owner of any parcel of land in a subdivision shall be deprived by the reversion to acreage of any part of the subdivision of reasonable access to such parcel nor of reasonable access therefrom to existing facilities to which such parcel has theretofore had access. Such access remaining or provided after such vacation need not be the same as that theretofore existing, but shall be reasonably equivalent thereto.

History.—s. 25, ch. 69-139.

163.285 Subdivision regulations; erection of buildings adjacent to unapproved streets.—In any area in which a planning commission has been established and made the accredited representative of the governing body for the purpose of plat approval and for which a comprehensive plan, or such portion of a comprehensive plan as relates to the major street plan, has been adopted, the following limitation shall apply concerning erection of buildings adjacent to unapproved streets: No building shall be erected on a lot or parcel of land within the area, nor shall any building permit be issued therefor, unless the street giving access to the lot or parcel on which such building is proposed to be placed has been accepted and opened as a public street, has otherwise received the legal status of a public street, has been accepted by the governing body and is shown on a recorded subdivision plat, or is a private street dedicated for the use of certain lots or parcels but not accepted for maintenance by the governing body or available for use by the public.

History.—s. 26, ch. 69-139.

163.290 Subdivision regulations; delegation of authority to other governmental agencies.—Nothing contained in this act shall prevent the governing body from assigning part or all of the powers and duties described in ss. 163.260 to 163.285 to agencies other than the commission. Governing bodies are hereby empowered to make such assignment of part or all of such powers and duties for the purpose of carrying out and enforcing the provisions of ss. 163.260 to 163.285, relative to approval of subdivision plans and plats and other matters contained herein.

History.—s. 27, ch. 69-139.

163.295 Building, plumbing, electrical, gas, fire, safety, and sanitary codes.—The several counties and incorporated municipalities, individually or in combination as authorized by this act, are authorized and empowered to adopt and, from time to time, amend or revise and enforce building, plumbing, electrical, gas, fire, safety, and sanitary codes after a public hearing with due public notice. Such codes are declared to be necessary to promote and preserve the public health, safety, comfort, order, appearance, convenience, morals, and general welfare. Such codes are declared to be one of the several instruments for implementing such comprehensive plans or parts thereof as may have been or hereafter may be adopted. Such codes may be adopted by reference if at least three copies of each such code are kept available for public use, inspection, and examination at some public office under the jurisdiction of the governing body to be determined by the governing body at the time of the adoption of such code or codes. The penalty provisions for the violation of such codes shall be set out in full in the ordinance adopting the code or codes. The provisions of this section shall not be interpreted to authorize the adoption and enforcement of any minimum housing code or public school building codes.

History.—s. 28, ch. 69-139.

163.300 Fees and charges; employment of personnel.—

(1) The several counties and incorporated municipalities of this state, individually or in combination as authorized by this act, are empowered to determine and set equitable fees and charges for the services and activities necessary to the administration of any ordinance or regulation enacted pursuant to this act.

(2) The several counties and incorporated municipalities of this state, individually or in combination as authorized by this act, are empowered to employ personnel of the type and kind necessary to administer and enforce any ordinance or regulation enacted pursuant to this act.

History.—s. 29, ch. 69-139.

163.305 Enforcement of ordinances and regulations.—The governing body shall provide by ordinance for the enforcement of any ordinance or regulation enacted under the provisions of this act. When appropriate, violation of any ordinance or regulation passed under this act may be deemed a misdemeanor, punishable as provided by law. The governing body may have recourse to such legal remedies as may be necessary to insure compliance with the provision of any ordinance or regulation enacted pursuant to this act.

History.—s. 30, ch. 69-139.

163.310 Construction.—This act shall be liberally construed to promote the purposes for which it is intended except for the penalty provisions, which shall be strictly construed against the commission or governing body.

History.—s. 31, ch. 69-139.

163.315 Effect of act on existing planning and plan implementation authorization.—

(1) A county or incorporated municipality, jointly or individually as set out in this act, desiring to utilize the provisions of this act must take formal suitable action declaring its election to proceed under the provisions of this act. Any county or incorporated municipality which, prior to September 1, 1969, had the authority to engage in planning and plan implementation from whatever source derived may continue to operate under such preexisting authority until the governing body of such county or incorporated municipality shall declare this act to be effective therein.

(2) Any municipal or county ordinance legally enacted under the provisions of any such preexisting power and authority shall remain in force and effect after this act becomes effective until the county or municipality has elected to proceed under the provisions of this act and has brought such resolution or ordinance into conformity with the provisions of this act. However, after this act becomes effective in any county or municipality, such resolutions and ordinances shall be administered under the provisions of this act, and any amendments to any such county or municipal ordinance shall be made under the provisions of this act.

History.—s. 33, ch. 69-139.

[1]163.3161 Short title; intent and purpose.—

(1) This act shall be known and may be cited as the "Local Government Comprehensive Planning Act of 1975."

(2) In conformity with, and in furtherance of, the purpose of the Florida Environmental Land and Water Management Act of 1972, chapter 380, it is the purpose of this act to utilize and strengthen the existing role, processes, and powers of local governments in the establishment and implementation of comprehensive planning programs to guide and control future development.

(3) It is the intent of this act that its adoption is necessary so that local governments can preserve and enhance present advantages; encourage the most appropriate use of land, water, and resources, consistent with the public interest; overcome present handicaps; and deal effectively with future problems that may result from the use and development of land within their jurisdictions. Through the process of comprehensive planning, it is intended that units of local government can preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare; prevent the overcrowding of land and avoid undue concentration of population; facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and conserve, develop, utilize, and protect natural resources within their jurisdictions.

(4) It is the intent of this act to encourage and assure cooperation between and among municipalities and counties and to encourage and assure coordination of planning and development activities of units of local government with the planning activities of regional agencies and state government in accord with applicable provisions of law.

(5) It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act.

(6) It is the intent of this act that the activities of units of local government in the preparation and adoption of comprehensive plans, or elements or portions therefor, shall be conducted in conformity with the provisions of this act.

(7) The provisions of this act in their interpretation and application are declared to be the minimum requirements necessary to accomplish the stated intent, purposes, and objectives of this act; to protect human, environmental, social, and economic resources; and to maintain, through orderly growth and development, the character and stability of present and future land use and development in this state.

History.—ss. 1, 2, ch. 75-257.

[1]Note.—See s. 48, ch. 79-190, which transferred all powers, duties, functions, records, property, and funds of designated units of the Division of State Planning of the Department of Administration to the Department of Community Affairs, including the Bureau of Comprehensive Planning related to local government comprehensive planning functions and that portion of the office of the director of the division which includes administrative services related thereto.

[1]163.3164 Definitions.—As used in this act:

(1) "Area" or "area of jurisdiction" means the total area qualifying under the provisions of this act, whether this be all of the lands lying within the limits of an incorporated municipality, lands in and adjacent to incorporated municipalities, all unincorporated lands within a county, or areas comprising combinations of the lands in incorporated municipalities and unincorporated areas of counties. In the case of municipalities where reserve areas have been designated for future annexation by law, the term "area" shall include, as being under the jurisdiction of the municipality for the purposes of this act, such unincorporated but designated and reserved lands.

(2) "Comprehensive plan" means a plan that meets the requirements of s. 163.3177.

(3) "Developer" means any person, including a governmental agency, undertaking any development as defined in this act.

(4) "Development" has the meaning given it in s. 380.04.

(5) "Development order" means any order granting, denying, or granting with conditions an application for a development permit.

(6) "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

(7) "Governing body" means the board of county commissioners of a county, the commission or council of an incorporated municipality, or any other chief governing body of a unit of local government, however designated, or the combination of such bodies where joint utilization of the provisions of this act is accomplished as provided herein.

(8) "Governmental agency" means:

(a) The United States or any department, commission, agency, or other instrumentality thereof.

(b) This state or any department, commission, agency, or other instrumentality thereof.

(c) Any local government, as defined in this section, or any department, commission, agency, or other instrumentality thereof.

(d) Any school board or other special district, authority, or governmental entity.

(9) "Land" means the earth, water, and air, above, below, or on the surface, and includes any improvements or structures customarily regarded as land.

(10) "Land use" means the development that has occurred on the land, the development that is proposed by a developer on the land, or the use that is permitted or permissible on the land under an adopted comprehensive plan or element or portion thereof, land development regulations, or a land development code, as the context may indicate.

(11) "Local government" means any county or municipality or any special district or local governmental entity established pursuant to law which exercises regulatory authority over, and grants development permits for, land development.

(12) "Local planning agency" means the agency designated to prepare the comprehensive plan required by this act.

(13) A "newspaper of general circulation" means a newspaper published at least on a weekly basis and printed in the language most commonly spoken in the area within which it circulates, but does not include a newspaper intended primarily for members of a particular professional or occupational group, a newspaper whose primary function is to carry legal notices, or a newspaper that is given away primarily to distribute advertising.

(14) "Parcel of land" means any quantity of land capable of being described with such definiteness that its locations and boundaries may be established, which is designated by its owner or developer as land to be used, or developed as, a unit or which has been used or developed as a unit.

(15) "Person" means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

(16) "Public notice" or "due public notice" as used in connection with the phrase "public hearing" or "hearing to be held after due public notice" means publication of notice of the time, place, and purpose of such hearing at least twice in a newspaper of general circulation in the area, with the first publication not less than 14 days prior to the date of the hearing and the second to be at least 5 days prior to the hearing.

(17) "Regional planning agency" means the agency designated by the state land planning agency to exercise responsibilities under law in a particular region of the state.

(18) "State land planning agency" means the Department of Community Affairs.

(19) "Structure" has the meaning given it by subsection 380.031(17).

History.—s. 3, ch. 75-257; s. 49, ch. 79-190.

[1]**Note.**—See s. 48, ch. 79-190, which transferred all powers, duties, functions, records, property, and funds of designated units of the Division of State Planning of the Department of Administration to the Department of Community Affairs, including the Bureau of Comprehensive Planning related to local government comprehensive planning functions and that portion of the office of the director of the division which includes administrative services related thereto.

[1]163.3167 Scope of act.—

(1) The several incorporated municipalities, the several counties, and certain special districts or local governmental entities set out in this act shall have power and responsibility:

(a) To plan for their future development and growth.

(b) To adopt and amend comprehensive plans, or elements or portions thereof, to guide their future development and growth.

(c) To implement adopted or amended comprehensive plans by the adoption of appropriate land development regulations or elements thereof.

(d) To establish, support, and maintain administrative instruments and procedures to carry out the provisions and purposes of this act.

The powers and authority set out in this act may be employed by incorporated municipalities, counties, and certain special districts individually or jointly by mutual agreement in accord with the provisions of this act and in such combinations as their common interests may dictate and require.

(2) On or before July 1, 1979, each county and each municipality in this state shall prepare and adopt a comprehensive plan of the type and in the manner set out in this act.

(3) On or before July 1, 1979, each special district or local governmental entity under subsection 163.3171(4) shall prepare and adopt a comprehensive plan of the type and in the manner set out in this act.

(4) When a municipality within a county under subsection (2) or when a special district or local governmental entity under subsection (3) has not prepared and adopted a comprehensive plan by July 1, 1979, as required by this act, the comprehensive plan of the county in which such municipality or special district or local governmental entity is situate shall govern. Such county shall have the responsibility to specifically review the application of its comprehensive plan to such municipality or special district or local governmental entity by not later than one year

from the date by which such other local government was required to adopt its comprehensive plan.

(5) When a county under subsection (2) has not prepared and adopted a comprehensive plan by July 1, 1979, the state land planning agency shall prepare a comprehensive plan for such county and any municipalities or special districts or local governmental entities therein not having met the requirements of this act by July 1, 1979, and shall recommend its adoption to the Administration Commission which shall have authority to adopt the comprehensive plan.

(6) Municipal corporations established after the effective date of this act shall prepare and adopt a comprehensive plan of the type and in the manner set out in this act within 3 years of the date of such incorporation. However, no comprehensive plan need be adopted prior to July 1, 1979. A county comprehensive plan adopted prior to or after the date of incorporation shall be deemed controlling until the municipality adopts a comprehensive plan in accord with the provisions of this act. After July 1, 1979, if, upon the expiration of the 3-year time limit, the municipality has not adopted a comprehensive plan and no county comprehensive plan has been adopted, the state land planning agency shall prepare and recommend to the Administration Commission a comprehensive plan for such municipality.

(7) The time limits set out in subsections (2), (3), (4), (5), and (6) shall be extended by the state land planning agency for a period not to exceed one year upon application to the state land planning agency by the local unit of government involved and on due cause shown that good faith efforts to meet the requirements of this act have been and are being made. In addition to the time extension herein, the state land planning agency shall also extend the time limit for one additional time period, not to exceed an additional year, upon application in the same manner and with the same burden of proof as provided for the initial extension.

(8) On or before July 1, 1976, each unit of local government shall officially inform the state land planning agency and the appropriate regional planning agency of its designation of a local planning agency pursuant to s. 163.3174. This time limit shall be extended by the state land planning agency for a period not to exceed 1 year upon application to the agency and on due cause shown that good faith efforts to meet the requirements of this act have been and are being made. If the designation has not been made within the required time period, the appropriate county land planning agency, pursuant to notification by the state land planning agency in the case of a nondesignating municipality or special district, or the state land planning agency, in the case of a nondesignating county or a nondesignating county and nondesignating municipalities or special districts therein, shall assume the responsibilities of a local planning agency for the area involved upon adoption of an ordinance or rule, as the case may be, and after due notification to the governing body of the area involved, until such time as the required designation has been made.

(9) Upon assumption of responsibility under subsection (8), the state land planning agency shall approve the estimated cost of assumption by a county land planning agency or shall determine the estimated costs when the state land planning agency is assuming responsibility for a nondesignating county. Invoices for costs involved shall be rendered quarterly to the governing body involved and, upon failure to pay such invoices, the division, or the division upon request of a county land planning agency, as the case may be, is authorized, upon filing proper vouchers with the State Comptroller, to request payment from the State Comptroller from unencumbered revenue or other tax sharing funds due such nondesignating local government from the state for work actually performed; however, the amount of such payment shall not exceed 50 percent of such funds due such local government.

(10) Nothing in this act shall limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to chapter 380.

History.—s. 4, ch. 75-257; s. 1, ch. 77-174.

[1]**Note.**—See s. 48, ch. 79-190, which transferred all powers, duties, functions, records, property, and funds of designated units of the Division of State Planning of the Department of Administration to the Department of Community Affairs, including the Bureau of Comprehensive Planning related to local government comprehensive planning functions and that portion of the office of the director of the division which includes administrative services related thereto.

[1]163.3171 Areas under this act.—

(1) When exercising authority under this act, a municipality shall exercise such authority for the total area under its jurisdiction upon the passage of an appropriate ordinance declaring its intent to do so. Unincorporated areas adjacent to incorporated municipalities may be included in the area of municipal jurisdiction for the purposes of this act if the governing bodies of the municipality and the county in which the area is located agree on the boundaries of such additional areas, procedures for joint action in the preparation and adoption of the comprehensive plan, procedures for the administration of land development regulations or the land development code applicable thereto, and the manner of representation on any joint body or instrument that may be created under the joint agreement. Such joint agreement shall be formally stated and approved in appropriate official action by the governing bodies involved.

(2) A county shall exercise authority under this act for the total unincorporated area under its jurisdiction or in such unincorporated areas as are not included in any joint agreement with municipalities established under the provisions of subsection (1). A county shall exercise such additional authority over municipalities within its boundaries under the circumstances and as set out in subsection 163.3167(4). The board of county commissioners shall by ordinance declare its intent to exercise the authority set out in this act. In the case of chartered counties, the county may exercise such additional authority over municipalities or districts within its boundaries as is provided for in its charter.

(3) Combinations of municipalities within a county, or counties, or an incorporated municipality or municipalities and a county or counties, or an incorporated municipality or municipalities and portions of a county or counties may jointly exercise the powers granted under the provisions of this act

upon formal adoption of an official agreement by the governing bodies involved pursuant to law. No such official agreement shall be adopted by the governing bodies involved until a public hearing on the subject with due public notice has been held by each governing body involved. The general administration of any joint agreement shall be governed by the provisions of s. 163.01 except that when there is conflict with this act the provisions of this act shall govern.

(4) The Reedy Creek Improvement District shall exercise the authority of this act, consistent with the legislative act under which it was established, over the total area under its jurisdiction. The Reedy Creek Improvement District may jointly exercise said authority with municipalities and counties in a manner consistent with subsection (3).

History.—s. 5, ch. 75-257.

[1]**Note.**—See s. 48, ch. 79-190, which transferred all powers, duties, functions, records, property, and funds of designated units of the Division of State Planning of the Department of Administration to the Department of Community Affairs, including the Bureau of Comprehensive Planning related to local government comprehensive planning functions and that portion of the office of the director of the division which includes administrative services related thereto.

[1]163.3174 Local planning agency.—

(1) Local governing bodies, individually or in combination as provided in s. 163.3171, shall designate and establish a "local planning agency," unless the agency is otherwise established by law. This agency shall prepare the comprehensive plan after hearings to be held after due public notice and shall make recommendations to the governing body regarding the adoption of such plan or element or portion thereof. The agency may be a local planning commission, the planning department of the local government, or other instrumentality, including a countywide planning entity established by special act or a council of local government officials created pursuant to s. 163.02, provided the composition of the council is fairly representative of all the governing bodies in the county or planning area; however:

(a) If a joint planning entity is in existence on the effective date of this act which authorizes the governing bodies to promulgate and enforce a land-use plan effective throughout the joint planning area, that entity shall be the agency for those local governments until such time as the authority of the joint planning entity is modified by law, and

(b) In the case of chartered counties, the planning responsibility between the county and the several municipalities therein shall be as stipulated in the charter.

(2) The ordinance or act establishing the local planning agency shall, if applicable:

(a) Establish the method of choosing the members of the agency.

(b) Require the agency to set rules of procedure and to choose its officers.

(c) Provide a method of financial support for the staffing and the work of the agency.

(d) Require that all meetings of the agency shall be public meetings and that its records shall be public records.

(e) Set out the duties and responsibilities of the agency and its relationships to the governing body.

(f) Provide for other appropriate matters.

(3) Nothing in this act shall prevent the governing body of an incorporated municipality or county that participates in creating a local planning agency serving two or more jurisdictions from continuing or creating its own local planning agency. A governing body may assign to the local planning agency serving two or more jurisdictions any or all of the functions, powers, and duties of its own local planning agency. Thereafter, such functions, powers, and duties shall be exercised by the local planning agency serving two or more jurisdictions; however, the governing body may rescind such assignment upon passage of a resolution at a duly publicized public meeting.

(4) The governing body or bodies may appropriate funds for salaries, fees, and expenses necessary in the conduct of the work of the local planning agency and also establish a schedule of fees to be charged by the agency. To accomplish the purposes and activities authorized by this act, the local planning agency, with the approval of the governing body or bodies and in accord with the fiscal practices thereof, has the authority to expend all sums so appropriated and other sums made available for use from fees, gifts, state or federal grants, state or federal loans, and other sources; however, acceptance of loans must be approved by the governing bodies involved.

(5) The governing body of a municipality or county or combinations thereof shall assign to the local planning agency the general responsibility for the conduct of the comprehensive planning program and the preparation of the comprehensive plan or elements or portions thereof. The governing body in cooperation with the local planning agency may designate any agency, committee, department, or person to prepare the comprehensive plan or any element thereof, but the responsibility for final recommendation of the adoption of such plan to the governing body shall be the responsibility of the local planning agency. The local planning agency shall monitor and oversee the effectiveness and status of the comprehensive plan and recommend to the governing body such changes in the comprehensive plan as may from time to time be required. The responsibilities, powers, and duties of the local planning agency shall be set out in the ordinance or act establishing the agency, subject to the particular requirements of this act.

History.—s. 6, ch. 75-257; s. 1, ch. 77-223.

[1]**Note.**—See s. 48, ch. 79-190, which transferred all powers, duties, functions, records, property, and funds of designated units of the Division of State Planning of the Department of Administration to the Department of Community Affairs, including the Bureau of Comprehensive Planning related to local government comprehensive planning functions and that portion of the office of the director of the division which includes administrative services related thereto.

[2]163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(1) The comprehensive plan shall consist of materials in such descriptive form, written or graphic, as may be appropriate to the prescription of principles, guidelines, and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area.

(2) Coordination of the several elements of the local comprehensive plan shall be a major objective of the planning process. The several elements of the comprehensive plan shall be consistent and the comprehensive plan shall be economically feasible.

(3) The economic assumptions on which the plan

is based and any amendments thereto shall be analyzed and set out as a part of the plan. Those elements of the comprehensive plan requiring the expenditure of public funds for capital improvements shall carry fiscal proposals relating thereto, including, but not limited to, estimated costs, priority ranking relative to other proposed capital expenditures, and proposed funding sources.

(4) Coordination of the local comprehensive plan with the comprehensive plans of adjacent municipalities, the county, adjacent counties, or region and with the state comprehensive plan shall be a major objective of the local comprehensive planning process. To that end, in the preparation of a comprehensive plan or element thereof, and in the comprehensive plan or element as adopted, the governing body shall include a specific policy statement indicating the relationship of the proposed development of the area to the comprehensive plans of adjacent municipalities, the county, adjacent counties, or region and to the state comprehensive plan, as the case may require and as such adopted plans or plans in preparation may exist.

(5) The comprehensive plan and its elements shall contain policy recommendations for the implementation of the plan and its elements.

(6) In addition to the general requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:

(a) A future land use plan element designating proposed future general distribution, location, and extent of the uses of land for housing, business, industry, agriculture, recreation, conservation, education, public buildings and grounds, other public facilities, and other categories of the public and private uses of land. The future land use plan shall include a statement of the standards to be followed in the control and distribution of population densities and building and structure intensity as recommended for the various portions of the area. The future land use plan may designate areas for future planned development use involving combinations of types of uses for which special regulations may be necessary to insure development in accord with the principles and standards of the comprehensive plan and this act.

(b) A traffic circulation element consisting of the types, locations, and extent of existing and proposed major thoroughfares and transportation routes.

(c) A general sanitary sewer, solid waste, drainage, and potable water element correlated to principles and guidelines for future land use indicating ways to provide for future potable water, drainage, sanitary sewer, and solid waste requirements for the area. The element may be a detailed engineering plan for such facilities. The element shall describe the problems and needs and the general facilities that will be required for solution of the problems and needs.

(d) A conservation element for the conservation, development, utilization, and protection of natural resources in the area, including, as the situation may be, air, water, estuarine marshes, soils, beaches, shores, flood plains, rivers, lakes, harbors, forests, fisheries and wildlife, minerals, and other natural and environmental resources.

(e) A recreation and open space element indicating a comprehensive system of public and private sites for recreation, including, but not limited to: natural reservations, parks and playgrounds, parkways, beaches and public access to beaches, open spaces, and other recreational facilities.

(f) A housing element consisting of standards, plans, and principles to be followed in:

1. The provision of housing for existing residents and the anticipated population growth of the area.
2. The elimination of substandard dwelling conditions.
3. The improvement of existing housing.
4. The provision of adequate sites for future housing, including housing for low-income and moderate-income families and mobile homes, with supporting infrastructure and community facilities as described in paragraphs (6)(c) and (7)(e) and (f).
5. Provision for relocation housing and identification of housing for purposes of conservation, rehabilitation, or replacement.
6. The formulation of housing implementation programs.

(g) For those units of local government lying in part or in whole in the coastal zone as defined by the Coastal Zone Management Act of 1972, Title 16, United States Code s. 1453(a), a coastal zone protection element, appropriately related to the particular requirements of paragraphs (d) and (e), including surveys of existing vegetation types which need to be preserved for natural control of dune and beach erosion and surveys of traditional patterns of public access and use of beach resources, setting out the policies for:

1. Maintenance, restoration, and enhancement of the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values.
2. Continued existence of optimum populations of all species of wildlife.
3. The orderly and balanced utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources.
4. Avoidance of irreversible and irretrievable commitments of coastal zone resources.
5. Ecological planning principles and assumptions to be used in the determination of suitability and extent of permitted development.
6. Proposed management and regulatory techniques.

In addition, at least 60 days before the adoption by a governing body of the coastal zone protection element, the governing body shall transmit a copy of the proposed element to the [1][Department of Environmental Regulation] or its successor for written comment pursuant to s. 163.3184.

(h) An intergovernmental coordination element showing relationships and stating principles and guidelines to be used in the accomplishment of coordination of the adopted comprehensive plan with the plans of school boards and other units of local government providing services but not having regulatory authority over the use of land, with the comprehensive plans of adjacent municipalities, the county,

adjacent counties, or the region, and with the state comprehensive plan, as the case may require and as such adopted plans or plans in preparation may exist. This element of the local comprehensive plan shall demonstrate consideration of the particular effects of the local plan, when adopted, upon the development of adjacent municipalities, the county, adjacent counties, or the region or on the state comprehensive plan, as the case may require.

(i) A utility element in conformance with the 10-year site plan required by the Florida Electrical Power Plant Siting Act, part II, chapter 403.

(j) The optional elements of the comprehensive plan in paragraphs (7)(a) and (b) are required elements for those units of local government having populations greater than 50,000, as determined under s. 23.019.

(7) The comprehensive plan may include the following additional elements, or portions or phases thereof:

(a) As a part of the circulation element of paragraph (6)(b) or as a separate element, a mass transit element showing proposed methods for the moving of people, rights of way, terminals, related facilities, and fiscal considerations for the accomplishment of the element.

(b) As a part of the circulation element of paragraph (6)(b) or as a separate element, plans for port, aviation, and related facilities coordinated with the general circulation and transportation element.

(c) As a part of the circulation element of paragraph (6)(b) and in coordination with paragraph (6)(e), where applicable, a plan element for the circulation of nonautomotive vehicular and pedestrian traffic, including bicycle paths and bikeways, exercise trails, riding facilities, and such other matters as may be related to the improvement and safety of movement of all types of vehicular and pedestrian traffic or to recreational aspects of circulation.

(d) As a part of the circulation element of paragraph (6)(b) or as a separate element, a plan element for the development of off-street parking facilities for motor vehicles and the fiscal considerations for the accomplishment of the element.

(e) A public services and facilities element, not including the solid waste, potable water, drainage, and sewer element which is required under paragraph (6)(c) or plans required by paragraph (6)(i), showing general plans for local utilities, rights-of-way easements, and facilities.

(f) A public buildings and related facilities element showing locations and arrangements of civic and community centers, public schools, hospitals, libraries, police and fire stations, and other public buildings. This plan element should show particularly how it is proposed to effect coordination with governmental units, such as school boards or hospital authorities, having public development and service responsibilities, capabilities, and potential but not having land development regulatory authority. This element may include plans for architecture and landscape treatment of their grounds.

(g) A recommended community design element which may consist of design recommendations for land subdivision, neighborhood development and redevelopment, design of open space locations, and similar matters to the end that such recommendations may be available as aids and guides to developers in the future planning and development of land in the area.

(h) A general area redevelopment element consisting of plans and programs for the redevelopment of slums and blighted locations in the area and for community redevelopment, including housing sites, business and industrial sites, public buildings sites, recreational facilities, and other purposes authorized by law.

(i) A safety element for the protection of residents and property of the area from fire, hurricane, or man-made or natural catastrophe, including such necessary features for protection as evacuation routes and their control in an emergency, water supply requirements, minimum road widths, clearances around and elevations of structures, and similar matters.

(j) An historical and scenic preservation element setting out plans and programs for those structures or lands in the area having historical, archaeological, architectural, scenic, or similar significance.

(k) An economic element setting forth principles and guidelines for the commercial and industrial development, if any, and the employment and manpower utilization within the area. The element may detail the type of commercial and industrial development sought, correlated to the present and projected employment needs of the area and to other elements of the plans, and may set forth methods by which a balanced and stable economic base will be pursued.

(l) Such other elements as may be peculiar to, and necessary for, the area concerned and as are added to the comprehensive plan by the governing body upon the recommendation of the local planning agency.

(8) All elements of the comprehensive plan, whether mandatory or optional, shall be based upon data appropriate to the element involved. Surveys and studies utilized in the preparation of the comprehensive plan shall not be deemed a part of the comprehensive plan unless adopted as a part of it. Copies of such studies, surveys, and supporting documents shall be made available to public inspection, and copies of such plans shall be made available to the public upon payment of reasonable charges for reproduction.

History.—s. 7, ch. 75-257; s. 1, ch. 77-174.

[1]**Note.**—Bracketed language substituted for "Coastal Coordinating Council" to conform to s. 18, ch. 75-22 and s. 4, ch. 77-306.

[2]**Note.**—See s. 48, ch. 79-190, which transferred all powers, duties, functions, records, property, and funds of designated units of the Division of State Planning of the Department of Administration to the Department of Community Affairs, including the Bureau of Comprehensive Planning related to local government comprehensive planning functions and that portion of the office of the director of the division which includes administrative services related thereto.

[1]163.3181 Public participation in the comprehensive planning process; intent.—

(1) It is the intent of the Legislature that the public participate in the comprehensive planning process to the fullest extent possible. Towards this end, local planning agencies and local governmental units are directed to adopt procedures designed to provide effective public participation in the comprehensive planning process and to provide real property owners with notice of all official actions which will regulate the use of their property. The provi-

sions and procedures required in this act are set out as the minimum requirements towards this end.

(2) During consideration of the proposed plan or amendments thereto by the local planning agency or by the local governing body, the procedures shall provide for broad dissemination of the proposals and alternatives, opportunity for written comments, public hearings as provided herein, provisions for open discussion, communications programs, information services, and consideration of and response to public comments.

History.—s. 8, ch. 75-257; s. 3, ch. 76-155; s. 1, ch. 77-174; s. 3, ch. 77-331.

[1]**Note.**—See s. 48, ch. 79-190, which transferred all powers, duties, functions, records, property, and funds of designated units of the Division of State Planning of the Department of Administration to the Department of Community Affairs, including the Bureau of Comprehensive Planning related to local government comprehensive planning functions and that portion of the office of the director of the division which includes administrative services related thereto.

[1]163.3184 Adoption of comprehensive plan or element or portion thereof.—

(1) At least 60 days before the adoption by a governing body of a comprehensive plan or element or portion thereof, or before the adoption of an amendment to a previously adopted comprehensive plan or element or portion thereof, the governing body shall:

(a) Transmit a copy of the proposed comprehensive plan or element or portion thereof to the state land planning agency for written comment. The state land planning agency shall promptly publish the fact of the local government's intended adoption of the comprehensive plan or element or portion thereof in the weekly publication required by subsection 380.06(9) and shall indicate therein the date, time, and place of the public hearing to be held thereon. It shall be the responsibility of the state land planning agency to circulate all or appropriate elements of the intended plan to appropriate state agencies for comment and advice.

(b) Transmit a copy of the proposed comprehensive plan or element or portion thereof to the regional planning agency having responsibility over the area for written comment.

(c) If it is a municipality or a unit of local government under subsection 163.3171(4) transmit a copy of the proposed comprehensive plan or element or portion thereof to the local planning agency of the county for written comment or, if there is no county land planning agency, to the clerk of the circuit court or the administrative officer of the county commission.

(d) Transmit a copy of the proposed comprehensive plan or element or portion thereof to any other unit of local government or governmental agency in the state that has filed with the governing body a request for copies of all proposed comprehensive plans or elements or portions thereof.

(e) Determine that the local planning agency has held a public hearing on the proposed plan or element or portion thereof with due public notice.

(2) Within 60 days, or any longer period to which the governing body has agreed, after a local government has transmitted a proposed comprehensive plan or element or portion thereof to the state land planning agency, the state land planning agency shall submit in writing its comments on the proposed comprehensive plan or element or portion thereof, together with the comments of any state agencies to which the state land planning agency may have referred the plan. The state land planning agency shall specify any objections and may make recommendations for modifications. The review of the state land planning agency shall be primarily in the context of the relationship and effect, under chapter 23, of the locally submitted plan or element or portion thereof to or on the comprehensive plan or element or portion thereof, and in the context of the impact of the locally submitted plan or element or portion thereof on the lawful responsibility of state agencies. If the state land planning agency transmits objections to the proposed comprehensive plan or element or portion thereof, the governing body shall transmit a written statement in reply thereto within 4 weeks. The governing body shall take no action to adopt the comprehensive plan or element or portion thereof until 2 weeks have elapsed following the transmittal of the governing body's letter of reply. The written materials of the state land planning agency and the governing body required by this subsection shall become a permanent part of the public record in the matter.

(3) The procedure of subsection (2) shall apply to review by the regional planning agency. The time sequence of subsections (2) and (3) shall run concurrently upon appropriate transmittal. Review by the regional planning agency shall be primarily in the context of the relationship and effect of the locally submitted plan or element or portion thereof to or on any regional comprehensive plan.

(4) The procedure of subsection (2) shall apply to review by the county land planning agency. The time sequence of subsections (2) and (4) shall run concurrently upon appropriate transmittal. Review by the county land planning agency shall be primarily in the context of the relationship and effect of the locally submitted plan or element or portion thereof to or on any county comprehensive plan or element or portion thereof.

(5) Any comments, recommendations, or objections of the state land planning agency or the regional or county land planning agencies and any reply thereto shall be public documents, a part of the permanent record in the matter, and admissible in any proceeding in which the comprehensive plan or element or portion thereof may be at issue.

(6) The governing body shall consider all comments received from any person, agency, or government. It may adopt, or adopt with changes or amendments, the proposed comprehensive plan or element or portion thereof despite any adverse comment received.

(7)(a) The procedure for adoption of a comprehensive plan or element or portion thereof, except for the future land-use plan element, shall be by not less than a majority of the total membership of the governing body, in a manner prescribed by law.

(b) The procedure for adoption of the future land-use element or portion thereof which involves less than 5 percent of the total land area of the local government unit shall be by not less than a majority of the total membership of the governing body, in the following manner:

1. The governing body shall direct the clerk of the governing body to notify by mail each real prop-

erty owner the use of whose land the governmental agency will restrict or limit by enactment of the proposal and whose address is known by reference to the latest ad valorem tax records. The notice shall state the substance of the proposal as it affects that property owner and shall set a time and place for one or more public hearings on such proposal. Such notice shall be given at least 30 days prior to the date set for the public hearing, and a copy of such notice shall be kept available for public inspection during regular business hours of the office of the clerk of the governing body.

2. The governing body shall hold a public hearing on the proposal and may, upon the conclusion of the hearing, adopt the proposal.

(c) The procedure for adoption of the future land-use plan element or portion thereof which involves 5 percent or more of the total land area of the local government unit shall be by not less than a majority of the total membership of the governing body, in the following manner:

1. The local governing body shall hold two advertised public hearings on the proposal. At the option of the governing body, one of the public hearings may be held by the local planning agency. Both hearings shall be held after 5 p.m. on a weekday, and the first shall be held approximately 7 days after the day that the first advertisement is published. The second hearing shall be held approximately 2 weeks after the first hearing and shall be advertised approximately 5 days prior to the public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing.

2. The required advertisements shall be no less than one-quarter page in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county and of general interest and readership in the community, not one of limited subject matter, pursuant to chapter 50. It is the legislative intent that, whenever possible, the advertisement shall appear in a newspaper that is published at least 5 days a week, unless the only newspaper in the community is published less than 5 days a week. The advertisement shall be in the following form:

NOTICE OF REGULATION OF LAND USE

The ...(name of local governmental unit)... proposes to regulate the use of land within the area shown in the map in this advertisement.

A public hearing on the proposal will be held on ...(date and time)... at ...(meeting place)....

The advertisement shall also contain a geographic location map which clearly indicates the area covered by the proposal. The map shall include major street names as a means of identification of the area.

3. In lieu of publishing the advertisements set out in this paragraph, the local governmental unit may mail a notice to each person owning real property within the area covered by the proposal. Such notice shall clearly explain the proposal and shall notify the person of the time, place, and location of both public hearings.

History.—s. 9, ch. 75-257; s. 1, ch. 77-174; s. 4, ch. 77-331.

[1]**Note.**—See s. 48, ch. 79-190, which transferred all powers, duties, functions, records, property, and funds of designated units of the Division of State Planning of the Department of Administration to the Department of Community Affairs, including the Bureau of Comprehensive Planning related to local government comprehensive planning functions and that portion of the office of the director of the division which includes administrative services related thereto.

[1]163.3187 Amendment of adopted comprehensive plan.—The procedure for amendment of an adopted comprehensive plan or element or portion thereof, other than for a future land-use plan element or portion thereof involving less than 5 percent of the total land area of the local governmental unit, shall be as for the original adoption of the comprehensive plan or element or portion thereof set forth in s. 163.3184. The procedure for amendment of the future land-use plan element or portion thereof which involves less than 5 percent of the total land area of the local governmental unit shall be the same as the procedure provided in s. 163.3184(7)(b). If any amendment to the land use element would be inconsistent with any other element of the plan previously adopted, the governing body shall also amend such other element and may do so by a vote of a majority of the total membership of the governing body. Corrections, updates, or modifications of current costs which were set out as part of the comprehensive plan shall not, for the purposes of this act, be deemed to be amendments.

History.—s. 10, ch. 75-257; s. 1, ch. 77-174; s. 5, ch. 77-331.

[1]**Note.**—See s. 48, ch. 79-190, which transferred all powers, duties, functions, records, property, and funds of designated units of the Division of State Planning of the Department of Administration to the Department of Community Affairs, including the Bureau of Comprehensive Planning related to local government comprehensive planning functions and that portion of the office of the director of the division which includes administrative services related thereto.

[1]163.3191 Evaluation and appraisal of comprehensive plan.—

(1) The planning program shall be a continuous and ongoing process. The local planning agency shall prepare periodic reports on the comprehensive plan, which shall be sent to the governing body at least once every 5 years after the adoption of the comprehensive plan or element or portion thereof. Reports may be transmitted at lesser intervals as may be required or upon request of the governing body.

(2) The report shall represent an assessment and evaluation of the success or failure of the comprehensive plan or element or portion thereof and shall contain appropriate statements (using words, maps, illustrations, or other forms) related to:

(a) The major problems of development, physical deterioration, and the location of land uses and the social and economic effects of such uses in the area.

(b) The condition of each element in the comprehensive plan at the time of adoption and at date of report.

(c) The comprehensive plan objectives as compared with actual results at date of report.

(d) The extent to which unanticipated and unforeseen problems and opportunities occurred between date of adoption and date of report.

(3) The report may also suggest changes in the comprehensive plan or elements or portions thereof,

including reformulated objectives, policies, and standards.

(4) The report shall be transmitted to the state land planning agency, to the regional agency having responsibility over the area, and, for municipalities, to the county planning agency.

(5) Action on the report constitutes action as for an amendment to the comprehensive plan or portion or element thereof. The governing body may adopt the report or a portion or portions thereof or may adopt the report with changes or amendments after taking the steps required by s. 163.3184 and subject to the limitations of s. 163.3187. The adoption of the report amends the comprehensive plan or element or portion thereof to the extent specified in the report required by this section.

History—s. 11, ch. 75-257.

[1]**Note.**—See s. 48, ch. 79-190, which transferred all powers, duties, functions, records, property, and funds of designated units of the Division of State Planning of the Department of Administration to the Department of Community Affairs, including the Bureau of Comprehensive Planning related to local government comprehensive planning functions and that portion of the office of the director of the division which includes administrative services related thereto.

[1]163.3194 Legal status of comprehensive plan.—

(1) After a comprehensive plan or element or portion thereof has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted. All land development regulations enacted or amended shall be consistent with the adopted comprehensive plan or element or portion thereof.

(2)(a) After a comprehensive plan for the area, or element or portion thereof, is adopted by the governing body, no land development regulation, land development code, or amendment thereto shall be adopted by the governing body until such regulation, code, or amendment has been referred to the local planning agency for review and recommendation as to the relationship of such proposal to the adopted comprehensive plan or element or portion thereof. Said recommendation shall be made within a reasonable time, but no later than within 2 months after the time of reference. If a recommendation is not made within the time provided, then the governing body may act on the adoption.

(b) For purposes of this subsection, "land development regulations" or "regulations for the development of land" include any local government zoning, subdivision, building and construction, or other regulations controlling the development of land. The various types of local government regulations or laws dealing with the development of land within a jurisdiction may be combined in their totality in a single document known as the "land development code" of the jurisdiction.

(3)(a) A court, in reviewing local governmental action or development regulations under this act, may consider, inter alia, the reasonableness of the comprehensive plan or element or elements thereof relating to the issue justiciably raised or the appropriateness and completeness of the comprehensive plan or element or elements thereof in relation to the governmental action or development regulation under consideration. The court may consider the relationship of the comprehensive plan or element or elements thereof to the governmental action taken or the development regulation involved in litigation, but private property shall not be taken without due process of law and the payment of just compensation.

(b) It is the intent of this act that the comprehensive plan set general guidelines and principles concerning its purposes and contents and that this act shall be construed broadly to accomplish its stated purposes and objectives.

(4) The tax exempt status of lands classified as agricultural under s. 193.461 shall not be affected by any comprehensive plan adopted under this act as long as the land meets the criteria set forth in s. 193.461.

History.—s. 12, ch. 75-257; s. 1, ch. 77-174; s. 2, ch. 77-223.

[1]**Note.**—See. s. 48, ch. 79-190, which transferred all powers, duties, functions, records, property, and funds of designated units of the Division of State Planning of the Department of Administration to the Department of Community Affairs, including the Bureau of Comprehensive Planning related to local government comprehensive planning functions and that portion of the office of the director of the division which includes administrative services related thereto.

[1]163.3197 Legal status of prior comprehensive plan.—Where, prior to the effective date of this act, a local government had adopted a comprehensive plan or element or portion thereof, such adopted plan or element or portion thereof shall have such force and effect as it had at the date of adoption and until appropriate action is taken to adopt a new comprehensive plan as required by this act. The prior adopted plan or element or portion thereof may be the basis for meeting the requirement of comprehensive plan adoption set out in this act, provided all requirements of this act are met.

History.—s. 13, ch. 75-257.

[1]**Note.**—See s. 48, ch. 79-190, which transferred all powers, duties, functions, records, property, and funds of designated units of the Division of State Planning of the Department of Administration to the Department of Community Affairs, including the Bureau of Comprehensive Planning related to local government comprehensive planning functions and that portion of the office of the director of the division which includes administrative services related thereto.

[1]163.3201 Relationship of comprehensive plan to exercise of land development regulatory authority.—It is the intent of this act that adopted comprehensive plans or elements thereof shall be implemented, in part, by the adoption and enforcement of appropriate local regulations on the development of lands and waters within an area. It is the intent of this act that the adoption and enforcement by a governing body of regulations for the development of land or the adoption and enforcement by a governing body of a land development code, as defined in paragraph 163.3194(2)(b), for an area shall be based on, related to, and a means of implementation for an adopted comprehensive plan as required by this act.

History.—s. 14, ch. 75-257.

[1]**Note.**—See s. 48, ch. 79-190, which transferred all powers, duties, functions, records, property, and funds of designated units of the Division of State Planning of the Department of Administration to the Department of Community Affairs, including the Bureau of Comprehensive Planning related to local government comprehensive planning functions and that portion of the office of the director of the division which includes administrative services related

thereto.

[1]163.3204 Cooperation by state and regional agencies.—The Interdepartmental Coordinating Council on Community Services created by subsection 20.18(5), the Division of Resource Management of the Department of Natural Resources or its successor, and any ad hoc working groups appointed by the division, and all regional agencies involved in the administration and implementation of this act shall cooperate and work with units of local government and technical advisory committees in the preparation and adoption of comprehensive plans or elements or portions thereof.

History.—s. 15, ch. 75-257; s. 3, ch. 79-65.

[1]**Note.**—See s. 48, ch. 79-190, which transferred all powers, duties, functions, records, property, and funds of designated units of the Division of State Planning of the Department of Administration to the Department of Community Affairs, including the Bureau of Comprehensive Planning related to local government comprehensive planning functions and that portion of the office of the director of the division which includes administrative services related thereto.

[1]163.3207 Technical advisory committees.—In order to coordinate technical elements of a comprehensive plan and to advise local planning agencies and local governing bodies, each unit of local government shall appoint one person to a technical advisory committee to be established within the jurisdictional boundaries of a single county. Special districts which include within their jurisdictions land that is within the boundary of one or more counties may appoint one person to the technical advisory committee in each county. Members of each committee shall be appointed on the basis of their professional or technical background, and each committee shall elect a chairman from among its membership. Committees shall meet from time to time in order to achieve the required coordination and cooperation required by this act.

History.—s. 16, ch. 75-257.

[1]**Note.**—See s. 48, ch. 79-190, which transferred all powers, duties, functions, records, property, and funds of designated units of the Division of State Planning of the Department of Administration to the Department of Community Affairs, including the Bureau of Comprehensive Planning related to local government comprehensive planning functions and that portion of the office of the director of the division which includes administrative services related thereto.

[1]163.3211 Conflict with other statutes.—Where this act may be in conflict with any other provision or provisions of law relating to local governments having authority to regulate the development of land, the provisions of this act shall govern unless the provisions of this act are met or exceeded by other provision or provisions of law relating to local government. Nothing in this act is intended to withdraw or diminish any legal powers or responsibilities of state agencies or change any requirement of existing law that local regulations comply with state standards or rules.

History.—s. 17, ch. 75-257.

[1]**Note.**—See s. 48, ch. 79-190, which transferred all powers, duties, functions, records, property, and funds of designated units of the Division of State Planning of the Department of Administration to the Department of Community Affairs, including the Bureau of Comprehensive Planning related to local government comprehensive planning functions and that portion of the office of the director of the division which includes administrative services related thereto.

PART III

COMMUNITY REDEVELOPMENT

163.330 Short title.—This part shall be known and may be cited as the "Community Redevelopment Act of 1969."

History.—s. 1, ch. 69-305.

163.335 Findings and declarations of necessity.—

(1) It is hereby found and declared that there exist in counties and municipalities of the state slum and blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability

imposing onerous burdens which decrease the tax base and reduce tax revenues, substantially impairs or arrests sound growth, retards the provision of housing accommodations, aggravates traffic problems and substantially hampers the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blight is a matter of state policy and state concern in order that the state and its counties and municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, and consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization, and other forms of public protection, services, and facilities.

(2) It is further found and declared that certain slum or blighted areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this part, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that other areas or portions thereof may, through the means provided in this part, be susceptible of conservation or rehabilitation in such a manner that the conditions and evils enumerated may be eliminated, remedied, or prevented; and that salvageable slum and blighted areas can be conserved and rehabilitated through appropriate public action as herein authorized and the cooperation and voluntary action of the owners and tenants of property in such areas.

(3) It is further found and declared that the powers conferred by this part are for public uses and purposes for which public money may be expended and the power of eminent domain and police power exercised, and the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

History.—s. 2, ch. 69-305.

163.340 Definitions.—The following terms, wherever used or referred to in this part, shall have the following meanings:

(1) "Agency" or "community redevelopment agency" means a public agency created by s. 163.356 or s. 163.357.

(2) "Public body" means the state or any county, municipality, authority, district, or any other public body of the state.

(3) "Governing body" means the council or other legislative body charged with governing the county or municipality.

(4) "Mayor" means the mayor of a municipality or, for a county, the chairman of the board of county commissioners or such other officer as may be constituted by law to act as the executive head of such municipality or county.

(5) "Clerk" means the clerk or other official of the county or municipality who is the custodian of the official records of such county or municipality.

(6) "Federal government" includes the United States or any agency or instrumentality, corporate or otherwise, of the United States.

(7) "Slum area" means an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, the existence of conditions which endanger life or property by fire or other causes, or any combination of such factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime and is detrimental to the public health, safety, morals, or welfare.

(8) "Blighted area" means an area in which there are a substantial number of slum, deteriorated, or deteriorating structures and conditions which endanger life or property by fire or other causes or one or more of the following factors which substantially impairs or arrests the sound growth of a county or municipality and is a menace to the public health, safety, morals, or welfare in its present condition and use:

(a) Predominance of defective or inadequate street layout;

(b) Faulty lot layout in relation to size, adequacy, accessibility or usefulness;

(c) Unsanitary or unsafe conditions;

(d) Deterioration of site or other improvements;

(e) Tax or special assessment delinquency exceeding the fair value of the land; and

(f) Diversity of ownership or defective or unusual conditions of title which prevents the free alienability of land within the deteriorated or hazardous area.

(9) "Community redevelopment project" means undertakings and activities of a county, municipality, or community redevelopment agency in a community redevelopment area for the elimination and prevention of the development or spread of slums and blight and may include slum clearance and redevelopment in a community redevelopment area, rehabilitation or conservation in a community redevelopment area, or any combination or part thereof in accordance with a community redevelopment plan.

(10) "Community redevelopment area" means a slum area or a blighted area or a combination thereof which the governing body designates as appropriate for a community redevelopment project.

(11) "Community redevelopment plan" means a plan, as it exists from time to time, for a community redevelopment project.

(12) "Related activities" means:

(a) Planning work for the preparation of a general neighborhood redevelopment plan or for the preparation or completion of a communitywide plan or program pursuant to s. 163.365; and

(b) The functions related to the acquisition and disposal of real property pursuant to s. 163.370(4).

(13) "Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith and every estate, interest, right and use, legal or equitable, therein, including but not limited to terms for years and liens by way of judgment, mortgage, or otherwise.

(14) "Bonds" means any bonds (including refunding bonds), notes, interim certificates, certificates of indebtedness, debentures, or other obligations.

(15) "Obligee" means and includes any bondholder, agents or trustees for any bondholders, or

lessor demising to the county or municipality property used in connection with community redevelopment, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the county or municipality.

(16) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic and includes any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(17) "Area of operation" means, for a county, the area within the boundaries of the county, and for a municipality, the area within the corporate limits of the municipality.

(18) "Housing authority" means a housing authority created by and established pursuant to chapter 421.

(19) "Board" or "commission" means a board, commission, department, division, office, body or other unit of the county or municipality.

(20) "Public officer" means any officer who is in charge of any department or branch of the government of the county or municipality relating to health, fire, building regulations, or other activities concerning dwellings in the county or municipality.

History.—s. 3, ch. 69-305; s. 1, ch. 77-391.

163.345 Encouragement of private enterprise.—Any county or municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this part, shall afford maximum opportunity, consistent with the sound needs of the county or municipality as a whole, to the rehabilitation or redevelopment of the community redevelopment area by private enterprise. Any county or municipality shall give consideration to this objective in exercising its powers under this part, including the formulation of a workable program, the approval of community redevelopment plans, communitywide plans or programs for community redevelopment, and general neighborhood redevelopment plans (consistent with the general plan of the county or municipality), the exercise of its zoning powers, the enforcement of other laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, the disposition of any property acquired, and the provision of necessary public improvements.

History.—s. 4, ch. 69-305.

163.350 Workable program.—Any county or municipality for the purposes of this part may formulate for the county or municipality a workable program for utilizing appropriate private and public resources to eliminate and prevent the development or spread of slums and urban blight, to encourage needed community rehabilitation, to provide for the redevelopment of slum and blighted areas, or to undertake such of the aforesaid activities or other feasible county or municipal activities as may be suitably employed to achieve the objectives of such workable program. Such workable program may include provision for the prevention of the spread of blight into areas of the county or municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards; the rehabilitation or conservation of slum and blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds and other public improvements, encouraging voluntary rehabilitation, and compelling the repair and rehabilitation of deteriorated or deteriorating structures; and the clearance and redevelopment of slum and blighted areas or portions thereof.

History.—s. 5, ch. 69-305.

163.355 Finding of necessity by counties or municipalities.—No county or municipality shall exercise the authority conferred by this part until after the governing body shall have adopted a resolution finding that:

(1) One or more slum or blighted areas exist in such county or municipality; and,

(2) The rehabilitation, conservation, or redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such county or municipality.

History.—s. 6, ch. 69-305.

163.356 Creation of community redevelopment agency.—

(1) Upon a finding of necessity as set forth in s. 163.355, and upon a further finding that there is a need for a community redevelopment agency to function in the county or municipality to carry out the community redevelopment purposes of this part, any county or municipality may create a public body corporate and politic to be known as a community redevelopment agency. Each such agency shall be constituted as a public instrumentality, and the exercise by a community redevelopment agency of the powers conferred by this part shall be deemed and held to be the performance of an essential public function. The community redevelopment agency of a county shall have the power to function within the corporate limits of a municipality only as, if, and when the governing body of the municipality has by resolution concurred in the community redevelopment plan and project proposed by the governing body of the county.

(2) When the governing body adopts a resolution declaring the need for a community redevelopment agency, that body shall, by ordinance, appoint a board of commissioners of the community redevelopment agency, which shall consist of five commissioners. Terms of office of the commissioners shall be for 4 years, except that three of the members first appointed shall be designated to serve terms of 1, 2, and 3 years, respectively, from the date of their appointments, and two members shall be designated to serve for terms of 4 years from the date of their appointments. A vacancy occurring during a term shall be filled for the unexpired term.

(3)(a) A commissioner shall receive no compensation for his services, but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the county or municipality, and such certificate shall be conclusive evi-

dence of the due and proper appointment of such commissioner.

(b) The powers of a community redevelopment agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number. Any persons may be appointed as commissioners if they reside or are engaged in business, which shall mean owning a business, practicing a profession, or performing a service for compensation, or serving as an officer or director of a corporation or other business entity so engaged, within the area of operation of the agency, which shall be coterminous with the area of operation of the county or municipality, and are otherwise eligible for such appointments under this part.

(c) The governing body of the county or municipality shall designate a chairman and vice chairman from among the commissioners. An agency may employ an executive director, technical experts, and such other agents and employees, permanent and temporary, as it may require, and determine their qualifications, duties, and compensation. For such legal service as it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this part shall file with the governing body and with the Auditor General, on or before March 31 of each year, a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expense as of the end of such calendar year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the county or municipality and that the report is available for inspection during business hours in the office of the clerk of the city or county commission and in the office of the agency.

(d) At any time after the creation of a community redevelopment agency, the governing body of the county or municipality may appropriate to the agency such amounts as the governing body deems necessary for the administrative expenses and overhead of the agency.

(4) The governing body may remove a commissioner for inefficiency, neglect of duty, or misconduct in office only after a hearing and only if he has been given a copy of the charges at least 10 days prior to such hearing and has had an opportunity to be heard in person or by counsel.

History.—s. 2, ch. 77-391.

163.357 Governing body as the community redevelopment agency.—

(1) As an alternative to the appointment of five members of the agency, the governing body may, at the time of the adoption of a resolution under s. 163.355, or at any time thereafter by adoption of a resolution, declare itself to be the agency, in which case all the rights, powers, duties, privileges, and immunities vested by this part in an agency shall be vested in the governing body of the county or municipality, subject to all responsibilities and liabilities imposed or incurred.

(2) Nothing in this part shall prevent the governing body from conferring the rights, powers, privileges, duties, and immunities of a community redevelopment agency upon any entity in existence on July 1, 1977, which has been authorized by law to function as a downtown development board or authority or as any other body the purpose of which is to prevent and eliminate slums and blight through community redevelopment plans. Any entity in existence on July 1, 1977, which has been vested with the rights, powers, privileges, duties, and immunities of a community redevelopment agency shall be subject to all provisions and responsibilities imposed by this part, notwithstanding any provisions to the contrary in any law or amendment thereto which established the entity. Nothing in this act shall be construed to impair or diminish any powers of any redevelopment agency or other entity as referred to herein in existence on the effective date of this act or to repeal, modify, or amend any law establishing such entity, except as specifically set forth herein.

History.—s. 2, ch. 77-391; s. 75, ch. 79-400.

163.358 Exercise of powers in carrying out community redevelopment project and related activities.—The "community redevelopment powers" assigned to a community redevelopment agency created under s. 163.356 shall include all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, except the following, which shall continue to vest in the governing body of the county or municipality:

(1) The power to determine an area to be a slum or blighted area, or combination thereof, to designate such area as appropriate for a community redevelopment project, and to hold any public hearings required with respect thereto.

(2) The power to grant final approval to community redevelopment plans and modifications thereof.

(3) The power to authorize the issuance of revenue bonds as set forth in s. 163.385.

(4) The power to approve the acquisition, demolition, removal, or disposal of property as provided in s. 163.370(4) and the power to assume the responsibility to bear loss as provided in s. 163.370(4).

History.—s. 2, ch. 77-391.

163.360 Community redevelopment plans.—

(1) A community redevelopment project for a community redevelopment area shall not be planned or initiated unless the governing body has, by resolution, determined such area to be a slum area or a blighted area, or a combination thereof, and designated such area as appropriate for a community redevelopment project.

(2) The community redevelopment plan shall:

(a) Conform to the comprehensive plan for the county or municipality as prepared by the local planning agency under the Local Government Comprehensive Planning Act of 1975.

(b) Be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the community

redevelopment area; zoning and planning changes, if any; land uses; maximum densities; and building requirements.

(3) The county, municipality, or community redevelopment agency may itself prepare or cause to be prepared a community redevelopment plan, or any person or agency, public or private, may submit such a plan to a community redevelopment agency. Prior to its consideration of a community redevelopment plan, the community redevelopment agency shall submit such plan to the local planning agency of the county or municipality for review and recommendations as to its conformity with the comprehensive plan for the development of the county or municipality as a whole. The local planning agency shall submit its written recommendations with respect to the conformity of the proposed community redevelopment plan to the community redevelopment agency within 60 days after receipt of the plan for review. Upon receipt of the recommendations of the local planning agency, or, if no recommendations are received within said 60 days, then without such recommendations, the community redevelopment agency may proceed with its consideration of the proposed community redevelopment project.

(4) The community redevelopment agency shall submit any community redevelopment plan it recommends for approval, together with its written recommendations, to the governing body. The governing body shall then proceed with the hearing on the proposed community redevelopment project as prescribed by subsection (5).

(5) The governing body shall hold a public hearing on a community redevelopment project after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the county or municipality. The notice shall describe the time, date, place, and purpose of the hearing, identify generally the community redevelopment area covered by the plan, and outline the general scope of the community redevelopment project under consideration.

(6) Following such hearing, the governing body may approve a community redevelopment project and the plan therefor if it finds that:

(a) A feasible method exists for the location of families who will be displaced from the community redevelopment area in decent, safe, and sanitary dwelling accommodations within their means and without undue hardship to such families;

(b) The community redevelopment plan conforms to the general plan of the county or municipality as a whole;

(c) The community redevelopment plan gives due consideration to the provision of adequate park and recreational areas and facilities that may be desirable for neighborhood improvement, with special consideration for the health, safety, and welfare of children residing in the general vicinity of the site covered by the plans; and

(d) The community redevelopment plan will afford maximum opportunity, consistent with the sound needs of the county or municipality as a whole, for the rehabilitation or redevelopment of the community redevelopment area by private enterprise.

(7) If the community redevelopment area consists of an area of open land to be acquired by the county or the municipality, such area shall not be so acquired unless:

(a) In the event the area is to be developed for residential uses, the governing body shall determine:

1. That a shortage of housing of sound standards and design which is decent, safe, and sanitary exists in the county or municipality;

2. That the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas;

3. That the conditions of blight in the area and the shortage of decent, safe, and sanitary housing cause or contribute to an increase in and spread of disease and crime and constitute a menace to the public health, safety, morals, or welfare; and

4. That the acquisition of the area for residential uses is an integral part of and is essential to the program of the county or municipality.

(b) In the event the area is to be developed for nonresidential uses, the governing body shall determine that:

1. Such nonresidential uses are necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives; and

2. Acquisition may require the exercise of governmental action, as provided in this part, because of:

a. Defective, or unusual conditions of, title or diversity of ownership which prevents the free alienability of such land;

b. Tax delinquency;

c. Improper subdivisions;

d. Outmoded street patterns;

e. Deterioration of site;

f. Economic disuse;

g. Unsuitable topography or faulty lot layouts;

h. Lack of correlation of the area with other areas of a county or municipality by streets and modern traffic requirements; or

i. Any combination of such factors or other conditions which retard development of the area.

(8) Upon the approval by the governing body of a community redevelopment plan or of any modification thereof, such plan or modification shall be deemed to be in full force and effect for the respective community redevelopment area, and the county or municipality may then cause the community redevelopment agency to carry out such plan or modification in accordance with its terms.

(9) Notwithstanding any other provisions of this part, when the governing body certifies that an area is in need of redevelopment or rehabilitation as a result of a flood, fire, hurricane, earthquake, storm, or other catastrophe, respecting which the Governor has certified the need for disaster assistance under federal law, that area may be certified as a "blighted area," and the governing body may approve a community redevelopment plan and a community redevelopment project with respect to such area without

regard to the provisions of this section requiring a general plan for the county or municipality and a public hearing on the community redevelopment project.

History.—s. 7, ch. 69-305; s. 3, ch. 77-391.

163.361 Modification of community redevelopment plans.—

(1) If at any time after the approval of a community redevelopment plan by the governing body it becomes necessary or desirable to amend or modify such plan, the governing body may amend such plan upon the recommendation of the agency. The agency recommendation to amend or modify a redevelopment plan may include a change in the boundaries of the project area to add land to or exclude land from the project area.

(2) The governing body shall hold a public hearing on a proposed modification of a community redevelopment plan after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the agency.

(3) If a community redevelopment plan is modified by the county or municipality after the lease or sale of real property in the community redevelopment project area, such modification may be conditioned upon such approval of the owner, lessee, or successor in interest as the county or municipality may deem advisable and, in any event, shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest, may be entitled to assert.

History.—s. 4, ch. 77-391.

163.362 Contents of community redevelopment plan.—Every community redevelopment plan shall:

(1) Contain a legal description of the boundaries of the community redevelopment project area.

(2) Show by diagram and in general terms:

(a) The approximate amount of open space to be provided and the street layout.

(b) Limitations on the type, size, height, number, and proposed use of buildings.

(c) The approximate number of dwelling units.

(d) Such property as is intended for use as public parks, recreation areas, streets, public utilities, and public improvements of any nature.

(3) If the project area contains low or moderate income housing, contain a neighborhood impact element, which describes in detail the impact of the project upon the residents of the project area and the surrounding areas, in terms of relocation, traffic circulation, environmental quality, availability of community facilities and services, effect on school population, and other matters affecting the physical and social quality of the neighborhood.

(4) Describe generally the proposed method of financing the redevelopment of the project area.

(5) Contain adequate safeguards that the work of redevelopment will be carried out pursuant to the plan.

(6) Provide for the retention of controls and the establishment of any restrictions or covenants running with land sold or leased for private use for such periods of time and under such conditions as the governing body deems necessary to effectuate the purposes of this part.

(7) Provide assurances that there will be replacement housing for the relocation of persons temporarily or permanently displaced from housing facilities within the community redevelopment project area.

(8) Provide an element of residential use in the project area if such use exists in the area prior to the adoption of the plan.

History.—s. 5, ch. 77-391.

163.365 Neighborhood and communitywide plans.—

(1) Any municipality or county or any public body authorized to perform planning work may prepare a general neighborhood redevelopment plan for a community redevelopment area or areas, together with any adjoining areas having specially related problems, which may be of such scope that redevelopment activities may have to be carried out in stages. Such plans may include, but not be limited to, a preliminary plan which:

(a) Outlines the community redevelopment activities proposed for the area involved;

(b) Provides a framework for the preparation of community redevelopment plans; and

(c) Indicates generally the land uses, population density, building coverage, prospective requirements for rehabilitation and improvement of property and portions of the area contemplated for clearance and redevelopment.

A general neighborhood redevelopment plan shall, in the determination of the governing body, conform to the general plan of the locality as a whole and the workable program of the county or municipality.

(2) Any county or municipality or any public body authorized to perform planning work may prepare or complete a communitywide plan or program for community redevelopment which shall conform to the general plan for the development of the county or municipality as a whole and may include, but not be limited to, identification of slum or blighted areas, measurement of blight, determination of resources needed and available to renew such areas, identification of potential project areas and types of action contemplated, and scheduling of community redevelopment activities.

(3) Authority is hereby vested in every county and municipality to prepare, adopt, and revise from time to time a general plan for the physical development of the county or municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related county or municipal planning activities, and to make available and to appropriate necessary funds therefor.

History.—s. 8, ch. 69-305.

163.367 Public officials, commissioners, and employees prohibited from acquiring an interest.—

(1) No public official or employee of a county or municipality, or board or commission thereof, and no commissioner or employee of a community redevelopment agency which has been vested by any county or municipality with community redevelop-

ment powers under s. 163.356 or s. 163.357, shall voluntarily or involuntarily acquire any personal interest, direct or indirect, in any community redevelopment project, in any property included or planned to be included in any community redevelopment project of such county or municipality, or in any contract or proposed contract in connection with such community redevelopment project.

(2) In the event of involuntary acquisition, the interest acquired shall be immediately disclosed in writing to the governing body, and such disclosure shall be entered upon the minutes of the governing body. If any such official, commissioner, or employee presently owns or controls, or owned or controlled within the preceding 2 years, any interest, direct or indirect, in any property which he knows is included or planned to be included in a community redevelopment project, he shall immediately disclose this fact in writing to the governing body, and such disclosure shall be entered upon the minutes of the governing body, and any such official, commissioner, or employee shall not participate in any action by the county or municipality, or board or commission thereof, or community redevelopment agency affecting such property. Any disclosure required to be made by this section to the governing body shall concurrently be made to a community redevelopment agency which has been vested with community redevelopment powers by the county or municipality pursuant to the provisions of s. 163.356 or s. 163.357.

(3) No commissioner or other officer of any community redevelopment agency, board, or commission exercising powers pursuant to this part shall hold any other public office under the county or municipality other than his commissionership or office with respect to such community redevelopment agency, board, or commission.

(4) Any violation of the provisions of this section shall constitute misconduct in office.

History.—s. 6, ch. 77-391; s. 76, ch. 79-400.

163.370 Powers; counties and municipalities; agencies.—

(1) Every county and municipality shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including the following powers in addition to others herein granted:

(a) To make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this part; to disseminate slum clearance and community redevelopment information; and to undertake and carry out community redevelopment projects and related activities within its area of operation, such projects to include:

1. Acquisition of a slum area or a blighted area or portion thereof.

2. Demolition and removal of buildings and improvements.

3. Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the community redevelopment area the community redevelopment objectives of this part in accordance with the community redevelopment plan.

4. Disposition of any property acquired in the community redevelopment area at its fair value for uses in accordance with the community redevelopment plan.

5. Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the community redevelopment plan.

6. Acquisition of real property in the community redevelopment area which, under the community redevelopment plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitation of the structures for guidance purposes, and resale of the property.

7. Acquisition of any other real property in the community redevelopment area when necessary to eliminate unhealthful, unsanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities.

8. Acquisition, without regard to any requirement that the area be a slum or blighted area, of air rights in an area consisting principally of land in highways, railway or subway tracks, bridge or tunnel entrances, or other similar facilities which have a blighting influence on the surrounding area and over which air rights sites are to be developed for the elimination of such blighting influences and for the provision of housing (and related facilities and uses) designed specifically for, and limited to, families and individuals of low or moderate income.

9. Construction of foundations and platforms necessary for the provision of air rights sites of housing (and related facilities and uses) designed specifically for, and limited to, families and individuals of low or moderate income.

(b) To provide, or to arrange or contract for, the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with a community redevelopment project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of a community redevelopment project and related activities, and to include in any contract let in connection with such a project and related activities provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

(c) Within its area of operation:

1. To enter into any building or property in any community redevelopment area in order to make inspections, surveys, appraisals, soundings, or test borings and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted.

2. To acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain, or otherwise, any real property (or personal property for its administrative purposes), together with any improvements thereon.

3. To hold, improve, clear, or prepare for redevel-

opment any such property.

4. To mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real property.

5. To insure or provide for the insurance of any real or personal property or operations of the county or municipality against any risks or hazards, including the power to pay premiums on any such insurance.

6. To enter into any contracts necessary to effectuate the purposes of this part.

(d) To invest any community redevelopment funds held in reserves or sinking funds or any such funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control; and to redeem such bonds as have been issued pursuant to s. 163.385 of this part at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled.

(e) To borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the federal government or the state, county, or other public body, or from any sources, public or private, for the purposes of this part, and to give such security as may be required and to enter into and carry out contracts or agreements in connection therewith; and to include in any contract for financial assistance with the federal government for or with respect to a community redevelopment project and related activities such conditions imposed pursuant to federal laws as the county or municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this part.

(f) Within its area of operation, to make or have made all surveys and plans necessary to the carrying out of the purposes of this part and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify and amend such plans, which plans may include, but not be limited to:

1. Plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements.

2. Plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements.

3. Appraisals, title searches, surveys, studies, and other plans and work necessary to prepare for the undertaking of community redevelopment projects and related activities.

(g) To develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight and developing and demonstrating new or improved means of providing housing for families and persons of low income.

(h) To apply for, accept and utilize grants of funds from the federal government for such purposes.

(i) To prepare plans for and assist in the relocation of persons (including individuals, families, business concerns, nonprofit organizations and others) displaced from a community redevelopment area, and to make relocation payments to or with respect to such persons for moving expenses and losses of property for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government.

(j) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this part; to zone or rezone any part of the county or municipality or make exceptions from building regulations; and to enter into agreements with a housing authority, which agreements may extend over any period, notwithstanding any provision or rule of law to the contrary, respecting action to be taken by such county or municipality pursuant to any of the powers granted by this part.

(k) To close, vacate, plan, or replan streets, roads, sidewalks, ways or other places; and to plan or replan any part of the county or municipality.

(l) Within its area of operation, to organize, coordinate, and direct the administration of the provisions of this part, as they may apply to such county or municipality in order that the objective of remedying slum and blighted areas and preventing the causes thereof within such county or municipality may be most effectively promoted and achieved, and to establish such new office or offices of the county or municipality or to reorganize existing offices in order to carry out such purpose most effectively.

(m) To exercise all or any part or combination of powers herein granted or to elect to have such powers exercised by a community redevelopment agency.

(2) With the approval of the governing body, a community redevelopment agency may:

(a) Prior to approval of a community redevelopment plan or approval of any modifications of the plan, acquire real property in a community redevelopment area, demolish and remove any structures on the property, and pay all costs related to the acquisition, demolition, or removal, including any administrative or relocation expenses.

(b) Assume the responsibility to bear any loss that may arise as the result of the exercise of authority under this subsection, in the event that the real property is not made part of the community redevelopment project.

History.—s. 9, ch. 69-305; s. 7, ch. 77-391.

163.375 Eminent domain.—

(1) Any county, municipality, or community redevelopment agency as provided by any county or municipal ordinance shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for, or in connection with, a community redevelopment project and related activities under this part. Any county, municipality, or community redevelopment agency as provided by any county or municipal ordinance may exercise the power of eminent domain in the manner provided in chapters 73 and 74 and acts amendatory thereof or supplementary thereto, or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain. Proper-

ty already devoted to a public use may be acquired in like manner. However, no real property belonging to the United States, the state, or any political subdivision of the state may be acquired without its consent.

(2) In any proceeding to fix or assess compensation for damages for the taking of property, or any interest therein, through the exercise of the power of eminent domain or condemnation, evidence or testimony bearing upon the following matters shall be admissible and shall be considered in fixing such compensation or damages in addition to evidence or testimony otherwise admissible:

(a) Any use, condition, occupancy, or operation of such property, which is unlawful or violative of, or subject to elimination, abatement, prohibition, or correction under, any law, ordinance, or regulatory measure of the state, county, municipality, or other political subdivision, or any agency thereof, in which such property is located, as being unsafe, substandard, unsanitary, or otherwise contrary to the public health, safety, morals, or welfare;

(b) The effect on the value of such property, of any such use, condition, occupancy, or operation, or of the elimination, abatement, prohibition, or correction of any such use, condition, occupancy, or operation.

(3) The foregoing testimony and evidence shall be admissible notwithstanding that no action has been taken by any public body or public officer toward the abatement, prohibition, elimination, or correction of any such use, condition, occupancy, or operation. Testimony or evidence that any public body or public officer charged with the duty or authority so to do has rendered, made, or issued any judgment, decree, determination, or order for the abatement, prohibition, elimination, or correction of any such use, condition, occupancy, or operation shall be admissible and shall be prima facie evidence of the existence and character of such use, condition, or operation.

History.—s. 10, ch. 69-305; s. 8, ch. 77-391.

163.380 Disposal of property in community redevelopment area.—

(1) Any county, municipality, or community redevelopment agency may sell, lease, dispose of, or otherwise transfer real property or any interest therein acquired by it for a community redevelopment project or in a community redevelopment area to any private person, or may retain such property for public use, and may enter into contracts with respect thereto for residential, recreational, commercial, industrial, educational, or other uses, in accordance with the community redevelopment plan, subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of future slums or blighted areas or to otherwise carry out the purposes of this part. However, such sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the community redevelopment plan by the governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the community redevelopment plan, and may be obligated to comply with such other requirements as the county, municipality, or community redevelopment agency may determine to be in the public interest, including the obligation to begin any improvements on such real property required by the community redevelopment plan within a reasonable time.

(2) Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the community redevelopment plan and in accordance with such reasonable competitive bidding procedures as any county, municipality, or community redevelopment agency may prescribe. In determining the fair value of real property for uses in accordance with the community redevelopment plan, the county, municipality, or community redevelopment agency shall take into account and give consideration to the uses provided in such plan; the restrictions upon, and the covenants, conditions, and obligations assumed by, the purchaser or lessee or by the county, municipality, or community redevelopment agency retaining the property; and the objectives of such plan for the prevention of the recurrence of slum or blighted areas. The county, municipality, or community redevelopment agency may provide in any instrument of conveyance to a private purchaser or lessee that such purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property without the prior written consent of the county, municipality, or community redevelopment agency until he has completed the construction of any or all improvements which he has obligated himself to construct thereon. Real property acquired by the county, municipality, or community redevelopment agency which, in accordance with the provisions of the community redevelopment plan, is to be transferred, shall be transferred as rapidly as feasible in the public interest, consistent with the carrying out of the provisions of the community redevelopment plan. Any contract for such transfer and the community redevelopment plan, or such part or parts of such contract or plan as the county, municipality, or community redevelopment agency may determine, may be recorded in the land records of the clerk of the circuit court in such manner as to afford actual or constructive notice thereof.

(3) Prior to disposition of any real property or interest therein in a community redevelopment area, any county, municipality, or community redevelopment agency shall give public notice of such disposition by publication in a newspaper having a general circulation in the community, at least 30 days prior to the execution of any contract to sell, lease, or otherwise transfer real property and, prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite proposals from, and make all pertinent information available to, private redevelopers or any persons interested in undertaking to redevelop or rehabilitate a community redevelopment area or any part thereof. Such notice shall identify the area or portion thereof and shall state that proposals shall be made by those interested within 30 days after the date of publication of said notice and that such further information as is available may be obtained at

such office as shall be designated in said notice. The county, municipality, or community redevelopment agency shall consider all such redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out, and may negotiate with any persons for proposals for the purchase, lease, or other transfer of any real property acquired by the county, municipality, or community redevelopment agency in the community redevelopment area. The county, municipality, or community redevelopment agency may accept such proposal as it deems to be in the public interest and in furtherance of the purposes of this part; however, a notification of intention to accept such proposal shall be filed with the governing body not less than 30 days prior to any such acceptance. Thereafter, the county, municipality, or community redevelopment agency may execute such contract in accordance with the provisions of subsection (1) and deliver deeds, leases, and other instruments and take all steps necessary to effectuate such contract.

(4) Any county, municipality, or community redevelopment agency may temporarily operate and maintain real property acquired by it in a community redevelopment area for or in connection with a community redevelopment project pending the disposition of the property as authorized in this part, without regard to the provisions of subsection (1), for such uses and purposes as may be deemed desirable, even though not in conformity with the community redevelopment plan.

History.—s. 11, ch. 69-305; s. 9, ch. 77-391.

163.385 Issuance of revenue bonds.—

(1) When authorized by resolution or ordinance of the governing body, every county, municipality, or community redevelopment agency shall have power in its corporate capacity, in its discretion, to issue negotiable redevelopment revenue bonds from time to time to finance the undertaking of any community redevelopment project under this part, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans or preliminary loans, and shall have power to issue refunding bonds for the payment or retirement of bonds or other obligations previously issued. The security for such bonds may be based upon the anticipated assessed valuation of the completed community redevelopment project and such other revenues as may be legally available. In anticipation of the sale of such revenue bonds, the county, municipality, or community redevelopment agency may issue negotiable bond anticipation notes and may renew the same from time to time, but the maximum maturity of any such note, including renewals thereof, shall not exceed 5 years from the date of issue of the original note. Such notes shall be paid from any revenues of the county, municipality, or agency available therefor and not otherwise pledged or from the proceeds of sale of the revenue bonds in anticipation of which they were issued.

(2) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under the provisions of this part are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes, except those taxes imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

(3) Bonds issued under this section shall be authorized by resolution or ordinance of the governing body; may be issued in one or more series; and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either with or without coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place or places, be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics as may be provided by such resolution or ordinance or by a trust indenture or mortgage issued pursuant thereto. Bonds issued under this section may be sold in such manner, either at public or private sale, and for such price as the governing body may determine will effectuate the purpose of this part.

(4) In case any of the public officials of the county, municipality, or community redevelopment agency whose signatures appear on any bonds or coupons issued under this part shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this part shall be fully negotiable.

(5) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this part, or the security therefor, any such bond reciting in substance that it has been issued by the county, municipality, or community redevelopment agency in connection with a community redevelopment project, as herein defined, shall be conclusively deemed to have been issued for such purpose, and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this part.

History.—s. 12, ch. 69-305; s. 12, ch. 73-302; s. 2, ch. 76-147; s. 10, ch. 77-391; s. 77, ch. 79-400.

163.387 Redevelopment trust fund.—

(1) There shall be established for each community redevelopment agency created under s. 163.356 a redevelopment trust fund. Funds allocated to and deposited into this fund shall be used by the agency to finance or refinance each community redevelopment project it undertakes. No community redevelopment agency shall exercise any community redevelopment powers under this section unless and until the governing body has, by ordinance, provided for the funding of the redevelopment trust fund for the duration of a community redevelopment project. The annual funding of the redevelopment trust fund shall be in an amount not less than that increment in the income, proceeds, revenues, and funds of the county or municipality derived from or held in connection with its undertaking and carrying out of community redevelopment projects under this part.

Such increment shall be determined annually and shall be that amount equal to the difference between:

(a) The amount of ad valorem taxes levied each year by all taxing authorities except school districts on taxable real property contained within the geographic boundaries of a community redevelopment project; and

(b) The amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for all taxing authorities except school districts upon the total of the assessed value of the taxable property in the community redevelopment project as shown upon the most recent assessment roll used in connection with the taxation of such property by each taxing authority prior to the effective date of the ordinance approving the community redevelopment plan.

(2) Upon the establishment of a redevelopment trust fund as herein provided, each taxing authority except school districts shall annually appropriate to such fund a sum which is no less than the increment of ad valorem tax revenues as defined and determined in paragraphs (1)(a) and (b) accruing to said taxing authority.

(3) The obligation of a local governing body to fund the redevelopment trust fund annually shall continue until all loans, advances, and indebtedness, if any, and interest thereon, of a community redevelopment agency incurred as a result of a community redevelopment project have been paid, but only to the extent that the tax increment described in this section accrues.

(4) The revenue bonds and notes of every issue under this part shall be payable solely out of revenues pledged to and received by a community redevelopment agency and deposited to its redevelopment trust fund. The lien created by such bonds or notes shall not attach until the revenues referred to herein are deposited in the redevelopment trust fund at the times, and to the extent that, such revenues accrue. The holders of such bonds or notes shall have no right to require the imposition of any tax or the establishment of any rate of taxation in order to obtain the amounts necessary to pay and retire such bonds or notes. The redevelopment trust fund shall receive the tax increment described in this section only as, if, and when such taxes are collected.

(5) Revenue bonds issued under the provisions of this part shall not be deemed to constitute a debt, liability, or obligation of the local governing body or the state or any political subdivision thereof, or a pledge of the faith and credit of the local governing body or the state or any political subdivision thereof, but shall be payable solely from the revenues provided therefor. All such revenue bonds shall contain on the face thereof a statement to the effect that the agency shall not be obligated to pay the same or the interest thereon except from the revenues of the community redevelopment agency held for that purpose and that neither the faith and credit nor the taxing power of the local governing body or of the state or of any political subdivision thereof is pledged to the payment of the principal of, or the interest on, such bonds.

History.—s. 11, ch. 77-391; s. 78, ch. 79-400.

163.390 Bonds as legal investments.—All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a county or municipality pursuant to this part or by any community development agency vested with community redevelopment project powers. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

History.—s. 13, ch. 69-305; s. 12, ch. 77-391.

163.395 Property exempt from taxes and from levy and sale by virtue of an execution.—

(1) All property of any county, municipality, or community redevelopment agency, including funds, owned or held by it for the purposes of this part shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against the county, municipality, or community redevelopment agency be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this part by the county or municipality on its rents, fees, grants, or revenues from community redevelopment projects.

(2) The property of the county, municipality, or community redevelopment agency acquired or held for the purposes of this part is declared to be public property used for essential public and governmental purposes, and such property shall be exempt from all taxes of the municipality, the county, or the state or any political subdivision thereof. However, such tax exemption shall terminate when the county, municipality, or community redevelopment agency sells, leases, or otherwise disposes of such property in a community redevelopment area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property.

History.—s. 14, ch. 69-305; s. 13, ch. 77-391.

163.400 Cooperation by public bodies.—

(1) For the purpose of aiding in the planning, undertaking, or carrying out of a community redevelopment project and related activities authorized by this part, any public body may, upon such terms,

with or without consideration, as it may determine:

(a) Dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or other rights or privileges therein to a county or municipality.

(b) Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section.

(c) Do any and all things necessary to aid or cooperate in the planning or carrying out of a community redevelopment plan and related activities.

(d) Lend, grant, or contribute funds to a county or municipality; borrow money; and apply for and accept advances, loans, grants, contributions, or any other form of financial assistance, from the federal government, the state, county or other public body, or any other source.

(e) Enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with the federal government, a county or municipality, or other public body respecting action to be taken pursuant to any of the powers granted by this part, including the furnishing of funds or other assistance in connection with a community redevelopment project and related activities.

(f) Cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places; plan or replan or zone or rezone any part of the public body or make exceptions from building regulations; and cause administrative and other services to be furnished to the county or municipality.

If at any time title to or possession of any community redevelopment project is held by any public body or governmental agency, other than the county or municipality, which is authorized by law to engage in the undertaking, carrying out, or administration of community redevelopment projects and related activities, including any agency or instrumentality of the United States, the provisions of the agreements referred to in this section shall inure to the benefit of and may be enforced by such public body or governmental agency. As used in this subsection, the term "county or municipality" shall also include a community redevelopment agency.

(2) Any sale, conveyance, lease, or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement, or public bidding.

(3) For the purpose of aiding in the planning, undertaking, or carrying out of any community redevelopment project and related activities of a community redevelopment agency or a housing authority hereunder, any county or municipality may, in addition to its other powers and upon such terms, with or without consideration, as it may determine, do and perform any or all of the actions or things which, by the provisions of subsection (1), a public body is authorized to do or perform, including the furnishing of financial and other assistance.

(4) For the purposes of this section, or for the purpose of aiding in the planning, undertaking, or carrying out of a community redevelopment project and related activities of a county or municipality, such county or municipality may, in addition to any authority to issue bonds pursuant to s. 163.385, issue and sell its general obligation bonds. Any bonds issued by the county or municipality pursuant to this section shall be issued in the manner and within the limitations prescribed by the applicable laws of this state for the issuance and authorization of general obligation bonds by such county or municipality. Nothing in this section shall limit or otherwise adversely affect any other section of this part.

History.—s. 15, ch. 69-305; s. 14, ch. 77-391; s. 79, ch. 79-400.

163.405 Title of purchaser.—Any instrument executed by any county, municipality, or community redevelopment agency and purporting to convey any right, title, or interest in any property under this part shall be conclusively presumed to have been executed in compliance with the provisions of this part insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned.

History.—s. 16, ch. 69-305; s. 15, ch. 77-391.

163.410 Exercise of powers in counties with home rule charters.—In counties which have adopted home rule charters, the powers conferred by this part shall be exercised exclusively by the governing body of such county. However, the governing body of any such county which has adopted a home rule charter may, in its discretion, by resolution delegate the exercise of the powers conferred upon said county by this part within the boundaries of a municipality to the governing body of such a municipality. Such a delegation to a municipality shall confer only such powers upon a municipality as shall be specifically enumerated in the delegating resolution. Any power not specifically delegated shall be reserved exclusively to the governing body of the county.

History.—s. 17, ch. 69-305.

163.415 Exercise of powers in counties without home rule charters.—The powers conferred by this part upon counties not having adopted a home rule charter shall not be exercised within the boundaries of a municipality within said county unless the governing body of the municipality expresses its consent by resolution. Such a resolution consenting to the exercise of the powers conferred upon counties by this part shall specifically enumerate the powers to be exercised by the county within the boundaries of the municipality. Any power not specifically enumerated in such a resolution of consent shall be exercised exclusively by the municipality within its boundaries.

History.—s. 18, ch. 69-305.

163.430 Powers supplemental to existing community redevelopment powers.—The powers conferred upon counties or municipalities by this part shall be supplemental to any community redevelopment powers now being exercised by any county or municipality in accordance with the provisions

of any population act, special act, or under the provisions of the home rule charter for Dade County, or under the provision of the charter of the consolidated City of Jacksonville.

History.—s. 21, ch. 69-305.

163.445 Assistance to community redevelopment by state agencies.—State agencies may provide technical and advisory assistance, upon request, to municipalities, counties, and community redevelopment agencies for a community redevelopment project as defined in this part. Such assistance may include, but need not be limited to, preparation of workable programs, relocation planning, special statistical and other studies and compilations, technical evaluations and information, training activities, professional services, surveys, reports, documents, and any other similar service functions. If sufficient funds and personnel are available, these services shall be provided without charge.

History.—s. 25, ch. 69-305; s. 16, ch. 77-391.

163.450 Municipal and county participation in neighborhood development programs under U.S.P.L. 90-448.—Nothing contained herein shall be construed to prevent a county or municipality which is engaging in community redevelopment activities hereunder from participating in the neighborhood development program under the Housing Act of 1968 (P.L. 90-448) or in any amendments subsequent thereto.

History.—s. 26, ch. 69-305.

PART IV

REGIONAL TRANSPORTATION AUTHORITIES

163.565 Short title.—This part shall be known and may be cited as the "Regional Transportation Authority Law."

History.—s. 1, ch. 71-373; s. 1, ch. 73-278.

163.566 Definitions.—As used in this part, and unless the context clearly indicates otherwise:

(1) "Authority" means a body politic and corporate created pursuant to this part.

(2) "Member" means the municipality, county, or political subdivision which, in combination with another member or members, comprises the authority.

(3) "Board of directors," hereinafter referred to as the board, means the governing body of the authority.

(4) "Director" means a person appointed to the board by a member. No person who serves without salary as a director or in any other appointed position of the authority shall be in violation of s. 99.012(2) by reason of holding such office.

(5) "Regional transportation area" means that area the boundaries of which are identical to the boundaries of the political subdivisions or other legal entities which constitute the authority.

(6) "Municipality" means any city with a population of over 50,000 within the regional transportation area.

(7) "County" means any county within the regional transportation area.

(8) "Public transportation" means transportation of passengers by means, without limitation, of a street railway, elevated railway or guideway, subway, motor vehicle, motor bus, or any bus or other means of conveyance operating as a common carrier within the regional transportation area, including charter service therein.

(9) "Public transportation system" means, without limitation, a combination of real and personal property, structures, improvements, buildings, equipment, plants, vehicle parking or other facilities, and rights-of-way, or any combination thereof, used or useful for the purposes of public transportation.

(10) "Operator" means any person engaged in, or intending to engage in, the business of providing public transportation, but does not include a person engaged primarily in the transportation of children to or from school or a person or entity furnishing transportation solely for his or its employees or customers.

(11) "Transportation facility" or "transportation facilities" means the property or property rights, both real and personal, of a type used for the establishment of public transportation systems which have heretofore been, or may hereafter be, established by public bodies for the transportation of people and property from place to place.

(12) "Population" means the population as determined under the provisions of s. 23.019.

History.—s. 2, ch. 71-373; s. 1, ch. 73-278; s. 1, ch. 77-174.

163.567 Regional transportation authorities.—

(1) Any two or more contiguous counties, municipalities, other political subdivisions, or combinations thereof in this state are authorized and empowered to convene a charter committee for the purpose of developing a charter under which a regional transportation authority, hereinafter referred to as "authority," may be constituted, composed, and operated as delineated in this part. However, no county, municipality, or other political subdivision may be a member in more than one authority created under this part.

(2) Upon the decision by such governing bodies to convene the committee, each shall appoint one representative for the first 100,000 population or fraction thereof over 50,000, plus one additional representative for each additional 100,000 population to the charter committee, except that the population of any participating municipality shall be subtracted from the county's population in determining county representation. The committee shall meet for the purpose of preparing the authority's charter. The charter, in addition to the purposes and powers provided in s. 163.568, shall contain:

(a) The formula for representation and voting of

the members based on population, but in no event shall the Governor's appointees have less than one vote each.

(b) Any limitations on the authority's powers of eminent domain beyond those limitations contained in s. 163.568 and deemed necessary for the authority's purposes.

(c) The duration of the authority and the method by which it may be terminated or withdrawn from by any participating member prior to the stated date of termination, if any.

(d) The manner in which the authority members will provide from their treasuries the financial support for the authority.

(e) A method or formula for equitably providing for and allocating and financing the capital and operating costs, including payments to reserve funds authorized by law and payments of principal and interest on obligations.

(f) The manner in which strict budgeting and accountability of all funds shall be provided for and the manner in which reports, including an annual independent audit, of all receipts and disbursements shall be prepared and presented to each participating member.

(g) Any other necessary and proper matters agreed upon by the charter committee.

(3) The charter and all subsequent amendments thereto shall be duly executed by the governing bodies of all members and shall be filed with the Department of State, at which time the authority shall be activated and legally constituted.

(4) When the charter is filed with the Department of State, the Governor shall be notified that such action has been taken, and the Governor shall within 20 days appoint two members to the authority. Within 25 days from the filing of the charter, each member shall appoint its director or directors, and the first meeting of the authority shall be held.

(5) In addition to other funding as prescribed in this part, any member joining the authority shall agree to provide the authority with funds to be used only for planning and administration for a period not to exceed 5 years from such time as the authority was formally constituted. These total funds shall not exceed $300,000 per annum, and the cost shall be duly apportioned among the members by a ratio based on population. Any member may, of its own accord, pay more than its apportioned share of the funds.

(6) After the authority has been in existence for a period of not less than 12 months, municipalities having less than 50,000 population may be admitted as fully participating members if agreed upon by at least a three-fourths vote of all the members of the board of directors.

(7) Subsequent to the activation of the authority, contiguous counties, municipalities, or other political subdivisions not participating initially may become members of the authority with the same benefits as the initial members, upon approval by a majority vote of the board.

(8) The board of directors of the authority shall consist of at least one director representing each member, and two directors appointed by the Governor. In no event shall the board be composed of less than five directors, including the two appointed by the Governor. Each member shall initially appoint one director for a 3-year term. Of those members appointing more than one director, the remaining directors shall be appointed initially for a term of 2 years. Thereafter, all directors shall be appointed for 3-year terms.

(9) Each director shall hold office until his successor has been appointed and qualified. A vacancy occurring during a term shall be filled only for the balance of the unexpired term. The first directors shall be selected as provided above. An appointment to fill a vacancy shall be made within 20 days after the occurrence of the vacancy or before expiration of the term, whichever is applicable. If no appointment is made within the prescribed time by the appointing member, the board, by a majority vote, shall appoint an eligible person to the board with like effect as if the appointment were made by the member. However, if the board does not appoint an eligible person within 10 days, the appointment shall then be made by the Governor within 10 days thereafter. Any director shall be eligible for reappointment.

(10) The board shall elect one of its directors as chairman and one as vice chairman to serve for 1 year in that capacity or until their successors are elected. A majority of the directors shall constitute a quorum. A vacancy on the board shall not impair its right to exercise all of its powers and perform all of its duties. Any vacancy not filled within the period prescribed by this section shall be filled by appointment of the board. Upon the effective date of his appointment, or as soon thereafter as practicable, each director shall enter upon his duties.

(11) A director of the board may be removed from office by the Governor or by the appointing member for misconduct, malfeasance, misfeasance, or neglect of duty in office. Any vacancy so created shall be filled as provided above.

(12) The authority may employ an executive administrator, who shall be a person of recognized ability and experience, to serve at the pleasure of the authority. The executive administrator may employ such employees as may be necessary for the proper administration of the duties and functions of the authority and may determine the qualifications of such persons; however, the board shall approve such positions and fix compensation for employees. The authority may contract for the services of attorneys, engineers, consultants, and agents for any purpose of the authority, including engineering, architectural design, management, feasibility, transportation planning, and other studies concerning the design of facilities and the acquisition, construction, extension, operation, maintenance, regulation, consolidation, and financing of transportation systems in the area.

(13) Directors of the board shall be entitled to receive their traveling and other necessary expenses incurred in connection with the business of the authority, as provided in s. 112.061, but they shall receive no salaries or other compensation.

History.—s. 3, ch. 71-373; s. 1, ch. 73-278.

163.568 Purposes and powers.—

(1) The authority created and established by this part is granted the authority to purchase, own, or operate, or provide for the operation of, transportation facilities; to contract for transit services; to exercise power of eminent domain limited to right-of-way and contiguous transportation facility acquisition and subject to any further limitations set forth in the authority charter; to conduct studies; and to contract with other governmental agencies, private companies and individuals. However, no public transportation system shall be purchased, owned, or operated that would be in the continued business of competing with existing private charter transportation companies for charter business, nor shall a new system be implemented where an existing transportation system of the same mode is operating a comparable service without first purchasing said existing system through negotiation.

(2) The authority is granted the authority to exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes, including, but not limited to, the following rights and powers:

(a) To sue and be sued, implead and be impleaded, complain and defend in all courts.

(b) To adopt, use, and alter at will a corporate seal.

(c) To acquire, purchase, hold, lease as a lessee, and use any franchise or property, real, personal, or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority, and to sell, lease as lessor, transfer and dispose of any property or interest therein acquired by it.

(d) To fix, alter, charge, and establish rates, fares, and other charges for the services and facilities within the area, which rates, fees, and charges shall be equitable and just.

(e) To acquire and operate, or provide for the operation of, local transportation systems, public or private, within the area, the acquisition of such system to be by negotiation and agreement between the authority and the owner of the system to be acquired.

(f) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business.

(g) To enter into management contracts with any person or persons for the management of a public transportation system owned or controlled by the authority for such period or periods of time, and under such compensation and other terms and conditions, as shall be deemed advisable by the authority.

(h) Without limitation, to borrow money and issue evidence of indebtedness and to accept gifts or grants or loans of money or other property and to enter into contracts, leases, or other transactions with any federal agency, the state, any agency of the state, or any other public body of the state.

(i) To develop transportation plans, and to coordinate its planning and programs with those of appropriate municipal, county, and state agencies and other political subdivisions of the state. All transportation plans are subject to review and approval by the Department of Transportation and by the regional planning agency, if any, for consistency with programs or planning for the area and region.

(j) To do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority in order to carry out the powers granted to it by this part or any other law.

(k) To prescribe and promulgate necessary rules and regulations consistent with the provisions of this part and the requirements of chapter 120.

History.—s. 4, ch. 71-373; s. 1, ch. 73-278.

163.569 Exemption from regulation.—The public transportation systems and facilities operating in and under the authority of this part shall be exempt from any of the regulatory provisions of chapters 323 and 350.

History.—s. 5, ch. 71-373; s. 1, ch. 73-278.

163.570 Special region taxation.—

(1) Any regional transportation authority created hereunder shall be deemed a special tax district and shall be authorized to levy an ad valorem tax based on full valuation of real property not to exceed 3 mills on the taxable real property in the areas affected by such authority, with the approval of the county commission or equivalent governing body of such area, at a rate sufficient to produce an amount that may be necessary for effectuating the purposes of this part, if such millage level is approved by a majority of the members of such authority and by referendum. Property taxes determined and levied under this section shall be certified by the authority to the appropriate auditor and extended, assessed, and collected in like manner as provided by general law for such political subdivisions. The proceeds under this section shall be remitted by the tax collector to the treasurer of the authority who shall credit them to the funds of the authority for use in effectuating the purposes of this part. At any time after making a tax levy under this section and certifying the same to the corresponding governing body represented by the membership on the authority, the authority may issue tax anticipation notes of indebtedness in anticipation of the collection of such taxes.

(2) No tax authorized by this part shall be levied unless the same shall be approved by a majority of the electors of each county, municipality, or other political subdivision, voting in elections to be held within the geographical area of the special tax district. A tax shall be authorized only in such political subdivisions as are approved by electors from within the counties or municipalities or other political subdivisions who are members of the regional authority.

History.—s. 6, ch. 71-373; s. 1, ch. 73-278.

163.571 Issuance of bonds.—Any transportation authority created hereunder may issue bonds to carry out the authorized powers or purposes of this part. In the creation of bonded indebtedness the procedure therefor shall be in conformity with the constitution and laws of the state.

History.—s. 7, ch. 71-373; s. 1, ch. 73-278.

163.572 Expansion of area.—Upon a resolution adopted by the governing body of any adjoining county, municipality, or other political subdivision, the authority may, subject to the provisions of s. 163.567(1), by a majority vote of its membership, include such territory in its regional transportation area.

History.—s. 8, ch. 71-373; s. 1, ch. 73-278.

PART V

NEW COMMUNITIES

163.601 Short title.—This act shall be known and may be cited as the "New Communities Act of 1975."

History.—s. 1, ch. 75-204.

163.602 Purpose.—

(1) It is the intent of the Legislature to provide local general-purpose government with the first opportunity to provide governmental services and to promote private initiative and voluntary participation in planned urbanization by authorizing new community districts in those areas of the state where, and for those services as to which, local general-purpose government has determined it presently cannot directly respond.

(2) The Legislature finds, in enacting this legislation, that new-community and large-scale development is a special function, based upon timely management of critical factors and sequential events, which requires a partnership between the expertise and management of private enterprise, the policy and priority considerations of local general-purpose government, and the overall public interest requirements of state and local government in combating duplication and proliferation of governmental bureaucracy and in seeing to it that any new growth pays for itself rather than burdening the established citizens and their local governments.

(3) In order to accomplish the purposes of this act, it is necessary for the state to develop, implement, coordinate, and enforce a "new communities" policy, and one essential element shall be a positive incentive for quality development through the mechanism of granting certain limited status as special improvement districts to private developers in order to operate, and finance the cost, delivery, and maintenance of, necessary predevelopment capital improvements such as water, sewer, road, and drainage systems and community facilities consistent with existing local facilities.

History.—s. 1, ch. 75-204; s. 1, ch. 77-174.

163.603 Preemption; sole authority.—

(1) This act shall constitute the sole authorization for the future establishment of independent special districts having the power to provide the capital improvements for sewer, road, water management and supply, solid waste, and erosion control systems and community facilities for development of lands, except for independent special districts and municipal service taxing and benefit units established pursuant to chapters 125, 153, 163, and 298 and s. 1, Art. VIII of the State Constitution. All other independent special districts created by local ordinance or by a court or state agency order for these purposes shall, in the future, be established pursuant to this act and in accordance with chapter 165.

(2) This act shall not affect the existence or authority of special districts existing on October 1, 1975, except in those cases where the district or a petitioner, by action pursuant to this act, bring themselves within this act.

(3) This act shall not apply to the establishment of a special road and bridge district pursuant to the provisions of chapter 336 or to the extension of territorial boundaries of any such district existing on October 1, 1975, if the acreage to be included in such district or extension thereof is less than 1,000 acres and was owned by, or under contract on July 1, 1975, for acquisition by, the parties seeking creation of the district. This exemption shall apply only if all contiguous properties of such parties to be included in such district are included in the district or territorial extension thereof at the time of such creation or extension. The exemption granted by this subsection shall be deemed to apply only to the creation, with no territorial extension thereof, of a special road and bridge district pursuant to the above conditions or to one territorial extension of the boundaries of an existing district.

History.—s. 1, ch. 75-204; s. 1, ch. 76-147.

163.604 Definitions.—The following words and terms shall have the meanings indicated unless the context clearly indicates a different meaning:

(1) "Ad valorem bonds" means bonds which are payable from the proceeds of ad valorem taxes levied on real and tangible personal property and are generally referred to as general obligation bonds.

(2) "Assessable improvements" includes, without limitation, any and all sewer systems, storm sewers and drains, water systems, streets, and roads of the new community district, or that portion or portions thereof local in nature and of special benefit to the premises or lands served thereby, and any and all modifications, improvements, and enlargements thereof.

(3) "Board" or "board of supervisors" means the governing board of that certain new community district, as herein defined, or, if such board be abolished, the board, body, or commission succeeding to the principal functions thereof or to whom the pow-

ers given by this act to the board shall be given by law.

(4) "Bond" includes "certificate," and provisions applicable to bonds shall be equally applicable to certificates. "Bond" includes general obligation bonds, assessment bonds, refunding bonds, revenue bonds, and other such obligations in the nature of bonds as are provided for in this act, as the case may be.

(5) "Cost," when used with reference to any project, includes but is not limited to:

(a) The expenses of determining the feasibility or practicability of acquisition, construction, or reconstruction.

(b) The cost of surveys, estimates, plans, and specifications.

(c) The cost of improvements.

(d) Engineering, fiscal, and legal expenses and charges.

(e) The cost of all labor, materials, machinery, and equipment.

(f) The cost of all lands, properties, rights, easements, and franchises acquired.

(g) Financing charges.

(h) The creation of initial reserve and debt service funds.

(i) Working capital.

(j) Interest charges incurred or estimated to be incurred on money borrowed prior to and during construction and acquisition and for such reasonable period of time after completion of construction or acquisition as the board may determine.

(k) The cost of issuance of bonds pursuant to this act, including advertisement and printing.

(l) The cost of any election held pursuant to this act and all other expenses of issuance of bonds.

(m) The discount, if any, on the sale or exchange of bonds.

(n) Administrative expenses.

(o) Such other expenses as may be necessary or incidental to the acquisition, construction, or reconstruction of any project, to the financing thereof, or to the development of any lands within the new community district.

(p) Reimbursement of any public or private body, person, or firm or corporation for any moneys advanced in connection with any of the foregoing items of cost.

Any obligation or expense incurred prior to the issuance of bonds in connection with the acquisition, construction, or reconstruction of any project or improvement thereon, or in connection with any other development of land that the board of the new community district shall determine to be necessary or desirable in carrying out the purposes of this act, may be treated as a part of such cost.

(6) "Department" means the Department of Community Affairs.

(7) "Elector" means a voter or qualified elector, as defined in subsection 97.021(5), who resides within the new community district.

(8) "General obligation bonds" means bonds which are secured by, or provide for their payment by, the pledge, in addition to those special taxes levied for their discharge and such other sources as may be provided for their payment or pledged as security under the resolution authorizing their issuance, of the full faith and credit and taxing power of the new community district and for payment of which recourse may be had against the general fund of the new community district.

(9) "Improvement bonds" means special obligations of the new community district which are payable solely from proceeds of the special assessments levied for an assessable project.

(10) "Landowner" means the owner of the freehold estate appearing in the official records, including trustees, private corporations, and owners of condominium units, but does not include reversioners, remaindermen, or mortgagees, who shall not be counted and need not be notified of proceedings under this act.

(11) "New community district" means a local or regional unit of special purpose government created pursuant to this act and limited to the purposes of performing those specialized functions specifically prescribed in this act, whose governing head is an independent body created, organized, constituted, and authorized to function specifically as prescribed in this act and whose location, formation, powers, governing body, operation, duration, accountability, requirements for disclosure, and termination are specifically set forth in this act.

(12) "Petitioner" means a landowner or private developer who is proposing the new community district.

(13) "Project" means any development, improvement, property, utility, facility, works, enterprise, or service, now existing or hereafter undertaken or established, under the provisions of this act.

(14) "Refunding bonds" means bonds issued to refinance outstanding bonds of any type and the interest and redemption premium thereon. Refunding bonds shall be issuable and payable in the same manner as the refinanced bonds, except that no approval by the electorate shall be required unless required by the State Constitution.

(15) "Revenue bonds" means obligations of the new community district which are payable from revenues derived from sources other than ad valorem taxes on real or tangible personal property and which do not pledge the property or credit of the new community district.

(16) "Sewer system" means any plant, system, facility, or property and additions, extensions, and improvements thereto at any future time constructed or acquired as part thereof, useful or necessary or having the present capacity for future use in connection with the collection, treatment, purification, or disposal of sewage, including without limitation industrial wastes resulting from any process of industry, manufacture, trade, or business or from the development of any natural resources and, without limiting the generality of the foregoing, shall include:

(a) Treatment plants, pumping stations, lift stations, valves, force mains, intercepting sewers, laterals, pressure lines, mains, and all necessary appurtenances and equipment.

(b) All sewer mains, laterals, and other devices

for the reception and collection of sewage from premises connected therewith.

(c) All real and personal property and any interest therein, rights, easements, and franchises of any nature whatsoever relating to any such system and necessary or convenient for operation thereof.

(17) "Water management and control facilities" means any lakes, canals, ditches, reservoirs, dams, levees, sluiceways, floodways, pumping stations, or any other works, structures, or facilities for the conservation, control, drainage, development, utilization, and disposal of water and any purposes appurtenant, necessary, or incidental thereto and includes all real and personal property and any interest therein, rights, easements, and franchises of any nature relating to any such water management and control facilities or necessary or convenient for the acquisition, construction, reconstruction, operation, or maintenance thereof.

(18) "Water system" means any plant, system, facility, or property and additions, extensions, and improvements thereto at any future time constructed or acquired as part thereof, useful or necessary or having the present capacity for future use in connection with the development of sources, treatment, or purification and distribution of water and, without limiting the generality of the foregoing, includes dams, reservoirs, storage tanks, mains, lines, valves, pumping stations, laterals, and pipes for the purpose of carrying water to the premises connected with such system and all rights, easements, and franchises of any nature whatsoever relating to any such system and necessary or convenient for the operation thereof.

History.—s. 1, ch. 75-204; s. 1, ch. 77-174.

163.611 Establishment of district; petition.—(1)(a) A petition requesting establishment of a new community district shall be filed by the petitioner with the county having jurisdiction over the majority of land in the area in which the district is to be located. If all of the land in the area for the proposed district is within the territorial jurisdiction of a municipal corporation, then the petition requesting establishment of a new community district under this act shall be filed by the petitioner with that particular municipal corporation. In such event, the duties of the county, hereinafter described, in action upon the petition shall be the duties of the said municipal corporation. The petition shall be filed after the petitioner has secured an appropriate development order as a development of regional impact; however, the petitioner may process jointly the petition and an application for development of regional impact approval pursuant to chapter 380.

(b) The governing body of any special district in existence or any person therein who meets the requirements of a petitioner under this act may petition pursuant to this act for reestablishment of the existing district as a new community district pursuant to this act. In such case, the new district so formed shall assume the existing obligations, indebtedness, and guarantees of indebtedness of the district so subsumed, and the existing district shall be terminated.

(2) The petition shall contain:

(a) A legal description of the property to be included in the district and a listing, with the last known address, of all owners of real property within the general external boundaries of the district which are to be excluded from the district.

(b) A request for the specific governmental powers which the district will be authorized to assume pursuant to this act in addition to the general powers authorized pursuant to s. 163.621, including a statement describing the capacity of existing local facilities, the future use thereof, and the role of the new community district in providing for compatibility of facilities with local and regional services.

(c) A statement showing the creation of the district as being the best alternative available for delivering the specific services sought to be delivered and that the area is amenable to separate special district government.

(d) Specific statements showing compliance with the following standards:

1. The new community district shall consist of land which is sufficiently contiguous to be developable as one functional interrelated community, the total acreage of which shall not be less than 1,000 acres unless the land is wholly contained within one or more municipalities.

2. The petitioner shall have control, by deed, trust agreement, contract, or option, of 75 percent of the land to be included in the new community district.

3. The new community district shall be shown to have the capability to build facilities that will be compatible with the overall general-purpose government facilities in the land area involved.

4. There shall be a commitment to apply for, and accept, housing subsidy and assistance programs for low-income and moderate-income individuals in an amount not less than 5 percent or more than 25 percent, as provided in the ordinance, of the total residential units to be developed over the succeeding calendar year or some other period, not more than 5 years, agreed upon and stated in the ordinance creating such new community district.

5. There shall be a commitment to comply with all ecological, environmental, economic, and other governmental, procedural, and policy requirements of local and state general-purpose government.

(e) The proposed plan for termination.

(3) Upon receipt of the petition, the county shall request written comments and recommendations from adjacent local governments and the Secretary of the Department of Community Affairs, who shall notify all appropriate state agencies which the secretary determines have an interest in the proposed new community district. Such written comments and recommendations may be made available to the petitioner and to all affected local general-purpose governments.

(4)(a) Within 90 days after the petition is filed, a local hearing shall be held by the county. If the area proposed to be included in the district is under the jurisdiction of more than one unit of local general-purpose government, the county with whom the petition is filed shall convene and conduct a joint hearing of all units with jurisdiction over any of the area proposed to be included. Notice of the hearing shall be sent to all agencies receiving notices of the peti-

tion, all persons owning property within the proposed district, and any other person who has filed a request for such notice with the county or Secretary of the Department of Community Affairs. Notice shall be further provided by publication in a newspaper of general circulation in the area affected no less than 7 or more than 14 days in advance of such hearing. Transfer of control of the land to petitioner or written approval or consent by a landowner or agency, filed with the petition, shall constitute a waiver of the specific notice requirement contained in this paragraph.

(b) All relevant information, studies, data, comments, and recommendations received by the county shall be presented at the hearing. Interested persons shall be heard concerning establishment of the district. Petitioner, or any interested party, may request that the hearing and all testimony and evidence introduced thereat be transcribed by a certified court reporter at his own expense. Such transcript, together with the minutes of the meeting, shall be the official record of the hearing.

(5)(a) Within 45 days after the hearing, after consideration of all the comments and recommendations received, and after determining that the proposed new community district and development conform to this section, the county shall make, by nonemergency ordinance or, if more than one county is involved, by joint ordinance, a final ordinance granting or denying establishment of the district and, if the petition is granted, specifying the powers authorized the district in addition to the general powers granted by s. 163.621. Failure to enact an ordinance within the specified time may be considered a denial for the purposes of any appeal authorized under subsection (7). If a county fails to enact an ordinance or denies a petition, it shall set forth in writing the reasons for its failure to act or its denial. The ordinance shall be filed with the Department of State, the board of the local governing body or bodies affected, and the Department of Community Affairs.

(b) Such ordinance shall not be effective within the boundaries of any municipality if such municipality, within 45 days, specifically excludes the area by ordinance. In such case, the district boundaries shall be deemed amended to exclude any such area.

(6) The ordinance creating the district may be amended upon petition of the district board pursuant to the same procedures as the initial establishment, except the provisions of paragraphs (2)(a) and (c) need not apply.

(7) The petitioner may appeal the unreasonable denial of a petition creating a new community district for services which the county will not timely perform to the circuit court for the county in which the petition was made. Denial of a petition shall be unreasonable where the developer has shown by a preponderance of the evidence that creation of a district pursuant to this act is necessary to the implementation of permits or approvals for such development previously received by the developer from the county or municipality. The circuit court may provide such injunctive or other relief as may be necessary.

History.—s. 1, ch. 75-204; s. 1, ch. 77-174.

163.612 Termination, contraction, or expansion of district.—

(1) The district may contract or expand its boundaries by petition of either the governing body or the owner of lands to be included or excluded. The petition shall be made in the same manner and shall have the same effect as a petition under s. 163.611; however, the standards for annexation and contraction of a municipality pursuant to chapter 171 shall be additionally applied.

(2) The district may merge with other districts pursuant to subsection 165.041(4).

(3) The district shall remain in existence unless one of the following methods of termination is exercised at any time following the first replacement of a member appointed by the petitioner pursuant to paragraph 163.613(1)(c) or such shorter time provided in the ordinance, in addition to the preferred method set forth in the ordinance creating it:

(a) Upon meeting the standards of ss. 171.042 and 171.043, and upon assumption of the district's debt and any guarantee of such debt as provided in s. 165.071, a municipality may annex all the land included in the district by ordinance.

(b) Upon providing any one or all of those services offered by the district at a similar level, and upon assumption of the district's debt and any guarantee of such debt related to the services assumed as provided in s. 165.071, a county may merge, by nonemergency ordinance, all the land included in the district into its system for delivering such services.

(c) Upon meeting the requirements of s. 165.061, the governing body of the district shall propose a charter incorporating the area as a municipality to the legislative delegation representing the area.

(d) In the event the district has become inactive pursuant to s. 165.052, the board of county commissioners shall be informed and it shall take appropriate action.

History.—s. 1, ch. 75-204; s. 30, ch. 79-164.

163.613 Governing body; members and meetings.—

(1)(a) The governing body of the district shall consist of five members, to be composed of two members appointed to represent the interests of the local citizenry by the county with jurisdiction over the area included within the district or, if more than one county or a municipality is affected, by a joint agreement as specified in the ordinance creating the district, and three members appointed by the petitioner to serve as his representatives to insure completion of the project. It shall not be deemed a conflict of interest under chapter 74-177, Laws of Florida, for an employee or stockholder of the petitioner to serve as a supervisor of the district.

(b) Members shall serve 4-year overlapping terms, with one each of the initial citizen and petitioner members appointed to serve initial 2-year terms.

(c) Members appointed by the petitioner shall be replaced by citizen members who reside in the district and are appointed by the county with jurisdiction over the area included within the district:

1. At a population level specified in the ordinance, or

2. According to a schedule calculated to achieve

one such replacement each time the new community gains a proportion equal to one-third of its projected total population or has one-third of its platted residential lots deeded, whichever occurs first.

(2) Members of the district board, to be known as supervisors, entering into office shall take and subscribe to the oath of office as prescribed by law and shall hold office for the terms for which they are elected or appointed and until their successors are chosen and qualified. In case of a vacancy in office, the vacancy shall be filled in the same manner as the original office for the remainder of the term, unless the office is an elective one with less than 28 months remaining in the term thereof, in which case the remaining members of the board may fill the vacancy by appointment.

(3) A majority of the members of the board shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes. Action taken by the district shall be upon a vote of a majority of the members present unless state law, the local ordinance creating the district, or a rule of the district requires a larger number.

(4) As soon as practicable after each election or appointment, the board shall organize by electing one of its members as chairman and by electing a secretary, who need not be a member of the board, and such other officers as the board may deem necessary.

(5) The board shall keep a permanent record book entitled "Record of Proceedings of (Name) New Community District," in which shall be recorded minutes of all meetings, resolutions, proceedings, certificates, bonds given by all employees, and any and all corporate acts, which book shall at reasonable times be open to inspection in the same manner as state, county, and municipal records pursuant to chapter 119, as well as to such other persons as the board may determine to have proper interest in the proceedings of the board. Such record book shall be kept at any office or other regular place of business maintained by the board in the county or municipality in which the new community district is located.

(6) All meetings shall be open to the public and governed by the provisions of chapter 286.

(7) Each supervisor shall be entitled to receive for his services an amount not to exceed $100 per month. In addition, each supervisor shall receive travel and per diem expenses as set forth in s. 112.061.

History.—s. 1, ch. 75-204; s. 1, ch. 77-174.

163.621 General powers.—A new community district established pursuant to this part shall have, in addition to any special powers as may hereinafter be authorized by the ordinance creating such district or subsequently amended, all the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including the following general powers:

(1) To sue and be sued in the name of the district; to adopt and use a seal and authorize the use of a facsimile thereof; to acquire real and personal property or any estate therein by purchase, gift, devise, or otherwise; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

(2) To employ and fix the compensation of a district manager who shall have charge and supervision of the works of the district and who may hire or otherwise employ and terminate the employment of such other persons, including, without limitation, professional, supervisory, and clerical, as may be necessary and authorized by the board. It shall not be deemed a conflict of interest under chapter 74-177, Laws of Florida, for an employee or stockholder of the petitioner to serve as an employee of the district. The compensation and other conditions of employment of such officers and employees shall be as provided by the board and shall not be governed by any rule applicable to state employees in the classified service unless the board, with the approval of the Secretary of the Department of Administration, so provides.

(3) To apply for coverage of its employees under the State Retirement System in the same manner as if such employees were state employees, subject to necessary action by the district to pay employer contributions into the State Retirement Fund.

(4) To authorize compensation for members of the district board for per diem, travel, and other reasonable expenses for meetings, hearings, and other official business, consistent with s. 112.061.

(5) To contract for the services of consultants to perform planning, engineering, legal, or other appropriate services of a professional nature. Such contracts shall be subject to the requirements of the state law relating to public bidding.

(6) To borrow money and accept gifts; apply for and use grants or loans of money or other property from the United States, the state, a local unit of government, or any person for any district purposes and enter into agreements required in connection therewith; and hold, use, and dispose of such moneys or property for any district purposes in accordance with the terms of the gift, grant, loan, or agreement relating thereto.

(7) To adopt bylaws, rules, resolutions, and orders, pursuant to the provisions of chapter 120, prescribing the powers, duties, and functions of the officers of the district, the conduct of the business of the district, the maintenance of records, and the form of certificates evidencing tax liens and all other documents and records of the district. The board may adopt administrative rules and regulations with respect to any of the projects of the district and define the area to be included therein on such notice as is required for elections and public hearings.

(8) To maintain an office at such place or places as it may designate within or without the district.

(9) To make use of any public easements, dedications to public use, platted reservations for public purposes, or reservations for specific public purposes within the boundaries of the district for those purposes authorized by the district.

(10) To lease as lessor or lessee to or from any person, firm, corporation, association, or body, public or private, any projects of the type that the district is authorized to undertake and facilities or property of any nature for the use of the district to carry out any of the purposes of this act or the ordinance authorizing such district.

(11) To borrow money and issue bonds, certifi-

cates, warrants, notes, or other evidences of indebtedness as hereinafter provided; to levy such tax and special assessments as may be authorized; to charge, collect, and enforce fees and other user charges; and to establish a budget and fiscal year in conformance with chapter 218.

(12) To raise, by user charges or fees authorized by resolution of the board, amounts of money which are necessary for the conduct of district activities and services and enforce their receipt and collection in the manner prescribed by resolution of the board not inconsistent with law.

(13) To exercise the right and power of eminent domain, pursuant to the provisions of chapters 73 and 74, over any property within the state, except municipal, county, state, and federal property, for the uses and purposes of the district relating solely to water, sewers, roads, and drainage, specifically including, without limitation, the power for the taking of easements for the drainage of the land of one person over and through the land of another.

(14) To cooperate or contract with other governmental agencies as may be necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes of the district as stated in this act or by the ordinance creating such district.

(15) To exercise such special powers as may be authorized by the ordinance creating such district pursuant to ss. 163.622-163.624.

History.—s. 1, ch. 75-204; s. 1, ch. 77-174.

163.622 Special powers; public improvements and community facilities.—The district shall have, concurrent within the boundaries of the district with other public bodies and agencies and subject to the regulatory jurisdiction and approval of any regulatory bodies and agencies, and the board may exercise any or all of the following special powers relating to public improvements and community facilities as may be specifically authorized by the ordinance creating such district or as it may be amended from time to time, namely, the power:

(1) To plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities for:

(a) Water management and control for the lands within the district and to connect some or any of such facilities with roads and bridges as in the judgment of the board is deemed advisable to provide access.

(b) Water supply, sewer and waste water management, or any combination thereof and to construct and operate connecting, intercepting, or outlet sewers and sewer mains and pipes and water mains, conduits, or pipelines in, along, and under any streets, alleys, highways, or other public places or ways within the district when deemed necessary or desirable by the board.

(c) Waste collection and disposal and to sell or otherwise dispose of any effluent, residue, or other byproducts of such system or sewer system.

(d) Bridges or culverts that may be needed in the district across any drain, ditch, canal, floodway, holding basin, excavation, public highway, tract, grade, fill, or cut and roadways over levees and embankments, and to construct any and all of said works and improvements across, through, or over any public right-of-way highway, grade, fill, or cut in the district.

(e) Highways, streets, roads, alleys, sidewalks, storm drains, bridges, and public thoroughfares of all kinds and descriptions, hereinafter collectively and severally referred to as "public roads," and connections to any extensions of any and all existing public roads within the district, deemed necessary or convenient by the board to provide access to, and efficient development of, the territory within the district and as may from time to time be deemed appropriate by the board to be adequate to service the district and its residential, park, recreational, commercial, and industrial areas, with such public roads to be equal to or exceed the specifications or requirements of the county in which such public roads are located.

(f) Indoor and outdoor recreational, cultural, and educational uses.

(g) Fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment.

(h) Police and school buildings and related structures for use in the law enforcement and educational system, when authorized by proper governmental agencies.

(i) Common, private, or contract carriers, buses, vehicles, railroads, monorails, airplanes, helicopters, boats and any others, including transportation facilities and devices, whether now or hereafter invented or developed.

(j) Community redevelopment and to exercise any power and duty authorized to a community redevelopment agency pursuant to s. 163.425 and part III of this chapter.

(k) Industrial development and to exercise any power and duty authorized an industrial development authority pursuant to s. 159.45 and part III of chapter 159.

(2) To regulate, prohibit, and restrict, by appropriate resolution following the procedures of chapter 120 and in connection with the provision of one or more services through its systems and facilities:

(a) All structures, materials, and things, whether solid, liquid, or gas and whether permanent or temporary in nature, which come upon, come into, connect to, or are a part of any facility owned or operated by the district, limited to water, sewer, or surface water management.

(b) The supply and level of water within the district, including:

1. The diversion of waters from one area, lake, pond, river or stream, basin, and water control facility to another.

2. The control and restrictions of the development and use of natural or artificial streams or bodies of water, lakes, or ponds.

3. The taking of all measures determined by the board to be necessary or desirable to prevent or alleviate land erosion.

(c) The use of sewers and the supply of water within the district and the use and maintenance of outhouses, privies, septic tanks, or other sanitary structures or appliances within the district, including the prescription of methods in pretreatment of wastes not amenable to treatment with domestic

sewage before accepting such wastes for treatment and to refuse to accept such wastes when not sufficiently pretreated as may be prescribed.

History.—s. 1, ch. 75-204; s. 1, ch. 77-174.

163.623 Special powers; special assessments and district taxes.—The district shall have, and the board may exercise, any or all of the following special powers relating to special assessments and district taxes as may be specifically authorized by the ordinance creating such district or as it may be amended from time to time and, if required, by referendum of the electors of such district, namely, the power:

(1) To assess, impose, and foreclose special assessment liens upon lands in the district for the costs of projects benefiting such lands in proportion to the benefits received by such land, as provided in chapters 170 and 173 or their successors.

(2) To assess, levy, and collect annual maintenance taxes based upon a footage or other equitable basis for the maintenance costs of those services requiring such maintenance.

(3) To levy and collect ad valorem taxes as may be required for general obligation or ad valorem debt service and for other purposes as may be authorized by vote of the electors.

Such special assessments and taxes shall be collected in the same manner and subject to the conditions as are special assessments and taxes of the county or, in the case of special assessments, may be collected as may be specifically authorized under chapters 170 and 173 and consistent with the authority granted by the ordinance establishing the district, as amended.

History.—s. 1, ch. 75-204; s. 1, ch. 77-174.

163.624 Special powers; borrowing.—

(1) The district board may borrow money, contract loans, and issue bonds as defined in s. 163.604 from time to time to finance the undertaking of any capital or other project for the purposes permitted by the ordinance creating the district and by the State Constitution and may pledge the funds, credit, property, and taxing power of the district for the payment of such debts and bonds as hereinafter provided.

(2)(a) Bonds issued under this part shall be authorized by resolution of the district board and, if required by the State Constitution, by affirmative vote of the electors of the district. Such bonds may be issued in one or more series and shall bear such date or dates; be payable upon demand or mature at such time or times; bear interest at such rate or rates; be in such denomination or denominations; be in such form, registered or not, with or without coupon; carry such conversion or registration privileges; have such rank or priority; be executed in such manner; be payable in such medium of payment, at such place or places; be subject to such terms of redemption, with or without premium; be secured in such manner; and have such other characteristics as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

(b) The district board shall determine the terms and manner of sale and distribution or other disposition of any and all bonds it may issue and shall have any and all powers necessary or convenient to such disposition.

(c) Any general obligation or ad valorem bond which is not a secondary pledge to an issue of special assessment or revenue bonds shall, in addition to being authorized by resolution, be further specifically approved by the local governing authority, individually or, if more than one, jointly, having jurisdiction over the area included in the district.

(d) The district board may establish and administer such sinking funds as it deems necessary or convenient for the payment, purchase, or redemption of any outstanding bonded indebtedness of the district.

(e) The district board may levy ad valorem taxes upon real and tangible personal property within the district as it deems necessary to make payment, including principal and interest, upon the general obligation and ad valorem bonded indebtedness of the district or into any sinking funds created under paragraph (d).

History.—s. 1, ch. 75-204.

163.631 Reports and reviews.—

(1) The district shall provide financial reports in such form and such manner as prescribed pursuant to chapter 218.

(2) The district shall prepare an annual report on its activities and shall furnish such to the Governor, the presiding officers of the Legislature, the Department of Community Affairs, the presiding officers of the governing bodies of the units of local, general-purpose government and any water management district created under chapter 373 within its boundaries, and, upon payment of a fee if such be established by the district, to any interested person. Such report shall include:

(a) A financial statement in the form provided for financial reporting to the state.

(b) The budget for the year in which the report is filed, including an outline of its programs and activities for such period.

(c) Any other information deemed necessary by the district or which the Department of Community Affairs may require under a rule established pursuant to the provisions of chapter 120.

(3) Prior to September 1 of each year, the district manager shall prepare and submit to the district board and to all units of local general-purpose government and any water management district created under chapter 373 having jurisdiction over lands in the district a proposed annual budget for the next fiscal year. Not later than October 1, the district board shall adopt its annual budget for the ensuing fiscal year.

(4) The district board shall make provision for an annual independent postaudit of its financial records. The Auditor General of the state is hereby instructed and authorized to make such audit pursuant to chapter 11.

(5)(a) The district board shall, at least 60 days prior to adoption, submit the proposed annual budget for the ensuing fiscal year and any long-term financial plan or program to the local governing authorities having jurisdiction over the area included in the district and shall further submit any other

plans or programs of the district for future operations.

(b) The local governing authorities may review the proposed annual budget and any long-term financial plan or program and make comments and recommendations thereon. Any other plans or programs of the district for future operations may be reviewed pursuant to the same procedure and to the same extent as future plans or programs of the local government pursuant to its policies.

History.—s. 1, ch. 75-204.

163.632 Disclosure of public financing.—

(1) The district shall take affirmative steps to provide for the full disclosure of information relating to the public financing and maintenance of improvements to real property pursuant to this act. Such information shall be provided by platted residential units and in such other formats as may be necessary.

(2) The petitioner and any subsequent purchaser for the sole purpose of resale shall provide for adequate financial disclosure of the method of public financing in order to allow comparative shopping by prospective purchasers.

(3) The Division of Florida Land Sales and Condominiums in the Department of Business Regulation shall assure that disclosures made pursuant to chapter 478 meet the requirements of this section.

(4) The Department of Community Affairs, in conjunction with the Division of Florida Land Sales and Condominiums, shall keep a current list of districts and their disclosures pursuant to this act and shall make such studies and reports and take such actions, including filing with the Department of Legal Affairs, as it deems necessary.

(5) The district shall not finance any improvement for which property purchasers have been charged by contract or otherwise and have paid such charge to the developer without a specific finding as to the amount of such purchasers' contribution or payment and payment by the developer of an amount equal to such contribution or payment to the district.

History.—s. 1, ch. 75-204; s. 1, ch. 77-174.

163.633 Special acts prohibited.—Pursuant to s. 11(a)(21), Art. III of the State Constitution, the Legislature hereby prohibits special laws pertaining to the future creation of independent special districts for any of the purposes set forth in this act.

History.—s. 2, ch. 75-204.

Note.—Chapter 75-204 passed both houses by the requisite three-fifths vote. See s. 11(a)(21), Art. III, State Const.

PART VI

ADVISORY COUNCIL ON INTERGOVERNMENTAL RELATIONS

163.701 Short title.—This part shall be known and may be cited as the "Advisory Council on Intergovernmental Relations Act."

History.—s. 1, ch. 77-340.

163.702 Findings and purpose.—

(1) The Legislature finds and declares that there is a need for an official body to:

(a) Involve local and state officials in an advisory capacity to the executive and legislative branches of state government.

(b) Study problems of the intergovernmental aspects of governmental structure, finance, functional performance, and relationships at the local, regional, state, and interstate levels.

(c) Recommend solutions to intergovernmental problems.

(d) Establish a regular system of reporting to state and local public officials on the progress of Florida and its political subdivisions toward meeting their intergovernmental responsibilities.

(e) Encourage and recommend methods of effective and efficient delivery of services at the state and local levels through services integration and combination of complementary services delivery functions.

(f) Assume such responsibilities for administering, coordinating, or providing intergovernmental services as may be required by the Legislature or Governor.

(g) Provide the Legislature, the Governor, and other interested parties with advice on intergovernmental concerns.

(2) It is the purpose of this part to improve the coordination and cooperation among the state and its local governments, other states, and the Federal Government through the establishment of a permanent Florida Advisory Council on Intergovernmental Relations.

History.—s. 1, ch. 77-340.

163.703 Council created.—There is hereby created a Florida Advisory Council on Intergovernmental Relations, hereafter referred to as the "council."

History.—s. 1, ch. 77-340.

163.704 Membership.—

(1) The council shall be composed of 17 members as follows:

(a) Four members of the Senate appointed by the President of the Senate.

(b) Four members of the House of Representatives appointed by the Speaker of the House of Representatives.

(c) Nine members appointed by the Governor from elected and appointed state and local officials and other interested citizens.

(2) Each member of the council who is a public officer shall perform the duties of a member of the council as additional duties required of him in his other official capacity.

(3) Legislative members shall be appointed to terms which correspond to their terms of office. All

other members shall be appointed to staggered 4-year terms. All members may be reappointed.

(4) The council shall elect a chairman from among its legislator members and a vice chairman and such other officers as it may deem necessary. The chairman and vice chairman shall serve for 1 year and may be reelected. If both the chairman and vice chairman are absent at any meeting, the voting members present shall elect a temporary chairman by a majority vote.

(5) If a representative of the counties or of the cities or a legislator ceases to be an officer or member of the unit he is appointed to represent, his membership on the commission shall terminate immediately and there will be a vacancy in the membership. Within 30 days, such vacancy shall be filled in the manner of the regular appointment, and the person so appointed shall serve only to the end of the unexpired term and until his successor is appointed and qualified.

(6) The presiding officers of the Legislature should be guided in their appointments by consideration of the legislators' expertise, interest, and experience, including legislative committee service in the field of intergovernmental relations.

(7) Nine of the members of the council shall constitute a quorum.

History.—s. 1, ch. 77-340; s. 1, ch. 78-241; s. 80, ch. 79-400.

163.705 Functions and duties.—

(1) The council is authorized to:

(a) Serve as a forum for the discussion and study of intergovernmental problems.

(b) To the extent not otherwise provided by law, evaluate on a continuous basis the interrelationships among local, regional, state, interstate, and federal agencies in the provision of public services to the citizens of Florida and, as appropriate, prepare studies and recommendations to improve organizational structure, operational efficiency, allocation of functional responsibilities, delivery of services, and related matters.

(c) Analyze the structure, functions, revenue requirements, and fiscal policies of Florida and its political subdivisions; conduct studies of economic, administrative, tax, and revenue matters for all levels of state government; and make recommendations for improvement.

(d) Examine proposed and existing federal and state programs, assess their impact upon Florida and its political subdivisions, and provide such assessments and recommendations, when appropriate, to the Legislature, the Governor, or any other group, public or private, whose activities affect intergovernmental relations.

(e) Encourage and, when appropriate, coordinate studies relating to intergovernmental relations conducted by universities; state, local, and federal agencies; and research and consulting organizations.

(f) Review the recommendations of national commissions studying federal, state, and local government relationships and problems and assess their possible application to Florida.

(g) Issue annual reports of its findings and recommendations to be transmitted to the Governor and the presiding officer of each house of the Legislature not less than 30 days prior to the convening of each regular session of the Legislature. Such reports shall set forth the reasons and supporting data for each recommendation and shall include draft legislation to implement such recommendations. Recommendations regarding economic and taxation issues shall be accompanied by supportive analyses of economic data. The council may issue special or interim reports on specific subjects as it may deem appropriate.

(h) Review and assess the work and recommendations of the federal Advisory Commission on Intergovernmental Relations and report such assessments to that body.

(2) The council is authorized to apply for, contract for, receive, and expend for its purposes any appropriations or grants from the state or its political subdivisions, the Federal Government, or any other source, public or private.

(3) As soon as practicable after the enactment or adoption of any new state program or increase in the level of services rendered in an existing program, which action substantially increases the expenditures of or reduces the revenue or revenue-producing ability of counties or municipalities, the council shall analyze such action. The council shall send its analysis and report thereon to the Governor and presiding officers of the Legislature no later than 30 days prior to the convening of the next regular legislative session. Each analysis shall include the council's recommendation and its identification of new sources of revenue required to fund the increased cost of, or to offset the revenue loss incurred because of, the action.

History.—ss. 1, 2, ch. 77-340; s. 2, ch. 78-241.

163.7055 Relationship to federal-state intergovernmental relations and activities.—The primary role of the council shall be to study the relationships between state and local government. To the extent that these relationships affect federal-state intergovernmental relations, the council is directed to coordinate and cooperate with the Executive Office of the Governor and any other agency or activity concerned with federal-state relationships.

History.—s. 1, ch. 77-340; s. 92, ch. 79-190.

163.706 Meetings, hearings, committees.—

(1) The council shall hold meetings at least semiannually at the call of the chairman and may meet at such other times as it deems necessary. The council may hold hearings from time to time on matters within its purview that it deems to be in the public interest. All meetings and hearings shall be open to the public and shall be conducted in accordance with the provisions of chapter 286.

(2) Each officer, board, commission, council, department, or agency of state government and each political subdivision of the state shall, when not inconsistent with any law, rule, or regulation regarding confidentiality, make available all facts, records, information, and data requested by the council and in all ways cooperate with the council in carrying out the functions and duties imposed by this part.

(3) The council may establish committees as it deems advisable and feasible, the membership of which may or may not be made up, in whole, from members of the council.

(4) The council shall promulgate rules of procedure governing its operations in accordance with the provisions of chapter 120.

History.—s. 1, ch. 77-340; s. 3, ch. 78-241.

163.707 Staff.—

(1) The council shall employ and set the compensation of an executive director, who shall serve at its pleasure. Within available funds, the executive director may employ and set the compensation of professional, technical, legal, or clerical staff as may be necessary, and may remove these personnel. The executive director, with the consent of the council, may acquire the services of consultants and enter into contracts on behalf of the council.

(2) The staff of the council shall be governed by the same rules as are the personnel of the Legislature and shall receive the same rights and benefits accruing to legislative personnel. The council staff shall be members of the Florida Retirement System, and the council shall make employer contributions for this purpose.

(3) Upon request of the council, the Joint Legislative Management Committee is directed to provide such office space and equipment as the council deems necessary.

History.—s. 1, ch. 77-340.

163.708 Finances.—

(1) A member of the council is not entitled to a salary for duties performed as a member of the council, except that the members, other than public officers, shall receive the per diem authorized for legislators, and each member is entitled to reimbursement for travel and other necessary expenses incurred in the performance of official duties.

(2) Political subdivisions of the state are authorized to appropriate funds to the council to share in the cost of operations.

(3) Any requests by the Legislature for the performance of specific functions or studies requiring additional staff or expenses beyond the basic annual appropriations shall be accompanied by funds for such purposes.

(4) After the initial appropriation for the first year, the funding of this council will be part of the continuing legislative appropriation.

History.—s. 1, ch. 77-340; s. 81, ch. 79-400.

TITLE XII

MUNICIPALITIES

CHAPTER 165

FORMATION OF LOCAL GOVERNMENTS

165.011 Short title.—This chapter shall be known and may be cited as the "Formation of Local Governments Act."

History.—s. 1, ch. 74-192.

165.021 Purpose.—The purpose of this act is to provide standards, direction, and procedures for the formation of local governmental units in this state and the provision of local governmental services so as to:

(1) Allow orderly patterns of urban growth and land use.

(2) Assure adequate quality and quantity of local public services.

(3) Insure financial integrity of units of local government.

(4) Eliminate or reduce avoidable and undesirable differentials in fiscal capacity among neighboring local governmental jurisdictions.

(5) Promote equity in the financing of local government services.

History.—s. 1, ch. 74-192.

165.022 Preemption; effect on special laws.—It is further the purpose of this act to provide viable and usable general law standards and procedures for forming and dissolving municipalities and special districts in lieu of any procedure or standards now provided by general or special law. The provisions of this act shall be the exclusive procedure pursuant to general law for forming or dissolving municipalities and special districts in this state except in those counties operating under a home rule charter which provides for an exclusive method as specifically authorized by s. 6(e), Art. VIII of the State Constitution. Any provisions of a general or special law existing on July 1, 1974 in conflict with the provisions of this act shall not be effective to the extent of such conflict.

History.—s. 1, ch. 74-192.

165.031 Definitions.—The following terms and phrases, when used in this chapter, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Unit of local government" means any local general purpose government or special district.

(2) "Local general purpose government" means a county, municipality, or consolidated city-county government.

(3) "County" means a political subdivision of the state established pursuant to s. 1, Art. VIII of the State Constitution.

(4) "Municipality" means a municipality created pursuant to general or special law authorized or recognized pursuant to s. 2 or s. 6, Art. VIII of the State Constitution.

(5) "Special district" means a local unit of special government created pursuant to general or special law for the purposes of performing prescribed, specialized functions within limited boundaries.

(6) "Department" means the Department of Community Affairs.

(7) "Formation" means any one of the four following activities:

(a) "Incorporation"—The establishment of a municipality.

(b) "Creation"—The establishment of a special district.

(c) "Dissolution"—The dissolving of the corporate statutes of a municipality or special district.

(d) "Merger"—The merging of two or more municipalities with each other and with any unincorporated areas authorized pursuant to this act to form a new municipality; the merging of one or more municipalities or special districts, in any combination thereof, with each other; or the merging of one or more counties with one or more special districts.

(8) "Service delivery" means any mechanism used by a unit of local government to provide governmental services.

(9) "Newspaper of general circulation" means a newspaper printed in the language most commonly

spoken in the area within which it circulates, which is readily available for purchase by all inhabitants in its area of circulation, but does not include a newspaper intended primarily for members of a particular professional or occupational group, a newspaper whose primary function is to carry legal notices, or a newspaper that is given away primarily to distribute advertising.

(10) "Parties affected" means any person owning property or residing either in a municipality or special district proposing a formation or in the territory that is proposed for a formation or any governmental unit with jurisdiction over such area.

(11) "Qualified voter" means any person registered to vote in accordance with law.

(12) "Sufficiency of petition" means the verification of the signatures and addresses of all signers of a petition with the voting list maintained by the county supervisor of elections and certification that the number of valid signatures represents the required percentage of the total number of qualified voters in the area affected by a proposal pursuant to this chapter.

History.—s. 1, ch. 74-192.

165.041 Formation procedures; incorporation, creation, and merger.—

(1) A charter for incorporation of a municipality, except in case of a merger which is adopted as otherwise provided herein, shall be adopted only by a special act of the Legislature upon determination that the standards herein provided have been met.

(2) A charter for creation of a special district shall be adopted only by special act of the legislature or by ordinance of a county or municipal governing body having jurisdiction over the area affected.

(3)(a) A charter for merger of two or more municipalities and associated unincorporated areas may also be adopted by passage of a concurrent ordinance by the governing bodies of each municipality affected, approved by a vote of the qualified voters in each area affected.

(b) The ordinance shall provide for:

1. The charter and its effective date.
2. The financial or other adjustments required.
3. A referendum for separate majorities by each unit or area to be affected.
4. The date of election, which should be the next regularly scheduled election or a special election held prior to such election, if approved by a majority of the members of the governing body of each governmental unit affected, but no sooner than 30 days after passage of the ordinance.

(c) Notice of the election shall be published at least once a week for the 4 successive weeks immediately prior to the election, in a newspaper of general circulation in the area to be affected. Such notice shall give the time and places for the election and a description of the area to be included in the municipality, with such description to be in metes and bounds and to include a map to show clearly the area to be covered by the municipality.

(4) The merger of one or more municipalities or counties with special districts, or of two or more special districts, may also be adopted by passage of a concurrent ordinance or, in the case of special districts, resolution by the governing bodies of each unit to be affected.

(5)(a) Initiation of procedures for an incorporation or merger may be done either by adoption of a resolution by the governing body of an area to be affected or by a petition of 10 percent of the qualified voters in the area.

(b) If a petition has been filed with the clerks of the governing bodies concerned, the governing bodies shall immediately undertake a study of the feasibility of the formation proposal and shall, within 6 months, either adopt an ordinance under subsection (3) or subsection (4) or reject the petition, specifically stating the facts upon which the rejection is based.

(c) The purpose of this subsection is to provide broad citizen involvement in both initiating and developing their local government; therefore, establishment of appropriate citizen advisory committees, as well as other mechanisms for citizen involvement, by the governing bodies of the units affected is specifically authorized and encouraged.

History.—s. 1, ch. 74-192.

165.051 Dissolution procedures.—

(1) The charter of any existing municipality or special district may be revoked and the municipal or special district corporation dissolved by either:

(a) A special act of the Legislature; or

(b) An ordinance of the governing body of the municipality or special district, approved by a vote of the qualified voters.

(2) If a vote of the qualified voters is required, the governing body of the municipality or special district or, if the municipal or special district governing body does not act within 30 days, the governing body of the county or counties in which the municipality or special district is located shall set the date of the election, which shall be the next regularly scheduled election or a special election held prior to such election, if approved by a majority of the members of the governing body of each governmental unit affected, but no sooner than 30 days after passage of the ordinance. Notice of the election shall be published at least once a week for the 4 successive weeks prior to the election in a newspaper of general circulation in the municipality or special district.

History.—s. 1, ch. 74-192.

165.052 Special dissolution procedures.—

(1) The Secretary of State by proclamation shall declare inactive any municipality or special district in this state upon a report being filed by the department which shall show that such municipality or special district is no longer active, based upon a finding:

(a) That the municipality has not conducted an election for membership in its legislative body within the 4 years immediately preceding, or as otherwise provided by law; or

(b) That the special district has not had appointed or elected a governing body within the 4 years immediately preceding or as otherwise provided by law or has not operated within the 2 years immediately preceding; and

(c) That a notice of the proposed proclamation has been published once a week for 4 weeks in a newspaper of general circulation within the county

wherein the territory of the municipality or special district is located, stating the name of said municipality or special district, the law under which it was organized and operating, a general description of the territory included in said municipality or special district, and stating that any objections to the proposed proclamation or to any debts of said municipality or special district shall be filed not later than 60 days following the date of last publication with the department; and

(d) That 60 days have elapsed from the last publication date of the notice of proposed proclamation and no sustained objections have been filed.

(2) The state agency charged with collecting financial information from municipalities and special districts shall report to the Department of State and the Department of Community Affairs any municipality or special district which has failed to file a report within the time set by law.

(3) If any municipality or special district declared inactive pursuant to this section owes any debt at the time of proclamation, any property or assets of such unit, or which belonged thereto at the time of such proclamation, shall be subject to legal process for payment of such debt. After the payment of all the debts of said inactive municipal or special district corporation, the remainder of its property or assets shall escheat to the county wherein located. If, however, it shall be necessary, in order to pay any such debt, to levy any tax or taxes on the property in the territory or limits of the inactive municipality or special district, the same may be assessed and levied by order of the county commissioners of the county wherein the same is situated, and shall be assessed by the county property appraiser and collected by the county tax collector. The proceedings in the assessment, collection, receipt, and disbursements of such taxes shall be like the proceedings concerning county taxes as far as applicable.

(4) Any special law authorizing the incorporation or creation, or relating only to the powers or duties, of any municipality or special district proclaimed inactive hereunder shall be reported by the Governor to the presiding officers of both houses of the Legislature. The proclamation of inactive status shall be sufficient notice as required by s. 10, Art. III of the State Constitution to authorize the Legislature to repeal any special laws so reported.

History.—s. 1, ch. 74-192; s. 1, ch. 77-102; s. 1, ch. 77-174.

165.061 Standards for incorporation, creation, merger, and dissolution.—

(1) The incorporation of a new municipality, other than through merger of existing municipalities, must meet the following conditions in the area proposed for incorporation:

(a) It must be compact and contiguous and amenable to separate municipal government.

(b) It must have a total population, as determined in the latest official state census, special census, or estimate of population, in the area proposed to be incorporated of at least 1,500 persons in counties with a population of less than 50,000, and of at least 5,000 population in counties with a population of more than 50,000.

(c) It must have an average population density of at least 1.5 persons per acre or have extraordinary conditions requiring the establishment of a municipal corporation with less existing density.

(d) It must have a minimum distance of any part of the area proposed for incorporation from the boundaries of an existing municipality within the county of at least 2 miles or have an extraordinary natural boundary which requires separate municipal government.

(e) It must have a proposed municipal charter which:

1. Prescribes the form of government and clearly defines the responsibility for legislative and executive functions.

2. Does not prohibit the legislative body of the municipality from exercising its powers to levy any tax authorized by the Constitution or general law.

(2) The incorporation of a new municipality through merger of existing municipalities and associated unincorporated areas must meet the following conditions:

(a) The area proposed for incorporation must be compact and contiguous and susceptible to urban services.

(b) Any unincorporated area to be included must meet the standards provided in s. 171.042, if available.

(c) The plan for merger and incorporation must provide for an equitable arrangement in relation to bonded indebtedness and the status and pension rights of employees of each governmental unit proposed to be merged.

(3) The creation of a special district must be the best alternative available for delivering the service and be amenable to separate special district government if such district is to have a governing body other than a county or municipal governing body.

(4) The dissolution of a municipality or special district must meet the following conditions:

(a) The municipality to be dissolved must not be substantially surrounded by other municipalities.

(b) The county or another municipality must be demonstrably able to provide necessary services to the municipal or special district area proposed for dissolution.

(c) An equitable arrangement must be made in relation to bonded indebtedness and vested rights of employees of the municipality or special district to be dissolved.

History.—s. 1, ch. 74-192.

165.071 Financial allocations.—

(1) The incorporation of a new municipality in previously unincorporated lands shall provide for assumption of the existing governmental indebtedness or property specially benefiting that area, if any, the fair value of such and the manner of transfer and financing.

(2) The government formed by merger of existing municipalities or special districts shall assume all indebtedness of, and receive title to all property owned by, the preexisting municipalities or special districts. The proposed charter, or merger agreement in the case of special districts, shall provide for the determination of the proper allocation of the indebtedness so assumed and the manner in which said debt shall be retired.

(3) The dissolution of a municipal or special dis-

trict government shall transfer the title to all property owned by the preexisting municipal or special district government to the county, which shall also assume all indebtedness of the preexisting municipality or special district, unless otherwise provided in the dissolution plan. The county is specifically authorized to levy and collect ad valorem taxes in the same manner as other county taxes from the area of the preexisting municipality or special district for repayment of any assumed indebtedness through a special purpose taxing district created for such purpose.

History.—s. 1, ch. 74-192.

165.081 Judicial review.—Any special law or ordinance enacted, and any dismissal of petition made, pursuant to this chapter shall be reviewable by certiorari. No appeal may be brought after the effective date of an incorporation or dissolution.

History.—s. 1, ch. 74-192; s. 3, ch. 78-95.

165.091 Department of Community Affairs; general powers and duties.—

(1) The department shall:

(a) Conduct studies of county, municipal, and special district formation and boundary reorganization problems throughout the state.

(b) Conduct studies relating to the need for, and the feasibility of, formation and service delivery adjustments that will strengthen the capability of local governments to provide and maintain essential public services in a fiscally equitable manner.

(c) Conduct studies relating to the fiscal conditions of units of local government.

(2) On or before July 1 of each year, the department shall develop and publish a general census of local government with respect to each county, municipality, and special district in the state. Information in the general census of local government shall be developed from any information maintained by any state agency and shall be consistent with standards developed by the United States Bureau of the Census and with s. 23.0115. Information in the census shall be summarized and organized to facilitate easy comparisons of major financial, economic, and demographic information for similar units of local government.

History.—s. 1, ch. 74-192; s. 3, ch. 79-183.

165.092 Local government service delivery; special studies.—

(1) The department shall, in consultation with the appropriate state and local agencies, conduct a continuing study of various governmental activities being conducted, and services being provided, by local governments in this state.

(2) The study of any function or activity shall consider the appropriate relationships of local-state-federal activity in the area and shall further consider the following criteria:

(a) The geographic and legal adequacy of the local governmental response;

(b) The degree of economic and social impact beyond the boundary of the local governmental unit involved in the activity or function;

(c) The degree of citizen access and control necessary for appropriate governmental response;

(d) The management and technical capability of the local governmental units involved in the function or activity; and

(e) The degree of economic efficiency and fiscal equity involved in the function or activity and any proposals for change.

(3) When a specific study of an activity or function is undertaken by the department, it shall notify the legislative committees and state agencies with jurisdiction over the subject matter, representatives of the state organizations of various local governmental units concerned, and any other person who has filed a request for such notification. The department shall further establish an advisory committee to review the study outline and any results or recommendations developing from such study.

(4) On or before February 1 of each year, the department shall report to the Governor and the presiding officers of both houses the status of the continuing study and any specific studies undertaken pursuant to this section.

History.—s. 1, ch. 74-192.

165.093 All state and local agencies to cooperate in administration of chapter.—The department is empowered to call on any state, county, special district, or municipal agency, department, bureau, or board for any information or assistance which may, in its judgment, be of assistance in administering, or preparing for the administration of, this chapter, and such state, county, special district, or municipal agency, department, bureau, or board is hereby authorized, directed, and required to furnish such information or assistance.

History.—s. 1, ch. 74-192.

CHAPTER 166

MUNICIPALITIES

PART I GENERAL PROVISIONS (ss. 166.011-166.043)

PART II MUNICIPAL BORROWING (ss. 166.101-166.141)

PART III MUNICIPAL FINANCE AND TAXATION (ss. 166.201-166.261)

PART IV EMINENT DOMAIN (ss. 166.401-166.411)

PART I

GENERAL PROVISIONS

166.011 Short title.—This chapter shall be known and may be cited as the "Municipal Home Rule Powers Act."

History.—s. 1, ch. 73-129.

166.021 Powers.—

(1) As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

(2) "Municipal purpose" means any activity or power which may be exercised by the state or its political subdivisions.

(3) The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:

(a) The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;

(b) Any subject expressly prohibited by the Constitution;

(c) Any subject expressly preempted to state or county government by the Constitution or by general law; and

(d) Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.

(4) The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the Constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the Constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. However, nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect the exercise of extraterritorial powers or which affect an area which includes lands within and without a municipality or any changes in a special law or municipal charter which affect the creation or existence of a municipality, the terms of elected officers and the manner of their election, the distribution of powers among elected officers, matters prescribed by the charter relating to appointive boards, any change in the form of government, or any rights of municipal employees, without approval by referendum of the electors as provided in s. 166.031. Any other limitation of power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed.

(5) All existing special acts pertaining exclusively to the power or jurisdiction of a particular municipality except as otherwise provided in subsection (4) shall become an ordinance of that municipality on the effective date of this act, subject to modification or repeal as other ordinances.

History.—s. 1, ch. 73-129; s. 1, ch. 77-174.

166.031 Charter amendments.—

(1) The governing body of a municipality may, by ordinance, or the electors of a municipality may, by petition signed by 10 percent of the registered electors, submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter except that part describing the boundaries of such municipality. The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose.

(2) Upon adoption of an amendment to the charter of a municipality by a majority of the electors voting in a referendum upon such amendment, the governing body of said municipality shall have the amendment incorporated into the charter and shall file the revised charter with the Department of State, at which time the revised charter shall take effect.

(3) A municipality may amend its charter pursuant to this section notwithstanding any charter provisions to the contrary. This section shall be supplemental to the provisions of all other laws relating to the amendment of municipal charters and is not intended to diminish any substantive or procedural power vested in any municipality by present law. A municipality may, by ordinance and without referendum, redefine its boundaries to include only those lands previously annexed and shall file said redefinition with the Department of State pursuant to the provisions of subsection (2).

(4) There shall be no restrictions by the municipality on any employee's or employee group's political activity, while not working, in any referendum changing employee rights.

(5) A municipality may, by unanimous vote of the governing body, abolish municipal departments provided for in the municipal charter and amend provisions or language out of the charter which has been judicially construed to be contrary to either the state or federal constitution.

History.—s. 1, ch. 73-129.

166.032 Electors.—Any person who is a resident of a municipality, who has qualified as an elector of this state, and who registers in the manner prescribed by general law and ordinance of the municipality shall be a qualified elector of the municipality.

History.—s. 1, ch. 73-129.

166.041 Procedures for adoption of ordinances and resolutions.—

(1) As used in this section, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(a) "Ordinance" means an official legislative action of a governing body, which action is a regulation of a general and permanent nature and enforceable as a local law.

(b) "Resolution" means an expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body.

(2) Each ordinance or resolution shall be introduced in writing and shall embrace but one subject and matters properly connected therewith. The subject shall be clearly stated in the title. No ordinance shall be revised or amended by reference to its title only. Ordinances to revise or amend shall set out in full the revised or amended act or section or subsection or paragraph of a section or subsection.

(3)(a) Except as provided in paragraph (c), a proposed ordinance may be read by title, or in full, on at least 2 separate days and shall, at least 7 days prior to adoption, be noticed once in a newspaper of general circulation in the municipality. The notice of proposed enactment shall state the date, time, and place of the meeting, the title or titles of proposed ordinances, and the place or places within the municipality where such proposed ordinances may be inspected by the public. Said notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(b) The governing body of a municipality may, by a two-thirds vote, enact an emergency ordinance without complying with the requirements of paragraph (a) of this subsection. However, no emergency ordinance shall be enacted which enacts or amends a land use plan or which rezones private real property.

(c) Enactment of ordinances initiated by the governing body or its designee which rezone private real property shall be enacted pursuant to the following procedure:

1. In cases in which the proposed rezoning involves less than 5 percent of the total land area of the municipality, the governing body shall direct the clerk of the governing body to notify by mail each real property owner whose land the municipality will rezone by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. The notice shall state the substance of the proposed ordinance as it affects that property owner and shall set a time and place for one or more public hearings on such ordinance. Such notice shall be given at least 30 days prior to the date set for the public hearing, and a copy of such notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the governing body. The governing body shall hold a public hearing on the proposed ordinance and may, upon the conclusion of the hearing, immediately adopt the ordinance.

2. In cases in which the proposed ordinance deals with more than 5 percent of the total land area of the municipality, the governing body shall provide for public notice and hearings as follows:

a. The local governing body shall hold two advertised public hearings on the proposed ordinance. Both hearings shall be held after 5 p.m. on a weekday, and the first shall be held approximately 7 days after the day that the first advertisement is published. The second hearing shall be held approximately 2 weeks after the first hearing and shall be advertised approximately 5 days prior to the public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing.

b. The required advertisements shall be no less than one-quarter page in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the municipality and of general interest and readership in the community, not one of limited subject matter, pursuant to chapter 50. It is the legislative intent that, whenever possible, the advertisement shall appear in a newspaper that is published at least 5 days a week unless the only newspaper in the community is published less than 5 days a week. The advertisement shall be in the following form:

NOTICE OF ZONING CHANGE

The (name of local governmental unit) proposes to rezone the land within the area shown in the map in this advertisement.

A public hearing on the rezoning will be held on (date and time) at (meeting place).

The advertisement shall also contain a geographic location map which clearly indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the area.

c. In lieu of publishing the advertisement set out in this paragraph, the municipality may mail a notice to each person owning real property within the area covered by the ordinance. Such notice shall clearly explain the proposed ordinance and shall notify the person of the time, place, and location of both public hearings on the proposed ordinance.

(4) A majority of the members of the governing body shall constitute a quorum. An affirmative vote of a majority of a quorum present shall be necessary to enact any ordinance or adopt any resolution; except that two-thirds of the membership of the board is required to enact an emergency ordinance. On final passage, the vote of each member of the governing body voting shall be entered on the official record of the meeting. All ordinances or resolutions passed by the governing body shall become effective 10 days after passage or as otherwise provided therein.

(5) Every ordinance or resolution shall, upon its final passage, be recorded in a book kept for that purpose and shall be signed by the presiding officer and the clerk of the governing body.

(6) The procedure as set forth herein shall constitute a uniform method for the adoption and enactment of municipal ordinances and resolutions and shall be taken as cumulative to other methods now provided by law for adoption and enactment of municipal ordinances and resolutions. By future ordinance or charter amendment, a municipality may specify additional requirements for the adoption or enactment of ordinances or resolutions or prescribe procedures in greater detail than contained herein. However, a municipality shall not have the power or authority to lessen or reduce the requirements of this section or other requirements as provided by general law.

History.—s. 1, ch. 73-129; s. 2, ch. 76-155; s. 2, ch. 77-331.

166.042 Legislative intent.—

(1) It is the legislative intent that the repeal by chapter 73-129, Laws of Florida, of chapters 167, 168, 169, 172, 174, 176, 178, 181, 183, and 184 of Florida Statutes shall not be interpreted to limit or restrict the powers of municipal officials, but shall be interpreted as a recognition of constitutional powers. It is, further, the legislative intent to recognize residual constitutional home rule powers in municipal government, and the Legislature finds that this can best be accomplished by the removal of legislative direction from the statutes. It is, further, the legislative intent that municipalities shall continue to exercise all powers heretofore conferred on municipalities by the chapters enumerated above, but shall hereafter exercise those powers at their own discretion, subject only to the terms and conditions which they choose to prescribe.

(2) Nothing contained in s. 5, chapter 73-129, Laws of Florida, shall be interpreted to impair any claim against a municipality or to affect the validity of any bonds or obligations issued under authority of any of the chapters enumerated in subsection (1).

History.—s. 5, ch. 73-129.

166.0425 Sign ordinances.—Nothing in chapter 78-8, Laws of Florida, shall be deemed to supersede the rights and powers of municipalities and counties to establish sign ordinances; however, such ordinances shall not conflict with any applicable state or federal laws.

History.—s. 5, ch. 78-8.
Note.—Also published at s. 125.0102.

166.043 Ordinances and rules imposing price controls; findings required; procedures.—

(1)(a) Except as hereinafter provided, no county, municipality, or other entity of local government shall adopt or maintain in effect an ordinance or a rule which has the effect of imposing price controls upon a lawful business activity which is not franchised by, owned by, or under contract with, the governmental agency, unless specifically provided by general law.

(b) The provisions of this section shall not prevent the enactment by local governments of public service rates otherwise authorized by law, including water, sewer, solid waste, public transportation, taxicab, or port rates.

(2) No law, ordinance, rule, or other measure which would have the effect of imposing controls on rents shall be adopted or maintained in effect except as provided herein and unless it is found and determined, as hereinafter provided, that such controls are necessary and proper to eliminate an existing housing emergency which is so grave as to constitute a serious menace to the general public.

(3) Any law, ordinance, rule, or other measure which has the effect of imposing controls on rents shall terminate and expire within 1 year and shall not be extended or renewed except by the adoption of a new measure meeting all the requirements of this section.

(4) Notwithstanding any other provisions of this section, no controls shall be imposed on rents for any accommodation used or offered for residential purposes as a seasonal or tourist unit, as a second housing unit, or on rents for dwelling units located in luxury apartment buildings. For the purposes of this section, a luxury apartment building is one wherein on January 1, 1977 the aggregate rent due on a monthly basis from all dwelling units as stated in leases or rent lists existing on that date divided by the number of dwelling units exceeds $250.

(5) No municipality, county, or other entity of local government shall adopt or maintain in effect any law, ordinance, rule, or other measure which would have the effect of imposing controls on rents unless:

(a) Such measure is duly adopted by the governing body of such entity of local government, after notice and public hearing, in accordance with all applicable provisions of the Florida and United States Constitutions, the charter or charters governing such entity of local government, this section and any other applicable laws.

(b) Such governing body makes and recites in such measure its findings establishing the existence

in fact of a housing emergency so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency.

(c) Such measure is approved by the voters in such municipality, county, or other entity of local government.

(6) In any court action brought to challenge the validity of rent control imposed pursuant to the provisions of this section, the evidentiary effect of any findings or recitations required by subsection (5) shall be limited to imposing upon any party challenging the validity of such measure the burden of going forward with the evidence, and the burden of proof, that is, the risk of nonpersuasion, shall rest upon any party seeking to have the measure upheld.

History.—ss. 1-6, ch. 77-50; s. 82, ch. 79-400.

PART II

MUNICIPAL BORROWING

166.101 Definitions.—As used in this part, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(1) The term "bond" includes bonds, debentures, notes, certificates of indebtedness, mortgage certificates, or other obligations or evidences of indebtedness of any type or character.

(2) The term "general obligation bonds" means bonds which are secured by, or provide for their payment by, the pledge, in addition to those special taxes levied for their discharge and such other sources as may be provided for their payment or pledged as security under the ordinance or resolution authorizing their issuance, of the full faith and credit and taxing power of the municipality and for payment of which recourse may be had against the general fund of the municipality.

(3) The term "ad valorem bonds" means bonds which are payable from the proceeds of ad valorem taxes levied on real and tangible personal property.

(4) The term "revenue bonds" means obligations of the municipality which are payable from revenues derived from sources other than ad valorem taxes on real or tangible personal property and which do not pledge the property, credit, or general tax revenue of the municipality.

(5) The term "improvement bonds" means special obligations of the municipality which are payable solely from the proceeds of the special assessments levied for an assessable project.

(6) The term "refunding bonds" means bonds issued to refinance outstanding bonds of any type and the interest and redemption premium thereon. Refunding bonds shall be issuable and payable in the same manner as the refinanced bonds, except that no approval by the electorate shall be required unless required by the state constitution.

(7) The term "governing body" means the council, commission, or other board or body in which the general legislative powers of the municipality shall be vested.

(8) The term "project" means a governmental undertaking approved by the governing body and includes all property rights, easements, and franchises relating thereto and deemed necessary or convenient for the construction, acquisition or operation thereof, and embraces any capital expenditure which the governing body of the municipality shall deem to be made for a public purpose including the refunding of any bonded indebtedness which may be outstanding on any existing project which is to be improved by means of a new project.

History.—s. 1, ch. 73-129.

166.111 Authority to borrow.—The governing body of every municipality may borrow money, contract loans, and issue bonds as defined in s. 166.101 from time to time to finance the undertaking of any capital or other project for the purposes permitted by the State Constitution and may pledge the funds, credit, property, and taxing power of the municipality for the payment of such debts and bonds.

History.—s. 1, ch. 73-129.

166.121 Issuance of bonds.—

(1) Bonds issued under this part shall be authorized by resolution or ordinance of the governing body and, if required by the State Constitution, by affirmative vote of the electors of the municipality. Such bonds may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, registered or not, with or without coupon, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, be secured in such manner, and have such other characteristics as may be provided by such resolution or ordinance or trust indenture or mortgage issued pursuant thereto.

(2) The governing body of a municipality shall determine the terms and manner of sale and distribution or other disposition of any and all bonds it may issue and shall have any and all powers necessary or convenient to such disposition.

History.—s. 1, ch. 73-129.

166.122 Establishment of sinking funds.—The governing body of a municipality may establish and administer such sinking funds as it deems necessary or convenient for the payment, purchase, or redemption of any outstanding bonded indebtedness of the municipality.

History.—s. 1, ch. 73-129.

166.131 Levy of taxes for payment of debt.—The governing body of a municipality may levy ad valorem taxes upon real and tangible personal property within the municipality as it deems necessary to make payment, including principal and interest, upon the general obligation and ad valorem bonded

indebtedness of the municipality or into any sinking funds created under s. 166.122.

History.—s. 1, ch. 73-129.

166.141 Full authority for issuance of bonds.—This part shall be full authority for the issuance of bonds authorized herein.

History.—s. 1, ch. 73-129.

PART III

MUNICIPAL FINANCE AND TAXATION

166.201 Taxes and charges.—A municipality may raise, by taxation and licenses authorized by the Constitution or general law, or by user charges or fees authorized by ordinance, amounts of money which are necessary for the conduct of municipal government and may enforce their receipt and collection in the manner prescribed by ordinance not inconsistent with law.

History.—s. 1, ch. 73-129.

166.211 Ad valorem taxes.—

(1) Pursuant to s. 9, Art. VII of the State Constitution, a municipality is hereby authorized, in a manner not inconsistent with general law, to levy ad valorem taxes on real and tangible personal property within the municipality in an amount not to exceed 10 mills, exclusive of taxes levied for the payment of bonds and taxes levied for periods of not longer than 2 years and approved by a vote of the electors.

(2) The assessment and collection of municipal ad valorem taxes shall be performed by appropriate officers as prescribed by general law. At any time millage rates are published for the purpose of giving notice, the rates shall be stated in terms of dollars and cents for every thousand dollars of assessed property value.

History.—s. 1, ch. 73-129.

166.221 Regulatory fees.—A municipality may levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter.

History.—s. 1, ch. 73-129.

166.231 Municipalities; public service tax.—

(1)(a) A municipality may levy a tax on the purchase of electricity, metered or bottled gas (natural liquefied petroleum gas or manufactured), water service, telephone service, and telegraph service. The tax shall be levied only upon purchases within the municipality and shall not exceed 10 percent of the payments received by the seller of the taxable item from the purchaser for the purchase of such service. Municipalities imposing a tax on the purchase of cable television service as of May 4, 1977, may continue to levy such tax to the extent necessary to meet all obligations to or for the benefit of holders of bonds or certificates, which were issued prior to May 4, 1977.

(b) The tax imposed by paragraph (a) shall not be applied against any fuel adjustment charge, and such charge shall be separately stated on each bill. "Fuel adjustment charge" shall mean all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.

(2) Services competitive with those enumerated in subsection (1), as defined by ordinance, shall be taxed on a comparable base at the same rates. However, fuel oil shall be taxed at a rate not to exceed 4 cents per gallon. However, for municipalities levying less than the maximum rate allowable in subsection (1), the maximum tax on fuel oil shall bear the same proportion to 4 cents which the tax rate levied under subsection (1) bears to the maximum rate allowable in subsection (1).

(3) The tax on electricity authorized under subsection (1) shall not be levied and collected on the first 50 kilowatt hours per month purchased for residential use beginning October 1, 1978. Such exemption shall apply to each separate residential unit, regardless of whether such unit is on a separate or central meter, and shall be passed on to each individual tenant. The electric utility shall compute the amount of the tax loss resulting from such exemption for each month and:

(a) Deduct this amount from the tax due the state for sales and use tax under chapter 212; and

(b) Remit this amount to the municipality in accordance with subsection (6).

(4) The purchase of natural gas or fuel oil by a public or private utility, either for resale or for use as fuel in the generation of electricity, or the purchase of fuel oil or kerosene for use as an aircraft engine fuel or propellant or for use in internal combustion engines shall be exempt from taxation hereunder.

(5) A municipality may exempt from taxation hereunder the purchase of the taxable items by the United States Government, the State of Florida, or any other public body as defined in s. 1.01, and shall exempt purchases by any recognized church in this state for use exclusively for church purposes.

(6) The tax authorized hereunder shall be collected by the seller of the taxable item from the purchaser at the time of the payment for such service. The seller shall remit the taxes collected to the municipality in the manner prescribed by ordinance.

(7) A municipality shall notify in writing any known seller of items taxable hereunder of any change in the boundaries of the municipality or in the rate of taxation.

History.—s. 1, ch. 73-129; ss. 1, 2, ch. 74-109; s. 1, ch. 77-251; s. 1, ch. 77-174; s. 4, ch. 78-299; s. 1, ch. 78-400.

166.232 Municipalities; public service tax; physical unit base option.—

(1) At the discretion and option of the local tax authority, the tax authorized under s. 166.231 may be levied on a physical unit basis. The tax on the purchase of electricity may be based upon the number of kilowatt hours purchased; the tax on the purchase of metered or bottled gas (natural liquefied petroleum gas or manufactured) may be based on the number of cubic feet purchased; the tax on the purchase of fuel oil and kerosene may be based on the number of gallons purchased; and the tax on the purchase of water service may be based on the number of gallons purchased.

(2) In the event that a municipality shall choose the option provided in this section to tax on a physical unit basis, the tax on electricity authorized under s. 166.231 shall not be levied and collected on the first 50 kilowatt hours per month purchased for residential use. Such exemption shall apply to each separate residential unit, regardless of whether such unit is on a separate or central meter, and shall be passed on to each individual tenant.

(3) In exercising its option pursuant to this section, each municipality levying a tax pursuant to this section shall implement a new tax rate structure and tax base in accordance with this act. The new tax rates shall apply to prior purchases of service if the purchases were billed during the month of implementation and thereafter. The shift in the tax rate and tax base for electricity, metered or bottled gas, fuel oil, kerosene, and water shall be accomplished in the following manner:

(a) Each municipality levying the tax shall, prior to converting to unit-based rates, compute the amount of tax it received from each source for the most recent 12 months for which such data is available.

(b) The amount determined under paragraph (a) shall be divided by the number of units purchased and taxed for the same period of time used in paragraph (a).

(c) One hundred five percent of the resulting figure rounded to no more than four decimal places shall be the maximum amount per unit which the municipality may levy upon converting to unit-based rates. However, during the year of conversion to a physical unit tax, the municipality may adjust its rates to ensure that revenues derived from the tax shall equal 105 percent of the revenues derived in the immediately preceding year. In those years subsequent to the year of conversion to a physical unit tax, the municipality may amend its tax rate by ordinance.

History.—s. 5, ch. 78-299.

166.241 Fiscal years, financial reports, appropriations, and audits.—

(1) Each municipality shall report its finances annually as provided by general law.

(2) Each municipality shall make provision for establishing a fiscal year beginning October 1 of each year and ending September 30 of the following year.

(3) The governing body of each municipality shall make appropriations for each fiscal year which, in any 1 year, shall not exceed the amount to be received from taxation or other revenue sources. It shall be unlawful for any officer of a municipal government to draw money from the treasury except in pursuance of appropriation made by law.

(4) Each municipality shall make provision for annual postaudit of its financial accounts in accordance with the rules of the Auditor General. It is the legislative intent that the rules of the Auditor General impose substantially the same requirements as formerly contained in s. 167.611.

History.—s. 1, ch. 73-129.

166.251 Service fee for dishonored check.— The governing body of a municipality may adopt a service fee of up to $5 for the collection of a dishonored check, draft, or other order for the payment of money to a municipal official or agency. The service fee shall be in addition to all other penalties imposed by law. Proceeds from this fee, if imposed, shall be retained by the collector of the fee.

History.—s. 2, ch. 75-56; s. 31, ch. 79-164.

166.261 Municipalities; investments.—

(1) Except when another procedure is prescribed by law or by ordinance as to particular funds, the governing body of each municipality shall, by resolutions to be adopted from time to time, invest and reinvest any surplus public funds in its control or possession in:

(a) The Local Government Surplus Funds Trust Fund;

(b) Negotiable direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States Government at the then prevailing market price for such securities;

(c) Interest-bearing time deposits or savings accounts in banks organized under the laws of this state, in national banks organized under the laws of the United States and doing business and situated in this state, in savings and loan associations which are under state supervision, or in federal savings and loan associations located in this state and organized under federal law and federal supervision, provided that any such deposits are secured by collateral as may be prescribed by law; or

(d) Obligations of the Federal Farm Credit Banks, Federal Home Loan Mortgage Corporation, or Federal Home Loan Bank or its district banks, including Federal Home Loan Mortgage Corporation participation certificates, or obligations guaranteed by the Government National Mortgage Association.

(2)(a) All securities purchased by any such governing body under this section shall be properly earmarked and immediately placed for safekeeping in a safety-deposit box in a bank or institution carrying adequate safety-deposit box insurance within the county in which said municipality is situated, and no withdrawal of such securities, in whole or in part, shall be made from such safety-deposit box except upon authority evidenced by resolution of the governing body of the municipality.

(b) The governing body may also receive bank trust receipts in return for investment of surplus funds in securities. Any trust receipts received must enumerate the various securities held, together with

the specific number of each security held. The actual securities on which the trust receipts are issued may be held by any bank depository chartered by the United States Government or the State of Florida or their designated agents.

(3) When the money invested in such securities is needed in whole or in part for the purposes originally intended, the governing body of the municipality is authorized to sell such security or securities at the then prevailing market price and to pay the proceeds of such sale into the proper account or fund of the municipality.

(4) For the purposes of this section, the term "surplus funds" is defined as funds in any general or special account or fund of the municipality, held or controlled by the governing body of the municipality, which funds in reasonable contemplation will not be needed for the purposes intended within a reasonable time from the date of such investment.

(5) Any surplus public funds subject to any contract or agreement on the date of this enactment shall not be invested contrary to said contract or agreement.

(6) The provisions of this section are supplemental to any and all other laws relating to the legal investments of municipalities.

History.—s. 4, ch. 77-394; s. 2, ch. 79-119; s. 4, ch. 79-262.

PART IV

EMINENT DOMAIN

166.401 Right of eminent domain.—All municipalities in the state may exercise the right and power of eminent domain; that is, the right to appropriate property within the state, except state or federal property, for the uses or purposes authorized pursuant to this part. The absolute fee simple title to all property so taken and acquired shall vest in such municipal corporation unless the municipality seeks to condemn a particular right or estate in such property.

History.—s. 1, ch. 73-129.

166.411 Eminent domain; uses or purposes.—Municipalities are authorized to exercise the power of eminent domain for the following uses or purposes:

(1) For the proper and efficient carrying into effect of any proposed scheme or plan of drainage, ditching, grading, filling, or other public improvement deemed necessary or expedient for the preservation of the public health, or for other good reason connected in anywise with the public welfare or the interests of the municipality and the people thereof;

(2) Over railroads, traction and streetcar lines, telephone and telegraph lines, all public and private streets and highways, drainage districts, bridge districts, school districts, or any other public or private lands whatsoever necessary to enable the accomplishment of purposes listed in s. 180.06;

(3) For streets, lanes, alleys, and ways;

(4) For public parks, squares, and grounds;

(5) For drainage, for raising or filling in land in order to promote sanitation and healthfulness, and for the taking of easements for the drainage of the land of one person over and through the land of another;

(6) For reclaiming and filling when lands are low and wet, or overflowed altogether or at times, or entirely or partly;

(7) For the abatement of any nuisance;

(8) For the use of water pipes and for sewerage and drainage purposes;

(9) For laying wires and conduits underground; and

(10) For city buildings, waterworks, ponds, and other municipal purposes which shall be coextensive with the powers of the municipality exercising the right of eminent domain.

History.—s. 1, ch. 73-129.

CHAPTER 170

SUPPLEMENTAL AND ALTERNATIVE METHOD OF MAKING LOCAL MUNICIPAL IMPROVEMENTS

170.01 Authority for providing improvements and levying and collecting special assessments against property benefited.—Any city, town, or municipal corporation of this state, hereinafter referred to as the "municipality," whether organized under the general law, or under special act, or having a charter adopted by vote under an enabling act, (hereinafter referred to as the "governing authority") may, by its governing authority, provide for the construction, reconstruction, repair, paving, repaving, hard surfacing, rehard surfacing, widening, guttering, and draining of streets, boulevards, and alleys and for grading, regrading, leveling, laying, relaying, paving, repaving, hard surfacing, and rehard surfacing sidewalks; order the construction or reconstruction of sanitary sewers, storm sewers, and drains, including the necessary appurtenances thereto; order the construction or reconstruction of water mains, water laterals, and other water distribution facilities, including the necessary appurtenances thereto; provide for the drainage and reclamation of wet, low, or overflowed lands; provide for offstreet parking facilities, parking garages, or similar facilities; and provide for the payment of all or any part of the costs of any such improvements by levying and collecting special assessments on the abutting, adjoining, contiguous, or other specially benefited property. However, offstreet parking facilities, parking garages, or other similar facilities shall have prior approval of affected property owners.

History.—s. 1, ch. 9298, 1923; CGL 3022; s. 1, ch. 59-396; s. 1, ch. 67-552; s. 1, ch. 78-360; s. 32, ch. 79-164.

170.02 Method of prorating special assessments.—Special assessments against property deemed to be benefited by local improvements, as provided for in s. 170.01, shall be assessed upon the property specially benefited by the improvement in proportion to the benefits to be derived therefrom, said special benefits to be determined and prorated according to the foot frontage of the respective properties specially benefited by said improvement, or by such other method as the governing body of the municipality may prescribe.

History.—s. 2, ch. 9298, 1923; CGL 3023.

170.03 Resolution required to declare special assessments.—When the governing authority of any municipality may determine to make any public improvement authorized by s. 170.01 and defray the whole or any part of the expense thereof by special assessments, said governing authority shall so declare by resolution stating the nature of the proposed improvement, designating the street or streets or sidewalks to be so improved, the location of said sanitary sewers, storm sewers, and drains, the location of said water mains, water laterals, and other water distribution facilities, or the location of the drainage project, and the part or portion of the expense thereof to be paid by special assessments, the manner in which said assessments shall be made, when said assessments are to be paid, what part, if any, shall be apportioned to be paid from the general improvement fund of the municipality; and said resolution shall also designate the lands upon which the special assessments shall be levied, and in describing said lands it shall be sufficient to describe them as "all lots and lands adjoining and contiguous or bounding and abutting upon such improvements or specially benefited thereby and further designated by the assessment plat hereinafter provided for." Such resolution shall also state the total estimated cost of the improvement. Such estimated cost may include the cost of construction or reconstruction, the cost of all labor and materials, the cost of all lands, property, rights, easements, and franchises

acquired, financing charges, interest prior to and during construction and for 1 year after completion of construction, discount on the sale of special assessment bonds, cost of plans and specifications, surveys of estimates of costs and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction or reconstruction, administrative expense, and such other expense as may be necessary or incident to the financing herein authorized.

History.—s. 3, ch. 9298, 1923; CGL 3024; s. 2, ch. 59-396; s. 2, ch. 67-552; s. 1, ch. 78-330.

170.04 Plans and specifications, with estimated cost of proposed improvement required before adoption of resolution.—At the time of the adoption of the resolution provided for in s. 170.03, there shall be on file with the town or city clerk, or like officer, of the municipality adopting said resolution, an assessment plat showing the area to be assessed, with plans and specifications, and an estimate of the cost of the proposed improvement, which assessment plat, plans and specifications and estimate shall be open to the inspection of the public.

History.—s. 4, ch. 9298, 1923; CGL 3025; s. 3, ch. 59-396.

170.05 Publication of resolution.—Upon the adoption of the resolution provided for in s. 170.03, the municipality shall cause said resolution to be published one time in a newspaper of general circulation published in said municipality, and if there be no newspaper published in said municipality, the governing authority of said municipality shall cause said resolution to be published once a week for a period of 2 weeks in a newspaper of general circulation published in the county in which said municipality is located.

History.—s. 5, ch. 9298, 1923; CGL 3026.

170.06 Assessment roll.—Upon the adoption of the resolution aforesaid, the governing authority of the municipality shall cause to be made an assessment roll in accordance with the method of assessment provided for in said resolution, which assessment roll shall be completed and filed with the governing authority of the municipality as promptly as possible; said assessment roll shall show the lots and lands assessed, the amount of the benefit to and the assessment against each lot or parcel of land, and if said assessment is to be paid in installments, the number of annual installments in which the assessment is divided shall also be entered and shown upon said assessment roll.

History.—s. 6, ch. 9298, 1923; CGL 3027; s. 3, ch. 67-552.

170.07 Publication of assessment roll.—Upon the completion of said assessment roll, the governing authority of the municipality shall by resolution fix a time and place at which the owners of the property to be assessed, or any other persons interested therein may appear before said governing authority and be heard as to the propriety and advisability of making such improvements, as to the cost thereof, as to the manner of payment therefor and as to the amount thereof to be assessed against each property so improved. Ten days' notice in writing of such time and place shall be given to such property owners which shall be served by mailing a copy of such notice to each of such property owners at his last known address, the names and addresses of such property owners to be obtained from the records of the property appraiser or from such other sources as the city or town clerk or engineer deems reliable, proof of such mailing to be made by the affidavit of the clerk or deputy clerk of said municipality, or by the engineer, said proof to be filed with the clerk, provided, that failure to mail said notice or notices shall not invalidate any of the proceedings hereunder. Notice of the time and place of such hearing shall also be given by two publications a week apart in a newspaper of general circulation in said municipality, and if there be no newspaper published in said municipality the governing authority of said municipality shall cause said notice to be published in like manner in a newspaper of general circulation published in the county in which said municipality is located; provided that the last publication shall be at least 1 week prior to the date of the hearing. Said notice shall describe the streets or other areas to be improved and advise all persons interested that the description of each property to be assessed and the amount to be assessed to each piece or parcel of property may be ascertained at the office of the clerk of the municipality. Such service by publication shall be verified by the affidavit of the publisher and filed with the clerk of said municipality.

History.—s. 7, ch. 9298, 1923; CGL 3028; s. 4, ch. 59-396; s. 1, ch. 77-102.

170.08 Equalizing board to hear complaints and adjust assessments; rebate of difference in cost and assessment.—At the time and place named in the notice provided for in s. 170.07, the governing authority of the municipality shall meet as an equalizing board to hear and consider any and all complaints as to such special assessments and shall adjust and equalize the said assessments on a basis of justice and right; and when so equalized and approved by resolution or ordinance of the governing authority, such assessments shall stand confirmed and remain legal, valid and binding first liens, upon the property against which such assessments are made, until paid; provided, however, that upon completion of the improvement, the municipality shall credit to each of said assessments the difference in the assessment as originally made, approved and confirmed and the proportionate part of the actual cost of said improvement to be paid by special assessments as finally determined upon the completion of said improvement, provided that in no event shall the final assessments exceed the amount of benefits originally assessed. Promptly after such confirmation, the assessments shall be recorded by the city clerk in a special book, to be known as the "Improvement Lien Book," and the record of the lien in said book shall constitute prima facie evidence of its validity. The governing authority of the municipality may by resolution grant a discount equal to all or a part of the payee's proportionate share of the cost of the project consisting of bond financing costs, such as capitalized interest, funded reserves, and bond discount included in the estimated cost of the project, upon payment in full of any assessment during such period prior to the time such financing costs

are incurred as may be specified by the governing authority.

History.—s. 8, ch. 9298, 1923; CGL 3029; s. 5, ch. 59-396; s. 1, ch. 78-330.

170.09 Priority of lien, interest and method of payment.—Said assessments shall be payable at the time and in the manner stipulated in the resolution providing for said improvements, and said special assessments shall remain liens, coequal with the lien of all state, county, district and municipal taxes, superior in dignity to all other liens, titles and claims, until paid, and shall bear interest at a rate not to exceed 8 percent per annum from the date of the acceptance of said improvement and may, by the resolution aforesaid, be made payable in not more than 10 equal yearly installments, to which, if not paid when due, there shall be added a penalty at the rate of 1 percent per month, until paid; provided that said assessments may be paid without interest at any time within 30 days after the improvement is completed, and a resolution accepting the same has been adopted by the governing authority.

History.—s. 9, ch. 9298, 1923; CGL 3030; s. 6, ch. 59-396; s. 1, ch. 61-349; s. 4, ch. 67-552.

170.10 Legal proceedings instituted upon failure of property owner to pay special assessment or interest when due; foreclosure; service of process.—Each annual installment provided for in s. 170.09 shall be paid upon the dates specified in said resolution, with interest upon all deferred payments, until the entire amount of said assessment has been paid, and upon the failure of any property owner to pay any annual installment due, or any part thereof, or any annual interest upon deferred payments, the governing authority of the municipality shall cause to be brought the necessary legal proceedings by a bill in chancery to enforce payment thereof with all accrued interest and penalties, together with all legal costs incurred, including a reasonable solicitor's fee, to be assessed as part of the costs and in the event of default in the payment of any installment of an assessment, or any accrued interest on said assessment, the whole assessment, with the interest and penalties thereon, shall immediately become due and payable and subject to foreclosure. In the foreclosure of any special assessment service of process against unknown or nonresident defendants may be had by publication, as now provided by law in other chancery suits. The foreclosure proceedings shall be prosecuted to a sale and conveyance of the property involved in said proceedings as now provided by law in suits to foreclose mortgages; or, in the alternative, said proceeding may be instituted and prosecuted under chapter 173.

History.—s. 10, ch. 9298, 1923; CGL 3031; s. 7, ch. 59-396.

170.11 Bonds may be issued to an amount not exceeding the amount of liens assessed for the cost of improvements to be paid by special assessment.—After the equalization, approval and confirmation of the levying of the special assessments for improvements as provided by s. 170.08 and as soon as a contract for said improvement has been finally let, the governing authority of the municipality may by resolution or ordinance authorize the issuance of bonds, to be designated "Improvement bonds, series No. .....," in an amount not in excess of the aggregate amount of said liens levied for such improvements. Said bonds shall be payable from a special and separate fund, to be known as the "Improvement fund, series No. .....," which shall be used solely for the payment of the principal and interest of said "Improvement bonds, series No. ....." and for no other purpose. Said fund shall be deposited in a separate bank account; and all the proceeds collected by the city from the principal, interest, and penalties of said liens shall be deposited and held in said fund. Said bonds so issued shall never exceed the amount of liens assessed, and said bonds shall mature not later than 2 years after the maturity of the last installment of said liens. Said bonds shall bear certificates signed by the clerk of the municipality certifying that the amount of liens levied, the proceeds of which are pledged to the payment of said bonds, are equal to the amount of the bonds issued. The bonds may be delivered to the contractor in payment for his work or may be sold at public or private sale for not less than 95 percent of par and accrued interest, the proceeds to be used in paying for the cost of the work. Said bonds shall not be a charge on, or payable out of, the general revenues of the city, but shall be payable solely out of said assessments, installments, interest, and penalties. Any surplus remaining after payment of all bonds and interest thereon shall revert to the city and be used for any municipal purpose.

History.—s. 11, ch. 9298, 1923; CGL 3032; s. 8, ch. 59-396; s. 5, ch. 67-552; s. 1, ch. 78-330.

170.14 Governing authority of municipality required to make new assessments until valid assessment is made if special assessment is omitted or held invalid.—If any special assessment made under the provisions of this chapter to defray the whole or any part of the expense of any said improvement shall be either in whole or in part annulled, vacated or set aside by the judgment of any court, or if the governing authority of any municipality shall be satisfied that any such assessment is so irregular or defective that the same cannot be enforced or collected, or if the governing authority of a municipality shall have omitted to make such assessment when it might have done so, the governing authority of the municipality shall take all necessary steps to cause a new assessment to be made for the whole or any part of any improvement or against any property benefited by any improvement, following as nearly as may be the provisions of this chapter and in case such second assessment shall be annulled, said governing authority of any municipality may obtain and make other assessments until a valid assessment shall be made.

History.—s. 14, ch. 9298, 1923; CGL 3035; s. 11, ch. 59-396.

170.15 Expenditures for improvements.—The governing authority of any municipality may pay out of its general funds or out of any special fund that may be provided for that purpose such portion of the cost of any improvement as it may deem proper.

History.—s. 15, ch. 9298, 1923; CGL 3036; s. 12, ch. 59-396.

170.16 Assessment roll sufficient evidence of assessment and other proceedings of this chapter; variance not material unless party objecting materially injured thereby.—Any informality or irregularity in the proceedings in connection with the levy of any special assessment under the provisions of this chapter shall not affect the validity of the same where the assessment roll has been confirmed by the governing authority, and the assessment roll as finally approved and confirmed shall be competent and sufficient evidence that the assessment was duly levied, that the assessment was duly made and adopted, and that all other proceedings adequate to the adoption of the said assessment roll were duly had, taken and performed as required by this chapter; and no variance from the directions hereunder shall be held material unless it be clearly shown that the party objecting was materially injured thereby.

History.—s. 16, ch. 9298, 1923; CGL 3037.

170.17 Denomination of bonds, interest, place of payment, form, signatures, coupons and delivery.—All bonds issued under this chapter shall be the denomination of $100, or some multiple thereof, and shall bear interest at a uniform rate not exceeding 7.5 percent per annum, payable annually or semiannually thereafter until maturity, and 10 percent per annum after maturity, and both principal and interest shall be payable at such place or places as the governing authority may determine. The form of such bonds shall be fixed by resolution of the governing authority of the municipality and said bonds shall be signed by the mayor or chief executive officer of the municipality and the clerk or other like officers thereof, under the seal of the municipality; the coupons, if any, shall be executed by the facsimile signatures of said officers. The delivery of any bond and coupon so executed at any time thereafter shall be valid although before the date of delivery the person signing such bond or coupons shall cease to hold office.

History.—s. 17, ch. 9298, 1923; CGL 3038; s. 13, ch. 59-396; s. 16, ch. 73-302.

170.18 Notice required where no newspaper is published in county in which municipality is situated.—Where, by any of the provisions of this chapter, any notice is required to be given by publication in a newspaper, if there be no newspaper published in the county in which the municipality is situated, then such notice shall be posted for the prescribed period of time in at least five public places in the municipality, one of which shall be the city or town hall, or the place of meeting of the governing authority, if there be no city or town hall.

History.—s. 18, ch. 9298, 1923; CGL 3039.

170.19 Construction and authority of chapter.—This chapter shall, without reference to any other law of Florida, be full authority for the issuance and sale of the bonds by this chapter authorized, and shall be construed as an additional and alternative method for the financing of the improvements referred to herein. No ordinance, resolution, election or proceeding in respect of the issuance of any bonds hereunder shall be necessary, except such as is required by this chapter, and no publication of any resolution, ordinance, election, notice or proceeding relating to the issuance of the bonds provided for by this chapter shall be required, except such as required by this chapter.

History.—s. 19, ch. 9298, 1923; CGL 3040; reenacted s. 14, ch. 59-396.

170.20 Bonds negotiable.—Bonds issued under s. 170.11 shall have all the qualities of negotiable paper under the law merchant, and shall not be invalid for any irregularity or defect in the proceedings for the issue and sale thereof, and shall be incontestable in the hands of bona fide purchasers or holders thereof for value.

History.—s. 20, ch. 9298, 1923; CGL 3041; s. 15, ch. 59-396.

170.21 Provisions of chapter supplemental, additional and alternative procedure.—This chapter shall not repeal any other law relating to the subject matter hereof, but shall be deemed to provide a supplemental, additional and alternative method of procedure for the benefit of all cities, towns and municipal corporations of the state, whether organized under special act or the general law, and shall be liberally construed to effectuate its purpose.

History.—s. 21, ch. 9298, 1923; CGL 3042; reenacted s. 16, ch. 59-396.

CHAPTER 171

MUNICIPAL ANNEXATION OR CONTRACTION

171.011 Short title.—This chapter shall be known and may be cited as the "Municipal Annexation or Contraction Act."

History.—s. 1, ch. 74-190.

171.021 Purpose.—The purposes of this act are to set forth procedures for adjusting the boundaries of municipalities through annexations or contractions of corporate limits and to set forth criteria for determining when annexations or contractions may take place so as to:

(1) Insure sound urban development and accommodation to growth.

(2) Establish uniform legislative standards throughout the state for the adjustment of municipal boundaries.

(3) Insure the efficient provision of urban services to areas that become urban in character.

(4) Insure that areas are not annexed unless municipal services can be provided to those areas.

History.—s. 1, ch. 74-190.

171.022 Preemption; effect on special laws.—

(1) It is further the purpose of this act to provide viable and usable general law standards and procedures for adjusting the boundaries of municipalities in this state.

(2) The provisions of any special act or municipal charter relating to the adjusting of municipal boundaries in effect on October 1, 1974, are repealed except as otherwise provided herein.

History.—s. 1, ch. 74-190.

171.031 Definitions.—As used in this chapter, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(1) "Annexation" means the adding of real property to the boundaries of an incorporated municipality, such addition making such real property in every way a part of the municipality.

(2) "Contraction" means the reversion of real property within municipal boundaries to an unincorporated status.

(3) "Municipality" means a municipality created pursuant to general or special law authorized or recognized pursuant to s. 2 or s. 6, Art. VIII of the State Constitution.

(4) "Newspaper of general circulation" means a newspaper printed in the language most commonly spoken in the area within which it circulates, which is readily available for purchase by all inhabitants in its area of circulation, but does not include a newspaper intended primarily for members of a particular professional or occupational group, a newspaper whose primary function is to carry legal notices, or a newspaper that is given away primarily to distribute advertising.

(5) "Parties affected" means any persons or firms owning property in, or residing in, either a municipality proposing annexation or contraction or owning property that is proposed for annexation to a municipality or any governmental unit with jurisdiction over such area.

(6) "Qualified voter" means any person registered to vote in accordance with law.

(7) "Sufficiency of petition" means the verification of the signatures and addresses of all signers of a petition with the voting list maintained by the county supervisor of elections and certification that the number of valid signatures represents the required percentage of the total number of qualified voters in the area affected by a proposed annexation.

(8) "Urban in character" means an area used intensively for residential, urban recreational or conservation parklands, commercial, industrial, institutional, or governmental purposes or an area undergoing development for any of these purposes.

(9) "Urban services" means any services offered by a municipality, either directly or by contract, to any of its present residents.

(10) "Urban purposes" means that land is used intensively for residential, commercial, industrial, institutional, and governmental purposes, including any parcels of land retained in their natural state or kept free of development as dedicated greenbelt areas.

(11) "Contiguous" means that a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality. The separation of the territory sought to be annexed from the annexing municipality by a right-of-way for a highway, road, railroad, canal, or utility or by a body of water, a watercourse, or other minor geographical division of a similar nature, running parallel with and between the territory sought to be annexed and the annexing municipality, shall not prevent annexation under this act, provided the presence of such a division does not, as a practical matter, prevent the territory sought to be annexed and the annexing municipality from becoming a unified whole with respect to municipal services or prevent their inhabitants from fully associating and trading with each other, socially and economically. However, nothing herein shall be construed to allow local rights-of-way, utility

easements, railroad rights-of-way, or like entities to be annexed in a corridor fashion to gain continuity, and when any provision or provisions of special law or laws prohibit the annexation of territory that is separated from the annexing municipality by a body of water or watercourse, then that law shall prevent annexation under this act.

(12) "Compactness" means concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns. Any annexation proceeding in any county in the state shall be designed in such a manner as to ensure that the area shall be reasonably compact.

History.—s. 1, ch. 74-190; s. 1, ch. 75-297.

171.0413 Annexation procedures.—Any municipality may annex contiguous, compact, unincorporated territory in the following manner:

(1) An ordinance proposing to annex an area of contiguous, compact, unincorporated territory shall be adopted by the governing body of the annexing municipality pursuant to the procedure for the adoption of a nonemergency ordinance established by s. 166.041. Each such ordinance shall propose only one reasonably compact area to be annexed. However, prior to the ordinance of annexation becoming effective, a referendum on annexation shall be held as set out below, and, if approved by the referendum, the ordinance shall become effective 10 days after the referendum or as otherwise provided in the ordinance, but not more than 1 year following the date of the referendum.

(2) Following the final adoption of the ordinance of annexation by the governing body of the annexing municipality, the ordinance shall be submitted to a separate vote of the registered electors of the annexing municipality and of the area proposed to be annexed. The referendum on annexation shall be called and conducted and the expense thereof paid by the governing body of the annexing municipality.

(a) The referendum on annexation shall be held at the next regularly scheduled election following the final adoption of the ordinance of annexation by the governing body of the annexing municipality or at a special election called for the purpose of holding the referendum. However, the referendum, whether held at a regularly scheduled election or at a special election, shall not be held sooner than 30 days following the final adoption of the ordinance by the governing body of the annexing municipality.

(b) The governing body of the annexing municipality shall publish notice of the referendum on annexation at least once a week for the 4 consecutive weeks immediately preceding the date of the referendum in a newspaper of general circulation in the area in which the referendum is to be held. The notice shall give the time and places for the referendum and a description of the area proposed to be annexed. The description shall be by metes and bounds and shall include a map clearly showing such area.

(c) On the day of the referendum on annexation there shall be prominently displayed at each polling place a copy of the ordinance of annexation and a description of the property proposed to be annexed. The description shall be by metes and bounds and shall include a map clearly showing such area.

(d) Ballots or mechanical voting devices used in the referendum on annexation shall offer the choice "For annexation of property described in ordinance number ..... of the City of ....." and "Against annexation of property described in ordinance number ..... of the City of ....." in that order.

(e) If there is a separate majority vote for annexation in the annexing municipality and in the area proposed to be annexed, the ordinance of annexation shall become effective on the effective date specified therein. If there is a majority vote against annexation in either the annexing municipality or in the area proposed to be annexed, or in both, the ordinance shall not become effective, and the area proposed to be annexed shall not be the subject of an annexation ordinance by the annexing municipality for a period of 2 years from the date of the referendum on annexation.

(3) Any improved parcel of land which is owned by one individual, corporation, or legal entity, or owned collectively by one or more individuals, corporations, or legal entities, proposed to be annexed under the provisions of this act shall not be severed, separated, divided, or partitioned by the provisions of said ordinance, but shall, if intended to be annexed, or if annexed, under the provisions of this act, be annexed in its entirety and as a whole. However, nothing herein contained shall be construed as affecting the validity or enforceability of any ordinance declaring an intention to annex land under the existing law that has been enacted by a municipality prior to July 1, 1975. The owner of such property may waive the requirements of this subsection if such owner does not desire all of his tract or parcel included in said annexation.

(4) Except as otherwise provided in this law, the annexation procedure as set forth in this section shall constitute a uniform method for the adoption of an ordinance of annexation by the governing body of any municipality in this state, and all existing provisions of special laws which establish municipal annexation procedures are repealed hereby; except that any provision or provisions of special law or laws which prohibit annexation of territory that is separated from the annexing municipality by a body of water or watercourse shall not be repealed.

(5) If the area proposed to be annexed is predominantly owned by individuals, corporations, or legal entities who are not registered electors of the area proposed to be annexed, such area shall not be annexed unless a majority of such individuals, corporations, or legal entities consent to such annexation.

History.—s. 2, ch. 75-297; s. 1, ch. 76-176; s. 44, ch. 77-104.

171.042 Prerequisites to annexation.—

(1) Prior to commencing the annexation procedures under s. 171.0413, the governing body of the municipality shall prepare a report setting forth the plans to provide urban services to any area to be annexed, and the report shall include the following:

(a) A map or maps of the municipality and adjacent territory showing the present and proposed municipal boundaries, the present major trunk water mains and sewer interceptors and outfalls, the proposed extensions of such mains and outfalls, as required in paragraph (c), and the general land use

pattern in the area to be annexed.

(b) A statement certifying that the area to be annexed meets the criteria in s. 171.043.

(c) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:

1. Provide for extending urban services except as otherwise provided herein to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation.

2. Provide for the extension of existing municipal water and sewer services into the area to be annexed so that, when such services are provided, property owners in the area to be annexed will be able to secure public water and sewer service according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions.

3. If extension of major trunk water mains and sewer mains into the area to be annexed is necessary, set forth a proposed timetable for construction of such mains as soon as possible following the effective date of annexation.

4. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.

(2) The Department of Community Affairs shall lend its technical assistance to any such municipality in preparing for annexation or deannexation.

(3) Prior to commencing the annexation procedures under s. 171.0413, the governing body of the municipality shall file a copy of the report required by this section with the board of county commissioners of the county wherein the municipality is located.

History.—s. 1, ch. 74-190; s. 3, ch. 75-297; s. 1, ch. 78-19.

171.043 Character of the area to be annexed.—A municipal governing body may propose to annex an area only if it meets the general standards of subsection (1) and the requirements of either subsection (2) or subsection (3).

(1) The total area to be annexed must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun and reasonably compact, and no part of the area shall be included within the boundary of another incorporated municipality.

(2) Part or all of the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which meets any one of the following standards:

(a) It has a total resident population equal to at least two persons for each acre of land included within its boundaries;

(b) It has a total resident population equal to at least one person for each acre of land included within its boundaries and is subdivided into lots and tracts so that at least 60 percent of the total number of lots and tracts are 1 acre or less in size; or

(c) It is so developed that at least 60 percent of the total number of lots and tracts in the area at the time of annexation are used for urban purposes, and it is subdivided into lots and tracts so that at least 60 percent of the total acreage, not counting the acreage used at the time of annexation for nonresidential urban purposes, consists of lots and tracts 5 acres or less in size.

(3) In addition to the area developed for urban purposes, a municipal governing body may include in the area to be annexed any area which does not meet the requirements of subsection (2) if such area either:

(a) Lies between the municipal boundary and an area developed for urban purposes, so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending services or water or sewer lines through such sparsely developed area; or

(b) Is adjacent, on at least 60 percent of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (2).

The purpose of this subsection is to permit municipal governing bodies to extend corporate limits to include all nearby areas developed for urban purposes and, where necessary, to include areas which at the time of annexation are not yet developed for urban purposes whose future probable use is urban and which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes.

History.—s. 1, ch. 74-190; s. 2, ch. 76-176.

171.044 Voluntary annexation.—

(1) The owner or owners of real property in an unincorporated area of a county which is contiguous to a municipality and reasonably compact may petition the governing body of said municipality that said property be annexed to the municipality.

(2) Upon determination by the governing body of the municipality that the petition bears the signatures of all owners of property in the area proposed to be annexed, the governing body may, at any regular meeting, adopt a nonemergency ordinance to annex said property and redefine the boundary lines of the municipality to include said property. Said ordinance shall be passed after same has been published once a week for 4 consecutive weeks in some newspaper in such city or town or, if no newspaper is published in said city or town, then in a newspaper published in the same county; and if no newspaper is published in said county, then at least three printed copies of said ordinance shall be posted for 4 consecutive weeks at some conspicuous place in said city or town.

(3) An ordinance adopted hereunder shall be filed with the Clerk of the Circuit Court of the county in which the municipality is located and with the Department of State.

(4) The method of annexation provided by this section shall be supplemental to any other procedure provided by general or special law, except that this section shall not apply to municipalities in counties with charters which provide for an exclusive method of municipal annexation.

(5) Land shall not be annexed through voluntary

annexation when such annexation results in the creation of enclaves.

History.—s. 1, ch. 74-190; ss. 4, 5, ch. 75-297; s. 3, ch. 76-176.

171.045 Annexation limited to a single county.—In order for an annexation proceeding to be valid for the purposes of this chapter, the annexation must take place within the boundaries of a single county.

History.—s. 2, ch. 74-190.

171.051 Contraction procedures.—Any municipality may initiate the contraction of municipal boundaries in the following manner:

(1) The governing body shall by ordinance propose the contraction of municipal boundaries, as described in the ordinance, and provide an effective date for the contraction.

(2) A petition of 15 percent of the qualified voters in an area desiring to be excluded from the municipal boundaries, filed with the clerk of the municipal governing body, may propose such an ordinance. The municipality to which such petition is directed shall immediately undertake a study of the feasibility of such proposal and shall, within 6 months, either initiate proceedings under subsection (1) or reject the petition, specifically stating the facts upon which the rejection is based.

(3) After introduction, the contraction ordinance shall be noticed at least once per week for 4 successive weeks in a newspaper of general circulation in the municipality, such notice to describe the area to be excluded. Such description shall include a statement of findings to show that the area to be excluded fails to meet the criteria of s. 171.043, set the time and place of the meeting at which the ordinance will be considered, and advise that all parties affected may be heard.

(4) If, at the meeting held for such purpose, a petition is filed and signed by at least 15 percent of the qualified voters resident in the area proposed for contraction requesting a referendum on the question, the governing body shall, upon verification, paid for by the municipality, of the sufficiency of the petition, and before passing such ordinance, submit the question of contraction to a vote of the qualified voters of the area proposed for contraction, or the governing body may vote not to contract the municipal boundaries.

(5) The governing body may also call for a referendum on the question of contraction on its own volition and in the absence of a petition requesting a referendum.

(6) The referendum, if required, shall be held at the next regularly scheduled election, or, if approved by a majority of the municipal governing body, at a special election held prior to such election, but no sooner than 30 days after verification of the petition or passage of the resolution or ordinance calling for the referendum.

(7) The municipal governing body shall establish the date of election and publish notice of the referendum election at least once a week for the 4 successive weeks immediately prior to the election in a newspaper of general circulation in the area proposed to be excluded or in the municipality. Such notice shall give the time and places for the election and a description of the area to be excluded, which shall be both in metes and bounds and in the form of a map clearly showing the area proposed to be excluded.

(8) Ballots or mechanical voting devices shall offer the choices "For deannexation" and "Against deannexation," in that order.

(9) A majority vote "For deannexation" shall cause the area proposed for exclusion to be so excluded upon the effective date set in the contraction ordinance.

(10) A majority vote "Against deannexation" shall prevent any part of the area proposed for exclusion from being the subject of a contraction ordinance for a period of 2 years from the date of the referendum election.

History.—s. 1, ch. 74-190.

171.052 Criteria for contraction of municipal boundaries.—

(1) Only those areas which do not meet the criteria for annexation in s. 171.043 may be proposed for exclusion by municipal governing bodies. If the area proposed to be excluded does not meet the criteria of s. 171.043, but such exclusion would result in a portion of the municipality becoming noncontiguous with the rest of the municipality, then such exclusion shall not be allowed.

(2) The ordinance shall make provision for apportionment of any prior existing debt and property.

History.—s. 1, ch. 74-190.

171.061 Apportionment of debts and taxes in annexations or contractions.—

(1) The area annexed to a municipality shall be subject to the taxes and debts of the municipality upon the effective date of the annexation. However, the annexed area shall not be subject to municipal ad valorem taxation for the current year if the effective date of the annexation falls after the municipal governing body levies such tax.

(2) The municipal governing body, in the event of exclusion of territory, shall reach agreement with the county governing body to determine what portion, if any, of the existing indebtedness or property of the municipality shall be assumed by the county of which the excluded territory will become a part, the fair value of such indebtedness or property, and the manner of transfer and financing.

History.—s. 1, ch. 74-190.

171.062 Effects of annexations or contractions.—

(1) An area annexed to a municipality shall be subject to all laws, ordinances, and regulations in force in that municipality and shall be entitled to the same privileges and benefits as other parts of that municipality upon the effective date of the annexation.

(2) If the area annexed was subject to a county land-use plan and county zoning or subdivision regulations, said regulations shall remain in full force and effect until otherwise provided by law. However, a municipal governing body shall not be authorized to increase, and is expressly prohibited from increasing, or decrease the density allowed under such county plan and regulations for a period of 2 years from the effective date of the annexation unless ap-

proval of such increase is granted by the governing body of the county.

(3) An area excluded from a municipality shall no longer be subject to any laws, ordinances, or regulations in force in the municipality from which it was excluded and shall no longer be entitled to the privileges and benefits accruing to the area within the municipal boundaries upon the effective date of the exclusion. It shall be subject to all laws, ordinances, and regulations in force in that county.

History.—s. 1, ch. 74-190.

171.071 Effect in Dade County.—Municipalities within the boundaries of Dade County shall adopt annexation or contraction ordinances pursuant to methods established by the home rule charter established pursuant to s. 6(e), Art. VIII of the State Constitution.

History.—s. 1, ch. 74-190.

171.081 Appeal on annexation or contraction.—No later than 30 days following the passage of an annexation or contraction ordinance, any party affected who believes that he will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this chapter for annexation or contraction or to meet the requirements established for annexation or contraction as they apply to his property may file a petition in the circuit court for the county in which the municipality or municipalities are located seeking review by certiorari. In any action instituted pursuant to this section, the complainant, should he prevail, shall be entitled to reasonable costs and attorney's fees.

History.—s. 1, ch. 74-190; s. 3, ch. 78-95.

171.091 Recording.—Any change in the municipal boundaries through annexation or contraction shall revise the charter boundary article and shall be filed as a revision of the charter with the Department of State within 30 days.

History.—s. 1, ch. 74-190.

CHAPTER 173

FORECLOSURE OF MUNICIPAL TAX AND SPECIAL ASSESSMENT LIENS

173.01 Foreclosure of municipal tax certificates authorized.—The lien of any and all taxes, except those ad valorem taxes collectible by the county tax collector, tax certificates, and special assessments imposed by any incorporated city or town in the state upon real estate may be foreclosed by such city or town by suit in chancery. The practice, pleading, and procedure in any such suit shall be in substantial accordance with the practice, pleading, and procedure for the foreclosure of mortgages of real estate, except as herein otherwise provided.

History.—s. 1, ch. 15038, 1931; CGL 1936 Supp. 3004(2); s. 31, ch. 73-332.

173.02 Proceedings in rem against the lands.—Suits for the foreclosure of tax liens and special assessments under this chapter shall be in the nature of proceedings in rem against the lands upon which said taxes or special assessments are a lien or liens, and it shall not be material that the ownership of said lands be correctly alleged in said proceedings or that parties having an interest or interests in or liens or claims upon said lands be made parties to such proceedings by name or description or be served with process therein, except as hereinafter provided. In any such suit as many lots, parcels or tracts of land, regardless of ownership, and as many tax liens, tax certificates and assessment liens may be included in one suit as the complainant may desire. Any judgment or decree that may be rendered in any such suit shall be enforceable only against such lands.

History.—s. 2, ch. 15038, 1931; CGL 1936 Supp. 3004(3).

173.03 Conditions determining when suit may be brought; lands and claims included.—

(1) Suit may be brought at any time after any one or more of the following events, respectively:

(a) After the expiration of 2 years from the date of any tax certificate issued and held by a city or town whose charter provides for or requires the issuing of tax certificates for delinquent taxes;

(b) After the expiration of 2 years from the date any tax becomes delinquent which was imposed by a city or town whose charter does not provide for or require the issuing of tax certificates; or

(c) After the expiration of 1 year from the date any special assessment or installment thereof becomes due and payable.

(2) There may be included in any suit all or any part of the lands upon which tax certificates have been outstanding or taxes have remained delinquent or any special assessment or installment thereof shall have been in default for the respective periods aforesaid, and there may be included therein all claims and demands of said city or town against said lands or any part thereof for taxes, tax certificates and special assessments or installments thereof which may be due and payable to such city or town at the time of the institution of such suit.

History.—s. 3, ch. 15038, 1931; CGL 1936 Supp. 3004(4).

173.04 Procedure for bringing foreclosure suit; certificate of attorney as to notice of suit; jurisdiction obtained by publication of notice of suit; form of notice.—

(1) Any suit hereby authorized shall be commenced by bill in chancery in the circuit court of the county in which such city or town is situated, in the name of the city or town whose taxes, tax certificates and special assessments are sought to be enforced, as complainant, and against any or all lands upon which any taxes, tax certificates and special assessments are delinquent (as the case may be) for the period aforesaid, as defendant, in which bill there shall be briefly described the levy and nonpayment of taxes and special assessments which are delinquent for the period aforesaid, and of all other taxes and special assessments then due and payable to said city or town and sought to be recovered in such bill, the lands proceeded against and the amount chargeable to each parcel or tract. It shall be unnecessary to name in such bill or proceedings any person owning or having any interest in or lien upon such lands as defendants. At least 30 days prior to the filing of any such bill in chancery, written notice of intention to file the same shall be sent by registered mail to the last known address of the holder of the record title and to the holder of record of each mortgage or other lien, except judgment liens, upon each tract of land to be included in said bill in chancery; such notice shall briefly describe the particular lot or parcel of land, shall state the amount of tax certificate and

special assessment liens sought to be enforced and shall warn said owner and holders of liens, mortgages or other liens that on or after the day therein named said bill in chancery to enforce the same will be filed, unless paid on or before said date.

(2) A certificate of the attorney shall be attached to the bill of complaint to the effect that said written notice has been given, and such certificate shall be prima facie evidence that the provisions of this section have been complied with. The complainant's counsel shall make diligent inquiry as to the address of the record title and holders of record liens other than judgments and the clerk of the circuit court shall mail by registered mail a copy of the notice hereinafter provided for, to such record owner and holders of record liens other than judgments at such last known address.

(3) Jurisdiction of any of said lands and of all parties interested therein or having any lien thereon shall be obtained by publication of a notice to be issued as of course by the clerk of the circuit court in which such bill is filed on the request of complainant, once each week for not less than 4 consecutive weeks, directed to all persons and corporations interested in or having any lien or claim upon any of the lands described in said notice and said bill. Such notice shall describe the lands involved and the respective principal amounts sought to be recovered in such suit for taxes, tax certificates and special assessments on such respective parcels of land, and requiring all such parties to appear and defend said suit on or before the day specified in said notice, which shall be not less than 4 weeks after the date of the first publication of such notice. Said notice may be in substantially the following form, with blanks appropriately filled in:

---------- **Name City or Town, Complainant,** **vs.** **Certain lands upon which ..... (here insert the word "taxes," or the words "special assessments" or both, as the case may be) are delinquent,** **Defendant.**	**IN THE CIRCUIT COURT FOR ----- COUNTY, FLORIDA. IN CHANCERY.**

NOTICE

To all persons and corporations interested in or having any lien or claim upon any of the lands described herein:

You are hereby notified that (name city or town) has filed its bill of complaint in the above named court to foreclose delinquent ..... (here insert the words "tax liens, tax certificates or special assessments," as the case may be) with interest and penalties, upon the parcels of land set forth in the following schedule, the aggregate amount of such ..... (here insert the words "tax liens, tax certificates or special assessments," as the case may be) interest and penalties, against said respective parcels of land, as set forth in said bill of complaint, being set opposite such parcels in the following schedule, to wit:

DESCRIPTION OF LANDS

Amount of ..... (here insert the word "taxes," or the words "special assessments" or both, as the case may be).

In addition to the amounts set opposite each parcel of land in the foregoing schedule, interest and penalties, as provided by law, on such delinquent taxes and special assessments, together with a proportionate part of the costs and expenses of this suit, are sought to be enforced and foreclosed in this suit.

You are hereby notified to appear and make your defenses to said bill of complaint on or before the ..... day of ....., and if you fail to do so on or before said date the bill will be taken as confessed by you and you will be barred from thereafter contesting said suit, and said respective parcels of land will be sold by decree of said court for nonpayment of said taxes and assessment liens and interest and penalties thereon and the costs of this suit.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said court, this ..... day of .....

(Clerk of said court.)

By (Deputy clerk.)

(4) Proof of publication of said notice, as herein required, shall be by affidavit of the publisher or some agent or employee thereof filed in said cause.

History.—s. 4, ch. 15038, 1931; CGL 1936 Supp. 3004(5); s. 32, ch. 71-355.

cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

173.05 Parties; time for appearance, etc.—Every person interested in or having any lien upon any parcel of land described in the bill of complaint shall be deemed a party to said cause and may appear and defend said cause within the time specified in such notice. Any person not appearing and defending within such time shall be deemed to have confessed said bill, but the court may in its discretion and for cause shown enlarge the time within which any such person may appear and defend said cause.

History.—s. 5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.06 Affidavits and certificates as prima facie evidence; proof of validity or invalidity.—

(1) An affidavit or affidavits of the tax collector or other officer of complainant having the duty of issuing or collecting such taxes, special assessments or tax certificates, as to the existence of delinquent taxes, tax certificates and special assessments upon any parcel of land and the time when the same became due, the amount due thereon, including interest and penalties, and the nonpayment thereof, shall be received in evidence as prima facie proof of the facts so certified and of the validity of all proceedings in and about the levying and assessment of such taxes and special assessments and the issuing of such tax certificate or certificates.

(2) Tax certificates shall be admissible in evidence and shall be prima facie valid.

(3) No tax certificate shall be held invalid except upon proof that the property was not subject to taxa-

tion or that the taxes had been paid previous to any tax sale or prior to the institution of the suit.

History.—s. 5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.07 Tender of correct amount as condition precedent.—If any person shall claim that any tax, tax certificate or assessment is improper or illegal, and seek to contest the same, then such person at the time of filing an answer resisting the foreclosure of any tax lien, tax certificate or assessment lien shall tender into the registry of the court such amount as he claims was properly assessable or for which the property of such person was properly assessable.

History.—s. 5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.08 Judgment for complainant; amounts included; attorney's fee.—

(1) In all cases where the cause may be decided for complainant, the judgment for delinquent taxes, tax certificates and special assessments against any parcel of land shall include the principal of, and interest and penalties on such taxes, tax certificates and special assessments, the costs of the suit and a reasonable attorney's fee; such costs and attorney's fee to be apportioned among and charged against the various parcels of land involved in proportion to the amount of taxes, tax certificates and special assessments adjudged against such respective parcels of land.

(2) In fixing the fees of complainant's attorney the court shall take into consideration the use which the complainant has made of the privilege hereby given of including in one suit divers taxes, tax certificates and assessment liens, and if the court be of the opinion that there has been an unnecessary separation of causes of action on the same or different parcels of land which might have been joined in the same action, it shall not allow an attorney's fee greater than would have been allowed if the action had been combined.

History.—s. 5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.09 Judgment for complainant; special master's sale; complainant may purchase and later sell.—

(1) Any such decree shall direct the special master thereby appointed to sell the several parcels of land separately to the highest and best bidder for cash (or, at the option of complainant, to the extent of special assessments included in such judgment, for bonds or interest coupons issued by complainant), at public outcry at the courthouse door of the county in which such suit is pending, or at such point or place in the complainant municipality as the court in such final decree may direct, after having advertised such sale (which advertisement may include all lands so ordered sold) once each week for 2 consecutive weeks in some newspaper published in the city or town in which is the complainant or if no such newspaper, in a newspaper published in the county in which the suit is pending, and if all the lands so advertised for sale be not sold on the day specified in such advertisement, such sale shall be continued from day to day until the sale of all such land is completed.

(2) Such sales shall be subject to confirmation by the court, and said special master shall, upon confirmation of the sale or sales, deliver to the purchaser or purchasers at said sale a deed of conveyance of the property so sold; provided, however, that in any case where any lands are offered for sale by the special master and the sum of the tax, tax certificates and special assessments, interest, penalty, costs and attorney's fee is not bid for the same, the complainant may bid the whole amount due and the special master shall thereupon convey such parcel or parcels of land to the complainant.

(3) The property so bid in by complainant shall become its property in fee simple and may be disposed of by it in the manner provided by law, except that in the sale or disposition of any such lands the city or town may, in its discretion, accept in payment or part payment therefor any bonds or interest coupons constituting liabilities of said city or town.

History.—s. 5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.10 Judgment for complainant; court may order payment of other taxes, etc., or sale subject to taxes; special master's conveyances.—

(1) In the judgment or decree the court may, in its discretion, direct the payment of all unpaid state and county taxes and also all unpaid city or town taxes and special assessments or installments thereof, imposed or falling due since the institution of the suit, with the penalties and costs, out of the proceeds of such foreclosure sale, or it may order and direct such sale or sales to be made subject to such state and county and city or town taxes and special assessments.

(2) Any and all conveyances by the special master shall vest in the purchaser the fee simple title to the property so sold, subject only to such liens for state and county taxes or taxing districts whose liens are of equal dignity, and liens for municipal taxes and special assessments, or installments thereof, as are not directed by the decree of sale to be paid out of the proceeds of said sale.

History.—s. 5, ch. 15038, 1931; CGL 1936 Supp. 3004(6).

173.11 Distribution of proceeds of sale.—The proceeds of any foreclosure sale authorized by this chapter shall be distributed by the special master conducting the sale according to the final decree and if any surplus remains after the payment of the full amount of the decree, costs and attorney's fees and any subsequent tax liens which may be directed by such decree to be paid from the proceeds of sale, such surplus shall be deposited with the clerk of the court and disbursed under order of the court.

History.—s. 6, ch. 15038, 1931; CGL 1936 Supp. 3004(7).

173.12 Lands may be redeemed prior to sale.—Any person interested in any lands included in the suit may redeem such lands at any time prior to the sale thereof by the special master by paying into the registry of the court the amount due for delinquent taxes, interest and penalties thereon and such proportionate part of the expense, attorney's fees and costs of suit as may have been fixed by the court in its decree of sale, or by written stipulation of com-

plainant, and thereupon such lands shall be dismissed from the cause.

History.—s. 7, ch. 15038, 1931; CGL 1936 Supp. 3004(8).

173.13 Procedure under this chapter optional.—The exercise of the power and provisions conferred in this chapter shall be optional with the municipalities and shall not be mandatory upon any municipality of the state. Any municipality desiring to proceed hereunder may elect to proceed hereunder by formal action of its governing authority and by proceeding as described herein.

History.—s. 8, ch. 15038, 1931; CGL 1936 Supp. 3004(9).

173.14 Chapter supplemental to other law.—This chapter shall not repeal any other statute relating to the subject matter hereof, but shall be deemed to provide a supplemental, additional and alternative method of enforcement of tax liens and special assessments for the benefit of all incorporated cities or towns of the state of Florida, whether organized under special act or general laws, and shall be liberally construed to effectuate its purpose.

History.—s. 9, ch. 15038, 1931; CGL 1936 Supp. 3004(10).

173.15 Parties and subject matter; tax liens, etc., of equal dignity.—

(1) In the foreclosure of municipal tax and special assessment liens by suit in the nature of proceedings in rem, as provided by chapter 173, for the purpose of adjudicating therein all tax liens against the lands being proceeded against, or any portion thereof, and receiving from the proceeds of any foreclosure sale in such proceedings a proper and proportionate share of such proceeds in satisfaction of tax liens so adjudicated, the owner, holder or assignee of any tax lien, however evidenced, of equal or inferior dignity with those of the complainant on or against the lands being proceeded against, or any portion thereof, may be included as and made a party defendant in such proceeding by the service of process on such party defendant in the manner provided by law for service of process on defendants in chancery.

(2) This section is intended to broaden the scope of the foreclosure proceedings authorized by chapter 173, so as to permit the adjudication of tax liens of equal dignity in said proceedings, and shall be liberally construed to effectuate such purpose.

History.—ss. 1, 2, ch. 22021, 1943.

CHAPTER 175

MUNICIPAL FIREFIGHTERS' PENSION TRUST FUND

175.011 Short title of act.—This act shall be known and may be cited as the "Municipal [1]Firemen's Pension Trust Fund Act."

History.—s. 1, ch. 63-249.

[1]**Note.**—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "firemen" to "firefighters" where the term appears in chapter 175.

175.021 Legislative declaration.—It is hereby declared by the Legislature that firefighters, as hereinafter defined, perform state and municipal functions; that it is their duty to extinguish fires, to protect life, and to protect property at their own risk and peril; that it is their duty to prevent conflagration and to continuously instruct school personnel, public officials, and private citizens in the prevention of fires and fire safety; that they protect both life and property from local disasters; and that their activities are vital to the public's safety. Therefore, the Legislature declares that it is a proper and legitimate state purpose to provide a uniform retirement system for the benefit of firefighters as hereinafter defined.

History.—s. 1, ch. 63-249; s. 1, ch. 79-380.

175.032 Definitions.—The following words and phrases used in this act shall have the following meanings, unless a different meaning is plainly required by the context:

(1)(a) "Firefighter" means any person employed solely in a constituted fire department of any municipality, or special fire control district established by this state law prior to 1963, who is certified as a firefighter as a condition of employment in accordance with the provisions of s. 633.35 and whose duty it is to extinguish fires, to protect life, and to protect property. However, for purposes of this chapter only, "firefighter" also shall include public safety officers who are responsible for performing both police and fire services, who are certified as police officers or firefighters, and who are certified by their employers to the Insurance Commissioner and Treasurer as participating in this chapter prior to October 1, 1979. Effective October 1, 1979, public safety officers who have not been certified as participating in this chapter shall be considered police officers for retirement purposes and shall be eligible to participate in chapter 185.

(b) "Volunteer firefighter" means any person whose name is carried on the active membership roll of a constituted volunteer fire department or a combination of a paid and volunteer fire department of any municipality and whose duty it is to extinguish fires, to protect life, and to protect property. Compensation for services rendered by a volunteer firefighter shall not disqualify him as a volunteer. A person shall not be disqualified as a volunteer firefighter solely because he has other gainful employment. Any person who volunteers assistance at a fire

but is not an active member of a department described herein is not a volunteer firefighter within the meaning of this paragraph.

(2)(a) "Average final compensation for full-time [1]firemen" means the average salary of the 10 best contributing years of the last 15 years prior to retirement, or the career average as full-time [1]firemen since July 1, 1953, whichever is greater. A year shall be 12 running months.

(b) "Average final compensation for volunteer [1]firemen" means the average salary of the 10 best contributing years prior to change in status to a permanent full-time [1]fireman or retirement as a volunteer [1]fireman or the career average of a volunteer [1]fireman, since July 1, 1953, whichever is greater.

(3) "Salary" means the fixed monthly compensation paid [1]firemen and where, as in the case of volunteer [1]firemen, compensation is derived from actual services rendered, salary shall be the total cash compensation received yearly for such services, prorated on a monthly basis.

(4) "Property insurance" means property insurance as defined in s. 624.604, and covers real and personal property within the corporate limits of any municipality within the state. Multiple peril means a combination or package policy which includes both property and casualty coverage for a single premium.

(5)(a) "Aggregate number of years of service with the municipality" shall mean the total number of years, and fractional parts of years of service of any [1]fireman, omitting intervening years and fractional parts of years, when such [1]fireman may not be employed by the municipality. Provided, however, that no [1]fireman will receive credit for years of fractional parts of years of service for which he has withdrawn his contributions to the fund for those years or fractional parts of years of service, unless the said [1]fireman repays into said fund the contributions he has withdrawn, with interest, within 90 days after his reemployment. Further, providing that a [1]fireman may voluntarily leave his contributions in the fund for a period of 5 years after leaving the employ of the fire department, pending the possibility of his being rehired by the same department and remaining employed for a period of not less than 3 years, without losing credit for the time he has participated actively as a [1]fireman. Should he not remain employed for a period of at least 3 years as a [1]fireman, with the same department upon reemployment, within 5 years, his contributions shall be returned to him without interest.

(b) In determining the aggregate number of years of service of any [1]fireman, the time spent in the military service of the Armed Forces of the United States, or the United States Merchant Marine, while on official leave of absence in the event of a national emergency, shall be added to the years of actual service; provided, however, that to receive credit for such services, the [1]fireman must return to his employment as a [1]fireman of the municipality within 1 year from the date of his release from such active service, provided further, however, that credit for such military service shall not exceed 5 years; provided further, however, that in order for any [1]fireman to receive said military service credit, the said [1]fireman must contribute into said fund the same sum which said [1]fireman would have contributed should he have remained a [1]fireman; provided further, however, that a request for such military service is made by the said [1]fireman within 90 days after reentering the service of the fire department from such leave of absence granted, or such military service credit shall be forfeited forever.

History.—s. 1, ch. 63-249; s. 2, ch. 79-380; s. 1, ch. 79-388.

[1]**Note.**—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "fireman" to "firefighter" and "firemen" to "firefighters" where the terms appear in chapter 175.

175.041 Municipal Firefighters' Pension Trust Fund created; applicability of provisions.—

(1) There is hereby created a special fund to be known as the "Municipal Firefighters' Pension Trust Fund," exclusively for the purpose of this act, in each municipality of this state heretofore or hereafter created which now has or which may hereafter have a constituted fire department or an authorized volunteer fire department, or any combination thereof, and which municipality does not presently have established by law, special law, or local ordinance a similar fund.

(2) To qualify as a fire department or volunteer fire department or combination thereof under the provisions of this chapter, the department shall own and use apparatus for the fighting of fires that is in compliance with National Fire Protection Association Standards for Automotive Fire Apparatus.

(3) The provisions of this act shall apply only to municipalities organized and established pursuant to the laws of the state, and said provisions shall not apply to the unincorporated areas of any county or counties nor shall the provisions hereof apply to any governmental entity whose employees are eligible for membership in a state or state and county retirement system.

(4) No municipality shall establish more than one retirement plan for public safety officers which is supported in whole or in part by the distribution of premium tax funds as provided by this chapter or chapter 185, nor shall any municipality establish a retirement plan for public safety officers which receives premium tax funds from both this chapter and chapter 185.

History.—s. 1, ch. 63-249; s. 1, ch. 65-153; ss. 2, 3, ch. 79-380; s. 1, ch. 79-388.

175.051 Actuarial deficits not state obligation.—Actuarial deficits, if any, arising under this act, shall not be the obligation of the state.

History.—s. 1, ch. 63-249.

175.061 Board of trustees; members, terms of office.—In each municipality there is hereby created a board of trustees of the Municipal [1]Firemen's Pension Trust Fund. The board of trustees shall consist of the mayor, or corresponding officer, when the municipality does not have a mayor; the chief of the fire department; two [1]firemen of the municipality, to be elected by a majority of the [1]firemen whose names appear on the rolls as members of the fire department of the municipality; and one legal resident of the municipality, to be appointed by the legislative body of the municipality. The mayor, or corresponding officer of the municipality, and the chief of the

fire department, shall serve as long as they shall continue to hold office as mayor or chief, respectively, and upon a vacancy in the office of mayor or chief, their respective successors shall automatically succeed to the position of trustee, and each of the [1]firemen shall be trustee, appointed for a period of 2 years, unless he sooner leaves the employment of the municipality, whereupon a successor shall be elected by a majority of the [1]firemen in the municipality where such vacancy exists; the resident member shall be a trustee for a term of 2 years and he may succeed himself in office. The resident member shall hold office at the pleasure of the legislative body of the municipality that he represents. The mayor shall be the chairman of the board. The board of trustees shall elect one of its members as secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.

History.—s. 1, ch. 63-249.

[1]**Note.**—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "firemen" to "firefighters" where the term appears in chapter 175.

175.071 Powers of board of trustees.—The board of trustees may:

(1) Invest and reinvest the assets of the Municipal [1]Firemen's Pension Trust Fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the Municipal [1]Firemen's Pension Trust Fund shall be entitled under the provisions of this act, and pay the initial and subsequent premiums thereon.

(2) Invest and reinvest the assets of the Municipal [1]Firemen's Pension Trust Fund in:

(a) Time or savings accounts of a national bank, a state bank insured by the Federal Deposit Insurance Corporation, or a savings, building and loan association insured by the Federal Savings and Loan Insurance Corporation.

(b) Obligations of the United States or obligations guaranteed as to principal and interest by the Government of the United States.

(c) County bonds containing a pledge of the full faith and credit of the county involved, bonds of the Division of Bond Finance of the Department of General Services, or of any other state agency, which have been approved as to legal and fiscal sufficiency by the State Board of Administration.

(d) Obligations of any municipal authority issued pursuant to the laws of this state; provided, however, that for each of the 5 years next preceding the date of investment the income of such authority available for fixed charges shall have been not less than 1.5 times its average annual fixed-charges requirement over the life of its obligations.

(e) Bonds, stocks or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state, or organized territory of the United States or the District of Columbia, provided:

1. The corporation is listed on any one or more of the recognized national stock exchanges and holds a rating in one of the three highest classifications by a major rating service;

2. The corporation has paid cash dividends for a period of 7 fiscal years next preceding the date of acquisition;

3. The corporation fulfills either of the following standards: Over the period of the 7 fiscal years immediately preceding purchase the corporation must have earned after federal income taxes, an average amount per annum at least equal to two times the amount of the yearly interest charges upon its bonds, notes or other evidences of indebtedness of equal or greater security outstanding at date of purchase, and earned after federal income taxes, an amount at least equal to two times the amount of such interest charges in each of the 3 fiscal years immediately preceding purchase; or the corporation over the period of 7 fiscal years immediately preceding purchase must have earned after federal income taxes, an average amount per annum at least equal to 6 percent of the par value of its bonds, notes or other evidences of indebtedness of equal or greater security outstanding at date of purchase, and earned after federal income taxes, an amount at least equal to 6 percent of the par value of such obligations in each of the 3 fiscal years immediately preceding purchase. No investment shall be made under this paragraph upon which any interest obligation is in default or which has been in default within the immediately preceding 5-year period;

4. The board of trustees shall not invest more than 1 percent of its assets in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed 1 percent of the outstanding capital stock of that company; nor shall the aggregate of its investments under this section at cost exceed 10 percent of the fund's assets.

(3) Issue drafts upon the Municipal [1]Firemen's Pension Trust Fund pursuant to this act and rules and regulations prescribed by the board of trustees; all such drafts shall be consecutively numbered and be signed by the chairman and secretary and shall state upon their face the purpose for which the drafts are drawn. The treasurer or depository of each municipality shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money shall be otherwise drawn from the fund.

(4) Any and all acts and decisions shall be by at least three members of the board; however, no trustee shall take part in any action in connection with his own participation in the fund, and no unfair discrimination shall be shown to any individual [1]fireman participating in the fund.

(5) The board's action on all claims for retirement under this act shall be final, provided, however, that the rules and regulations of the board have been complied with.

(6) Convert into cash any securities of the fund.

(7) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

(8) The general administration of, and the responsibilities for, the proper operation of the Municipal [1]Firemen's Pension Trust Fund and for making effective the provisions of this act are vested in the board of trustees. The board of trustees shall keep in convenient form such data as shall be necessary for

an actuarial valuation of the Municipal [1]Firemen's Pension Trust Fund and for checking the actual experience of the fund.

History.—s. 1, ch. 63-249; s. 1, ch. 65-365; ss. 22, 35, ch. 69-106.

[1]Note.—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "fireman" to "firefighter" and "firemen" to "firefighters" where the terms appear in chapter 175.

175.081 Use of annuity or insurance policies.—When the board of trustees purchases annuity or life insurance contracts to provide all or any part of the benefits as provided for by this act, the following principles shall be observed:

(1) Only those [1]firemen who have been members of the Municipal [1]Firemen's Pension Trust Fund for 1 year or more may participate in the insured plan.

(2) Individual policies shall be purchased only when a group insurance plan is not feasible.

(3) Each application and policy shall designate the Municipal [1]Firemen's Pension Trust Fund as owner of the policy.

(4) Policies shall be written on an annual premium basis.

(5) The type of policy shall be one which for the premium paid provides each individual with the maximum retirement benefit at his earliest statutory normal retirement age.

(6) Death benefit, if any, should not exceed:

(a) One hundred times the estimated normal retirement income, based on the assumption that the present rate of compensation continues without change to normal retirement date, or

(b) Twice the annual rate of compensation as of the date of termination of service, or

(c) The single-sum value of the accrued deferred retirement income (beginning at normal retirement date) at date of termination of service, whichever is greatest.

(7) An insurance plan may provide that the assignment of insurance contract to separating [1]firemen shall be at least equivalent to the return of the [1]firemen's contributions used to purchase the contract. An assignment of contract discharges the municipality from all further obligation to the participant under the plan even though the cash value of such contract may be less than the [1]firemen's contributions.

(8) Provisions shall be made, either by issuance of separate policies, or otherwise, that the separating [1]fireman does not receive cash value and other benefits under the policies assigned to him which exceed the present value of his vested interest under the Municipal [1]Firemen's Pension Trust Fund, inclusive of his contribution to the plan; the contributions by the state shall not be exhausted faster merely because the method of funding adopted was through insurance companies.

(9) The [1]fireman shall have the right at any time to give the board of trustees written instructions designating the primary and contingent beneficiaries to receive death benefits or proceeds, and the method of settlement of the death benefit or proceeds, or requesting a change in the beneficiary designation or method of settlement previously made, subject to the terms of the policy or policies on his life. Upon receipt of such written instructions, the board of trustees shall take necessary steps to effectuate the designation or change of beneficiary or settlement option.

History.—s. 1, ch. 63-249.

[1]Note.—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "fireman" to "firefighter" and "firemen" to "firefighters" where the terms appear in chapter 175.

175.091 Creation and maintenance of fund.—The Municipal [1]Firemen's Pension Trust Fund in each municipality shall be created and maintained in the following manner:

(1) By payment to the fund of the net proceeds of the 2 percent excise or license or other similar tax, which may be imposed by the respective municipalities upon fire insurance companies, fire insurance associations, or other property insurers on their gross receipts on premiums from holders of policies, which policies cover real or personal property within the corporate limits of such municipalities, as is hereinafter expressly authorized.

(2) By the payment to the fund of 5 percent of the salary of each uniformed [1]fireman who is a member or duly enrolled in the fire department of any municipality, which 5 percent shall be deducted by the municipality from the compensation due to the [1]fireman and paid over to the board of trustees of the Municipal [1]Firemen's Pension Trust Fund wherein such [1]fireman is employed. A [1]fireman participating in the old age survivors insurance of the Federal Social Security Law may limit his contribution to the Municipal [1]Firemen's Pension Trust Fund to 3 percent of his annual compensation and receive reduced benefits as set forth in s. 175.211 and s. 175.191(5). No [1]fireman shall have any right to said money so paid into said fund except as provided in this act.

(3) By all fines and forfeitures imposed and collected from any [1]fireman because of the violation of any rule and regulation promulgated by the board of trustees.

(4) By mandatory payment by municipality of a sum equal to the normal cost and the amount required to fund over a period of 40 years or on a 40-year basis, any actuarial deficiency shown by a quinquennial actuarial valuation. The first such actuarial valuation shall be conducted for the calendar year ending December 31, 1967.

(5) By all gifts, bequests and devises when donated to the fund.

(6) By all accretions to the fund by way of interest or dividends on bank deposits, or otherwise.

(7) By all other sources or income now or hereafter authorized by law for the augmentation of such Municipal [1]Firemen's Pension Trust Fund.

History.—s. 1, ch. 63-249; s. 1, ch. 65-58; s. 1, ch. 67-218.

[1]Note.—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "fireman" to "firefighter" and "firemen" to "firefighters" where the terms appear in chapter 175.

175.101 Two percent excise tax on property insurance premiums authorized; procedure.—Each municipality in this state described and classified in s. 175.041, having a lawfully established Municipal [1]Firemen's Pension Trust Fund or municipal fund providing pension benefits to [1]firemen by whatever name known, may assess and impose on every insurance company, corporation or other insurer

now engaged in or carrying on, or who shall hereinafter engage in or carry on the business of property insurance as shown by the records of the Department of Insurance, an excise or license tax in addition to any lawful license or excise tax now levied by each of the said municipalities, respectively, amounting to 2 percent of the gross amount of receipts of premiums from policyholders on all premiums collected on property insurance policies covering property within the corporate limits of such municipalities, respectively. In the case of multiple peril policies with a single premium for both the property and casualty coverages in such policies, 70 percent of such premium shall be used as the basis for the 2 percent tax above. Said excise or license tax shall be payable annually on March 1 of each year after the passage of an ordinance assessing and imposing the tax herein authorized. Every insurance company, corporation or other insurer paying such tax shall receive credit for the amount thereof, when paid on the amount payable by such insurer to the state for the similar state excise tax now imposed by other provisions of law; provided, however, that this chapter shall not be construed to require the payment of any excise tax by an insurance company that does not now pay such tax.

History.—s. 1, ch. 63-249; s. 2, ch. 67-218; ss. 13, 35, ch. 69-106.

[1]Note.—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "firemen" to "firefighters" where the term appears in chapter 175.

175.111 Certified copy of ordinance filed; insurance companies' annual report of premiums; duplicate files; book of accounts.—Whenever any municipality shall pass an ordinance assessing and imposing the taxes authorized in s. 175.101, a certified copy of such ordinance shall be deposited with both the Department of Banking and Finance and the Department of Insurance, and thereafter every insurance company, association, corporation or other insurer carrying on the business of property insurance on real or personal property, on or before the succeeding March 1 after date of the passage of said ordinance shall report fully in writing and under oath to the Department of Banking and Finance and the Department of Insurance, a just and true account of all premiums by such insurer received for property insurance policies covering or insuring any real or personal property located within the corporate limits of each such municipality during the period of time elapsing between the date of the passage of said ordinance and the succeeding March 1. Said report shall include the city code designation as prescribed by the insurance commission for each piece of insured property, real or personal, located within the corporate limits of each municipality. The aforesaid insurer shall annually thereafter, on March 1, file with the same departments, a similar report covering the preceding year's premium receipts, and every such insurer at the same time of making such reports shall pay to the Insurance Commissioner and Treasurer the amount of the tax hereinbefore mentioned. Every insurer engaged in carrying on such insurance business in the state shall keep accurate books of accounts of all such business done by it within the corporate limits of each such municipality, and in such manner as to be able to comply with the provisions of this section. The Department of Insurance shall furnish to any municipality requesting the same a copy of any of the reports filed by insurers under this section.

History.—s. 1, ch. 63-249; ss. 12, 13, 35, ch. 69-106; s. 1, ch. 75-240.

175.121 Moneys received by Insurance Commissioner and Treasurer paid into trust fund; Comptroller to pay municipalities annually.—The Insurance Commissioner and Treasurer of the state shall keep a separate account of all moneys collected for each municipality, under the provisions of this act and any and all moneys so collected, after deducting the necessary expenses incurred by the Department of Insurance (not to exceed $30,000 per annum) in carrying out the provisions of this act, shall be paid into the State Treasury in a fund known as the Insurance Commissioner's Regulatory Trust Fund. The Comptroller shall, on or before June 1 of each year, and at such other times as the State Treasurer may elect, draw his warrant on the Insurance Commissioner and Treasurer for the full net amount of money then on deposit with the Insurance Commissioner and Treasurer in the Insurance Commissioner's Regulatory Trust Fund, specifying the municipality to which said moneys shall be paid and the net amount collected for and to be paid to each said municipality, which said sums payable to said municipality are hereby appropriated annually out of the Insurance Commissioner's Regulatory Trust Fund. The warrants of the Comptroller shall be countersigned by the Governor and shall be payable to the municipality entitled to receive the same, and shall be remitted annually by the Comptroller to each municipality.

History.—s. 1, ch. 63-249; ss. 13, 35, ch. 69-106; s. 1, ch. 74-294.

175.122 Limitation of disbursement.—Any municipality participating in the Municipal [1]Firemen's Pension Trust Fund pursuant to provisions of this chapter shall be limited to receiving any moneys from such fund in excess of that produced by one-half of the excise tax, as provided for in s. 175.101; provided, however, that any such municipality receiving less than 6 percent of its fire department payroll from such fund shall be entitled to receive from such fund the amount determined under s. 175.121, in excess of one-half of said excise tax, not to exceed 6 percent of its fire department payroll.

History.—s. 1, ch. 67-217.

[1]Note.—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "firemen" to "firefighters" where the term appears in chapter 175.

175.131 Funds received by municipalities; deposit in Municipal Firefighters' Pension Trust Fund.—All funds received by any municipality under the provisions of this chapter, shall be by such municipality paid immediately into the Municipal [1]Firemen's Pension Trust Fund of said municipality, as described in s. 175.041, or s. 175.351(13).

History.—s. 1, ch. 63-249.

[1]Note.—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "firemen" to "firefighters" where the term appears in chapter 175.

175.141 Tax imposed by municipalities under this act not additional to state excise tax; credit given on state tax.—The tax herein authorized to be imposed by each municipality shall in nowise be in addition to any similar state excise or

license tax imposed by law, but the payer of the tax hereby authorized shall receive credit therefor on his said state excise or license tax and the balance of said state excise or license tax shall be paid to the State Treasurer as is now provided by law.

History.—s. 1, ch. 63-249.

175.151 Penalty for failure of insurers to comply with this act.—Should any insurance company, corporation or other insurer fail to comply with the provisions of this act, on or before March 1 of each year as herein provided, the certificate of authority issued to said insurance company, corporation or other insurer to transact business in this state may be canceled and revoked by the Department of Insurance, and it is unlawful for any such insurance company, corporation, or other insurer to transact business thereafter in this state unless such insurance company, corporation, or other insurer shall be granted a new certificate of authority to transact any business in this state, in compliance with provisions of law authorizing such certificate of authority to be issued.

History.—s. 1, ch. 63-249; ss. 13, 35, ch. 69-106.

175.162 Requirements for retirement.—Any [1]fireman who has attained the age of 60 years, or more, and who at such time has completed at least 10 years of continuous service within the contemplation of this act, as a [1]fireman and who for such minimum period has been a member of the Municipal [1]Firemen's Pension Trust Fund, is eligible for normal retirement benefits. Normal retirement under the plan is retirement from the service of the municipality, on or after the normal retirement date. In such event, payment of retirement income will be governed by the following provisions of this section:

(1) The normal retirement date of each [1]fireman will be the first day of the month coincident with or next following the date on which he has attained the age of 60 years and has completed 10 years, in the aggregate within the contemplation of this act, of service.

(2)(a) The amount of monthly retirement income payable to a full-time [1]fireman who retires on or after his normal retirement date shall be an amount equal to the number of his years of credited service multiplied by 2 percent of his average final compensation as a full-time [1]fireman. If the [1]fireman has been contributing only 3 percent of his salary, his monthly retirement income shall be an amount equal to the number of his years of credited service multiplied by 1.2 percent of his average final compensation.

(b) The amount of monthly retirement income payable to a volunteer [1]fireman who retires on or after his normal retirement date shall be an amount equal to the number of his years of credited service multiplied by 2 percent of his average final compensation as a volunteer [1]fireman. If the [1]fireman has been contributing only 3 percent of his salary, his monthly retirement income shall be an amount equal to the number of his years of credited service multiplied by 1.2 percent of his average final compensation.

(3) The monthly retirement income payable in the event of normal retirement will be payable on the first day of each month. The first payment will be made on the [1]fireman's normal retirement date, or on the first day of the month coincident with or next following his actual retirement, if later, and the last payment will be the payment due next preceding the [1]fireman's death; except that, in the event the [1]fireman dies after his retirement but before he has received retirement benefits for a period of 10 years, the same monthly benefit will be paid to the beneficiary (or beneficiaries), as designated by the [1]fireman for the balance of such 10-year period. If a [1]fireman continues in the service of the municipality beyond his normal retirement date and dies prior to his date of actual retirement, without an option made pursuant to s. 175.171 being in effect, monthly retirement income payments will be made for a period of 10 years to a beneficiary (or beneficiaries) designated by the [1]fireman as if the [1]fireman had retired on the date on which his death occurred.

(4) Early retirement under the plan is retirement from the service of the municipality, with the consent of the said municipality, as of the first day of any calendar month which is prior to the [1]fireman's normal retirement date but subsequent to the date as of which he has both attained the age of 50 years and has been a member of this fund for 10 continuous years. The monthly amount of retirement income payable to a [1]fireman who retires prior to his normal retirement date shall be in the amount computed as described in subsection (2), such amount of retirement income to be actuarially reduced to take into account the [1]fireman's younger age and the earlier commencement of retirement income benefits. The amount of monthly income payable in the event of early retirement will be paid in the same manner as in subsection (3).

History.—s. 1, ch. 63-249; s. 1, ch. 70-129.

[1]Note.—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "fireman" to "firefighter" and "firemen" to "firefighters" where the terms appear in chapter 175.

175.171 Optional forms of retirement income.—

(1) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified in s. 175.162, a [1]fireman, upon written request to the board of trustees, and submission of evidence of good health (except that such evidence will not be required if such request is made at least 3 years prior to the date of commencement of retirement income or if such request is made within 6 months following the effective date of the plan, if later), and subject to the approval of the board of trustees, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

(a) A retirement income of larger monthly amount, payable to the [1]fireman for his lifetime only.

(b) A retirement income of a modified monthly amount, payable to the [1]fireman during the joint lifetime of the [1]fireman and a dependent joint pensioner designated by the [1]fireman, and following the death of either of them, 100 percent, 66⅔ percent or 50 percent of such monthly amounts payable to the survivor for the lifetime of the survivor.

(c) Such other amount and form of retirement payments or benefits as, in the opinion of the board

of trustees will best meet the circumstances of the retiring [1]fireman.

1. The [1]fireman upon electing any option of this section will designate the joint pensioner or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the plan in the event of his death, and will have the power to change such designation from time to time, but any such change shall be deemed a new election and will be subject to approval by the board of trustees. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. If a [1]fireman has elected an option with a joint pensioner or beneficiary and his retirement income benefits have commenced, he may thereafter change his designated joint pensioner or beneficiary, but only if the board of trustees consents to such change and if the joint pensioner last previously designated by him is alive when he files with the board of trustees his request for such change.

2. The consent of a [1]fireman's joint pensioner or beneficiary to any such change shall not be required.

3. The board of trustees may request such evidence of the good health of the joint pensioner that is being removed as it may require and the amount of the retirement income payable to the [1]fireman upon designation of a new joint pensioner shall be actuarially redetermined taking into account the age and sex of the former joint pensioner, the new joint pensioner, and the [1]fireman. Each such designation will be made in writing on a form prepared by the board of trustees, and on completion will be filed with the board of trustees. In the event that no designated beneficiary survives the [1]fireman, such benefits as are payable in the event of the death of the [1]fireman subsequent to his retirement, shall be paid as provided in s. 175.181.

(2) Retirement income payments will be made under the option elected in accordance with the provisions of this section and will be subject to the following limitations:

(a) If a [1]fireman dies prior to his normal retirement date, or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under s. 175.201.

(b) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the [1]fireman's retirement under the plan, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the [1]fireman upon his retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section, or a new beneficiary is designated by the [1]fireman prior to his retirement and within 90 days after the death of the beneficiary.

(c) If both the retired [1]fireman, and the beneficiary (or beneficiaries) designated by him die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection (1)(c), the board of trustees may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum, and in accordance with s. 175.181.

(d) If a [1]fireman continues beyond his normal retirement date pursuant to the provisions of s. 175.162 (1), and dies prior to his actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the [1]fireman in the amount or amounts computed as if the [1]fireman had retired under the option on the date on which his death occurred.

History.—s. 1, ch. 63-249; s. 2, ch. 65-58.

[1]**Note.**—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "fireman" to "firefighter" where the term appears in chapter 175.

175.181 Beneficiaries.—

(1) Each [1]fireman may, on a form provided for that purpose, sign and file with the board of trustees, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of his death, and each designation may be revoked by such [1]fireman by signing and filing with the board of trustees a new designation of beneficiary form.

(2) If a deceased [1]fireman fails to name a beneficiary in the manner above prescribed, or if the beneficiary (or beneficiaries) named by a deceased [1]fireman predecease the [1]fireman, the death benefit, if any, which may be payable under the plan with respect to such deceased [1]fireman may be paid, in the discretion of the board of trustees, either to:

(a) The wife or dependent children of said [1]fireman; or

(b) Dependent living parents of said [1]fireman.

History.—s. 1, ch. 63-249.

[1]**Note.**—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "fireman" to "firefighter" where the term appears in chapter 175.

175.191 Disability retirement.—

(1) A [1]fireman having 10 or more continuous years of credited service and having contributed to the Municipal [1]Firemen's Pension Trust Fund for 10 years or more may retire from the service of the municipality under the plan if, prior to his normal retirement date, he becomes totally and permanently disabled as defined in subsection (2), by reason of any cause other than a cause set out in subsection (3), on or after the effective date of the plan. Such retirement shall herein be referred to as disability retirement.

(2) A [1]fireman will be considered totally disabled if, in the opinion of the board of trustees, he is wholly prevented from rendering useful and efficient service as a [1]fireman; and a [1]fireman will be considered permanently disabled if, in the opinion of the board of trustees, such [1]fireman is likely to remain so disabled continuously and permanently from a cause other than is specified in subsection (3).

(3) A [1]fireman will not be entitled to receive any disability retirement income if the disability is a result of:

(a) Excessive and habitual use by the [1]fireman of drugs, intoxicants or narcotics;

(b) Injury or disease sustained by the [1]fireman while willfully and illegally participating in fights, riots, civil insurrections, or while committing a crime;

(c) Injury or disease sustained by the [1]fireman while serving in any armed forces;

(d) Injury or disease sustained by the [1]fireman after his employment has terminated.

(4) No [1]fireman shall be permitted to retire under the provisions of this section until examined by a duly qualified physician or surgeon, to be selected by the board of trustees for that purpose, and is found to be disabled in the degree and in the manner specified in this section. Any [1]fireman retiring under this section shall be examined periodically by a duly qualified physician or surgeon or board of physicians and surgeons to be selected by the board of trustees for that purpose, to determine if such disability has ceased to exist.

(5) The benefits payable to a [1]fireman who retires from the service of a municipality, due to total and permanent disability as a direct result of a disability commencing prior to his normal retirement date is the monthly income payable for 10 years certain and life which can be provided by the single-sum value of the deferred monthly retirement income beginning at normal retirement date which has accrued to his date of disability (where the amount of such accrued deferred monthly retirement income is computed by multiplying his number of years of actual credited service as of his date of disability by 2 percent of his average final compensation). If the [1]fireman has been contributing only 3 percent of his salary, his monthly retirement income shall be an amount equal to the number of his years of credited service multiplied by 1.2 percent of his average final compensation.

(6) The monthly retirement income to which a [1]fireman is entitled in the event of his disability retirement will be payable on the first day of each month. The first payment will be made on the first day of the month following the later to occur of the date on which the disability has existed for 3 months and the date the board of trustees approved the payment of such retirement income. The last payment will be, if the [1]fireman recovers from the disability prior to his normal retirement date, the payment due next preceding the date of such recovery, or, if the [1]fireman dies without recovering from his disability, the payment due next preceding his death or the 120th monthly payment, whichever is later. Any monthly retirement income payments due after the death of a disabled [1]fireman shall be paid to the [1]fireman's designated beneficiary (or beneficiaries) as provided in ss. 175.181 and 175.201.

(7) If the board of trustees finds that a [1]fireman who is receiving a disability retirement income is, at any time prior to his normal retirement date, no longer disabled, as provided herein, the board of trustees shall direct that the disability retirement income be discontinued. Recovery from disability as used herein shall mean the ability of the [1]fireman to render useful and efficient service as a [1]fireman.

(8) If the [1]fireman recovers from disability and reenters the service as a [1]fireman, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he reentered the service, will not be considered as credited service for the purpose of this plan.

History.—s. 1, ch. 63-249; s. 3, ch. 65-58; s. 2, ch. 70-129.

[1]**Note.**—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "fireman" to "firefighter" and "firemen" to "firefighters" where the terms appear in chapter 175.

175.201 Death prior to retirement; refunds of death benefits.—Should any [1]fireman die before being eligible to retire under the provisions of this act, the heirs, legatees, beneficiaries, or personal representatives of such deceased [1]fireman shall be entitled to a refund of 100 percent without interest, of the contributions made to the Municipal [1]Firemen's Pension Trust Fund by such deceased [1]fireman; or in the event an annuity or life insurance contract has been purchased by the board of trustees on such [1]fireman, then to the death benefits available under such life insurance or annuity contract subject to the limitations on such death benefits set forth in s. 175.081, whichever amount is greater. In the event that the death benefit paid by a life insurance company exceeds the limit set forth in s. 175.081, the excess of the death benefit over the limit shall be paid to the Municipal [1]Firemen's Pension Trust Fund.

History.—s. 1, ch. 63-249.

[1]**Note.**—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "fireman" to "firefighter" and "firemen" to "firefighters" where the terms appear in chapter 175.

175.211 Separation from service; refunds.—Should any [1]fireman leave the service of the municipality before accumulating aggregate time of 10 years toward retirement and before being eligible to retire under the provisions of this act, such [1]fireman shall be entitled to a refund of all of his contributions made to the Municipal [1]Firemen's Pension Trust Fund after July 1, 1963, without interest, less any disability benefits paid to him after July 1, 1963. Should any [1]fireman who has been in the service of the municipality for at least 10 years and has contributed to the Municipal [1]Firemen's Pension Trust Fund for at least 10 years elect to leave his accrued contributions in the Municipal [1]Firemen's Pension Trust Fund, such [1]fireman upon attaining the age of 50 years may retire at the actuarial equivalent of the amount of such retirement income otherwise payable to him.

History.—s. 1, ch. 63-249.

[1]**Note.**—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "fireman" to "firefighter" and "firemen" to "firefighters" where the terms appear in chapter 175.

175.221 Lump sum payment of small retirement income.—Notwithstanding any provisions of the plan to the contrary, if the monthly retirement income payable to any person entitled to benefits hereunder is less than $30, or if the single-sum value of the accrued retirement income is less than $750, as of the date of retirement or termination of service, whichever is applicable, the board of trustees, in the exercise of its discretion, may specify that the actuarial equivalent of such retirement income be paid in a lump sum.

History.—s. 1, ch. 63-249.

175.231 Diseases of [1]firemen suffered in line of duty; presumption.—Any condition or impairment of health of a [1]fireman caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty unless the contrary be shown by competent evidence, provided, however, that such [1]fireman shall have successfully passed a physical examination before entering into such service, which examination failed to reveal any evidence of such condition. This section shall be applicable to all [1]firemen employed in Florida only with reference to pension and retirement benefits under this chapter.

History.—s. 1, ch. 63-249.

[1]Note.—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "fireman" to "firefighter" and "firemen" to "firefighters" where the terms appear in chapter 175.

175.241 Exemption from execution.—The pensions, annuities, or other benefits accrued or accruing to any person under the provisions of this act and the accumulated contributions and the cash securities in the funds created under this act are hereby exempted from any state, county, or municipal tax and shall not be subject to execution or attachment or to any legal process whatsoever, and shall be unassignable.

History.—s. 1, ch. 63-249.

175.251 Employment records required to be kept by secretary of board of trustees.—The secretary of the board of trustees shall keep a record of all persons receiving retirement payments under the provisions of this act, in which shall be noted the time when the pension is allowed and when the same shall cease to be paid. In this record the secretary shall keep a list of all [1]firemen employed by the municipality, and the record shall be kept in such manner as to show the name, address and time of employment of such [1]firemen, and when such [1]firemen cease to be employed by the municipality.

History.—s. 1, ch. 63-249.

[1]Note.—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "firemen" to "firefighters" where the term appears in chapter 175.

175.261 Report to Department of Insurance.—

(1) Each year, by February 1, the chairman or secretary of the board of trustees of each Municipal [1]Firemen's Pension Trust Fund shall file a report with the Department of Insurance, containing the following:

(a) Whether in fact the municipality is within the provisions of s. 175.041.

(b) A certified statement of accounting for the most recent fiscal year of the municipality, showing a detailed listing of assets (and methods used to value them) and a statement of all income and disbursements during the year. Such income and disbursements shall be reconciled with the assets at the beginning of and end of the year.

(c) A statistical exhibit showing the total number of [1]firemen on the force, the number included in the retirement plan and the number ineligible, classified according to the reason for their being ineligible, and the number of disabled [1]firemen and retired [1]firemen and their beneficiaries receiving pension payments and the amounts of annual retirement income or pension payments being received by them.

(d) A statement of the amount the municipality, or other income source, has contributed to the retirement fund for the most recent fiscal year and the amount the municipality will contribute to the retirement fund during its current fiscal year.

(e) If any benefits are insured with a commercial insurance company, the report should include a statement of the relationship of the insured benefits to the benefits provided by this act as well as the name of the insurer and information about the basis of premium rates, mortality table, interest rates and method used in valuing retirement benefits.

(2) By February 1 of each quinquennial year, beginning with February 1, 1968, the chairman of each Municipal [1]Firemen's Pension Trust Fund shall report to the Department of Insurance such data that it needs to complete an actuarial valuation of each fund. The forms for each municipality shall be supplied by the department. The expense of this actuarial valuation shall be borne by the Municipal [1]Firemen's Pension Trust Fund established by ss. 175.041 and 175.121.

History.—s. 1, ch. 63-249; s. 4, ch. 65-58; ss. 13, 35, ch. 69-106.

[1]Note.—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "firemen" to "firefighters" where the term appears in chapter 175.

[1]175.271 Advisory committee.—The Department of Insurance shall appoint annually an advisory committee to serve for 1 year, consisting of seven members, one of whom shall be from the department, as chairman, to receive such reports as may be brought to its attention and to advise and assist in matters relating to the Municipal [2]Firemen's Pension Trust Fund.

History.—s. 1, ch. 63-249; ss. 13, 35, ch. 69-106; s. 4, ch. 78-323.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[2]Note.—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "firemen" to "firefighters" where the term appears in chapter 175.

175.291 Attorney for municipality to represent board of trustees upon request; failure to do so; board may employ independent counsel.— The attorney or corporation counsel of each municipality shall give advice to said board of trustees in all matters pertaining to its duties in the administration of said Municipal [1]Firemen's Pension Trust Fund whenever thereunto requested; and he shall represent and defend said board as its attorney in all suits and actions at law or in equity that may be brought against it and bring all suits and actions in its behalf that may be required or determined upon by said board; provided, however, that if said attorney shall fail or refuse to comply with the request of the board of trustees in this relation, the said board of trustees in its discretion may employ independent legal counsel for such purpose.

History.—s. 1, ch. 63-249.

[1]Note.—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "firemen" to "firefighters" where the term appears in chapter 175.

175.301 Deposit of funds and securities with municipal treasurer.—The funds and securities of the Municipal [1]Firemen's Pension Trust Fund shall be deposited with the treasurer or depository of the municipality, who shall keep the same in a separate fund, and shall be liable for the safekeeping of same,

under the bond given by him to the municipality, and he shall be liable in the same manner and to the same extent as he is liable for the safekeeping of the funds of the municipality.

History.—s. 1, ch. 63-249.

[1]Note.—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "firemen" to "firefighters" where the term appears in chapter 175.

175.311 Each municipality independent of any other municipality in the operation of this act.—In the enforcement and in the interpretation of the provisions of this act, each municipality shall be independent of any other municipality, and the board of trustees of the Municipal Firefighters' Pension Trust Fund of each municipality shall function for the municipality which it is to serve as trustee.

History.—s. 1, ch. 63-249; s. 4, ch. 79-380.

175.321 Application of ss. 175.101-175.121, 175.131-175.151.—Sections 175.101-175.121 and 175.131-175.151 shall be applicable in relation to all municipalities of the state, which now have or hereafter establish a Municipal [1]Firemen's Pension Trust Fund or a pension fund for [1]firemen, regardless of whether said municipality shall fall within the classification of s. 175.041 and have its Municipal [1]Firemen's Pension Trust Fund established under the provisions thereof, or whether said city's or town's said pension fund shall exist under other general, special laws of the state, or a local ordinance. The remaining sections of this act, which apply specifically to the creation of a board of trustees, define its powers and establish a Municipal [1]Firemen's Pension Trust Fund in each municipality, as well as such sections as define the person who shall be entitled to a pension out of such fund the amount thereof, and govern the conditions upon which such pensions shall be allowed, and the duties of the officers of those municipalities in relation to such fund, shall not apply to any municipality which now has a Municipal [1]Firemen's Pension Trust Fund or municipal pension fund for [1]firemen and policemen.

History.—s. 1, ch. 63-249.

[1]Note.—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "firemen" to "firefighters" where the term appears in chapter 175.

175.331 Rights of firefighters under former law.—The rights of [1]firemen established by any former provisions of this act shall not be impaired nor shall their benefits be reduced by virtue of any provisions of this act; provided, however, that no member may receive the benefits under the former act and also be entitled to receive the benefits under this act. Unless an election is made in writing before January 1, 1964, to the board of trustees, to remain under the provisions of the former act, it shall be conclusively presumed that the provisions of this act as amended, will apply to all [1]firemen. Members who have retired under the former act prior to the enactment of this act, shall continue to receive their benefits under the former act.

History.—s. 1, ch. 63-249.

[1]Note.—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "firemen" to "firefighters" where the term appears in chapter 175.

175.333 Discrimination in benefit formula prohibited.—No plan established under the provisions of this chapter and participating in the distribution of premium tax moneys as provided in this chapter shall discriminate in its benefit formula based on color, national origin, sex, or marital status. Nothing herein shall preclude a plan from actuarially adjusting benefits or offering options based upon sex, age, early retirement, or disability.

History.—s. 4, ch. 79-380.

175.341 Department of Insurance to establish rules and regulations.—The Department of Insurance shall establish rules and regulations pertaining to the operation of this fund.

History.—s. 1, ch. 63-249; ss. 13, 35, ch. 69-106.

175.351 Municipalities having their own pension plans for firefighters.—In order for municipalities with their own pension plans for firefighters, or for firefighters and other employees, to participate in the distribution of the tax fund established in ss. 175.101-175.121, 175.131-175.151, their pension funds must meet each of the following standards:

(1) The plan must be for the purpose of providing retirement and disability income for [1]firemen or their beneficiaries.

(2) The normal retirement age, if any, shall not be more than age 65.

(3) If the plan provides for a stated period of service as a requirement to receive a retirement income, that period must not be more than 35 years.

(4) The benefit formula to determine the amount of monthly pension should be equal to at least one-twelfth of 1 percent of the [1]fireman's total earnings during his period of credited service.

(5) If a ceiling on the monthly payment is stated in the plan, it should be no lower than $100.

(6) Death or survivor benefits and disability benefits may be incorporated into the plan as the municipalities wish but in no event should the single-sum value of such benefits as of the date of termination of service because of death or disability exceed:

(a) One hundred times the estimated normal retirement income, based on assumption that the present rate of compensation continues without change to normal retirement date, or

(b) Twice the annual rate of compensation as of date of termination of service, or

(c) The single-sum value of the accrued deferred retirement income (beginning at normal retirement date) at date of termination of service, whichever is greatest; provided, however, that nothing in this paragraph shall require any reduction in death or disability benefits provided by a retirement plan in effect prior to July 1, 1963.

(7) Eligibility for coverage under the plan must be based upon length of service, or attained age, or both; and benefits must be determined by a nondiscriminatory formula based upon:

(a) Length of service and compensation, or

(b) Length of service.

(8) If the retirement plan requires participants to contribute toward the cost of the plan, it must set forth the termination rights, if any, of an employee before retirement.

(9) An actuarial valuation of the retirement plan must be made at least once in every 5 years commencing with December 31, 1968, subject to the following:

(a) The assets shall be valued at cost, or market,

or on such other basis as may be approved by the Department of Insurance.

(b) Minimum actuarial assumptions and methods to be used in valuing the liabilities will be provided by the Department of Insurance, and revised from time to time by it. The valuation must be on basis and methods not less conservative than those set forth by the Department of Insurance.

(c) Cost of the actuarial valuation must be paid by each individual [1]fireman's retirement fund or by the municipality.

(d) A report of the valuation, including actuarial assumptions and type and basis of funding shall be made to the Department of Insurance within 3 months after the date of valuation. If any benefits are insured with a commercial insurance company, the report should include a statement of the relationship of the retirement plan benefits to the insured benefits, and in addition, the name of the insurer, basis of premium rates, mortality table, interest rate and method used in valuing the retirement benefits.

(e) Provided, however, that if an actuarial valuation has been made subsequent to December 31, 1963, the 5-year period will commence on the date of that valuation.

(10) The municipality shall contribute to the plan annually an amount which together with the contributions from the [1]firemen and the amount derived from the premium tax provided in s. 175.101 and other income sources as authorized by law will be sufficient to meet the normal cost of the plan and to fund the actuarial deficiency over a period not more than 40 years. The advisory committee shall have authority to grant a maximum of 5 extensions of 1 year each for this mandatory payment.

(11) No retirement plan or amendment to a retirement plan shall be proposed without the proposed plan or amendment containing an actuarial estimate of the costs involved.

(12) Each year, on or before March 15, the trustees of the retirement plan shall submit the following information to the Department of Insurance in order for the retirement plan of such municipality to receive a share of the state funds for the then current calendar year; when any of these items would be identical with the corresponding item submitted for a previous year it will not be necessary to submit duplicate information, but to make reference to the item in such previous year's report:

(a) A certified copy of each and every instrument constituting or evidencing the plan. This includes the formal plan, including all amendments, the trust agreement, copies of all insurance contracts and formal announcement material.

(b) A certified statement of accounting for the most recent fiscal year of the municipality showing:

1. A detailed listing of assets and
2. A statement of all income and disbursements during the year.

Such income and disbursements must be reconciled with the assets at the beginning and end of the year.

(c) A certified statement listing the investments of the plan and a description of the methods used in valuing the investments.

(d) A statistical exhibit showing the total number of [1]firemen, the number included in the plan, and the number ineligible classified according to the reasons for their being ineligible.

(e) A certified statement describing the methods, factors and actuarial assumption used in determining the cost.

(f) A certified statement by an actuary who is a member of the Society of Actuaries, Casualty Actuarial Society, Conference of Actuaries in Public Practice, or Fraternal Actuarial Association, showing the results of the latest quinquennial valuation of the plan and a copy of the detailed worksheets showing the computations used in arriving at the results.

(g) A statement of the amount the municipality, or other income source has contributed toward the plan for the most recent fiscal year and will contribute toward the plan for the current fiscal year.

(13) When a municipality has a [1]firemen's retirement fund, which in the opinion of the Department of Insurance meets the standards set forth in subsections (1) through (12), the board of trustees of the pension fund, as approved by a majority of [1]firemen of the municipality affected, or the official pension committee; as approved by a majority of [1]firemen of the municipality affected, may place the income from the premium tax in s. 175.101 in its existing pension fund for [1]firemen, where it shall become an integral part of said fund, or may use such income to pay extra benefits to the [1]firemen included in the fund.

(14) The retirement plan setting forth the benefits and the trust agreement, if any, covering the duties and responsibilities of the trustees and the regulations of the investment of funds must be in writing and copies made available to the participants and to the general public.

History.—s. 1, ch. 63-249; ss. 13, 35, ch. 69-106; s. 5, ch. 79-380.

[1]**Note.**—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "fireman" to "firefighter" and "firemen" to "firefighters" where the terms appear in chapter 175.

175.361 Termination of plan and distribution of fund.—Upon termination of the plan for any reason, or upon written notice to the board of trustees that contributions thereunder are being permanently discontinued, the fund shall be apportioned and distributed in accordance with the following procedures:

(1) The board of trustees shall determine the date of distribution and the asset value to be distributed, after taking into account the expenses of such distribution.

(2) The board of trustees shall determine the method of distribution of the asset value, that is, whether distribution shall be by payment in cash, the maintenance of another or substituted trust fund, by the purchase of insured annuities or otherwise, for each [1]fireman entitled to benefits under the plan as specified in subsection (3).

(3) The board of trustees shall apportion the asset value as of the date of termination in the manner set forth below, on the basis that the amount required to provide any given retirement income shall mean the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) in-

volves the purchase of an insured annuity, the amount required to provide the given retirement income shall mean the single premium payable for such annuity.

(a) Apportionment shall first be made in respect of each retired [1]fireman receiving a retirement income hereunder on such date, each person receiving a retirement income on such date on account of a retired (but since deceased) [1]fireman, and each [1]fireman who has, by such date, become eligible for normal retirement but has not yet retired, in the amount required to provide such retirement income, provided that, if such asset value be less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.

(b) If there be any asset value remaining after the apportionment under paragraph (a), apportionment shall next be made in respect of each [1]fireman in the service of the city on such date who has completed at least 10 years of credited service and who has contributed to the Municipal [1]Firemen's Pension Trust Fund for at least 10 years and who is not entitled to an apportionment under paragraph (a), in the amount required to provide the actuarial equivalent of the accrued normal retirement income, based on the [1]fireman's credited service and earnings to such date, and each former participant then entitled to a benefit under the provisions of s. 175.211, who has not, by such date, reached his normal retirement date, in the amount required to provide the actuarial equivalent of the accrued normal retirement income to which he is entitled under s. 175.211, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(c) If there be any asset value after the apportionments under paragraphs (a) and (b), apportionment shall lastly be made in respect of each [1]fireman in the service of the city on such date who is not entitled to an apportionment under paragraphs (a) and (b) in the amount equal to his total contributions to the plan to date of termination, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(d) In the event that there be asset value remaining after the full apportionment specified in paragraphs (a), (b) and (c), such excess shall be returned to the city, less return of state's contributions to the state, provided that, if the excess is less than the total contributions made by the city and the state to date of termination of the plan such excess shall be divided proportionately to the total contributions made by the city and state.

(4) The board of trustees shall distribute, in accordance with the manner of distribution determined under subsection (2), the amounts apportioned under subsection (3).

History.—s. 1, ch. 63-249; s. 5, ch. 65-58.

[1]**Note.**—See s. 6, ch. 79-380, and s. 3, ch. 79-388, providing for the change of "fireman" to "firefighter" and "firemen" to "firefighters" where the terms appear in chapter 175.

CHAPTER 177

LAND BOUNDARIES

PART I PLATTING (ss. 177.011-177.151)

PART II COASTAL MAPPING (ss. 177.25-177.40)

PART III RESTORATION OF CORNERS (ss. 177.501-177.510)

PART I

PLATTING

177.011 Purpose and scope of part I.—This part shall be deemed to establish consistent minimum requirements, and to create such additional powers in local governing bodies, as herein provided to regulate and control the platting of lands. This part establishes minimum requirements and does not exclude additional provisions or regulations by local ordinance, laws, or regulations.

History.—s. 1, ch. 71-339; s. 33, ch. 79-164.

177.021 Legal status of recorded plats.—The recording of any plats made in compliance with the provisions of this chapter shall serve to establish the identity of all lands shown on and being a part of such plats, and lands may thenceforth be conveyed by reference to such plat.

History.—s. 1, ch. 71-339.

177.031 Definitions.—As used in this chapter:

(1) "Alley" means a right-of-way providing a secondary means of access and service to abutting property.

(2) "Block" includes "tier" or "group" and means a group of lots existing within well-defined and fixed boundaries, usually being an area surrounded by streets or other physical barriers and having an assigned number, letter, or other name through which it may be identified.

(3) "Board" means any board appointed by a municipality, county commission, or state agency, such as the planning and zoning board, area planning board, or the governing board of a drainage district.

(4) "Governing body" means the board of county commissioners or the legal governing body of a county, municipality, town, or village of this state.

(5) "Cul-de-sac" means a street terminated at the end by a vehicular turnaround.

(6) "Developer" means the person or legal entity that applies for approval of a plat of a subdivision pursuant to this chapter.

(7)(a) "Easement" means any strip of land created by a subdivider for public or private utilities, drainage, sanitation, or other specified uses having limitations, the title to which shall remain in the name of the property owner, subject to the right of use designated in the reservation of the servitude.

(b) "Public utility" includes any public or private utility, such as, but not limited to, storm drainage, sanitary sewers, electric power, water service, gas service, or telephone line, whether underground or overhead.

(8) "Survey data" means all information shown on the face of a plat that would delineate the physical boundaries of the subdivision and any parts thereof.

(9) "Improvements" may include, but are not limited to, street pavements, curbs and gutters, sidewalks, alley pavements, walkway pavements, water mains, sanitary sewers, storm sewers or drains, street names, signs, landscaping, permanent reference monuments ("P.R.M.s"), permanent control points ("P.C.P.s"), or any other improvement required by a governing body.

(10) "Land surveyor" means a land surveyor registered under chapter 472 who is in good standing with the [1]Florida State Board of Professional Engineers and Land Surveyors.

(11) "Lot" includes tract or parcel and means the least fractional part of subdivided lands having limited fixed boundaries, and an assigned number, letter, or other name through which it may be identified.

(12) "Municipality" means any incorporated city, town, or village.

(13) "P.C.P." means permanent control point, which shall be a secondary horizontal control monument and shall be a metal marker with the point of reference marked thereon or a 4-inch by 4-inch concrete monument a minimum of 24 inches long with the point of reference marked thereon. "P.C.P.s"

shall bear the registration number of the surveyor filing the plat of record.

(14) "Plat" means a map or delineated representation of the subdivision of lands, being a complete exact representation of the subdivision and other information in compliance with the requirement of all applicable sections of this chapter and of any local ordinances, and may include the terms "replat," "amended plat," or "revised plat."

(15) "P.R.M." means a permanent reference monument, which consists of a metal rod a minimum of 24 inches long or a 1½ inch minimum diameter metal pipe a minimum of 20 inches long, either of which shall be encased in a solid block of concrete or set in natural bedrock, a minimum of 6 inches in diameter, and extending a minimum of 18 inches below the top of the monument, or a concrete monument 4 by 4 inches, a minimum of 24 inches long, with the point of reference marked thereon. A metal cap marker, with the point of reference marked thereon, shall bear the registration number of the surveyor certifying the plat of record, and the letters "PRM" shall be placed in the top of the monument.

(16) "Right-of-way" means land dedicated, deeded, used, or to be used, for a street, alley, walkway, boulevard, drainage facility, access for ingress and egress, or other purpose by the public, certain designated individuals, or governing bodies.

(17) "Street" includes any access way such as a street, road, lane, highway, avenue, boulevard, alley, parkway, viaduct, circle, court, terrace, place, or culde-sac, and also includes all of the land lying between the right-of-way lines as delineated on a plat showing such streets, whether improved or unimproved, but shall not include those access ways such as easements and rights-of-way intended solely for limited utility purposes, such as for electric power lines, gas lines, telephone lines, water lines, drainage and sanitary sewers, and easements of ingress and egress.

(18) "Subdivision" means the platting of real property into three or more lots, parcels, tracts, tiers, blocks, sites, units, or any other division of land, and includes establishment of new streets and alleys, additions and resubdivisions and, when appropriate to the context, relates to the process of subdividing or to the lands or area subdivided.

(19) "State plane coordinates" means the system of plane coordinates which has been established by the National Ocean Survey for defining and stating the positions or locations of points on the surface of the earth within the state and shall hereinafter be known and designated as the "Florida Coordinate System." For the purpose of the use of this system, the divisions established by the National Ocean Survey in special publication number 255 shall be used, and the appropriate projection and zone designation shall be indicated and included in any description using the "Florida Coordinate System."

(20) Surveying data:

(a) "Point of curvature," written "P.C.," means the point where a tangent circular curve begins.

(b) "Point of tangency," written "P.T.," means the point where a tangent circular curve ends and becomes tangent.

(c) "Point of compound curvature," written "P.C.C.," means the point where two circular curves have a common point of tangency, the curves lying on the same side of the common tangent.

(d) "Point of reverse curvature," written "P.R.C.," means the point where two circular curves have a common point of tangency, the curves lying on opposite sides of the common tangent.

History.—s. 1, ch. 71-339; s. 2, ch. 72-29; s. 49, ch. 73-333.

[1]**Note.**—The Florida State Board of Professional Engineers and Land Surveyors was abolished by ch. 79-243, and a Board of Land Surveyors was created to regulate this profession.

177.041 Title certification.—Every plat of a subdivision submitted to the approving agency of the local governing body must be accompanied by a title opinion of an attorney-at-law licensed in Florida or a certification by an abstractor or a title company showing that apparent record title to the land as described and shown on the plat is in the name of the person, persons, or corporation executing the dedication, if any, as it is shown on the plat and, if the plat does not contain a dedication, that the developer has apparent record title to the land. The title opinion or certification shall also show all mortgages not satisfied or released of record.

History.—s. 1, ch. 71-339; s. 1, ch. 72-77.

177.051 Name of subdivision.—Every subdivision shall be given a name by which it shall be legally known. Such name shall not be the same or in any way so similar to any name appearing on any recorded plat in the same county as to confuse the records or to mislead the public as to the identity of the subdivision, except when the subdivision is subdivided as an additional unit or section by the same developer or his successors in title. Every subdivision's name shall have legible lettering of the same size and type, including the words "section," "unit," "replat," "amended," etc. The name of the subdivision shall be shown in the dedication and shall coincide exactly with the subdivision name.

History.—s. 1, ch. 71-339.

177.061 Qualification of person making survey and plat certification.—Every subdivision of lands made within the provisions of this chapter shall be made under the responsible direction and supervision of a land surveyor who shall certify on the plat that the plat is a true and correct representation of the lands surveyed, that the survey was made under his responsible direction and supervision, and that the survey data complies with all of the requirements of this chapter. The certification shall bear the signature, registration number, and the official seal of the land surveyor.

History.—s. 1, ch. 71-339.

177.071 Approval of plat by governing bodies.—

(1) Before a plat is offered for recording, it shall be approved by the appropriate governing body, and evidence of such approval shall be placed on such plat. If not approved, the governing body shall return the plat to the land surveyor. However, such examination and approval for conformity to this chapter by the appropriate governing body shall not include the verification of the survey data, except by a land surveyor either employed by or under con-

tract to the local governing body for the purpose of such examination. For the purposes of this chapter:

(a) When the plat to be submitted for approval is located wholly within the boundaries of a municipality, the governing body of such municipality shall have exclusive jurisdiction to approve such plat.

(b) When a plat lies wholly within the unincorporated areas of a county, the governing body of such county shall have exclusive jurisdiction to approve such plat.

(c) When a plat lies within the boundaries of more than one governing body, two plats shall be prepared and each governing body shall have exclusive jurisdiction to approve the plat within its boundaries, unless the governing bodies having said jurisdiction agree that one plat is mutually acceptable.

(2) Any provision in a county charter, or in an ordinance of a county chartered under s. 6(e), Art. VIII of the State Constitution, which provision is inconsistent with anything contained in this section shall prevail in such charter county to the extent of any such inconsistency.

History.—s. 1, ch. 71-339; s. 1, ch. 76-110; s. 1, ch. 77-152; s. 1, ch. 77-278.

177.081 Dedication and approval.—

(1) Every plat of a subdivision filed for record must contain a dedication by the developer. The dedication shall be executed by all developers having a record interest in the lands subdivided, in the same manner in which deeds are required to be executed. All mortgagees having a record interest in the lands subdivided shall execute, in the same manner in which deeds are required to be executed, either the dedication contained on the plat or a separate instrument joining in and ratifying the plat and all dedications and reservations thereon.

(2) When a tract or parcel of land has been subdivided and a plat thereof bearing the dedication executed by the developers and mortgagees having a record interest in the lands subdivided and the approval of the governing body has been secured and recorded in compliance with this chapter, all streets, alleys, easements, rights-of-way, and public areas shown on such plat, unless otherwise stated, shall be deemed to have been dedicated to the public for the uses and purposes thereon stated. However, nothing herein shall be construed as creating an obligation upon any governing body to perform any act of construction or maintenance within such dedicated areas except when the obligation is voluntarily assumed by the governing body.

History.—s. 1, ch. 71-339; s. 2, ch. 79-86.

177.085 Platted streets; reversionary clauses.—

(1) When any owner of land subdivides the land and dedicates streets, other roadways, alleys or similar strips on the map or plat, and the dedication contains a provision that the reversionary interest in the street, roadway, alley or other similar strip is reserved unto the dedicator or his heirs, successors, assigns, or legal representative, or similar language, and thereafter conveys abutting lots or tracts, the conveyance shall carry the reversionary interest in the abutting street to the centerline or other appropriate boundary, unless the owner clearly provides otherwise in the conveyance.

(2) As to all plats of subdivided lots heretofore recorded in the public records of each county, the holder of any interest in any reversionary rights in streets in such plats, other than the owners of abutting lots, shall have 1 year from July 1, 1972 to institute suit in a court of competent jurisdiction in this state to establish or enforce the right, and failure to institute the action within the time shall bar any right, title or interest, and all right of forfeiture or reversion shall thereupon cease and determine, and become unenforceable.

History.—ss. 1, 2, ch. 72-257; s. 50, ch. 73-333.

177.091 Plats made for recording.—Every plat of a subdivision offered for recording shall conform to the following:

(1) It shall be:

(a) An original drawing made with black permanent drawing ink or varitype process on a good grade linen tracing cloth or with a suitable permanent black drawing ink on a stable base film, a minimum of 0.003 inches thick, coated upon completion with a suitable plastic material to prevent flaking and to assure permanent legibility; or

(b) A nonadhered scaled print on a stable base film made by photographic processes from a film scribing tested for residual hypo testing solution to assure permanency.

Marginal lines, standard certificates and approval forms shall be printed on the plat with a permanent black drawing ink. A print or photographic copy of the original drawing shall be submitted with the original drawing.

(2) The size of each sheet shall be determined by the local governing body and shall be drawn with a marginal line, or printed when permitted by local ordinance, completely around each sheet and placed so as to leave at least a ½-inch margin on each of three sides and a 3-inch margin on the left side of the plat for binding purposes.

(3) When more than one sheet must be used to accurately portray the lands subdivided, each sheet must show the particular number of that sheet and the total number of sheets included, as well as clearly labeled matchlines to show where other sheets match or adjoin.

(4) In all cases, the scale used shall be of sufficient size to show all detail and shall be both stated and graphically illustrated by a graphic scale drawn on every sheet showing any portion of the lands subdivided.

(5) The name of the plat shall be shown in bold legible letters, as stated in s. 177.051. The name of the subdivision shall be shown on each sheet included.

(6) A prominent "north arrow" shall be drawn on every sheet included showing any portion of the lands subdivided. The bearing or azimuth reference shall be clearly stated on the face of the plat in the notes or legend.

(7) Permanent reference monuments shall be placed at each corner or change in direction on the boundary of the lands being platted; however, "P.R.M.s" need not be set closer than 310 feet, but shall not be more than 1400 feet apart. In all cases there shall be a minimum of four "P.R.M.s" placed

on the boundary of the lands being platted. Where such corners are in an inaccessible place, "P.R.M.s" shall be set on a nearby offset within the boundary of the plat and such offset shall be so noted on the plat. Where corners are found to coincide with a previously set "P.R.M.," the number on the previously set "P.R.M." shall be shown on the new plat or, if unnumbered, shall so state. Permanent reference monuments shall be set before the recording of the plat and this will be so stated in the surveyor's certificate on the plat. Such "P.R.M." shall be shown on the plat by an appropriate designation.

(8) "P.C.P.s" shall be set at the intersection of the centerline of the right-of-way at the intersection of all streets, at "P.C.s," "P.T.s," "P.R.C.s" and "P.C.C.s" and no more than 1,000 feet apart, on tangent, between changes of direction, or along the street right-of-way or block lines at each change in direction and no more than 1,000 feet apart. Such "P.C.P.s" shall be shown on the plat by an appropriate designation. In those counties or municipalities that do not require subdivision improvements and do not accept bonds or escrow accounts to construct improvements, "P.C.P.s" may be set prior to the recording of the plat and shall be set within 1 year of the date the plat was recorded and shall be referred to in the surveyor's certificate. In the counties or municipalities that require subdivision improvements and have the means of insuring the construction of said improvements, such as bonding requirements, "P.C.P.s" shall be set prior to the expiration of the bond or other surety. It is the land surveyor's responsibility to furnish the clerk or recording officer of the county or municipality his certificate that the "P.C.P.s" have been set and the dates the "P.C.P.s" were set.

(9) Each plat shall show the section, township, and range as applicable, or, if in a land grant, the plat will so state.

(10) The name of the city, town, village, county, and state in which the land being platted is situated shall appear under the name of the plat as applicable.

(11) Each plat shall show a description of the lands subdivided, and the description shall be the same in the title certification. The description must be so complete that from it, without reference to the plat, the starting point and boundary can be determined.

(12) The dedications and approvals required by ss. 177.071 and 177.081.

(13) The circuit court clerk's certificate and the land surveyor's certificate and seal.

(14) All section lines and quarter section lines occurring in the map or plat shall be indicated by lines drawn upon the map or plat, with appropriate words and figures. If the description is by metes and bounds, the point of beginning shall be indicated, together with all bearings and distances of the boundary lines. If the platted lands are in a land grant or are not included in the subdivision of government surveys, then the boundaries are to be defined by metes and bounds and courses. The initial point in the description shall be tied to the nearest government corner or other recorded and well established corner.

(15) Location, width, and names of all streets, waterways, or other rights-of-way shall be shown, as applicable.

(16) Location and width of easements shall be shown on the plat or in the notes or legend, and their intended use shall be clearly stated.

(17) All contiguous properties shall be identified by subdivision title, plat book, and page, or, if unplatted, land shall be so designated. If the subdivision platted is a resubdivision of a part or the whole of a previously recorded subdivision, sufficient ties shall be shown to controlling lines appearing on the earlier plat to permit an overlay to be made; the fact of its being a resubdivision shall be stated as a subtitle following the name of the subdivision wherever it appears on the plat.

(18) All lots shall be numbered either by progressive numbers or, if in blocks, progressively numbered in each block, and the blocks progressively numbered or lettered, except that blocks in numbered additions bearing the same name may be numbered consecutively throughout the several additions.

(19) Block corner radii dimensions shall be shown.

(20) Sufficient survey data shall be shown to positively describe the bounds of every lot, block, street easement, and all other areas shown on the plat. When any lot or portion of the subdivision is bounded by an irregular line, the major portion of that lot or subdivision shall be enclosed by a witness line showing complete data, with distances along all lines extended beyond the enclosure to the irregular boundary shown with as much certainty as can be determined or as "more or less," if variable. Lot, block, street, and all other dimensions except to irregular boundaries, shall be shown to a minimum of hundredths of feet. All measurements shall refer to horizontal plane and in accordance with the definition of a foot or meter adopted by the United States Bureau of Standards.

(21) Curvilinear lots shall show the radii, arc distances, and central angles or radii, chord, and chord bearing, or both. Radial lines will be so designated. Direction of nonradial lines shall be indicated.

(22) Sufficient angles, bearings, or azimuth to show direction of all lines shall be shown, and all bearings, angles, or azimuth shall be shown to the nearest second of arc.

(23) The centerlines of all streets shall be shown with distances, angles, bearings or azimuth, "P.C.s," "P.T.s," "P.R.C.s," "P.C.C.s," arc distance, central angles, tangents, radii, chord, and chord bearing or azimuth, or both.

(24) Park and recreation parcels as applicable shall be so designated.

(25) All interior excepted parcels shall be clearly indicated and labeled "Not a part of this plat."

(26) The purpose of all areas dedicated must be clearly indicated or stated on the plat.

(27) When it is not possible to show curve detail information on the map, a tabular form may be used.

History.—s. 1, ch. 71-339; s. 51, ch. 73-333.

177.101 Vacation and annulment of plats subdividing land.—

(1) Whenever it is discovered, after the plat has been recorded in the public records, that the developer has previously caused the lands embraced in the second plat to be differently subdivided under and by virtue of another plat of the same identical lands, and the first plat was also filed of public record at an earlier date, and no conveyances of lots by reference to the first plat so filed appears of record in such county, the governing body of the county is authorized and directed to and shall, by resolution, vacate and annul the first plat of such lands appearing of record upon the application of the developer of such lands under the first plat or upon application of the owners of all the lots shown and designated upon the second and subsequent plat of such lands, and the circuit court clerk of the county shall thereupon make proper notation of the annulment of such plat upon the face of such annulled plat.

(2) Whenever it is discovered that after the filing of a plat subdividing a parcel of land located in the county, the developer of the lands therein and thereby subdivided did cause such lands embraced in said plat, or a part thereof, to be again and subsequently differently subdivided under another plat of the same and identical lands or a part thereof, which said second plat was also filed at a later date; and it is further made to appear to the governing body of the county that the filing and recording of the second plat would not materially affect the right of convenient access to lots previously conveyed under the first plat, the governing body of the county is authorized by resolution to vacate and annul so much of the first plat of such lands appearing of record as are included in the second plat, upon application of the owners and developer of such lands under the first plat or their successors, grantees, or assignees, and the circuit court clerk of the county shall thereupon make proper notation of the action of the governing body upon the face of the first plat.

(3) The governing bodies of the counties of the state may adopt resolutions vacating plats in whole or in part of subdivisions in said counties, returning the property covered by such plats either in whole or in part into acreage. Before such resolution of vacating any plat either in whole or in part shall be entered by the governing body of a county, it must by shown that the persons making application for said vacation own the fee simple title to the whole or that part of the tract covered by the plat sought to be vacated, and it must be further shown that the vacation by the governing body of the county will not affect the ownership or right of convenient access of persons owning other parts of the subdivision.

(4) Persons making application for vacations of plats either in whole or in part shall give notice of their intention to apply to the governing body of the county to vacate said plat by publishing legal notice in a newspaper of general circulation in the county in which the tract or parcel of land is located, in not less than 2 weekly issues of said paper, and must attach to the petition for vacation the proof of such publication, together with certificates showing that all state and county taxes have been paid. For the purpose of the tax collector's certification that state, county, and municipal taxes have been paid, the taxes shall be deemed to have been paid if, in addition to any partial payment under s. 194.171, the owner of the platted lands sought to be vacated shall post a cash bond, approved by the tax collector of the county where the land is located and by the Department of Revenue, conditioned to pay the full amount of any judgment entered pursuant to s. 194.192 adverse to the person making partial payment, including all costs, interest, and penalties. The circuit court shall fix the amount of said bond by order, after considering the reasonable time frame for such litigation and all other relevant factors; and a certified copy of such approval, order, and cash bond shall be attached to the application. If such tract or parcel of land is within the corporate limits of any incorporated city or town, the governing body of the county shall be furnished with a certified copy of a resolution of the town council or city commission, as the case may be, showing that it has already by suitable resolution vacated such plat or subdivision or such part thereof sought to be vacated.

(5) Every such resolution by the governing body shall have the effect of vacating all streets and alleys which have not become highways necessary for use by the traveling public. Such vacation shall not become effective until a certified copy of such resolution has been filed in the offices of the circuit court clerk and duly recorded in the public records of said county.

(6) All resolutions vacating plats by the governing body of a county prior to September 1, 1971 are hereby validated, ratified, and confirmed. Such resolutions shall have the same effect as if the plat had been vacated after September 1, 1971.

History.—s. 1, ch. 71-339; s. 1, ch. 79-86.

177.111 Instructions for filing plat.—After the approval by the appropriate governing body required by s. 177.071, the plat shall be recorded by the circuit court clerk or other recording officer upon submission thereto of such approved plat. The circuit court clerk or other recording officer shall maintain in his office a book of the proper size for such papers so that they shall not be folded, to be kept in the vault. A print or photographic copy on cloth shall be filed in a similar book and kept in his office for the use of the public. The clerk shall make available to the public a full size copy of the record plat at a reasonable fee.

History.—s. 1, ch. 71-339; s. 1, ch. 76-110.

177.121 Misdemeanor to molest monument or deface or destroy map or plat.—It is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person to molest any monuments established according to this chapter or to deface or destroy any map or plat placed on public record.

History.—s. 1A, ch. 71-339.

177.131 Recordation of the Department of Transportation official right-of-way maps and other governmental right-of-way maps.—

(1) The circuit court clerk of a county shall record in the public land records of the county any map prepared and adopted by the Department of

Transportation or any other governmental entity as its official right-of-way map after the same has been approved by the appropriate governmental authority. The clerk shall use special plat books provided by the appropriate governmental authority for such maps, which shall be kept with other plat books. The clerk shall make available to the public a full size copy of the right-of-way maps at a reasonable fee.

(2) Sections 177.011-177.121 of this chapter are not applicable to this section. Upon request of the clerk, the Department of Transportation shall furnish without charge a reproducible copy of its right-of-way maps.

History.—s. 1, ch. 71-339.

177.132 Preservation of unrecorded maps.—

(1) The Clerk of the Circuit Court of a county may receive and copy, as unrecorded maps, otherwise unrecorded plats and maps, including sales maps, which describe or illustrate the boundaries and subdivision of parcels of land, but which do not necessarily indicate proper metes and bounds or otherwise comply with the recording requirements of this chapter. The receipt and copying of such documents shall not affect or impair the title to the property in any manner, nor shall it be construed as actual or constructive notice, but shall be for informational purposes only and shall not be referred to for the purpose of conveying property or for circumventing the lawful regulation and control of subdividing lands by local governing bodies. The clerk may maintain a separate book or other filing process provided by the county for this purpose. The clerk shall make reproductions of these copies available to the public at a reasonable fee.

(2) Sections 177.021-177.121 of this chapter shall not apply to this section.

History.—s. 2, ch. 76-110.

177.141 Affidavit confirming error on a recorded plat.—In the event an appreciable error or omission in the data shown on any plat duly recorded under the provisions of this chapter is detected by subsequent examination or revealed by a retracement of the lines run during the original survey of the lands shown on such recorded plat, the land surveyor who was responsible for the survey and the preparation of the plat as recorded may file an affidavit confirming that such error or omission was made. However, the affidavit must state the he has made a resurvey of the subject property in the recorded subdivision within the last 10 days and that no evidence existed on the ground that would conflict with the corrections as stated in the affidavit. The affidavit shall describe the nature and extent of such error or omission and the appropriate correction that in his opinion should be substituted for the erroneous data shown on such plat or added to the data on such plat. When such an affidavit is filed, it is the duty of the circuit court clerk to record such affidavit, and he may place in the margin of such recorded plat a notation that the affidavit has been filed, the date of filing, and the book and page where it is recorded. The affidavit shall have no effect upon the validity of the plat or on the information shown thereon.

History.—s. 1, ch. 71-339.

177.151 State plane coordinate.—

(1) Coordinates may be used to define or designate the position of points on the surface of the earth within the state for land descriptions and subdivision purposes, provided the initial point in the description shall be tied to the nearest government corner or other recorded and well established corner. The plane coordinates of a point on the earth's surface, to be used in expressing the position or location of such point in the appropriate projection and zone system, shall consist of two distances, expressed in feet and decimals of a foot. One distance, to be known as the "x-coordinate," shall give the position in an east and west direction; the other, to be known as the "y-coordinate," shall give the position in a north and south direction. These coordinates shall be made to depend upon and conform to the origins and projections on the Florida Coordinate System and the triangulation and traverse stations of the National Ocean Survey within the state, as those origins and projections have been determined by the said survey. When any tract of land to be defined by a single description extends from one into the other of the above projections or zones, the positions of all points on its boundary may be referred to either of the zones or projections, with the zone and projection being used specifically named in the description.

(2) The position of points on the Florida Coordinate System shall be as marked on the ground by triangulation or traverse stations established in conformity with standards adopted by the National Ocean Survey for first-order and second-order work, the geodetic positions of which have been rigidly adjusted on the North American Datum of 1927, and the coordinates of which have been computed on the system herein defined. Any such station may be used for establishing a survey connection with the Florida Coordinate System.

(3) No coordinates based on the Florida Coordinate System purporting to define the position of a point on a land boundary shall be presented to be recorded in any public land records or deed records unless such point is within one-half mile of a triangulation or traverse station established in conformity with the standards described in s. 177.031(19). However, the said one-half mile limitation may be waived when coordinates shown are certified as having been established in accordance with National Ocean Survey requirements and procedures for first-order or second-order work by a surveyor licensed in the state. This certification of order-of-accuracy must be included in the description of the land involved.

(4) The use of the term "Florida Coordinate System" on any map, report of survey, or other document shall be limited to coordinates based on the Florida Coordinate System as defined in this chapter.

(5) Whenever coordinates based on the Florida Coordinate system are used to describe a tract of land which in the same document is also described by reference to any subdivision, line, or corner of the United States Public Land Survey, the description

by coordinates shall be construed as supplemental to the basic description of such subdivision, line, or corner contained in the official plats and field notes of record, and, in the event of any conflict, the description by reference to the subdivision, line or corner of the United States Public Land Survey shall prevail over the description by coordinates.

(6) Nothing contained in this chapter shall require any purchaser or mortgagee to rely on a description any part of which depends exclusively upon the Florida Coordinate System.

History.—s. 1, ch. 71-339.

PART II

COASTAL MAPPING

177.25 Short title.—This part shall be cited as the "Florida Coastal Mapping Act of 1974."

History.—s. 1, ch. 74-56.

177.26 Declaration of policy.—The legislature hereby declares that accurate maps of coastal areas are required for many public purposes, including, but not limited to, the promotion of marine navigation, the enhancement of recreation, the determination of coastal boundaries, and the implementation of coastal zone planning and management programs by state and local governmental agencies. Accordingly, a state coastal mapping program is declared to be in the public interest. The legislature further recognizes the desirability of confirmation of the mean high-water line, as recognized in the State Constitution and defined in s. 177.27(15) as the boundary between state sovereignty land and uplands subject to private ownership, as well as the necessity of uniform standards and procedures with respect to the establishment of local tidal datums and the determination of the mean high-water and mean low-water lines, and therefore directs that such uniform standards and procedures be developed.

History.—s. 2, ch. 74-56.

177.27 Definitions.—The following words, phrases, or terms used herein, unless the context otherwise indicates, shall have the following meanings:

(1) "Apparent shoreline" means the line drawn on a map or chart in lieu of the mean high-water line or mean low-water line in areas where either or both may be obscured by marsh or mangrove, cypress, or other types of marine vegetation. This line represents the intersection of the mean high-water datum with the outer limits of vegetation and appears to the navigator as the shoreline.

(2) "Approved coastal zone map" means a map approved by the department.

(3) "Comparison of simultaneous observations" means a method of determining mean values by comparison of short-period observations at a station with simultaneous observations made at a station for which mean values, based on long-period observations, are available.

(4) "Control tide station" means a place so designated by the department or the National Ocean Survey at which continuous tidal observations have been taken or are to be taken over a minimum of 19 years to obtain basic tidal data for the locality.

(5) "Datum" means a reference point, line, or plane used as a basis for measurements.

(6) "Datum plane" means a surface used as reference from which heights or depths are reckoned. The plane is called a tidal datum when defined by a phase of the tide—for example, high water or low water.

(7) "Demarcation" means the act of setting and marking limits or boundaries on the ground.

(8) "Department" means the Department of Natural Resources.

(9) "Diurnal tides" means tides having a period or cycle of approximately one tidal day.

(10) "Foreshore" means the strip of land between the mean high-water and mean low-water lines that is alternately covered and uncovered by the flow of the tide.

(11) "Geodetic bench mark" means a permanently monumented and precisely referenced and described mark, usually a bronze tablet or copper or bronze bolt leaded or cemented into a masonry structure, which is established to give a definite high point on the monument to which geodetic elevations are referred.

(12) "Interpolated water elevation" means a point between two adjacent tide stations where the water elevation has been determined by interpolation from established datums at the two tide stations.

(13) "Leveling" means the operation of determining differences of elevation between points on the surface of the earth or of determining the elevations of points relative to some arbitrary or natural level surface called a datum.

(14) "Local tidal datum" means the datum established for a specific tide station through use of tidal observations made at that station.

(15) "Mean high water" means the average height of the high waters over a 19-year period. For shorter periods of observation, "mean high water" means the average height of the high waters after corrections are applied to eliminate known varia-

tions and to reduce the result to the equivalent of a mean 19-year value.

(16) "Mean high-water line" means the intersection of the tidal plane of mean high water with the shore.

(17) "Mean low water" means the average height of the low waters over a 19-year period. For shorter periods of observation, "mean low water" means the average height of low waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of mean 19-year value.

(18) "Mean low-water line" means the intersection of the tidal plane of mean low water with the shore.

(19) "Mean range difference" means the variation of the mean range of the tide at two different tide stations.

(20) "Mixed tide" means the type of tide in which the presence of a diurnal wave is conspicuous by a large inequality in either the high or low water heights, with two high waters and two low waters usually occurring each tidal day. The name is usually applied to the tides intermediate to those predominantly diurnal and those predominantly semidiurnal.

(21) "National map accuracy standards" means a set of guidelines published by the Office of Management and Budget of the United States, to which maps produced by the United States Government usually adhere.

(22) "Nineteen-year tidal cycle" means the period of time generally reckoned as constituting a full tidal cycle.

(23) "Nonperiodic forces" means those forces that occur without regard to a fixed cycle.

(24) "Photogrammetry" means the science of making precise measurements from photographs.

(25) "Semidiurnal tides" means tides having a period of approximately one-half of a tidal day.

(26) "Tidal bench mark" means a standard disk or other acceptable fixed point in the general vicinity of a tide station, used for the purpose of preserving tidal information, to which the tide staff at the tide station and the tidal datums determined from the observations at the tide station are originally referred.

(27) "Tidal datum" means a plane of reference for elevations determined from the rise and fall of the tides.

(28) "Tidal day" means the time of the rotation of the earth with respect to the moon, or the interval between two successive upper transits of the moon over the meridian of a place.

(29) "Tide" means the periodic rising and falling of the waters of the earth that result from the gravitational attraction of the moon and the sun acting upon the rotating earth.

(30) "Tide station" means a place at which continuous tide observations have been taken or are to be taken to obtain tidal data for the locality.

(31) "Time difference" means the variation in time between the occurrences of the same phase of the tide at two tide stations.

History.—s. 3, ch. 74-56.

177.28 Legal significance of the mean high-water line.—

(1) Mean high-water line along the shores of land immediately bordering on navigable waters is recognized and declared to be the boundary between the foreshore owned by the state in its sovereign capacity and upland subject to private ownership. However, no provision of this part shall be deemed to constitute a waiver of state ownership of sovereignty submerged lands, nor shall any provision of this part be deemed to impair the title to privately owned submerged lands validly alienated by the State of Florida or its legal predecessors.

(2) No provision of this part shall be deemed to modify the common law of this state with respect to the legal effects of accretion, reliction, erosion, or avulsion.

History.—s. 4, ch. 74-56.

177.29 Powers and duties of the department.—

(1) The provisions of this part shall be administered by the Department of Natural Resources.

(2) In addition to such powers as may be specifically delegated to it under the provisions of this part, the department is authorized to perform the following functions:

(a) To coordinate the efforts of all public and private agencies and organizations engaged in the making of tidal surveys and maps of the coastal areas of this state, with the object of avoiding unnecessary duplication and overlapping;

(b) To serve as a coordinating state agency for any program of tidal surveying and mapping conducted by the Federal Government;

(c) To assist any court, tribunal, administrative agency, or political subdivision, and to make available to them information, regarding tidal surveying and coastal boundary determinations;

(d) To contract with federal, state, or local agencies or with private parties for the performance of any surveys, studies, investigations, or mapping activities, for preparation and publication of the results thereof, or for other authorized functions relating to the objectives of this part;

(e) To develop permanent records of tidal surveys and maps of the state's coastal areas;

(f) To develop uniform specifications and regulations for tidal surveying and mapping coastal areas of the state;

(g) To collect and preserve appropriate survey data from coastal areas; and

(h) To act as a public repository for copies of coastal area maps and to establish a library of such maps and charts.

History.—s. 5, ch. 74-56.

177.30 Authorization of coastal mapping program.—The Department of Natural Resources is authorized and directed to conduct a comprehensive program of coastal boundary mapping with the object of providing accurate surveys of the coastline of the state at the earliest possible date.

History.—s. 6, ch. 74-56.

177.31 Mapping standards.—All maps produced under the provisions of this part shall conform at least to minimal national map accuracy standards.

History.—s. 7, ch. 74-56.

177.32 Approval of maps by department.—

(1) Upon completion of a map or series of maps, the department shall transmit a copy of the map or maps to the clerk of the circuit court for the county in which the land shown on the map is located. In addition to any other notice required by law, the department shall publish in a newspaper of general circulation in the affected area at least once a week for 4 consecutive weeks a notice that a copy of the proposed map or maps is on file in the said clerk's office and that a public hearing shall be held at a specified time and place as provided in subsection (2).

(2) Before a proposed map shall become effective, the department shall hold a public hearing in the county or counties in which the land shown on the map is located.

(3) After such public hearing, the department may approve the proposed map with or without amendments or may withdraw it for further study.

(4) The decision of the department shall be subject to judicial review as provided in chapter 120.

(5) Upon approval by the department, these maps shall be known as "approved coastal zone maps," and copies thereof shall be filed among the public land records of all affected counties.

History.—s. 8, ch. 74-56; s. 23, ch. 78-95.

177.33 Revised and supplemental maps.—

(1) The department shall endeavor to maintain the accuracy of its mapping program by reviewing its data at least every 25 years and, when necessary, issuing revised approved coastal zone maps.

(2) Any private person or government official may advise the department in writing of any instance in which significant shoreline alteration has occurred as the result of natural conditions or human activities. Upon notification thereof, or on its own initiative, the department may investigate such cases and, when appropriate, authorize the production of a revised coastal zone map of the affected area.

(3) When appropriate and when needed or desirable for particular areas, the department may publish supplemental maps of a scale larger than the standard scale.

(4) Revised or larger scale maps shall become approved coastal zone maps following approval by the department in accordance with the procedures set forth in s. 177.32.

History.—s. 9, ch. 74-56.

177.34 Coastal boundary line location.—Where approved coastal zone maps do not designate the mean high-water line but instead depict an apparent shoreline, the apparent shoreline is not intended to represent the mean high-water line. Mean high-water or mean low-water lines, whether or not represented on approved coastal zone maps, may be located precisely on the ground by field surveys made in accordance with the standards and procedures set forth in ss. 177.37-177.39.

History.—s. 10, ch. 74-56.

177.35 Standards and procedures; applicability.—The establishment of local tidal datums and the determination of the location of the mean high-water line or the mean low-water line, whether by federal, state, or local agencies or private parties, shall be made in accordance with the standards and procedures set forth in ss. 177.37-177.39 and in accordance with supplementary regulations promulgated by the department.

History.—s. 11, ch. 74-56.

177.36 Work to be performed only by authorized personnel.—The establishment of local tidal datums and the determination of the location of the mean high-water line or the mean low-water line shall be performed by qualified personnel licensed by the [1]Florida State Board of Professional Engineers and Land Surveyors or by representatives of the United States Government when approved by the department.

History.—s. 12, ch. 74-56.

[1]**Note.**—The Florida State Board of Professional Engineers and Land Surveyors was abolished by ch. 79-243, and a Board of Land Surveyors was created to regulate the profession of surveying.

177.37 Notification to department.—Any surveyor undertaking to establish a local tidal datum and to determine the location of the mean high-water line or the mean low-water line shall submit a copy of the results thereof to the department within 90 days after the completion of such work, if the same is to be recorded or submitted to any court or agency of state or local government.

History.—s. 13, ch. 74-56.

177.38 Standards for establishment of local tidal datums.—

(1) Unless otherwise allowed by this part or regulations promulgated hereunder, a local tidal datum shall be established from a series of tide observations taken at a tide station established in accordance with procedures approved by the department. In establishing such procedures, full consideration will be given to the national standards and procedures established by the National Ocean Survey.

(2) Records acquired at control tide stations, which are based on mean 19-year values, comprise the basic data from which tidal datums are determined.

(3) Observations at a tide station other than a control tide station shall be reduced to mean 19-year values through comparison with simultaneous observations at the appropriate control tide stations. The observations shall be made continuously and shall extend over such period as shall be provided for in departmental regulations.

(4) When a local tidal datum has been established, it shall be preserved by referring it to tidal bench marks in the manner prescribed by the department.

(5) A local tidal datum may be established between two tide stations by interpolation when the time and mean range differences of the tide between the two tide stations are within acceptable standards

as determined by the department. The methods for establishing the local tidal datum by interpolation shall be prescribed by regulations of the department. Local tidal datums established in this manner shall be recorded with the department.

(6) A local tidal datum properly established through the use of continuous tide observations meeting the standards described in this section shall be presumptively correct when it differs from a local tidal datum established by interpolation.

(7) The department may approve the use of tide observations made prior to July 1, 1974, for use in establishing local tidal datums.

History.—s. 14, ch. 74-56.

177.39 Determination of mean high-water line or mean low-water line.—The location of the mean high-water line or the mean low-water line shall be determined by methods which are approved by the department for the area concerned. Geodetic bench marks shall not be used unless approved by the department.

History.—s. 15, ch. 74-56.

177.40 Admissibility of maps and surveys.—No map or survey prepared after July 1, 1974, and purporting to establish local tidal datums or to determine the location of the mean high-water line or the mean low-water line shall be admissible as evidence in any court, administrative agency, political subdivision, or tribunal in this state unless made in accordance with the provisions of this part by persons described in s. 177.36.

History.—s. 16, ch. 74-56.

PART III

RESTORATION OF CORNERS

177.501 Short title.—Sections 177.501-177.510 may be cited as the "Florida Public Land Survey Restoration and Perpetuation Act."

History.—s. 1, ch. 77-361.

177.502 Declaration of policy.—The Legislature finds and declares that it is the responsibility of the state, and in the public interest, to provide a means for the identification, restoration, and preservation of the controlling corner monuments established during the original cadastral surveys, to which the vast majority of titles to lands in Florida are related and dependent. All such monuments and evidence pertaining to the original government surveys and resurveys are recognized as historical and economic resources of the state and, as such, are vitally important to the orderly planning, management, use, conservation, and public enjoyment of Florida's natural resources. In order to implement this policy, the Department of Natural Resources shall assume the responsibility for conducting a program of the identification, restoration, and preservation of such monuments.

History.—s. 1, ch. 77-361.

177.503 Definitions.—As used in ss. 177.501-177.510, the following words and terms shall have the meanings indicated unless the context clearly indicates a different meaning:

(1) "Professional land surveyor" or "land surveyor" means a person authorized to practice land surveying under the provisions of chapter 472.

(2) "Department" means the Department of Natural Resources.

(3) "Corner" means a geographic position on the surface of the earth.

(4) "Monument" means a man-made or natural object that is presumed to occupy the corner or is a reference to the position of a corner.

(5) "Public land survey corner" means any corner actually established and monumented in the original public land survey or resurvey and those similar original corners subdividing Spanish land grants.

(6) "Corner accessory" means any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be, but are not limited to, bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, blaze marks, steel or wooden stakes, or other such natural or manmade objects.

(7) "Reference monument" means a monument that does not occupy the same geographical position as the corner itself, but whose spatial relationship to the corner is recorded and which serves to witness the corner.

(8) "Township" has the meaning ascribed in 43 U.S.C. s. 751.

(9) "Validated corner record" means a document prepared by the department or by a land surveyor under contract to the department for the execution of this act or a corner record prepared by a land surveyor and verified by a department land surveyor under an incentive program.

(10) "Certified corner record" means a document prepared by a land surveyor when a public land survey corner is used as control in his survey or resurvey.

(11) "State cadastral surveyor" means the chief of the Bureau of Coastal and Land Boundaries, Division of Resource Management of the department.

History.—s. 1, ch. 77-361; s. 83, ch. 79-400.

177.504 Powers and duties of the department.—

(1) The provisions of this act shall be administered by the department through the state cadastral surveyor.

(2) The functions, duties, and responsibilities of the department shall be:

(a) To establish a program for identification, restoration, maintenance, and perpetuation of the public land survey corners.

(b) To establish an incentive program with land

surveyors throughout the state, providing for their participation in public land survey corner location and remonumenting. This program shall provide for a nominal fee, not exceeding $75, to cover a portion of the cost of the remonumentation when performed by a land surveyor and verified by a department land surveyor, creating a validated corner record.

(c) To provide for the extension and densification throughout the state of the federally initiated precise geodetic horizontal and vertical control networks, whereby these basic framework surveys shall be extended to survey corners identified under this program to permit the general use of the coordinate systems. The information derived from this work shall meet the standards established by the National Geodetic Survey in order to be accepted and published by the National Geodetic Survey.

(d) To provide for entering into agreements or contracts with agencies of the United States Government, the State of Florida, or other states, and with land surveyors in private practice and others, as are deemed necessary or desirable properly to plan and execute projects within the scope and purpose of this act, including the preparation of necessary cadastral documents, maps, and photogrammetric and geodetic control data. The department or its designated contracting agency, in contracting with land surveyors for professional services, shall give due consideration to their experience and knowledge of local conditions and the history of each particular area involved in the execution of this act.

(e) To act as a public repository of survey corner information.

(f) To adopt rules and regulations necessary to carry out the purpose of this act.

History.—s. 1, ch. 77-361.

177.505 Establishment of an advisory board.—The department shall select and appoint a five-person advisory board from a list of land surveyors recommended annually by the Florida Society of Professional Land Surveyors. The advisory board shall assist the department in formulating policies, in adopting rules and regulations, and in selecting qualified professional surveying personnel. The advisory board shall also advise the department with respect to differences occurring between a corner as located by an individual land surveyor and as located by a department land surveyor. Board members shall receive no compensation for their services, but shall receive their actual travel expenses, subsistence, and lodging, not to exceed the statutory amount allowed state officers and employees. The state cadastral surveyor shall serve as secretary to this advisory board, without voting privileges.

History.—s. 1, ch. 77-361.

177.506 Records exchange and availability.—On request, all departments, boards, or agencies of state or local government shall furnish to the public or department certified copies of specified deeds, plats, or other land records which are in their custody. This service shall be free of cost when possible; otherwise, it shall be at the actual cost of reproduction of the records. On the same basis, the department shall furnish such certified records within its custody to the public or other agencies or departments of state or local government, upon request.

History.—s. 1, ch. 77-361.

177.507 Validation and certification of corners.—

(1) The state cadastral surveyor shall complete a reproducible written record of corner identification or restoration, to be known as a validated corner record, for every public land survey corner and corner accessory identified, recovered, reestablished, remonumented, or restored under the provisions of this act. The state cadastral surveyor must file in the department, for public access, a copy of his validated corner record within 90 days after completion of each section of a township.

(2) Every land surveyor not under contract to the department for the execution of this act who, in any survey or resurvey made under his direction, identifies, recovers, reestablishes, remonuments, restores, or uses as control a public land survey corner or corner accessory shall, within 90 days after completion of the survey, file with the department a certified corner record for each such corner or corner accessory, unless the corner or its accessories are substantially as described in a previously filed corner record. The record shall be signed, embossed with the official seal of the surveyor, and produced on material suitable for reproduction or microfilming. The 90-day limitation may be extended with permission of the department. All such certified corner records shall be accepted and filed with the department without further inspection or approval of any public body or officer, if prepared in accordance with the criteria set forth in subsection (3).

(3) Each certified corner record shall contain the following minimum information:

(a) A description of the corner which the monument marks.

(b) A description of the monument.

(c) Descriptions and angular and linear measurements to at least three readily identifiable accessories or reference monuments, unless the department agrees to fewer accessories.

(d) A graphic illustration of the action by the land surveyor showing field conditions and dimensions at, and in the vicinity of, the corner as well as descriptive language, where appropriate, listing pertinent details of the action of the land surveyor.

(4) In every case in which a certified corner record of a public land survey corner is filed under the provisions of this act, the surveyor shall reconstruct or rehabilitate the monument of such corner and accessories to such corner, so as to make them as permanent as is reasonably possible and to facilitate easy location in the future.

(5) The department shall make its records available for public inspection during all usual office hours, and true full scale copies thereof shall be made available for a reasonable fee.

(6) In order to provide a means to protect property owners and others concerned with matters of land titles and title insurance, the department has no authority under this act to determine private property rights, private ownership boundaries where

these boundaries are not adjoining public lands, or locations of survey corners other than public land survey corners.

History.—s. 1, ch. 77-361; s. 84, ch. 79-400.

177.508 Private practice not affected.—Nothing in this act is to be construed as restricting or limiting the actions or practice of land surveyors as provided in chapter 472.

History.—s. 1, ch. 77-361.

177.509 Personnel requirements.—A field supervisor who directs the field survey work required in the identification, restoration, and preservation of the public land survey corners shall be a land surveyor and shall direct not more than three field parties in a local geographic area during any one period of time.

History.—s. 1, ch. 77-361.

177.510 Penalty for disturbing monuments.—Any person who willfully modifies, defaces, disturbs, removes, or destroys any monument or reference monument placed, or corner record filed, under the authority of this act without first obtaining written permission from the department is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 77-361.

CHAPTER 180

MUNICIPAL PUBLIC WORKS

180.01 Definition of term "municipality."— The term "municipality," as used in this chapter, shall mean any city, town, or village duly incorporated under the laws of the state.

History.—s. 1, ch. 17118, 1935; CGL 1936 Supp. 3100(6).

180.02 Powers of municipalities.—

(1) For the accomplishment of the purposes of this chapter, any municipality may execute its corporate powers within its corporate limits.

(2) Any municipality may extend and execute all of its corporate powers applicable for the accomplishment of the purposes of this chapter outside of its corporate limits, as hereinafter provided and as may be desirable or necessary for the promotion of the public health, safety and welfare or for the accomplishment of the purposes of this chapter; provided, however, that said corporate powers shall not extend or apply within the corporate limits of another municipality.

(3) In the event any municipality desires to avail itself of the provisions or benefits of this chapter, it is lawful for such municipality to create a zone or area by ordinance and to prescribe reasonable regulations requiring all persons or corporations living or doing business within said area to connect, when available, with any sewerage system constructed, erected and operated under the provisions of this chapter; provided, however, in the creation of said zone the municipality shall not include any area within the limits of any other incorporated city or village, nor shall such area or zone extend for more than 5 miles from the corporate limits of said municipality.

History.—s. 1, ch. 17118, 1935; CGL 1936 Supp. 3100(6).

180.03 Resolution or ordinance proposing construction or extension of utility; objections to same.—

(1) When it is proposed to exercise the powers granted by this chapter, a resolution or ordinance shall be passed by the city council, or the legislative body of the municipality, by whatever name known, reciting the utility to be constructed or extended and its purpose, the proposed territory to be included, what mortgage revenue certificates or debentures if any are to be issued to finance the project, the cost thereof, and such other provisions as may be deemed necessary.

(2) Any objections to any of the provisions of said resolution or ordinance shall be in writing and filed with the governing body of the municipality, and hearing thereupon shall be held within 30 days after the passage of the resolution by the legislative body of said municipality.

History.—s. 1, ch. 17118, 1935; CGL 1936 Supp. 3100(6).

180.04 Ordinance or resolution authorizing construction or extension of utility; election.—If after the passage of said resolution the said city council or other legislative body, by whatever name known, shall determine to proceed toward the construction of said utility, but not earlier than 40 days after the passage of said ordinance or resolution, the said city council or other legislative body, by whatever name known, shall pass an ordinance or resolution authorizing the construction of the utility or any extension thereof, reciting the purpose and the territory to be included, correcting any errors, remedying any sustained objections, authorizing the issuance of mortgage revenue certificates or debentures to pay for the construction and all other costs of the said utility, and containing all other necessary provisions. All other legislative and administrative functions and proceedings shall be the same as provided for the government of the municipality. The city council or other legislative body, by whatever name known, of the municipality, may adopt and provide for the enforcement of all resolutions and ordinances that may be required for the accomplishment of the

purposes of this chapter, and its decision shall be final in determining to construct the utility, or any extension thereof as and where proposed, to promote the public health, safety, and welfare by the accomplishment of the purposes of this chapter; provided, that where any mortgage revenue certificates, debentures, or other evidences of indebtedness shall come within the purview of s. 12, Art. VII of the State Constitution, the same shall be issued only after having been approved by a majority of the votes cast in an election in which a majority of the owners of freeholds not wholly exempt from taxation who are qualified electors residing in such municipality shall participate, pursuant to the provisions of ss. 100.201-100.221, 100.241, 100.261-100.341, 100.351.

History.—s. 1, ch. 17118, 1935; CGL 1936 Supp. 3100(6); s. 15, ch. 69-216; s. 64, ch. 77-175.

180.05 Definition of term "private company." —A "private company" shall mean any company or corporation duly authorized under the laws of the state to construct or operate water works systems, sewerage systems, sewage treatment works, garbage collection and garbage disposal plants.

History.—s. 2, ch. 17118, 1935; CGL 1936 Supp. 3100(7).

180.06 Activities authorized by municipalities and private companies.—Any municipality or private company organized for the purposes contained in this chapter, is authorized:

(1) To clean and improve street channels or other bodies of water for sanitary purposes;

(2) To provide means for the regulation of the flow of streams for sanitary purposes;

(3) To provide a water supply for domestic, municipal or industrial uses;

(4) To provide for the collection and disposal of sewage and other liquid wastes;

(5) To provide for the collection and disposal of garbage;

(6) And incidental to such purposes and to enable the accomplishment of the same, to construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works;

(7) To construct airports, hospitals, jails and golf courses, to maintain, operate and repair the same, and to construct and operate in addition thereto all machinery and equipment;

(8) To construct, operate and maintain gas plants and distribution systems for domestic, municipal and industrial uses; and

(9) To construct such other buildings and facilities as may be required to properly and economically operate and maintain said works necessary for the fulfillment of the purposes of this chapter.

However, a private company or municipality shall not construct any system, work, project or utility authorized to be constructed hereunder in the event that a system, work, project or utility of a similar character is being actually operated by a municipality or private company in the municipality or territory immediately adjacent thereto, unless such municipality or private company consents to such construction.

History.—s. 3, ch. 17118, 1935; s. 1, ch. 17119, 1935; CGL 1936 Supp. 3100(8).

180.07 Public utilities; combination of plants or systems; pledge of revenues.—

(1) All such reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, intakes, pipelines, distribution systems, purification works, collecting systems, treatment and disposal works, airports, hospitals, jails and golf courses, and gas plants and distribution systems, whether heretofore or hereafter constructed or operated, are considered a public utility within the meaning of any constitutional or statutory provision for the purpose of acquiring, purchasing, owning, operating, constructing, equipping and maintaining such works.

(2) Whenever any municipality shall decide to avail itself of the provisions of this chapter for the extension or improvement of any existing utility plant or system, any then existing plant or system may be included as a part of a whole plant or system and any two or more utilities may be included in one project hereunder. The revenues of all or any part of any existing plants or systems or any plants or systems constructed hereunder may be pledged to secure moneys advanced for the construction or improvement of any utility plant or system or any part thereof or any combination thereof.

History.—s. 4, ch. 17118, 1935; s. 2, ch. 17119, 1935; CGL 1936 Supp. 3100(9).

180.08 Revenue certificates; terms; price and interest; three-fifths vote of governing body required.—

(1) Any municipality which acquires, constructs or extends any of the public utilities authorized by this chapter and desires to raise money for such purpose, may issue mortgage revenue certificates or debentures therefor without regard to the limitations of municipal indebtedness as prescribed by any statute now in effect or hereafter enacted; provided, however, that such mortgage revenue certificates or debentures shall not impose any tax liability upon any real or personal property in such municipality nor constitute a debt against the municipality issuing the same, but shall be a lien only against or upon the property and revenues of such utility, including a franchise setting forth the terms upon which, in the event of foreclosure, the purchaser may operate the same, which said franchise shall in no event extend for a period longer than 30 years from the date of the sale of such utility and franchise under foreclosure proceedings.

(2) Such mortgage revenue certificates or debentures shall be sold for at least 95 percent of par value and shall bear interest not to exceed 7½ percent per annum.

(3) No mortgage revenue certificates or debentures shall be issued except upon a three-fifths affirmative vote of the city council, or other legislative body of the municipalities by whatever name known; such mortgage revenue certificates or debentures shall provide that out of the revenues and income derived and obtained from the operation of the utili-

ty so constructed, such portion thereof as may be deemed sufficient after all operating costs have been paid, shall be set aside annually in a sinking fund for the payment of interest on said certificates or debentures and the principal thereof at the maturity of the same.

History.—s. 5, ch. 17118, 1935; CGL 1936 Supp. 3100(10); s. 18, ch. 73-302.

180.09 Notice of resolution or ordinance authorizing issuance of certificates.—Upon the adoption of resolution or ordinance by the city council, or other legislative body, by whatever name known, authorizing the issuance of mortgage revenue certificates or debentures, a notice thereof shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the county in which the municipality is located, or by posting a notice in at least three conspicuous places within the limits of the municipality, one of which shall be posted at the door of the city hall or city offices; provided, that if any of the mortgage revenue certificates or debentures are to be purchased by the United States of America, or any instrumentality or subdivision thereof, it shall not be necessary to advertise or offer the same for sale by competitive bidding.

History.—s. 5, ch. 17118, 1935; CGL 1936 Supp. 3100(10).

180.10 When election necessary.—Where any mortgage revenue certificates, debentures, or other evidences of indebtedness shall come within the purview of s. 12, Art. VII of the State Constitution, the same shall be issued only after having been approved by a majority of the votes cast in an election in which a majority of the owners of freeholds not wholly exempt from taxation who are qualified electors residing in such municipality shall participate, pursuant to the provisions of ss. 100.201-100.221, 100.241, 100.261-100.341, 100.351.

History.—s. 7, ch. 22858, 1945; s. 15, ch. 69-216; s. 64, ch. 77-175.

180.11 Referendum and procedure therefor.—

(1) A referendum may be held upon the issuance of such mortgage revenue certificates or debentures in the following manner: a petition shall be filed with the clerk within 30 days after the date of the first publication of the notice of the issuance of the proposed mortgage revenue certificates or debentures or after the posting of the notice, as hereinbefore provided. The petition shall contain the nature of the objection to the proposed utility or the issuance of said mortgage revenue certificates or debentures and shall be signed by 20 percent of the registered and qualified electors of said municipality. Such referendum shall be held not later than 60 days after the date of the first publication of said notice as aforesaid or the posting of such notice.

(2) The aforesaid petition shall be filed with the city clerk, or the officer performing the corresponding duties, and the said clerk or officer shall ascertain immediately if the requisite number of registered and qualified electors have signed the said petition; whereupon he shall immediately report in writing to the mayor, or the executive officer of said municipality, and to the city council or other legislative body of the municipality, by whatever name known; whereupon a resolution or ordinance shall forthwith be enacted determining if the requisite number of registered and qualified electors have signed the petition, a resolution or ordinance shall forthwith be enacted setting forth the date upon which the referendum shall be held, appropriating sufficient funds to pay the expenses of said election, designating the places of voting and providing for the form of ballot to be used. In determining the number of registered and qualified electors for the purposes of determining the sufficiency of the petition for referendum, the city clerk, or such other officer, shall use the number of registered and qualified electors at the last municipal election held by the said municipality. All rules, regulations, ordinances or resolutions pertaining to municipal elections shall apply under the referendum herein set forth, except where the same are inconsistent with the proceedings herein authorized.

History.—s. 5, ch. 17118, 1935; CGL 1936 Supp. 3100(10).

180.12 Examinations, surveys, etc.—Any municipality, to carry out the purpose of this chapter, may, through its officers, committees, agents, servants or employees, enter into and upon private property where it is proposed to construct said utility, or extensions thereof to make necessary examinations and surveys, and for such other purposes as may be required in the accomplishment of the purposes of this chapter; provided, however, the municipality, before constructing any of said works upon private property, shall first acquire the right to take and use the property by agreement or purchase or by proceedings or by the exercise of the right of eminent domain in a court of the state having jurisdiction of the same in the manner prescribed by law.

History.—s. 6, ch. 17118, 1935; CGL 1936 Supp. 3100(11).
cf.—Ch. 73 Eminent Domain.

180.13 Administration of utility; rate fixing and collection of charges.—

(1) The city council, or other legislative body of the municipality, by whatever name known, may create a separate board or may designate certain officers of said municipality to have the supervision and control of the operation of the works constructed under the authority of this chapter, which said board or designated officers may make all necessary rules or regulations governing the use, control and operation of said works; subject, however, to the approval of the city council, or other legislative body, by whatever name known.

(2) The city council, or other legislative body of the municipality, by whatever name known, may establish just and equitable rates or charges to be paid to the municipality for the use of the utility by each person, firm or corporation whose premises are served thereby; and provided further, that if the charges so fixed are not paid when due, such sums may be recovered by the said municipality by suit in a court having jurisdiction of said cause or by discontinuance of service of such utility until delinquent charges for services thereof are paid, including charge covering any reasonable expense for reconnecting such service after such delinquencies are

paid, or any other lawful method of enforcement of the payment of such delinquencies.

History.—s. 7, ch. 17118, 1935; CGL 1936 Supp. 3100(12).

180.14 Franchise for private companies; rate fixing.—A private company or corporation organized under the laws of the state for any of the purposes recited in this chapter, may construct, operate and maintain such works provided for in this chapter, within or without the corporate limits of any municipality, upon application by such company or corporation to the city council, or other legislative body of the municipality, by whatever name known, and the said municipality may grant to said private company or corporation the privilege or franchise of exercising its corporate powers for such terms of years and upon such conditions and limitations as may be deemed expedient and for the best interest of said municipality for the accomplishment of the purposes set forth in this chapter; said franchise, however, to be for a period of not longer than 30 years; provided further, that the rates or charges to be made by the private company or corporation to the individual users of the utility constructed or operated under authority of this chapter shall be fixed by the city council, or other legislative body of the municipality, by whatever name known, upon proper hearing had for that purpose.

History.—s. 8, ch. 17118, 1935; CGL 1936 Supp. 3100(13).

180.15 Liability of private companies.—Any private company or corporation constructing or operating any of the works provided for in this chapter, within or without the corporate limits of any municipality, shall be liable for all damages occasioned by the acts, negligence or injury to the rights of other persons, firms or corporations in the same manner and with the same limitations as any other private corporation chartered under the laws of the state.

History.—s. 9, ch. 17118, 1935; CGL 1936 Supp. 3100(14).

180.16 Acquisition by municipality of property of private company.—When a municipality has granted to a private company or corporation a privilege or franchise, as set forth in s. 180.14, if at the expiration of the term of the privilege or franchise and after petition of the private company or corporation, the municipality fails or refuses to renew the privilege or franchise, then upon further petition of the private company or corporation, its property, consisting of all the works constructed and used in the operation and use of the utility, together with the appurtenances, materials, fixtures, machinery, and real estate appertaining thereto, which is on hand at the time of the expiration of said privilege or franchise, shall be purchased by the said municipality at a price to be mutually agreed upon; provided, however, if the price for same cannot be agreed upon, the price shall be determined by an arbitration board consisting of three persons, one of whom shall be selected by the city council or other legislative body, one shall be appointed by the private company or corporation, and the two persons so selected shall select a third member of said board; and provided further, that in the event said board cannot agree as to the price to be paid by the said municipality, then the municipality shall file appropriate condemnation proceedings under chapter 73, within 6 months after the date of filing the original petition.

History.—s. 10, ch. 17118, 1935; CGL 1936 Supp. 3100(15).

180.17 Contracts with private companies.—Any municipality may contract by and through its duly authorized officers with any private company or corporation which is organized for any purpose related to the provisions of this chapter, and may contract with said private company or corporation for the construction or use of such works authorized by this chapter.

History.—s. 11, ch. 17118, 1935; CGL 1936 Supp. 3100(16).

180.18 Use by municipality of privately owned utility.—Whenever a private company or corporation shall construct or operate any of the works authorized by this chapter, the municipality wherein the same shall be constructed or operated shall not use the said works in any manner except by and with the consent of the private company or corporation in the manner and upon the terms and conditions which are mutually agreeable to the private company or corporation and the municipality, except as hereinbefore provided.

History.—s. 12, ch. 17118, 1935; CGL 1936 Supp. 3100(17).

180.19 Use by other municipalities and by individuals outside corporate limits.—

(1) A municipality which constructs any works as are authorized by this chapter, may permit any other municipality and the owners or association of owners of lots or lands outside of its corporate limits or within the limits of any other municipality, to connect with or use the utilities mentioned in this chapter upon such terms and conditions as may be agreed between such municipalities, and the owners or association of owners of such outside lots or lands.

(2) Any private company or corporation organized to accomplish the purposes set forth in this chapter, which has been granted a privilege or franchise by a municipality, may permit the owners or association of owners of lots or lands outside of the boundaries of said municipality granting said privilege or franchise, or other municipality, to connect with and use the utility operated by the said private company or corporation upon such terms as may be agreed between the said private company or corporation and the owners or association of owners of said lots or lands or the said municipality.

History.—s. 13, ch. 17118, 1935; CGL 1936 Supp. 3100(18).

180.191 Limitation on rates charged consumer outside city limits.—

(1) Any municipality within the state operating a water or sewer utility outside of the boundaries of such municipality shall charge consumers outside the boundaries rates, fees, and charges determined in one of the following manners:

(a) It may charge the same rates, fees, and charges as consumers inside the municipal boundaries. However, in addition thereto, the municipality may add a surcharge of not more than 25 percent of such rates, fees, and charges to consumers outside the boundaries. Fixing of such rates, fees and charges in this manner shall not require a public

hearing except as may be provided for service to consumers inside the municipality.

(b) It may charge rates, fees, and charges that are just and equitable and which are based on the same factors used in fixing the rates, fees, and charges for consumers inside the municipal boundaries. In addition thereto, the municipality may add a surcharge not to exceed 25 percent of such rates, fees and charges for said services to consumers outside the boundaries. However, the total of such rates, fees, and charges for said services to consumers outside the boundaries shall not be more than 50 percent in excess of the total amount the municipality charges consumers served within the municipality for corresponding service. No such rates, fees and charges shall be fixed until after a public hearing at which all of the users of the water or sewer systems, owners, tenants, or occupants of property served or to be served thereby, and all others interested shall have an opportunity to be heard concerning the proposed rates, fees, and charges. Any change or revision of such rates, fees, or charges may be made in the same manner as such rates, fees, or charges were originally established, but if such change or revision be made substantially pro rata as to all classes of service, no hearing or notice shall be required.

(2) Whenever any municipality has engaged, or there are reasonable grounds to believe that any municipality is about to engage, in any act or practice prohibited by subsection (1), a civil action for preventive relief, including application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person or persons aggrieved.

(3) This section shall apply to municipally owned water and sewer utilities within the confines of a single county.

(4) This section shall not apply to a county operating under a home rule charter if said county has in operation under said charter an agency regulating water and sewer systems.

(5) In any action commenced pursuant to this section, the court in its discretion may allow the prevailing party treble damages and, in addition, a reasonable attorney's fee as part of the cost.

History.—ss. 1-5, ch. 70-997.

180.20 Regulations by private companies; rates; contracts.—Whenever any private company or corporation organized for the accomplishment of the purposes of this chapter is granted a privilege or franchise by a municipality, it may prescribe the terms upon which owners and occupants of houses, buildings or lots may obtain the use of the utility constructed and operated by the said private company or corporation, and the rate charged for such use, and also the rate and terms upon which the municipality may use such utility for public purposes; such rates, however, shall be subject to the approval of the city council, or other legislative body of the municipality, by whatever name known; provided, however, that the municipality may contract with the said private company or corporation to pay the said company or corporation a flat or fixed rate for such service and use of the utility and may pay out of the general revenue or any special revenue such rate as agreed.

History.—s. 14, ch. 17118, 1935; CGL 1936 Supp. 3100(19).

180.21 Powers granted deemed additional.—The authority and powers granted by this chapter to municipalities shall be in addition to but not in limitation of any of the powers heretofore or hereafter granted to municipalities now existing or hereafter created.

History.—s. 15, ch. 17118, 1935; CGL 1936 Supp. 3100(20).

180.22 Power of eminent domain.—

(1) Any municipality or private company or corporation authorized to carry into effect any or all of the purposes defined in this chapter may exercise the power of eminent domain over railroads, traction and streetcar lines, telephone and telegraph lines, all public and private streets and highways, drainage districts, bridge districts, school districts, and any other public or private lands or property whatsoever necessary to enable the accomplishment of the purposes of this chapter.

(2) Any municipality which exercises its power under this section outside of its corporate boundaries for the accomplishment of the purposes of this chapter may finance such extraterritorial project in any manner in which it is presently authorized by law to finance a like project within its corporate boundaries.

History.—s. 16, ch. 17118, 1935; CGL 1936 Supp. 3100(21); s. 1, ch. 78-198.
cf.—Ch. 73 Eminent Domain.

180.23 Contracts with engineers, attorneys and others; boards.—Any municipality desiring to construct, maintain or operate any of the utilities described in this chapter, may contract with engineers and attorneys for professional services required for the accomplishment of any or all of the purposes of this chapter; provided, however, that such employment is to be evidenced by written agreement setting forth the terms and conditions of the employment; provided further, that such municipality may also create such other offices and boards as may be necessary and expedient for carrying out the purposes of this chapter and shall provide suitable and fit compensation for the same.

History.—s. 17, ch. 17118, 1935; CGL 1936 Supp. 3100(22).

180.24 Contracts for construction; bond; publication of notice; bids.—

(1) Any municipality desiring the accomplishment of any or all of the purposes of this chapter may make contracts for the construction of any of the utilities mentioned in this chapter, or any extension or extensions to any previously constructed utility, which said contracts shall be in writing, and the contractor shall be required to give bond, which said bond shall be executed by a surety company authorized to do business in the state; provided, however, construction contracts in excess of $1,000 shall be advertised by the publication of a notice in a newspaper of general circulation for 2 consecutive weeks in the county in which said municipality is located, or by posting three notices in three conspicuous places in said municipality, one of which shall be on the door of the city hall; and that at least 10 days shall

elapse between the date of the first publication or posting of such notice and the date of receiving bids and the execution of such contract documents.

(2) All contracts for the purchase, lease or renting of materials or equipment to be used in the accomplishment of any or all of the purposes of this chapter by the municipality, shall be in writing; provided, however, that where said contract for the purchase, lease or renting of such materials or equipment is in excess of $1,000, notice or advertisement for bids on the same shall be published in accordance with the provisions of subsection (1).

History.—s. 18, ch. 17118, 1935; CGL 1936 Supp. 3100(23); s. 3, ch. 73-129.
Note.—Former s. 255.26.

180.25 Contents of notice of issuance of certificates.—The form of the notice for advertising the proposed issuance of mortgage revenue certificates or debentures shall contain the amount of the certificates to be sold and the rate of interest thereon; a description in general terms of the utility to be constructed; the time, place and date where bids for the sale of the same are to be received; and such other pertinent information as may be deemed necessary.

History.—s. 19, ch. 17118, 1935; CGL 1936 Supp. 3100(24).

180.26 Form of certificates.—The certificate of indebtedness to be issued under the terms and conditions of this chapter shall contain a description of the utility, the revenue of which is pledged, together with the terms of payment of the same, as is established by the ordinances or resolutions of the municipality, in accordance with the conditions heretofore established in this chapter, and may or may not have attached thereto interest coupons, and shall contain such other and further conditions as shall be determined by the governing body of the municipality, in accordance with the terms and conditions of this chapter.

History.—s. 20, ch. 17118, 1935; CGL 1936 Supp. 3100(25).

CHAPTER 185

MUNICIPAL POLICE OFFICERS' RETIREMENT TRUST FUND; POLICEMEN GENERALLY

185.01 Legislative declaration.—It is hereby found and declared by the Legislature that police officers as hereinafter defined perform both state and municipal functions; that they make arrests for violations of state traffic laws on public highways; that they keep the public peace; that they conserve both life and property and that their activities are vital to public welfare of this state. Therefore the legislature declares that it is a proper and legitimate state purpose to provide a uniform retirement system for the benefit of police officers as hereinafter defined.

History.—s. 1, ch. 28230, 1953.

185.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless a different meaning is plainly required by the context:

(1) "Police officer" means a full-time police officer who receives compensation from municipal funds of any incorporated municipality of the state for services rendered. For the purposes of this chapter only, "police officer" also shall include a public safety officer who is responsible for performing both police and fire services.

(2) "Average final compensation" means the average cash compensation of a police officer during his last 10 years of contributing service.

(3) "Salary" means the total cash remuneration paid to a police officer for services rendered.

(4) "Casualty insurance" means automobile public liability and property damage insurance to be applied at the place of residence of the owner, or if the subject is a commercial vehicle, to be applied at the place of business of the owner; automobile collision insurance; fidelity bonds; burglary and theft insurance; plate glass insurance.

(5) In determining the "aggregate number of years of service" of any police officer, the time spent in the military service of the United States or United States Merchant Marine by the police officer on leave of absence for such reason shall be added to the years of service, provided, however, that to receive credit for such service the police officer must have reentered the municipality's police service within 1 year of date of release from service.

(6) Otherwise, "aggregate number of years of service with the municipality" means the total number of years, and fractional parts of years, of service of any police officer, omitting intervening years and fractional parts of years, when such police officer may not be employed by the municipality. Provided, however, that no police officer will receive credit for years or fractional parts of years of service for which he has withdrawn his contributions to the fund for those years or fractional parts of years of service; and provided further that no credit will be given for service after the normal retirement date. Further providing that a police officer may voluntarily leave his contributions in the fund for a period of 5 years after leaving the employ of the police department, pending the possibility of his being rehired by the same department, without losing credit for the time he has participated actively as a police officer. Should he not be reemployed as a police officer, with

the same department, within 5 years, his contributions shall be returned to him without interest.

History.—s. 11, ch. 28230, 1953; s. 1, ch. 29825, 1955; s. 1, ch. 59-320; s. 1, ch. 61-85; s. 7, ch. 79-380; s. 2, ch. 79-388.

185.03 Municipal Police Officers' Retirement Trust Fund created; applicability of provisions; participation by public safety officers.—

(1) There may be hereby created a special fund to be known as the "Municipal Police Officers' Retirement Trust Fund," exclusively for the purposes provided in this chapter, in each incorporated city or town of this state, heretofore or hereafter created, which now has or which may hereafter have a regularly organized police department, and which now owns and uses or which may hereafter own and use equipment and apparatus of a value exceeding $500 in serviceable condition, for the prevention of crime and for the preservation of life and property, and which city or town does not presently have established by law a similar fund.

(2) The provisions of this act shall apply only to municipalities organized and established pursuant to the laws of the state and said provisions shall not apply to the unincorporated areas of any county or counties nor shall the provisions hereof apply to any governmental entity whose employees are eligible for membership in a state or state and county retirement system.

(3) No municipality shall establish more than one retirement plan for public safety officers which is supported in whole or in part by the distribution of premium tax funds as provided by this chapter or chapter 175, nor shall any municipality establish a retirement plan for public safety officers which receives premium tax funds from both this chapter and chapter 175.

History.—s. 1, ch. 28230, 1953; s. 2, ch. 29825, 1955; s. 2, ch. 61-119; s. 1, ch. 65-152; s. 7, ch. 79-380; s. 2, ch. 79-388.

185.04 Actuarial deficits not state obligations.—Actuarial deficits, if any, arising under this chapter shall not be the obligation of the state.

History.—s. 1b, ch. 28230, 1953.

185.05 Board of trustees; members, terms of office.—In each municipality described in s. 185.03, there is hereby created a Board of Trustees of the Municipal Police Officers' Retirement Trust Fund. The board of trustees shall consist of the mayor, or corresponding officer when the municipality does not have a mayor, the chief of the police department, and two regularly employed policemen of the municipality to be chosen by the legislative body of the municipality upon recommendation of a majority of the regularly employed policemen of the municipality, and one resident of the municipality to be appointed by the legislative body of the municipality. The mayor, or corresponding officer, and the chief of the police department shall serve as long as they shall continue to hold office as mayor or chief respectively, and upon a vacancy in the office of mayor or chief, their respective successors shall succeed to the position of trustees; and each of the policemen shall be trustee for a period of 2 years, unless he sooner leaves the employment of the municipality as a policeman, whereupon the legislative body of the municipality upon recommendation of a majority of the regularly employed policemen thereof, shall choose his successors; the resident member shall be a trustee for a term of 2 years and may succeed himself in office. The mayor shall be the chairman of the board. The board of trustees shall elect one of its members as secretary of the board. The secretary of the board shall keep a complete minute book of the proceedings of the board. The trustees shall not receive any compensation as such.

History.—s. 2, ch. 28230, 1953; s. 2, ch. 59-320; s. 2, ch. 61-119.

185.06 Powers of board of trustees.—The board of trustees may:

(1) Invest and reinvest the assets of the retirement trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the Municipal Police Officers' Retirement Trust Fund shall be entitled under the provisions of this chapter, and pay the initial and subsequent premiums thereon.

(2) Invest and reinvest the assets of the retirement trust fund in:

(a) Time or savings accounts of a national bank, a state bank insured by the Federal Deposit Insurance Corporation, or a savings and loan association insured by the Federal Savings and Loan Insurance Corporation.

(b) Obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

(c) County bonds containing a pledge of the full faith and credit of the county or district involved, provided that such bonds are approved by the State Board of Administration as to legal and fiscal sufficiency, bonds of the Division of Bond Finance of the Department of General Services, or any other state agency, which have been approved as to legal and fiscal sufficiency by the State Board of Administration.

(d) Obligations of any municipal authority issued pursuant to the laws of this state, provided, however, that for each of the 5 years next preceding the date of investment the income of such authority available for fixed charges shall have been not less than 1½ times its average annual fixed-charges requirement over the life of its obligations.

(e) Bonds, stocks or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, and state, or organized territory of the United States or the District of Columbia, provided:

1. The corporation is listed on any one or more of the recognized national stock exchanges and holds a rating in one of the three highest classifications by a major rating service;

2. The corporation has paid cash dividends for a period of 7 fiscal years next preceding the date of acquisition;

3. The corporation fulfills either of the following standards: Over the period of the 7 fiscal years immediately preceding purchase the corporation must have earned after federal income taxes, an average amount per annum at least equal to two times the amount of the yearly interest charges upon its bonds, notes or other evidences of indebtedness of

equal or greater security outstanding at date of purchase, and earned after federal income taxes, an amount at least equal to two times the amount of such interest charges in each of the three fiscal years immediately preceding purchase; or the corporation over the period of 7 fiscal years immediately preceding purchase must have earned after federal income taxes, an average amount per annum at least equal to 6 percent of the par value of its bonds, notes or other evidences of indebtedness of equal or greater security outstanding at date of purchase, and earned after federal income taxes, an amount at least equal to 6 percent of the par value of such obligations in each of the 3 fiscal years immediately preceding purchase. No investment shall be made under this paragraph upon which any interest obligation is in default or which has been in default within the immediately preceding 5-year period;

4. The board of trustees shall not invest more than 1 percent of its assets in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed 1 percent of the outstanding capital stock of the company; nor shall the aggregate of its investments under this section at cost exceed 10 percent of the fund's assets.

(3) Issue drafts upon the Municipal Police Officers' Retirement Trust Fund pursuant to this act and rules and regulations prescribed by the board of trustees. All such drafts shall be consecutively numbered, and be signed by the chairman and secretary and shall state upon their faces the purposes for which the drafts are drawn. The city treasurer or other depository shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money shall otherwise be drawn from the fund.

(4) Any and all acts and decisions shall be by at least three members of the board; however, no trustee shall take part in any action in connection with his own participation in the fund, and no unfair discrimination shall be shown to any individual employee participating in the fund.

(5) Finally decide all claims to relief under the board's rules and regulations and pursuant to the provisions of this act.

(6) Convert into cash any securities of the fund.

(7) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

(8) The general administration of, and the responsibilities for, the proper operation of the retirement trust fund and for making effective the provisions of this chapter are vested in the board of trustees. The board of trustees shall keep in convenient form such data as shall be necessary for an actuarial valuation of the retirement trust fund and for checking the actual experience of the fund.

History.—s. 3, ch. 28230, 1953; s. 1, ch. 57-118; s. 3, ch. 59-320; s. 2, ch. 61-119; s. 1, ch. 65-366; ss. 22, 35, ch. 69-106.

185.061 Use of annuity or insurance policies.—When the board of trustees purchases annuity or life insurance contracts to provide all or part of the benefits promised by this chapter, the following principles shall be observed:

(1) Only those officers who have been members of the retirement trust fund for 1 year or longer may be included in the insured plan.

(2) Individual policies shall be purchased only when a group insurance plan is not feasible.

(3) Each application and policy shall designate the pension fund as owner of the policy.

(4) Policies shall be written on an annual-premium basis.

(5) The type of policy shall be one which for the premium paid provides each individual with the maximum retirement benefit at his earliest statutory normal retirement age.

(6) Death benefit, if any, should not exceed:

(a) One hundred times the estimated normal monthly retirement income, based on the assumption that the present rate of compensation continues without change to normal retirement date, or

(b) Twice the annual rate of compensation as of the date of termination of service, or

(c) The single-sum value of the accrued deferred retirement income (beginning at normal retirement date) at date of termination of service, whichever is greatest.

(7) An insurance plan may provide that the assignment of insurance contract to separating officer shall be at least equivalent to the return of the officer's contributions used to purchase the contract. An assignment of contract discharges the municipality from all further obligation to the participant under the plan even though the cash value of such contract may be less than the employee's contributions.

(8) Provisions shall be made, either by issuance of separate policies, or otherwise, that the separating officer does not receive cash values and other benefits under the policies assigned to him which exceed the present value of his vested interest under the retirement plan, inclusive of his contribution to the plan, the contributions by the state shall not be exhausted faster merely because the method of funding adopted was through insurance companies.

(9) The police officer shall have the right at any time to give the board of trustees written instructions designating the primary and contingent beneficiaries to receive death benefit or proceeds and the method of the settlement of the death benefit or proceeds, or requesting a change in the beneficiary, designation or method of settlement previously made, subject to the terms of the policy or policies on his life. Upon receipt of such written instructions, the board of trustees shall take the necessary steps to effectuate the designation or change of beneficiary or settlement option.

History.—s. 4, ch. 59-320; s. 2, ch. 61-119.

185.07 Creation and maintenance of fund.—The Municipal Police Officers' Retirement Trust Fund in each municipality described in s. 185.03 shall be created and maintained in the following manner:

(1) By the net proceeds of the 1 percent excise or license tax which may be imposed by the respective cities and towns upon certain casualty insurance companies on their gross receipts of premiums from holders of policies which policies cover property within the corporate limits of such municipalities as is hereinafter expressly authorized.

(2) By 5 percent of the salary of each full-time policeman duly appointed and enrolled as a member

of such police department, which shall be deducted by the municipality and paid over to the board of trustees of the retirement trust fund wherein such policeman is employed, provided that no deductions shall be made after an officer has passed his normal retirement date. A full-time police officer participating in the old age and survivors insurance of the Federal Social Security Law, and/or Municipal Police Officers' Retirement Trust Fund, may limit his contributions to the Municipal Police Officers' Retirement Trust Fund to 3 percent of salary and receive reduced benefits as set forth in ss. 185.16(2) and 185.18(5). No police officer shall have any right to said money so paid into said fund except as provided in this chapter.

(3) By all fines and forfeitures imposed and collected from any policeman because of the violation of any rule and regulation promulgated by the board of trustees.

(4) By payment by municipality or other sources of a sum equal to the normal cost and the amount required to fund over a 40-year basis any actuarial deficiency shown by a quinquennial actuarial valuation. The first such actuarial valuation shall be conducted for the calendar year ending December 31, 1963.

(5) By all gifts, bequests and devises when donated for the fund.

(6) By all accretions to the fund by way of interest on bank deposits or otherwise.

(7) By all other sources of income now or hereafter authorized by law for the augmentation of such Municipal Police Officers' Retirement Trust Fund.

History.—s. 4, ch. 28230, 1953; s. 3, ch. 29825, 1955; s. 5, ch. 59-320; s. 2, ch. 61-119.

185.08 One percent excise tax on casualty insurance premiums authorized; procedure.—

(1) Each incorporated city or town in this state described and classified in s. 185.03, as well as each other city or town of this state which on July 31, 1953, has a lawfully established Municipal Police Officers' Retirement Trust Fund or city fund providing pension or relief benefits to policemen by whatever name known, may assess and impose on every insurance company, corporation or other insurer now engaged in or carrying on, or who shall hereafter engage in or carry on the business of casualty insurance as shown by the records of Department of Insurance, an excise or license tax in addition to any lawful license or excise tax now levied by each of the said towns respectively, amounting to 1 percent of the gross amount of receipts of premiums from policyholders on all premiums collected on casualty insurance policies covering property within the corporate limits of such municipalities, respectively.

(2) In the case of multiple peril policies with a single premium for both property and casualty coverages in such policies, 30 percent of such premium shall be used as the basis for the 1 percent tax above.

(3) Said excise or license tax shall be payable annually March 1 of each year after the passing of an ordinance assessing and imposing the tax herein authorized. Every insurance company, corporation or other insurer paying such tax shall receive credit for the amount thereof, when paid, on the amount payable by such insurer to the state for the similar state excise tax now imposed by other provisions of law; provided, however, that this chapter shall not be construed to require the payment of an excise tax by an insurance company that does not now pay such tax.

History.—s. 5, ch. 28230, 1953; s. 2, ch. 61-119; s. 1, ch. 63-196; ss. 13, 35, ch. 69-106.

185.09 Report of premiums paid; date tax payable.—Whenever any city or town shall pass an ordinance assessing and imposing the tax authorized in s. 185.08, a certified copy of such ordinance shall be deposited with both the Department of Banking and Finance and the Department of Insurance and thereafter every insurance company, corporation or other insurer carrying on the business of casualty insuring on or before the succeeding March 1 after date of the passage of said ordinance shall report fully in writing to the Department of Banking and Finance and Department of Insurance, a just and true account of all premiums received by such insurer for casualty insurance policies covering or insuring any property located within the corporate limits of such municipality during the period of time elapsing between the date of the passage of said ordinance and the succeeding March 1. The aforesaid insurer shall annually thereafter, on March 1, file with the same officers, a similar report covering the preceding year's premium receipts. Every such insurer shall, at the time of making such report, pay to the insurance commissioner and treasurer the amount of the tax heretofore mentioned. Every insurer engaged in carrying on a general casualty insurance business in the state, as shown by the records of the Department of Insurance, shall keep accurate books of account of all such business done by it within the limits of such incorporated municipality in such a manner as to be able to comply with the provisions of this chapter. The Department of Insurance shall furnish to any municipality requesting the same a copy of any of the reports filed by insurers under this section.

History.—s. 6, ch. 28230, 1953; s. 2, ch. 61-85; ss. 12, 13, 35, ch. 69-106.

185.10 Insurance Commissioner and Treasurer to keep accounts of deposits; disbursements.—The Insurance Commissioner and Treasurer shall keep a separate account of all moneys collected for each city and town under the provisions of this chapter and any and all moneys so collected, after deducting the necessary expense incurred by the Department of Insurance, in carrying out the provisions of this chapter, shall be paid into the State Treasury in a fund known as the Insurance Commissioner's Regulatory Trust Fund. The Comptroller shall on or before June 1 of each year, and at such other times as the State Treasurer may elect, draw his warrant on the State Treasurer for the full net amount of money then within the State Treasury in the Insurance Commissioner's Regulatory Trust Fund specifying the cities or towns to which said moneys shall be paid and the net amount collected for and to be paid to each city or town, respectively, which said sums payable to said cities or towns are hereby appropriated annually out of the Insurance Commissioner's Regulatory Trust Fund. Said warrants of said Comptroller shall be countersigned by

the Governor and shall be payable to the cities or towns, respectively, entitled to receive the same, and shall be remitted annually by the Comptroller to such cities and towns.

History.—s. 7, ch. 28230, 1953; s. 2, ch. 29734, 1955; s. 2, ch. 61-119; ss. 13, 35, ch. 69-106; s. 1, ch. 74-297.

185.11 Funds received by municipalities, deposit in retirement trust fund.—All funds received by any city or town under the provisions of this chapter, shall be by said town paid immediately into its Municipal Police Officers' Retirement Trust Fund or into its pension fund for policemen, where such latter fund exists.

History.—s. 8, ch. 28230, 1953; s. 2, ch. 61-119.

185.12 Payment of municipal tax credit on state tax.—The tax herein authorized shall in nowise be additional to the similar state excise or license tax imposed by part IV, chapter 624, but the payer of the tax hereby authorized shall receive credit therefor on his said state excise or license tax and the balance of said state excise or license tax shall be paid to the Insurance Commissioner and Treasurer as is now provided by law.

History.—s. 9, ch. 28230, 1953; s. 3, ch. 61-85; ss. 13, 35, ch. 69-106.

185.13 Failure of insurer to comply with chapter; penalty.—Should any insurance company, corporation or other insurer fail to comply with the provisions of this chapter, on or before March 1 in each year as herein provided, the certificate of authority issued to said insurance company, corporation or other insurer to transact business in this state may be canceled and revoked by the Department of Insurance, and it is unlawful for any such insurance company, corporation or other insurer to transact any business thereafter in this state unless such insurance company, corporation or other insurer shall be granted a new certificate of authority to transact business in this state, in compliance with provisions of law authorizing such certificate of authority to be issued.

History.—s. 10, ch. 28230, 1953; ss. 13, 35, ch. 69-106.

185.14 Contributions.—Except as provided in ss. 185.07(2) and 185.15, the municipal officer or board paying salaries to police officers entitled to the benefit of this chapter shall deduct 5 percent from each installment of salary of each police officer so long as such police officer shall hold office, or be employed. Said amount so deducted shall be deposited in a special fund hereby established in the municipal treasury, to be known as the Municipal Police Officers' Retirement Trust Fund.

History.—s. 12, ch. 28230, 1953; s. 6, ch. 59-320; s. 4, ch. 61-85; s. 2, ch. 61-119.

185.15 Contributions; new employees.—Any person who enters the employment of any incorporated municipality of the state as a police officer after July 31, 1953 and who does not desire to accept the provisions of this chapter shall, within 12 months after employment, notify the officer or board paying the salary of such police officer, in writing, to that effect. Thereupon, it shall be the duty of the board of trustees to refund from the Municipal Police Officers' Retirement Trust Fund the full amount, without interest, withheld from such police officer's salary and deposited in such fund. Thenceforward no withholding shall be made from such salary and all police officers who have given such notice shall be barred from participating in the retirement system.

History.—s. 13, ch. 28230, 1953; s. 2, ch. 57-118; s. 6, ch. 59-320; s. 2, ch. 61-119.

185.16 Requirements for retirement.—Any police officer who has attained the age of 60 years, or more, and who at such time has completed at least 10 years of service as a police officer and for such period has been a member of the retirement fund, is eligible for normal retirement benefits. Normal retirement under the plan is retirement from the service of the city on or after the normal retirement date. In such event, payment of retirement income will be governed by the following provisions of this section:

(1) The normal retirement date of each police officer will be the first day of the month coincident with or next following the date on which he has attained the age of 60 years and has completed 10 years service. A police officer who retires after his normal retirement date will upon actual retirement be entitled to receive the same amount of monthly retirement income that he would have received had he retired on his normal retirement date.

(2) The amount of the monthly retirement income payable to a police officer who retires on or after his normal retirement date shall be an amount equal to the number of his years of credited service multiplied by 2 percent of his average final compensation. If the police officer has been contributing only 3 percent of salary, his monthly retirement income shall be an amount equal to the number of his years of credited service multiplied by 1.2 percent of his average final compensation. The retirement income will be reduced for moneys received under the disability provisions of this chapter.

(3) The monthly retirement income payable in the event of normal retirement will be payable on the first day of each month. The first payment will be made on the police officer's normal retirement date, or on the first day of the month coincident with or next following his actual retirement, if later, and the last payment will be the payment due next preceding the police officer's death; except that, in the event the police officer dies after his retirement but before he has received retirement benefits for a period of 10 years, the same monthly benefit will be paid to the beneficiary (or beneficiaries) as designated by the police officer for the balance of such 10-year period, or, if no beneficiary is designated, to the surviving spouse, descendants, heirs at law or estate of the police officer, as provided in s. 185.162. If a police officer continues in the service of the city beyond his normal retirement date and dies prior to his date of actual retirement, without an option made pursuant to s. 185.161 being in effect, monthly retirement income payments will be made for a period of 10 years to a beneficiary (or beneficiaries) designated by the police officer as if the police officer had retired on the date on which his death occurred, or, if no beneficiary is designated, to the surviving spouse, descend-

ants, heirs at law or estate of the police officer, as provided in s. 185.162.

(4) Early retirement under the plan is retirement from the service of the city, with the consent of the city, as of the first day of any calendar month which is prior to the police officer's normal retirement date but subsequent to the date as of which he has both attained the age of 50 years and completed 10 years of contributing service. In the event of early retirement, payment of retirement income will be governed as follows:

(a) The early retirement date shall be the first day of the calendar month coincident with or immediately following the date a police officer retires from the service of the city under the provisions of this section prior to his normal retirement date.

(b) The monthly amount of retirement income payable to a police officer who retires prior to his normal retirement date under the provisions of this section shall be an amount computed as described in subsection (2), taking into account his credited service to his date of actual retirement and his final monthly compensation as of such date, such amount of retirement income to be actuarially reduced to take into account the police officer's younger age and the earlier commencement of retirement income payments.

(c) The retirement income payable in the event of early retirement will be payable on the first day of each month. The first payment will be made on the police officer's early retirement date and the last payment will be the payment due next preceding the retired police officer's death; except that, in the event the police officer dies before he has received retirement benefits for a period of 10 years, the same monthly benefit will be paid to the beneficiary designated by the police officer for the balance of such 10-year period, or, if no designated beneficiary is surviving, the same monthly benefit for the balance of such 10-year period shall be payable as provided in s. 185.162.

History.—s. 14, ch. 28230, 1953; s. 4, ch. 29825, 1955; s. 6, ch. 59-320; s. 5, ch. 61-85; s. 2, ch. 63-196; s. 1, ch. 70-128.

185.161 Optional forms of retirement income.—

(1)(a) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified in s. 185.16, a police officer, upon written request to the board of trustees and submission of evidence of good health (except that such evidence will not be required if such request is made at least 3 years prior to the date of commencement of retirement income or if such request is made within 6 months following the effective date of the plan, if later), and subject to the approval of the board of trustees, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

1. A retirement income of larger monthly amount, payable to the police officer for his lifetime only.

2. A retirement income of a modified monthly amount, payable to the police officer during the joint lifetime of the police officer and a joint pensioner designated by the police officer, and following the death of either of them, 100 percent, 66⅔ percent, or 50 percent of such monthly amount payable to the survivor for the lifetime of the survivor.

3. Such other amount and form of retirement payments or benefit as, in the opinion of the board of trustees, will best meet the circumstances of the retiring police officer.

(b) The police officer upon electing any option of this section will designate the joint pensioner or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the plan in the event of his death, and will have the power to change such designation from time to time but any such change shall be deemed a new election and will be subject to approval by the pension committee. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. If a police officer has elected an option with a joint pensioner or beneficiary and his retirement income benefits have commenced, he may thereafter change his designated joint pensioner or beneficiary but only if the board of trustees consents to such change and if the joint pensioner last previously designated by him is alive when he files with the board of trustees his request for such change. The consent of a police officer's joint pensioner or beneficiary to any such change shall not be required. The board of trustees may request such evidence of the good health of the joint pensioner that is being removed as it may require and the amount of the retirement income payable to the police officer upon the designation of a new joint pensioner shall be actuarially redetermined taking into account the ages and sex of the former joint pensioner, the new joint pensioner, and the police officer. Each such designation will be made in writing on a form prepared by the board of trustees, and on completion will be filed with the board of trustees. In the event that no designated beneficiary survives the police officer, such benefits as are payable in the event of the death of the police officer subsequent to his retirement, shall be paid as provided in s. 185.162.

(2) Retirement income payments will be made under the option elected in accordance with the provisions of this section and will be subject to the following limitations:

(a) If a police officer dies prior to his normal retirement date or early retirement date, whichever first occurs, no benefit will be payable under the option to any person, but the benefits, if any, will be determined under s. 185.21.

(b) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the police officer's retirement under the plan, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the police officer upon his retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the police officer prior to his retirement and within 90 days after the death of the beneficiary.

(c) If both the retired police officer and the beneficiary (or beneficiaries) designated by him die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of sub-

section (1)(a)3., the board of trustees may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum, and in accordance with s. 185.162.

(d) If a police officer continues beyond his normal retirement date pursuant to the provisions of s. 185.16 (1), and dies prior to his actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the police officer in the amount or amounts computed as if the police officer had retired under the option on the date on which his death occurred.

History.—s. 7, ch. 59-320.

185.162 Beneficiaries.—

(1) Each police officer may, on a form, provided for that purpose, signed and filed with the board of trustees, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of his death, and each designation may be revoked by such police officer by signing and filing with the board of trustees a new designation or beneficiary form.

(2) If a deceased police officer failed to name a beneficiary in the manner above prescribed, or if the beneficiary (or beneficiaries) named by a deceased police officer predeceases the police officer, the death benefit, if any, which may be payable under the plan with respect to such deceased police officer may be paid, in the discretion of the board of trustees, either to:

(a) Any one or more of the persons comprising the group consisting of the police officer's spouse, the police officer's descendants, the police officer's parents, or the police officer's heirs at law, and the board of trustees may pay the entire benefit to any member of such group or apportion such benefit among any two or more of them in such shares as the board of trustees, in its sole discretion, shall determine, or

(b) The estate of such deceased police officer, provided that in any of such cases the board of trustees, in its discretion, may direct that the commuted value of the remaining monthly income payments be paid in a lump sum. Any payment made to any person pursuant to the power and discretion conferred upon the board of trustees by the preceding sentence shall operate as a complete discharge of all obligations under the plan with regard to such deceased police officer and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons ever interested hereunder.

History.—s. 7, ch. 59-320.

185.18 Disability retirement.—

(1) A police officer having 10 or more years of credited service and having contributed to the Municipal Police Officers' Retirement Trust Fund for 10 years or more may retire from the service of the city under the plan if, prior to his normal retirement date, he becomes totally and permanently disabled as defined in subsection (2), by reason of any cause other than a cause set out in subsection (3), on or after the effective date of the plan. Such retirement shall herein be referred to as disability retirement.

(2) A police officer will be considered totally disabled if, in the opinion of the board of trustees, he is wholly prevented from rendering useful and efficient service as a police officer; and a police officer will be considered permanently disabled if, in the opinion of the board of trustees, such police officer is likely to remain so disabled continuously and permanently from a cause other than as specified in subsection (3).

(3) A police officer will not be entitled to receive any disability retirement income if the disability is a result of:

(a) Excessive and habitual use by the police officer of drugs, intoxicants or narcotics;

(b) Injury or disease sustained by the police officer while willfully and illegally participating in fights, riots, civil insurrections or while committing a crime;

(c) Injury or disease sustained by the police officer while serving in any armed forces;

(d) Injury or disease sustained by the police officer after his employment has terminated;

(e) Injury or disease sustained by the police officer while working for anyone other than the city and arising out of such employment.

(4) No police officer shall be permitted to retire under the provisions of this section until examined by a duly qualified physician or surgeon, to be selected by the board of trustees for that purpose, and is found to be disabled in the degree and in the manner specified in this section. Any police officer retiring under this section shall be examined periodically by a duly qualified physician or surgeon or board of physicians and surgeons to be selected by the board of trustees for that purpose, to determine if such disability has ceased to exist.

(5) The benefit payable to a police officer who retires from the service of the city with a total and permanent disability as a result of a disability commencing prior to his normal retirement date is the monthly income payable for 10 years certain and life which can be provided by the single-sum value of the deferred monthly retirement income beginning at normal retirement date which has accrued to his date of disability (where the amount of such accrued deferred monthly retirement income is computed by multiplying his number of years of actual credited service as of his date of disability by 2 percent of his average final compensation). If the police officer has been contributing only 3 percent of salary, his monthly retirement income shall be an amount equal to the number of his years of credited service multiplied by 1.2 percent of his average final compensation.

(6)(a) The monthly retirement income to which a police officer is entitled in the event of his disability retirement will be payable on the first day of each month. The first payment will be made on the first day of the month following the later to occur of

1. The date on which the disability has existed for 6 months and

2. The date the board of trustees approves the payment of such retirement income.

(b) The last payment will be

1. If the police officer recovers from the disability

prior to his normal retirement date, the payment due next preceding the date of such recovery, or,

2. If the police officer dies without recovering from his disability or attains his normal retirement date while still disabled, the payment due next preceding his death or the 120th monthly payment, whichever is later.

(c) Any monthly retirement income payments due after the death of a disabled police officer shall be paid to the police officer's designated beneficiary (or beneficiaries) as provided in ss. 185.162 and 185.21.

(7) If the board of trustees finds that a police officer who is receiving a disability retirement income is, at any time prior to his normal retirement date, no longer disabled, as provided herein, the board of trustees shall direct that the disability retirement income be discontinued. Recovery from disability as used herein shall mean the ability of the police officer to render useful and efficient service as a police officer.

(8) If the police officer recovers from disability and reenters the service of the city as a police officer, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he reentered the service of the city will not be considered as credited service for the purposes of the plan.

History.—s. 16, ch. 28230, 1953; s. 6, ch. 59-320; s. 6, ch. 61-85; s. 2, ch. 61-119; s. 2, ch. 70-128.

185.19 Separation from municipal service; refunds.—

(1) Should any police officer leave the service of the municipality before accumulating aggregate time of 10 years toward retirement and before being eligible to retire under the provisions of this chapter, such police officer shall be entitled to a refund of all of his contributions made to the Municipal Police Officers' Retirement Trust Fund without interest, less any benefits paid to him.

(2) Should any police officer who has been in the service of the municipality for at least 10 years and has contributed to the Municipal Police Officers' Retirement Trust Fund for at least 10 years elect to leave his accrued contributions in the Municipal Police Officers' Retirement Trust Fund, such police officer upon attaining age 50 years or more may retire at the actuarial equivalent of the amount of such retirement income otherwise payable to him.

History.—s. 17, ch. 28230, 1953; s. 6, ch. 59-320; s. 7, ch. 61-85; s. 2, ch. 61-119.

185.191 Lump sum payment of small retirement income.—Notwithstanding any provision of the plan to the contrary, if the monthly retirement income payable to any person entitled to benefits hereunder is less than $30 or if the single-sum value of the accrued retirement income is less than $750 as of the date of retirement or termination of service, whichever is applicable, the board of trustees, in the exercise of its discretion, may specify that the actuarial equivalent of such retirement income be paid in a lump sum.

History.—s. 7, ch. 59-320.

185.21 Death prior to retirement; refunds or death benefits.—Should any police officer die before being eligible to retire under the provisions of this chapter, the heirs, legatees, beneficiaries, or personal representative of such deceased police officer shall be entitled to a refund of 100 percent, without interest, of the contributions made to the Municipal Police Officers' Retirement Trust Fund by such deceased police officer; or in the event an annuity or life insurance contract has been purchased by the board on such police officer, then to the death benefits available under such life insurance or annuity contract, subject to the limitations on such death benefits set forth in s. 185.061 whichever amount is greater. In event the death benefit paid by a life insurance company exceeds the limit set forth in s. 185.061(6) the excess of the death benefit over the limit shall be paid to the municipal police officers' retirement trust fund.

History.—s. 19, ch. 28230, 1953; s. 6, ch. 29825, 1955; s. 3, ch. 57-118; s. 6, ch. 59-320; s. 2, ch. 61-119.

185.221 Report to Department of Insurance.—

(1) Each year by February 1, the chairman or secretary of each Municipal Police Officers' Retirement Trust Fund shall file a report with the Department of Insurance containing the following:

(a) Whether in fact the municipality is within the provisions of s. 185.03.

(b) A certified statement of accounting for the most recent fiscal year of the municipality showing a detailed listing of assets, and methods used to value them and a statement of all income and disbursements during the year. Such income and disbursements shall be reconciled with the assets at the beginning and end of the year.

(c) A statistical exhibit showing the total number of police officers on the force of the municipality, the number included in the retirement plan and the number ineligible classified according to the reasons for their being ineligible, and the number of disabled and retired police officers and their beneficiaries receiving pension payments and the amounts of annual retirement income or pension payments being received by them.

(d) A statement of the amount the municipality has contributed to the retirement plan for the year ending with the preceding December 31 and the amount the municipality will contribute to the retirement plan for the current calendar year.

(e) If any benefits are insured with a commercial insurance company, the report shall include a statement of the relationship of the insured benefits to the benefits provided by this chapter. This report shall also contain information about the insurer, basis of premium rates and mortality table, interest rate and method used in valuing retirement benefits.

(2) By February 1 of each quinquennial year beginning with February 1, 1964, the chairman of each Municipal Police Officers' Retirement Trust Fund shall report to the Department of Insurance such data that the department needs to complete an actuarial valuation of each fund. The forms for each municipality shall be supplied by the department. The expense of the actuarial valuation shall be borne by

the Municipal Police Officers' Retirement Trust Fund established by ss. 185.10 and 185.24.

History.—s. 7, ch. 59-320; s. 2, ch. 61-119; ss. 13, 35, ch. 69-106.

185.23 Rules and regulations.—The Department of Insurance shall make such rules and regulations as are necessary for the effective administration of this chapter.

History.—s. 20, ch. 28230, 1953; ss. 13, 35, ch. 69-106.

[1]185.231 Advisory committee.—The Department of Insurance may appoint annually an advisory committee, to serve for 1 year, or at its pleasure, consisting of seven members, one of whom shall be from the department, to receive such reports as may be brought to its attention and to advise and assist on matters relating to the Municipal Police Officers' Retirement Trust Fund.

History.—s. 7, ch. 59-320; s. 2, ch. 61-119; ss. 13, 35, ch. 69-106; s. 4, ch. 78-323.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

185.24 Annual appropriation.—There is hereby annually appropriated to the Department of Insurance from the moneys collected for each city and town under this chapter the amount necessary to administer efficiently the provisions of this chapter, not to exceed $30,000 per annum.

History.—s. 20, ch. 28230, 1953; ss. 13, 35, ch. 69-106.

185.25 Exemption from execution.—The pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this chapter and the accumulated contributions and the cash securities in the funds created under this chapter are hereby exempted from any state, county or municipal tax of the state and shall not be subject to execution or attachment or to any legal process whatsoever and shall be unassignable.

History.—s. 21, ch. 28230, 1953.

185.27 Roster of retirees.—The secretary of the board of trustees shall keep a record of all persons enjoying a pension under the provisions of this chapter, in which shall be noted the time when the pension is allowed and when the same shall cease to be paid. And in this book the secretary shall keep a record of all policemen employed by the municipality and a record shall be kept in such manner as to show the name, address and time of employment of such policemen and when such policemen cease to be employed by the municipality.

History.—s. 23, ch. 28230, 1953.

185.29 City attorney to represent board of trustees.—The city attorney or corporation counsel shall give advice to said board of trustees in all matters pertaining to their duties in the administration of said Municipal Police Officers' Retirement Trust Fund whenever thereunto requested; and he shall represent and defend said board as its attorney in all suits and actions at law or in equity that may be brought against it, and bring all suits and actions in its behalf that may be required or determined upon by said board; provided, however, that if the city attorney should fail or refuse to comply with the request of the board of trustees in this relation, the said board of trustees in their discretion may employ independent legal counsel for such purpose.

History.—s. 25, ch. 28230, 1953; s. 2, ch. 61-119.

185.30 Depository for retirement fund.—All funds and securities of the Municipal Police Officers' Retirement Trust Fund shall be deposited with the city treasurer or depository of the city, who shall keep the same in a separate fund, and he shall be liable for the safekeeping of the same, under the bond given by him to the city, and he shall be liable in the same manner and to the same extent as he is liable for the safekeeping of the funds of the city.

History.—s. 26, ch. 28230, 1953; s. 2, ch. 61-119.

185.31 Municipalities and boards independent of other municipalities and boards.—In the enforcement and in the interpretation of the provisions of this chapter, each municipality shall be independent of any other municipality and the board of trustees of the Municipal Police Officers' Retirement Trust Fund of each municipality shall function for the municipality which they are to serve as trustees.

History.—s. 27, ch. 28230, 1953; s. 2, ch. 61-119.

185.32 Exemptions from chapter.—This chapter shall not apply to any person who is or may become eligible to become a member of any other retirement system provided for by law, or of any retirement system provided for by any ordinance of any incorporated municipality of the state, nor shall this chapter, nor any provisions thereof, be construed as limiting, modifying or enlarging any ordinance of any incorporated municipality of the state; provided, however, that nothing in this chapter shall be construed to bar cities that have adopted the social security plan advanced by the federal government.

History.—s. 28, ch. 28230, 1953; s. 19, ch. 29615, 1955.

185.34 Disability in line of duty.—Any condition or impairment of health of any and all police officers employed in the state caused by tuberculosis, hypertension, heart disease, or hardening of the arteries, resulting in total or partial disability or death, shall be presumed to be accidental and suffered in line of duty unless the contrary be shown by competent evidence. Any condition or impairment of health caused directly or proximately by exposure, which exposure occurred in the active performance of duty at some definite time or place without willful negligence on the part of the police officer, resulting in total or partial disability, shall be presumed to be accidental and suffered in the line of duty; provided, however, that such police officer shall have successfully passed a physical examination upon entering such service, which physical examination including electrocardiogram failed to reveal any evidence of such condition; provided further, that such presumption shall not apply to benefits payable under or granted in a policy of life insurance or disability insurance. Nothing herein shall be construed to extend or otherwise affect the provisions of chapter 440, pertaining to workers' compensation. All laws,

including local or special laws, in conflict herewith are repealed.

History.—ss. 1, 2, ch. 57-340; s. 1, ch. 67-580; s. 62, ch. 79-40.

185.35 Municipalities having their own pension plans for policemen.—

(1) In order for cities with their own pension plans for policemen or for policemen and other employees to participate in the distribution of the tax fund established in ss. 185.07, 185.08 and 185.09, their retirement funds must meet each of the following standards:

(a) The plan must be for the purpose of providing retirement and disability income for policemen.

(b) The normal retirement age, if any, shall not be higher than age 65.

(c) If the plan provides for a stated period of service as a requirement to receive a retirement income, that period must not be higher than 35 years.

(d) The benefit formula to determine the amount of monthly pension should be equal to at least $\frac{1}{12}$ of 1 percent of the officer's total earnings during his period of credited service.

(e) If a ceiling on the monthly payment is stated in the plan, it should be no lower than $100.

(f) Death or survivor benefits and disability benefits may be incorporated into the plan as the municipality wishes but in no event should the single-sum value of such benefits as of the date of termination of service because of death or disability exceed

1. One hundred times the estimated normal monthly retirement income, based on assumption that the present rate of compensation continues without change to normal retirement date, or

2. Twice the annual rate of compensation as of the date of termination of service, or

3. The single-sum value of the accrued deferred retirement income (beginning at normal retirement date) at date of termination of service, whichever is greatest; provided, however, that nothing in this subparagraph shall require any reduction in death or disability benefits provided by a retirement plan in effect on July 1, 1959.

(g) Eligibility for coverage under the plan must be based upon length of service, or attained age, or both, and benefits must be determined by a nondiscriminatory formula based upon

1. Length of service and compensation, or

2. Length of service.

(h) If the retirement plan requires participants to contribute toward the cost of the plan, it must set forth the termination rights, if any, of an employee in the event of the separation or withdrawal of an employee before retirement.

(i) An actuarial valuation of the retirement plan must be made at least once in every 5 years commencing with December 31, 1963, by an actuary who is a member of the Society of Actuaries, Casualty Actuarial Society, Conference of Actuaries in Public Practice, or Fraternal Actuarial Association, and who is selected by the individual municipal police officers' retirement trust fund.

1. Cost of the actuarial valuation must be paid by the individual retirement fund or by the municipality.

2. A report of the valuation, including actuarial assumptions and type and basis of funding shall be made to the Department of Insurance within 3 months after the date of valuation. If any benefits are insured with a commercial insurance company, the report shall include a statement of the relationship of the retirement plan benefits to the insured benefits and in addition the name of the insurer, basis of premium rates and the mortality table, interest rate and method used in valuing retirement benefits.

(j) Commencing on July 1, 1964, the municipality shall contribute to the plan annually an amount which together with the contributions from the police officers, the amount derived from the premium tax provided in s. 185.08 and other income sources will be sufficient to meet the normal cost of the plan and to fund the actuarial deficiency over a period not longer than 40 years.

(k) No retirement plan or amendment to a retirement plan shall be proposed without the proposed plan or amendment containing an actuarial estimate of the costs involved.

(l) Each year on or before March 15, the trustees of the retirement plan must submit the following information to the Department of Insurance in order for the retirement plan of such city to receive a share of state funds for the then current calendar year; when any of these items would be identical with the corresponding item submitted for a previous year it will not be necessary to submit duplicate information but to make reference to the item in such previous year's report:

1. A certified copy of each and every instrument constituting or evidencing the plan.

2. A certified statement of accounting for the most recent fiscal year of the municipality showing (a) a detailed listing of assets and (b) a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year.

3. A certified statement listing the investments of the plan and a description of the methods used in valuing the investments.

4. A statistical exhibit showing the total number of policemen, the number included in the plan and the number ineligible classified according to the reasons for their being ineligible.

5. A statement of the amount the city and other income sources has contributed toward the plan or will contribute toward the plan for the current calendar year.

(2) When a municipality has a policemen's retirement plan which meets the standards set forth in subsection (1), the board of trustees of the pension plan or the official pension committee or agency, may place the income from the premium tax in s. 185.08 in its existing pension fund for the sole and exclusive use of their policemen (or for firemen and policemen where included), or may use said income to pay extra benefits to the policemen.

(3) The retirement plan setting forth the benefits and the trust agreement, if any, covering the duties and responsibilities of the trustees and the regulations of the investment of funds must be in writing

and copies made available to the participants and to the general public.

History.—s. 7, ch. 59-320; s. 2, ch. 61-119; s. 3, ch. 63-196; ss. 13, 35, ch. 69-106.

185.36 Rights of police officers under former law.—The rights of police officers established or declared by any former provisions of this chapter shall not be impaired nor shall their benefits be reduced by virtue of any provisions of this chapter, provided however that no member may receive the benefits under the former chapter and also be entitled to receive the benefits under this chapter as amended in 1959. Unless an election in writing is made before January 1, 1960, to the board of trustees to remain under the provisions of the former chapter, it shall be conclusively presumed that the provisions of this chapter, as amended, will apply as to all police officers. Members who have retired under the former chapter prior to the enactment of the 1959 law shall continue to receive their benefits under the former chapter. Nothing in this law shall be construed as affecting benefits, due or to become due any police officer under a statutory pension plan.

History.—s. 7, ch. 59-320.

185.37 Termination of plan and distribution of fund.—Upon termination of the plan for any reason, or upon written notice to the board of trustees that contributions thereunder are being permanently discontinued, the fund shall be apportioned and distributed in accordance with the following procedures:

(1) The board of trustees shall determine the date of distribution and the asset value to be distributed, after taking into account the expenses of such distribution.

(2) The board of trustees shall determine the method of distribution of the asset value, that is, whether distribution shall be by payment in cash, the maintenance of another or substituted trust fund, by the purchase of insured annuities or otherwise, for each police officer entitled to benefits under the plan, as specified in subsection (3).

(3) The board of trustees shall apportion the asset value as of the date of termination in the manner set forth below, on the basis that the amount required to provide any given retirement income shall mean the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income shall mean the single premium payable for such annuity.

(a) Apportionment shall first be made in respect of each retired police officer receiving a retirement income hereunder on such date, each person receiving a retirement income on such date on account of a retired (but since deceased) police officer, and each police officer who has, by such date, become eligible for normal retirement but has not yet retired, in the amount required to provide such retirement income, provided that, if such asset value be less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.

(b) If there be any asset value remaining after the apportionment under paragraph (a), apportionment shall next be made in respect of each police officer in the service of the city on such date who has completed at least 10 years of credited service and who has contributed to the Municipal Police Officers' Retirement Trust Fund for at least 10 years and who is not entitled to an apportionment under paragraph (a), in the amount required to provide the actuarial equivalent of the accrued normal retirement income, based on the police officer's credited service and earnings to such date, and each former participant then entitled to a benefit under the provisions of s. 185.19, who has not, by such date, reached his normal retirement date, in the amount required to provide the actuarial equivalent of the accrued normal retirement income to which he is entitled under s. 185.19, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(c) If there be an asset value after the apportionments under paragraphs (a) and (b), apportionment shall lastly be made in respect of each police officer in the service of the city on such date who is not entitled to an apportionment under paragraphs (a) and (b) in the amount equal to his total contributions to the plan to date of termination, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(d) In the event that there be asset value remaining after the full apportionment specified in paragraphs (a), (b) and (c), such excess shall be returned to the city, less return of state's contributions to the state, provided that, if the excess is less than the total contributions made by the city and the state to date of termination of the plan such excess shall be divided proportionately to the total contributions made by the city and the state.

(4) The board of trustees shall distribute, in accordance with the manner of distribution determined under subsection (2), the amounts apportioned under subsection (3).

History.—s. 8, ch. 61-85; s. 2, ch. 61-119; s. 4, ch. 63-196.

TITLE XIII

SPECIAL DISTRICTS

CHAPTER 189

SPECIAL DISTRICTS; DISCLOSURE

189.001 Short title.—Sections 189.001-189.009 shall be known and may be cited as the "Special Districts Disclosure Act of 1979."

History.—s. 10, ch. 79-183.

189.002 Legislative findings and intent.—

(1) The Legislature finds that special districts serve a necessary and useful function by providing services to residents and property in the state. The Legislature finds further that special districts operate to serve a public purpose and that this public trust is best secured by certain minimum standards of accountability designed to inform the public and appropriate general-purpose local governments of the status and activities of special districts. It is the intent of the Legislature that this public trust be secured by requiring each independent special district in the state to register and report its financial and other activities. The Legislature further finds that failure of an independent special district to comply with the minimum disclosure requirements set forth in this act may result in action against officers of such district board.

(2) Realizing that special districts are created to serve special purposes, it is the legislative intent of this act that special districts cooperate and coordinate their activities with the units of general-purpose local government in which they are located. The reporting requirements set forth in this act shall be the minimum level of cooperation necessary to provide services to the citizens of this state in an efficient and equitable fashion. It is not the intent of this act to confer budgetary powers upon boards of county commissioners for those independent special districts which file budgets with the clerk of the board of county commissioners, unless otherwise provided by law.

History.—s. 10, ch. 79-183.

189.003 Definitions.—As used in ss. 189.001-189.009, except where the context clearly indicates a different meaning:

(1) The meanings of the terms "special district" and "independent special district" shall be the same as those provided in s. 218.31.

(2) The term "department" means the Department of Community Affairs.

(3) The term "local governing authority" means the governing body of a unit of local general-purpose government. However, if the special district is a political subdivision of a municipality, "local governing authority" means the municipality.

History.—s. 10, ch. 79-183.

189.004 Designation of registered office and agent.—

(1) Prior to October 1, 1979, or no later than 1 year subsequent to its creation, each special district in the state shall designate a registered office and a registered agent and file such information with the local governing authority or authorities and with the Department of Community Affairs. The registered agent shall be an agent of the district upon whom any process, notice, or demand required or permitted by law to be served upon the district may be served. A registered agent shall be an individual resident of this state whose business address is identical with the registered office of the district. The registered office may be, but need not be, the same as the place of business of the special district.

(2) The district may change its registered office or change its registered agent, or both, upon filing such information with the local governing authority or authorities and with the Department of Community Affairs.

History.—s. 10, ch. 79-183.

189.005 Meetings; notice; required reports.—

(1) The governing body of each special district shall file annually a schedule of its regular meetings with the local governing authority or authorities. The schedule shall include the date, time, and location of each scheduled meeting. The governing body of an independent special district shall advertise the day, time, place, and purpose of any special meeting, at least 7 days prior to such meeting, in a newspaper of general paid circulation in the county or counties in which the special district is located, unless a bona fide emergency situation exists, in which case a meeting to deal with the emergency may be held as

necessary, with reasonable notice, so long as it is subsequently ratified by the board. The advertisement shall be placed in that portion of the newspaper where legal notices and classified advertisements appear. It is the legislative intent that, whenever possible, the advertisement shall appear in a newspaper that is published at least 5 days a week, unless the only newspaper in the county is published fewer than 5 days a week. It is further the legislative intent that the newspaper selected be one of general interest and readership in the community and not one of limited subject matter, pursuant to chapter 50.

(2) All meetings of the governing body of the special district shall be open to the public and governed by the provisions of chapter 286.

(3) Meetings of the governing body of the special district shall be held in a public building when available within the district, in a county courthouse of a county in which the district is located, or in a building in the county accessible to the public.

History.—s. 10, ch. 79-183.

189.006 Reports; audits.—

(1) Prior to October 1, 1979, or no later than 1 year subsequent to its creation, each special district shall file with the local governing authority or authorities and with the Department of Community Affairs a copy of the document authorizing its creation, by whatever method the creation occurred; a list of any improvements necessary to accomplish district purposes; a proposed schedule of completion of any improvements; and, if applicable, a plan of termination. Any amendment, modification, or update required shall be filed within 30 days of its adoption by the district board in the same manner as the original.

(2) Each special district shall file with the local governing authority or authorities a copy of the local government financial reports required by ss. 218.32 and 218.34 and a complete description of all outstanding bonds as provided in s. 218.38(1).

(3) Each special district shall make provisions for an annual independent postaudit of its financial records as provided in s. 11.45. A copy of the audit shall be filed with the local governing authority or authorities.

(4) All reports or information required to be filed with a local governing authority under ss. 11.45, 189.004, 189.005, 218.32, and 218.34 and this section shall:

(a) When the local governing authority is a county, be filed with the clerk of the board of county commissioners.

(b) When the district is a multicounty district, be filed with the clerk of the county commission in each county.

(c) When the local governing authority is a municipality, be filed at the place designated by the municipal governing body.

History.—s. 10, ch. 79-183.

189.007 Effect of failure to file certain reports.—

(1) If a special district fails to file the reports required under s. 11.45, s. 189.004, s. 189.005, s. 189.006, s. 218.32, or s. 218.34 and a description of all outstanding bonds as provided in s. 218.38(1) with the local governing authority, the person authorized to read the reports shall notify the district's registered agent and the appropriate local governing authority or authorities. At any time, the governing authority may grant an extension of time for filing the required reports, except that no extension shall exceed 30 days.

(2) If at any time the local governing authority or authorities or the board of county commissioners determines that there has been an unjustified failure to file the reports described in subsection (1), it may petition the department to initiate proceedings against the special district in the manner provided in s. 189.008.

(3) If a special district fails to file the reports required under s. 11.45, s. 218.32, s. 218.34, or s. 218.38 with the appropriate state agency, the agency may request the department to initiate proceedings against the special district in the manner provided in s. 189.008.

History.—s. 10, ch. 79-183.

189.008 Failure of district to disclose financial reports.—

(1) The department shall investigate all petitions [1]filed pursuant to s. 189.007 and determine whether or not the district board has made a good faith effort to file the required reports.

(2) If the department determines that a good faith effort has been made, it shall grant a reasonable extension of time for filing the required reports with the appropriate bodies and notify the special district of the granting of the extension.

(3) If the department determines that a good faith effort has not been made to file the report or that a reasonable time has passed and the reports have not been forthcoming, it may file a petition for hearing, pursuant to s. 120.57, on the question of the inactivity of the district. The proceedings and hearings required by ss. 189.001-189.009 shall be conducted by a hearing officer assigned by the Division of Administrative Hearings of the Department of Administration and shall be governed by the provisions of the Administrative Procedure Act. Such hearing shall be held in the county in which the district is located, pursuant to all the applicable provisions of chapter 120. Notice of the hearing shall be served on the district's registered agent and published at least once a week for 2 successive weeks prior to the hearing in a newspaper of general circulation in the area affected. The notice shall state the time, place, and nature of the hearing and that all interested parties may appear and be heard. Within 30 days of the hearing, the hearing officer shall file his report with the department in the manner provided in chapter 120.

History.—s. 10, ch. 79-183.

[1]**Note.**—The words "filed pursuant to s. 189.007" were inserted by the editors.

189.009 Action of the department.—

(1) If the department determines, after receipt of the report from the hearing examiner, that there is an inactive district under the criteria established in ss. 165.052 and 165.061(4)(b) and (c), it shall file such

determination with the Secretary of State pursuant to s. 165.052.

(2) If the department determines that the failure to file the reports is a result of the volitional refusal of the members of the governing body of the district, it shall seek an injunction or writ of mandamus to compel production of the reports in the circuit court.

History.—s. 10, ch. 79-183.

TITLE XIV

TAXATION AND FINANCE

CHAPTER 192

TAXATION; GENERAL PROVISIONS

192.001 Definitions.—All definitions set out in chapter 1 that are applicable to this part, are included herein. In addition, the following definitions shall apply in the imposition of ad valorem taxes:

(1) "Ad valorem tax" means a tax based upon the assessed value of property. The term "property tax" may be used interchangeably with the term "ad valorem tax."

[1](2) "Assessed value of property" means an annual determination of the just or fair market value of an item or property, or if a property assessed solely on the basis of character or use, or at a specified percentage of its value, pursuant to s. 4(a) or s. 4(b), Art. VII of the State Constitution, its classified use value or fractional value.

(3) "County property appraiser" means the county officer charged with determining the value of all property within the county, of maintaining certain records connected therewith, and of determining the tax on taxable property after taxes have been levied. He shall also be referred to in these statutes as the "property appraiser" or "appraiser."

(4) "County tax collector" means the county officer charged with the collection of ad valorem taxes levied by the county, the school board, any special taxing districts within the county, and all municipalities within the county.

(5) "Department" unless otherwise designated, shall mean the State Department of Revenue.

(6) "Extend on the tax roll" means the arithmetic computation whereby the "millage" is converted to a decimal number representing one one-thousandth of a dollar and then multiplied by the assessed value of the property to determine the tax on such property.

(7) "Governing body" means any board, commission, council, or individual acting as the executive head of a unit of local government.

(8) "Homestead" means that property described in s. 6(a), Art. VII and s. 4(a)(1), Art. X of the State Constitution.

(9) "Levy" means the imposition of a tax, stated in terms of "millage," against all appropriately located property by a governmental body authorized by law to impose ad valorem taxes.

(10) "Mill" means one one-thousandth of a United States dollar. "Millage" may apply to a single levy of taxes or to the cumulative of all levies.

(11) "Personal property" for the purposes of ad valorem taxation, shall be divided into four categories as follows:

(a) "Household goods" means wearing apparel, furniture, appliances, and other items ordinarily found in the home and used for the comfort of the owner and his family. Household goods are not held for commercial purposes or resale.

(b) "Intangible personal property" means money, all evidences of debt owed to the taxpayer, all evidences of ownership in a corporation or other business organization having multiple owners, and all other forms of property where value is based upon that which the property represents rather than its own intrinsic value.

(c) "Inventory" means only those chattels consisting of items commonly referred to as goods, wares, and merchandise (as well as inventory) which are held for sale or lease to customers in the ordinary course of business. Supplies and raw materials shall be considered to be inventory only to the extent that they are acquired for sale or lease to customers in the ordinary course of business or will physically become a part of merchandise intended for sale or lease to customers in the ordinary course of business. Partially finished products which when completed shall be held for sale or lease to customers in the ordinary course of business shall be deemed items of inventory. All livestock shall be considered inventory. Items of inventory held for lease to customers in the ordinary course of business, rather than for sale, shall be deemed inventory only prior to the initial lease of such items. Items of inventory refers to the total of such items in a class or category assessable to a particular taxpayer.

[1](d) "Tangible personal property" means all goods, chattels, and other articles of value (but not including the vehicular items enumerated in s. 1(b), Art. VII of the State Constitution and elsewhere defined) capable of manual possession and whose chief

value is intrinsic to the article itself. "Inventory" and "household goods" are expressly excluded from this definition. Live-aboard vessels as defined in s. 371.021(18) are expressly included in this definition.

(12) "Real property" means land, buildings, fixtures and all other improvements to land. The terms "land," "real estate," "realty" and "real property" may be used interchangeably.

(13) "Taxpayer" means the person or other legal entity in whose name the property is assessed.

History.—s. 1, ch. 70-243; s. 1, ch. 77-102; s. 4, ch. 79-334.

[1]Note.—As amended by s. 4, ch. 79-334, applies to assessment rolls and taxes levied thereon for the year 1980 and each year thereafter.

Note.—Consolidation of provisions of former ss. 192.031, 192.041, 192.052, 192.064.

192.011 All property to be assessed.—The property appraiser shall assess all property located within his county, whether such property is taxable, wholly or partially exempt, or subject to classification reflecting a value less than its just value at its present highest and best use. Extension on the tax rolls shall be made according to regulation promulgated by the department in order properly to reflect the general law. Streets, roads, and highways which have been dedicated to or otherwise acquired by a municipality, a county, or a state agency may be assessed, but need not be.

History. —s. 1, ch. 4322, 1895; GS 428; s. 1, ch. 5596, 1907; RGS 694; CGL 893; ss. 1, 2, ch. 69-55; s. 2, ch. 70-243; s. 1, ch. 77-102.

Note.—Former s. 192.01.

[1]192.032 Situs of property for assessment purposes.—All property shall be assessed according to its situs as follows:

(1) Real property, in that county in which it is located and in that taxing jurisdiction in which it may be located.

(2) Tangible personal property, in that county and taxing jurisdiction in which it is permanently located on January 1 of each year; except that tangible personal property brought into the state after January 1 and before April 1 of any year shall be taxable for that year if the property appraiser has reason to believe that such property will be removed from the state prior to January 1 of the next succeeding year. All tangible personal property which is removed from one county in this state to another county after January 1 of any year shall be subject to taxation for said year in the county where located on January 1; except that the provisions of this subsection shall not apply to tangible personal property located in such county on January 1 on a temporary or transitory basis if such property is included in the tax return being filed in the county in this state where such tangible personal property is permanently located. The provisions of this subsection shall not apply to goods-in-transit as described in subsection (4).

(3) Inventory, in that county where inventory is held for sale or lease to customers or will physically become a part of the merchandise to be held for sale or lease to customers, based upon the average value of the inventory attributable to the taxpayer during the prior calendar year; said average value shall reflect the average periodic amount of inventories physically on hand. The provisions of this subsection shall not apply to goods-in-transit as described in subsection (4).

(4)(a) Personal property manufactured or produced outside this state and brought into this state only for transshipment out of the United States, or manufactured or produced outside of the United States and brought into this state for transshipment out of this state, for sale in the ordinary course of trade or business is considered goods-in-transit and shall not be deemed to have acquired a taxable situs within a county even though the property is temporarily halted or stored within the state.

(b) The term "goods-in-transit" implies that the personal property manufactured or produced outside this state and brought into this state has not been diverted to domestic use and has not reached its final destination, which may be evidenced by the fact that the individual unit packaging device utilized in the shipping of the specific personal property has not been opened except for inspection, storage, or other process utilized in the transportation of the personal property.

(c) Personal property transshipped into this state and subjected in this state to a subsequent manufacturing process or used in this state in the production of other personal property is not goods-in-transit. Breaking in bulk, labeling, packaging, relabeling, or repacking of such property solely for its inspection, storage, or transportation to its final destination outside of the state shall not be considered to be a manufacturing process or the production of other personal property within the meaning of this subsection. However, such storage shall not exceed 180 days.

(d) For purposes of computing the appropriate tax on inventory, a person shall keep records evidencing contracts of sale on the tax lien date and a full, true, and correct inventory of all property held for transshipment as goods-in-transit under the meaning of this subsection, together with the date of receipt of the property, the date of withdrawal of the property, the point of origin thereof, and the point of ultimate destination thereof.

(5) Intangible personal property, according to the rules laid down in chapter 199.

(6) Notwithstanding the provisions of subsection (2), live-aboard vessels shall be assessed on January 1 as tangible personal property if the vessel meets the provisions of s. 371.021(18) at any time during the prior year, in that county and taxing jurisdiction in whose waters it is located when meeting said provisions; except that live-aboard vessels meeting said provisions after January 1 and before April 1 of any year shall be taxable for that year if the property appraiser has reason to believe that such property will be removed from the state prior to January 1 of the next succeeding year. If a vessel meets the provisions of s. 371.021(18) in more than one county and taxing jurisdiction during any year, the vessel shall be subject to taxation in that county and taxing district where it was located when meeting said provisions for the greatest period of time.

(7) For the purposes of this section and with respect to tangible personal property, the term "permanently located" means habitually located or typi-

cally present for the 12-month period preceding the date of assessment.

History.—s. 3, ch. 70-243; s. 1, ch. 77-102; s. 1, ch. 77-305; s. 1, ch. 78-269; s. 5, ch. 79-334; s. 85, ch. 79-400.

[1]Note.—As amended by s. 5, ch. 79-334, applies to assessment rolls and taxes levied thereon for the year 1980 and each year thereafter.

Note.—Consolidation of provisions of former ss. 193.022, 193.034, 196.0011.

192.042 Date of assessment.—All property shall be assessed according to its just value as follows:

(1) Real property, on January 1 of each year. Improvements or portions not substantially completed on January 1 shall have no value placed thereon. "Substantially completed" shall mean that the improvement or some self-sufficient unit within it can be used for the purpose for which it was constructed.

(2) Tangible personal property, on January 1.

(3) Inventory, on January 1 of each year at its average value during the prior calendar year.

(4) Intangible personal property, according to the rules laid down in chapter 199.

History.—s. 4, ch. 70-243.

192.047 Date of filing.—

(1) For the purposes of ad valorem tax administration, the date of an official United States Postal Service postmark of an application for exemption, an application for special assessment classification, or a return filed by mail shall be considered the date of filing the application or return.

(2) When the deadline for filing an ad valorem tax application or return falls on a Saturday, Sunday, or legal holiday, the filing period shall extend through the next working day immediately following such Saturday, Sunday, or legal holiday.

History.—s. 1, ch. 78-185.

192.053 Lien for unpaid taxes.—A lien for all taxes, penalties, and interest shall attach to any property upon which a lien is imposed by law on the date of assessment and shall continue in full force and effect until discharged by payment as provided in chapter 197 or until barred under chapter 95.

History.—s. 3, ch. 4322, 1895; GS 430; s. 3, ch. 5596, 1907; RGS 696; CGL 896; s. 1, ch. 18297, 1937; ss. 1, 2, ch. 69-55; s. 5, ch. 70-243; s. 30, ch. 74-382.

Note.—Former s. 192.04; s. 192.021.

192.071 Administration of oaths.—For the purpose of administering the provisions of this law or of any other duties pertaining to the proper administration of the duties of the office of property appraiser, or of the filing of applications for tax exemptions as required by law, the property appraisers or their lawful deputies may administer oaths and attest same in the same manner and with the same effect as other persons authorized by law to administer oaths by the laws of the state.

History.—s. 9, ch. 17060, 1935; CGL 1936 Supp. 897(10); ss. 1, 2, ch. 69-55; s. 6, ch. 70-243; s. 1, ch. 77-102.

Note.—Former s. 192.20.

192.091 Commissions of property appraisers and tax collectors.—

(1)(a) The budget of the property appraiser's office, as approved by the Department of Revenue, shall be the basis upon which the several tax authorities of each county, except municipalities and the district school board, shall be billed by the property appraiser for services rendered. Each such taxing authority shall be billed an amount that bears the same proportion to the total amount of the budget as its share of ad valorem taxes bore to the total levied for the preceding year. All municipal and school district taxes shall be considered as taxes levied by the county for purposes of this computation.

(b) Payments shall be made quarterly by each such taxing authority. The property appraiser shall notify the various taxing authorities of his estimated budget requirements and billings thereon at the same time as his budget request is submitted to the Department of Revenue pursuant to s. 195.087 and at the time he receives final approval of his budget by the department.

[1](2) The tax collectors of the several counties of the state shall be entitled to receive upon the amount of all real and tangible personal property taxes, and licenses, collected and remitted, the following commissions:

(a) On state licenses:

1. Ten percent on the first $5,000;
2. Five percent on the next $5,000; and
3. Three percent on the balance.

(b) On the county tax, including licenses:

1. Ten percent on the first $5,000;
2. Five percent on the next $5,000;
3. Three percent on the balance up to the amount of taxes levied on an assessed valuation of $50 million; and
4. Two percent on the balance.

(c) On each taxing district:

1. Three percent on the amount of taxes levied on an assessed valuation of $50 million; and
2. Two percent on the balance.

For purpose of this subsection the commissions on the nonvoted school millage shall be paid by the county commissioners.

(3) In computing the amount of taxes levied on an assessed valuation of $50 million for the purposes of this section the valuation of nonexempt property and the taxes levied thereon shall be taken first.

(4) The commissions for collecting taxes assessed for or levied by the state shall be audited and allowed by the State Comptroller and shall be paid by the State Treasurer as other comptroller's warrants are paid; and commissions for collecting the county taxes shall be audited and paid by the boards of county commissioners of the several counties of this state. The commissions for collecting all special school district taxes shall be audited by the school board of each respective district and taken out of the funds of the respective special school district under its control and allowed and paid to the said tax collectors for collecting such taxes; and the commissions for collecting all other district taxes, whether special or not, shall be audited and paid by the governing board or commission having charge of the financial obligations of such district. All commissions for collecting special tax district taxes shall be paid at the time and in the manner now, or as may hereafter be, provided for the payment of the commissions for the collection of county taxes. All amounts paid as compensation to any tax collector under the provisions of this or any other law shall be a part of the general income or compensation of such officer for the year

in which received, and nothing contained in this section shall be held or construed to affect or increase the maximum salary as now provided by law for any such officer.

(5) Provided, that the provisions of this section shall not apply to commissions on intangible property taxes or drainage district or drainage subdistrict taxes; and

(6) Provided, further, that where any property appraiser or tax collector in the state is receiving compensation for expenses in conducting his office or by way of salary pursuant to any act of the Legislature other than the general law fixing compensation of property appraisers, such property appraiser or tax collector may file a declaration in writing with the board of county commissioners of his county electing to come under the provisions of this section, and thereupon such property appraiser or tax collector shall be paid compensation in accordance with the provisions hereof, and shall not be entitled to the benefit of the said special or local act. If such property appraiser or tax collector does not so elect, he shall continue to be paid such compensation as may now be provided by law for such property appraiser or tax collector.

(7) The provisions of subsection (1) as amended by chapter 67-558 shall apply to taxes assessed for the year 1967 and subsequent years, and commissions on taxes levied for prior years shall be paid at the rate in effect on September 1, 1967.

History.—s. 67, ch. 4322, 1895; ss. 11, 12, ch. 4515, 1897; s. 5, ch. 4885, 1901; GS 594, 595; ss. 63, 64, ch. 5596, 1907; RGS 797, 801; CGL 1028, 1033; s. 1, ch. 17876, 1937; CGL 1940 Supp. 1036(14); ss. 1, 1A, ch. 20936, 1941; ss. 1, 2, ch. 21918, 1943; s. 1, ch. 67-558; ss. 1, 2, ch. 69-55; s. 1, ch. 69-300; s. 6, ch. 70-243; s. 1, ch. 70-246; s. 8, ch. 73-172; s. 1, ch. 74-234; s. 1, ch. 77-102; s. 7, ch. 79-332.

[1]**Note.**—As amended by s. 7, ch. 79-332, effective upon approval of SJR 1-B (1979) at a special election to be held on March 11, 1980, or at the 1980 general election, and applicable to "assessment rolls for the year 1980 and each year thereafter," subsection (2) will read:

(2) The tax collectors of the several counties of the state shall be entitled to receive upon the amount of all real and tangible personal property taxes, and licenses, collected and remitted, the following commissions:

(a) On state licenses:

1. Ten percent on the first $5,000;
2. Five percent on the next $5,000; and
3. Three percent on the balance.

(b) On the county tax, including licenses:

1. Ten percent on the first $5,000;
2. Five percent on the next $5,000;
3. Three percent on the balance up to the amount of taxes levied on an assessed valuation of $50 million; and
4. Two percent on the balance.

(c) On each taxing district:

1. Three percent on the amount of taxes levied on an assessed valuation of $50 million; and
2. Two percent on the balance.

For purposes of this subsection, the commissions on the amount of taxes collected from the nonvoted school millage, and on the amount of additional taxes that would be collected for school districts if the exemptions applicable to homestead property for school district taxation were the same as exemptions applicable for all other ad valorem taxation, shall be paid by the board of county commissioners.

Note.—Former s. 193.65.

192.102 Payment of property appraisers' and collectors' commissions.—

(1) The board of county commissioners and school board of each county shall advance and pay to the county tax collector of each such county, at the first meeting of such board each month from October through July of each year, on demand of the county tax collector, an amount equal to one-twelfth of the commissions on the county taxes levied on the county tax roll for the preceding year and one-twelfth of the commissions on county occupational and beverage licenses paid to the tax collector in the preceding fiscal year. To demand the first advance under this section, each tax collector shall submit to the board of county commissioners a statement showing the calculation of the commissions on which the amount of each advance is to be based.

(2) On or before November 1 of each year, each tax collector who has received advances under the provisions of this section shall make an accounting to the board of county commissioners and the school board, and any adjustments necessary shall be made so that the total advances and commissions paid by the board of county commissioners and the school board shall be the amount of commissions earned. At no time within the year shall there be paid by the board of county commissioners and the school board more than the total advances due to that date or the commissions earned to that date, whichever is the greater. Nothing contained herein shall be construed to abrogate any law providing a salary for the tax collector or require the tax collector to accept the benefits of this section. This section shall apply to payments of advances and commissions for the calendar year 1959 and subsequent years.

(3) The Comptroller of the state shall issue to each of the county property appraisers and collectors of taxes, on the first Monday of January, April, July and October, on demand of such county property appraisers and collectors of taxes after approval by the Department of Revenue, his warrant, which shall be paid by the Treasurer of the state, for an amount equal to one-fourth of four-fifths of the total amount of commissions received by such county property appraisers and collectors of taxes or their predecessors in office from the state during and for the preceding year, and the balance of the commissions earned by such county property appraiser and collector of taxes, respectively, during each year, over and above the amount of such installment payments herein provided for, shall be payable when a report of errors and double assessments is approved by the county commissioners and a copy thereof filed with the Department of Revenue.

History.—s. 7, ch. 70-243; s. 22, ch. 73-172; s. 1, ch. 74-234; s. 1, ch. 77-102.

Note.—Consolidation of provisions of former ss. 192.101, 192.114, 192.122.

192.105 Unlawful disclosure of federal tax information; penalty.—

(1) It is unlawful for any person to divulge or make known federal tax information obtained pursuant to 26 U.S.C. s. 6103, except in accordance with a proper judicial order or as otherwise provided by law for use in the administration of the tax laws of this state.

(2) Any person who violates the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 78-160.

CHAPTER 193

ASSESSMENTS

PART I GENERAL (ss. 193.011-193.132)

PART II SPECIAL CLASSES OF PROPERTY (ss. 193.441-193.623)

PART I

GENERAL

193.011 Factors to consider in deriving just valuation.—In arriving at just valuation as required under s. 4, Art. VII of the State Constitution, the property appraiser shall take into consideration the following factors:

(1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;

(2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable local or state land use regulation and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium prohibits or restricts the development or improvement of property as otherwise authorized by applicable law;

(3) The location of said property;

(4) The quantity or size of said property;

(5) The cost of said property and the present replacement value of any improvements thereon;

(6) The condition of said property;

(7) The income from said property; and

[1](8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

History.—s. 1, ch. 63-250; s. 1, ch. 67-167; ss. 1, 2, ch. 69-55; s. 13, ch. 69-216; s. 8, ch. 70-243; s. 20, ch. 74-234; s. 1, ch. 77-102; s. 1, ch. 77-363; s. 6, ch. 79-334.

[1]**Note.**—As amended by s. 6, ch. 79-334, applies to assessment rolls and taxes levied thereon for the year 1980 and each year thereafter.

Note.—Former s. 193.021.

193.023 Duties of the property appraiser in making assessments.—

(1) The property appraiser shall complete his assessment of the value of all property no later than July 1 of each year, except that the department may for good cause shown extend the time for completion of assessment of all property.

(2) In making his assessment of the value of real property, the property appraiser is required to inspect physically the property every 3 years to insure that his tax roll meets all the requirements of law. However, he shall physically inspect any parcel of taxable real property upon the request of the taxpayer or owner.

(3) In revaluating property in accordance with constitutional and statutory requirements, the property appraiser may adjust the assessed value placed on any parcel or group of parcels based on mass data collected, on ratio studies prepared by an agency authorized by law, or pursuant to regulations of the Department of Revenue.

(4) In making his assessment of leasehold interests in property serving the unit owners of a condominium or cooperative subject to a lease, including property subject to a recreational lease, the property appraiser shall assess the property at its fair market value without regard to the income derived from the lease.

History.—s. 9, ch. 70-243; s. 1, ch. 72-290; s. 5, ch. 76-222; s. 1, ch. 77-102.

193.052 Preparation and filing of returns.—

(1) The following returns shall be filed:

(a) Tangible personal property;

(b) Inventory; and

(c) Property specifically required to be returned by other provisions in this title.

(2) No return shall be required for real property the ownership of which is reflected in instruments recorded in the public records of the county in which the property is located, unless otherwise required in this title. In order for land to be considered for agricultural zoning under s. 193.461, an application for

such zoning must be filed on or before March 1 of each year with the property appraiser of the county in which such land is located. Such application shall state that said lands on January 1 of that year were used primarily for agricultural purposes.

(3) A return for the above types of property shall be filed in each county which is the situs of such property, as set out under s. 192.032.

(4) All returns shall be completed by the taxpayer in such a way as to correctly reflect owner's estimate of the value of property owned or otherwise taxable to him and covered by such return. All forms used for returns shall be prescribed by the department and delivered to the property appraisers for distribution to the taxpayers.

(5) Property appraisers may distribute returns in whatever way they feel most appropriate. However, as a minimum requirement, the property appraiser shall requisition, and the department shall distribute, forms in a timely manner so that each property appraiser can and shall make them available in his office no later than the first working day of the calendar year.

(6) The department shall promulgate the necessary regulations to insure that all railroad and utility property is properly returned in the appropriate county. However, the evaluating or assessing of utility property in each county shall be the duty of the property appraiser.

(7) All fiduciaries shall file with the Department of Revenue a copy of each inventory required to be filed in the circuit court under general law or rules adopted by the State Supreme Court relating to decedent's estates, trusts, or guardianships. No such inventory may be approved by the court until such copy as required hereunder has been filed with the Department of Revenue. When an inventory is not required by the court, the fiduciary shall return such information as shall be prescribed by regulation of the department.

[1](8) Upon approval of a return for a live-aboard vessel, the property appraiser shall issue to the vessel owner an acknowledgment on a form prescribed by the department that the vessel is included in an assessment of the tangible personal property of the owner for ad valorem taxation. The owner must present such acknowledgment to the county tax collector or the Department of Natural Resources pursuant to s. 371.65(7) to be eligible for exemption from license fees when applying for a certificate of registration.

History.—s. 11, ch. 70-243; s. 1, ch. 72-370; s. 1, ch. 73-228; s. 20, ch. 73-334; s. 6, ch. 76-234; s. 1, ch. 77-102; s. 45, ch. 77-104; s. 7, ch. 79-334.

[1]**Note.**—As created by s. 7, ch. 79-334, applies to assessment rolls and taxes levied thereon for the year 1980 and each year thereafter.

Note.—Consolidation of provisions of former ss. 193.113, 193.121, 193.203, 193.211, 193.231-193.261, 193.272, 193.281-193.311.

193.062 Dates for filing returns.—All returns shall be filed according to the following schedule:

(1) Tangible personal property—April 1.

(2) Inventory—April 1.

(3) Real property—when required by specific provision of general law.

[1](4) Railroad, railroad terminal, private car and freight line and equipment company property—April 1.

[1](5) All other returns and applications not otherwise specified by specific provision of general law—April 1.

History.—s. 12, ch. 70-243; s. 45, ch. 77-104; s. 8, ch. 79-334.

[1]**Note.**—As created by s. 8, ch. 79-334, applies to assessment rolls and taxes levied thereon for the year 1980 and each year thereafter.

Note.—Consolidation of provisions of former ss. 193.203, 193.211.

193.072 Penalties for improper or late filing of returns and for failure to file returns.—

(1) The following penalties shall apply:

(a) For failure to file a return—25 percent of the total tax levied against the property for each year that no return is filed;

(b) For filing returns after the due date—5 percent of the total tax levied against the property covered by that return for each year, for each month, or portion thereof, that a return is filed after the due date, but not to exceed 25 percent of the total tax.

(c) For property unlisted on the return—15 percent of the tax attributable to the omitted property.

[1](d) For incomplete returns by railroad and railroad terminal companies and private car and freight line and equipment companies—2 percent of the assessed value, not to exceed 10 percent thereof, shall be added to the values apportioned to the counties for each month or fraction thereof in which the return is incomplete; however, the return shall not be deemed incomplete until 15 days after notice of incompleteness is provided to the taxpayer.

(2) Penalties listed in this section shall be determined upon the total of all ad valorem personal property taxes, penalties and interest levied on the property, and such penalties shall be a lien on the property.

(3) Failure to file a return, or to otherwise properly submit all his property for taxation, shall in no regard relieve any taxpayer of any requirement to pay all taxes assessed against him promptly.

[1](4) For good cause shown, and upon finding that such unlisting or late filing of returns was not intentional or made with the intent to evade or illegally avoid the payment of lawful taxes, the property appraiser or, in the case of properties valued by the Department of Revenue, the executive director may reduce or waive any of said penalties.

History.—s. 13, ch. 70-243; s. 1, ch. 77-102; s. 9, ch. 79-334.

[1]**Note.**—Paragraph (1)(d) as created and subsection (4) as amended by s. 9, ch. 79-334, apply to assessment rolls and taxes levied thereon for the year 1981 and each year thereafter.

Note.—Consolidation of provisions of former ss. 193.203, 193.222, 199.321.

193.073 Erroneous returns.—Upon discovery that an erroneous or incomplete statement of personal property has been filed by a taxpayer or that all the property of a taxpayer has not been returned for taxation, the property appraiser shall proceed as follows:

(1) If the property is personal property and is discovered before April 1, he shall make an assessment in triplicate. After attaching the affidavit and warrant required by law, he shall dispose of the additional assessment roll in the same manner as provided by law.

(2) If the property is personal property and is discovered on or after April 1, or is real property discovered at any time, the property shall be added to the assessment roll then in preparation.

History.—s. 38, ch. 4322, 1895; s. 5, ch. 4515, 1897; GS 538; s. 37, ch. 5596, 1907; RGS 737; CGL 945; s. 8, ch. 20722, 1941; ss. 1, 2, ch. 69-55; s. 2, ch. 72-268; s. 1, ch. 77-102.

Note.—Former s. 193.37; s. 197.031.

[1]193.074 Confidentiality of returns.—All returns of property submitted by the taxpayer pursuant to law shall be deemed to be confidential in the hands of the property appraiser, the department, the tax collector, and the Auditor General, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters.

History.—s. 10, ch. 79-334.

[1]**Note.**—Applies to assessment rolls and taxes levied thereon for the year 1980 and each year thereafter.

193.075 Mobile homes.—Any mobile home without a current license plate properly affixed, as provided in s. 320.08(8) or s. 320.0815, shall be presumed to be either real property or tangible personal property. It shall be presumed to be real property only if the owner of the mobile home is also the owner of the land on which it is located and the mobile home is also permanently affixed to the realty. Otherwise it shall be presumed to be tangible personal property.

History.—s. 2, ch. 74-234.

193.085 Listing all property.—

(1) The property appraiser shall insure that all real property within his county is listed and valued on the real property assessment roll. Streets, roads, and highways which have been dedicated to or otherwise acquired by a municipality, county, or state agency need not, but may, be listed.

(2) The department shall promulgate such regulations and shall make available maps and mapping materials as it deems necessary to insure that all real property within the state is listed and valued on the real property assessment rolls of the respective counties. In addition, individual property appraisers may use such other maps and materials as they deem expedient to accomplish the purpose of this section.

(3) The department will coordinate with all other departments of state government to insure that the several property appraisers are properly notified annually of state ownership of real property. The department shall promulgate regulations to insure that all forms of local government, special taxing districts, multicounty districts, and municipalities properly notify annually the several property appraisers of any and all real property owned by any of them so that ownership of all such property shall be properly listed.

[1](4) The department shall promulgate such rules as are necessary to ensure that all railroad property of all types is properly listed in the appropriate county and shall submit the county railroad property assessments to the respective county property appraisers not later than June 1 in each year. However, in those counties in which railroad assessments are not completed by the department by June 1, for millage certification purposes, the property appraiser may utilize the prior year's values for such property.

(a) All railroad and railroad terminal companies maintaining tracks or other fixed assets in the state and subject to assessment under the unit rule method of valuation shall make an annual return to the Department of Revenue. Such returns shall be filed on or before April 1 and shall be subject to the penalties provided in s. 193.072. The department shall make an annual assessment of all operating property of every description owned by or leased to such companies. Such assessment shall be apportioned to each county, based upon actual situs, and, in the case of property not having situs in a particular county, shall be apportioned based upon track miles. Operating property shall include all property owned or leased to such company, including right-of-way presently in use by the company, track, switches, bridges, rolling stock, and other property directly related to the operation of railroads. Nonoperating property shall include that portion of office buildings not used for operating purposes, property owned but not directly used for operation of the railroad, and any other property that is not used for operating purposes. The department shall promulgate rules necessary to ensure that all operating property is properly valued, apportioned, and returned to the appropriate county, including rules governing the form and content of returns. The evaluation and assessment of utility property shall be the duty of the property appraiser.

(b)1. All private car and freight line and equipment companies operating rolling stock in Florida shall make an annual return to the Department of Revenue. The department shall make an annual determination of the average number of cars habitually present in Florida for each company and shall assess the just value thereof.

2. The department shall promulgate rules respecting the methods of determining the average number of cars habitually present in Florida, the form and content of returns, and such other rules as are necessary to ensure that the property of such companies is properly returned, valued, and apportioned to the state.

3. For purposes of this paragraph, "operating rolling stock in Florida" means having ownership of rolling stock which enters Florida.

4. The department shall apportion the assessed value of such property to the local taxing jurisdiction based upon the number of track miles and the location of mainline track of the respective railroads over which the rolling stock has been operated in the preceding year in each taxing jurisdiction. The situs for taxation of such property shall be according to the apportionment.

History.—s. 14, ch. 70-243; s. 2, ch. 73-228; s. 2, ch. 74-234; s. 1, ch. 77-102; s. 1, ch. 77-174; s. 2, ch. 78-269; s. 11, ch. 79-334.

[1]**Note.**—As amended by s. 11, ch. 79-334, applies to assessment rolls and taxes levied thereon for the year 1980 and each year thereafter.

Note.—Consolidation of provisions of former ss. 193.051, 193.061, 193.071, 193.113, 193.131, 193.272, 193.281.

193.092 Assessment of property for back taxes.—

(1) When it shall appear that any ad valorem tax might have been lawfully assessed or collected upon any property in the state, but that such tax was not lawfully assessed or levied, and has not been collected for any year within a period of 3 years next preceding the year in which it is ascertained that such tax has not been assessed, or levied, or collected, then the officers authorized shall make the assessment of taxes upon such property in addition to the assessment of such property for the current year,

and shall assess the same separately for such property as may have escaped taxation at and upon the basis of valuation applied to such property for the year or years in which it escaped taxation, noting distinctly the year when such property escaped taxation and such assessment shall have the same force and effect as it would have had if it had been made in the year in which the property shall have escaped taxation, and taxes shall be levied and collected thereon in like manner and together with taxes for the current year in which the assessment is made. But no property shall be assessed for more than 3 years' arrears of taxation, and all property so escaping taxation shall be subject to such taxation to be assessed in whomsoever's hands or possession the same may be found; provided, that the county property appraiser shall not assess any lot or parcel of land certified or sold to the state for any previous years unless such lot or parcel of lands so certified or sold shall be included in the list furnished by the Comptroller to the county property appraiser as provided by law; provided, if real or personal property be assessed for taxes, and because of litigation delay ensues and the assessment be held invalid the taxing authorities, may reassess such property within the time herein provided after the termination of such litigation; provided further, that personal property acquired in good faith by purchase shall not be subject to assessment for taxes for any time prior to the time of such purchase, but the individual or corporation liable for any such assessment shall continue personally liable for same.

(2) The provisions of this section shall apply to property of every class and kind upon which ad valorem tax is assessable by any state or county authority under the laws of the state.

History.—s. 24, ch. 4322, 1895; s. 1, ch. 4663, 1899; GS 524; s. 22, ch. 5596, 1907; RGS 722; ss. 1, 2, ch. 9180, 1923; CGL 924-926; ss. 1, 2, ch. 69-55; s. 15, ch. 70-243; s. 1, ch. 77-102.

Note.—Former s. 193.23; s. 193.151.

193.102 Lands subject to tax sale certificates; assessments; taxes not extended.—

(1) All lands against which the state holds any tax sale certificate or other lien for delinquent taxes assessed for the year 1940 or prior years shall be assessed for the year 1941 and subsequent years in like manner and to the same effect as if no taxes against such lands were delinquent. Should the taxes on such lands not be paid as required by law, such lands shall be sold or the title thereto shall become vested in the county, in like manner and to the same effect as other lands upon which taxes are delinquent are sold or the title to which becomes vested in the county under this law. Such lands upon which tax certificates have been issued to this state, when sold by the county for delinquent taxes, may be redeemed in the manner prescribed by this law; provided, that all tax certificates held by the state on such lands shall be redeemed at the same time, and the clerk of the circuit court shall disburse the money as provided by law. After the title to any such lands against which the state holds tax certificates becomes vested in the county as provided by this law, the county may sell such lands in the same manner as provided in s. 197.302, and the clerk of the circuit court shall distribute the proceeds from the sale of such lands by the board of county commissioners in proportion to the interest of the state, the several taxing units, and the funds of such units, as may be calculated by the clerk.

(2) The property appraisers, in making up their assessment rolls, shall place thereon the lands upon which taxes have been sold to the county, enter their valuation of the same on the roll, and extend the taxes upon such lands.

History.—s. 16, ch. 4322, 1895; GS 512; s. 13, ch. 5596, 1907; s. 1, ch. 6158, 1911; RGS 712, 769; CGL 914, 984; ss. 4, 23, ch. 20722, 1941; ss. 3½, 10, ch. 22079, 1943; ss. 1, 2, ch. 69-55; s. 1, ch. 69-300; s. 16, ch. 70-243; s. 32, ch. 73-332; s. 5, ch. 75-103; s. 1, ch. 77-102; s. 1, ch. 77-174.

Note.—Former ss. 193.16, 193.171; ss. 193.63, 193.181.

193.114 Preparation of assessment rolls.—

(1) Each property appraiser shall prepare the following assessment rolls:

(a) Real property assessment roll.

(b) Tangible personal property assessment roll. This roll shall include inventory, taxable household goods, and all other taxable tangible personal property.

(2) The department shall promulgate regulations and forms for the preparation of the real property assessment roll to reflect:

(a) A brief description of the property for purposes of location.

(b) The just value (using the factors set out in s. 193.011) of all property.

(c) When property is wholly or partially exempt, a categorization of such exemption.

(d) When property is classified so that it is assessed other than under s. 193.011, the value according to its classified use and its value as assessed under s. 193.011.

(e) The owner or fiduciary responsible for payment of taxes on the property, his address, and an indication of any fiduciary capacity (such as executor, administrator, trustee, etc.) as appropriate.

(f) The millage levied on the property.

(g) The tax, determined by multiplying the millages by the assessed value for taxation.

(3) The department shall promulgate regulations and forms for the preparation of the tangible personal property roll to reflect:

(a) A code reference to the tax returns showing the property.

(b) The just value (using the factors set out in s. 193.011) of all such property, and, in the case of inventory, the percentage of the property, subject to taxation.

(c) When property is wholly or partially exempt, a categorization of such exemption.

(d) The owner or fiduciary responsible for payment of taxes on the property, his address and an indication of any fiduciary capacity (such as executor, administrator, trustee, etc.) as appropriate.

(e) The millages levied on the property.

(f) The tax, determined by multiplying the millages by the assessed value for taxation.

(4) The department shall promulgate regulations and forms for the preparation of the intangible personal property roll to comply with chapter 199.

(5) Each assessment roll shall be submitted to the executive director for review in the manner and form prescribed by the department on or before the first Monday in July. The roll submitted to the department need not contain centrally assessed prop-

erties prior to approval under this subsection and subsection (6). Such review by the executive director shall be made to determine if the rolls meet all the appropriate requirements of this section relating to form and just value. Upon approval of the rolls by the executive director, the hearings required in s. 194.032 may be held.

(6) The executive director shall disapprove all or part of any assessment roll of any county not in full compliance with the administrative order of the executive director issued pursuant to the notice called for in s. 195.097, and shall otherwise disapprove all or any part of any roll not assessed in substantial compliance with law, as disclosed during the department's investigation, including, but not limited to, audits by the Department of Revenue and Auditor General establishing noncompliance.

(7) Approval or disapproval of all or any part of a roll shall not be deemed to be final until the procedures called for in s. 195.098 [F. S. 1973] have been exhausted if an appeal has been sought thereunder.

(8) Chapter 120 shall not apply to this section.

History.—s. 17, ch. 70-243; ss. 10, 21, ch. 73-172; s. 21, ch. 74-234; s. 1, ch. 77-102; ss. 45, 46, ch. 77-104.

Note.—Consolidation of provisions of former ss. 193.041, 193.051, 193.061, 193.071, 193.113, 193.131, 193.251, 193.261, 193.361-193.381, 193.392.

193.116 Municipal assessment rolls.—

(1) The county property appraiser shall prepare an assessment roll for every municipality in his county. The property appraisal adjustment board shall give notice to the chief executive officer of each municipality whenever an appeal has been taken with respect to property located within that municipality. Representatives of that municipality shall be given an opportunity to be heard at such hearing. The property appraiser shall deliver each assessment roll to the appropriate municipality in the same manner as assessment rolls are delivered to the county commissions. The governing body of the municipality shall have 30 days to certify all millages to the county property appraiser. The county property appraiser shall extend the millage against the municipal assessment roll. The property appraiser shall certify the municipal tax roll to the county tax collector for collection in the same manner as the county tax roll is certified for collection. The property appraiser shall deliver to each municipality a copy of the municipal tax roll.

(2) The county tax collector shall collect all ad valorem taxes for municipalities within his county. He shall collect municipal taxes in the same manner as county taxes. Each county tax collector shall include on the printed statement required under s. 197.072 a separate category for the municipality, if any, in which the property is located. This category shall state the rate of taxation for the municipality and the amount of tax.

History.—s. 3, ch. 74-234; s. 1, ch. 76-133; s. 2, ch. 76-140.

193.122 Certificates of property appraisal adjustment board and property appraiser.—

(1) The property appraisal adjustment board shall certify each assessment roll after all hearings required by s. 194.032 have been held. These certificates shall be attached to each roll as required by the Department of Revenue.

(2) After certification of the tax rolls by the property appraisal adjustment board, the property appraiser shall make all required extensions on the rolls to show the tax attributable to all taxable property. Upon completion of these extensions, and upon satisfying himself that all property is properly taxed, the property appraiser shall certify the tax rolls. These certificates shall be made in the form required by the department and shall be attached to each roll as required by the department by regulation. An appeal of a property appraisal adjustment board decision pursuant to section 194.032(6)(a) 1. or 2. by the property appraiser shall be filed prior to certification of the tax roll under this subsection. The roll may be certified prior to an appeal being filed pursuant to subparagraph 194.032(6)(a) 3., but such appeal shall be filed within 20 days after receipt of the department's decision relative to further judicial proceedings.

(3) The department shall promulgate regulations to insure that copies of the tax rolls are distributed to the appropriate officials and maintained as part of their records for as long as is necessary to provide for the orderly collection of taxes. Such regulations shall also provide for the maintenance of the necessary permanent copies of such rolls.

(4) The property appraiser may extend millage as required in subsection (2) against the assessment roll and certify it to the tax collector even though there are parcels subject to judicial or administrative review pursuant to paragraph 194.032(6)(a). Such parcels shall be certified and have taxes extended against them in accordance with the property appraisal adjustment board's decisions, except that payment of such taxes by the taxpayer shall not preclude the taxpayer from being required to pay additional taxes in accordance with final judicial determination of an appeal filed pursuant to paragraph 194.032(6)(a).

History.—s. 18, ch. 70-243; s. 1, ch. 71-371; s. 9, ch. 73-172; s. 4, ch. 74-234; s. 2, ch. 76-133; s. 5, ch. 76-234; s. 1, ch. 77-174.

Note.—Consolidation of provisions of former ss. 193.401-193.421.

193.132 Prior assessments validated.—Every assessment of taxes heretofore made on property of any kind, when such assessment has been actually made in the name of the true owner, is hereby validated. No tax assessment or tax levy made upon any such property shall be held invalid by reason of or because of the subsequent amendment in the law.

History.—s. 1, ch. 10023, 1925; CGL 927; ss. 1, 2, ch. 69-55; s. 19, ch. 70-243.

Note.—Former s. 192.32; s. 193.341.

PART II

SPECIAL CLASSES OF PROPERTY

[1]**193.441 Legislative intent.**—For the purposes of assessment roll preparation and recordkeeping, it is the legislative intent that any assessment for tax purposes which is less than the just value of the property shall be considered a classified use assessment and reported accordingly.

History.—s. 12, ch. 79-334.
[1]**Note.**—Applies to assessment rolls and taxes levied thereon for the year 1980 and each year thereafter.

193.451 Annual growing of agricultural crops, nonbearing fruit trees, nursery stock; taxability.—

(1) Growing annual agricultural crops, nonbearing fruit trees, and nursery stock, regardless of the growing methods, shall be considered as having no ascertainable value and shall not be taxable until they have reached maturity or a stage of marketability and have passed from the hands of the producer and/or offered for sale. This section shall be construed liberally in favor of the taxpayer.

(2) Raw, annual, agricultural crops shall be considered to have no ascertainable value and shall not be taxable until such property is offered for sale to the consumer.

History.—ss. 1, 2, ch. 63-432; s. 1, ch. 67-573; ss. 1, 2, ch. 69-55.
Note.—Former s. 192.063.

193.461 Agricultural lands; classification and assessment.—

(1) The property appraiser shall, on an annual basis, classify for assessment purposes all lands within the county as either agricultural or nonagricultural.

(2) Any landowner whose land is denied agricultural classification by the property appraiser may appeal to the property appraisal adjustment board. The board may also review all lands classified by the property appraiser upon its own motion. The property appraiser shall have available at his office a list by ownership of all applications received showing the acreage, the full valuation under s. 193.011, the valuation of the land under the provisions of this section, and whether or not the classification requested was granted.

(3)(a) No lands shall be classified as agricultural lands unless a return is filed on or before March 1 of each year. The property appraiser, before so classifying said lands, may require the taxpayer or his representative to furnish the property appraiser such information as may reasonably be required to establish that said lands were actually used for a bona fide agricultural purpose. Failure to make timely application by March 1 shall constitute a waiver for 1 year of the privilege herein granted for agricultural assessment. The owner of land that was classified agricultural in the previous year and whose ownership or use has not changed may reapply on a short form as provided by the department.

(b) Subject to the restrictions set out in this section, only lands which are used primarily for bona fide agricultural purposes shall be classified agricultural. "Bona fide agricultural purposes" means good faith commercial agricultural use of the land. In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:

1. The length of time the land has been so utilized;
2. Whether the use has been continuous;
3. The purchase price paid;
4. Size, as it relates to specific agricultural use;
5. Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforesting, and other accepted agricultural practices;
6. Whether such land is under lease and, if so, the effective length, terms, and conditions of the lease; and
7. Such other factors as may from time to time become applicable.

(c) The maintenance of a dwelling on part of the lands used for agricultural purposes shall not in itself preclude an agricultural classification.

(4)(a) The property appraiser shall reclassify the following lands as nonagricultural:

1. Land diverted from an agricultural to a nonagricultural use;
2. Land no longer being utilized for agricultural purposes;
3. Land that has been zoned to a nonagricultural use at the request of the owner subsequent to the enactment of this law; or
4. Land for which the owner has recorded a subdivision plat subsequent to the enactment of this law.

(b) The board of county commissioners may also reclassify lands classified as agricultural to nonagricultural when there is contiguous urban or metropolitan development and the board of county commissioners finds that the continued use of such lands for agricultural purposes will act as a deterrent to the timely and orderly expansion of the community.

(c) Sale of land for a purchase price which is three or more times the agricultural assessment placed on the land shall create a presumption that such land is not used primarily for bona fide agricultural purposes. Upon a showing of special circumstances by the landowner demonstrating that the land is to be continued in bona fide agriculture, this presumption may be rebutted.

(5) For the purpose of this section, "agricultural purposes" shall include horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; and all forms of farm products and farm production.

(6)(a) In years in which proper application for agricultural assessment has been made and granted pursuant to this section, the assessment of land shall be based solely on its agricultural use. The property appraiser shall consider the following use factors only:

1. The quantity and size of the property;
2. The condition of said property;

3. The present market value of said property as agricultural land;
4. The income produced by said property;
5. The productivity of land in its present use;
6. The economic merchantability of the agricultural product; and
7. Such other agricultural factors as may from time to time become applicable.

(b) In years in which proper application for agricultural assessment has not been made the land shall be assessed under the provisions of s. 193.011.

History.—s. 1, ch. 59-226; s. 1, ch. 67-117; ss. 1, 2, ch. 69-55; s. 1, ch. 72-181; s. 4, ch. 74-234; s. 3, ch. 76-133.

193.481 Assessment of oil, mineral, and other subsurface rights.—

(1) Whenever the mineral, oil, gas, and other subsurface rights in or to real property in this state shall have been sold or otherwise transferred by the owner of such real property, or retained or acquired through reservation or otherwise, such subsurface rights shall be taken and treated as an interest in real property subject to taxation separate and apart from the fee or ownership of the fee or other interest in the fee. Such mineral, oil, gas, and other subsurface rights, when separated from the fee or other interest in the fee, shall be subject to separate taxation. Such taxation shall be against such subsurface interest and not against the owner or owners thereof or against separate interests or rights in or to such subsurface rights.

(2) The property appraiser shall, upon request of the owner of real property who also owns mineral, oil, gas, or other subsurface mineral rights to the same property, separately assess the subsurface mineral right and the remainder of the real estate as separate items on the tax roll.

(3) Such subsurface rights shall be assessed on the basis of a just valuation, as required by s. 4, Art. VII of the State Constitution, which valuation, when combined with the value of the remaining surface and undisposed of subsurface interests, shall not exceed the full just value of the fee title of the lands involved, including such subsurface rights.

(4) Statutes and regulations, not in conflict with the provisions herein, relating to the assessment and collection of ad valorem taxes on real property, shall apply to the separate assessment and taxation of such subsurface rights, insofar as they may be applied.

(5) Tax certificates and tax liens encumbering subsurface rights, as aforesaid, may be acquired, purchased, transferred, and enforced as are tax certificates and tax liens encumbering real property generally, including the issuance of a tax deed.

(6) Nothing contained in chapter 69-60, Laws of Florida, amending subsections (1) and (3) of this section and creating s. 197.083 shall be construed to affect any contractual obligation existing on June 4, 1969.

History.—ss. 1-4, ch. 57-150; s. 1, ch. 63-355; ss. 1, 2, ch. 69-55; ss. 1, 2, ch. 69-60; s. 13, ch. 69-216; s. 2, ch. 71-105; ss. 33, 35, ch. 73-332; s. 1, ch. 77-102.
Note.—Former s. 193.221.

193.501 Voluntary development right transfers; conservation restrictions; assessment.—

(1) The owner or owners in fee of any land qualified as environmentally endangered pursuant to paragraph (6)(h), and so designated by formal resolution of the governing board of the county within which such land is located, or any land which is utilized for outdoor recreational or park purposes may, by appropriate instrument, for a term of not less than 10 years:

(a) Convey the development right of said land to the governing board of any county in this state within which said land is located or to the Board of Trustees of the Internal Improvement Trust Fund; or

(b) Covenant with the governing board of any county in this state within which said land is located, or with the Board of Trustees of the Internal Improvement Trust Fund, that said land shall be subject to one or more of the conservation restrictions provided in s. 704.06(1) or shall not be used by the owner for any purpose other than outdoor recreational or park purposes.

(2)(a) The governing board of any county in this state or the Board of Trustees of the Internal Improvement Trust Fund is authorized and empowered in its discretion to accept any and all instruments conveying the development right of any land within said county or establishing a covenant pursuant to subsection (1), and if accepted by said board, the instrument shall be promptly filed with the appropriate officer for recording in the same manner as any other instrument affecting the title to real property.

(b) The governing board of any county may, by appropriate resolution, delegate to any municipality within said county, the power to exercise its authority under this section and if so authorized the governing board of the municipality shall have the same powers, duties and responsibilities as the governing board of the county hereunder, except that the authority granted to any municipality shall not extend to any lands not within the boundaries of the municipality.

(3) When, pursuant to subsections (1) and (2), the development right in real property has been conveyed to the governing board of any county in this state or to the Board of Trustees of the Internal Improvement Trust Fund or a covenant has been executed and accepted by said board, the lands which are the subject of such conveyance or covenant shall be thereafter assessed as provided herein:

(a) If the covenant or conveyance extends for a period of not less than 10 years from January 1 in the year such assessment is made, the property appraiser, in valuing such land for tax purposes, shall consider no factors other than those relative to its value for the present use, as restricted by any conveyance or covenant under this section.

(b) If the covenant or conveyance extends for a period less than 10 years, the land shall be assessed under the provisions of s. 193.011, recognizing the nature and length thereof of any restriction placed on the use of the land under the provisions of subsection (1).

(4) After making a conveyance of the development right or executing a covenant pursuant to this section, the owner of said land shall not use said land in any manner not consistent with the development right voluntarily conveyed or with the restrictions voluntarily imposed or shall not change the use of said land from outdoor recreational or park purposes

during the term of said conveyance or covenant without first obtaining a written instrument from the board, which instrument reconveys all or part of the development right to said owner or releases said owner from the terms of the covenant and which instrument must be promptly recorded in the same manner as any other instrument affecting the title to real property. Upon obtaining board approval for reconveyance or release, the reconveyance or release shall be made to the owner upon payment of the deferred tax liability. Any payment of said deferred tax liability shall be payable to the county tax collector within 90 days of the date of approval by the board of the reconveyance or release. The collector shall distribute the payment to each governmental unit in the proportion that its millage bears to the total millage levied on the parcel for the years in which such conveyance or covenant was in effect.

(5) No governing board of any county or the Board of Trustees of the Internal Improvement Trust Fund which holds title to a development right pursuant to this section shall convey said development right to anyone other than the record owner of the fee interest in the land to which the development right attaches, and the conveyance to said owner of the fee shall be made only after a determination by said board that such conveyance would not adversely affect the interest of the public. Section 125.35 shall not apply to such sales, but any board accepting any instrument conveying a development right pursuant to this section shall forthwith adopt appropriate regulations and procedures governing the disposition of same. These regulations and procedures shall provide in part that no development right shall be conveyed by said board without first holding a public hearing and unless notice of the proposed conveyance and the time and place that the public hearing is to be held shall be published once a week for at least 2 weeks in some newspaper of general circulation in the county involved prior to said hearing.

(6) The following terms whenever used as referred to in this section shall have the following meaning unless a different meaning is clearly indicated by the context:

(a) "Outdoor recreational or park purposes" includes, but is not necessarily limited to, boating, golfing, camping, swimming, horseback riding, and historical, archaeological, scenic, or scientific sites, and applies only to land which is open to the general public.

(b) "Development right" is the right of the owner of the fee interest in the land to change the use of the land.

(c) "Conservation restriction" means a limitation on a right to the use of land for purposes of conserving or preserving land or water areas predominantly in their natural, scenic, open, or wooded condition. The limitation on rights to the use of land may involve or pertain to any of the activities enumerated in s. 704.06(1).

(d) "Present use" is the manner in which the land is utilized on January 1 of the year in which the assessment is made.

(e) "Board" is the governing board of any county or the Board of Trustees of the Internal Improvement Trust Fund.

(f) "Covenant" is a covenant running with the land.

(g) "Deferred tax liability" means an amount equal to the difference between the total amount of taxes which would have been due in March in each of the previous years in which the conveyance or covenant was in effect if the property had been assessed under the provisions of s. 193.011 and the total amount of taxes actually paid in those years when the property was assessed under the provisions of this section, plus 6 percent interest per year on the amount so established.

(h) "Qualified as environmentally endangered" means land which has unique ecological characteristics, rare or limited combinations of geological formations, or features of a rare or limited nature constituting habitat suitable for fish, plants, or wildlife, and which, if subject to a development moratorium or one or more conservation easements or development restrictions appropriate to retaining such land or water areas predominantly in their natural state, would be consistent with the conservation, recreation and open space, and, if applicable, coastal protection elements of the comprehensive plan adopted by formal action of the local governing body pursuant to the Local Government Comprehensive Planning Act of 1975, s. 163.3161; or land subject to regulation by the Department of Environmental Regulation and defined as submerged lands in regulations adopted pursuant to s. 403.817.

(7) The property appraiser shall report to the department the just value and the classified use value of property assessed as environmentally endangered land pursuant to this section separately from property assessed as outdoor recreational or park land.

History.—s. 1, ch. 67-528; ss. 1, 2, ch. 69-55; s. 2, ch. 72-181; s. 1, ch. 77-102; s. 1, ch. 78-354.
Note.—Former s. 193.202.

193.507 Lands within areas of critical state concern; reassessment.—

(1) The property appraiser, on an annual basis, shall determine what land lying within the county has by rule been designated an area of critical state concern, or any part of such an area, by the Administration Commission under the provisions of s. 380.05 and over which land development regulations have been approved or established pursuant to the provisions of said section.

(2) Any landowner whose land has been assessed on the basis of a use which has been prohibited by the land development regulations adopted or approved pursuant to the designation of an area of critical state concern may, on or before April 1 of each year, petition the property appraiser for a reclassification and reassessment of the land for the upcoming tax year.

(3) The property appraiser shall examine the petition, the land development rules and regulations in effect within the area of critical state concern, and the land and shall secure any other information necessary. The property appraiser shall then make a determination of the highest and best use to which the land could have been expected to have been put under the existing tax classification and shall determine whether or not the land development regula-

tions approved or established under the designation make development to that extent no longer possible. If development of the land to the maximum extent allowed within the present tax classification is no longer possible because of the land development regulations, then the property appraiser shall reclassify the land to the classification which corresponds most nearly to the land development which would be allowed under the land development regulations in effect and shall reduce the assessed valuation accordingly.

(4) Any landowner owning land within an area of critical state concern over which land development regulations have been approved or established who has properly petitioned the property appraiser for a reclassification and reassessment but has been denied such reclassification and reassessment may appeal to the property appraisal adjustment board. The board may review upon its own motion the classification of any land within an area of critical state concern.

(5) If the property appraiser determines that the use of the land has been affected by the land development regulations approved or established, and if the property appraiser shall then reclassify and reassess the property, he shall report same to the Department of Revenue along with an estimation of the tax revenue lost, by reason of the reclassification and reassessment, to the county, district school board, and any other special tax districts authorized by general law to levy and collect taxes.

History.—s. 19, ch. 74-234; s. 4, ch. 76-133; s. 1, ch. 77-102.

193.511 Assessment of inventory.—All items of inventory shall be assessed for the purpose of taxation at 10 percent of just valuation, except that goods in the process of manufacture and raw materials held for physical incorporation into the goods to be sold shall be assessed for the purpose of taxation at 1 percent of just valuation. For purposes of this section, fuels used in the production of electricity shall be considered goods in the process of manufacture.

History.—s. 3, ch. 4322, 1895; GS 430; s. 3, ch. 5596, 1907; RGS 696; CGL 896; s. 1, ch. 18297, 1937; s. 1, ch. 61-295; s. 1, ch. 65-296; s. 1, ch. 67-376; ss. 1, 2, ch. 68-17; ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 21, ch. 70-243; ss. 1, 2, ch. 77-476; s. 3, ch. 78-269.

Note.—Former s. 192.05.

193.621 Assessment of pollution control devices.—

(1) If it becomes necessary for any person, firm or corporation owning or operating a manufacturing or industrial plant or installation to construct or install a facility, as is hereinafter defined, in order to eliminate or reduce industrial air or water pollution, any such facility or facilities shall be deemed to have value for purposes of assessment for ad valorem property taxes no greater than its market value as salvage. Any facility as herein defined heretofore constructed shall be assessed in accordance with this section.

(2) If the owner of any manufacturing or industrial plant or installation shall find it necessary in the control of industrial contaminants to demolish and reconstruct that plant or installation in whole or part and the property appraiser determines that such demolition or reconstruction does not substantially increase the capacity or efficiency of such plant or installation or decrease the unit cost of production, then in that event, such demolition or reconstruction shall not be deemed to increase the value of such plant or installation for ad valorem tax assessment purposes.

(3) Notwithstanding the foregoing provisions, nothing in this section shall prevent an increase in the assessment of the plant or installation:

(a) In any year where the taxable property in the county is being reassessed or revalued; or

(b) If the assessed value of such plant or installation or parts thereof, during the year preceding the removal, was less than its just value as required by s. 4, Art. VII of the State Constitution, and s. 193.011; or

(c) In the 10th year after the completion of the reconstruction and replacement and thereafter.

The provisions of this subsection shall apply only if the demolition or removal shall commence prior to September 1, 1969, and if the reconstruction and replacements, in lieu thereof are completed and installed prior to September 1, 1971.

(4) The terms "facility" or "facilities" as used in this section shall be deemed to include any device, fixture, equipment, or machinery used primarily for the control or abatement of pollution or contaminants from manufacturing or industrial plants or installations, but shall not include any public or private domestic sewerage system or treatment works.

(5) Any taxpayer claiming the right of assessments for ad valorem taxes under the provisions of this law shall so state in a return filed as provided by law giving a brief description of the facility. The property appraiser may require the taxpayer to produce such additional evidence as may be necessary to establish taxpayer's right to have such properties classified hereunder for assessments.

(6) If a property appraiser is in doubt whether a taxpayer is entitled, in whole or in part, to an assessment under this section, he may refer the matter to the Department of Environmental Regulation for a recommendation. If he so refers the matter, he shall notify the taxpayer of such action. The Department of Environmental Regulation shall immediately consider whether or not such taxpayer is so entitled and certify its recommendation to the property appraiser.

(7) The Department of Environmental Regulation shall promulgate rules and regulations regarding the application of the tax assessment provisions of this section for the consideration of the several county property appraisers of this state. Such rules and regulations shall be distributed to the several county property appraisers of this state.

History.—s. 25, ch. 67-436; ss. 1, 2, ch. 69-55; ss. 21, 26, 35, ch. 69-106; s. 13, ch. 69-216; s. 2, ch. 71-137; s. 33, ch. 71-355; s. 1, ch. 77-102; s. 47, ch. 77-104; s. 4, ch. 79-65.

Note.—Former s. 403.241.

193.623 Assessment of building renovations for accessibility to the physically handicapped.—Any taxpayer who renovates an existing building or facility owned by such taxpayer in order to permit physically handicapped persons to enter and leave such building or facility or to have effective use of the accommodations and facilities therein shall, for the purpose of assessment for ad valorem tax pur-

poses, be deemed not to have increased the value of such building more than the market value of the materials used in such renovation, valued as salvage materials. "Building or facility" shall mean only a building or facility, or such part thereof, as is intended to be used, and is used, by the general public. The renovation required in order to entitle a taxpayer to the benefits of this section must include one or more of the following: the provision of ground level or ramped entrances and washroom and toilet facilities accessible to, and usable by, physically handicapped persons.

History.—s. 1, ch. 76-144.

CHAPTER 194

ADMINISTRATIVE AND JUDICIAL REVIEW OF PROPERTY TAXES

PART I ADMINISTRATIVE REVIEW (ss. 194.011-194.032)

PART II JUDICIAL REVIEW (ss. 194.171-194.231)

PART I

ADMINISTRATIVE REVIEW

194.011 Completion of assessment rolls.—

(1) The property appraiser shall complete all assessments and have them entered on the appropriate tax rolls on or before July 1 of each year, as required in s. 193.023.

(2) On or before approval of the assessment roll by the Department of Revenue, or upon order of the commission or court pursuant to s. 195.098, as appropriate, each property appraiser shall notify by first-class mail each person subject to real or tangible personal ad valorem taxes of the assessment of each taxable item of real property and tangible personal property, as the item appears on the assessment roll, which he proposes to increase from the previous year's assessment. The notice required above shall contain the dollar value of the prior year's assessment and the current assessed value as determined by the property appraiser. However, such notice shall not be required when such increased assessment is not greater than the value declared by the taxpayer on his return.

(3) Any person objecting to the assessment placed on any property taxable to him may request the property appraiser to informally confer with the taxpayer. Upon receiving the request, the property appraiser, or a member of his staff, shall confer with the taxpayer regarding the correctness of the assessment. At this informal conference, the taxpayer shall present those facts considered by the taxpayer to be supportive of the taxpayer's claim for a change in the assessment of the property appraiser. The property appraiser or his representative at this conference shall present those facts considered by the property appraiser to be supportive of the correctness of the assessment. However, nothing herein shall be construed to be a prerequisite to administrative or judicial review of property assessments. Petitions to the property appraisal adjustment board shall describe the property by parcel number and shall be filed as follows:

(a) The property appraiser shall have available and shall distribute forms prescribed by the Department of Revenue on which the petition shall be made. Such petition shall be sworn to by the petitioner.

(b) The completed petition shall be filed with the clerk of the property appraisal adjustment board of the county, who shall acknowledge receipt thereof and promptly furnish a copy thereof to the property appraiser.

(c) Each petition shall state the approximate time anticipated by the taxpayer to present and argue his petition before the board.

(d) Such petition may be filed at any time during the taxable year prior to the later of:

1. July 15, or
2. The 17th day following the mailing of notice by the property appraiser as provided in subsection (2).

History.—s. 25, ch. 4322, 1895; GS 525; s. 1, ch. 5605, 1907; ss. 23, 66, ch. 5596, 1907; RGS 723, 724; CGL 929, 930; s. 1, ch. 67-415; ss. 1, 2, ch. 69-55; s. 1, ch. 69-140; ss. 21, 35, ch. 69-106; s. 25, ch. 70-243; s. 34, ch. 71-355; s. 11, ch. 73-172; s. 5, ch. 76-133; s. 1, ch. 76-234; s. 1, ch. 77-102; s. 1, ch. 77-174; s. 2, ch. 78-354.

Note.—Former s. 193.25.

194.015 Property appraisal adjustment board.—There is hereby created a property appraisal adjustment board for each county, which shall consist of three members of the governing body of the county as elected from the membership of the board of said governing body, one of whom shall be elected chairman, and two members of the school board as elected from the membership of the school board. The members of the board may be temporarily replaced by other members of the respective boards on appointment by their respective chairpersons. Any three members shall constitute a quorum of the board, except that each quorum must include at least one member of said governing board and at least one member of the school board, and no meeting of the board shall take place unless a quorum is present. Members of the board may receive such per diem compensation as is allowed by law for state employees if both bodies elect to allow such compensation. The clerk of the governing body of the county shall be the clerk of the property appraisal adjustment board. The office of the county attorney may be counsel to the board unless the county attorney represents the property appraiser, in which instance the board shall appoint private counsel who has practiced law for over 5 years and who shall receive such compensation as may be established by the board. No meeting of the board shall take place unless counsel to the board is present. However, counsel for the property appraiser shall not be required when the county attorney represents only the board at the board hearings, even though the county attorney may represent the property appraiser in other matters or at a different time. Two-fifths of the expenses of the board shall be borne by the district school board and three-fifths by the district county commission.

History.—s. 2, ch. 69-140; s. 1, ch. 69-300; s. 26, ch. 70-243; s. 22, ch. 73-172; s. 5, ch. 74-234; s. 1, ch. 75-77; s. 6, ch. 76-133; s. 2, ch. 76-234; s. 1, ch. 77-69.

194.032 Hearing complaints.—

(1) The property appraisal adjustment board shall meet on or before the 30th day following approval of all or any part of the assessment rolls by the Department of Revenue, for the following purposes:

(a) Hearing petitions relating to assessments filed pursuant to s. 194.011(3).

(b) Hearing complaints relating to homestead exemptions as provided for under s. 196.151.

(c) Hearing appeals from exemptions denied, or disputes arising from exemptions granted, upon the filing of exemption applications under s. 196.011.

(d) Hearing appeals concerning ad valorem tax deferrals.

(2) The clerk of the governing body of the county shall prepare a schedule of appearances before the board based on petitions timely filed with him. He shall notify each petitioner of the scheduled time of his appearance no less than 5 calendar days prior to the day of such scheduled appearance. No petitioner shall be required to wait for more than 4 hours from the scheduled time, and if his petition is not heard in that time he may, at his option, report to the chairman of the meeting that he intends to leave, and, if he is not heard immediately, his administrative remedies will be deemed to be exhausted and he may seek further relief as he deems appropriate. Repeated failure to convene at the scheduled time of meetings of the property appraisal adjustment board shall constitute grounds for removal from office by the Governor for neglect of duties.

(3) Petitioners before the board may be represented by an attorney and present testimony and other evidence. The property appraiser or his authorized representatives may be represented by an attorney in defending his assessment or opposing an exemption and may present testimony and other evidence. The property appraiser, each petitioner, and all witnesses may be required to testify under oath as administered by the chairman of the property appraisal adjustment board. Hearings shall be conducted in the manner prescribed by rules and regulations of the department. Such hearings shall generally conform to the procedures prescribed for hearings in chapter 120, except that nothing herein shall preclude an aggrieved taxpayer from contesting his assessment in the manner provided by s. 194.171. A verbatim record of the proceedings shall be made, and proof of any documentary evidence presented shall be preserved and made available to the Department of Revenue, if requested, and for further judicial proceedings as provided in subsection (6).

(4) The board is hereby authorized to appoint special masters for the purpose of taking testimony and making recommendations to the board, which recommendations the board may act upon without further hearing. Such special masters may not be elected or appointed officials or employees of the county but shall be selected from a list of those qualified individuals residing in the county who are willing to serve as special masters. The clerk of the board shall annually notify such individuals or their professional associations to make known to them that opportunities to serve as special masters exist. The board shall appoint such masters from the list so compiled prior to convening of the board. The expense of hearings before special masters and any compensation of special masters shall be borne three-fifths by the board of county commissioners and two-fifths by the school board.

(5) In each case, except when a complaint is withdrawn by the petitioner or is acknowledged as correct by the property appraiser, the property appraisal adjustment board shall render a written decision. All such decisions shall be issued within 20 calendar days of the last day the board is in session under this section. The decision of the board shall contain findings of fact and conclusions of law and shall include reasons for upholding or overturning the property appraiser's determination. The clerk, upon issuance of the decisions, shall, on a form provided by the Department of Revenue, notify by first-class mail each taxpayer, the property appraiser, and the department of the decision of the board.

(6) Appeals of the board's decision shall be as follows:

(a) If the property appraiser disagrees with the decision of the board, he may appeal the decision to the circuit court if one or more of the following criteria are met:

1. The property appraiser determines and affirmatively asserts in any legal proceedings that there is a specific constitutional or statutory violation, or a specific violation of administrative rules, in the board's decision, except that nothing herein shall authorize the property appraiser to institute any suit to challenge the validity of any portion of the Constitution or of any duly enacted legislative act of this state;

2. There is a variance from the property appraiser's assessed value in excess of the following: 15 percent variance from any assessment of $50,000 or less; 10 percent variance from any assessment in excess of $50,000 but not in excess of $500,000; 7 ½ percent variance from any assessment in excess of $500,000 but not in excess of $1,000,000; or 5 percent variance from any assessment in excess of $1,000,000; or

3. There is an assertion by the property appraiser to the Department of Revenue that there exists a consistent and continuous violation of the intent of the law or administrative rules by the property appraisal adjustment board in its decisions. The property appraiser shall notify the department of those portions of the tax roll for which the assertion is made. The department shall thereupon notify the clerk of the board who shall, within 15 days of the notification by the department, send the written decisions of the board to the department. Within 30 days of the receipt of the decisions by the department, the department shall notify the property appraiser of its decision relative to further judicial proceedings. If the department finds upon investigation that a consistent and continuous violation of the intent of the law or administrative rules by the board has occurred, it shall so inform the property appraiser, who may thereupon bring suit in circuit court against the property appraisal adjustment board for injunctive relief to prohibit continuation of the violation of the law or administrative rules and for a mandatory injunction to restore the tax roll to its just value in such amount as determined by judicial

proceeding. However, when a final judicial decision is rendered as a result of an appeal filed pursuant to subparagraph 194.032(6)(a)3. which alters or changes an assessment of a parcel of property of any taxpayer not a party to such procedure, such taxpayer shall have 60 days from the date of the final judicial decision to file an action to contest such altered or changed assessment pursuant to s. 194.171(1), and the provisions of s. 194.171(2) shall not bar such action.

(b) Any taxpayer may bring an action to contest a tax assessment pursuant to s. 194.171.

(c) The circuit court proceeding shall be de novo, and the burden of proof shall be upon the party initiating the action.

(7) Once an original application for tax exemption has been granted, in each succeeding year the property appraiser shall mail to the applicant, on or before February 1, a renewal application, and said property appraiser shall accept from all such applicants a renewal application on forms to be prescribed by the Department of Revenue. Such renewal applications shall be accepted as evidence of exemption by the property appraiser unless he shall deny the said application. Upon such denial, the property appraiser shall serve a notice on the applicant by first-class mail on or before July 1 of each year, setting forth the grounds for denial. Any applicant objecting to such denial may file a petition as provided for in s. 194.011(3) and this section.

(8) Appearance before an advisory board or agency created by the county may not be required as a prerequisite condition to appearing before the property appraisal adjustment board.

(9) The property appraisal adjustment board of each county may employ qualified property appraisers or evaluators to appear before the property appraisal adjustment board at that meeting of the board which is held for the purpose of hearing complaints. Such property appraisers or evaluators shall present testimony as to the just value of any property the value of which is contested before the board and shall submit to examination by the board, the taxpayer, and the property appraiser.

(10) The board shall remain in session from day to day until all petitions, complaints, appeals, and disputes are heard. If all or any part of an assessment roll has been disapproved by the department pursuant to s. 193.114(5) and (6), or disapproved by the Assessment Administration Review Commission or the Supreme Court pursuant to s. 195.098, the board shall reconvene to hear petitions, complaints, or appeals and disputes filed upon the finally approved roll or part of a roll.

History.—s. 4, ch. 69-140; ss. 21, 35, ch. 69-106; s. 27, ch. 70-243; s. 12, ch. 73-172; s. 6, ch. 74-234; s. 7, ch. 76-133; s. 3, ch. 76-234; s. 1, ch. 77-174; s. 13, ch. 77-301.

PART II

JUDICIAL REVIEW

194.171 Circuit court to have original jurisdiction in tax cases.—

(1) The circuit courts have original jurisdiction at law of all matters relating to property taxation. Venue is in the county where the property is located.

(2) No action shall be brought to contest a tax assessment after 60 days from the date the assessment being contested is certified for collection under s. 193.122(2).

(3) Before a taxpayer may bring an action to contest a tax assessment, he shall pay to the collector the amount of the tax which he admits in good faith to be owing. The collector shall issue a receipt for the payment, and the taxpayer shall file the receipt with his complaint.

(4) No action to contest a tax assessment may be maintained unless all taxes on the property which the taxpayer in good faith admits to be owing, including taxes assessed in years after the action is brought, are paid before they become delinquent.

(5) Pending actions to contest tax assessments shall be dismissed unless the taxpayer shall have paid to the collector all taxes on the property which he in good faith admits to be owing, including taxes assessed in years after the action is brought.

(6) The clerk of the circuit court shall, after deducting his statutory fee, pay to the collector all taxes which have been admitted to be due and have been deposited in the registry of the court in connection with pending actions to contest tax assessments.

History.—s. 1, ch. 8586, 1921; CGL 1038; s. 2, ch. 29737, 1955; s. 1, ch. 67-538; ss. 1, 2, ch. 69-55; s. 8, ch. 69-102; s. 6, ch. 69-140; ss. 30, 31, ch. 70-243; s. 1, ch. 72-239; s. 6, ch. 74-234.

Note.—Former s. 192.21; s. 194.151; s. 196.01.

194.181 Parties to a tax suit.—

(1) The plaintiff in any tax suit shall be:

(a) The taxpayer contesting the assessment of any tax, the payment of which he is responsible for under the law; or

(b) The property appraiser pursuant to s. 194.032.

(2) In any case contesting the assessment of any property brought by the taxpayer, the county property appraiser shall be party defendant. In any case brought by the property appraiser pursuant to s. 194.032(6)(a) 1. or 2., the taxpayer shall be party defendant. In any case brought by the property appraiser pursuant to subparagraph 194.032(6)(a) 3., the property appraisal adjustment board shall be party defendant.

(3) In any suit involving the collection of any tax on property, as well as questions relating to tax certificates or tax deeds, the tax collector charged under the law with collecting such tax shall be the defendant.

(4) In any suit involving a tax other than an ad valorem tax on property, the tax collector charged under the law with collecting such tax shall be defendant. However, this section shall not apply in any instance wherein general law provides for some other person to be the party defendant.

(5) In any suit in which the assessment of any tax, or the collection of any tax, tax certificate, or tax deed is contested on the ground that it is contrary to

the State Constitution, the official of the state government responsible for overall supervision of the assessment and collection of such tax shall be made a party defendant of such suit. Any such suit shall be brought in that county having venue under s. 194.171 or, when that section is inapplicable, in the circuit court of Leon County, and the attorney for the defendant county officer shall upon request represent the state official in any such suit or proceeding, for which he shall receive no additional compensation.

(6) In any suit in which the validity of any statute or regulation found in, or issued pursuant to, chapters 192 through 197, inclusive, is contested, the public officer affected may be a party plaintiff.

History.—s. 3, ch. 8586, 1921; CGL 1040; ss. 1, 2, ch. 69-55; s. 7, ch. 69-140; s. 32, ch. 70-243; s. 1, ch. 73-74; s. 9, ch. 76-133; s. 4, ch. 76-234; s. 1, ch. 77-174.
Note.—Former s. 196.03.

194.192 Costs; interest on unpaid taxes; penalty.—

(1) In any suit involving the assessment or collection of any tax, the court shall assess all costs.

(2) If the court finds that the amount of tax owed by the taxpayer is greater than the amount the taxpayer has in good faith admitted and paid, it shall enter judgment against the taxpayer for the deficiency and for interest on the deficiency at the rate of 8 percent per annum from the date the tax became delinquent or from January 1, 1971, whichever is later, and at the rate of 6 percent per annum for any period of delinquency before January 1, 1971. If it finds that the amount of tax which the taxpayer has admitted to be owing is grossly disproportionate to the amount of tax found to be due and that the taxpayer's admission was not made in good faith, the court shall also assess a penalty at the rate of 10 percent of the deficiency per annum from the date the tax became delinquent.

History.—s. 8, ch. 69-140; s. 33, ch. 70-243; s. 35, ch. 71-355; s. 2, ch. 72-239.

194.211 Injunction against tax sales.—In any tax suit, the court may issue injunctions to restrain the sale of real or personal property for any tax which shall appear to be contrary to law or equity, and in no case shall any complaint be dismissed because the tax assessment complained of, or the injunction asked for, involves personal property only.

History.—s. 2, ch. 8586, 1921; CGL 1039; ss. 1, 2, ch. 69-55; s. 34, ch. 70-243.
Note.—Former s. 196.02.

194.231 Parties in suits relating to distribution, etc., of funds to counties, etc.—

(1) No court shall hereafter enter any interlocutory or final order, decree or judgment in any case involving the validity or constitutionality of any law relating to the distribution, apportionment or allocation of any state excise or other taxes equally to the several counties in this state under such law, until it shall be made to appear of record in the case that the party to the cause seeking such order, decree or judgment has duly served upon the chairman of the board of county commissioners or the chairman of the school board of each of the counties of this state or upon both such chairmen of said boards, depending upon whether one or both of said boards has an interest in the subject matter, written notice of the pendency of the case and thereafter of all hearings of all applications or motions for such orders, decrees of judgments in such cases, at least 5 days before all hearings.

(2) Such notice shall state the time, place and date of each such hearing and adjournments thereof, and shall be accompanied by copy of the complaint and petition, motion or application for any such order, decree, or judgment and the exhibits thereto attached, if any; and upon such service such boards of such counties having an interest in the subject matter of the case shall forthwith be and become parties to the cause, and shall be by order of the court properly aligned as parties plaintiff or defendant.

History.—s. 1, ch. 19029, 1939; CGL 1940 Supp. 1279(110-f); s. 2, ch. 29737, 1955; ss. 1, 2, ch. 69-55; s. 1, ch. 69-300.
Note.—Former s. 196.13.

CHAPTER 195

PROPERTY ASSESSMENT ADMINISTRATION AND FINANCE

195.0011 Short title.—Chapter 195 shall be known as the "Property Assessment Administration and Finance Law."

History.—s. 1, ch. 73-172.

195.0012 Legislative intent.—It is declared to be the legislative purpose and intent in this entire chapter to recognize and fulfill the state's responsibility to secure a just valuation for ad valorem tax purposes of all property and to provide for a uniform assessment as between property within each county and property in every other county or taxing district.

History.—s. 47, ch. 70-243; s. 2, ch. 73-172.
Note.—Former s. 195.111.

195.002 Supervision by Department of Revenue.—The Department of Revenue shall have general supervision of the assessment and valuation of property so that all property will be placed on the tax rolls and shall be valued according to its just valuation, as required by the constitution. It shall also have supervision over tax collection and all other aspects of the administration of such taxes. The supervision of the department shall consist primarily of aiding and assisting county officers in the assessing and collection functions, with particular emphasis on the more technical aspects. In this regard, the department shall conduct schools to upgrade assessment skills of both state and local assessment personnel.

History.—s. 35, ch. 70-243; s. 7, ch. 74-234.

195.022 Forms to be prescribed by Department of Revenue.—The Department of Revenue shall prescribe and furnish all forms to be used by property appraisers, tax collectors, clerks of the circuit court, and property appraisal adjustment boards in administering and collecting ad valorem taxes. The department shall prescribe a form for each purpose. A county officer may use a form other than the form prescribed by the department, but only at the expense of his office and upon obtaining written permission from the executive director of the department; provided that no county officer shall use a form the substantive content of which is at variance with the form prescribed by the department for the same or a similar purpose. If the executive director finds good cause to grant such permission he may do so, but only for 1 year, subject to renewal upon reapplication by the county officer. Otherwise, all such officers and their employees shall use the forms, and follow the instructions applicable to the forms, furnished to them by the department. The department, upon request of any property appraiser or, in any event, at least once every 3 years, shall prescribe and furnish such aerial photographs and nonproperty ownership maps to the property appraisers as are necessary to insure that all real property within the state is properly listed on the roll. All forms and maps furnished by the department shall be paid for by the department as provided by law. All forms and maps and instructions relating to their use shall be substantially uniform throughout the state. An officer may employ supplemental forms and maps, at the expense of his office, which he deems expedient for the purpose of administering and collecting ad valorem taxes. The forms required in ss. 193.461(3)(a) and 196.011(1) for renewal purposes shall require sufficient information for the property appraiser to evaluate the changes in use since the prior year. If the property appraiser determines, in the case of a taxpayer, that he has insufficient current information upon which to approve the exemption, or if the information on the renewal form is inadequate for him to evaluate the taxable status of the property, he may require the resubmission of an original application.

History.—s. 37, ch. 70-243; s. 4, ch. 73-172; s. 7, ch. 74-234; s. 10, ch. 76-133; s. 2, ch. 78-185; s. 1, ch. 78-193.

195.027 Rules and regulations.—

(1) The Department of Revenue shall prescribe reasonable rules and regulations for the assessing and collecting of taxes, and such rules and regulations shall be followed by the property appraisers, tax collectors, clerks of the circuit court, and property appraisal adjustment boards. It is hereby declared to be the legislative intent that the department shall formulate such rules and regulations that property will be assessed, taxes will be collected, and the administration will be uniform, just, and otherwise in compliance with the requirements of the general law and the constitution.

(2) It is the legislative intent that all counties operate on computer programs that are substantial-

ly similar and produce data which are directly comparable. The rules and regulations shall prescribe uniform standards and procedures for computer programs and operations for all programs installed in any property appraiser's office after July 1, 1973. The rules and regulations shall provide for a time schedule by which all programs and procedures in use on July 1, 1973, shall conform with the uniform standards. It is the legislative intent that the department shall require a high degree of uniformity so that data will be comparable among counties and that a single audit procedure will be practical for all property appraisers' offices.

[1](3) The rules and regulations shall provide procedures whereby the property appraiser, the Department of Revenue, and the Auditor General shall be able to obtain access, where necessary, to financial records relating to nonhomestead property, which records are required to make a determination of the proper assessment as to the particular property in question. Access to a taxpayer's records shall be provided only in those instances in which it is determined that such records are necessary to determine either the classification or the value of the taxable nonhomestead property. Access shall be provided only to those records which pertain to the property physically located in the taxing county as of January 1 of each year and to the income from such property generated in the taxing county for the year in which a proper assessment is made. All records produced by the taxpayer under this subsection shall be deemed to be confidential in the hands of the property appraiser, the department, the tax collector, and the Auditor General and shall not be divulged to any person, firm, or corporation, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters.

(4)(a) The rules and regulations prescribed by the department shall require a return of tangible personal property, other than inventory, which shall include:

1. A general identification and description of the property or, when more than one item constitutes a class of similar items, a description of the class.
2. The location of such property.
3. The original cost of such property and, in the case of a class of similar items, the average cost.
4. The age of such property and, in the case of a class of similar items, the average age.
5. The condition, including functional and economic depreciation or obsolescence.
6. The taxpayer's estimate of fair market value.

(b) For purposes of this subsection, a class of property shall include only those items which are substantially similar in function and use. Nothing in this chapter shall authorize the department to prescribe a return requiring information other than that contained in this subsection; nor shall the department issue or promulgate any rule or regulation directing the assessment of property by the consideration of factors other than those enumerated in s. 193.011.

(5) The rules and regulations shall require that the property appraiser deliver copies of all pleadings in court proceedings in which his office is involved to the Department of Revenue.

[1](6) The rules and regulations shall prescribe an information form that will provide the property appraiser with adequate data on the transfer of interests in real property to enable him to evaluate the transfer, its terms, and consideration. The clerk of the circuit court shall require at the time of recording of a conveyance in real property either a properly executed information form or a copy of the closing statement in lieu thereof, provided that said statement shall contain no less information than that required on the form. Either the buyer or the seller or the agent of either shall complete the information form or supply the closing statement and certify that the form or statement is accurate to the best of his knowledge and belief. The information form or closing statement shall be confidential in the hands of all persons after delivery to the clerk, except that the Department of Revenue and the Auditor General shall have access to such in the execution of their official duties. The information form or closing statement may be used in any judicial proceeding, upon a motion to produce duly made by any party to such proceedings. Failure of the clerk to obtain an information form or closing statement with the recording shall not impair the validity of the recording or the conveyance. The form shall provide for a notation by the clerk indicating the book and page number of the conveyance in the official record books of the county. The clerk shall promptly deliver all information forms and closing statements received by him to the property appraiser for his custody and use.

History.—s. 39, ch. 70-243; s. 2, ch. 73-172; ss. 8, 22, 23, ch. 74-234; s. 11, ch. 76-133; s. 16, ch. 76-234; s. 14, ch. 79-334.

[1]**Note.**—Subsection (3) as amended and subsection (6) as created by s. 14, ch. 79-334, apply to assessment rolls and taxes levied thereon for the year 1980 and each year thereafter.

Note.—Former s. 195.042.

195.032 Establishment of standards of value.—In furtherance of the requirement set out in s. 195.002, the Department of Revenue shall establish and promulgate standard measures of value not inconsistent with those standards provided by law, to be used by property appraisers in all counties, including taxing districts, to aid and assist them in arriving at assessments of all property. The standard measures of value shall provide guidelines for the valuation of property and methods for property appraisers to employ in arriving at the just valuation of particular types of property consistent with ss. 193.011 and 193.461. The standard measures of value shall assist the property appraiser in the valuation of property and be deemed prima facie correct, but shall not be deemed to establish the just value of any property.

History.—s. 38, ch. 70-243; s. 12, ch. 76-133; s. 9, ch. 76-234.

195.052 Research and tabulation of data.—The department shall conduct constant research and maintain accurate tabulations of data and conditions existing as to ad valorem taxation, and annually shall make such recommendations to the legislature as are necessary to insure that property is valued according to its just value and is equitably taxed throughout the state.

History.—s. 40, ch. 70-243.

195.062 Manual of instructions.—

(1) The department shall prepare and maintain a current manual of instructions for property appraisers and other officials connected with the administration of property taxes. This manual shall contain all:

(a) Rules and regulations.

(b) Standard measures of value.

(c) Forms and instructions relating to the use of forms and maps.

Consistent with s. 195.032, the standard measures of value shall be adopted in general conformity with the procedures set forth in s. 120.54, but shall not have the force or effect of such rules and shall be used only to assist tax officers in the assessment of property as provided by s. 195.002.

(2) The department may also include in such manual any other information which it deems pertinent or helpful in the administration of taxes. Such manual shall instruct that the mere recordation of a plat on previously unplatted acreage shall not be construed as evidence of sufficient change in the character of the land to require reassessment until such time as development is begun on the platted acreage. Such manual shall be made available for distribution to the public at a nominal cost, to include cost of printing and circulation.

History.—s. 41, ch. 70-243; s. 1, ch. 71-367; s. 2, ch. 73-172; s. 9, ch. 74-234; s. 1, ch. 75-12; s. 10, ch. 76-234; s. 1, ch. 77-174.

195.072 Cooperation of other agencies of state government.—The several departments and agencies of state government are hereby authorized and directed to render such necessary aid and assistance to the Department of Revenue as is required to enable the department to carry out its functions of insuring just valuation and equitable administration of property taxes in this state.

History.—s. 42, ch. 70-243.

195.073 Classification of property.—All items required by law to be on the assessment rolls shall receive a classification based upon the use of the property. The department shall promulgate uniform definitions for all classifications. The department may designate other subclassifications of property. No assessment roll may be approved by the department which does not show proper classifications.

(1) Real property shall be classified according to the assessment basis of the land into the following classes:

(a) Residential:
1. Single family.
2. Mobile homes.
3. Multifamily.
4. Condominiums.
5. Cooperatives.
6. Retirement homes.

(b) Commercial and industrial.

(c) Agricultural.

(d) Nonagricultural acreage.

(e) Exempt, wholly or partially.

(f) Centrally assessed.

(g) Leasehold interests.

(h) Other.

[1](2) Personal property shall be classified as:

(a) Inventory.

(b) Live-aboard vessels—residential.

(c) Live-aboard vessels—nonresidential.

(d) Mobile homes and attachments.

(e) Household goods.

(f) Other tangible personal property.

(3) When the tax roll is submitted to the department for approval, there shall also be appended a statement indicating the total assessed valuation of structures added to and deleted from the assessment roll for that year in each taxing jurisdiction.

History.—s. 3, ch. 73-172; ss. 8, 23, ch. 74-234; s. 15, ch. 79-334.

[1]**Note.**—As amended by s. 15, ch. 79-334, applies to assessment rolls and taxes levied thereon for the year 1980 and each year thereafter.

195.084 Information exchange.—

(1) The department shall promulgate rules and regulations for the exchange of information among the department, the property appraisers' offices, and the Auditor General. All records and returns of the department useful to the property appraiser shall be made available upon his request, but subject to the reasonable conditions imposed by the department. This section shall supersede statutes prohibiting disclosure only with respect to the property appraiser and the Auditor General, but the department may establish regulations setting reasonable conditions upon the access to and custody of such information. The Auditor General and the property appraisers shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality shall be a misdemeanor of the first degree punishable as provided by ss. 775.082 and 775.083.

(2) All of the records of property appraisers and collectors, including, but not limited to, worksheets and property record cards, shall be made available to the Department of Revenue and Auditor General. Property appraisers and collectors are hereby directed to cooperate fully with representatives of the Department of Revenue and Auditor General in realizing the objectives stated in s. 195.0012.

History.—s. 5, ch. 73-172; s. 1, ch. 77-102.

195.087 Property appraisers and tax collectors to submit budgets to Department of Revenue.—

(1)(a) On or before June 1 of each year, every property appraiser, regardless of the form of county government, shall submit to the Ad Valorem Tax Division of the Department of Revenue a budget for the operation of his office for the ensuing fiscal year beginning October 1. The property appraiser shall submit his budget in the manner and form required by the Executive Office of the Governor. A copy of such budget shall be furnished at the same time to the board of county commissioners. The division shall, upon proper notice to the county commission and property appraiser, review the budget request and may amend or change the budget request as it deems necessary, in order that the budget be neither inadequate nor excessive. On or before July 15, the division shall notify the property appraiser and the board of county commissioners of its tentative budget amendments and changes. Prior to August 15, the property appraiser and the board of county commis-

sioners may submit additional information or testimony to the division respecting the budget. On or before August 15, the division shall make its final budget amendments or changes to the budget and shall provide notice thereof to the property appraiser and board of county commissioners.

(b) The Governor and Cabinet, sitting as the Administration Commission, may hear appeals from the final action of the Ad Valorem Tax Division upon a written request being filed no later than September 1 by the property appraiser or the presiding officer of the county commission. The Administration Commission may amend the budget if it finds that any aspect of the budget is unreasonable in light of the work load of the property appraiser's office in the county under review. The budget request as approved by the division and as amended by the commission shall become the operating budget of the property appraiser for the ensuing fiscal year beginning October 1, except that the budget so approved may subsequently be amended under the same procedure. After final approval the property appraiser shall make no transfer of funds between accounts without the written approval of the Ad Valorem Tax Division.

(2) On or before August 1 of each year, each tax collector shall submit to the Department of Revenue his budget for the operation of his office for the ensuing fiscal year, in the manner and form prescribed by the Department of Revenue. The department shall examine the budget and, if it is found adequate to carry on the work of the tax collector, shall approve the budget and certify it back to the tax collector. If the department finds the budget inadequate or excessive, it shall return such budget to the tax collector, together with its ruling thereon. The tax collector shall revise the budget as required and resubmit it to the department. After the final approval of the budget by the department, there shall be no reduction or increase by any officer, board, or commission without the approval of the department.

(3) Any check received by the office of the collector which is returned by the bank upon which the check is drawn shall be the personal liability of the tax collector unless the collector, after due diligence to collect the returned check, forwards the returned check to the State Attorney of the circuit where the check was drawn for prosecution. This subsection shall not apply to ad valorem taxes, in which case the collector shall proceed under chapter 197.

History.—s. 56, ch. 20722, 1941; ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 36, ch. 70-243; s. 6, ch. 73-172; s. 10, ch. 74-234; s. 1, ch. 77-102; s. 93, ch. 79-190; s. 16, ch. 79-334.

Note.—Former s. 193.02; s. 195.011.

195.092 Authority to bring and maintain suits.—The Department of Revenue shall have authority to bring and maintain such actions at law or in equity by mandamus or injunction, or otherwise, to enforce the performance of any duties of any officer or official performing duties with relation to the execution of the tax laws of the state, or to enforce obedience to any lawful order, rule, regulation or decision of the Department of Revenue lawfully made under the authority of these tax laws.

History.—s. 55, ch. 20722, 1941; ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 44, ch. 70-243.

Note.—Former s. 196.16; s. 195.041.

195.094 Property Assessment Loan Fund.—

(1) There is hereby created in the State Treasury under the Department of Revenue a trust fund designated as the "Property Assessment Loan Fund."

(2) The moneys deposited in the trust fund are appropriated to, and may be loaned by, the department to any property appraiser for the purpose of assisting the county assessment program in appraising all or a portion of the county and in equipping the property appraiser's office with capital outlay items.

(3) The department shall contract with the property appraiser for the repayment of the loan over a period of not more than 3 years and at an interest rate of not less than the interest rate being charged by the Federal Reserve Bank for discounting instruments of Florida member banks. All interest earnings shall be deposited in the trust fund to be used in the same manner as all other moneys in the fund.

(4) The Department of Revenue shall be a party to all contracts involving any expenditures from the loan fund. In the contract, the department shall include the specifications for the equipment or services to be purchased and standards for the methods to be used. The department shall retain the right to advance the loan funds only as needed and to withhold funds for deviations from the agreed terms, specifications, or standards.

(5) The department may expend money from the trust fund, with the written consent of the property appraiser, for the purpose of employing on a temporary basis consultants to assist the property appraiser in assessing complex or other difficult properties. The department shall charge the office of each consenting property appraiser based upon his relative use of the consultants. The department shall not hire any consultant for which the trust account will not be fully replenished by charges within 12 months from the date the expenditure is charged against the trust fund.

(6) In the event that any property appraiser does not pay in full any installment due under a loan extended under the provisions of this section, the department shall reduce the county distribution under s. 218.23 in an amount equal to the unpaid balance then due, which amount the county may deduct from the subsequent quarterly payment due the property appraiser for his services.

History.—s. 7, ch. 73-172; s. 1, ch. 77-102.

195.095 Approved bidder list; standard contracts.—

(1) The department shall accept applications from all persons and firms who desire to contract with property appraisers, collectors, or county commissions for assessment or collection services or systems or for the sale of electronic data-processing programs or equipment. No application shall be approved unless the assessment procedures on the electronic data-processing programs fully meet the regulations of the department relating to uniformity of assessment. The regulations shall insure that the person or firm has sufficient and modern equipment as well as the necessary technology to fulfill the type of contract on which the person or firm proposes to bid. The firm or person shall be approved to bid only on the type of contract for which it is qualified. Chap-

ter 475 shall not apply to persons contracting under the provisions of this section. The department shall establish a list of approved bidders for such contracts based upon an evaluation of each person's or firm's ability to comply satisfactorily with such contracts and the person's or firm's past performance on similar contracts. Any person or firm that has not fully complied with the terms of a contract with a Florida property appraiser, collector, or county commission shall be removed from the approved list for future contracts until there is full compliance. No property appraiser, collector, or county commission may contract for assessment services or purchase of data-processing programs or equipment for use by the property appraiser or collector unless the vendor is on the approved state bidder list.

(2) The department shall promulgate a standard contract containing the minimum standards that must be included in all contracts entered into with approved bidders. All contracts shall contain a requirement that the contractor shall post a performance bond and that the bond shall remain in effect at least 1 year after the completion of the contract. All contractors and bonding companies shall disclose all sureties, endorsers, and guarantors of performance. Any provision of the standard contract may be deleted or added to only with written approval of the department. The department shall, at the minimum, promulgate standard contracts for mass data reappraisals and computer service programs and equipment.

(3) The department may waive all or part of the requirements of this section in the case of property appraisers who, as of July 1, 1973, have electronic data-processing equipment, contracts, or programs in operation which are subject to review under s. 195.087.

History.—s. 7, ch. 73-172; s. 11, ch. 74-234; s. 1, ch. 77-102.

195.096 Review of assessment rolls.—

(1) The assessment rolls of each county shall be subject to review by the Division of Ad Valorem Tax.

(2) Beginning with 1974, the Division of Ad Valorem Tax shall conduct, no less frequently than once every 4 years, an in-depth review of the assessment rolls of each county. The Division of Ad Valorem Tax need not study every use-class of property set forth in s. 195.073, but shall study the level of assessment in relation to just value of such classifications and such other strata as are significant in a particular county. Such in-depth review may include proceedings of the property appraisal adjustment board.

(a) The Division of Ad Valorem Tax shall, at least 30 days prior to the beginning of an in-depth review in any county, notify the property appraiser in the county of the pending review. At the request of the property appraiser, the Division of Ad Valorem Tax shall consult with the property appraiser regarding the classifications and strata to be studied, in order that the review will be useful to the property appraiser in evaluating his procedures.

(b) Every property appraiser whose roll is subject to an in-depth review in the current year shall, upon completion of the assessment roll, deliver a list of the parcel numbers of all parcels that did not appear on the assessment roll of the previous year, indicating the parcel number of the parent parcel from which each new parcel was created or "cut out."

(c) In the conduct of assessment ratio studies, the Division of Ad Valorem Tax shall utilize a statistically reliable sample of properties in tests of each classification, stratum, or roll made the subject of a ratio study published by it. Computations for the ratio studies shall use that measure of central tendency which most accurately reflects the true ratio for that particular classification, stratum, or roll.

(d) In the conduct of such reviews, the Division of Ad Valorem Tax shall adhere to all standards to which the property appraisers are required to adhere.

(e) The Division of Ad Valorem Tax and each property appraiser shall cooperate in the conduct of such reviews and each shall make available to the other all matters and records bearing on the preparation and computation of such reviews. The property appraisers shall provide any and all data requested by the Division of Ad Valorem Tax in the conduct of such studies, including electronic data processing tapes. Direct reimbursable costs of providing such data shall be borne by the Division of Ad Valorem Tax.

(f) Within 120 days following the receipt of the county's assessment roll by the executive director of the department pursuant to subsection 193.114(5), but in no event later than January 1, the Division of Ad Valorem Tax shall complete a county's review and forward its findings, except for portions of the review relating to personal property, together with all of its work-product upon which its findings are based, including a statement of the confidence interval for each stratum or classification studied and for the roll as a whole, employing a 95 percent level of confidence, to the executive director of the department and the appropriate property appraiser. The Division of Ad Valorem Tax shall complete the personal property review and forward its findings to the property appraiser and the executive director of the department no later than March 1. For any roll submitted to the department for approval after December 21 and upon good cause shown, the executive director of the department may grant the Division of Ad Valorem Tax an extension of 10 days from the submission date of the roll in which to complete its review.

(3) For those counties not being studied in the current year, the Division of Ad Valorem Tax shall project levels of assessment for each roll not subject to an in-depth review in the current year. The Division of Ad Valorem Tax shall make its projection based upon the best information available. The projections are recognized to be approximations only, and shall not be used as the sole basis of any legal or administrative action.

(4) It is declared to be the legislative intent that approval of the rolls by the department pursuant to subsection 193.114(5) and certification by the property appraisal adjustment board pursuant to subsection 193.122(1) shall not be deemed to impugn the use of postcertification reviews to require adjustments in the preparation of succeeding assessment rolls to insure that such succeeding assessment rolls do meet the constitutional mandates of just value.

(5) The Auditor General shall have the responsi-

bility to perform postaudits and performance audits of the administration of ad valorem tax laws and programs pursuant to the general authority granted in chapter 11.

(6) Chapter 120 shall not apply to this section.

History.—s. 7, ch. 73-172; ss. 11, 21, ch. 74-234; s. 2, ch. 75-211; s. 13, ch. 76-133.

195.097 Postaudit review of rolls; supervision by the department.—

(1) Upon evaluation of the findings of the Division of Ad Valorem Tax, and upon the independent study of his staff, the executive director of the department shall evaluate the assessment rolls of all counties and shall issue a notice to any property appraiser who he has determined has one or more classes or other strata of property listed on the assessment rolls in a manner inconsistent with the requirements of law, or is otherwise not assessing in accordance with law. The executive director shall specify in his notice the classes or strata of property that have been improperly assessed on the prior year's roll, the nature of the defect or defects, and the requirements of the department to obtain approval of the current year's assessment roll. Such notice shall be provided to the property appraiser no later than January 15.

(2) Within 15 days after receipt of a notice, but no later than February 1, the property appraiser shall either notify the executive director in writing of his intention to comply or request an immediate conference with the executive director for the purpose of attempting to resolve differences between himself and the executive director. Such conference shall be held no later than February 15. At the conclusion of such conference, but no later than March 1, the executive director shall issue his administrative order, which order shall incorporate the remedial steps, if any, to be taken by the property appraiser to insure that all property on his rolls is assessed at just value. An administrative order shall also be issued in the case of a property appraiser who has stated his intention to comply. The department may, with respect to the personal property assessment roll, amend its March 1 order prior to March 15 in those counties in which the auditor general has audited the prior year's personal property assessment roll.

(3) Upon the issuance of the administrative order, the department shall commence continuing supervision of the preparation of the current rolls to insure that every reasonable effort is being taken by the property appraiser to comply with the order. Supervision may include, but shall not be limited to, the conduct of ratio or other mass data studies on the roll being prepared. During its supervision, the department may seek any judicial remedy available to it under law to force compliance with its order, and may request removal of the property appraiser by the Governor when it deems such action necessary. No later than May 1, the executive director shall notify the property appraiser, in writing, as to whether he is in substantial compliance with the order. In the event that the executive director determines that the property appraiser is not in substantial compliance at that time, he shall send to the property appraiser and the governing body of each tax-levying agency in the county a notice of intent to disapprove the tax roll in whole or in part.

(4) Chapter 120 shall not apply to this section.

History.—s. 7, ch. 73-172; ss. 14, 21, ch. 74-234; s. 3, ch. 75-211; s. 1, ch. 77-102.

195.098 Assessment Administration Review Commission; hearings; judicial review.—

(1) There is hereby created, pursuant to s. 1, Art. V of the State Constitution, 1968, as amended, the Assessment Administration Review Commission, which shall have adjudicatory authority to hear complaints relating to approval or disapproval of assessment rolls. The creation of this commission is not intended in any way to limit the jurisdiction of the Circuit Courts of this state in litigation relating to ad valorem taxation, except in regard to appeals from approval or disapproval of an assessment roll by the department.

(a) The Assessment Administration Review Commission shall consist of three persons knowledgeable in any of the following three general areas: property tax law, determination of property values, or statistics. Members of the commission shall be appointed by the Governor with the consent of three members of the cabinet, subject to approval by the Senate, and each shall serve for a term concurrent with the Governor. Each member shall receive compensation at the rate of $100 per day, but not more than $10,000 in any fiscal year. The members shall not be considered full-time employees of the state.

(b) The commission shall be authorized to employ the necessary clerical staff and hearing examiners to assist it in the performance of its duties. In addition, the commission shall engage a person to act as law officer of its hearings who shall have those qualifications set for the office of circuit judge by s. 8, Art. V of the State Constitution of 1968, as amended. Such law officer shall preside over all hearings of the commission, make all necessary rulings of law, and prepare the final order of the commission pursuant to its findings of facts.

(c) The commission is authorized to establish rules for its operations and for the conduct of its hearings. The law officer shall have the power to issue notices of hearings and subpoenas requiring the attendance of witnesses and the production of evidence, administer oaths, and take testimony as may be necessary to carry out the duties and responsibilities of the commission.

(2) Upon approval or disapproval of all or any part of any roll of any county, as provided for in subsection 193.114(5) or subsection 193.114(6), an appeal may be filed with the commission. The appeal shall be filed within 20 days of the issuance of the rule of the executive director approving or disapproving all or any part of a county assessment roll. Appeals shall be filed in the form and manner as prescribed by the rules of the commission. A property appraiser may appeal a disapproval of all or any part of any of his rolls, and the Auditor General, when expressly so directed by the joint legislative auditing committee, may appeal an approval of all or any part of any roll. When an appeal is taken by the Auditor General, the executive director, joined by the appropriate property appraiser, shall defend such approval. Upon receipt by the law officer of an appeal, the law officer shall promptly notify all proper parties of the hearing date.

(a) In a hearing reviewing the disapproval of all or any part of an assessment roll, neither the determination of the department nor the assessments of the property appraiser shall be presumed correct, but the burden of proof shall be on the executive director. In a hearing challenging the approval of all or any part of an assessment roll, the burden of proof shall be on the Auditor General.

(b) The commission shall make findings of fact, and the law officer shall prepare the final order of the commission, which order shall be binding upon all parties. Such order shall be subject to review by the Supreme Court as provided below.

(3) The Supreme Court shall have exclusive jurisdiction to review the final order of the Assessment Administration Review Commission as a matter of right as provided by s. 3(b)(7), Art. V of the State Constitution of 1968, as amended. The court is requested to give such review the highest priority and to expedite hearing and determination of the matter. Upon the court rendering a decision requiring reassessment of part or all of the rolls of a county, the court may, within its discretion, require the department to do any or all of the following in order to implement the decision of the court:

(a) Enter such orders as are necessary to insure that the roll under review shall be uniform, equitable at just value, and otherwise in compliance with law.

(b) Maintain jurisdiction for the purpose of supervising the revision of the rolls until such time as all of the requirements of the commission or of the court as expressed in its orders have been met.

(c) Order the preparation of a preliminary roll prior to full compliance as necessary for the purpose of preparing and mailing preliminary tax bills.

(d) Upon full compliance with the requirements of the court, order the preparation of a final roll and order the preparation of supplemental bills and refunds to be distributed to the taxpayers.

(e) Readjust the millage of each taxing authority within the county as necessary in order to produce the same revenue which would be generated under the preliminary roll.

(f) Direct the Comptroller to withhold distribution of any state-appropriated funds to the taxing entities within the county in excess of state distributions during the prior fiscal year.

(4) Chapter 120 shall not apply to this section.

History.—s. 7, ch. 73-172; s. 21, ch. 74-234; s. 1, ch. 77-102; s. 48, ch. 77-104.

195.101 Withholding of state funds.—

(1) The Department of Revenue is hereby directed to determine each year whether the several counties of this state are assessing the real and tangible personal property within their jurisdiction in accordance with law. If the Department of Revenue determines that any county is assessing property at less than that prescribed by law, the comptroller shall withhold from such county a portion of any state funds to which the county may be entitled equal to the difference of the amount assessed and the amount required to be assessed by law.

(2) The Department of Revenue is hereby directed to determine each year whether the several municipalities of this state are assessing the real and tangible personal property within their jurisdiction in accordance with law. If the Department of Revenue determines that any municipality is assessing property at less than that prescribed by law, the comptroller shall withhold from such municipality a portion of any state funds to which that municipality may be entitled equal to the difference of the amount assessed and the amount required to be assessed by law.

History.—s. 6, ch. 67-395; s. 5, ch. 67-396; ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 45, ch. 70-243.

Note.—Former ss. 193.326, 195.051; ss. 167.445, 195.061.

195.106 Department of Revenue to pass upon and order refunds.—

(1)(a) Except as provided in paragraph (b), the Department of Revenue shall pass upon and order refunds when payment has been made voluntarily or involuntarily of taxes assessed on the county tax rolls by reason of any of the following circumstances:

1. Any over-payment;
2. Payment when no tax was due;
3. When a bona fide controversy exists between the tax collector and the taxpayer as to the liability of the taxpayer for the payment of the tax claimed to be due, the taxpayer pays the amount claimed by the tax collector to be due, and it is finally adjudged by a court of competent jurisdiction that the taxpayer was not liable for the payment of the tax or any part thereof.

(b) Those refunds which have been ordered by a court and those refunds which do not result from changes made in the assessed value on a tax roll certified to the tax collector shall be made directly by the tax collector without order from the department and from undistributed funds without approval of the various taxing authorities.

(c) Claims for refunds shall be made in accordance with the rules of the department. No refund shall be granted unless claim is made therefor within 4 years of January 1 of the tax year for which the taxes were paid.

(2)(a) When the Department of Revenue orders a refund, it shall forward a copy of its order to the tax collector who shall then determine and certify to the county, district school board, each municipality, and the governing body of each taxing district their pro rata share of such refund, the reason for the refund, and the date the refund was ordered by the department.

(b) The board of county commissioners, the district school board, each municipality, and the governing body of each taxing district shall comply with the order of the department in the following manner:

1. Authorize the tax collector to make refund from undistributed funds held for that taxing authority by the tax collector;
2. Authorize the tax collector to make refund and forward to the tax collector their pro rata share of the refund from currently budgeted funds, if available; or
3. Notify the tax collector that the taxing authority does not have funds currently available and provide in their budget for the ensuing year funds for the payment of the refund.

(3) A refund ordered by the department pursuant to this section shall be made by the tax collector

in one aggregate amount composed of all the pro rata shares of the several taxing authorities concerned, except that a partial refund is allowed when one or more of the taxing authorities concerned do not have funds currently available to pay their pro rata share of the refund and this would cause an unreasonable delay in the total refund. A statement by the tax collector explaining the refund shall accompany the refund payment.

(4) Nothing contained in this section shall be construed to authorize any taxing authority to make any tax levy in excess of the maximum authorized by the constitution or the laws of Florida.

(5) The provisions of this section shall apply with respect to refunds of amounts paid for tax certificates which are subsequently determined to be void, as provided in s. 197.116 (8).

History.—s. 1, ch. 10282, 1925; CGL 948; s. 47, ch. 20722, 1941; ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; ss. 1, 2, ch. 69-290; s. 46, ch. 70-243; ss. 12, 23, ch. 74-234; s. 4, ch. 76-143; s. 1, ch. 77-174; s. 1, ch. 78-32.

Note.—Former s. 193.40; s. 195.081.

195.207 Effect on levy of municipal taxes.—No municipal charter may prohibit or limit the authority of the governing body to levy ad valorem taxes or utility service taxes authorized under s. 167.431. Any word, sentence, phrase, or provision, of any special act, municipal charter, or other law, that prohibits or limits a municipality from levying ad valorem taxes within the millage limits fixed by s. 9, Art. VII of the State Constitution, or prohibits or limits a municipality from levying utility service taxes within the limits fixed by s. 167.431, is hereby nullified and repealed.

History.—s. 2, ch. 72-360; s. 3, ch. 73-129.

Note.—Former s. 167.4391.

CHAPTER 196

EXEMPTION

196.001 Property subject to taxation.—Unless expressly exempted from taxation, the following property shall be subject to taxation in the manner provided by law:

(1) All real and personal property in this state and all personal property belonging to persons residing in this state; and

(2) All leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state.

History.—s. 16, ch. 71-133.

[1]196.002 Legislative intent.—For the purposes of assessment roll recordkeeping and reporting:

(1) The increase in the homestead exemption provided in s. 196.031(3)(d) shall be reported separately for those persons entitled to exemption under paragraph (a) or paragraph (b) of s. 196.031(3) and for those persons entitled to exemption under s. 196.031(1) but not under said paragraphs; and

(2) The exemptions authorized by each provision of this chapter shall be reported separately for each category of exemption in each such provision, both as to total value exempted and as to the number of exemptions granted.

History.—s. 8, ch. 79-332.

[1]**Note.**—Effective upon approval of S.J.R. 1-B (1979) at a special election to be held on March 11, 1980, or at the 1980 general election; but will "apply to assessment rolls for the year 1980 and each year thereafter."

196.011 Annual application required for exemption.—

(1) Every person or organization who has the legal title to real or personal property which is entitled by law to exemption from taxation as a result of its ownership and use shall, before March 1 of each year, file an application for exemption with the county property appraiser, listing and describing the property for which exemption is claimed and certifying its ownership and use. The Department of Revenue shall prescribe the forms upon which the application is made. Failure to make application, when required, by March 1 of any year shall constitute a waiver of the exemption privilege for that year.

However, application for exemption will not be required on public roads rights-of-way and borrow pits owned, leased, or held for exclusive governmental use and benefit or on property owned and used exclusively by a municipality for municipal or public purposes in order for such property to be released from all ad valorem taxation. The owner of property that received an exemption in the prior year may reapply on a short form as provided by the department.

[1](2) It shall not be necessary to make annual application for exemption on houses of public worship, the lots on which they are located, personal property located therein or thereon, parsonages, house of public worship owned burial grounds and tombs, other such property not rented or hired out for other than religious or educational purposes at any time; household goods and personal effects of residents of this state; and property of the state, any county, any municipality, or any school district or community college district thereof.

(3) When any property has been determined to be fully exempt from taxation because of its exclusive use for religious, literary, scientific, or charitable purposes and the application for its exemption has met the criteria of s. 196.195, the property appraiser may accept, in lieu of the annual application for exemption, a statement certified under oath that there has been no change in the ownership and use of the property.

History.—s. 1, ch. 63-342; ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 4, ch. 71-133; s. 1, ch. 72-276; s. 2, ch. 72-290; s. 2, ch. 72-367; s. 1, ch. 74-2; s. 14, ch. 74-234; s. 3, ch. 74-264; s. 7, ch. 76-234; s. 1, ch. 77-102; s. 34, ch. 79-164; s. 17, ch. 79-334.

[1]**Note.**—Subsection (2), as amended by ch. 79-334, applies to assessment rolls and taxes levied thereon for the year 1980 and each year thereafter.

Note.—Former s. 192.062.

cf.—ss. 3, 6, Art. VII, State Const.

196.012 Definitions.—For the purpose of this chapter the following terms are defined as follows except where the context clearly indicates otherwise:

(1) "Exempt use of property" means predominant or exclusive use of property for educational, literary, scientific, religious, charitable, or governmental use, as defined in this chapter.

(2) "Exclusive use of property" means property that is used 100 percent for exempt purposes. Such purposes may include more than one class of exempt use.

(3) "Predominant use of property" means property used for exempt purposes in excess of 50 percent but less than exclusive.

(4) "Educational institutions" means state, parochial, church, and private schools, colleges, and universities conducting regular classes and courses of study required for eligibility to certification by, accreditation to, or membership in, the State Department of Education of Florida, Southern Association of Colleges and Secondary Schools, or the Florida Council of Independent Schools.

(5) Governmental, municipal, or public purpose or function shall be deemed to be served or performed when the lessee under any leasehold interest created in property of the United States, the state or any of its political subdivisions, or any municipality, agency, authority, or other public body corporate of the state, is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit, or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds. The term "governmental purpose" shall include a direct use of property on federal lands in connection with the Federal Government's Space Exploration Program. Real property and tangible personal property owned by the Federal Government and used for defense and space exploration purposes or which is put to a use in support thereof shall be deemed to perform an essential national governmental purpose and shall be exempt.

(6) "Charitable purpose" means a function or service which is of such a community service that its discontinuance could legally result in the allocation of public funds for the continuance of the function or service.

(7) "Hospitals" means institutions which possess a valid license granted under chapter 395 on January 1 of the year for which exemption from ad valorem taxation is requested.

(8) "Nursing homes," "homes for special services," and "homes for the aged" mean institutions which possess a valid license under chapter 400 on January 1 of the year for which exemption from ad valorem taxation is requested.

(9) "Gross income" means all income from whatever source derived, including, but not limited to, the following items, whether actually owned by, or received by, or not received by but available to, any person or couple: earned income, income from investments, gains derived from dealings in property, interest, rents, royalties, dividends, annuities, income from retirement plans, pensions, trusts, estates and inheritances, and direct and indirect gifts. Gross income specifically shall not include payments made for the medical care of the individual, return of principal on the sale of a home, social security benefits, or public assistance payments payable to the person or assigned to an organization designated specifically for the support or benefit of that person.

(10) "Totally and permanently disabled persons" means those persons who are currently certified by two licensed physicians of this state who are professionally unrelated or the Veterans' Administration to be totally and permanently disabled.

(11) "Couple" means a husband and wife legally married under the laws of any state or territorial possession of the United States or of any foreign country.

(12) "Real estate used and owned as a homestead" means real property to the extent provided in s. 6(a), Art. VII, and s. 4(a)(1), Art. X, of the State Constitution, but less any portion thereof used for commercial purposes.

History.—s. 1, ch. 71-133; s. 1, ch. 72-367; s. 1, ch. 73-340; s. 14, ch. 74-234; s. 13, ch. 76-234; s. 1, ch. 77-447.

196.021 Tax returns to show all exemptions and claims.—In making tangible personal property tax returns under this chapter it shall be the duty of the taxpayer to completely disclose and claim any and all lawful or constitutional exemptions from taxation to which he may be entitled or which he may desire to claim in respect to taxable tangible personal property. The failure to disclose and in-

clude such exemptions, if any, in a tangible personal property tax return made under this chapter shall be deemed a waiver of the same on the part of the taxpayer and no such exemption or claim thereof shall thereafter be allowed for that tax year.

History.—s. 14, ch. 20723, 1941; ss. 1, 2, ch. 69-55.
Note.—Former s. 200.15.
cf.—ss. 3, 6, Art. VII, State Const.

196.031 Exemption of homesteads.—

(1) Every person who has the legal title or beneficial title in equity to real property in this state and who resides thereon and in good faith makes the same his or her permanent home, or the permanent home of another or others legally or naturally dependent upon said person, shall be entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of $5,000 on the said home and contiguous real property, as defined in s. 6, Art. VII of the State Constitution. Said title may be held by the entireties, jointly, or in common with others, and said exemption may be apportioned among such of the owners as shall reside thereon, as their respective interests shall appear, but no such exemption of more than $5,000 shall be allowed to any one person or on any one dwelling house, except that an exemption up to the assessed valuation of $5,000 may be allowed on each apartment occupied by a tenant-stockholder or member of a cooperative apartment corporation and on each condominium parcel occupied by its owner, nor shall the amount of the exemption allowed any person exceed the proportionate assessed valuation based on the interest owned by such person.

(2) As used in subsection (1), "cooperative apartment corporation" means a corporation, whether for profit or not for profit, organized for the purpose of owning, maintaining and operating an apartment building or apartment buildings to be occupied by its stockholders or members; and "tenant-stockholder or member" means an individual who is entitled, solely by reason of his ownership of stock or membership in a cooperative apartment corporation, to occupy for dwelling purposes an apartment in a building owned by such corporation. A corporation leasing land for a term of 98 years or more for the purpose of maintaining and operating a cooperative apartment thereon shall be deemed the owner for purposes of this exemption.

[1](3)(a) For every person who is entitled to the exemption provided in subsection (1) who has been a permanent resident of this state for the 5 consecutive years prior to claiming an exemption under this subsection and who is 65 years of age or older, the exemption is increased to $10,000 of assessed valuation for taxes levied by governing bodies of school districts, counties, municipalities, and special districts. Submission of an affidavit that the applicant claiming the additional exemption under this subsection has been a permanent resident of this state for the 5 years immediately preceding the date of application shall be prima facie proof of such residence.

(b) For every person who is entitled to the exemption provided in subsection (1) who has been a resident of this state for the 5 consecutive years prior to claiming the exemption under this subsection and who qualifies for the exemption granted pursuant to s. 196.202 as a totally and permanently disabled person, the exemption shall be increased by $4,500 of assessed valuation so that the sum of the combined exemptions is $10,000 of assessed valuation for taxes levied by the governing bodies of school districts, counties, municipalities, and special districts.

(c) No homestead shall be exempted under both paragraphs (a) and (b). In no event shall the combined exemptions of s. 196.202 and this section exceed $10,000.

[1](4) The property appraisers of the various counties shall each year compile a list of taxable property and its value removed from the assessment rolls of each local governmental unit as a result of the increased exemptions provided in subsection (3), as well as a statement of the loss of tax revenue to each such governmental unit, and shall deliver a copy thereof to the Department of Revenue upon certification of the assessment roll to the tax collector.

History.—ss. 1, 2, ch. 17060, 1935; CGL 1936 Supp. 897(2); s. 1, ch. 67-339; ss. 1, 2, ch. 69-55; ss. 1, 3, ch. 71-309; s. 1, ch. 72-372; s. 1, ch. 72-373; s. 9, ch. 74-227; s. 1, ch. 74-264; s. 1, ch. 77-102; s. 3, ch. 79-332.

[1]**Note.**—As amended by s. 3, ch. 79-332, effective upon approval of S.J.R. 1-B (1979) at a special election to be held on March 11, 1980, or at the 1980 general election, and applicable to "assessment rolls for the year 1980 and each year thereafter," subsections (3) and (4) will read:

(3)(a) For every person who is entitled to the exemption provided in subsection (1) who has been a permanent resident of this state for the 5 consecutive years prior to claiming an exemption under this subsection and who is 65 years of age or older, the exemption is increased to $10,000 of assessed valuation for taxes levied by governing bodies of counties, municipalities, and special districts. Submission of an affidavit that the applicant claiming the additional exemption under this subsection has been a permanent resident of this state for the 5 years immediately preceding the date of application shall be prima facie proof of such residence.

(b) For every person who is entitled to the exemption provided in subsection (1) who has been a resident of this state for the 5 consecutive years prior to claiming the exemption under this subsection and who qualifies for the exemption granted pursuant to s. 196.202 as a totally and permanently disabled person, the exemption is increased to $9,500 of assessed valuation for taxes levied by governing bodies of counties, municipalities, and special districts.

(c) No homestead shall be exempted under both paragraphs (a) and (b). In no event shall the combined exemptions of s. 196.202 and paragraph (a) or (b) exceed $10,000.

(d) For every person who is entitled to the exemption provided in subsection (1) who has been a resident of this state for the 5 consecutive years prior to claiming the exemption under this subsection, the exemption is increased to a total of $25,000 of assessed valuation for taxes levied by governing bodies of school districts.

(4)(a) The property appraisers of the various counties shall each year compile a list of taxable property and its value removed from the assessment rolls of each local governmental unit, except school districts, as a result of the increased exemptions provided in subsection (3), as well as a statement of the loss of tax revenue to each such governmental unit, except school districts, and shall deliver a copy thereof to the Department of Revenue upon certification of the assessment roll to the tax collector.

(b) The property appraisers of the various counties shall each year compile a list of taxable property and its value removed from the assessment rolls of each school district as a result of the excess of exempt value above that amount allowed for nonschool levies as provided in subsections (1) and (3), as well as a statement of the loss of tax revenue to each school district from levies other than the minimum financial effort required pursuant to s. 236.02(6), and shall deliver a copy thereof to the Department of Revenue upon certification of the assessment roll to the tax collector.

Note.—Former s. 192.12.
cf.—s. 6, Art. VII, State Const.

196.032 Local Government Exemption Trust Fund; annual payments to local governments for certain tax revenues lost.—

(1) There is created the Local Government Exemption Trust Fund, to be administered by the Department of Revenue.

(2) Each qualified county, municipality, or special district is entitled to receive an annual payment from the fund in an amount equal to the revenue lost as a result of the additional exemptions provided in s. 196.031(3) and the reduction of inventory assessment provided in s. 193.511 as amended by chapter 77-476, Laws of Florida. Revenue lost shall be calcu-

lated by multiplying 96 percent of the additional exemption granted in s. 196.031(3) and the reduction of inventory assessment provided in s. 193.511 as amended by chapter 77-476, Laws of Florida, by the applicable millage. A qualified local government is one which either:

(a) Made application to the department not later than December 1; or

(b) Participated in the distribution from the trust fund for the preceding year and levied an ad valorem tax for the current year.

(3) Not later than 30 days after the application deadline of each year, the department shall authorize payment to qualified local governments from the trust fund, as follows:

(a) Qualified local governments for which the department has received the data necessary to compute the amount of revenue lost in the current fiscal year's ad valorem tax levy as a result of the additional exemptions or reduction of inventory assessment shall receive payment in the amount of that loss. The department is authorized to make payments on a prorated basis if it deems the balance in the trust fund insufficient to make projected payments.

(b) Qualified local governments for which the department has not received sufficient data to compute the amount of revenue so lost shall receive payment in an amount equivalent to 85 percent of the replacement funds received the previous year from the trust fund. The department shall make full payment, or the proration if the fund is being prorated, upon receipt of sufficient data.

(4) Amounts by which actual payments to any qualified local government are less than the amount finally determined as the revenue lost from that year's ad valorem tax levy as the result of the additional homestead tax exemptions provided in s. 196.031(3) and the reduction of inventory assessment provided in s. 193.511, as amended by chapter 77-476, Laws of Florida, shall constitute a first priority charge against the following year's distribution from the trust fund. Such deficiency payments shall be made as soon as funds are available. At the end of each state fiscal year all funds not distributed from the Local Government Exemption Trust Fund shall revert to the General Revenue Fund.

History.—s. 2, ch. 74-264; s. 4, ch. 77-476; s. 86, ch. 79-400.

[1]196.033 School District Homestead Trust Fund; annual payments to school districts for certain revenues lost.—

(1) There is created the School District Homestead Trust Fund, to be administered by the Department of Revenue.

(2) Each school district shall receive an annual payment from the fund in an amount equal to the revenue lost from levies other than minimum financial effort required pursuant to s. 236.02(6) as a result of the increase of exemption amounts for school districts provided in ch. 79-332, Laws of Florida. Revenue lost shall be calculated by multiplying 96 percent of the additional exempt value resulting from said increase by the applicable school millage.

(3) The department shall authorize such payment to each school district no later than January 31 of each year.

(4) The Legislature shall annually appropriate from the General Revenue Fund a sum sufficient to meet the provisions of this section.

History.—s. 4, ch. 79-332.

[1]**Note.**—Effective upon approval of S.J.R. 1-B (1979) at a special election to be held on March 11, 1980, or at the 1980 general election, but will "apply to assessment rolls for the year 1980 and each year thereafter."

196.041 Extent of homestead exemptions.— Vendees in possession of real estate under bona fide contracts to purchase when such instruments, under which they claim title, are recorded in the office of the clerk of the circuit court where said properties lie, and who reside thereon in good faith and make the same their permanent homes; persons residing on real estate by virtue of dower or other estates therein limited in time by deed, will, jointure, or settlement; and lessees owning the leasehold interest in a bona fide lease having an original term of 98 years or more in a condominium parcel as defined in chapter 718, or persons holding leases of 50 years or more, existing prior to June 19, 1973, for the purpose of homestead exemptions from ad valorem taxes and no other purpose, shall be deemed to have legal or beneficial and equitable title to said property. In addition, a tenant-stockholder or member of a cooperative apartment corporation who is entitled solely by reason of his ownership of stock or membership in the corporation to occupy for dwelling purposes an apartment in a building owned by the corporation, for the purpose of homestead exemption from ad valorem taxes and for no other purpose, is deemed to have beneficial title in equity to said apartment and a proportionate share of the land on which the building is situated. A person who otherwise qualifies by the required residence for the homestead tax exemption provided in s. 196.031 shall be entitled to such exemption where his possessory right in such real property is based upon an instrument granting to him a beneficial interest for his life, such interest being hereby declared to be "equitable title to real estate," as that term is employed in s. 6, Art. VII of the State Constitution; and such person shall be entitled to the homestead tax exemption irrespective of whether such interest was created prior or subsequent to the effective date of this act. However, nothing herein shall be deemed to render any property owned by any municipality, county, district, or agency thereof subject to taxation.

History.—s. 2, ch. 17060, 1935; CGL 1936 Supp. 897(3); s. 1, ch. 65-281; s. 2, ch. 67-339; ss. 1, 2, ch. 69-55; s. 1, ch. 69-68; s. 1, ch. 73-201; s. 1, ch. 78-324; s. 35, ch. 79-164.

Note.—Former s. 192.13.

196.051 Homestead exemptions; definitions.— The words "resident," "residence," "permanent residence," "permanent home" and those of like import, shall not be construed so as to require continuous physical residence on the property, but mean only that place which the person claiming the exemption may rightfully and in good faith call his home to the exclusion of all other places where he may, from time to time, temporarily reside.

History.—s. 3, ch. 17060, 1935; CGL 1936 Supp. 897(4); ss. 1, 2, ch. 69-55.

Note.—Former s. 192.14.

196.061 Rental of homestead to constitute abandonment.— The rental of an entire dwelling previously claimed to be a homestead for tax purposes shall constitute the abandonment of said

dwelling as a homestead, and said abandonment shall continue until such dwelling is physically occupied by the owner thereof; provided, however, that such abandonment of such homestead after January 1 of any year shall not affect the homestead exemption for tax purposes for that particular year; provided further, the provisions of this section shall not apply to a member of the Armed Forces of the United States whose service in such forces is the result of a mandatory obligation imposed by the Federal Selective Service Act or who volunteers for service as a member of the Armed Forces of the United States; provided, however, that this section shall have no effect on the status of any property involved in litigation pending on June 12, 1959.

History.—s. 1, ch. 59-270; s. 1, ch. 67-459; ss. 1, 2, ch. 69-55.
Note.—Former s. 192.141.
cf.—s. 6, Art. VII, State Const.

196.071 Homestead exemptions; claims by members of armed forces.—Every person who is entitled to homestead exemption in this state and who is serving in any branch of the Armed Forces of the United States, shall file a claim for such exemption as required by law, either in person, or, if by reason of such service he is unable to file such claim in person he may file such claim through his or her next of kin or through any other person he may duly authorize in writing to file such claim.

History.—s. 1, ch. 28199, 1953; ss. 1, 2, ch. 69-55.
Note.—Former s. 192.161.
cf.—s. 6, Art. VII, State Const.

196.081 Exemption for certain permanently and totally disabled veterans.—

(1) Any real estate used and owned as a homestead by a veteran, honorably discharged with service-connected total and permanent disability and having a letter from the United States Government or United States Veterans' Administration or its successors certifying that the ex-serviceman is totally and permanently disabled, shall be exempt from taxation, provided the veteran was a permanent resident of the state on January 1, 1976, or a permanent resident of the state for a period of not less than 5 years as of January 1 of the tax year for which exemption is being claimed.

(2) The production by an ex-serviceman of a letter of total and permanent disability from the United States Government or United States Veterans' Administration before the property appraiser of the county wherein said ex-serviceman's property lies, shall be prima facie evidence of the fact that he is entitled to such exemption.

(3) In the event the homestead of the totally and permanently disabled veteran is held with the veteran's wife as an estate by the entirety, and in the event the veteran predeceases his wife, the exemption from taxation shall carry over to the benefit of the veteran's wife, provided, however, that she continues to reside on said real estate and use it as her domicile or until such time as she remarries or sells or otherwise disposes of the property.

History.—s. 1, ch. 57-778; s. 1, ch. 65-193; ss. 1, 2, ch. 69-55; s. 2, ch. 71-133; s. 1, ch. 76-163; s. 1, ch. 77-102.
Note.—Former s. 192.111.
cf.—ss. 3, 6, Art. VII, State Const.

196.091 Exemption for disabled veterans confined to wheelchairs.—

(1) Any real estate used and owned as a homestead by an ex-serviceman, honorably discharged with service connected total disability and who has a certificate from the government or United States Veterans' Administration, or its successors, certifying that the ex-serviceman is receiving or has received special pecuniary assistance due to disability requiring specially adapted housing and required to use a wheelchair for his transportation, shall be exempt from taxation.

(2) The production by an ex-serviceman of a certificate of disability from the United States Government or United States Veterans' Administration before the property appraiser of the county wherein his property lies, shall be prima facie evidence of the fact that he is entitled to such exemptions.

(3) In the event the homestead of the wheelchair veteran was or is held with the veteran's wife as an estate by the entirety, and in the event the veteran did or shall predecease his wife, the exemption from taxation shall carry over to the benefit of the veteran's wife provided however, that she continue to reside on said real estate and use it as her domicile or until such time as she shall remarry or sell or otherwise dispose of the property.

History.—s. 1, ch. 57-761; s. 2, ch. 65-193; ss. 1, 2, ch. 69-55; s. 1, ch. 77-102.
Note.—Former s. 192.112.
cf.—ss. 3, 6, Art. VII, State Const.

196.101 Exemption for totally and permanently disabled persons.—

(1) Any real estate used and owned as a homestead by any quadriplegic shall be exempt from taxation.

(2) Any real estate used and owned as a homestead by a paraplegic, hemiplegic, or other totally and permanently disabled person, as defined in subsection 196.012(10), who must use a wheelchair for mobility or who is legally blind, shall be exempt from taxation.

(3) The production by any totally and permanently disabled person entitled to the exemption in subsection (1) or subsection (2) of a certificate of such disability from two licensed doctors of this state or from the Veterans' Administration to the property appraiser of the county wherein the property lies shall be prima facie evidence of the fact that he is entitled to such exemption.

(4) A person entitled to the exemption in subsection (2) must be a resident of this state for 5 consecutive years prior to claiming the exemption under this section. Submission of an affidavit that the applicant claiming the exemption under subsection (2) has been a permanent resident of this state for the 5 years preceding the date of application shall be prima facie proof of such residence. However, the income of all persons residing in or upon the homestead shall not exceed $8,200. For purposes of this section, gross income shall include Veterans' Administration and any social security benefits payable to the persons.

(5) The physician's certification shall read as follows:

PHYSICIAN'S CERTIFICATION
OF
TOTAL AND PERMANENT DISABILITY

I, (name of physician), a physician licensed pursuant to chapter 458, Florida Statutes, hereby certify Mr. ..... Mrs. ..... Miss ..... Ms. ..... (name of totally and permanently disabled person), social security number ....., is totally and permanently disabled as of January 1, (year), due to the following mental or physical condition(s):

..... Quadriplegia
..... Paraplegia
..... Hemiplegia
..... Other total and permanent disability requiring use of a wheelchair for mobility
..... Legal Blindness

It is my professional belief that the above named condition(s) render Mr. ..... Mrs. ..... Miss ..... Ms. ..... totally and permanently disabled, and that the foregoing statements are true, correct, and complete to the best of my knowledge and professional belief.

Signature .....
Date .....
Florida Board of Medical Examiners license number .....
Issued on .....

NOTICE TO TAXPAYER: Each Florida resident applying for a total and permanent disability exemption must present to the county property appraiser, on or before March 1 of each year, a copy of this form (or a letter from the United States Veterans' Administration). Each form is to be completed by a licensed Florida physician.

NOTICE TO TAXPAYER AND PHYSICIAN: Section 196.131(2), Florida Statutes, states that, "Any person who shall knowingly give false information for the purpose of claiming homestead exemption . . . shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083," or, in other words, punishable by a term of imprisonment not exceeding 60 days or a fine not exceeding $500.

History.—s. 1, ch. 59-134; ss. 1, 2, ch. 69-55; s. 17, ch. 76-234; s. 49, ch. 77-104; s. 2, ch. 77-447.
Note.—Former s. 192.113.
cf.—ss. 3, 6, Art. VII, State Const.

196.111 Property appraisers to notify persons entitled to homestead exemption; publication of notice; costs.—

(1) As soon as practicable after February 5 of each current year, the property appraisers of the several counties shall mail to each person to whom homestead exemption was granted for the year immediately preceding and whose application for exemption for the current year has not been filed as of February 1 thereof, a form for application for homestead exemption, together with a notice reading substantially as follows:

NOTICE TO TAXPAYERS ENTITLED
TO HOMESTEAD EXEMPTION

Records in this office indicate that you have not filed an application for homestead exemption for the current year.

If you wish to claim such exemption, please fill out the enclosed form and file it with your property appraiser on or before March 1, 19.....

Failure to do so shall constitute a waiver of said exemption for the year 19.....

(Property Appraiser)
..... County, Florida

(2) The expenditure of funds for any of the requirements of this section is hereby declared to be for a county purpose and the board of county commissioners of each county shall appropriate and provide the necessary funds for such purposes.

History.—s. 1, ch. 67-534; ss. 1, 2, ch. 69-55; s. 14, ch. 74-234; s. 1, ch. 77-102.
Note.—Former s. 192.142.
cf.—s. 6, Art. VII, State Const.

196.121 Homestead exemptions; forms.—

[1](1) The Department of Revenue shall furnish to the property appraiser of each county a sufficient number of printed forms to be filed by taxpayers claiming to be entitled to said exemption. Said forms shall be substantially as follows:

Property Appraiser of ..... County, Florida:

I hereby make application for an exemption from all taxation up to the valuation of $5,000 on the following described property: .....
.....
.....

The title to said property is in (Name all owners and their proportionate interest) and my interest or title in this property is as follows: .....
.....

(If title is not in applicant or is held jointly with others, give relationship of the owner or joint owner, to applicant) .....
.....
.....

I reside on the above property and in good faith make the same my permanent home and do hereby declare that I am a bona fide citizen of the State of Florida.

The statements contained and agreed to herein are true and made in good faith.

(Applicant)

Subscribed and sworn to before me this ..... day of ..... 19.....
.....

(2) All other taxing units shall provide forms making only such changes as are necessary to conform to the laws governing them.

History.—s. 4, ch. 17060, 1935; CGL 1936 Supp. 897(5); ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 1, ch. 77-102; s. 5, ch. 79-332.
[1]**Note.**—As amended by s. 5, ch. 79-332, effective upon approval of S.J.R. 1-B (1979) at a special election to be held March 11, 1980, or at the 1980 general election, and applicable to "assessment rolls for the year 1980 and for each year thereafter," subsection (1) will read:
(1) The Department of Revenue shall furnish to the property appraiser of each county a sufficient number of printed forms to be filed by taxpayers claiming to be entitled to said exemption and shall prescribe the content of said forms by rule.
Note.—Former s. 192.15.
cf.—s. 6, Art. VII, State Const.

196.131 Homestead exemptions; claims.—

(1) Each taxpayer who claims said exemption shall file one of said forms, properly filled out and executed, with the property appraiser on or before March 1 of each year; and the failure to do so shall constitute a waiver of said exemption for such year. At the time each taxpayer files claim for homestead exemption, the property appraiser shall deliver to

him a receipt over his signature, or that of a duly authorized deputy, which shall appropriately identify the property covered in the application, shall bear date as of the day such application is received by the property appraiser, and shall include any serial number or other identifying data desired by said property appraiser. The possession of such receipt shall constitute conclusive proof of the timely filing of such application.

(2) Any person who shall knowingly give false information for the purpose of claiming homestead exemption as provided for in this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 5, ch. 17060, 1935; CGL 1936 Supp. 897(6); s. 1, ch. 21876, 1943; s. 1, ch. 28105, 1953; ss. 1, 2, ch. 69-55; s. 94, ch. 71-136; s. 15, ch. 74-234; s. 1, ch. 77-102; s. 1, ch. 77-174.

Note.—Former s. 192.16.

cf.—s. 6, Art. VII, State Const.

[1]196.141 Homestead exemptions; duty of property appraiser.—The property appraiser shall examine each claim for exemption filed with him or referred to him and shall allow the same if found to be in accordance with law, by marking the same approved and by making the proper deductions on the tax books. In every case the property shall be assessed whether of the value more or less than $5,000 and an appropriate deduction shall be made as the case may be.

History.—s. 6, ch. 17060, 1935; CGL 1936 Supp. 897(7); ss. 1, 2, ch. 69-55; s. 1, ch. 77-102; s. 6, ch. 79-332.

[1]Note.—As amended by s. 6, ch. 79-332, effective upon approval of S.J.R. 1-B (1979) at a special election to be held March 11, 1980, or at the 1980 general election, and applicable to "assessment rolls for the year 1980 and each year thereafter," s. 196.141 will read:

196.141 Homestead exemptions; duty of property appraiser.—The property appraiser shall examine each claim for exemption filed with him or referred to him and shall allow the same, if found to be in accordance with law, by marking the same approved and by making the proper deductions on the tax books.

Note.—Former s. 192.17.

196.151 Homestead exemptions; approval, refusal, hearings.—The property appraisers of the several counties of the state shall, as soon as practicable after March 1 of each current year and prior to the first Monday in May of said year, carefully consider all applications for tax exemptions that shall have been filed in their respective offices on or before March 1 of that year. If upon such investigation the property appraiser finds the applicant entitled to the tax exemption applied for under the law, he shall mark the application "approved" and "exemption granted" and file same in the permanent records of his office and shall make such entries upon the tax rolls of his county as will be necessary to allow such exemption to the applicant. If, after due consideration, the property appraiser should find the applicant not to be entitled under the law to the exemption asked for, such property appraiser shall immediately make out in triplicate form a notice of such disapproval, giving his reasons therefor, a copy of which notice shall be served upon the applicant by the property appraiser either by personal delivery or by registered mail to the post-office address given by the applicant and shall make return of the manner in which such notice was served upon said applicant upon the original notice thereof and immediately file same with the clerk of the property appraisal adjustment board of said county. The third copy of said notice shall likewise have entered upon it the return of the property appraiser as to service had and filed among the permanent records of his office. The original notice of disapproval of application for exemption, with entry of service upon the applicant, when filed with the clerk of the property appraisal adjustment board, shall constitute an appeal of the applicant from the decision of the property appraiser refusing to allow the exemption for which application was made to the board, and said board shall review the application and evidence presented to the property appraiser upon which the applicant based his claim for exemption and shall hear the applicant in person or by agent on behalf of his right to such exemption. The property appraisal adjustment board shall reverse the decision of the property appraiser in said cause and grant exemption to the applicant if in its judgment the applicant is entitled thereto or affirm the decision of the property appraiser. Such action of the board shall be final in said cause unless the applicant shall, within 15 days from the date of refusal of said application of said board, file in the circuit court of the county in which the homestead is situated a proceeding against the property appraiser for a declaratory judgment as is provided by chapter 86 or other appropriate proceeding. The failure of the taxpayer to appear before the property appraiser or property appraisal adjustment board or to file any paper other than the application above provided shall not constitute any bar or defense to said proceedings.

History.—s. 8, ch. 17060, 1935; CGL 1936 Supp. 897(9); ss. 1, 2, ch. 69-55; s. 36, ch. 71-355; s. 14, ch. 76-133; s. 8, ch. 76-234.

Note.—Former s. 192.19.

cf.—s. 1.01 defines registered mail to include certified mail with return receipt requested.
s. 6, Art. VII, State Const.

196.161 Homestead exemptions; lien imposed on property of person claiming exemption although not a bona fide resident.—

(1) When the estate of any person is being probated or administered in another state under an allegation that such person was a resident of that state and the estate of such person contains real property situate in this state upon which homestead exemption has been allowed pursuant to s. 6, Art. VII of the State Constitution for any year or years within 10 years immediately prior to the death of the deceased, then within 3 years after the death of said person the property appraiser of the county where said real property is located shall, upon knowledge of said fact, record a notice of tax lien against said property among the public records of said county, and said property shall be subject to the payment of all taxes exempt thereunder, plus 6 percent interest per annum, unless the circuit court having jurisdiction over the ancillary administration in this state determines that the decedent was a bona fide resident of this state during the year or years an exemption was allowed, whereupon said lien shall not be filed or, if filed, shall be canceled of record by the property appraiser of the county where said real estate is located.

(2) The collection of the taxes provided in this section shall be in the same manner as existing ad valorem taxes, and the above procedure of recapturing said taxes shall be supplemental to any existing provision under the laws of this state.

(3) The lien herein provided shall not attach to the property until said notice of tax lien is filed among the public records of the county where the property is located. Prior to the filing of such notice of lien any purchaser for value of the subject property shall take free and clear of such lien.

(4) Notice of the lien described hereinabove shall be included on all applications for homestead exemption forms.

History.—ss. 1-4, ch. 67-134; ss. 1, 2, ch. 69-55; s. 20, ch. 69-216; s. 1, ch. 74-155; s. 1, ch. 77-102.
Note.—Former s. 192.215.
cf.—s. 6, Art. VII, State Const.

196.171 Homestead exemptions; city officials.—City tax assessors, or other officials performing such duties, shall be governed by the provisions of these homestead exemption laws.

History.—s. 7, ch. 17060, 1935; CGL 1936 Supp. 897(8); ss. 1, 2, ch. 69-55.
Note.—Former s. 192.18.
cf.—s. 6, Art. VII, State Const.

196.181 Exemption of household goods and personal effects.—There shall be exempt from taxation to every person residing and making his or her permanent home in this state household goods and personal effects. Title to such household goods and personal effects may be held individually, by the entireties, jointly or in common with others.

History.—ss. 1, 3, ch. 29743, 1955; s. 1, ch. 67-378; ss. 1, 2, ch. 69-55.
Note.—Former s. 192.201.
cf.—s. 3, Art. VII, State Const.

196.192 Exemptions from ad valorem taxation.—

(1) All property used exclusively for exempt purposes shall be totally exempt from ad valorem taxation.

(2) All property used predominantly for exempt purposes shall be exempted from ad valorem taxation to the extent of the ratio that such predominant use bears to the nonexempt use.

History.—s. 3, ch. 71-133.

196.193 Exemption applications; review by property appraiser.—

(1)(a) All property exempted from the annual application requirement of s. 196.011 shall be returned, but shall be granted tax exemption by the property appraiser. However, no such property shall be exempt which is rented or hired out for other than religious, educational or other exempt purposes at any time.

(b) The property appraiser may deny exemption to property claimed by religious organizations to be used for any of the purposes set out in s. 196.011 if the use is not clear or if the property appraiser determines that the property is being held for speculative purposes or that it is being rented or hired out for other than religious or educational purposes.

(c) If the property appraiser does deny such property a tax exemption, appeal of the determination to the property appraisal adjustment board may be made in the manner prescribed for appealed tax exemptions.

(2) Applications required by this chapter shall be filed on forms distributed to the property appraisers by the Department of Revenue. Such forms shall call for accurate description of the property, the value of such property, and the use of such property.

(3) Upon receipt of an application for exemption the property appraiser shall determine:

(a) Whether the applicant falls within the definition of any one or several of the exempt classifications.

(b) Whether the applicant requesting exemption uses the property predominantly or exclusively for exempt purposes.

(c) The extent to which the property is used for exempt purposes.

In doing so, the property appraiser shall use the standards set forth in this chapter as applied by regulations of the Department of Revenue.

(4) The property appraiser shall find that the person or organization requesting exemption meets the requirements set forth in paragraphs (a) and (b) of subsection (3) before any exemption can be granted.

(5) In the event the property appraiser shall determine that any property claimed as wholly or partially exempt under this section is not entitled to any exemption or is entitled to an exemption to an extent other than that requested in the application, he shall notify the person or organization filing the application on such property of that determination in writing not later than June 1 of the year for which the application was filed. All notifications must specify the right to appeal to the property appraisal adjustment board and the procedures to follow in obtaining such an appeal. Thereafter, the person or organization filing such application, or a duly designated representative, may appeal that determination by the property appraiser to the board at the time of its regular hearing. In the event of an appeal, the property appraiser or his representative shall appear at the board hearing and present his findings of fact. If the applicant is not present or represented at the hearing, the board may make a determination on the basis of information supplied by the property appraiser or such other information on file with the board.

History.—s. 5, ch. 71-133; s. 15, ch. 76-133; s. 1, ch. 77-102; s. 1, ch. 77-174.

196.194 Property appraisal adjustment board; notice; hearings; appearance before the board.—

(1) The property appraisal adjustment board shall hear disputed or appealed applications for exemption and shall grant such exemptions in whole or in part in accordance with criteria set forth in this chapter. It may review exemptions on its own motion or upon motion of the property appraiser. Review of an exemption application upon motion of the board shall not be held until the applicant has had at least 5 calendar days' notice of the board's intent to review the application.

(2) At least 2 weeks prior to the meeting of the property appraisal adjustment board, but no sooner than May 15, notice of the meeting shall be published in a newspaper of general circulation within the county or, if no such newspaper is published within the county, notice shall be placed on the courthouse door and two other prominent places within the county. Such notice shall list:

(a) Applicants for exemption under this chapter

that have had their applications wholly or partially approved by the property appraiser with the street address or, if no street address is available, another designation of location of the property granted the exemption, its assessed value, and the extent of the exemption granted. However, this notice shall not apply to exemptions granted pursuant to s. 196.031, s. 196.081, s. 196.091, s. 196.101, s. 196.199, or s. 196.202. The notice shall indicate that a list maintained by the property appraiser of all applicants for exemption under the above mentioned sections who have had their applications for exemption wholly or partially approved is available to the public, at a location specified in the notice, and the hours during which the list may be seen. The notice shall further indicate, by name, the types of exemptions which are included in the list.

(b) Applicants for exemption under this chapter that have had their applications denied by the property appraiser, with the street address or, if no street address is available, another designation of location of the property so denied and its assessed value. However, this notice shall not apply to exemptions authorized pursuant to s. 196.031, s. 196.081, s. 196.091, s. 196.101, or s. 196.202. The notice shall further indicate that a list maintained by the property appraiser of all applicants for exemption under the above mentioned sections who have had their applications for exemption denied is available to the public, at a location specified in the notice, and the hours during which the list may be seen. The notice shall further indicate, by name, the types of exemptions which are included in the list.

(3) The exemption procedures of the property appraisal adjustment board shall be as provided in chapter 194 except as otherwise provided in this chapter. Records of the property appraisal adjustment board showing the names of persons and organizations granted exemptions, the street address or other designation of location of the exempted property, and the extent of the exemptions granted shall be part of the public record.

History.—s. 6, ch. 71-133; s. 1, ch. 76-122; s. 16, ch. 76-133.

196.195 Criteria for determining profit or nonprofit status of applicant.—

(1) Applicants requesting exemption shall supply such fiscal and other records showing in reasonable detail the financial condition, record of operation, and exempt and nonexempt uses of the property, where appropriate, for the immediately preceding fiscal year as are requested by the property appraiser or the property appraisal adjustment board.

(2) In determining whether an applicant for a religious, literary, scientific, or charitable exemption under this chapter is a nonprofit or profit-making venture or whether the property is used for a profit-making purpose, the following criteria shall be applied:

(a) The reasonableness of any advances or payment directly or indirectly by way of salary, fee, loan, gift, bonus, gratuity, drawing account, commission, or otherwise (except for reimbursements of advances for reasonable out-of-pocket expenses incurred on behalf of the applicant) to any person, company, or other entity directly or indirectly controlled by the applicant or any officer, director, trustee, member, or stockholder of the applicant;

(b) The reasonableness of any guaranty of a loan to, or an obligation of, any officer, director, trustee, member, or stockholder of the applicant or any entity directly or indirectly controlled by such person, or which pays any compensation to its officers, directors, trustees, members, or stockholders for services rendered to or on behalf of the applicant;

(c) The reasonableness of any contractual arrangement by the applicant or any officer, director, trustee, member, or stockholder of the applicant regarding rendition of services, the provision of goods or supplies, the management of the applicant, the construction or renovation of the property of the applicant, the procurement of the real, personal, or intangible property of the applicant, or other similar financial interest in the affairs of the applicant;

(d) The reasonableness of payments made for salaries for the operation of the applicant or for services, supplies and materials used by the applicant, reserves for repair, replacement, and depreciation of the property of the applicant, payment of mortgages, liens, and encumbrances upon the property of the applicant, or other purposes;

(e) The reasonableness of charges made by the applicant for any services rendered by it in relation to the value of those services.

(3) Each applicant must affirmatively show that no part of the subject property, or the proceeds of the sale, lease, or other disposition thereof, will inure to the benefit of its members, directors, or officers or any person or firm operating for profit or for a nonexempt purpose.

(4) No application for exemption may be granted for religious, literary, scientific, or charitable use of property until the applicant has been found by the property appraiser or, upon appeal, by the property appraisal adjustment board to be nonprofit as defined in this section.

History.—s. 7, ch. 71-133; s. 17, ch. 76-133.

196.196 Criteria for determining that portion of charitable, religious, scientific or literary property entitled to exempt status.—

(1) In the determination of whether an applicant is actually using all or a portion of its property predominantly for a charitable, religious, scientific, or literary purpose, the following criteria shall be applied:

(a) The nature and extent of the charitable, religious, scientific, or literary activity of the applicant, a comparison of such activities with all other activities of the organization, and the utilization of the property for charitable, religious, scientific or literary activities as compared with other uses.

(b) The extent to which the property has been made available to groups who perform exempt purposes, at a charge that is equal to or less than the cost of providing the facilities for their use, or the extent to which services are provided to persons at a charge that is equal to or less than the cost of providing such services. Such rental or service shall be considered as part of the exempt purposes of the applicant.

(2) Only those portions of property used predominantly for charitable, religious, scientific or literary purposes shall be exempt. In no event shall an incidental use of property either qualify such property

for an exemption or impair the exemption of an otherwise exempt property.

(3) Except as otherwise provided herein, property claimed as exempt for literary, scientific, or charitable purposes which is used for profit-making purposes shall be subject to ad valorem taxation. Use of property for functions not requiring a business or occupational license conducted by the organization at its primary residence the revenue of which is used wholly for exempt purposes shall not be considered profit making. In this connection the playing of bingo on such property shall not be considered as using such property in such a manner as would impair its exempt status.

History.—s. 8, ch. 71-133.
cf.—s. 3, Art. VII, State Const.

196.197 Additional provisions for exempting property used by hospitals, nursing homes, and homes for special services.—In addition to criteria for granting exemptions for charitable use of property set forth in other sections of this chapter, hospitals, nursing homes, and homes for special services shall be exempt to the extent that they meet the following criteria:

(1) The applicant must be a Florida corporation not for profit that has been exempt as of January 1 of the year for which exemption from ad valorem property taxes is requested from federal income taxation by having qualified as an exempt organization under the provisions of s. 501(c)(3) of the Internal Revenue Code of 1954 or of the corresponding section of a subsequently enacted federal revenue act.

(2) In determining the extent of exemption to be granted to institutions licensed as hospitals, nursing homes, and homes for special services, portions of the property leased as parking lots or garages operated by private enterprise shall not be deemed to be serving an exempt purpose and shall not be exempt from taxation. Property or facilities which are leased to a nonprofit corporation which provides direct medical services to patients in a nonprofit or public hospital and qualifies under s. 196.196 of this chapter are excluded and shall be exempt from taxation.

History.—s. 9, ch. 71-133; s. 2, ch. 73-340; s. 1, ch. 73-344; s. 3, ch. 74-264; ss. 14, 15, ch. 76-234.
cf.—s. 3, Art. VII, State Const.

196.1975 Additional provisions for exempting property used by homes for the aged.—In addition to criteria for granting exemptions for charitable use of property set forth in other sections of this chapter, homes for the aged shall be exempt to the extent that they meet the following criteria:

(1) The applicant must be a Florida corporation not for profit that has been exempt as of January 1 of the year for which exemption from ad valorem property taxes is requested from federal income taxation by having qualified as an exempt organization under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954 or of the corresponding section of a subsequently enacted federal revenue act.

(2) Licensing by the Department of Health and Rehabilitative Services shall not be required for tax exemption hereunder if a home for the aged applicant requires its residents to be ambulatory, furnishes no medical facilities, nursing services, or dining services to its residents, and is exempt from the payment of income taxes to the United States for income derived from the operation of the home.

(3) Portions of the home for the aged devoted exclusively to the conduct of religious services or the rendering of nursing or medical services shall be exempt from ad valorem taxation.

(4)(a) After removing the assessed value exempted in subsection (3), homes for the aged shall be deemed to be used for charitable purposes only to the extent that residency in the applicant home is restricted to or occupied by persons who have resided in the applicant home and in good faith made the State of Florida their permanent home for 5 years prior to January 1 of the year in which exemption is claimed and also meet the requirements set forth in one of the following paragraphs:

1. Persons having a gross income of not more than $7,200 per year, who are 62 years of age or older.

2. Couples, one of whom must be 62 years of age or older, having a combined gross income of not more than $8,000 per year.

3. Persons who are totally and permanently disabled and have gross incomes of not more than $7,200 per year.

4. Couples, one or both of whom are totally and permanently disabled, having a combined gross income of not more than $8,000 per year.

However, the requirement for 5 consecutive years' residence shall not apply to any person who has lived in the home for the aged on or before July 4, 1976, or to nonprofit housing projects which are financed by a mortgage loan made or insured by the U. S. Department of Housing and Urban Development made under s. 202 of the Housing Act of 1959, as amended, or s. 236 or s. 221(d)(3) of the National Housing Act, as the same shall apply to nonprofit rental housing programs for lower income elderly and handicapped persons.

(b) The maximum income limitations permitted in subsection (4) shall be adjusted, effective January 1, 1977, and on each succeeding year, by the percentage change in the average cost-of-living index in the period January 1 through December 31 of the immediate prior year compared with the same period for the year prior to that. The index is the average of the monthly consumer price index figures for the stated 12-month period, relative to the United States as a whole, issued by the United States Department of Labor.

(5) For the purposes of this section, gross income shall include social security benefits payable to the person or couple or assigned to an organization designated specifically for the support or benefit of that person or couple. It is hereby declared to be the intent of the Legislature that this section implements the ad valorem tax exemption authorized in the third sentence of s. 3(a), Art. VII, State Constitution, for purposes of granting such exemption to homes for the aged. The Legislature, while recognizing that problems facing the aged of the state frequently require the expenditure of public funds or the extending of charity to the aged by nongovernmental entities, realizes that not all aged persons are in need of

public or private assistance. Age has its drawbacks and hardships which require special care and attention and are aggravated by indigency. Homes for the aged frequently provide such care and attention, but a home for the aged does not necessarily serve a charitable purpose. Charity is a function performed to help those in need of assistance and is not necessarily based exclusively on age. It is for this reason that the Legislature hereby provides criteria to be used by the state's property appraisers and property appraisal adjustment boards in determining whether a particular home for the aged is being used for a charitable purpose and is thereby entitled to an exemption from ad valorem taxation.

(6) Physical occupancy on January 1 shall not be required in those instances in which a home restricts occupancy to persons meeting the income requirements specified in this section. Those portions of such property failing to meet those requirements shall qualify for an alternative exemption as provided in subsection (7). In those homes in which at least 25 percent of the units or apartments of the home are restricted to or occupied by persons meeting the income requirements specified in this section, the common areas of said home shall be exempt from taxation.

(7)(a) Each unit or apartment of homes for the aged which are owned and operated by a Florida corporation organized under the provisions of chapter 617 not exempted in subsections (3) or (4), which property is used by such homes for the aged for the purposes for which they were organized, shall be exempt from all ad valorem taxation, except for assessments for special benefits, to the extent of $5,000 of assessed valuation of such property for each apartment or unit:

1. Which is used by such homes for the aged for the purposes for which they were organized, and

2. Which is occupied on January 1 of the year in which exemption from ad valorem property taxation is requested, by a person who resides therein and in good faith makes the same his or her permanent home.

(b) The exemption provided for in paragraph (a) shall be increased to $10,000 of assessed valuation for taxes levied by governing bodies of school districts, counties, municipalities, and special districts for each apartment or unit:

1. Which is used by such homes for the aged for the purpose for which they were organized, and

2. Which is occupied on January 1 of the year in which exemption from ad valorem property taxation is requested, by a person who is 65 years of age or older and who has resided therein and in good faith made the State of Florida his or her permanent home for the 5 consecutive years prior to such date. However, the requirement for 5 consecutive years' residence shall not apply to any person who has lived in the home for the aged on or before July 4, 1976.

(c)1. Each applicant home for an exemption under paragraph (a) shall file with the annual application for exemption an affidavit from each person who occupies a unit or apartment for which an exemption under said paragraph is claimed, stating that he or she resides therein and in good faith makes the same his or her permanent home.

2. Each applicant home for the increased exemption under paragraph (b) shall file with the annual application for exemption an affidavit from each person who occupies a unit or apartment for which such increased exemption is claimed, stating that he or she was 65 years of age or older on January 1 of the year in which the exemption is claimed and that he or she has resided in the state for the 5 consecutive years prior to such date.

(d) The words "permanent home" as used in this section shall not be construed so as to require a continuous physical residence in such unit or apartment but means only that the person occupying such apartment or unit rightfully and in good faith calls it his or her home to the exclusion of all other places where he or she may, from time to time, temporarily reside.

History.—s. 12, ch. 76-234; s. 1, ch. 77-174; s. 1, ch. 77-448; s. 87, ch. 79-400.

196.1976 Provisions of ss. 196.1975 or 196.197(1) or (2); severability.—If any provision of s. 196.1975 or subsections 196.197(1) or (2), created and amended by chapter 76-234, Laws of Florida, is held to be invalid or inoperative for any reason, it is the legislative intent that the invalidity shall not affect other provisions or applications of said sections which can be given effect without the invalid provision or application, and to this end the provisions of said sections are declared to be severable.

History.—s. 18, ch. 76-234; s. 2, ch. 77-448; s. 88, ch. 79-400.

196.198 Educational property; exemption.—Educational institutions within this state and their property used exclusively for educational purposes shall be exempt from taxation. Sheltered workshops providing rehabilitation and retraining of disabled individuals and exempted by a certificate under s. (d) of the Federal Fair Labor Standards Act of 1938, as amended, are declared wholly educational in purpose and shall be exempted from certification, accreditation, and membership requirements set forth in s. 196.012. Those portions of property of college fraternities and sororities certified by the president of the college or university to the appropriate property appraiser as being essential to the educational process, shall be exempt from ad valorem taxation. The use of property by public fairs and expositions chartered by chapter 616 is presumed to be an educational use of such property and shall be exempt from ad valorem taxation to the extent of such use.

History.—s. 10, ch. 71-133; s. 1, ch. 77-102.
cf.—s. 3, Art. VII, State Const.

196.1985 Exemptions for property owned and used by labor organizations.—Real property owned and used by any labor organization which has a charter from a state or national organization, which property is used predominantly by such organization for educational purposes, is hereby defined as property within the purview of s. 3, Art. VII of the State Constitution and shall be exempt from ad valorem taxation to the extent of such use pursuant to s. 196.192(2). Any portion of such property used for nonexempt purposes may be valued and

placed upon the tax rolls separately from any portion entitled to exemption pursuant to this section.
History.—s. 1, ch. 77-459.

196.199 Exemptions for property owned by governmental units.—

(1) Property owned and used by the following governmental units shall be exempt from taxation under the following conditions:

(a) All property of the United States shall be exempt from ad valorem taxation, except such property as is subject to tax by this state or any political subdivision thereof or any municipality under any law of the United States.

(b) All property of this state which is used for governmental purposes shall be exempt from ad valorem taxation except as otherwise provided by law.

(c) All property of the several political subdivisions and municipalities of this state which is used for governmental, municipal, or public purposes shall be exempt from ad valorem taxation, except as otherwise provided by law.

(2) Property owned by the following governmental units, but used by nongovernmental lessees, shall only be exempt from taxation under the following conditions:

(a) Leasehold interests in property of the United States, of the state or any of its several political subdivisions, or of municipalities, agencies, authorities, and other public bodies corporate of the state shall be exempt from ad valorem taxation only when the lessee serves or performs a governmental, municipal, or public purpose or function, as defined in s. 196.012(5). In all such cases, all other interests in the leased property shall also be exempt from ad valorem taxation.

(b) The exemption provided by this subsection shall not apply to those portions of a leasehold estate which are used predominantly for a private, commercial purpose and serve no governmental, municipal, or public purpose.

(c) Any governmental property leased to an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes shall be exempt from taxation.

(3) Nothing herein or in s. 196.001 shall require a governmental unit or authority to impose taxes upon a leasehold estate created, extended, or renewed prior to April 15, 1976, if the lease agreement creating such leasehold estate contains a covenant on the part of such governmental unit or authority as lessor to refrain from imposing taxes on the leasehold estate during the term of the leasehold estate, but any such covenant shall not prevent taxation of a leasehold estate by any such taxing unit or authority other than the unit or authority making such covenant.

(4) Property owned by any municipality, agency, authority, or other public body corporate of the state which becomes subject to a leasehold interest or other possessory interest of a nongovernmental lessee other than that described in paragraph (a) of subsection (2), after April 14, 1976, shall be subject to ad valorem taxation unless the lessee is an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes.

(5) Leasehold interests in governmental property shall not be exempt pursuant to this subsection unless an application for exemption has been filed on or before March 1 with the property appraiser. The property appraiser shall review the application and make findings of fact which shall be presented to the property appraisal adjustment board at its convening, whereupon the board shall take appropriate action regarding the application. If the exemption in whole or in part is granted, or established by judicial proceeding, it shall remain valid for the duration of the lease unless the lessee changes its use, in which case the lessee shall again submit an application for exemption. The requirements set forth in s. 196.194 shall apply to all applications made under this subsection.

(6) No exemption granted before June 1, 1976, shall be revoked by this chapter if such revocation will impair any existing bond agreement.

(7) Property which is originally leased for 99 years or more, exclusive of renewal options, shall be deemed to be "owned" for purposes of this section.

(8)(a) Any and all of the aforesaid taxes on any leasehold described in this section shall not become a lien on same or the property itself, but shall constitute a debt due and shall be recoverable by legal action or by the issuance of tax executions that shall become liens upon any other property in any county of this state of the taxpayer who owes said tax.

(b) Nonpayment of any such taxes by the lessee shall result in the revocation of any occupational license of such person or the revocation, upon certification hereunder by the property appraiser to the Department of State, of the corporate charter of any such domestic corporation or the revocation, upon certification hereunder by the property appraiser to the Department of State, of the authority of any foreign corporation to do business in Florida, as appropriate, which such license, charter, or authority is related to the leased property.
History.—s. 11, ch. 71-133; s. 1, ch. 76-283; s. 1, ch. 77-174.

196.2001 Exemption for property owned by a not-for-profit sewer and water company.—

(1) Property of any sewer and water company owned or operated by a Florida corporation not for profit, the income from which has been exempt, as of January 1 of the year for which the exemption from ad valorem property taxes is requested, from federal income taxation by having qualified under s. 115(a) of the Internal Revenue Code of 1954 or of a corresponding section of a subsequently enacted federal revenue act, shall be exempt from ad valorem taxation, provided the following criteria for exemption are met by the not-for-profit sewer and water company:

(a) Net income derived by the company does not inure to any private shareholder or individual.

(b) Gross receipts do not constitute gross income for federal income tax purposes.

(c) Members of the company's governing board serve without compensation.

(d) Rates for services rendered by the company are established by the governing board of the county or counties within which the company provides service; by the Public Service Commission, in those counties in which rates are regulated by the commission; or by the Farmers Home Administration.

(e) Ownership of the company reverts to the county in which the company conducts its business upon retirement of all outstanding indebtedness of the company.

Notwithstanding anything above, no exemption shall be granted until the property appraiser has considered the proposed exemption and has made a specific finding that the water and sewer company in question performs a public purpose in the absence of which the expenditure of public funds would be required.

(2)(a) No exemption authorized pursuant to this section shall be granted unless the company applies to the property appraiser on or before March 1 of each year for such exemption. In its annual application for exemption, the company shall provide the property appraiser with the following information:

1. Financial statements for the immediately preceding fiscal year, certified by an independent certified public accountant, showing the financial condition and records of operation of the company for that fiscal year.

2. Any other records or information as may be requested by the property appraiser for the purposes of determining whether the requirements of subsection (1) have been met.

(b) The exemption from ad valorem taxation shall not be granted to a not-for-profit sewer and water company unless the company meets the criteria set forth in subsection (1). In determining whether the company is operated as a profit-making venture, the property appraiser shall consider the following:

1. Any advances or payments directly or indirectly by way of salary, fee, loan, gift, bonus, gratuity, drawing account, commission, or otherwise (except for reimbursement of advances for reasonable out-of-pocket expenses incurred on behalf of the applicant) to any person, company, or other entity directly or indirectly controlled by such persons, or which pays any compensation to its officers, directors, trustees, members, or stockholders for services rendered to or on behalf of the corporation;

2. Any contractual arrangement by the corporation with any officer, director, trustee, member, or stockholder of the corporation regarding rendition of services, the provision of goods or supplies, the management of applicant, the construction or renovation of the property of the corporation, the procurement of the real, personal, or intangible property of the corporation, or other similar financial interest in the affairs of the corporation;

3. The reasonableness of payments made for salaries for the operations of the corporation or for services, supplies, and materials used by the corporation, reserves for repair, replacement, and depreciation of the property of the corporation, payment of mortgages, liens, and encumbrances upon the property of the corporation, or other purposes.

History.—s. 11, ch. 76-234; s. 2, ch. 77-459.

196.202 Property of widows, blind persons, and persons totally and permanently disabled.—Property to the value of $500 of every widow, blind person, or totally and permanently disabled person who is a bona fide resident of this state shall be exempt from taxation.

History.—s. 12, ch. 71-133.
cf.—s. 3(b), Art. VII, State Const.

196.24 Evidence of disability of ex-servicemen; exemption.—Any ex-serviceman, a bona fide resident of the state, who has been disabled to a degree of 10 percent or more in war service between the dates of April 6, 1917, and July 2, 1921; December 7, 1941, and September 2, 1945; June 25, 1950, and February 1, 1955; August 4, 1964, to the date of cessation of hostilities as determined by the United States Government, or by misfortune, shall be entitled to the exemption from taxation provided for in s. 3(b), Art. VII of the Constitution, and the production by him of a certificate of disability from the United States Government before the property appraiser of the county wherein his property lies shall be prima facie evidence of the fact that he is entitled to such exemption.

History.—s. 1, ch. 16298, 1933; CGL 1936 Supp. 897(1); s. 2, ch. 67-457; ss. 1, 2, ch. 69-55; s. 16, ch. 69-216; s. 1, ch. 77-102.
Note.—Former s. 192.11.
cf.—s. 3, Art. VII, State Const.

196.28 Cancellation of delinquent taxes upon lands used for road purposes, etc.—

(1) The board of county commissioners of each county of the state be and it is hereby given full power and authority to cancel and discharge any and all liens for taxes, delinquent or current, held or owned by the county or the state, upon lands, heretofore or hereafter, conveyed to, or acquired by any agency, governmental subdivision or municipality of the state, or the United States, for road purposes, defense purposes, recreation, reforestation or other public use; and said lands shall be exempt from county taxation so long as the same are used for such public purpose.

(2) Such cancellation shall be by resolution of the board of county commissioners, duly adopted and entered upon its minutes, properly describing such lands, and setting forth the public use to which the same are, or will be, devoted. Upon receipt of a certified copy of such resolution, the proper officials of the county, and of the state, are hereby authorized, empowered and directed to make proper entries upon the records to accomplish such cancellation and to do all things necessary to carry out the provisions of this section, and to make the same effective, this section being their authority so to do.

History.—ss. 1, 2, ch. 22845, 1945; ss. 1, 2, ch. 69-55.
Note.—Former s. 192.59.

196.29 Cancellation of certain taxes on real property acquired by counties.—Whenever any county or school board of this state has heretofore acquired, or shall hereafter acquire, title to any real property, the taxes of all political subdivisions, as defined in s. 1.01, upon such property for the year in which title to such property was acquired, or shall hereafter be acquired, shall be that portion of the taxes levied or accrued against such property for such year which the portion of such year which has expired at the date of such acquisition bears to the

entire year, and the remainder of such taxes for such year shall stand canceled.

History.—s. 1, ch. 26974, 1951; s. 1, ch. 65-179; ss. 1, 2, ch. 69-55; s. 1, ch. 69-300.

Note.—Former s. 192.60.

196.295 Property transferred to exempt governmental unit; tax payment into escrow.—In the event fee title to property shall be acquired between January 1 and November 1 of any year by a governmental unit exempt under this chapter by any means except condemnation or shall be acquired by any means except condemnation for use exclusively for federal, state, county, or municipal purposes, the taxpayer shall be required to place in escrow with the county tax collector an amount equal to the current taxes prorated to the date of transfer of title, based upon the current assessment and millage rates on the land involved. This fund shall be used to pay any ad valorem taxes due, and the remainder of taxes which would otherwise have been due for that current year shall stand canceled.

History.—s. 13, ch. 74-234; s. 1, ch. 75-103.

196.31 Taxes against state properties; notice.—Whenever lands or other property of the state or of any agency thereof are situated within any district, subdistrict or governmental unit for the purpose of taxation, which said lands or any of them or other property, are or shall be subject to special assessments or taxes, the tax collector or other tax collecting agency having authority to collect such taxes or special assessments shall, upon such taxes or special assessments becoming legally due and payable, mail to the state agency or department holding such land or other property, or if held by the state, then to the Board of Trustees of the Internal Improvement Trust Fund at Tallahassee, a notice and make notation under the same date of such notice on the tax roll, which said notice shall contain a description of the lands or other property owned by the state or its agency upon which taxes or special assessments have been levied and are collectible, and the amount of such special assessments or taxes, and unless such notation of notice on the tax roll shall have been made, any nonpayment by the said state or its agency of taxes or special assessments shall not constitute a delinquency or be the basis on which the said lands or other property may be sold for the nonpayment of such taxes or special assessments.

History.—s. 1, ch. 15640, 1931; CGL 1936 Supp. 953(1); ss. 1, 2, ch. 69-55; ss. 27, 35, ch. 69-106.

Note.—Former s. 192.27.

cf.—s. 153.05 Water system improvements and sanitary sewers; special assessment.

s. 235.34 Expenditures authorized for certain improvements to school plants.

s. 298.36 Assessing land for reclamation; apportionment of tax; lands belonging to state assessed; drainage tax record.

196.32 Executive Office of the Governor; consent required to certain assessments.—When, under any law of this state heretofore or hereafter enacted providing for the imposition of any tax, provision is made for the payment of any portion of the revenue derived from such tax by any state officer, officers, or board, to defray expenses incident to the enforcement and collection thereof, no such state officer, officers, or board may pay or agree to pay any of such funds without the express authorization and approval of the Executive Office of the Governor.

History.—s. 1, ch. 21919, 1943; ss. 2, 3, ch. 67-371; ss. 1, 2, ch. 69-55; ss. 31, 35, ch. 69-106; s. 94, ch. 79-190.

Note.—Former s. 192.51.

CHAPTER 197

TAX COLLECTIONS, SALES, AND LIENS

197.012 When taxes due; discounts if paid before certain time.—All taxes shall be due and payable on November 1 of each year or as soon thereafter as the assessment roll, of which he shall give notice by publication, may come into the hands of the tax collector. The tax collector is hereby vested with the power, and it shall be his duty, to collect all taxes as shown on the tax roll, which taxes shall become delinquent on April 1 following the year in which they are assessed. On all taxes assessed on the county tax rolls and collected by the county tax collector, discounts for early payment thereof shall be at the rate of 4 percent in the month of November and at any time within 30 days after the mailing of the original tax notice; 3 percent in the month of December; 2 percent in the following month of January; and 1 percent in the following month of February. The taxes paid in March shall be without discount. It shall also be his duty, and he is hereby vested with the power, to collect by sale of the tax liens on the real property and by seizure and sale of personal property, all taxes assessed on the roll and which are not paid prior to April 1 of the year following the year in which the taxes are assessed.

History.—s. 42, ch. 4322, 1895; s. 7, ch. 4515, 1897; GS 541; s. 41, ch. 5596, 1907; RGS 741; CGL 950; s. 2, ch. 14572, 1929; s. 10, ch. 20722, 1941; s. 6, ch. 22079, 1943; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 1, ch. 73-332.

Note.—Former ss. 193.41, 197.055.

[1]197.013 Prepayment of estimated tax by installment method.—

(1) Ad valorem taxes on any real property may be prepaid in installments as provided in this section. A taxpayer who elects to prepay taxes shall make payments based upon an estimated tax, equal to the actual taxes levied upon the subject property in the prior year. Such taxpayer shall complete and file with the tax collector prior to making the first installment payment pursuant to this section an application to prepay such taxes by installment. The application shall be made on forms supplied by the Department of Revenue and provided to the taxpayer by the tax collector. Installment payments shall be made according to the following schedule:

(a) The first payment of one-quarter of the total amount of estimated taxes due shall be made in June of the year in which the taxes are assessed. A 6 percent discount applied against the amount of the installment shall be granted for such payment.

(b) The second payment of one-quarter of the total amount of estimated taxes due shall be made in September of the year in which the taxes are assessed. A 4.5 percent discount applied against the amount of the installment shall be granted for such payment.

(c) The third payment of one-quarter of the total amount of estimated taxes due, plus one-half of any adjustment made pursuant to a determination of actual tax liability, shall be made in December of the year in which taxes are assessed. A 3 percent discount applied against the amount of the installment shall be granted for such payment.

(d) The fourth payment of one-quarter of the total amount of estimated taxes due, plus one-half of any adjustment made pursuant to a determination of actual tax liability, shall be made in March following the year in which taxes are assessed. No discount shall be granted for such payment.

(2) A taxpayer who fails to make a timely installment payment shall not be required to discontinue his participation in the installment payment plan. Instead, such taxpayer shall be required to remit with his next installment payment an amount equal to the current installment amount plus any installment amount due but unpaid. The applicable discount rate for the current installment shall be applied against the sum of the current and past due installment payment amounts.

(3) Nothing in this section shall preclude a taxpayer who has applied for the installment method of payment or who has made one or more installment payments from discontinuing his participation in such plan. In such event, the remainder of the taxpayer's taxes shall be due and payable as provided in s. 197.012.

(4) Upon receiving a taxpayer's application for participation in the prepayment installment plan, the tax collector shall mail to the taxpayer a statement of the taxpayer's estimated tax liability which shall be equal to the actual taxes levied on the subject property in the preceding year, and which statement shall indicate the amount of each quarterly installment after application of the discount rates provided in this section, and a payment schedule, based upon the schedule provided in this section and furnished by the Department of Revenue. During the first month that the tax roll is open for payment of taxes, the tax collector shall mail to such taxpayer a statement which shows the amount of the remaining installment payments to be made after application of the discount rates provided in this section.

(5) The moneys collected under this section shall be placed in an interest-earning escrow account. The interest earned on this account shall be distributed

as provided in s. 197.016(2).

(6) Notice of the right to prepay taxes pursuant to this section shall be provided by publication in a newspaper of general circulation within the county twice each year during the month of May. Such notice shall be no less than one-quarter page in size of a standard-size or a tabloid-size newspaper, and the headline in the notice shall be in a type no smaller than 18 point. Such notice shall not be published in that section of the newspaper where legal or classified advertisements appear. In addition, the tax collector shall mail to the owner of each parcel appearing on the assessment roll an application form that includes an explanation of the right to prepay taxes pursuant to this section. The application forms shall be provided by the Department of Revenue and shall accompany the notice of taxes provided for by s. 197.012. Said newspaper notice shall include a facsimile of the application form for installment payment as issued by the department pursuant to subsection (1), and may be used by the taxpayer in lieu thereof.

History.—s. 18, ch. 79-334.

[1]**Note.**—As created by s. 18, ch. 79-334, applies to assessment rolls and taxes levied thereon for the year 1980 and each year thereafter.

[1]197.014 Payment of taxes prior to certified roll procedure.—

(1) It is the legislative intent to provide a method for voluntary payment of ad valorem taxes when the tax roll cannot be certified for collection of taxes in time to allow payment prior to January 1 of the current tax year. It is the legislative intent that all taxpayers shall be afforded the opportunity to pay estimated taxes pursuant to this section.

(2) When it appears that it shall be impossible for the property appraiser to certify the tax roll for collection in time sufficient to allow payment of current taxes prior to January 1, the property appraiser shall certify such circumstances in writing to the tax collector on or before December 1 and shall provide to the collector a true copy of the preceding year's tax roll as certified for collection and statement of current year's millages from taxing authorities which have so certified. The property appraiser's certification shall constitute authority for the collector to receive payments of estimated taxes.

(3) Immediately upon receipt of the property appraiser's certification, the tax collector shall cause to be published in a newspaper of general circulation in the county, and shall prominently post at the courthouse door, a notice that the tax roll will not be certified for collection prior to January 1 and that payments of estimated taxes will be allowed by those taxpayers who tender payment to the collector on or before December 31.

(4) The tax collector shall accept payment of estimated current taxes based upon an amount equal to the taxes levied against the parcel in the previous year or an amount the tax collector deems to be a more accurate representation of the taxpayer's current tax liability.

(5) When estimated taxes are paid, the collector shall issue a validated temporary tax notice-receipt. Estimated taxes collected pursuant to this section shall be accounted for, deposited, and distributed as provided generally for ad valorem taxes. However, no distribution shall be made of estimated taxes until receipt of a tax roll properly certified for collection, except upon request for an emergency distribution made by the governing body of a taxing authority, certifying a lack of funds for current operations.

(6) Discounts shall not be allowed on payments of estimated taxes, but shall be allowed on the amount of total taxes levied, determined at the time the tax roll has been certified for collection and final tax notice-receipts are issued.

(7) Interest earned on payments of estimated taxes prior to certification of the tax roll for collection shall be retained by the tax collector's office and disbursed as follows:

(a) First, to pay the expenses of the tax collector's office in administering and accounting for payments of estimated taxes;

(b) Second, any excess remaining shall be distributed pro rata to the taxing authorities in the proportion that each authority's tax levy for the prior tax year bears to the total ad valorem tax levy for the prior tax year; however, a taxing authority which has requested and received an emergency distribution of estimated taxes shall not receive this distribution.

(8) Upon receipt of the tax roll certified for collection, the tax collector shall prepare a tax notice-receipt for each taxpayer who has made payment of estimated taxes, showing the amount of estimated taxes paid and the taxes remaining unpaid or any overpayment. Each such tax notice-receipt shall show the periods in which discounts are authorized, the amount of discount, and the discount applied to the estimated taxes with the appropriate remainder due.

(9) After the discount has been applied to the estimated taxes paid and it is determined that an overpayment has occurred, the following shall apply:

(a) If the amount of overpayment is $5.00 or less, then no refund shall be processed.

(b) If the amount of overpayment is more than $5.00, the tax collector shall immediately refund to the person who paid the estimated tax the amount of overpayment. Department of Revenue approval shall not be required for the refund of overpayment made pursuant to this subsection.

(10) Any remaining unpaid taxes which become delinquent after notice by the tax collector shall be collected as are other delinquent taxes pursuant to this chapter.

(11) Payment of estimated taxes shall not preclude the right of the taxpayer to challenge his assessment as provided in chapter 194.

History.—s. 28, ch. 79-334.

[1]**Note.**—As created by s. 28, ch. 79-334, applies to assessment rolls and taxes levied thereon for the year 1980 and each year thereafter.

197.016 When collections are to be made; distributions to taxing authorities; when taxes are delinquent; time of final settlement.—

(1) Tax collectors are required to make all collections before April 1 following the year in which the taxes were assessed. All taxes collected shall be delivered forthwith to the governmental unit levying the tax. All unpaid taxes upon real and personal property shall become delinquent on April 1 of the

year following the year in which the taxes were assessed. Real property taxes shall bear interest at the rate of 18 percent per year from that date until a certificate is sold, from which time the interest rate shall be as bid by the buyer. Delinquent taxes on real property may be paid after April 1 but prior to the sale of a tax certificate by paying all taxes, costs, advertising charges, and interest. Personal property taxes shall bear interest at 18 percent per year from April 1 until paid or barred under chapter 95.

(2) The collector shall distribute to each taxing authority taxes collected according to the following schedule: During the first 2 months after the tax roll comes into his possession for collection, there shall be at least four distributions; in all other months there shall be at least one. A different schedule may be used if the collector and the governing board of the taxing authority mutually agree.

(3) On or before the third Monday in July following the year in which the taxes were assessed, the collector shall make a final report and settlement with the county commissioners. All warrants now outstanding shall be in full force until all the taxes remaining unpaid shall have been collected and the final report and settlement made by the tax collector with the county authorities, and all warrants heretofore issued or to be issued shall be in full force in the hands of any successor of the tax collector to whom they may have been issued.

(4) The tax collector of every county in this state shall collect the taxes so assessed on railroad spurs and sidetracks by the county property appraiser or the Department of Revenue as other personal taxes are collected.

History.—ss. 36, 50, ch. 4322, 1895; s. 10, ch. 4515, 1897; s. 2, ch. 4665, 1899; GS 552, 558; ss. 34, 50, ch. 5596, 1907; RGS 735, 751, 756; s. 1, ch. 8570, 1921; CGL 943, 964, 969; s. 3, ch. 14572, 1929; ss. 7, 11, ch. 20722, 1941; s. 5, ch. 22079, 1943; s. 1, ch. 28286, 1953; s. 1, ch. 63-167; ss. 1, 2, ch. 67-533; ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 12, ch. 69-353; s. 1, ch. 72-268; s. 2, ch. 73-332; s. 53, ch. 73-333; s. 1, ch. 77-102.

Note.—Former ss. 193.51, 197.081, 193.50, 197.071, 195.05, 197.045.

197.0161 Calculation of interest.—Except as provided in s. 197.0168 with regard to deferred payment tax certificates, interest to be accrued pursuant to this chapter shall be calculated on a monthly basis from the first day of each month. Certificate holders shall draw no interest during the period of time the 3 percent mandatory charge under s. 197.062(3) is in effect.

History.—s. 2, ch. 78-32.

197.0163 Short title.—This act shall be known and may be cited as the "Homestead Property Tax Deferral Act."

History.—s. 1, ch. 77-301.

197.0164 Definitions.—

(1) "Household" means a person or group of persons living together in a room or group of rooms as a housing unit.

[1](2) "Income" means the "adjusted gross income," as defined in s. 62 of the United States Internal Revenue Code, of all members of a household.

History.—s. 2, ch. 77-301; s. 1, ch. 78-161; s. 19, ch. 79-334.

[1]**Note.**—As amended by s. 19, ch. 79-334, applies to assessment rolls and taxes levied thereon for the year 1979 and each year thereafter.

197.0165 Homestead tax deferral.—

[1](1) Any person who is entitled to claim homestead tax exemption under the provisions of s. 196.031(1) may elect to defer payment of a portion of the ad valorem taxes levied on his homestead by filing an annual application for tax deferral with the county tax collector on or before January 31 following the year in which the taxes are assessed. Any applicant who is entitled to receive the homestead tax exemption but has waived it for any reason shall furnish, with his application for tax deferral, a certificate of eligibility to receive the exemption. Such certificate shall be prepared by the county property appraiser upon request of the taxpayer. It shall be the burden of each applicant to affirmatively demonstrate his compliance with the requirements of this section.

[1](2)(a) Approval of an application for tax deferral shall defer that portion of ad valorem taxes otherwise due and payable on the applicant's homestead pursuant to s. 197.012 which exceeds 5 percent of the applicant's household's income for the prior calendar year.

(b) In the event the applicant is entitled to claim the increased exemption by reason of age and residency as provided in s. 196.031(3)(a), approval of such application shall defer that portion of said taxes which exceeds 3 percent of the applicant's household's income for the prior calendar year.

(c) The household income of an applicant who applies for a tax deferral before the end of the calendar year in which the taxes are assessed shall be for the current year, adjusted to reflect estimated income for the full calendar year period.

(3) No tax deferral shall be granted:

(a) If the total amount of deferred taxes and interest plus the total amount of all other unsatisfied liens on the homestead exceeds 85 percent of the assessed value of the homestead, or

(b) If the primary mortgage financing on the homestead is for an amount which exceeds 70 percent of the assessed value of the homestead.

(4) The amount of taxes and interest deferred pursuant to this act shall accrue interest at a rate equal to the semiannually compounded rate of one-half of 1 percent plus the average yield to maturity of the long-term fixed-income portion of the Florida Retirement System investments as of the end of the quarter preceding the date of the sale of the deferred payment tax certificates.

(5) The taxes and interest deferred pursuant to this act shall constitute a prior lien and shall attach as of the date and in the same manner and be collected as other liens for taxes, as provided for under this chapter, but such deferred taxes shall only be due, payable, and delinquent as provided in this act.

History.—s. 3, ch. 77-301; s. 2, ch. 78-161; s. 20, ch. 79-334.

[1]**Note.**—As amended by s. 20, ch. 79-334, applies to assessment rolls and taxes levied thereon for the year 1979 and each year thereafter.

197.0166 Homestead tax deferral; application.—

[1](1) The application for deferral shall be made upon a form prescribed by the Department of Revenue and furnished by the county tax collector. The application form shall be signed upon oath by the applicant before an officer authorized by the state to

administer oaths. The tax collector may, in his discretion, require the applicant to submit such other evidence and documentation as deemed necessary by the tax collector in considering the application. The application form shall advise the applicant of the manner in which interest is computed. Each application form shall contain an explanation of the conditions to be met for approval and the conditions under which deferred taxes and interest become due, payable, and delinquent. Each application shall clearly state that all deferrals pursuant to this act shall constitute a lien on the applicant's homestead.

(2)(a) The tax collector shall consider each annual application for homestead tax deferral within 30 days of the day the application is filed or as soon as practicable thereafter. If the tax collector finds that the applicant is entitled to the tax deferral, he shall approve the application and file the application in the permanent records. If the tax collector finds the applicant is not entitled to the deferral, he shall send a notice of disapproval within 30 days of the filing of the application, giving his reasons therefor to the applicant, either by personal delivery or by registered mail to the mailing address given by the applicant, and shall make return in the manner in which such notice was served upon the applicant upon the original notice thereof and file among the permanent records of his office. The original notice of disapproval sent to the applicant shall advise the applicant of his right to appeal the decision of the tax collector to the property appraisal adjustment board and shall inform the applicant of the procedure for filing such an appeal.

(b) Appeals of the decision of the tax collector to the property appraisal adjustment board shall be in writing on a form prescribed by the Department of Revenue and furnished by the tax collector. Such appeal shall be filed with the property appraisal adjustment board within 20 days after the applicant's receipt of the notice of disapproval. The property appraisal adjustment board shall review the application and evidence presented to the tax collector upon which the applicant based his claim for tax deferral and, at the election of the applicant, shall hear the applicant in person, or by agent on his behalf, on his right to homestead tax deferral. The property appraisal adjustment board shall reverse the decision of the tax collector and grant homestead tax deferral to the applicant, if in its judgment the applicant is entitled thereto, or affirm the decision of the tax collector. Such action of the property appraisal adjustment board shall be final unless the applicant or tax collector or other lienholder, within 15 days from the date of disapproval of the application by the board, files in the circuit court of the county in which the property is located, a proceeding for a declaratory judgment or other appropriate proceeding.

(3) Each application shall contain a list of, and the current value of, all outstanding liens on the applicant's homestead.

(4) For approved applications, the date of receipt by the tax collector of the application for tax deferral shall be used in calculating taxes due and payable net of discounts for early payment as provided for by s. 197.012.

(5) If such proof has not been furnished with a prior application, each applicant shall furnish proof of fire and extended coverage insurance in an amount which is in excess of the sum of all outstanding liens and deferred taxes and interest with a loss payable clause to the county tax collector.

(6) The tax collector shall notify the property appraiser in writing of those parcels for which taxes have been deferred.

History.—s. 4, ch. 77-301; s. 3, ch. 78-161; s. 21, ch. 79-334.

[1]**Note.**—As amended by s. 21, ch. 79-334, applies to assessment rolls and taxes levied thereon for the year 1979 and each year thereafter.

197.0167 Annual notification to property owner.—

(1) The tax collector shall notify the owner of record of each parcel appearing on the real property assessment roll of the right to defer payment of taxes pursuant to ss. 197.0163-197.0174. Such notice shall be printed on the back of envelopes used for mailing the notice of taxes provided for by s. 197.072. Such notice of the right to defer payment of taxes shall be in substantially the following form:

NOTICE TO TAXPAYERS
ENTITLED
TO HOMESTEAD EXEMPTION

Florida law entitles you to DEFER PAYMENT of that portion of the property taxes levied against your homestead which exceeds 5 percent (3 percent for senior citizens) of your household income, subject to certain conditions. Interest is charged on deferred taxes at a rate set by law. The deferred taxes and interest are treated as a lien against your homestead.

Application for deferral of payment must be made on or before January 31 of each year. Application forms are available from your county tax collector.

(2) On or before November 1 of each year, the tax collector shall notify each property owner to whom a tax deferral has been previously granted of the accumulated sum of deferred taxes and interest outstanding.

(3) In the event the tax collector has envelopes delivered to his office or on order prior to July 3, 1979, the notice required in subsection (1) may, for the mailing of 1979 tax notices only, be printed on a separate sheet of paper and enclosed with each tax notice.

History.—s. 5, ch. 77-301; s. 22, ch. 79-334.

197.0168 Deferred payment tax certificates.—

(1) The tax collector shall notify each local governing body of the amount of taxes deferred which would otherwise have been collected for such governing body. The county shall then, at the time of the tax certificate sale held pursuant to s. 197.116, conduct a separate deferred payment tax certificate sale in the manner set forth in said section. The maximum rate of interest for deferred payment tax certificates shall be equal to the semiannually compounded rate of 0.5 percent plus the average yield to maturity of the long-term fixed-income portion of the Florida Retirement System investments as of the end of the quarter preceding the date of the sale of

the deferred payment tax certificates, as certified to the tax collector by the State Board of Administration; however, the tax collector shall accept bids in even increments and in fractional interest rate bids of 0.25 percent only.

(2) If there remain unsold certificates following the sale of deferred payment tax certificates in accordance with the procedure set forth in s. 197.116, the county shall:

(a) Hold the unsold certificates until such time as deferred taxes plus interest become due; or

(b) Offer the unsold certificates for purchase to the State Board of Administration. Upon such offer to the State Board of Administration, the board shall purchase said certificates; however, not more than 10 percent of any fund shall be invested in such certificates as specified in s. 215.47(2)(e).

(3) The certificates so held by the county or purchased by the State Board of Administration shall bear interest at a rate equal to the semiannually compounded rate of one-half of 1 percent plus the average yield to maturity of the long-term fixed-income portion of the Florida Retirement System investments as of the end of the quarter preceding the date of the sale of the deferred payment tax certificates.

History.—s. 6, ch. 77-301; s. 4, ch. 78-161.

197.0169 Change in ownership or use of property.—

(1) In the event that there is a change in use of tax-deferred property such that the owner is no longer entitled to claim homestead exemption for such property pursuant to s. 196.031(1), or such person fails to maintain the required fire and extended insurance coverage, the total amount of deferred taxes and interest for all previous years shall be due and payable November 1 of the year in which the change in use occurs or on the date failure to maintain insurance occurs and shall be delinquent on April 1 of the year following the year in which the change in use or failure to maintain insurance occurs.

(2) In the event that there is a change in ownership of tax-deferred property, the total amount of deferred taxes and interest for all previous years shall be due and payable on the date the change in ownership takes place and shall be delinquent on April 1 following said date. When, however, the change in ownership is to a surviving spouse and such spouse is eligible to claim homestead exemption on such property pursuant to s. 196.031(1), such surviving spouse may continue the deferment of previously deferred taxes and interest pursuant to the provisions of this act.

(3) Whenever the property appraiser discovers that there has been a change in the ownership or use of property which has been granted a tax deferral, he shall notify the tax collector in writing of the date such change occurs, and the tax collector shall collect any taxes and interest due or delinquent.

(4) During any year in which the total amount of deferred taxes, interest, and all other unsatisfied liens on the homestead exceeds 85 percent of the assessed value of the homestead, the tax collector shall immediately notify the owner of the property on which taxes and interest have been deferred that the portion of taxes and interest which exceeds 85 percent of the assessed value of the homestead shall be due and payable within 30 days of receipt of the notice. Failure to pay the amount due shall cause the total amount of deferred taxes and interest to become delinquent.

(5) Each year, upon notification, each owner of property on which taxes and interest have been deferred shall submit to the tax collector a list of, and the current value of, all outstanding liens on the owner's homestead. Failure to respond to this notification within 30 days shall cause the total amount of deferred taxes and interest to become payable within 30 days.

History.—s. 7, ch. 77-301; s. 5, ch. 78-161.

197.017 Prepayment of deferred taxes.—

(1) All or part of the deferred taxes and accrued interest may at any time be paid to the tax collector by:

(a) The owner of the property or the spouse of the owner.

(b) The next of kin of the owner, heir of the owner, child of the owner, or any person having or claiming a legal or equitable interest in the property, provided no objection is made by the owner within 30 days after the tax collector notifies the owner of the fact that such payment has been tendered.

(2) Any partial payment made pursuant to this section shall be applied first to accrued interest.

History.—s. 8, ch. 77-301.

197.0171 Distribution of payments.—When any deferred taxes or interest is collected, the tax collector shall maintain a record of the payment, setting forth a description of the property and the amount of taxes or interest collected for such property. The tax collector shall distribute payments received in accordance with the procedures for distribution of ad valorem taxes or redemption moneys as prescribed in this chapter.

History.—s. 9, ch. 77-301; s. 6, ch. 78-161.

197.0172 Construction.—Nothing in this act shall be construed to prevent the collection of personal property taxes which become a lien against tax-deferred property, defer payment of special assessments to benefited property, or affect any provision of any mortgage or other instrument relating to property requiring a person to pay ad valorem taxes.

History.—s. 10, ch. 77-301.

197.0173 Penalties.—

(1) The following penalties shall be imposed on any person who willfully files information required under s. 197.0165 or s. 197.0169 which is incorrect:

(a) Such person shall pay the total amount of taxes and interest deferred, which amount shall immediately become due;

(b) Such person shall be disqualified from filing a homestead tax deferral application for the next 3 years; and

(c) Such person shall pay a penalty of 25 percent of the total amount of taxes and interest deferred.

(2) Any person against whom the penalties pre-

scribed in this section have been imposed may appeal the penalties imposed to the Property Appraisal Adjustment Board within 30 days after said penalties are imposed.

History.—s. 11, ch. 77-301.

197.0174 Payment by mortgagee.—If any mortgagee shall elect to pay the taxes when an applicant qualifies for tax deferral, then such election shall not give the mortgagee the right to foreclose.

History.—s. 12, ch. 77-301.

197.018 Tax certificate notice.—The tax collector shall mail to each taxpayer, at the address shown on the latest tax roll, a notice stating that there is a tax certificate against a parcel of real property taxable to him. The notice shall be given by first-class mail annually with or prior to the mailing of the current tax notices.

History.—s. 1, ch. 72-268; s. 15, ch. 74-234.

197.026 Correcting erroneous returns.—If any tax collector has reason to believe that any taxpayer has filed an erroneous or incomplete statement of his personal property or has not returned the full amount of all his property subject to taxation, the collector shall notify the property appraiser of the erroneous or incomplete statement.

History.—s. 38, ch. 4322, 1895; s. 5, ch. 4515, 1897; GS 538; s. 37, ch. 5596, 1907; RGS 737; CGL 945; s. 8, ch. 20722, 1941; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 1, ch. 77-102.

Note.—Former ss. 193.37, 197.031.

197.032 Double assessment.—When any tax collector discovers that any land has been assessed more than once for the same year's taxes, he shall collect only the tax justly due thereon, and shall make return of the balance as a double assessment and shall be credited therefor by the county commissioners and Department of Revenue, and he shall notify the different parties to whom the property is assessed. He shall also report to the county commissioners the errors, double assessments and insolvencies for which he is to be credited under different heads, giving in every case the names of the parties on whose account the credit is to be allowed.

History.—s. 46, ch. 4322, 1895; GS 548; s. 45, ch. 5596, 1907; RGS 746; CGL 959; ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 1, ch. 72-268.

Note.—Former ss. 193.38, 197.035.

197.046 Land shall not be subdivided; no plat filed until taxes paid.—No land shall be divided or subdivided and no drawing or plat of the division or subdivision of any land shall be filed or recorded in the public records of any court until all taxes have been paid on the land.

History.—s. 2½, ch. 22079, 1943; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268.

Note.—Former ss. 192.56, 197.051.

cf.—Chapter 177 Maps and plats.

197.052 Destruction of 20-year-old tax receipts.—The tax collector in each county of the state is authorized to destroy all duplicate tax receipts and microfilm of tax receipts on file in his office as they become 20 years old. Tax receipts may be destroyed after 5 years if microfilmed.

History.—s. 1, ch. 26891, 1951; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268.

Note.—Former ss. 193.391, 197.240.

197.056 Lien of taxes.—

(1) All taxes imposed pursuant to the Constitution and laws of this state shall be a first lien, superior to all other liens, on any property against which the taxes have been assessed, and shall continue in full force from January 1 of the year the taxes were levied until discharged by payment or until barred by chapter 95. All personal property tax liens, to the extent that the property to which the lien is applicable cannot be located in the county or to which the sale of the property is insufficient to pay all delinquent taxes, interest, fees, and costs due, shall be liens against all other personal property of the taxpayer within that county. No act of omission or commission on the part of any property appraiser, tax collector, board of county commissioners, clerk of the circuit court, or county comptroller, or their deputies or assistants, or newspaper in which any advertisement of sale may be published shall operate to defeat the payment of the taxes; but any acts of omission or commission may be corrected at any time by the officer or party responsible for them in like manner as provided by law for performing acts in the first place, and when so corrected they shall be construed as valid *ab initio* and shall in no way affect any process by law for the enforcement of the collection of any tax. All owners of property shall be held to know that taxes are due and payable annually and are charged with the duty of ascertaining the amount of current and delinquent taxes and paying them before April 1 of the year following the year in which taxes are assessed. No sale or conveyance of real or personal property for nonpayment of taxes shall be held invalid except upon proof that:

(a) The property was not subject to taxation;

(b) The taxes had been paid before the sale of personal property; or

(c) The real property had been redeemed before the execution and delivery of a deed based upon a certificate issued for nonpayment of taxes.

(2) A lien created through the sale of a tax certificate may not be foreclosed or enforced in any manner except as prescribed in this chapter.

History.—s. 1, ch. 10040, 1925; CGL 894; s. 1, ch. 14572, 1929; ss. 2, 2½, ch. 17442, 1935; s. 1, ch. 20722, 1941; s. 2, ch. 20723, 1941; s. 1, ch. 22079, 1943; s. 1, ch. 22758, 1945; s. 14, ch. 63-572; s. 1, ch. 67-538; ss. 1, 2, ch. 69-55; s. 8, ch. 69-102; s. 1, ch. 72-268; s. 3, ch. 73-332; s. 53, ch. 73-333; s. 1, ch. 77-102.

Note.—Former ss. 192.21, 197.011, 200.02, 197.015.

197.062 Advertisement of real or personal property with delinquent taxes.—

(1) PROCEDURE; COSTS.—The board of county commissioners shall, whenever legal advertisements are required, select and advertise as provided in chapter 50. The office of the tax collector shall pay all newspaper charges, and the proportionate cost of the advertisements shall be added to the delinquent taxes when they are collected.

(2) PERSONAL PROPERTY.—Within 45 days after the personal property taxes become delinquent, the tax collector shall advertise a list of the names of delinquent personal property taxpayers and the amount of tax due by each. The advertisement shall include a notice that all personal property taxes are now drawing interest at the rate of 18 percent per year and that, unless the delinquent taxes are paid, warrants will be issued thereon pursuant to s. 197.086 and the tax collector will apply to

the circuit court for an order directing levy upon and seizure of the personal property of the taxpayer for the unpaid taxes.

(3) REAL PROPERTY.—The tax collector shall advertise once each week for 4 weeks and sell tax certificates on all real property with taxes due on or before June 1 of each year. He shall make a list of such properties specifying the amount due on each parcel, including interest at the rate of 18 percent per year from April 1 to the date of sale, provided that the minimum charge for any taxes redeemed prior to the sale of a tax certificate shall be 3 percent regardless of the time of redemption, with the cost of advertising and expense of sale in the same order in which the lands were assessed.

(4) FORM.—All advertisements shall be in the form prescribed by the Department of Revenue.

History.—s. 1, ch. 72-268; s. 4, ch. 73-332; s. 1, ch. 75-136; s. 3, ch. 78-32.

197.066 Publisher to furnish copy of advertisement to tax collector; proof of publication; fees.—

(1) The newspaper publishing the notice of a tax sale shall transmit by mail a copy of the paper containing each notice to the tax collector within 10 days after the last required publication. When the publication of the tax sale notice is completed as provided by law, the publisher shall make affidavit in the form prescribed by the Department of Revenue, which shall be delivered to the tax collector and annexed to the report of lands sold for taxes as provided by s. 197.116.

(2) When tax certificates are advertised for sale under this law, the tax collector shall be entitled to 15 cents for certification of sale, and shall be entitled to 5 percent commission on the amount of each delinquent tax when actual sale is made. However, the tax collector shall not be entitled to any commission for the sale of property made to the county until the commission is paid upon the redemption or sale of the tax certificates issued to the county. When a tax deed is issued to the county, the tax collector shall not receive his commission for the certificates until after the property is sold and conveyed by the county.

History.—s. 50, ch. 4322, 1895; s. 10, ch. 4515, 1897; GS 559, 560; ss. 51, 52, ch. 5596, 1907; RGS 757, 758; CGL 970, 971; s. 4, ch. 14572, 1929; s. 1, ch. 15798, 1931; ss. 12, 13, ch. 20722, 1941; s. 1, ch. 59-424; ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 1, ch. 72-268.

Note.—Former ss. 193.53, 197.091, 193.52, 197.085.

197.072 Notice of taxes by mail, etc.—

(1) Within 20 days after delivery to him of the tax roll with the property appraiser's warrant and recapitulation sheet, the tax collector shall mail to each taxpayer appearing on the assessment roll, whose post-office address is known to him, notice that the tax roll is open for payment of taxes, stating the amount of taxes due by the taxpayer and advising the taxpayer of the discounts allowed for early payment. The notice shall be accompanied by a printed statement that shall clearly designate and separately identify the rate of taxation to be levied for the use of the county and school board and the total rate of taxation for all other taxing authorities in the county. The postage shall be paid out of the general fund of the county upon statement thereof by the tax collector.

(2) Upon delivery of a written request from a mortgagee stating that he is the trustee of an escrow account for ad valorem taxes due on the property, the tax collector shall mail to the mortgagee or lienholder a notice of taxes against the property or a copy of the newspaper, if available, containing the list of lands advertised for sale for nonpayment of taxes, as may be requested. When the original tax notice is mailed to a trustee of an escrow account, the tax collector shall mail a duplicate notice to the owner of the property with the additional statement that the original has been sent to the trustee. The tax collector shall also mail a duplicate tax notice to the vendee of a recorded contract for deed, or, if the contract is not recorded, the duplicate shall be mailed upon written application by the vendee.

(3) At the recommendation of the county tax collector, the board of county commissioners may adopt a resolution instructing the collector not to mail notices to any taxpayer when the amount of taxes shown on the tax notice is less than $5. The resolution shall also instruct the property appraiser that he shall not make an extension on the tax roll for any parcel for which the tax will amount to less than $5. The minimum tax bill so established may not exceed $5.

(4) The tax collector shall mail such additional notices as he may deem proper and necessary or as may be required by reasonable rules and regulations of the Department of Revenue. Additional notices shall be mailed to those taxpayers whose payment has not been received prior to March 1 of the year following the year of assessment. However, this requirement does not preclude the tax collector from mailing such other notices as he may deem necessary or be required to mail.

History.—ss. 1-3, ch. 10039, 1925; CGL 951-953; s. 1, ch. 67-271; ss. 1, 2, ch. 69-55; s. 1, ch. 69-300; s. 48, ch. 70-243; ss. 1, 2, ch. 70-359; s. 1, ch. 72-268; s. 5, ch. 73-332; s. 1, ch. 76-143; s. 1, ch. 77-102; s. 5, ch. 78-32.

Note.—Former ss. 193.45, 197.065.

197.076 Notice to mortgagee.—

(1) On or before May 1 of each year, the holder or mortgagee of an unsatisfied mortgage, upon filing with the tax collector a description of land encumbered by a recorded mortgage and paying an annual service charge of $2, may request and receive information during the current tax year concerning any delinquent taxes appearing on the current tax roll and certificates issued on the described mortgaged land. The collector, upon receipt of such request, will furnish the following information to the mortgagee within 60 days following the tax certificate sale:

(a) Description of land sold as requested by the mortgagee.

(b) The number of each certificate issued and to whom.

(c) The face amount of the certificate.

(d) The cost for redemption of the certificate.

(2) On or before May 1 of each year, the holder or mortgagee of an unsatisfied mortgage or lien upon personal property, upon filing with the tax collector a description of the personal property encumbered by said mortgage or lien and the name and address of the owner of such property, and upon paying an annual service charge of $2, may request and receive information during the current tax year concerning any delinquent taxes appearing on the current tax

roll for such property as is described as provided above or as may be owned by the named taxpayer. The collector, upon receipt of such request, will furnish the following information to the mortgagee or lienholder prior to April 25 of the following year:

(a) A description of property against which taxes are assessed.

(b) The amount of taxes and costs owed.

History.—ss. 1, 2, ch. 8472, 1921; CGL 977, 978; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 6, ch. 73-332; s. 2, ch. 75-136.
Note.—Former ss. 194.14, 197.485.

197.082 Errors and insolvencies list.—On or before the third Monday in July of each year, the tax collector shall make out a report to the county commissioners showing the discounts, errors, double assessments, and insolvencies for which he is to be credited under the different heads, giving, in every case except discounts, the names of the parties on whose account the credit is to be allowed. In no case, however, shall the tax collector take credit on the list as insolvent items, any personal property tax due by a solvent taxpayer. The county commissioners, upon receiving the report, shall examine it, make such investigations as may be necessary, and, if it is discovered that the tax collector has taken credit as an insolvent item any personal property tax due by a solvent taxpayer, then the amount of taxes represented by such item shall be charged to the tax collector, and the report shall not be approved until the tax collector strikes such item from the report.

History.—s. 37, ch. 20723, 1941; s. 7, ch. 22858, 1945; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 7, ch. 73-332.
Note.—Former ss. 200.38, 197.041.

197.086 Delinquent personal property taxes; warrants; court order for levy and seizure of personal property; seizure; fees of tax collectors.—

(1) Prior to May 1 of each year immediately following the year of assessment, the tax collector shall prepare a list of the unpaid personal property taxes containing the names and addresses of the taxpayers and the property subject to the tax, as the same appear on the tax roll. Prior to April 30 of the next year, the tax collector shall prepare warrants against the delinquent taxpayers providing for the levy upon, and seizure of, tangible personal property. Within 30 days from the date such warrants are prepared, the tax collector shall cause the filing of a petition in the circuit court for the county in which the tax collector serves, which petition shall briefly describe the levies and nonpayment of taxes, the issuance of warrants, and proof of the publication of notice as provided for in s. 197.062, and shall list the names and addresses of the taxpayers who failed to pay taxes and the personal property taxed, as the same appear on the assessment roll. Said petition shall pray for an order ratifying and confirming the issuance of said warrants and directing the tax collector or his deputy to levy upon and seize the tangible personal property of each delinquent taxpayer to satisfy the unpaid taxes set forth in the petition. At the time such petition is directed to be filed, such tax collector is empowered to employ counsel and agree upon his or their compensation for conducting such suit or suits and to pay such compensation out of the general office expense fund, and he may include such item in the budget. Immediately upon the filing of said petition, the tax collector, through his attorney, shall request the earliest possible time for hearing before the circuit court on said petition, at which hearing the tax roll shall be presented and the tax collector or one of his deputies shall appear to testify under oath as to the nonpayment of the personal property taxes listed in the petition. Upon the filing of said petition, the clerk of the court shall notify each delinquent taxpayer who is included within the petition that a petition has been filed and that upon ratification and confirmation of the petition the tax collector shall be authorized to issue warrants and levy upon, seize, and sell so much of the personal property as to satisfy the delinquent taxes plus cost, interest, attorney's fees, and other charges. Said notice shall be by certified mail, return receipt requested. If it shall appear to the circuit court that the taxes as appear on the tax roll are unpaid, the court shall issue its order directing the tax collector or his deputy to levy upon and seize so much of the tangible personal property of the taxpayers who are listed in the petition as is necessary to satisfy the unpaid taxes. The Department of Revenue shall provide reasonable rules and regulations to guide the tax collector in the collection and enforcement of taxes which are delinquent or which may become delinquent. This proceeding is specifically provided to safeguard the constitutional rights of the taxpayers in relation to their tangible personal property and to allow the tax collector sufficient time to collect said delinquent personal property taxes before the filing of petitions in the circuit court as provided and shall be conducted with these objectives in mind. The court shall retain jurisdiction over the matters raised in the petition to hear such objections of taxpayers to the levy and seizure of their tangible personal property as may be warranted under the statutes and laws of the state.

(2) A tax warrant issued by the tax collector for the collection of tangible personal property taxes shall, after the court has issued its order as set forth in subsection (1), have the same force as a writ of garnishment when levied by the tax collector upon any person, firm, or corporation who has any goods, moneys, chattels, or effects of the delinquent taxpayer in his hands, possession, or control or who is indebted to such delinquent taxpayer. When any tax warrant is levied upon any debtor or person holding property of the taxpayer, the debtor or person shall pay the debt or deliver the property of the tax delinquent to the tax collector levying the warrant, and the receipt of the tax collector shall be complete discharge to that extent of the debtor or person holding the property. The tax collector shall make note of the levy upon the tax warrant.

(3) The tax collector shall be entitled to the following fees that shall be collected from delinquent taxpayers at the same time of the payment of their taxes:

(a) On amounts of less than $5 for taxes, his fee shall be $1.

(b) On amounts of over $5 but less than $10 for taxes, his fee shall be $1.50.

(c) On amounts over $10 for taxes, he shall receive a fee of $2.

History.—ss. 26, 30, ch. 20723, 1941; s. 1, ch. 63-430; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 3, ch. 75-136; s. 2, ch. 76-143.
Note.—Former ss. 200.27, 197.095, 200.31, 197.155.

197.092 Attachment of tangible personal property in case of removal; taxes assessed a judgment.—If any tangible personal property upon which taxes have been assessed is removed from the county in which the tangible personal property was assessed, the tax collector of the county, by issuing a warrant, may authorize the sheriff of the county to which the tangible personal property has been removed to collect the taxes, and the sheriff shall proceed as upon execution from the circuit court. The tax collector of each county shall have the power to attach for taxes thereon any tangible personal property that has been assessed at any time before payment, if he has reason to believe that the property is being, or has been, removed or disposed of so as to prevent or endanger the payment of taxes thereon, in the same manner and under the rules of law governing attachments of debts in other cases. All taxes assessed upon tangible personal property shall have all the force of a judgment and execution at law against the owner of the property from the date the taxes become due.

History.—s. 29, ch. 20723, 1941; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 4, ch. 75-136; s. 3, ch. 76-143.
Note.—Former ss. 200.30, 197.150.

197.096 Tax collector to keep record of warrants and levies on tangible personal property.—The tax collector shall keep a record of all warrants and levies made under this chapter and shall note on such record the date of payment, the amount of money, if any, received, and the disposition thereof made by him. Such record shall be known as "the tangible personal property tax warrant register" and the form thereof shall be prescribed by the Department of Revenue.

History.—s. 31, ch. 20723, 1941; ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 1, ch. 72-268.
Note.—Former ss. 200.32, 197.160.

197.101 Continuing duty of the tax collector to collect delinquent tax warrants.—It shall be the duty of the tax collector issuing a tax warrant for the collection of delinquent tangible personal property taxes to continue from time to time his efforts to collect them for a period of 7 years from the date of the issuance of the warrant. After the expiration of 7 years, the warrant shall be barred by this statute of limitation and no action may be maintained in any court. No tax collector shall be relieved of accountability for collection of any taxes assessed on tangible personal property until he has completely performed every duty devolving upon him as required by law.

History.—ss. 32, 33, ch. 20723, 1941; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268.
Note.—Former ss. 200.33, 197.165, 200.34, 197.170.

197.106 Sale of personal property after seizure.—

(1) When personal property is levied upon for any delinquent taxes as provided for in s. 197.086, the tax collector shall give public notice by advertisement of the time and place of sale of the property to be sold at least 15 days before the sale. The notice shall be posted in at least three public places in the county, one of which shall be at the courthouse, and the property shall be sold at public auction at the courthouse door. The property sold shall be present if practical, but at any time before the sale the owner or claimant of the property may release it by the payment of the taxes plus delinquency charges, interest, and costs for which it was liable to be sold. In all cases, immediate payment for the property shall be required. In case any sale is made as aforesaid, the tax collector shall be entitled to the same fees and charges as are allowed sheriffs upon execution sales.

(2) If the property levied upon is sold for more than the amount of taxes, delinquent charges, interest, costs, and collection fees, the surplus shall be returned to the person in whose possession the property was when the levy was made or to the owner of the property.

(3) If the property levied upon cannot be located in the county or is sold for less than the amount of taxes, delinquent charges, interest, costs, and collection fees, the deficit shall be a general lien against all other personal property of the taxpayer situated in the county. The other property may be seized and sold in the same manner as like property on which there is a specific lien for delinquent taxes.

History.—ss. 27, 28, ch. 20723, 1941; s. 7, ch. 22858, 1945; ss. 1, 2, ch. 69-55; s. 8, ch. 69-102; s. 1, ch. 72-268; s. 8, ch. 73-332; s. 53, ch. 73-333.
Note.—Former ss. 200.28, 197.140, 200.29, 197.145.

197.111 Notice of delinquent real property taxes to owners of subsurface rights.—When the taxes under s. 193.481 on subsurface rights have become delinquent and a tax certificate is to be sold under this chapter, a notice of the delinquency shall be given by registered mail to the owner of the fee to which these subsurface rights are attached. On the day of the tax sale the fee owner shall have the right to purchase the tax certificate at the maximum rate of interest provided by law before bids are accepted for the sale of such certificate.

History.—ss. 2, 3, ch. 69-60; s. 1, ch. 72-268; s. 36, ch. 79-164.
Note.—Former s. 197.083.

197.116 Sale of tax certificates for unpaid taxes.—

(1) On the day and approximately at the time designated in the notice of the sale, the tax collector shall commence the sale of tax certificates on those lands on which taxes have not been paid, and shall continue same from day to day until each parcel is sold to pay the taxes, interest, costs, and charges thereon, and in case there are no bidders, each parcel shall be bid off by the tax collector for the county. The tax collector shall offer all the lands as assessed.

(2) The land shall be struck off to the person who will pay the tax, interest, costs, and charges and will demand the lowest rate of interest, not in excess of 18 percent per year. The tax collector shall accept bids in even increments and in fractional interest rate bids of one-quarter of 1 percent only. If there is no buyer the land shall be struck off to the county at the maximum rate of interest allowed by law.

(3) The tax collector shall require immediate payment of a reasonable deposit from any person to whom any parcel of land may be struck off, and failure to pay such deposit shall cause the bid to be

canceled. When tax certificates are ready for issuance, the tax collector shall notify all persons to whom any parcel was struck off that the certificate is ready for issuance, and payment must be made within 48 hours from the mailing of such notice or the deposit shall be forfeited and the bid canceled. In any event, payment shall be made before delivery of the certificate by the tax collector. Upon the cancellation of any bid, the tax collector shall resell that certificate the following day or as soon thereafter as possible, provided the certificate is sold within 10 days after cancellation of such bid.

(4) The tax collector shall make a list of all the certificates sold for taxes, showing the date of the sale, the number of each certificate, the name of the owner as returned, a description of the land within the certificate, the name of the purchaser, the interest rate bid, and the amount for which sale was made. The tax collector shall append to the list a certificate setting forth the fact that the sale was made in accordance with this chapter.

(5) As soon as is practical after the sale of tax certificates, the tax collector shall deliver to the property appraiser a list of all lands struck off to the county.

(6) Delinquent property taxes of all governmental units due on a parcel of land due in any one year shall be combined into one certificate.

(7) No certificate shall be sold on, nor any lien created in, property owned by any governmental unit whose property has become subject to taxation due to its lease to a nongovernmental lessee. Such delinquent taxes shall be enforced and collected in the manner provided in s. 196.199(7).

(8) Any tax certificates issued pursuant to the provisions of this section on or after the effective date of this subsection which are void due to an error of the property appraiser, the tax collector, any other county official, or any municipal official and which are subsequently canceled pursuant to the provisions of this chapter (Tax Collections, Tax Sales, Tax Liens) or chapter 196 (Exemption) shall earn interest at the rate of 8 percent per annum, simple interest, calculated from the date the certificate was purchased. Refunds made on tax certificates which are void shall be processed as provided in s. 195.106.

History.—ss. 51-53, ch. 4322, 1895; GS 561, 563, 564; ss. 53, 55, 56, ch. 5596, 1907; RGS 759, 761, 762; CGL 972, 974, 975; ss. 5-7, ch. 14572, 1929; ss. 14, 15, ch. 20722, 1941; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 9, ch. 73-332; s. 3, ch. 75-103; s. 6, ch. 76-143; s. 1, ch. 77-102.

Note.—Former ss. 193.54, 197.180, 193.56, 197.190, 193.57, 197.195.

197.121 Collector not to sell certificates on land on which taxes have been paid; penalty.—If any tax collector sells any tax certificates on land upon which the taxes have been paid, upon written demand by the aggrieved taxpayer alleging the circumstances, the tax collector shall initiate action to cancel any improperly issued tax certificate or deed in accordance with the provisions of s. 197.206. If the tax collector fails to act within a reasonable time, his office shall be liable for all legitimate expenses to which the aggrieved taxpayer may be put in clearing his title, including a reasonable attorney's fee. The office of the tax collector shall be responsible to the publisher for costs of advertising lands on which the taxes have been paid, and the office of the property appraiser shall be responsible to the publisher for the costs of advertising lands doubly assessed or assessed in error.

History.—s. 51, ch. 4322, 1895; GS 562; s. 54, ch. 5596, 1907; RGS 760; CGL 973; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 10, ch. 73-332; s. 15, ch. 74-234; s. 1, ch. 77-102.

Note.—Former ss. 193.55, 197.185.

197.132 Duplicate certificates.—

(1) If application is made to the board of county commissioners for issuance of a duplicate tax sale certificate instead of a certificate alleged by affidavit to be the property of affiant and to have been lost or destroyed, the board may authorize the tax collector to issue a duplicate certificate upon such reasonable terms, conditions, and assurances as the board may require. The duplicate certificate shall be plainly marked or stamped "duplicate," and the tax collector shall thereupon issue it to the affiant upon payment of $2 and enter the fact of the duplicate in the tax sale record opposite the entry of the sale for which the lost or destroyed certificate was issued. He shall enter in the same place a notation of the alleged loss or destruction, whether the duplicate is issued or not. If the tax collector certifies to the board of county commissioners that a tax sale certificate belonging to the county has been lost or misplaced, the board shall enter an order in its minute book directing the collector to issue and file in his office a duplicate certificate.

(2) The tax collector shall immediately issue, mail and file the duplicate certificate. At the same time, he shall make an entry on the tax sale record showing the issuance of the duplicate certificate.

History.—s. 8, ch. 14572, 1929; s. 16, ch. 20722, 1941; s. 7, ch. 22079, 1943; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 10, ch. 73-332; s. 53, ch. 73-333.

Note.—Former ss. 193.59, 197.205.

197.136 Certificate of sale.—Immediately after the tax sale, the tax collector shall give to the purchaser a certificate of sale describing the lands and the amount paid therefor, which amount shall bear interest from the date of sale at the rate bid by a purchaser. The form of the certificate shall be as prescribed by the Department of Revenue.

History.—s. 1, ch. 4888, 1901; GS 567; s. 57, ch. 5596, 1907; RGS 766; CGL 981; s. 8, ch. 14572, 1929; s. 16, ch. 20722, 1941; s. 7, ch. 22079, 1943; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 10, ch. 73-332.

Note.—Former ss. 193.59, 197.205.

197.141 Tax sale certificate transferable by endorsement.—

(1) All tax sale certificates issued, whether to the county, a municipality, or an individual, shall be transferable by endorsement at any time before they are redeemed or a tax deed is executed thereunder.

(2) The official endorsement of a tax sale certificate by the tax collector with the date and the amount received shall be sufficient evidence of the assignment of it. Any part of land or interest therein contained in any tax certificate that can be ascertained by legal and usual subdivision may be redeemed or sold by a certificate of the transfer or redemption under the hand and official seal of the tax collector, and a deed may issue thereupon in compliance with the terms of this law.

(3) The tax collector shall receive as a service charge 50 cents for each endorsement.

History.—ss. 2, 7, ch. 4888, 1901; s. 1, ch. 5112, 1903; GS 568, 573; RGS 767, 775; CGL 982, 992; s. 10, ch. 14572, 1929; s. 18, ch. 20722, 1941; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 34, ch. 73-332; s. 53, ch. 73-333.
Note.—Former ss. 193.60, 197.460, 194.11, 197.465.

197.143 Judicial sale; payment of taxes.—All officers of the court selling property under process or court order shall pay all taxes that are due and unpaid against the property from the proceeds of the sale after the payment of the costs of the proceedings and any attorney's fee allowed by the court when the court order or process directs that taxes shall be paid.

History.—s. 1, ch. 10285, 1925; CGL 954; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268.
Note.—Former ss. 192.28, 197.255.

197.151 Tax sale certificates belonging to the county held by the tax collector; redemption.—

(1) All tax sale certificates issued to the county or any municipality shall be held by the tax collector of the county where the lands covered by the certificates are located. All certificates held by the county shall be enforced in the manner prescribed for county certificates without regard to which governmental unit's taxes the certificates relate.

(2) The tax collector of the county is authorized and directed to allow the redemption or purchase, in whole or in part, when the part to be redeemed or purchased can be ascertained by legal description, of any tax certificates held by the county, at any time before the vesting of title in the county. The property appraiser shall, within 15 days after request from the collector, apportion the property into the parts sought to be redeemed or purchased. The payment of the amount of the tax certificate or certificates, or the part thereof as the part to be redeemed or purchased bears to the whole, and any and all subsequent unpaid or omitted taxes due on the land to be redeemed or purchased shall be paid with interest thereon at the rate of 18 percent per annum for the period of time from the date of the certificate. For each certificate redeemed, each county certificate purchased, or each omitted year, the collector shall receive a fee of $5.

History.—s. 3, ch. 4888, 1901; GS 569; RGS 768; CGL 983; ss. 22, 34, ch. 20722, 1941; ss. 9, 12, ch. 22079, 1943; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 11, ch. 73-332; s. 54, ch. 73-333; s. 1, ch. 77-102.
Note.—Former ss. 194.01, 197.265, 194.45, 197.270.

197.156 Redemption of tax sale certificates sold to purchaser other than county.—

(1) Any person owning or claiming lands upon which a tax sale certificate has been sold, or any part or parcel thereof or any interest therein, or the creditor of any owner or claimant, may redeem the lands at any time after the issuance of the tax sale certificate and before a tax deed is issued by paying to the tax collector in the county where the land is situated the face amount of the certificate of sale, or the part thereof as the part or interest redeemed shall bear to the whole, upon the collector's being furnished within 15 days by the property appraiser with a certificate apportioning the value to the part or parts sought to be redeemed and to the remaining land or lands under said certificate or certificates, according to their respective part or parts, the apportionment to be made upon the basis of valuation. Upon redemption being made, the person redeeming the tax sale certificate shall pay all taxes, interest, costs, charges, and omitted taxes, if any, as provided by law upon the part or parts of the certificate so redeemed or purchased, with interest as stated in the certificate from the date of the certificate to the date of redemption. When a tax sale certificate is redeemed and the interest earned on the tax sale certificate is less than 5 percent of the face amount of the certificate, then a mandatory charge of 5 percent shall be levied upon the tax sale certificate. The person redeeming the tax sale certificate shall pay the interest rate bid or the 5 percent mandatory charge, whichever is greater. This shall apply to all tax sale certificates except those with an interest rate bid of zero percent.

(2) When any land subject to a tax sale certificate has been redeemed, the collector shall pay to the holder of the tax certificate the amount received by him for redemption, less service charges. The certificate shall be surrendered to the collector and canceled, if the whole is redeemed. If only a part is redeemed, the portion and description of land, with date of redemption, shall be endorsed on the certificate by the collector. The certificate shall be retained by the owner subject to the endorsement, and the redemption shall be forthwith entered by the collector on the record of tax sales on file in his office. Nothing herein shall be deemed to deny the right to redeem any outstanding tax sale certificate in accordance with the law in force when it was issued. However, the provisions of s. 197.281, relating to survival of restrictions and covenants after tax deed, shall not be repealed by this chapter, and shall apply with the same force and effect to lands covered by such chancery decrees as the same apply to tax deeds and masters' deeds as provided in the section.

(3) When any land covered by certificates in the hands of individuals is redeemed, the tax collector shall give to the person making the redemption a receipt and certificate showing the amount paid for the redemption, a description of the land redeemed, and the date, number and amount of the certificate, certificates, or part of certificate from which the same is redeemed, which shall be in the form prescribed by the Department of Revenue.

History.—ss. 5, 6, ch. 4888, 1901; GS 570, 571; RGS 770, 771; CGL 985, 986; s. 9, ch. 14572, 1929; ss. 19, 20, ch. 20722, 1941; s. 8, ch. 22079, 1943; s. 1, ch. 28254, 1953; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 11, ch. 73-332; s. 1, ch. 77-102.
Note.—Former ss. 194.02, 197.440, 194.03, 197.445.

197.161 Payment of back taxes as condition precedent to cancellation of tax certificate held by county.—No decree shall be made by any court in an action brought by or on behalf of any landowner to enjoin any tax sale or to set aside or cancel any tax certificate held by any county in the state until the owner pays to the tax collector of the county where the property is assessable the full amount of the taxes that could have been lawfully assessed against the property for the period covered by the assessment complained of, whether the real estate has been returned for assessment by the owner or not. In all such cases the court shall ascertain and determine the amount of tax to be paid by the owner.

History.—s. 52, ch. 20722, 1941; s. 7, ch. 22858, 1945; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268.
Note.—Former ss. 196.15, 197.305.

197.166 Party recovering land must refund taxes paid and interest.—If, in an action at law or in equity involving the validity of any tax deed, the court holds that the tax deed was invalid at the time of its issuance and that title to the land therein described did not vest in the tax deed holder, then, if the taxes for which the land was sold and upon which the tax deed was issued had not been paid prior to issuance of the deed, the party in whose favor the judgment or decree in the suit is entered shall pay to the party against whom the judgment or decree is entered the amount paid for the tax deed and all taxes paid upon the land, together with 12 percent interest thereon per year from the date of the issuance of the tax deed and all legal expenses in obtaining the tax deed, including publication of notice and clerk's fees for issuing and recording the tax deed, and also the fair cash value of all permanent improvements made upon the land by the holders under the tax deed. The amount of the expenses and the fair cash value of improvements shall be ascertained and found upon the trial of the action, and the tax deed holder or anyone holding thereunder shall have a prior lien upon the land for the payment of the sums.

History.—s. 64, ch. 4322, 1895; GS 592; s. 61, ch. 5596, 1907; RGS 795; s. 3, ch. 12409, 1927; CGL 1026; ss. 1, 2, ch. 23637, 1947; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 50, ch. 77-104.

Note.—Former ss. 196.07, 197.310.

197.171 Redemption of omitted taxes.—Unpaid or omitted taxes shall be collected upon the basis of the regular valuation placed by the property appraiser upon the land for the year for which taxes remain unpaid, and, when no valuation was so placed, then the last assessed valuation prior thereto shall be considered the regular valuation.

History.—s. 5, ch. 7806, 1919; CGL 997; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 1, ch. 77-102.

Note.—Former ss. 194.10, 197.455.

197.176 Redemption of portion of tax certificate.—Any portion of land, or interest therein, contained in a tax sale certificate or certificates may be redeemed under the hand and official seal of the tax collector, upon his being furnished by the property appraiser with a certificate apportioning the value to that portion sought to be redeemed and to the remaining land or lands under said certificate or certificates, according to their respective portion, said apportionment to be made upon the basis of valuation. The tax collector shall submit to the property appraiser a written request for apportionment, and the property appraiser shall, within 15 days, return the apportionment to the collector. The person shall pay all taxes, interest, costs, and charges as provided by law upon the portion of the land being redeemed.

History.—ss. 1-3, ch. 17404, 1935; CGL 1936 Supp. 999(109)-(111); ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 12, ch. 73-332; s. 53, ch. 73-333; s. 1, ch. 77-102.

Note.—Former ss. 194.13, 197.480.

197.181 Duty of the collector as to redemption of land.—It shall be the duty of the tax collector to enter on the record of tax sales the partial or total redemption or sale of every tax certificate made through him, and he shall also keep a permanent record of all sales and redemptions, giving the number of the tax certificate, the date of the tax certificate, the amount or proportionate amount of the face value of the certificate, and the disposition of the proceeds, with the date thereof, in a form approved by the Department of Revenue. The collector shall remit to the general fund of each taxing unit all amounts due the unit including interest from the certificate, and shall file with the board of county commissioners a report showing the amount of money collected and disposition thereof in detail.

History.—s. 11, ch. 4888, 1901; s. 2, ch. 5113, 1903; GS 578; RGS 780; CGL 1004; s. 1, ch. 15918, 1933; ss. 1, 2, ch. 19004, 1939; CGL 1940 Supp. 1003(127); s. 48, ch. 20722, 1941; ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 1, ch. 72-268; s. 13, ch. 73-332; s. 6, ch. 75-103.

Note.—Former ss. 194.25, 197.545.

197.186 Disposition of unclaimed redemption moneys.—When money is held by the tax collector for the redemption of tax certificates, which money is by the course of law provided to be paid over to the holder of a redeemed tax certificate, but as to which the tax collector has not made payment over to the tax certificate holder of record, the tax collector shall, upon the expiration of 90 days from the receipt of the moneys, remit, on the first day of the following quarter, to the board of county commissioners the unclaimed redemption moneys, less the sum of $1 on each $100 or fraction thereof, which shall be retained by the collector as service charges. Two years after the date the unclaimed redemption moneys were remitted to the board of county commissioners, all claims to such moneys are hereby declared to be forever barred, and such moneys shall become the property of the county.

History.—s. 1, ch. 18313, 1937; CGL 1940 Supp. 999(149); ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 13, ch. 73-332; s. 55, ch. 73-333.

Note.—Former ss. 192.24, 197.550.

197.191 Redemptions before November 1.—When application is made before November 1 of any year for the redemption of lands heretofore or hereafter sold for taxes, the person applying for redemption shall not be required to pay the taxes for the year in which redemption is made. Taxes for the year in which such redemption is made, if unpaid, shall continue to be a lien against the lands, and, if not paid before a tax sale is held in the county, the same shall be included by the tax collector in his sale as are other lands. The taxes shall be extended by the property appraiser, if the property is redeemed before the completion of the rolls, and by the tax collector, if the property is redeemed after the completion of the rolls. However, in the event the party redeeming pays the current year's taxes for the year of redemption during the time when discounts are allowed for payment of taxes, then the same discounts shall be allowed the party as are allowed in other cases of the payment of taxes.

History.—s. 1, ch. 15055, 1931; CGL 1936 Supp. 984(1); ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 13, ch. 73-332; s. 1, ch. 77-102.

Note.—Former ss. 194.07, 197.285.

197.196 Record of tax redemptions.—

(1) The tax collector shall keep a record of all moneys received by him for redemption from sales of real estate for taxes or special assessments, which record shall show the names of the persons who purchased the property at the sales, or the assignees of the purchaser, if known, and the amount due the

lawful holder of the tax certificate for each redemption sale.

(2) The tax collector at the expiration of his term of office shall account for and pay over to his successor in office all moneys in his hands received for redemptions from sale for taxes or special assessments on real estate.

History.—ss. 1, 2, ch. 8569, 1921; CGL 990, 991; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268.
Note.—Former ss. 194.12, 197.475.

197.201 Tax collector shall notify property appraiser of the purchase or redemption of county-owned tax certificates.—Immediately after any tax certificate held by the county is redeemed or purchased, the collector shall notify the property appraiser, advising him of the name of the assignee or grantee, the description of the property, and the year for which taxes were last collected.

History.—s. 35, ch. 20722, 1941; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 14, ch. 73-332; s. 1, ch. 77-102.
Note.—Former ss. 194.46, 197.645.

197.206 Cancellation of void tax certificates; procedure; return of payments.—

(1) When it is proved to the tax collector of any county that lands in his county have been sold for unpaid taxes, and the tax sale certificate evidencing the sale is void because the taxes on the lands have been paid, the lands were not subject to taxation at the time of the assessment on which they were sold, or the description of the property in the tax sale certificate is void, or because of some error or omission that invalidates the sale, or if the tax sale certificate is void for any other reason, he shall forward a certificate of the fact to the Department of Revenue and enter upon the list of land sold for taxes a memorandum of the fact. The department, upon receipt of such certificate, if satisfied of the correctness, shall notify the collector, who shall cancel the certificate. When the certificate is held by an individual, the collector shall at once notify the original purchaser of the certificate, or the subsequent holder thereof, if known, that upon the voluntary surrender of the certificate or deed of release of his rights under any tax deed that may have been issued to him upon the certificate, it will refund to the holder of the certificate the amount received for the purchase of the certificate and the sum of $1 for the deed of release, as may be necessary, and the county commissioners shall refund from the general fund the amount received by the county for the certificate, and likewise any school board, school district, or other district, commission, or governmental subdivision or agency that has received any sums from the tax sale shall refund to the holder of the certificate the amount received by it. A certificate that is void for any reason shall be canceled only by a court of proper jurisdiction or by the procedure herein set forth.

(2) The holder of a void tax sale certificate shall be entitled to the return of the amount paid therefor; and if the holder of a tax sale certificate pays, redeems, or causes to be canceled and surrendered any other tax sale certificates, or pays any subsequent and omitted taxes, in connection with obtaining a tax deed or in connection with the foreclosure of a tax sale certificate or tax deed, and when such other tax sale certificates or such subsequent and omitted taxes are void for any reason, the person paying, redeeming or causing to be canceled and surrendered the other tax sale certificates or paying the other subsequent and omitted taxes, shall be entitled to obtain the return of the amount paid therefor.

History.—ss. 1, 2, ch. 18314, 1937; CGL 1940 Supp. 1009(1), (2); ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 1, ch. 72-268.
Note.—Former ss. 194.36, 197.590, 194.35, 197.585.

197.214 Special assessment; method of collection.—Special assessment liens on property in special districts shall be collected as provided for ad valorem taxes under this chapter, whether created by general or special law or by county ordinance which now exists or which may become law.

History.—s. 4, ch. 75-103; s. 1, ch. 77-174.

197.216 Cancellation of void omitted taxes or subsequent certificates.—If the holder of any tax sale certificate should pay, redeem, or cause to be canceled and surrendered any other tax sale certificate, or should pay or redeem any subsequent and omitted taxes, in connection with an application for tax deed, and if it should develop that the other tax sale certificate or any of the subsequent and omitted taxes are void for any reason, the collector shall forward a certificate of the fact to the Department of Revenue and enter upon the records in his office a memorandum of the fact, as provided for in s. 197.206. If the department, upon receipt of such certificate, is satisfied of the correctness thereof, the tax collector shall refund to the person so paying or redeeming the other tax sale certificate, or to the person so paying the subsequent and omitted taxes, in connection with an application for tax deed, the amount received by the state, and thereupon the county commissioners, and any school district, school board, drainage district, or other district, commission, or governmental subdivision or agency shall likewise refund the amount received by it in accordance with the provisions of s. 197.206.

History.—s. 3, ch. 18314, 1937; CGL 1940 Supp. 1009(3); ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 1, ch. 72-268; s. 15, ch. 73-332; s. 53, ch. 73-333.
Note.—Former ss. 194.37, 197.595.

197.221 Cancellation of tax liens held by the county on property of the United States and the State of Florida.—When the board of county commissioners finds that the United States, or any duly constituted agency thereof, has acquired by purchase or contract to purchase any lands in that county for reforestation, game preserve, or military aviation purposes, or that any duly constituted authorities of the state have acquired lands for public road or aeronautical purposes, against which there is any outstanding tax lien held by the county, the board shall by resolution describe the lands acquired, the nature of the lien thereon, and the purpose for which the lands are to be used and request the Department of Revenue for authority to cancel the lien against the lands. A certified copy of the resolution shall be furnished to the Department of Revenue, and upon receipt of the authority from the department to cancel the tax lien, the tax collector and the clerk of the county in which the lands are located shall record the authority in the official records of the county and note on the proper tax records of the office the action taken by the board of county commissioners and the

Department of Revenue by noting: "Canceled by authority of s. 197.221, Florida Statutes," the date of the authority, and reference to the book and page number where the authorization is recorded. All taxes and liens shall thereafter be canceled. No charge shall be made for costs or expenses to secure cancellation of any tax lien affected by the provisions of this section.

History.—ss. 1, 2, ch. 17424, 1935; ss. 1-3, ch. 17426, 1935; ss. 1-3, ch. 17459, 1935; CGL 1936 Supp. 992(2), (3), (5)-(7), (9)-(11); ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 1, ch. 72-268.
Note.—Former ss. 194.33, 197.245, 194.34, 197.250.

197.226 Cancellation of certificates on riparian rights separate from land.—

(1) All tax sale certificates describing riparian rights, as defined by s. 197.228, only and separately from the land in the hands of any governmental taxing agency are hereby declared invalid and are hereby canceled.

(2) Any title presumed to have vested in the state under chapter 18296, Laws of Florida, 1937, known as the Murphy Act, by virtue of such certificates is hereby declared invalid, and the riparian rights affected thereby are hereby restored to their original status and become appurtenant to the adjoining upland.

(3) The tax collector of each county and the proper tax officer of any governmental taxing agency are hereby authorized and directed to withhold all such tax sale certificates in their hands from redemptions or sale and to enter such cancellation upon the face of any such tax sale certificate and upon the tax sale record of the county or other taxing agency.

History.—s. 3, ch. 28262, 1953; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268.
Note.—Former ss. 194.63, 192.61(1)-(4), 197.315.

197.228 Riparian rights defined; certain submerged bottoms subject to private ownership.—

(1) Riparian rights are those incident to land bordering upon navigable waters. They are rights of ingress, egress, boating, bathing and fishing and such others as may be or have been defined by law. Such rights are not of a proprietary nature. They are rights inuring to the owner of the riparian land but are not owned by him. They are appurtenant to and are inseparable from the riparian land. The land to which the owner holds title must extend to the ordinary high watermark of the navigable water in order that riparian rights may attach. Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running therewith whether or not mentioned in the deed or lease of the upland.

(2) Navigable waters in this state shall not be held to extend to any permanent or transient waters in the form of so-called lakes, ponds, swamps or overflowed lands, lying over and upon areas which have heretofore been conveyed to private individuals by the United States or by the state without reservation of public rights in and to said waters.

(3) The submerged lands of any nonmeandered lake shall be deemed subject to private ownership where the Board of Trustees of the Internal Improvement Trust Fund of Florida conveyed the same more than 50 years ago without any deductions for water and without any reservation for public use and when taxes have been levied and collected on said submerged lands since conveyance by the state.

(4) Where private ownership of submerged bottoms outward from the shore has originated in a Spanish or other land grant approved by the Congress specifically describing an area in which was included navigable water, or by patent out of the United States prior to the date on which Florida became a state likewise containing a description including navigable water, or upon a valid conveyance out of the state, the submerged land included in such grant, patent or conveyance shall be subject to taxes lawfully imposed.

History.—ss. 1, 2, ch. 28262, 1953; s. 2, ch. 61-119.
Note.—Former ss. 192.61(1)-(4), 271.09, 197.315(3).

197.231 Cancellation of tax certificates; suit by holder.—

(1) The holder of any tax sale certificate that is void for any reason shall have the right to bring an action in the circuit court to have such tax sale certificate canceled and to obtain the return of the money paid for the tax sale certificate. If such tax sale certificate embraces county taxes, the only necessary party defendant shall be the tax collector. If such tax sale certificate is issued for nonpayment of city or municipal taxes, the only necessary party defendant shall be the city or municipality. If such tax sale certificate is issued by a district, board, commission, or other governmental subdivision or agency, the only necessary party defendant shall be the district, board, commission, or other governmental subdivision or agency.

(2) The complaint shall briefly describe the tax sale certificate, state that it is void, state briefly the reason the same is void, and demand that the tax sale certificate be declared void and that all amounts received by the governmental unit be returned. The plaintiff may include as many void certificates as he sees fit, whether they cover the same land or different parcels of land, and whether they were issued by the same governmental agency or by different governmental agencies.

(3) If the court finds for the plaintiff, it shall enter a final judgment declaring the tax sale certificate to be void, canceling it of record, and ordering each governmental unit or agency receiving any sums for the tax sale certificate to return the amounts received by them to the plaintiff; and thereupon the amount received for the certificate by the governmental units or agencies shall be returned. In such cases the county commissioners shall make all refunds on void tax sale certificates from the general fund. The same procedure shall be followed as in other civil actions.

(4) If the holder of any tax sale certificate pays, redeems, or causes to be canceled and surrenders any other tax sale certificate, or pays or redeems any other subsequent or omitted taxes, in connection with an application for tax deed or in connection with tax foreclosure proceedings, and if the other tax sale certificate or other subsequent and omitted taxes are void for any reason, the person so paying, redeeming, or causing to be canceled the void tax sale certificate, or paying or redeeming the void subsequent and omitted taxes, shall have the right to bring an action in chancery to obtain the return of the moneys received for the void tax sale certificate

or for the void subsequent and omitted taxes in accordance with the provisions of this section.

(5) The provisions of this section shall not be exclusive, but a refund of moneys may be obtained under s. 197.206 or s. 197.216.

History.—s. 4, ch. 18314, 1937; CGL 1940 Supp. 1009(4); ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 1, ch. 72-268.
Note.—Former ss. 194.38, 197.600.

197.236 Limitation upon lien of tax certificates.—

(1) A period of 7 years is declared to be the life of any tax certificate issued against any lands and held by any private holder. The period of 7 years shall be computed from the date of the issuance of the tax certificate.

(2) When such certificate becomes 7 years old, the certificate is deemed and held to be barred by this statute of limitation, and no action on the certificate may be maintained by any private holder in any court of this state, and no tax deed shall issue therefor.

(3) The provisions and limitations herein prescribed for tax certificates shall not apply to tax certificates which were sold under the provisions of chapter 18296, Laws of Florida, 1937, commonly known as the Murphy Act.

(4) After the expiration of 7 years from the date of issuance of any tax sale certificate issued against any land for taxes, when no application for a tax deed or other administrative or legal proceeding has existed of record, the tax sale certificate is declared null and void, and the tax collector shall cancel all 7-year-old tax sale certificates, noting the date of the cancellation of any of the tax sale certificates upon all appropriate records in his office. The collector shall complete the cancellation by entering opposite the record of the 7-year-old tax sale certificate a notation in substantially the following form: "Canceled by Act of 1973 Florida Legislature." All certificates outstanding July 1, 1973 shall have a life of 20 years.

History.—ss. 1-3, ch. 19515, 1939; CGL 1940 Supp. 1003(128); ss. 1-3a, 5, ch. 23828, 1947; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; ss. 16, 34, ch. 73-332.
Note.—Former ss. 196.12, 197.625, 194.58, 197.430.

197.241 Application for obtaining tax deed by holder of tax sale certificate; fees.—

(1) Tax deeds on real estate may be obtained by the holder of a tax certificate in the following manner: The holder of any tax certificate other than the county may at any time after 2 years have elapsed since April 1 of the year of issuance of the tax sale certificate and before the expiration of 7 years from the date of issuance, file the certificate and an application for a tax deed with the tax collector of the county where the lands described in the certificate are located. The holder shall notify the tax collector that he desires the lands, or any part thereof which is capable of being readily separated from the whole, advertised for sale as provided in s. 197.246. Consolidated applications on more than one tax sale certificate are prohibited.

(2) Any certificate holder, other than the county, making application for a tax deed shall pay the collector all amounts required for redemption or purchase of all other outstanding tax certificates, plus interest, any omitted taxes, plus interest, and delinquent taxes, plus interest, covering the land. The distribution to certificate holders of record of tax certificates redeemed or purchased shall be made as prescribed by the Department of Revenue. The tax collector shall then deliver to the clerk of the circuit court a statement certifying the names and addresses of all persons the clerk is required by law to notify prior to the sale of the property and that payment has been made to the collector for all outstanding certificates or if the certificate is held by the county that all appropriate fees have been deposited. The clerk shall advertise and administer the sale and receive such fees for the issuance of the deed and sale of the property as is provided in s. 28.24. The certificate shall be signed by the collector and his seal affixed. The collector may purchase a reasonable bond for errors and omissions of his office in making such certificates.

(3) The county shall make application for a deed on all certificates 2 years from the date the taxes to which they relate were due. A county shall apply for a deed on all certificates in its possession that have been in its possession for more than 2 years. Upon application for a tax deed, the county shall deposit with the collector all applicable costs and fees, but shall not deposit any money to cover the redemption of other outstanding certificates covering the land. The opening bid shall be the sum of the value of all outstanding certificates against the land, plus omitted years' taxes, delinquent taxes, interest, and all costs and fees paid by the county.

(4) If there are no bidders at the public sale, the clerk shall enter the land on a list entitled "Lands Available for Taxes" and shall immediately notify the county commission and all other persons holding certificates against the land that the land is available. The county may, at any time within 90 days after the day of offering for public sale, purchase the land at the minimum bid. After 90 days any person or governmental unit may purchase the land from the clerk, without further notice or advertising, for the minimum bid.

(5) Taxes shall not be extended against parcels listed as lands available for taxes, but in each year the taxes that would have been due shall be treated as omitted years and added to the required minimum bid. Seven years from the day the land was offered for public sale, the land shall escheat to the county in which it is located, and the clerk shall execute a tax deed vesting title in the board of county commissioners of the county in which it is located.

(6) Any fees collected pursuant to this section shall be refunded to the certificate holder in the event that the tax deed sale is canceled for any reason.

History.—s. 1, ch. 17457, 1935; CGL 1936 Supp. 999(136); s. 24, ch. 20722, 1941; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 17, ch. 73-332; s. 5, ch. 76-143; s. 4, ch. 78-32.
Note.—Former ss. 194.15, 197.490.

197.246 Notice, form of publication for obtaining tax deed by holder.—

(1) Upon the receipt of the application as provided by s. 197.241, and after the proper charges have been paid, the clerk shall publish a notice once each week for 4 consecutive weeks at weekly intervals in a newspaper selected as provided in s. 197.062. The form of notice of the application for a tax deed shall be as prescribed by the Department of Revenue. No

tax deed sale shall be held until 30 days after the first publication of the notice.

(2) Proof of the publication or posting of the notice provided for in this section shall be filed by the clerk of the circuit court in his office on or before the date fixed for the making of the sale. When there is no newspaper, the clerk shall execute and file in his office a certificate of the posting of the notices, stating where and on what dates the notices were posted.

(3) Upon ultimate disposition of the application for a tax deed, the clerk shall enter his certificate of notice and his certificate of advertising in the public records of the county with such other relevant documents as may be required by the Department of Revenue.

History.—ss. 2, 3, ch. 17457, 1935; CGL 1936 Supp. 999 (137, 138); ss. 25, 27, ch. 20722, 1941; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; ss. 18, 30, ch. 73-332.
Note.—Former ss. 194.16, 197.495, 194.17, 197.500, 197.251.

197.256 Mailing notice to owner where application is made by holder.—

(1) In addition to the publication of the notice provided for by s. 197.246, the clerk of the circuit court shall notify, by certified mail with return receipt requested, the legal titleholder and lienholders of record of the property and each lienholder as listed in the collector's certification who claims a lien thereon at the date of the filing of the application for obtaining tax deed, if the address of the owner appears on the record of the conveyance of the lands to the owner, or, if the address of the owner does not appear thereon, then the notice shall be mailed, by certified mail with return receipt requested, to the owner to whom the property was assessed on the tax roll for the year in which the property was last assessed, or, if the name and address of such person does not appear thereon, then the notice shall be mailed, by certified mail with return receipt requested, to the person last paying taxes upon the lands. If, upon diligent search, no address can be found, then no notice shall be required. The collector shall also mail, by certified mail with return receipt requested, notices to other lienholders who make application to his office. The clerk shall mail, by certified mail with return receipt requested, a copy of the notice to each mortgagee whose mortgage upon such lands is recorded in the county in which the property is located. The clerk shall also mail, by certified mail with return receipt requested, a notice to vendees of recorded contracts for deed or those who have made application to receive tax notices, including those making application for homestead exemption. The clerk shall enclose with every copy mailed a statement as follows: "Warning, property in which you are interested is listed in the copy of the enclosed notice"; and the clerk shall make out and attach to the affidavit of the publisher a certificate containing the names and addresses of those persons to whom the copy was sent and the date thereof. The certificate shall be signed by the clerk and his official seal affixed. The certificate shall be prima facie evidence of the fact that the notice was mailed. In the event the addresses of the owners, if any, do not appear on the tax roll and the address of the person last paying taxes upon the lands is not shown, the clerk shall execute a certificate to this effect. The failure of the owner, contract vendee, mortgagee, or municipality or other taxing district to receive the notice shall not affect the validity of the tax deed issued pursuant to the notice.

(2) The notice referred to in this section may be sent any time not later than 20 days prior to the date of sale, and a printed copy of the notice as published in the newspaper shall be sufficient.

History.—s. 4, ch. 17457, 1935; CGL 1936 Supp. 999(139); s. 28, ch. 20722, 1941; s. 11, ch. 22079, 1943; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 20, ch. 73-332; s. 1, ch. 75-192; s. 1, ch. 77-174.
Note.—Former ss. 194.18, 197.505.

197.261 Fees for mailing additional notices, when application is made by holder.—When the certificate holder makes a written request for him to do so and furnishes him with the names and addresses at the time of the filing of the application, the clerk shall send a copy of the notice referred to in s. 197.256 to anyone to whom the certificate holder may request him to send it, and the clerk shall include in it the statement required in s. 197.256. The certificate holder shall pay the clerk the service charges as prescribed in s. 28.24(9) for preparing and mailing each copy of notice requested by the holder. When the charges are made, they shall be added by the clerk to the amount required to redeem the land from sale.

History.—s. 5, ch. 17457, 1935; CGL 1936 Supp. 999(140); s. 29, ch. 20722, 1941; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 20, ch. 73-332; s. 3, ch. 77-354.
Note.—Former ss. 194.19, 197.510.

197.266 Sale at public auction.—

(1) The lands advertised for sale to the highest bidder as a result of an application filed under s. 197.241 shall be sold at public auction by the clerk of the circuit court, or his deputy, of the county where the lands are located, on the date, at the time, and at the courthouse door as set forth in the published notice, which shall be during the regular hours his office is open. At the time and place the clerk shall read the notice of sale, and shall offer the lands described in the notice for sale to the highest bidder for cash at public outcry. The amount required to redeem the tax certificate, plus the amounts paid by the holder to the clerk of the circuit court in charges for costs of sale, redemption of other tax certificates on the same lands, and all other costs to the applicant for tax deed, plus interest thereon at the rate of 18 percent per year for one month, shall be considered the bid of the certificate holder for the property. If there are no higher bids, the land shall be struck off and sold to the certificate holder. If there are other bids, the certificate holder shall have the right to bid as others present may bid, and the property shall be struck off and sold to the highest bidder.

(2) The clerk of the circuit court shall demand immediate payment for cost by the highest bidder of an amount equal to his bid plus applicable documentary stamp taxes and recording fees. The successful bidder shall make a reasonable deposit within 24 hours after the closing of the sale. If a reasonable deposit is not timely received, the clerk shall cancel the bids and sell the property on the following day. The clerk shall receive full payment prior to the issuance of the tax deed.

History.—s. 7, ch. 17457, 1935; CGL 1936 Supp. 999(142); s. 30, ch. 20722, 1941; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 19, ch. 73-332.
Note.—Former ss. 194.21, 197.520.

197.271 Tax deeds.—All tax deeds shall be issued in the name of a county and shall be signed by the clerk of the county. The deed shall be witnessed by two witnesses, the official seal shall be attached thereto, and the deed shall be acknowledged or proven as other deeds. Except as specifically provided in this chapter, no right, interest, restriction, or other covenant shall survive the issuance of a tax deed, except that a lien of record held by a municipal or county governmental unit, when such lien is not satisfied as of the disbursement of proceeds of sale under the provisions of s. 197.291, shall survive the issuance of a tax deed. The charges by the clerk shall be as provided in s. 28.24. Tax deeds issued to a purchaser of land for delinquent taxes shall be in the form prescribed by the Department of Revenue. All deeds issued pursuant to this section shall be prima facie evidence of the regularity of all proceedings from the valuation of the lands to the issuance of the deed, inclusive.

History.—s. 1, ch. 72-268; s. 21, ch. 73-332; s. 1, ch. 79-334.

197.276 Easements for public service purposes or for ingress and egress survive tax sales and deeds.—When any lands are sold for the nonpayment of taxes, or any tax certificate is issued thereon by a governmental unit or agency or pursuant to any tax lien foreclosure proceeding, the title to the lands shall continue to be subject to any easement for telephone, telegraph, pipeline, power transmission, or other public service purpose and shall continue to be subject to any easement for the purpose of ingress and egress to and from other land. The easement and the rights of the owner of it shall survive and be enforceable after the execution, delivery, and recording of a tax deed, master's deed, or a clerk's certificate of title pursuant to foreclosure of a tax deed, tax certificate, or tax lien, to the same extent as though the land had been conveyed by voluntary deed. The easement must be evidenced by written instrument recorded in the office of the clerk of the circuit court in the county where such land is located before the recording of such tax deed or master's deed, or, if not recorded, an easement for a public service purpose must be evidenced by wires, poles, or other visible occupation, and an easement for the purpose of ingress and egress must be evidenced by a road or other visible occupation to be entitled to the benefit of this section; however, this shall only apply to tax deeds issued after the effective date of this act.

History.—s. 1, ch. 21805, 1943; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 1, ch. 77-138.

Note.—Former ss. 192.58, 197.525.

197.281 Survival of restrictions and covenants after tax sale.—

(1) When a deed in the chain of title contains restrictions and covenants running with the land, as hereinafter defined and limited, the restrictions and covenants shall survive and be enforceable after the issuance of a tax deed or master's deed, or a clerk's certificate of title upon foreclosure of a tax deed, tax certificate, or tax lien, to the same extent that it would be enforceable against a voluntary grantee of the owner of the title immediately before the delivery of the tax deed, master's deed, or clerk's certificate of title.

(2) This section shall apply to the usual restrictions and covenants limiting the use of property, the type, character and location of building, covenants against nuisances and what the former parties deemed to be undesirable conditions, in, upon, and about the property, and other similar restrictions and covenants; but this section shall not protect covenants creating any debt or lien against or upon the property, except one providing for satisfaction or survival of a lien of record held by a municipal or county governmental unit, or requiring the grantee to expend money for any purpose, except one that may require that the premises be kept in a sanitary or sightly condition or one to abate nuisances or undesirable conditions.

(3) Any right that the former owner had to enforce like restrictions and covenants against the immediate, mediate, or remote grantor and other parties owning other property held or sold under the same plat or plan, or in the same or adjacent subdivisions of land, or otherwise, except forfeitures, right of reentry, or reverter, shall likewise survive to the grantee in the tax deed or master's deed or clerk's certificate of title and to his or its heirs, successors and assigns. All forfeitures, rights of reentry, and reverter rights shall be destroyed and shall not survive to the grantee in the tax deed or master's deed or clerk's certificate of title or to his or its heirs, successors and assigns.

History.—ss. 1-3, ch. 17402, 1935; CGL 1936 Supp. 5663(1)-(3); s. 1, ch. 29959, 1955; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 2, ch. 79-334.

Note.—Former ss. 192.33, 197.530.

197.291 Disbursement of proceeds of sale.—

(1) If the property is purchased by any person other than the certificate holder, the clerk shall forthwith pay to the certificate holder all of the sums he has paid, including the amount required for the redemption of the certificate or certificates together with any and all subsequent unpaid taxes plus the costs and expenses of the application for deed, with interest on the total of such sums for 1 month at the rate of 18 percent per year. The clerk shall distribute the amount required to redeem the certificate or certificates and the amount required for the redemption of other tax certificates on the same land with omitted taxes and with all costs, plus interest thereon at the rate of 18 percent per year for 1 month, in the same manner as he distributes money received for the redemption of tax certificates owned by the county.

(2) If the property is purchased for an amount in excess of the statutory bid of the certificate holder, the excess shall be paid over and disbursed by the clerk. The clerk shall distribute the excess to the governmental units for the payment of any lien of record held by a governmental unit against the property. In the event the excess is not sufficient to pay all of such liens in full, the excess shall then be paid to each governmental unit pro rata. If, after all liens of record of the governmental units upon the property are paid in full, there remains a balance of undistributed funds, the balance of the purchase price shall be retained by the clerk for the benefit of the person who on the day of the sale was the legal ti-

titleholder of record. The clerk shall mail a notice to the legal titleholder of record notifying him of the funds held for his benefit and shall pay to him upon demand the entire balance less a service charge at the same rate as prescribed in s. 28.24(14) and less the cost of mailing. Excess proceeds shall be held and disbursed in the same manner as unclaimed redemption moneys in s. 197.186 [F. S. 1973]. In the event excess proceeds are not sufficient to cover the service charge and mailing costs, the clerk shall receive the total amount of excess proceeds as a service charge.

(3) Any distribution by a clerk of unclaimed funds to the county from the sale of lands for taxes accumulated and disbursed prior to July 1, 1972 is ratified and validated upon the passage of this act.

History.—s. 8, ch. 17457, 1935; CGL 1936 Supp. 999(143); s. 31, ch. 20722, 1941; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; ss. 22, 34, ch. 73-332; s. 4, ch. 77-354; s. 3, ch. 79-334.

Note.—Former ss. 194.22, 197.535.

197.297 Validity of certificates.—No certificates valid as of the date of this enactment shall be invalidated by any repeal or amendment contained herein.

History.—s. 1, ch. 72-268.

197.302 County delinquent tax lands; method and procedure for sale by county.—

(1) Lands acquired by any county of the state for delinquent taxes in accordance with law which have not been previously sold or dedicated by the board of county commissioners may, at its discretion, be conveyed to the record fee simple owner of such lands as of the date the county obtained title to the lands. However, before any conveyance shall be made, the former owner of the lands may file with the board of county commissioners a verified written application which shall show:

(a) The description of the lands for which a conveyance is sought;

(b) The name and address of the former owner;

(c) The date title was acquired by the county;

(d) The price of the lands as previously fixed by resolution of the board of county commissioners, if this has been done;

(e) The use to which the lands were enjoyed by the record fee simple owner at the time of acquisition by the county;

(f) A brief statement of the facts and circumstances upon which the former owner bases the request for restitution of the described property;

(g) An offer to pay an amount equal to all taxes, including municipal taxes and liens, if any, which had become delinquent, together with interest and costs provided by law.

(2) In the event the described lands have not been assessed for taxes for the current year in which the petition is filed, the applicant shall pay, in addition, the taxes for current and omitted years, the latter amount to be determined by applicable millage for the omitted years and based on the last assessment of the described lands.

History.—s. 1, ch. 22870, 1945; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 23, ch. 73-332.

Note.—Former ss. 194.471, 197.655.

197.306 Corrective county deeds without consideration or further notice.—As to all lands acquired by any county for delinquent taxes and thereafter described and recorded in the book designated "county lands acquired for delinquent taxes" on file in the office of the clerk of the circuit court and that have been through the procedures of public notice and public sale to the highest and best bidder and a conveyance issued by any county and the proceeds of the sale received by the county and the conveyance being invalid because the purchaser or one of the purchasers at the public sale and in the deed from the county was the clerk of the circuit court of the county, the board of county commissioners is authorized and empowered to convey the title to the lands to the record fee simple owners or the record grantees or successor grantees of the purchaser from the county and execute a proper conveyance therefor without further public notice or without further consideration.

History.—ss. 1, 2, ch. 57-827; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268.

Note.—Former ss. 194.601, 197.690.

197.311 Grantee of tax deed entitled to immediate possession.—Any person, firm, corporation, or county that is the grantee of any tax deed under this law shall be entitled to the immediate possession of the lands described in the deed. If a demand for possession is refused, the purchaser may apply to the circuit court for a writ of assistance upon 5 days' notice directed to the person refusing to deliver possession. Upon service of the responsive pleadings, if any, the matter shall proceed as in chancery cases. If the court finds for the applicant, an order shall be issued by the court directing the sheriff to put the grantee in possession of the lands.

History.—s. 43, ch. 20722, 1941; s. 20, ch. 22079, 1943; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 24, ch. 73-332.

Note.—Former ss. 194.54, 197.695.

cf.—s. 28.241 Circuit court clerk filing fees.

197.346 Auditor General to examine accounts and tax certificates of tax collector.—The Auditor General shall annually examine the records, accounts, and tax certificates of the tax collector and report his findings.

History.—s. 14, ch. 4888, 1901; GS 582; RGS 784; CGL 1010; ss. 1, 2, ch. 69-55; s. 8, ch. 69-82; s. 1, ch. 72-268.

Note.—Former ss. 194.42, 197.640.

197.351 When taxes not due at time of sale.—When it appears to the Department of Revenue that the taxes on any land heretofore sold, or that may hereafter be sold, by the county for taxes were not due at the time of the sale upon the lands or any part thereof embraced in any certificate of sale, or that the sale was otherwise illegal or improper, the department shall have the power to cause the certificate to be canceled, in whole or in part, or cause it to be surrendered, in the manner and upon the terms as may in its judgment be best to protect the interest of the state and county and do justice to the owners. The collector shall make the cancellation or surrender and refund to the owner of the certificate on the order of the department.

History.—s. 12, ch. 4888, 1901; GS 579; RGS 781; CGL 1005; s. 49, ch. 20722, 1941; ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 1, ch. 72-268; s. 25, ch. 73-332; s. 53, ch. 73-333.

Note.—Former ss. 194.26, 197.555.

197.354 False return of collection; penalty.—If any tax collector returns to the Department of Revenue and county commissioners as unpaid any tax that has been paid to him, he is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 40, ch. 5596, 1907; RGS 5331; CGL 7464; ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 95, ch. 71-136; s. 1, ch. 72-268.
Note.—Former ss. 193.74, 197.135.

197.356 Implementation of this act.—

(1) For the calendar year 1972 the clerks of the circuit court shall continue to administer delinquent taxes.

(2) The Department of Revenue is directed to provide any assistance to the tax collectors and the clerks of the circuit court during the period of implementation necessary to carry out the provisions of this act.

(3) No clerk of the circuit court shall be relieved of accountability for any duty performed by his office prior to the transfer of the duty to the tax collector.

(4) All clerks of the circuit court and municipalities shall deliver to the county tax collector all lists of land sold for taxes and certificates for his collection. Every municipality which on January 1, 1973, had delinquent taxes for which certificates have never been sold shall retain until January 1, 1980, the power and duty to enforce the taxes as if this act and chapter 72-268, Laws of Florida, had not been enacted. All such municipal taxes shall, on January 1, 1980, become extinguished, null and void, unenforceable, and uncollectible in any manner and shall have no effect on the marketability of the title in any way.

(5) All certificates issued prior to December 31, 1972, shall remain in force with all rights then vested plus any that are created by chapter 72-268, except that the interest rate limit of 8 percent for all years subsequent to the first year after issuance shall remain in effect.

(6) The repeal by chapter 73-332 or chapter 72-268, Laws of Florida, of a curative provision that validates any document or act by any official under the provisions of this chapter shall not be interpreted as an impairment of the validation.

(7) The tax collector shall administer all lists of lands sold for taxes delivered to him by any governmental agency in the same manner as prescribed for county taxes.

(8) All unclaimed redemption moneys and tax deed surplus moneys in the possession of the state shall, if still unclaimed by July 1, 1975, become the property of the state.

History.—s. 1, ch. 72-268; s. 26, ch. 73-332.

197.361 Murphy Act lands; costs and attorney fees for quieting title.—No costs or attorney fees of any party adverse to the state may be charged to the state in any proceeding to quiet title in any person to lands the title to which vested in the state under the provisions of chapter 18296, Laws of Florida, 1937.

History.—s. 1, ch. 72-268; s. 1, ch. 75-269; s. 52, ch. 77-104; s. 89, ch. 79-400.

197.366 Murphy Act; tax certificates barred.—The right to apply for a tax deed or to institute other action for recovery on, or enforcement of, tax sale certificates, and subsequent and omitted taxes in connection therewith, that were sold and assigned under the provisions of chapter 18296, Laws of Florida, 1937, commonly known as the Murphy Act, and which certificates are held by private holders, natural or corporate, partnership, trustee, estate of deceased person, or other person or persons under disability, or otherwise, shall be deemed and held to be barred by this section from and after midnight June 30, 1956.

History.—s. 1, ch. 29794, 1955; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268.
Note.—Former ss. 192.351, 197.325.

197.371 Murphy Act; cancellation of tax certificates held by clerks of the circuit court.—

(1) The clerk of the circuit court is authorized and directed, immediately after June 30, 1956, to note the cancellation of all tax sale certificates that were sold under the provisions of chapter 18296, Laws of Florida, 1937, commonly known as the Murphy Act, and that were then still outstanding upon any and all records in his office.

(2) The several clerks of the circuit court shall show the cancellation by entering opposite the record of the tax sale certificates, a notation in substantially the following form: "Canceled by Laws of Florida, 1955."

(3) For making each cancellation and otherwise complying with law in relation thereto the clerk shall receive the fees as provided by general law from the General Revenue Fund of the county for canceling tax certificates by marginal notations.

History.—s. 2, ch. 29794, 1955; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268.
Note.—Former ss. 192.352, 197.330.

197.376 Exception; certificates held by the state.—Sections 197.366 and 197.371 shall not apply to tax sale certificates held by the clerks of the circuit courts on behalf of the state, by virtue of which title to the land covered thereby vested in the state under s. 197.381.

History.—s. 3, ch. 29794, 1955; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268.
Note.—Former ss. 192.353, 197.335.

197.381 Title to certain tax certificate lands vested in state.—

(1) At the expiration of 2 years from the date chapter 18296, Laws of Florida, 1937, became a law, the fee simple title to all lands in this state against which there remained outstanding tax sale certificates which, on the date the act became a law, were more than 2 years old, became absolutely vested in the state, and every right, title, or interest of every nature or kind whatsoever of the former owner of the property or anyone claiming by, through, or under him, or anyone holding a lien thereon, terminated, and the state, through the Board of Trustees of the Internal Improvement Trust Fund, may:

(a) Sell the lands to the highest bidder for cash at the time and after giving such notice and according to such rules and regulations as may be adopted by the board of trustees;

(b) Sell or lease the lands to any governmental unit without notice and public sale, on terms and conditions to be determined by the board of trustees.

Such conveyances may, upon a showing of good cause, be made without consideration by the governmental unit receiving the property;

(c) Convey any parcel or easements for right-of-way to any agency or county of the state, without giving notice, on such terms and conditions as may be fixed by the board of trustees. Conveyances made under this section shall be subject to any interests granted or withheld;

(d) Withdraw parcels from public sale considered by the board of trustees to be valuable for public purposes, and dedicate the parcels to such public use as is considered necessary and proper by the trustees;

(e) Exchange lands for other lands when the exchange is considered by the board of trustees to be in the public interest;

(f) Convey easements to railroad companies, light and power companies, and other public service corporations without notice and on such terms and conditions as to the Board of Trustees of the Internal Improvement Trust Fund may be proper, and conveyances under (a), (b) and (e) herein shall be subject thereto.

(2) The Board of Trustees of the Internal Improvement Trust Fund is vested and charged with the administration, management, control, supervision, conservation and protection of lands and products on, under, or growing out of, or connected with, lands mentioned in this section, and for such purposes, laws relating to lands of the board of trustees shall be applicable.

History.—s. 9, ch. 18296, 1937; CGL 1940 Supp. 992(20); ss. 1, 2, ch. 20424, 1941; s. 1, ch. 21684, 1943; ss. 1-3, ch. 21929, 1943; s. 2, ch. 61-119; ss. 1, 2, ch. 69-55; ss. 27, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 72-268.
Note.—Former ss. 192.38, 197.350, 192.45, 197.370, 192.50, 197.395.

197.386 Sale of Murphy Act lands to former owner; application; conveyance; distribution of proceeds.—

(1) Lands acquired by the state through delinquent ad valorem tax liens and the Murphy Act, chapter 18296, Laws of Florida, 1937, that have not been previously sold, conveyed, dedicated, or otherwise disposed of by the state, may be sold and conveyed by the state, through the board of trustees, to the record fee simple owner of the lands as of June 9, 1939, the date the lands became absolutely vested in the state, or to those claiming by, through, or under him by virtue of conveyance, mortgage, lien, or agreement, upon such terms and conditions and for such consideration as the board of trustees shall deem equitable and proper. No publication of a notice of sale or sale at auction to the highest and best bidder shall be necessary hereunder.

(2) Sale and conveyance of the lands hereunder shall be pursuant to application by the former owner, or those claiming by, through, or under the owner, that shall contain:

(a) A description of the lands sought to be purchased.

(b) The name and address, if known, of the former owner and the name and address of the applicant, if other than the former owner, showing the chain of title from the owner to the applicant.

(c) The mortgage and lienholders, if any, claiming under the former owner or his successors in title.

(d) The price offered for the lands, the amount of which shall accompany the application in cash or certified or cashier's checks.

(e) Any equities or elements of hardship, why the lands should be sold to the applicant under this statute instead of under s. 197.381.

(f) Such other information as the Board of Trustees of the Internal Improvement Trust Fund requires.

(g) Evidence satisfactory to the board of trustees of the payment of all taxes and assessments levied and assessed on the lands before the vesting of title in the state, with the payment of an amount equal to the sum of taxes and assessments that would have been due had the lands not vested in the state.

(3) Any original application pending for the purchase of the lands under s. 197.381 shall be suspended, upon the filing of the application hereunder, until the final disposition of the application, and the pendency of an original application shall not bar sale and conveyance hereunder unless and until a deed under s. 197.381 has been delivered to the purchaser.

(4) The form for conveyances hereunder shall be adopted by the Board of Trustees of the Internal Improvement Trust Fund.

(5) The proceeds of sales hereunder shall be distributed and disposed of as are the proceeds from sale under s. 197.381.

History.—ss. 1-5, ch. 28317, 1953; ss. 1, 2, ch. 69-55; ss. 27, 35, ch. 69-106; s. 1, ch. 72-268.
Note.—Former ss. 192.381, 197.355.

197.391 Construction of recodification.—This recodification of the sections relating to chapter 18296, Laws of Florida, 1937, by chapter 72-268, Laws of Florida, shall not serve to reinstate any right to maintain any action that had expired prior to this act.

History.—s. 1, ch. 72-268.

197.401 Murphy Act lands; suits by former owners; limitations.—The former owner of land vested in the state by virtue of chapter 18296, Laws of Florida, 1937, and others having or claiming by, through, or under him, shall have a period of 6 months from the time this section becomes a law to bring an action to recover the land or to enforce any right of the former owner, or any claim by, through, or under the former owner, or to set aside a sale by the Board of Trustees of the Internal Improvement Trust Fund, and on failure to assert the right within the time set in this section, shall be forever barred and foreclosed of all claims in and to the lands.

History.—s. 1, ch. 21685, 1943; s. 2, ch. 61-119; ss. 1, 2, ch. 69-55; ss. 27, 35, ch. 69-106; s. 1, ch. 72-268.
Note.—Former ss. 192.47, 197.380.

197.406 Murphy Act lands and other lands held under tax proceedings; suits by former owners; limitations.—

(1) The former owner, and others having or claiming by, through or under him, of land title to which is or was claimed by the state under and by virtue of chapter 18296, Laws of Florida, 1937, shall have 1 year from the time a deed of the land by the Board of Trustees of the Internal Improvement Trust Fund is recorded in the office of the clerk of the circuit court to sue to recover the land or to enforce any right of the former owner, or any claim by,

through or under the former owner, or to set aside a sale by the trustees, and on failure to assert the right within the time set out in this section shall be forever barred and foreclosed of claims as aforesaid in and to the land.

(2) The provisions of this section shall apply to any deed hereafter executed pursuant to any tax foreclosure or tax forfeiture to satisfy a tax lien and to any deed executed by the state, county, municipality, drainage district, or other taxing unit, conveying or purporting to convey any real estate title to which is claimed pursuant to any tax foreclosure, tax forfeiture, or any other proceeding to satisfy a tax lien, in the same manner and to the same extent as this section applies to a deed executed by the Board of Trustees of the Internal Improvement Trust Fund as referred to in subsection (1).

(3) The former owner of, and any persons having or claiming any interest in, any land the title to which has heretofore passed or purportedly passed to another by virtue of any deed executed within the past 5 years pursuant to any tax foreclosure or procedure or tax forfeiture to satisfy a tax lien, and executed by the state, or any county, municipality, drainage district, or other taxing unit within the state, shall have 1 year from the time this section becomes law within which to sue to recover the land or to enforce any right of the former owner or any claim or interest of any person therein, and upon failure to assert the right, claim, or interest within the time set out in this subsection, the owner and other persons shall be forever barred and foreclosed of rights, claims, or interests as aforesaid in and to the land.

(4) When the land conveyed by any such deed is in the actual and open possession of anyone other than the grantee named in the deed, the grantee in the deed, or any one claiming by, through, or under him, shall bring appropriate action within 3 years from the date of the deed for the possession of the land described in the deed.

(5) This section shall not apply to any lands upon which the taxes that were the basis for the issuance of a tax deed had been paid or the land in question was tax exempt or was not subject to any portion of the tax.

History.—s. 2, ch. 21685, 1943; s. 1, ch. 23827, 1947; s. 2, ch. 61-119; ss. 1, 2, ch. 69-55; ss. 27, 35, ch. 69-106; s. 1, ch. 72-268.
Note.—Former ss. 192.48, 197.385.

197.411 Murphy Act lands; conveyances, leases, etc., confirmed.—Subject to the time limit set forth in ss. 197.401 and 197.406, all deeds, leases, and easements heretofore executed by the Board of Trustees of the Internal Improvement Trust Fund on behalf of the state under the provisions of chapter 18296, Laws of Florida, 1937, and s. 197.381 shall be valid in all respects.

History.—s. 3, ch. 21685, 1943; s. 2, ch. 61-119; ss. 1, 2, ch. 69-55; ss. 27, 35, ch. 69-106; s. 1, ch. 72-268.
Note.—Former ss. 192.49, 197.390.

197.421 Certificates purchased under Murphy Act.—Holders of tax sale certificates together with subsequent omitted taxes, purchased by persons not the owners of the lands described in such certificates, under the provisions of chapter 18296, Acts 1937, shall, at the expiration of 2 years from the date of the sale of such certificates, except certificates encumbering homesteads, have the right to apply for tax deeds, in the manner provided by law, to the lands described in such certificates; provided, that for 2 years from the date of the sale of any certificate, the person holding title to the lands described in said certificate, on the date it became 2 years old, his grantee or legal representative or anyone holding a lien upon such land, shall have the right to redeem the same from said certificate so sold, by the payment of the amount bid therefor plus 3 percent per annum from the date of said certificate, together with all costs paid by the purchaser in connection with the purchase of said certificate.

History.—s. 6, ch. 18296, 1937; CGL 1940 Supp. 992(17); ss. 1, 2, ch. 69-55; s. 1, ch. 72-268.
Note.—Former ss. 192.35, 197.320.

197.426 Homesteads; certificates purchased under Murphy Act.—In the event any tax certificate, together with subsequent or omitted taxes, encumbering a homestead was purchased under chapter 18296, Acts 1937, by any person, not the owner of the land described in such certificate, then at the expiration of 10 years from the date of such sale of such certificate such purchaser shall have the right to apply for tax deed, as provided by law, for land described in such certificate; provided, that for 10 years from date of sale of such certificate the person who held title to said land on date said certificate became 2 years old, his grantee or legal representative or anyone holding a lien on such land shall have the right to redeem such land from such certificate by the payment of the amount bid therefor plus 3 percent per annum from the date of sale of such certificate together with all costs paid in connection with sale of said certificate.

History.—s. 11, ch. 18296, 1937; CGL 1940 Supp. 992(22); ss. 1, 2, ch. 69-55; s. 1, ch. 72-268.
Note.—Former ss. 192.36, 197.340.

197.431 Cancellation of certificates purchased under Murphy Act.—The holder of any tax sale certificate, by purchase, assignment, or otherwise, purchased under the provisions of chapter 18296, Acts of 1937, shall have the right, at any time, to deliver such certificate to the clerk of the circuit court of the county in which the lands are situated, for cancellation and said clerk shall cancel the certificates of record upon the payment of a fee of 10 cents for each certificate so canceled.

History.—s. 7, ch. 18296, 1937; CGL 1940 Supp. 992(18); ss. 1, 2, ch. 69-55; s. 1, ch. 72-268.
Note.—Former ss. 192.37, 197.345.

197.441 Cancellation of certain tax sale certificates.—

(1) The clerks of the circuit court of the several counties of the state are hereby authorized, empowered, and directed to note the cancellation by this section of any and all tax sale certificates issued for state taxes, state and county taxes, or municipal taxes, and held by any private holder, natural or corporate, partnership, trustee estate of a deceased person, or other person or persons under disability or otherwise, where the land covered by such tax sale certificate heretofore reverted to the state for nonpayment of delinquent taxes under the provisions of the Murphy Act.

(2) The clerks of the circuit court shall accomplish such cancellation by entering opposite the record of each such tax sale certificate so canceled a notation in substantially the following form: "Canceled by Acts 1947 Florida Legislature."

History.—ss. 1, 2, ch. 23832, 1947; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268.
Note.—Former ss. 194.59, 197.435.

CHAPTER 198

ESTATE TAXES

198.01 Definitions.—When used in this chapter the term, phrase or word:

(1) "Department" means the Department of Revenue.

(2) "Executor" means the executor, administrator or curator of the decedent, or, if there is no executor, administrator or curator appointed, qualified and acting, then any person who is in the actual or constructive possession of any property included in the gross estate of the decedent;

(3) "Person" means persons, corporations, associations, joint stock companies and business trusts;

(4) "Transfer" shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described;

(5) "Decedent" shall include the testator, intestate, grantor, bargainor, vendor, or donor;

(6) "Resident" means a natural person domiciled in the state;

(7) "Nonresident" means a natural person domiciled without the state;

(8) "Gross estate" means the gross estate as determined under the provisions of the applicable Federal Revenue Act;

(9) "Net estate" means the net estate as determined under the provisions of the applicable Federal Revenue Act;

(10) "Tangible personal property" means corporeal personal property, including money; and the term "intangible personal property" means incorporeal personal property including deposits in banks, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in property, evidences of debt and choses in action generally.

(11) "United States" when used in a geographical sense includes only the 50 states, and the District of Columbia.

History.—s. 2, ch. 16015, 1933; CGL 1936 Supp. 1342(81); ss. 21, 35, ch. 69-106; s. 44, ch. 71-377.

198.015 Domicile of decedent.—

(1) For the purposes of this chapter, every person shall be presumed to have died a resident and not a nonresident of the state:

(a) If such person has dwelt or lodged in the state during and for the greater part of any period of 12 consecutive months in the 24 months next preceding his death, notwithstanding the fact that from time to time during such 24 months such person may have sojourned outside of this state, and without regard to whether or not such person may have voted, may have been entitled to vote, or may have been assessed for taxes in this state; or

(b) If such person has been a resident of Florida, sojourning outside of this state.

(2) The burden of proof in an estate tax proceeding shall be upon any person claiming exemption by

reason of alleged nonresidency. Domicile shall be determined exclusively in the proceedings provided in this chapter, and orders relating to domicile previously entered in the probate proceedings shall not be conclusive for the purposes of this chapter.

History.—s. 1, ch. 77-411.

198.02 Tax upon estates of resident decedents.—A tax is imposed upon the transfer of the estate of every person who, at the time of death, was a resident of this state, the amount of which shall be a sum equal to the amount by which the credit allowable under the applicable Federal Revenue Act for estate, inheritance, legacy and succession taxes actually paid to the several states shall exceed the lesser of:

(1) The aggregate amount of all constitutionally valid estate, inheritance, legacy and succession taxes actually paid to the several states of the United States (other than this state) in respect of any property owned by such decedent or subject to such taxes as a part of or in connection with his estate, or

(2) An amount equal to such proportion of such allowable credit as the value of properties taxable by other states bears to the value of the entire gross estate wherever situate.

All values shall be as finally determined for federal estate tax purposes.

History.—s. 3, ch. 16015, 1933; CGL 1936 Supp. 1342(83); s. 1, ch. 71-202.

198.03 Tax upon estates of nonresident decedents.—A tax is imposed upon the transfer of real property situate in this state, upon tangible personal property having an actual situs in this state, upon intangible personal property having a business situs in this state and upon stocks, bonds, debentures, notes and other securities or obligations of corporations organized under the laws of this state, of every person who at the time of death was not a resident of this state but was a resident of the United States, the amount of which shall be a sum equal to such proportion of the amount of the credit allowable under the applicable Federal Revenue Act for estate, inheritance, legacy and succession taxes actually paid to the several states, as the value of the property taxable in this state bears to the value of the entire gross estate wherever situate.

History.—s. 4, ch. 16015, 1933; CGL 1936 Supp. 1342(84); s. 1, ch. 28031, 1953.

198.04 Tax upon estates of alien decedents.—A tax is imposed upon the transfer of real property situate and tangible personal property having an actual situs in this state and upon intangible personal property physically present within this state of every person who at the time of death was not a resident of the United States, the amount of which shall be a sum equal to such proportion of the credit allowable under the applicable Federal Revenue Act for estate, inheritance, legacy and succession taxes actually paid to the several states, as the value of the property taxable in this state bears to the value of the estate taxable by the United States wherever situate. For the purpose of this section, stock in a corporation organized under the laws of this state shall be deemed physically present within this state. The amount receivable as insurance upon the life of a decedent who at the time of his death was not a resident of the United States, and any moneys deposited with any person carrying on the banking business by or for such decedent who was not engaged in business in the United States at the time of his death, shall not, for the purpose of this section, be deemed to be physically present in this state.

History.—s. 5, ch. 16015, 1933; CGL 1936 Supp. 1342(85).

198.05 Administration of law by Department of Revenue.—The Department of Revenue shall, except as otherwise provided, have jurisdiction and be charged with the administration and enforcement of the provisions of this chapter.

History.—s. 6, ch. 16015, 1933; CGL 1936 Supp. 1342(86); ss. 21, 35, ch. 69-106.

198.06 Examination of books, papers, records, etc., by the department.—

(1) The department, for the purpose of ascertaining the correctness of any return, or for the purpose of making a return where none has been made, may examine any books, papers, records or memoranda, bearing upon the matter required to be included in the return; may require the attendance of persons rendering return or of any officer or employee of such persons, or of any person having knowledge in the premises, at any convenient place in the county in which such person resides, and may take his testimony with reference to the matter required by law to be included in such return, and may administer oaths to such persons.

(2) If any person summoned to appear under this chapter to testify, or to produce books, papers, or other data, shall refuse to do so, the circuit court for the county in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

History.—s. 6, ch. 16015, 1933; CGL 1936 Supp. 1342(86); ss. 21, 35, ch. 69-106.

198.07 Appointment of agents by department; bonds of agents; may administer oaths; credentials.—

(1) The department may appoint and remove such examiners, appraisers, attorneys and employees as it may deem necessary, such persons to have such duties and powers as the department may from time to time prescribe. The salaries of all examiners, appraisers, attorneys and employees employed by the department shall be such as it may prescribe, and such examiners, appraisers, attorneys and employees shall be reimbursed for traveling expenses as provided in s. 112.061.

(2) The department may require such of the examiners, appraisers, attorneys and employees as it may designate to give bond payable to the state for the faithful performance of their duties in such form and with such sureties as it may determine, and all premiums on such bonds shall be paid by the state.

(3) All officers empowered by law to administer oaths and the examiners, appraisers and attorneys appointed by the department may administer an oath to all persons giving any testimony before them or to take the acknowledgment of any person in re-

spect to any return or report required under this chapter.

(4) All examiners, appraisers and attorneys appointed by the department shall have for identification purpose proper credentials issued by the department and exhibit the same upon demand.

History.—s. 6, ch. 16015, 1933; CGL 1936 Supp. 1342(86); s. 19, ch. 63-400; ss. 21, 35, ch. 69-106.

cf.—s. 112.061 Traveling expenses.
s. 113.07 Bonds of officials.

198.08 Rules and regulations.—The department may from time to time make such rules and regulations not inconsistent with this chapter as it may deem necessary to enforce its provisions, and may adopt such rules and regulations as are or may be promulgated with respect to the estate tax provisions of the Revenue Act of the United States insofar as they shall be applicable hereto. The department may from time to time prescribe such forms as it shall deem proper for the administration of this chapter.

History.—s. 6, ch. 16015, 1933; CGL 1936 Supp. 1342(86); ss. 21, 35, ch. 69-106.

198.09 Information confidential; exceptions.—

(1) Except in accordance with proper judicial order, as provided by subsection (2), or as otherwise provided by law, it constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for the department or any examiner, appraiser, attorney, or other employee to divulge or make known in any manner the value of any estate or any particulars set forth or disclosed in any report or return required. Nothing herein shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof. However, the department may permit the Commissioner of Internal Revenue, any collector of Internal Revenue or Internal Revenue agent of the United States, or the proper officer of any state imposing an estate tax or inheritance tax or the authorized representative of such officer to inspect the estate tax returns of any individual or may furnish to such officer or his authorized representatives an abstract of the return of any executor or furnish information concerning any item contained in any return or disclosed by the report of any investigation of the return of any executor.

(2)(a) Any information received by the Department of Revenue in connection with the operation and enforcement of this chapter, including, but not limited to, information contained in returns and reports filed by persons subject to tax, shall be made available by the department to the Auditor General or his authorized agent in the performance of his official duties; however, no information shall be disclosed to the Auditor General or his authorized agent when such disclosure is prohibited by federal law. The Auditor General and his authorized agent shall be subject to the same requirements of confidentiality and subject to the same penalties for violation of the requirements as the department. The provisions of this subsection shall prevail over any conflicting provision of law unless the conflicting provision contains a specific exemption from this subsection.

(b) This subsection shall expire and cease to take effect on July 1, 1981.

History.—s. 6, ch. 16015, 1933; CGL 1936 Supp. 1342(86); ss. 21, 35, ch. 69-106; s. 96, ch. 71-136; ss. 1, 2, ch. 79-252.

198.10 Suits by or against department; special counsel.—

(1) The department may sue and be sued but shall not be required to give supersedeas or other bond in any cause or court of this state.

(2) Said department may employ special counsel to advise it and to conduct any litigation or proceeding that may be brought by or against it, and such special counsel shall be paid such compensation as said department shall deem proper.

History.—s. 6, ch. 16015, 1933; CGL 1936 Supp. 1342(86); ss. 21, 35, ch. 69-106.

198.11 Appointment of special appraisers.— The department may employ special appraisers for the purpose of determining the value of any property which is, or is believed by the department to be, subject to the tax imposed by this chapter, and such special appraisers shall be paid such compensation as said department shall deem proper.

History.—s. 6, ch. 16015, 1933; CGL 1936 Supp. 1342(86); ss. 21, 35, ch. 69-106.

198.12 Notice of death to department; tax return.—The executor, within 2 months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the department on the form prepared and published by the department known as the preliminary notice and report.

History.—s. 7, ch. 16015, 1933; CGL 1936 Supp. 1342(87); s. 1, ch. 29718, 1955; ss. 21, 35, ch. 69-106; s. 5, ch. 71-202.

198.13 Tax return to be made in certain cases.—The executor of every estate required by the laws of the United States to file a federal estate tax return shall file with the department within 9 months from the date of death a return consisting of an executed copy of the federal estate tax return, and shall file with such return all supplemental data, if any, as may be necessary to determine and establish the correct tax under this chapter. Such return shall be made in the case of every decedent who at the time of his death was not a resident of the United States and whose gross estate shall include any real property situate and tangible personal property having an actual situs in the state and intangible personal property physically present within the state.

History.—s. 7, ch. 16015, 1933; CGL 1936 Supp. 1342(87); s. 2, ch. 28031, 1953; s. 2, ch. 29718, 1955; ss. 21, 35, ch. 69-106; s. 2, ch. 71-202.

198.14 Failure to make return; extension of time for filing.—If the federal taxing authorities grant an extension of time for filing a return the department shall allow a like extension of time for filing upon the filing by the executor of a copy of such federal extension with the department. An extension of time for filing a return shall not operate to extend the time for payment of the tax. If any person fails to file a return at the time prescribed by law or files, willfully or otherwise, a false or fraudu-

lent return, the department shall make the return from its own knowledge and from such information as it can obtain through testimony or otherwise. Any such return so made by the department shall be prima facie good and sufficient for all legal purposes.

History.—s. 7, ch. 16015, 1933; CGL 1936 Supp. 1342(87); s. 3, ch. 29718, 1955; ss. 21, 35, ch. 69-106.

198.15 When tax due; extension; interest.—The tax imposed by this chapter shall be due and payable 9 months after the decedent's death, and shall be paid by the executor to the department. Where the department finds that the payment on the due date of the tax or any part thereof would impose undue hardship upon the estate, the department may extend the time for payment of any such part, but no extension shall be for more than 1 year, and the aggregate of extensions with respect to any estate shall not exceed 10 years from the due date. In such case, the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, unless a further extension be granted. If the time for the payment is thus extended, there shall be collected, as part of such amount, interest thereon at the rate of one-half of 1 percent per month of the amount due from the due date of the tax to the date the same shall be paid.

History.—s. 8, ch. 16015, 1933; CGL 1936 Supp. 1342(88); s. 3, ch. 28031, 1953; ss. 21, 35, ch. 69-106; s. 3, ch. 71-202; s. 1, ch. 76-261; s. 2, ch. 77-411.

198.16 Notice of determination of deficiency in federal estate tax to be filed with department.—It shall be the duty of the executor to file with the department within 60 days after a final determination of any deficiency in federal estate tax has been made, written notice thereof. If, based upon such deficiency and the ground therefor, it shall appear that the amount of tax previously paid is less than the amount of tax owing, the difference, together with interest at the rate of 1 percent per month from the due date of the tax, shall be paid upon notice and demand by the department. In the event the executor shall fail to give the notice required by this section, any additional tax which shall be owing may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment at any time prior to the filing of such notice or within 30 days after the delinquent filing of such notice, notwithstanding the provisions of s. 198.28.

History.—s. 9, ch. 16015, 1933; CGL 1936 Supp. 1342(89); s. 4, ch. 28031, 1953; s. 4, ch. 29718, 1955; ss. 21, 35, ch. 69-106; s. 3, ch. 77-411.

198.17 Deficiency; hearing by department.—If upon examination of any return a tax or a deficiency in tax is disclosed, the department shall proceed to determine all questions involving such tax or deficiency. Such tax or deficiency in tax shall be assessed and paid together with the penalty and interest, if any, applicable thereto, within 60 days after such demand as may be included in the department's order.

History.—s. 10, ch. 16015, 1933; CGL 1936 Supp. 1342(90); s. 5, ch. 29718, 1955; s. 19, ch. 63-559; ss. 21, 35, ch. 69-106; s. 54, ch. 78-95.

198.18 Failure to pay tax; civil penalties; delinquent or deficient taxes, interest.—

(1) If any part of a deficiency in tax due under the provisions of this chapter is due to negligence or intentional disregard of the provisions of this chapter or the rules and regulations issued pursuant hereto, with knowledge thereof but without intent to defraud, there shall be added as a penalty 5 percent of the total amount of the deficiency in tax, and if any part of such deficiency is willfully made with intent to defraud, there shall be added as a penalty 50 percent of the total amount of such deficiency, which penalty shall become due and payable upon notice and demand by the department, and such executor shall be liable to the state personally and on his official bond, if any, for any loss to the state accruing under the provisions of this section through his negligence or willful neglect. No interest shall be collected upon the amount of any penalty. The department may compromise or remit any penalty imposed pursuant to this section.

(2) Any deficiency in tax or any tax payment not received by the department on or before the due date as provided in s. 198.15, in addition to any other penalties, shall bear interest at the rate of 1 percent per month of the amount due from the due date until paid.

History.—s. 11, ch. 16015, 1933; CGL 1936 Supp. 1342(91); s. 6, ch. 29718, 1955; ss. 21, 35, ch. 69-106; s. 2, ch. 76-261; s. 1, ch. 77-174.

198.19 Receipts for taxes.—The department shall issue to the executor upon payment of the tax imposed by this chapter, receipts in triplicate, any of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts. If the executor files a complete return and makes written application to the department for determination of the amount of the tax and discharge from personal liability therefor, the department as soon as possible, and in any event within 1 year after receipt of such application, shall notify the executor of the amount of the tax, and upon payment thereof the executor shall be discharged from personal liability for any additional tax thereafter found to be due, and shall be entitled to receive from the department a receipt in writing showing such discharge; provided, however, that such discharge shall not operate to release the gross estate of the lien of any additional tax that may thereafter be found to be due, while the title to such gross estate remains in the executor or in the heirs, devisees, or distributees thereof; but after such discharge is given, no part of such gross estate shall be subject to such lien or to any claim or demand for any such tax after the title thereto has passed to a bona fide purchaser for value.

History.—s. 12, ch. 16015, 1933; CGL 1936 Supp. 1342(92); ss. 21, 35, ch. 69-106.

198.20 Failure to pay tax when due, department's warrant, etc.—If any tax imposed by this chapter or any portion of such tax be unpaid within 90 days after the same becomes due, and the time for payment be not extended, the department shall issue a warrant directed to the sheriff of any county of the state in which the estate or any part thereof may be situated, commanding him to levy upon and sell the real and personal property of such estate found within his county, for the payment of the amount thereof,

with such interest and penalties, if any, as may have accrued thereon or been assessed against the same, together with the cost of executing the warrant, and to return such warrant, to the department and pay to it the money collected by virtue thereof, by a time to be therein specified, not less than 60 days from the date of the warrant. The sheriff thereupon shall proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for services in executing the warrant as are now allowed by law for like services to be collected in the same manner as now provided by law. Alias and pluries warrants may issue from time to time as said department may deem proper until the entire amount of the tax, deficiency, interest, penalties and costs have been recovered.

History.—s. 13, ch. 16015, 1933; CGL 1936 Supp. 1342(93); ss. 21, 35, ch. 69-106.

198.21 Tax due payable from entire estate; third persons.—If the tax or any part thereof is paid or collected out of that part of the estate passing to or in possession of any person other than the executor in his capacity as such, such person shall be entitled to a reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the person whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest in the estate is subject to an equal or prior liability for the payment of tax, debts, or other charges against the estate, it being the purpose and intent of this section that so far as is practical and unless otherwise directed by the will of the decedent, the tax shall be paid out of the estate before its distribution; but the department shall not be charged with enforcing contribution from any person.

History.—s. 14, ch. 16015, 1933; CGL 1936 Supp. 1342(94); ss. 21, 35, ch. 69-106.

198.22 Lien for unpaid taxes.—Unless the tax is sooner paid in full, it shall be a lien for 12 years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien, and except that such part of the gross estate of a resident decedent as is transferred to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth shall be divested of such lien and such lien shall then attach to the consideration received for such property from such purchaser, mortgagee, or pledgee. If the department is satisfied that no tax liability exists or that the tax liability of an estate has been fully discharged or provided for, it may issue a waiver releasing any or all property of such estate from the lien herein imposed.

History.—s. 15, ch. 16015, 1933; CGL 1936 Supp. 1342(95); s. 1, ch. 57-108; s. 13, ch. 59-1; ss. 21, 35, ch. 69-106; s. 4, ch. 77-411.

198.23 Personal liability of executor, etc.—If any executor shall make distribution either in whole or in part of any of the property of an estate to the heirs, next of kin, distributees, legatees or devisees without having paid or secured the tax due the state under this chapter, or obtained the release of such property from the lien of such tax he shall become personally liable for the tax so due the state, or so much thereof as may remain due and unpaid, to the full extent of the full value of any property belonging to such person or estate which may come into his hands, custody or control.

History.—s. 16, ch. 16015, 1933; CGL 1936 Supp. 1342(96).

198.24 Sale of real estate by executor to pay tax.—Every executor shall have the same right and power to take possession of or sell, convey and dispose of real estate as assets of the estate for the payment of the tax imposed by this chapter as he may have for the payment of the debts of the decedent.

History.—s. 17, ch. 16015, 1933; CGL 1936 Supp. 1342(97).

198.25 Actions to enforce payment of tax.—Actions may be brought within the time or times herein specified by the department to recover the amount of any taxes, penalties and interest due under this chapter. Every such action shall be brought in the county where the estate is being or has been administered, or if no administration be had in this state, then in any county where any of the property of the estate shall be situate.

History.—s. 18, ch. 16015, 1933; CGL 1936 Supp. 1342(98); ss. 21, 35, ch. 69-106.

198.26 No discharge of executor until tax is paid.—No final account of an executor of the estate of a nonresident, nor of the estate of a resident where the value of the gross estate wherever situate exceeds $60,000 shall be allowed by any court unless and until such account shows, and the judge of said court finds, that the tax imposed by the provisions of this chapter upon said executor, which has become payable, has been paid. The certificate of the department of nonliability for tax or its receipt for the amount of tax therein certified shall be conclusive in such proceedings as to the liability or the payment of the tax to the extent of said certificate.

History.—s. 19, ch. 16015, 1933; CGL 1936 Supp. 1342(99); s. 7, ch. 29718, 1955; ss. 21, 35, ch. 69-106.

198.27 Agreements as to amount of tax due.—For the purpose of facilitating the settlement and distribution of estates held by executors, the department may, on behalf of the state, agree upon the amount of taxes at any time due or to become due from such executor under the provisions of this statute, and payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates.

History.—s. 20, ch. 16015, 1933; CGL 1936 Supp. 1342(100); ss. 21, 35, ch. 69-106.

198.28 Time for assessment of tax.—The amount of estate tax due under this chapter shall be determined and assessed within 4 years from the

date the return was filed, or within a period expiring 90 days after the last day on which the assessment of a deficiency in federal estate tax may lawfully be made under applicable provisions of the Internal Revenue Laws of the United States, whichever date last occurs, and no suit or other proceedings for the collection of any tax due under this chapter shall be begun after such date; provided, however, that in the case of a false or fraudulent return or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

History.—s. 21, ch. 16015, 1933; CGL 1936 Supp. 1342(101); s. 5, ch. 28031, 1953; s. 8, ch. 29718, 1955.

198.29 Refunds of excess tax paid.—

(1) Wherever it appears upon the examination of any return made under this chapter or upon proof submitted to the department by the executor, that an amount of estate tax has been paid in excess of the tax legally due under this chapter, then the amount of such overpayment, together with any overpayment of interest thereon shall be refunded to the executor and paid upon the warrant of the Comptroller drawn upon the State Treasurer who shall honor and pay the same; and such refund shall be made by the department as a matter of course regardless of whether or not the executor has filed a written claim therefor, except that upon request of the department, the executor shall file with the department a conformed copy of any written claim for refund of federal estate tax which has theretofore been filed with the United States.

(2) Notwithstanding the foregoing provisions, no refund of estate tax shall be made nor shall any executor be entitled to bring any action for refund of estate tax after the expiration of 4 years from the date of payment of the tax to be refunded unless there shall have been filed with the department written notice of any administrative or judicial determination of the federal estate tax liability of the estate, whichever shall last occur, and such notice shall have been so filed not later than 60 days after such determination shall have become final.

(3) For the purpose of this section, an administrative determination shall be deemed to have become final on the date of receipt by the executor or other interested party of the final payment to be made refunding federal estate tax or upon the last date on which the executor or any other interested party shall receive notice from the United States that an overpayment of federal estate tax has been credited by the United States against any liability other than federal estate tax of said estate. A final judicial determination shall be deemed to have occurred on the date on which any judgment entered by a court of competent jurisdiction and determining that there has been an overpayment of federal estate tax becomes final.

(4) Nothing herein contained shall be construed to prevent an executor from bringing or maintaining an action in any court of competent jurisdiction within any period otherwise prescribed by law to determine any question bearing upon the taxable situs of property, the domicile of a decedent, or otherwise affecting the jurisdiction of the state to impose an inheritance or estate tax with respect to a particular item or items of property.

History.—s. 22, ch. 16015, 1933; CGL 1936 Supp. 1342(102); s. 8-A, ch. 29718, 1955; ss. 21, 35, ch. 69-106.

198.30 Circuit judge to furnish department with names of decedents, etc.—The circuit judges of this state shall, on or before the tenth day of every month, notify the department of the names of all decedents, the names and addresses of the respective executors, administrators or curators appointed, the amount of the bonds, if any, required by the court, and the probable value of the estates, in all estates of decedents whose wills have been probated or propounded for probate before him or upon which letters testamentary or upon whose estates letters of administration or curatorship have been sought or granted, during the preceding month, and such report shall contain any other information which the circuit judge may have concerning the estate of such decedents; and said circuit judge shall also furnish forthwith such further information, from the records and files of the circuit court in regard to such estates, as the department may from time to time require.

History.—s. 23, ch. 16015, 1933; CGL 1936 Supp. 1342(103); s. 9, ch. 29718, 1955; ss. 21, 35, ch. 69-106; s. 20, ch. 73-334.

198.31 Duties and powers of corporate executors of nonresident decedents.—If the executor of the estate of a nonresident be a corporation duly authorized, qualified and acting as such executor in the jurisdiction of the domicile of such decedent, it shall be under the duties and obligations as to the giving of notices and filing of returns required by this chapter, and may bring and defend actions and suits as may be authorized or permitted by this chapter, to the same extent as an individual executor, notwithstanding that such corporation may be prohibited from exercising, in this state, any powers as executor, but nothing herein contained shall be taken or construed as authorizing corporations not authorized to do business in this state to qualify or act as executor, administrator or in any other fiduciary capacity, if otherwise prohibited by the laws of this state, except to the extent herein expressly provided.

History.—s. 24, ch. 16015, 1933; CGL 1936 Supp. 1342(104).

198.32 Prima facie liability for tax.—The estate of each decedent whose property shall be subject to the laws of the state shall be deemed prima facie liable for estate taxes under this chapter, and shall be subject to a lien therefor in such amount as may be later determined to be due and payable on such estate as provided in this chapter. Such presumption of liability shall begin on the date of the death of the decedent and shall continue until the full settlement of all taxes which may be found to be due under this chapter, such settlement to be shown by receipts for all taxes due to be issued by the department as provided for in this chapter. Whenever it shall be made to appear to the department that an estate is not subject to any tax under this chapter such department shall issue to the executor, administrator, curator, or other personal representative, or to the

heirs, devisees, or legatees of the decedent, a certificate in writing to that effect, showing such nonliability to tax, which certificate of nonliability shall have the same force and effect as a receipt showing payment. Such certificate of nonliability shall be subject to record and admissible in evidence in like manner as receipts showing payment of taxes. There shall be paid to the department a fee of $5 for each certificate so issued.

History.—s. 25, ch. 16015, 1933; CGL 1936 Supp. 1342(105); ss. 21, 35, ch. 69-106; s. 4, ch. 71-202.

198.33 Discharge of estate, notice of lien, limitation on lien, etc.—

(1) Where no receipt for the payment of taxes, or no receipt of nonliability for taxes has been issued or recorded as provided for in this chapter, the property constituting the estate of the decedent in this state shall be deemed fully acquitted and discharged of all liability for estate and inheritance taxes under this chapter after a lapse of 10 years from the date of the filing with the department of notice of the decedent's death, or after a lapse of 10 years from the date of the filing with the department of an estate tax return, whichever date shall be earlier, unless the department shall make out and file and have recorded in the public records of the county wherein any part of the estate of the decedent may be situated in this state, a notice of lien against the property of the estate, specifying the amount or approximate amount of taxes claimed to be due to the state under this chapter, which notice of lien shall continue said lien in force for an additional period of 5 years or until payment is made. Such notice of lien shall be filed and recorded in the book of deeds in the office of the clerk of the circuit court; provided, where no receipt for the payment of taxes, or no certificate of nonliability for taxes, has been issued or recorded as provided for in this chapter, the property constituting the estate of the decedent in this state, if said decedent was a resident of this state at the time of his death, shall be deemed fully acquitted and discharged of all liability for tax under this chapter after a lapse of 10 years from the date of the death of the decedent, unless the department shall make out and file and have recorded notice of lien as herein provided, which notice shall continue said lien in force against such property of the estate as is situate in the county wherein said notice of lien was recorded for an additional period of 5 years or until payment is made.

(2) Notwithstanding anything to the contrary in this section or this chapter, no lien for estate and inheritance taxes under this chapter shall continue for more than 20 years from the date of death of the decedent, whether the decedent be a resident or nonresident of this state.

History.—s. 26, ch. 16015, 1933; CGL 1936 Supp. 1342(106); s. 6, ch. 28031, 1953; s. 10, ch. 29718, 1955; s. 2, ch. 57-108; ss. 21, 35, ch. 69-106.
cf.—s. 28.24 Fees of clerk of circuit court.

198.331 Retroactive effect of ss. 198.22 and 198.33.—The provisions of ss. 198.22 and 198.33 as amended by ch. 57-108 shall apply to estates of decedents dying after 12:01 a.m., Eastern Standard Time, October 1, 1933.

History.—s. 3, ch. 57-108; ss. 21, 35, ch. 69-106; s. 57, ch. 73-333.

198.34 Disposition of proceeds from taxes.— All taxes and fees levied and collected under this chapter shall be paid into the Treasury of the State to the credit of the general revenue fund.

History—s. 28, ch. 16015, 1933; CGL 1936 Supp. 1342(108); s. 10, ch. 26869, 1951.
cf.—s. 550.30 Racetrack funds guaranteed from general revenue fund.

198.35 Interpretation and construction.— When not otherwise provided for in this chapter, the rules of interpretation and construction applicable to the estate and inheritance tax laws of the United States effective January 1, 1979, shall apply to and be followed in the interpretation of this chapter.

History—s. 32, ch. 16015, 1933; CGL 1936 Supp. 1342(111); s. 5, ch. 77-411; s. 1, ch. 79-34.

198.36 Failure to produce records; penalty.— Whoever fails to comply with any duty imposed upon him by this law, or having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the department or any examiner, appraiser, or attorney appointed pursuant to this chapter, who desires to examine the same in the performance of his duties under this chapter, shall be liable to a penalty of not exceeding $500 to be recovered, with costs of suit, in a civil action in the name of the state.

History.—s. 27, ch. 16015, 1933; CGL 1936 Supp. 1342(107); ss. 21, 35, ch. 69-106.

198.37 Failure to make return; penalty.—Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information for the purposes of the computation, assessment, or collection of any tax imposed by this chapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 27, ch. 16015, 1933; CGL 1936 Supp. 7473(3a); s. 97, ch. 71-136.

198.38 False return; penalty.—Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, this chapter of a false or fraudulent return, affidavit, claim, or document shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim or document) be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 27, ch. 16015, 1933; CGL 1936 Supp. 7473(3a); s. 98, ch. 71-136.

198.39 False statement in return; penalty.—Whoever knowingly makes any false statement in any notice or return required to be filed under this chapter shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 27, ch. 16015, 1933; CGL 1936 Supp. 7473(3a); s. 99, ch. 71-136.

198.40 Failure to pay tax, evasion of tax, etc.; penalty.—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 27, ch. 16015, 1933; CGL 1936 Supp. 7473(3a); s. 100, ch. 71-136.

198.41 Effectiveness of this chapter, etc.—This chapter shall remain in force and effect so long as the Government of the United States retains in full force and effect as a part of the Revenue Laws of the United States a Federal Estate Tax, and this chapter shall cease to be operative as and when the Government of the United States ceases to impose any Estate Tax of the United States.

History.—s. 29, ch. 16015, 1933; CGL 1936 Supp. 1342(109).

198.42 Short title.—This chapter may be cited as the "Estate Tax Law of Florida."

History.—s. 1, ch. 16015, 1933; CGL 1936 Supp. 1342(80).

198.44 Certain exemptions from inheritance and estate taxes.—The tax imposed under the inheritance and estate tax laws of this state in respect to personal property (except tangible property having an actual situs in this state) shall not be payable:

(1) If the transferor at the time of his death was a resident of a state or territory of the United States, or the District of Columbia, which at the time of his death did not impose a death tax of any character in respect to property of residents of this state (except tangible personal property having an actual situs in such state, territory or district); or

(2) If the laws of the state, territory or district of the residence of the transferor at the time of his death contained a reciprocal exemption provision under which nonresidents were exempted from said death taxes of every character in respect to personal property (except tangible personal property having an actual situs therein), and provided that the state, territory or district of the residence of such nonresident decedent allowed a similar exemption to residents of the state, territory or district of residence of such decedent.

History.—s. 1, ch. 15747, 1931; CGL 1936 Supp. 1342(70).

CHAPTER 199

INTANGIBLE PERSONAL PROPERTY TAXES

PART I GENERAL PROVISIONS (ss. 199.012-199.072)

PART II ASSESSMENT PROCEDURES (ss. 199.103-199.122)

PART III ADMINISTRATIVE, COLLECTION, AND ENFORCEMENT PROCEDURES (ss. 199.202-199.292)

PART I

GENERAL PROVISIONS

199.012 Short title.—This chapter shall be known and may be cited as the "Intangible Personal Property Tax Act."

History.—s. 1, ch. 71-134.

199.023 Definitions.—The following terms and phrases when used in this chapter shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Intangible personal property" means all personal property which is not in itself intrinsically valuable, but which derives its chief value from that which it represents, including, but not limited to, the following:

(a) Money, including, without limitation, United States legal tender, certificates of deposit, cashier's and certified checks, bills of exchange, drafts, the cash equivalent of annuities and life insurance policies, and similar instruments:

1. Held by a taxpayer;

2. Deposited in or with banks or other corporations, institutions, or persons doing a similar type of business;

3. Placed with, deposited with, or entrusted as a shareholder to building and loan associations, savings associations, credit unions, or similar institutions; or

4. Deposited with or held by any person.

(b) All stocks or shares of incorporated or unincorporated companies, business trusts, and mutual funds.

(c) All beneficial interests of residents in trusts.

(d) All notes, bonds, and other obligations for the payment of money.

(e) All condominium and cooperative apartment leases of recreation facilities, land leases, and leases of other commonly used facilities. These leases shall not be valued as other than intangibles.

(2) "Person" means any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary and shall include the plural as well as the singular.

(3) "Taxpayer" means any person liable for taxes imposed under this chapter, any agent required to file and pay any taxes imposed hereunder, and the heirs, successors, assignees, and transferees of any such person or agent.

(4) "Department" means the Department of Revenue.

(5) "In the state" means within the exterior limits of Florida.

(6) "Beneficial interest" means the ownership of one or more property rights in the principal or income of a trust, whether vested, contingent, or subject to conditions, but it shall not mean an interest in trust income only.

(7) "Affiliated group" means one or more chains of includable corporations connected through stock ownership with a common parent corporation, incorporated in or having its principal place of business in the state, which is an includable corporation, providing that:

(a) Stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of each of the includable corporations, excepting therefrom the common parent corporation, is owned directly by one or more of the other includable corporations; and

(b) The common parent corporation owns directly stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of at least one of the other includable corporations.

As used in this subsection the term "nonvoting stock" does not include nonvoting stock which is limited and preferred as to dividends.

(8) "Genuine primary security" means the collateral to which the taxpayer, either by law, regulation, or contract, looks first for collection.

History.—s. 1, ch. 71-134; s. 1, ch. 74-237; s. 1, ch. 76-130; s. 4, ch. 76-222.

199.032 Levy.—There is hereby levied, to be assessed and collected as provided by this chapter:

(1) An annual tax of 1 mill on the dollar of the just valuation of all intangible personal property, except money as defined in s. 199.023(1)(a), and except notes, bonds, and other obligations for payment of money which are secured by mortgage, deed of

trust, or other lien upon real property situated in the state;

(2) A nonrecurring tax of 2 mills on the dollar of the just valuation of all notes, bonds, and other obligations for payment of money which are secured by mortgage, deed of trust, or other lien upon real property situated in the state.

(3) When notes, bonds, and other obligations for the payment of money are secured by personalty, taxable as provided for in subsection (1), are also secured by real property, taxable as provided for in subsection (2), the taxpayer may elect to be taxed under subsections (1) and (2) hereof, and the tax shall be apportioned, based upon the value of the genuine primary security.

History.—s. 1, ch. 71-134; s. 1, ch. 71-987; s. 2, ch. 76-130.

199.042 Date of delinquency; discounts for early payment.—

(1)(a) All annual taxes on intangible personal property shall be due and payable so as to be received by the department by June 30 of each year, and shall be delinquent on and after July 1 of each year. However, no return to the department shall be considered delinquent when said return is postmarked, other than by a postage meter, not later than the thirtieth day of such month.

(b) The full amount of the taxes shown on any return required under this chapter shall accompany the return at the time of its filing. On all payments, discounts for early payment thereof shall be allowed as follows:

1. For payment in April or prior thereto, 4 percent;
2. For payment in May, 2 percent;
3. Tax payments made in June shall be without discount.

(2) All intangible taxes on notes, bonds and other obligations for payment of money which are secured by mortgage, deed of trust, or other lien upon real property situated in the state shall be due and payable when the instrument is recorded or sought to be enforced.

History.—s. 1, ch. 71-134; s. 3, ch. 72-277.

199.052 Returns.—

(1) It is hereby made the duty of every person in the state, and every person who has become a legal resident of the state on or before January 1, who owns or has control, management, or custody of intangible personal property which is subject to annual taxation under this chapter to file a sworn return with the department on or before June 30 of each year, listing separately the character, description, location, and just valuation of all such property.

(2) No taxpayer subject to the annual tax imposed by this chapter shall be required to file a return or pay a tax thereunder if the aggregate annual tax upon the taxpayer's intangible personal property for any year is less than $5. Agents and fiduciaries shall report for each person for whom they hold intangibles if the aggregate annual tax on each person is more than $5.

(3) Husband and wife may file a joint return listing all intangible personal property held jointly or singly by them, and they shall be jointly liable for the payment of all taxes due under this chapter. Husband and wife filing jointly shall be entitled to two exemptions as provided in s. 199.072(3).

(4) The beneficial interest of a resident of Florida in a foreign trust shall be returned by the resident unless the trustee returns the resident's beneficial interest for taxation. Any foreign trustee may return the full value of the principal of the trust for taxation, in which event the owners of all beneficial interests in the trust shall not be required to return such interests.

(5) An affiliated group of corporations shall have the privilege of making a consolidated return. The making of a consolidated return shall be upon the condition that all includable corporations which are members of the affiliated group consent to be included in said return. The making of a consolidated return shall be considered as such consent; however, the making of a consolidated return shall not operate to provide taxable situs for intangibles held by an includable corporation when the intangibles would not otherwise be required to be returned for taxation. The fact that members of an affiliated group own stock in corporations which do not qualify under the stock ownership requirements as members of an affiliated group will not preclude the filing of a consolidated return on behalf of the qualified members. In the case of consolidated returns, intercompany accounts, including the capital stock of an includable corporation other than the parent, owned by another includable corporation, shall not be subject to taxation under this chapter. However, capital stock and other intercompany accounts of a nonqualified member of the affiliated group shall be returned and taxed. Each corporation filing a consolidated return shall submit therewith a separate balance sheet, which shall properly identify and separately state all intercompany accounts, for each company included therein.

(6) The tax imposed on intangible personal property reported and paid by a trustee under subsections (1) or (4), as agent, shall not be returned by the person owning, or having a beneficial interest in, such property.

(7)(a) Every person who shall take, receive, or record any note, bond, or other obligation for the payment of money which is secured by mortgage, deed of trust, or other written specific lien in the nature of a mortgage upon real property situated in the state shall pay the tax prescribed by this chapter in respect to the debt or obligation secured thereby to the clerk of the circuit court at the time the instrument is presented for recordation or, if not so presented, at the time of execution. In evidence thereof the clerk of the circuit court, upon receiving payment thereof, shall place on such instrument a notation showing the amount of tax levied by this chapter and received by him.

(b) Any mortgage, deed of trust, or other lien given to replace a defective mortgage, deed of trust, or other lien, covering the identical real property as the original and securing identical original note or obligation, may be recorded without payment of additional tax upon proof of payment of the tax upon the original recording. The clerk shall place a notation on the new mortgage, deed of trust, or other lien

showing that the tax has been paid on the original recording.

(c) No mortgage, deed of trust, or written evidence of a specific lien in the nature of a mortgage on real property shall be recorded in any public record of the state or be enforceable in any court of the state unless and until the tax levied by this chapter shall have been paid and until the notation of the clerk of the circuit court shall have been placed thereon showing the payment of the tax. However, the failure to place the notation thereon or to pay the correct amount of tax shall not affect the constructive notice given by the recordation of the mortgage, deed of trust, or instrument evidencing a lien. However, the provisions of this chapter shall not apply to the assumption of a mortgage agreement between the mortgagor and his grantee when the amount of the indebtedness remains the same whether or not the original obligor is released from liability on the note and mortgage.

(d) If the mortgage, deed of trust, or other lien subject to the tax levied by this chapter secures future advances, as provided in s. 697.04, the tax shall be paid at the time of execution on the initial debt or obligation secured, excluding future advances; at the time and so often as any future advance is made, the tax shall be paid on all sums then advanced. The trustee under any such deed of trust or the owner of any such mortgage or other instrument evidencing such lien making any such advance shall pay the tax prescribed in this chapter in respect to the amount of the advance, and the clerk shall place a notation on the record of the mortgage, deed of trust, or other instrument evidencing such lien, or upon any supplemental instrument evidencing such advance and offered for recording, showing the amount of tax received by him. Failure to pay the tax shall not affect the lien for any such future advance given by s. 697.04, but any person who shall fail or refuse to pay such tax due by him shall be guilty of a misdemeanor, and upon conviction shall be fined accordingly. The mortgage, deed of trust, or other instrument shall not be enforceable in any court of this state as to any such advance unless and until the tax due thereon upon each advance that may have been made thereunder has been paid.

(e) The clerk of the circuit court shall, on or before the twentieth day of each month, transmit to the department all intangible taxes collected by him during the preceding month, together with a list of all instruments upon which the tax was paid.

(8)(a) Filing returns or paying all or any portion of tax as shown on the return after the due date shall require a delinquency penalty of 5 percent for each month, or portion thereof, on the amount of tax delinquent but not to exceed 25 percent of the total tax levied against the property covered by that return.

(b) If any amount of tax imposed by s. 199.032(1) is not paid on or before the date prescribed for payment of such tax, determined without regard to any extensions, interest of 12 percent per year on the unpaid amount shall be paid from such date to the date of payment. Interest prescribed by this paragraph on any tax shall be deemed assessed upon the assessment of the tax to which such interest relates and shall be collected and paid in the same manner as taxes.

(c) Property omitted from any return shall require, in addition to the delinquency penalty, a specific penalty of 15 percent of the tax attributed to the omitted property.

(d) Property undervalued shall require a specific penalty of 15 percent of the tax attributed to the undervaluation. This specific penalty may be waived or compromised by the department upon a showing by the taxpayer that the undervaluation was due to reasonable cause and not willful neglect.

(9) Stock held in margin accounts in other than a fiduciary relationship shall be reported and the tax thereon paid by the customer purchasing the same, but under no circumstances shall the security broker from whom the stock is purchased be required to report or pay the tax on said margin accounts.

History.—s. 1, ch. 71-134; s. 2, ch. 72-277; s. 2, ch. 74-237; s. 1, ch. 76-32; s. 3, ch. 76-261; s. 1, ch. 77-174; s. 1, ch. 79-350.

cf.—s. 199.282 Punishment for violation of this chapter.

199.062 Information reports; companies, corporations, and brokers.—

(1) Every company or corporation, including financial institutions, qualified to do business in this state, domestic or foreign, shall, on or before April 1 of each year, forward to the department a record of all registered holders of its securities of record as of December 31 of the preceding year, taxable under this chapter, whose mailing address on the records of the company or corporation or its agencies is within the state. Such record shall contain the name, address, and social security or federal identification number of each registered holder, together with the number and class of shares of stock and the published market value, or just value as of January 1, if not listed or regularly traded, the face amount and class of bonds registered in the holder's name, and such other information as the department may require from time to time. Payment of the tax on any class of such securities, as agent, by any such company or corporation, including any such financial institution, shall exempt such company or corporation, including financial institutions, from the provisions of this subsection and of subsection (4) with respect to such securities and the holders thereof, except that notification of the election to make such payment shall be filed with the department before April 1.

(2) The department may establish regulations requiring every bank, savings and loan association, building and loan association, credit union, and any other person engaged in a similar business in the state to furnish to the department on or before April 1 of each year the name, address, and social security or federal identification number of depositors who had a deposit on January 1 and whose mailing address is in the state. Payment of the tax on money, as agent, by any such institution or person shall exempt such institution or person from the provisions of this subsection.

(3) All security brokers registered under the laws of Florida shall furnish to the department, on or before April 1 of each year, the name, address, and social security or federal identification number of each customer whose mailing address is in the state,

together with the number and class of shares of stock, the face amount and class of bonds held by each customer as of December 31 of the preceding year, and such other information as the department may require from time to time.

(4)(a) In order to provide for uniform reporting, every company or corporation qualified to do business in the state, both domestic and foreign, shall on or before April 1 of each year:

1. Notify all of its Florida stockholders of record as of December 31 of the preceding year of the just value of each share of stock. However, no notification is required if the stocks and values of a company or corporation are listed on any of the public stock exchanges or are regularly traded over the counter, and are not restricted; and

2. Notify the owners or holders of stock listed on the public stock exchanges or regularly traded over the counter which are for any reason restricted in value as of January 1 if a value less than the published value is returnable.

(b) Values determined by a company or corporation shall not be binding on the department, and, in the event it is later found that the stock was undervalued, the department shall assess and collect from each person required to make a tax return the amount of the tax and penalties due and payable.

(c) Any company or corporation required under the provisions of this section to notify its stockholders of its stock values shall certify to the department on or before April 1 of each year that all of its stockholders have been notified as required herein and shall include as a part of the certification the following:

1. Method used to determine share value;
2. Type or kind of stock to be valued;
3. Value for each share of each type or kind; and
4. Balance sheet as of the last day of the corporation's accounting period which ended within the immediately preceding calendar year.

(5)(a) If any company, corporation, or broker shall fail to produce or provide such information as described in this section in the manner required or within the time required, that company, corporation, or broker shall pay a penalty of $100 and, in addition, shall also pay a penalty of $50 for each month or portion thereof until satisfactory filing with the department, with the stockholders, or with both, has been made.

(b) All such penalties shall be payable to, and collectible by, the department in the same manner as other penalties assessed under this chapter.

(6)(a) In order to administer properly the provisions of this section, the department is hereby specifically authorized and empowered to examine at all reasonable hours all books, records, and other documents relating to the report of companies, corporations, and brokers charged with the duty to file a report or make a report as required in this section.

(b) In the event a company, corporation, or broker shall refuse to permit examination of such records by the department, the department shall have the right to proceed in any circuit court against such company, corporation, or broker to seek a mandatory injunction or other appropriate remedy to enforce its right, as granted by this section, to require examination of such records. If the injunction or other appropriate remedy is granted, the court may order the company, corporation, or broker to pay the costs of such legal action and the cost of the subsequent examination by the department.

(7) The companies, corporations and brokers subject to the provisions of this section shall keep and preserve all books, records, and documents for a period of 3 years in order to aid the proper administration of this chapter.

History.—s. 1, ch. 71-134; s. 5, ch. 74-237; s. 1, ch. 79-33.

199.072 Exemptions.—

(1) The following intangible property shall be exempt from the tax imposed by this chapter:

(a) Property owned by the state or any political subdivision or municipality thereof;

(b) Franchises;

(c) Any interest in a partnership, either general or limited. It is declared to be the legislative intent that this paragraph is an interpretation of the prior law, and that the provisions of this chapter are not intended to tax any interest of a partner in a partnership;

(d) Bonds of the several municipalities, counties, and other taxing districts of the state, and bonds of the United States Government and its agencies;

(e) Intangible personal property held in trust pursuant to any employee welfare or benefit plan which is qualified under s. 401, United States Internal Revenue Code, 1954; and

(f) Notes, bonds, and other obligations secured by mortgage, deed of trust, or other lien upon real property situated outside the state upon which a documentary or recording tax has been paid in the jurisdiction where said real property is located.

(2)(a) There shall also be exempt from the tax imposed by this chapter intangible personal property owned by nonprofit religious, nonprofit educational, or nonprofit charitable institutions.

(b) The provisions of this subsection authorizing exemptions from tax for religious, educational and charitable institutions shall be strictly defined, limited, and applied in each category as follows:

1. "Religious institutions" shall mean churches and ecclesiastical or denominational organizations, or established physical places for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on, and shall also mean church cemeteries.

2. "Educational institutions" shall mean state tax-supported or parochial, church, and nonprofit private schools, colleges, or universities conducting regular classes and courses of study required for accreditation by, or membership in, the Southern Association of Colleges and Secondary Schools, Department of Education, or the Florida Council of Independent Schools. Nonprofit libraries, art galleries, and museums open to the public are defined as educational institutions and are eligible for exemption.

3. "Charitable institutions" shall mean only nonprofit corporations operating physical facilities in Florida at which are provided charitable services, a reasonable percentage of which shall be without cost to those unable to pay, and those institutions qualified as charitable under s. 501(c)(3), United States Internal Revenue Code, 1954.

(c) Property owned by such exempt institutions shall not include intangible personal property held in trusts of any kind over which the institution has no interest in the trust principal except the right to compel the performance of the trust agreement.

(3) There shall be allowed to every taxpayer who is a natural person an exemption of the first $20,000 of property subject to the taxes imposed by s. 199.032(1). Agents and fiduciaries filing as such shall not be entitled to claim the exemption afforded hereby in their own right or on behalf of their principals or beneficiaries. When any property is held by an agent or fiduciary, a principal or beneficiary may file a return, and the exemption afforded hereby may be claimed by such principal or beneficiary on his return. No taxpayer shall be entitled to more than one exemption as provided by this section.

History.—s. 1, ch. 71-134; s. 3, ch. 74-237.

PART II

ASSESSMENT PROCEDURES

199.103 Basis of assessment.—The department shall assess all intangible personal property subject to the annual tax imposed by this chapter at its just valuation as of January 1 of each year.

History.—s. 1, ch. 71-134.

199.112 Business situs.—All bills, notes or accounts receivable, obligations, or credits, wheresoever situated, arising out of, or issued in connection with, the sale, leasing, or servicing of real or personal property in the state are subject to taxation under this chapter, it being the legislative intent to provide that such intangibles shall be assessable regardless of where they are kept, approved as to their creation, or paid. This provision shall apply to any person representing business interests in the state that may claim a domicile elsewhere, the intent being further that no nonresident, either by himself or through an agent, shall transact business in the state without paying the same tax which the state would impose on residents transacting the same business. Sales of tangible personal property are in this state if the property is delivered or shipped to a purchaser within this state, regardless of the f.o.b. point or other conditions of the sale. The provisions of this section shall in no way be construed to alter the tax status of intangibles not connected with the sale, leasing, or servicing of real or personal property in the state.

History.—s. 1, ch. 71-134; s. 1, ch. 77-413.

199.122 Valuation.—Intangible personal property shall be valued in the following manner:

(1) Shares of stock of corporations regularly listed on any stock exchange or regularly traded over the counter shall be valued at their closing prices on the last business day of the previous calendar year.

(2) Bonds regularly listed on any stock exchange or regularly traded over the counter shall be valued at their closing bid prices on the last business day of the previous calendar year.

(3) Shares of stocks, bonds, or similar instruments of corporations not listed on any stock exchange or not regularly traded over the counter shall be valued in accordance with generally accepted accounting principles which take into account those factors customarily considered in determining intrinsic value.

(4) The blockage rule or discount theory shall have no effect on valuation of shares of stocks as defined herein.

(5) Accounts receivable shall be valued at their face value less a reasonable allowance for uncollectible accounts.

(6) All notes and other obligations shall have a value equal to their unpaid balance as of January 1 of each year, unless the taxpayer can establish a lesser value upon proof satisfactory to the department.

(7) All notes, bonds, and other obligations for payment of money which are secured by mortgage, deed of trust, or other lien upon real property situated in the state shall be valued at the principal amount of indebtedness evidenced by such obligation.

(8) All other forms of intangible personal property shall be valued in accordance with generally accepted accounting principles which take into account those factors customarily considered in determining intrinsic value.

History.—s. 1, ch. 71-134.

PART III

ADMINISTRATIVE, COLLECTION, AND ENFORCEMENT PROCEDURES

199.202 Administration of law; rules and regulations.—

(1) The cost of preparing and distributing the reports, forms, and paraphernalia for the collection of the tax imposed by this chapter and expenses of the inspection and enforcement duties required herein shall be borne by the revenue produced by this chapter.

(2) The department shall administer and enforce the assessment and collection of the taxes, interest, and penalties imposed by this chapter. It is authorized to make and publish such rules and regulations not inconsistent with this chapter as it may deem

necessary to administer and enforce the provisions of this chapter.

(3) Penalties as provided in this chapter, unless waived or compromised by the department, shall be assessed and collected in the same manner as the tax levied by this chapter.

History.—s. 1, ch. 71-134.

199.212 All state agencies to cooperate in administration of law.—The department is empowered to call on any state, county, or municipal agency, department, bureau, or board for any and all information which may, in its judgment, be of assistance in administering, or preparing for the administration of, this chapter, and such state, county, or municipal agency, department, bureau, or board is hereby authorized, directed, and required to furnish such information.

History.—s. 1, ch. 71-134.

199.222 Information confidential.—

(1) It is unlawful for the department or any examiner or employee to divulge or make known in any manner the values or any particulars set forth or disclosed in any report or return required. Nothing herein shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns. However, the department shall permit the auditor general or his authorized agent, and may permit the Commissioner of Internal Revenue or other duly authorized official of the Internal Revenue Service of the United States or the proper officer of any state or his authorized agent to inspect the tax returns of any individual, and the department may furnish to such person an abstract of any return or any item of information contained in any return. The department shall also permit a taxpayer or his authorized representative or the administrator or executor of his estate to inspect a taxpayer's return and may furnish an abstract of such return.

(2) It shall be the duty of the department to destroy all intangible personal property tax returns filed with the department 4 years after the tax with respect to the return has been paid.

History.—s. 1, ch. 71-134; s. 4, ch. 74-237; s. 54, ch. 77-104.

199.232 Department's powers.—

(1) The department shall ascertain by diligent search and inquiry whether all persons as defined in this chapter have made proper returns and whether all intangible personal property subject to taxation has been assessed. If the department discovers that any intangible personal property has for any reason escaped taxation or has been undervalued, it shall assess the same separately for each year that the property may have escaped taxation or has been undervalued, and the tax and penalties shall be levied and collected by the department.

(2) Upon discovery of any person that the department has reason to believe should have filed a return but who failed or refused to do so, the department may require that person to file completed returns for all years under investigation, including the current year. The total tax and penalties accrued to the date of payment must accompany such returns. On receipt of such returns, the department, using available information, shall ascertain if any intangible personal property has either been omitted or undervalued. Upon discovery that intangible personal property was either omitted or undervalued, the department shall assess such property at the rate and in the manner as provided in this chapter.

(3) If, upon examination of returns that have been filed, the department has reason to believe that any intangible personal property has been omitted or has been undervalued, it may require the person filing the return to produce the books, records, and documents deemed necessary by the department to discover omitted property or to determine the just values of all listed or omitted property.

(4) The department is authorized to audit or inspect the books, records, or documents of persons and correct by credit or refund any overpayment of tax, and, in the event of a deficiency, an assessment of such deficiency shall be made and collected. No assessment shall be made, except pursuant to an investigation, after the expiration of 3 years from the due date for filing a return or the date of filing, whichever is later.

(5)(a) In the event any person charged herein:

1. Fails or refuses to make his books, records, or documents available for inspection, so that no audit or examination can be made of the books and records of such person; or
2. Fails to make a return and pay the tax as provided by this chapter; or
3. Makes a grossly incorrect return; or
4. Makes a return that is false and fraudulent,

it shall be the duty of the department to make an assessment from an estimate based on the best information then available to it for the taxable period, together with penalties if such have accrued.

(b) The department shall proceed to collect such taxes and penalties, if such have accrued, on the basis of such assessment, which shall be considered prima facie correct. The burden to show the contrary shall rest upon the person so assessed.

(6) It shall be the duty of every person required to make a return and pay tax under this chapter to keep and preserve suitable records of intangible personal property and such other books and documents as may be necessary to determine the amount of the tax due hereunder and other information as may be required by the department. It shall be the further duty of every such person so charged to keep and preserve, for the same 3-year period in which a refund would be allowed or the same 3-year period as prescribed herein for the time an assessment may be made by the department, all such records as may be required by the department for the reasonable administration of this chapter; and all such records shall be open to examination at all reasonable hours by the department or any of its duly authorized agents.

(7) An investigation may be made against a person for any year in which that person's right to a refund is available. The date a taxpayer is contacted personally by an agent of the department, or the date of a certified letter from the department to the last known address of the taxpayer, shall be the date that will govern the period subject to assessment.

(8) After an investigation has been completed and a deficiency is found to be due, the taxpayer shall be notified in writing, either by delivery or by certified mail at his or its last known address, of the amount of tax and penalty due. Full payment for the total amount shall be made by the taxpayer to the place designated and within the time specified in such notice.

(9) The department shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction under this chapter. Any duly authorized representative of the department shall have the power to administer oaths and affirmations to any person.

(10) If any person shall refuse to obey any such subpoena, to give testimony, or to produce evidence as required thereby, any judge of a circuit court having jurisdiction over that person may, upon application of the department showing such failure and refusal to comply, make and issue such orders as may be necessary to secure the compliance of such person.

History.—s. 1, ch. 71-134.

cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

[1]199.243 Actions involving legality of tax or penalty.—In any action involving the legality of any tax or penalty assessed under this chapter, the court shall inquire into and determine the legality and validity of the assessment and shall issue decrees setting aside such assessment or any part of the same which is contrary to law. The complainant shall in every case, except where the taxes assessed, including penalties and interest, have been paid to the department prior to the institution of suit, tender into court and file with the complaint the full amount of the assessment complained of, including penalties and interest, or file with the complaint a cash bond or a surety bond endorsed by a surety company authorized to do business in this state or by such sureties as may be approved by the court, conditioned to satisfy any judgment or decree in full, including the taxes complained of, costs, penalties, and interest.

History.—s. 1, ch. 71-134; s. 1, ch. 78-79; s. 54, ch. 78-95.

[1]Note.—Former s. 199.242(3), as amended by s. 1, ch. 78-79. See s. 1, ch. 78-95, concerning the effect of the amendment by s. 1, ch. 78-79, on the repeal of s. 199.242 by s. 54, ch. 78-95.

199.252 Refunds.—

(1) Any person or his heirs, personal representatives, or assigns shall be entitled to a refund of any tax or penalty levied under this chapter, whether payment was made voluntarily or involuntarily, which should not have been paid. No refund shall be allowed unless proper application has been made and delivered to the department for approval within 3 years from the date the right to such refund shall have accrued.

(2) When a bona fide controversy exists between the department and a taxpayer as to the liability of the taxpayer for the payment of the tax claimed to be due, the taxpayer may pay the amount claimed by the department to be due, or such lesser amount as may be fixed by a court of competent jurisdiction, and, if it is finally adjudged by a court of competent jurisdiction that the taxpayer was not liable for the payment of taxes and penalties, or any part thereof, the comptroller shall make such refund as the court may direct.

History.—s. 1, ch. 71-134.

199.262 Tax liens and garnishment.—

(1) When any tax imposed by this chapter becomes delinquent, or is otherwise in jeopardy, it shall be the duty of the department to issue a warrant for the full amount of tax due or estimated to be due, together with penalties and cost of collection. Such warrant shall be directed to all and singular the sheriffs of the state and shall be recorded with the clerk of the circuit court in the county where the delinquent taxpayer's property is located. Upon recording, the amount of such warrant shall become a lien upon the taxpayer's real or personal property in such county in the same manner as a judgment duly docketed and recorded, and the clerk of the circuit court shall issue execution thereon the same as on a judgment. The sheriff shall thereupon proceed in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against property upon judgment of the circuit court, and he shall be entitled to the same fees for his services in executing the warrant. Upon payment of such execution, warrant, or judgment, the department is authorized and directed to satisfy the lien of record within 30 days; and any interested person may thereafter compel the department to satisfy the lien of records.

(2) Whenever it becomes necessary in the judgment of the department, it may issue an alias tax execution or tax executions which, however, shall be so designated on the face of the tax execution. Any such alias tax execution shall have the same force and effect as the original.

(3) Tax executions shall have the same force and effect as a writ of garnishment when levied upon any person, firm, or corporation that shall have any goods, moneys, chattels, or effects of the delinquent taxpayer in its hands, possession, or control or that shall be indebted to such delinquent taxpayer. When any tax execution is so levied upon any debtor or person holding property of the taxpayer, such debtor or person shall pay the debt or deliver the property of the delinquent taxpayer to the department or an authorized agent of the department levying such writ, and the receipt of the department or an authorized agent of the department shall be complete discharge to that extent of the debtor or person holding such property.

(4) Any employee of the department designated in writing by the executive director of the department is authorized to make and sign assessments, tax warrants, assignments of tax warrants, and satisfactions of tax warrants.

(5) Whenever any tax execution issued under the provisions of this chapter or any previous law providing for the administration of intangible personal property tax becomes void by virtue of the expiration of any statute of limitations or otherwise, the department or any tax collector or other officer having official custody of the pertinent records shall have authority to cancel the same of record and shall do

so upon the request of any interested person. Such cancellation shall be recorded by the clerks of the courts.

History.—s. 1, ch. 71-134; s. 1, ch. 78-43.

199.272 Suits for violation of this chapter; jurisdiction and service.—

(1) All suits brought hereinafter by the department against any person defined in this chapter for any violation of this chapter and for the purpose of effecting collection of any tax due from any person, including garnishment proceedings, regardless of the amount, shall be brought thereon in the circuit courts of this state having jurisdiction of the subject matter.

(2) Every person having his principal place of business outside of this state but subject to the provisions of this chapter shall designate with the department an agent for service within the state for the purpose of enforcing this chapter. If such person has not designated an agent, the Department of State shall be deemed the agent for service, or any agent or employee of the person within the state shall be deemed agent for service.

History.—s. 1, ch. 71-134.

199.282 Punishment for violation of this chapter.—Any person willfully failing or refusing to comply with this chapter or violating any of the provisions hereof shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1A, ch. 71-134.

199.292 Disposition of intangible personal property taxes; appropriations for expenses of assessment and collection; county sharing.—

(1) All intangible personal property taxes levied, assessed, and collected under and pursuant to this chapter shall be promptly remitted by the clerk of the circuit court or, during the implementation period, by the tax collector, to the Department of Revenue, to be placed in a special fund designated as the "Intangible Tax Trust Fund." The amount collected by the Department of Revenue shall also be deposited in the Intangible Tax Trust Fund.

(2) There is hereby appropriated annually out of the Intangible Tax Trust Fund the amount necessary for the effective and efficient performance of the duties, services, functions, and enforcement by the department of the provisions of chapters 192, 193, 194, 195, 196, 197, 198, and this chapter and for the fees of the county property appraisers and tax collectors allowed them by the law for the assessment and collection of intangible personal property taxes. It shall be the duty of the department to pay from the Intangible Tax Trust Fund these costs and fees.

(3) The department shall pay from the Intangible Tax Trust Fund the entire cost of all forms, books, and records of any type required by law to be furnished each county or county officer by the Department of Revenue, and a sum sufficient to pay therefor is hereby annually appropriated out of the Intangible Tax Trust Fund.

(4) An amount equal to 55 percent of the total net intangible taxes collected shall be transferred to the Revenue Sharing Trust Fund for Counties in the month following collection. The remaining balance of net collections from this tax shall be transferred to the Local Government Exemption Trust Fund provided for in s. 196.032. For the purposes of this law, "net collections" means the total amount collected less a pro rata share of all costs as provided in subsections (2) and (3).

(5) The distribution of these amounts shall be made quarterly in the months of September, December, March, and June, and shall include the net collections through the end of the month preceding the distributions thereof.

History.—s. 1, ch. 71-134; s. 1, ch. 72-277; s. 18, ch. 72-360; s. 1, ch. 77-102; s. 5, ch. 77-476.

CHAPTER 200

DETERMINATION OF MILLAGE

200.011 Duty of county commissioners and school board in setting rate of taxation.—

(1) The county commissioners shall determine the amount to be raised for all county purposes except for county school purposes, and shall enter upon their minutes the rates to be levied for each fund respectively, together with the rates certified to be levied by the board of county commissioners for use of the county, special taxing district, board, agency or other taxing unit within the county for which the board of county commissioners is required by law to levy taxes.

(2) The county commissioners shall ascertain the aggregate rate necessary to cover all such taxes and certify the same to the county property appraiser within 30 days after the adjournment of the property appraisal adjustment board. The property appraiser shall carry out the full amount of taxes for all county purposes, except for school purposes, under one heading in the assessment roll to be provided for that purpose, and the county commissioners shall notify the clerk and auditor and tax collector of the county of the amounts to be apportioned to the different accounts out of the total taxes levied for all purposes.

(3) The county depository, in issuing receipts to the tax collector, shall state in each of his receipts, which shall be in duplicate, the amount deposited to each fund out of the deposits made with it by the tax collector. When any such receipts shall be given to the tax collector by the county depository, he shall immediately file one of the same with the clerk and auditor of the county, who shall credit the same to the tax collector with the amount thereof and make out and deliver to the tax collector a certificate setting forth the payment in detail, as shown by the county depository's receipt.

(4) The county commissioners and school board shall file written statements with the county property appraiser setting forth the boundary of each special school district and the district or territory in which other special taxes are to be assessed, and the county property appraiser shall, upon receipt of such statements and orders from the board of county commissioners and school board setting forth the rate of taxation to be levied on the real and personal property therein, proceed to assess such property and enter the taxes thereon in the assessment rolls to be provided for that purpose.

(5) The property appraiser shall designate and separately identify by certificate to the tax collector the rate of taxation to be levied for the use of the county and school board and the total rate of taxation for all other taxing authorities in the county.

(6) The board of county commissioners shall certify to the property appraiser the millage rates to be levied for the use of the county and special taxing districts, boards, authorities, and all other taxing units within the county for which the board of county commissioners is required by law to levy taxes. The district school board, each municipality, and the governing board or governing authority of each special taxing district or other taxing unit within the county whose taxes are assessed on the tax roll prepared by the county property appraiser, but for which the board of county commissioners is not required by law to levy taxes, shall certify to the county property appraiser the millage rate set by said board, municipality, authority, special taxing district, or taxing unit. The certifications required by this subsection shall be made within 30 days after the property appraisal adjustment board adjourns.

History.—s. 2, ch. 4885, 1901; GS 532; s. 30, ch. 5596, 1907; RGS 731; CGL 937; s. 6, ch. 20722, 1941; s. 1, ch. 67-227; s. 1, ch. 67-512; ss. 1, 2, ch. 69-55; s. 1, ch. 69-300; s. 36, ch. 71-355; s. 18, ch. 76-133; s. 1, ch. 77-102; s. 1, ch. 77-248; s. 90, ch. 79-400.

Note.—Former s. 193.31.

200.065 Method of fixing millage.—

(1) At the time the assessment roll is prepared and published, the property appraiser shall certify to each taxing authority the taxable value within the jurisdiction of the taxing authority. The property appraiser shall also send to each taxing authority a copy of the statement required to be submitted under s. 195.073(3), as applicable to that taxing authority. Exclusive of new construction, improvements, and deletions, the property appraiser shall certify to each taxing authority a millage rate which will provide the same ad valorem tax revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the property appraiser shall use 98 percent of such taxable value.

(2) No millage in excess of the property appraiser's certified millage shall be levied until a resolution or ordinance has been approved by the governing board of the taxing authority, which resolution or ordinance must be approved by said taxing authority according to the following procedure:

(a) After the meeting finalizing the budget, the taxing authority shall advertise its intent to exceed the property appraiser's certified millage in a newspaper of general circulation in the county, as provided in subsection (3). A public hearing shall be held after 5 p.m., approximately 7 days after the day that the advertisement is published for the purpose of

hearing comments regarding the proposed increase and explaining the reasons for the proposed increase.

(b) After the first public hearing has been held in accordance with paragraph (a), the taxing authority shall readvertise and meet again within 2 weeks to adopt a resolution or ordinance levying a millage rate in excess of the certified millage. The advertisement shall be as provided in subsection (3). The day, time, and place at which the resolution or ordinance will be scheduled for consideration and approval by the taxing authority must be announced at the first public hearing. If the resolution or ordinance is not adopted within 2 weeks from the first public hearing, the taxing authority must again advertise and meet in the same manner as provided in this subsection. The adoption of the budget and the levy of the millage shall be by separate votes.

(3)(a) The advertisement shall be no less than one-quarter page in size of a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county. It is the legislative intent that, whenever possible, the advertisement shall appear in a newspaper that is published at least 5 days a week unless the only newspaper in the county is published less than 5 days a week. It is further the legislative intent that the newspaper selected shall be one of general interest and readership in the community, and not one of limited subject matter, pursuant to chapter 50. The advertisement shall be in the following form:

NOTICE OF TAX INCREASE

The ...(name of the taxing authority)... proposes to increase your property taxes by ...(percentage of increase over certified millage)... percent.

A public hearing on the increase will be held on ...(date and time)... at ...(meeting place)....

(b) In lieu of publishing the notice set out in this subsection, the taxing authority may mail a copy of the notice to each elector residing within the jurisdiction of the taxing authority.

(c) The advertising required by the provisions of paragraph (a) shall not be required when the total millage levied does not exceed the district required local effort under the provisions of chapter 236.

(4) The resolution or ordinance approved in the manner provided for in this section shall be forwarded to the property appraiser, tax collector, and Department of Revenue. No millage in excess of the property appraiser's certified millage can be levied until the resolution or ordinance to levy required in subsection (3) is approved by the governing board of the taxing authority and submitted to the property appraiser and the Department of Revenue.

(5) The property appraiser shall notify each taxing authority of the aggregate change in the assessment roll which results from actions by the property appraisal adjustment board or from corrections of errors in the assessment roll. Such notification shall be delivered within 1 week after the certification in s. 193.122(1). An increase in the taxing authority's millage above that certified by the property appraiser or adopted by resolution or ordinance of the governing body of the taxing authority which is required by a reduction of the assessment roll by 5 percent or less due to actions of the property appraisal adjustment board or to errors in the assessment roll may be approved by the Department of Revenue without further proceedings under this section upon a showing that the total reduction is 5 percent or less of the assessment roll. If the reduction is more than 5 percent, then the property appraiser shall recertify the millage. Only those taxing authorities which had voted to levy a millage equal to or less than the prior certified levy which are in excess of the new certified levy need proceed to advertise as required herein to maintain the tax levy approved by the taxing authority.

(6) If, after the initial millage vote provided for in subsection (2), the taxing authority determines that it requires a greater millage or fails to act in the specified period, it shall readvertise and revote as required in subsections (2) and (3).

(7) Nothing contained in this section shall serve to extend or authorize any millage in excess of the maximum millage permitted by law nor prevent the reduction of millage.

(8) Upon written request from the presiding officer of a taxing authority within the county, the property appraiser shall deliver to the presiding officer for budget planning purposes an estimate of the total assessed value of nonexempt property for the current year. The property appraiser shall deliver the estimate within 10 days after receipt of the request, but in no event shall he be required to deliver an estimate earlier than June 1.

(9) Multicounty taxing authorities shall be subject to the provisions of this section. The term "taxable value" shall mean the taxable value of all property subject to taxation by the authority. The property appraiser shall not certify a millage to multicounty taxing authorities, but, rather, shall submit to the Department of Revenue the taxable value of property in his county which is subject to taxation by the multicounty taxing authority, and the executive director of the Department of Revenue shall certify the millage to such authorities. If the department has not received such information from a county by September 1, it shall make the certification, based upon the best information available. The multicounty district shall add the following sentence to the advertisement set forth in subsection (3): "This tax increase is applicable to ...(name of county or counties)...." This section shall not apply to any multicounty taxing authority wherein the district or board is limited by law to ad valorem tax revenues based on separate levies of 1 mill or less.

History.—s. 13, ch. 73-172; s. 16, ch. 74-234; ss. 1, 2, ch. 75-68; s. 19, ch. 76-133; s. 1, ch. 77-102; s. 1, ch. 77-174; s. 1, ch. 78-228.

200.071 Limitation of millage; counties.—

(1) Except as otherwise provided herein, no aggregate ad valorem tax millage shall be levied against real and tangible personal property by counties and districts as herein defined in excess of 10 mills on the dollar of assessed value, except for special benefits and debt service on obligations issued in

connection therewith, and except for that millage authorized in s. 9, Art. VII of the State Constitution. However, nothing in ss. 200.071, 200.091, 200.111, 200.121, 200.141, and 200.161 shall prevent any board of county commissioners or district school board to each levy at least 5 mills.

(2) The board of county commissioners in counties not having a budget commission or board shall have authority, in event the aggregate of the proposed millage for said county and districts therein aggregate more than the maximum allowed hereunder, to apportion the millage to be levied for county officers, departments, divisions, districts, commissions, authorities and independent taxing agencies so as not to exceed the maximum millage provided herein under this section or s. 200.091. The budget commission or budget board in counties presently having such a commission or board shall make the apportionment as above provided, in event the apportionment is necessary.

(3) In any county which, through a special taxing district or a municipal service taxing unit covering a specific area of the county not within the boundaries of any municipality, provides services or facilities of the kind or type commonly provided by municipalities, there may be levied, in addition to the millages otherwise provided in this section, against real and tangible personal property within each such special taxing district or municipal service taxing unit an additional ad valorem tax millage not in excess of 10 mills on the dollar of assessed value to pay for such services or facilities provided through such special tax district or with the funds obtained through such levy within such municipal service taxing unit.

History.—s. 1, ch. 67-395; ss. 1, 2, ch. 69-55; s. 28, ch. 69-216; s. 1, ch. 69-300; s. 2, ch. 70-368; s. 3, ch. 74-191.
Note.—Former s. 193.321.

200.081 Millage limitation; municipalities.—No municipality shall levy ad valorem taxes for real and tangible personal property in excess of 1 percent of the assessed value thereof (10 mills), except for special benefits and debt service on obligation issued with the approval of those taxpayers subject to ad valorem taxes on real and tangible personal property.

History.—s. 1, ch. 67-396; ss. 1, 2, ch. 69-55.
Note.—Former s. 167.441.

200.091 Referendum to increase millage.—The millage authorized to be levied in s. 200.071 for county purposes, including districts therein, may be increased for periods not exceeding 2 years, provided such levy has been approved by a majority of those voting in an election participated in only by the qualified electors of the county or district who pay taxes on real or personal property. Such elections may be called by the governing body of any such county or district on its own motion, or shall be called upon submission of a petition specifying the amount of millage sought to be levied and the purpose for which the proceeds will be expended and containing the signatures of at least 10 percent of the persons qualified to vote in such election, signed within 60 days prior to the date said petition is filed.

History.—s. 2, ch. 67-395; ss. 1, 2, ch. 69-55.
Note.—Former s. 193.322.

200.101 Referendum for millage in excess of limits.—Those taxpayers subject to ad valorem taxes on real and tangible personal property may approve an increase of millage above those limits imposed by s. 200.081 in a referendum called for such purpose by the governing body of the municipality, provided that such increase does not exceed a period of 2 years. Such referendum also may be initiated by submission of a petition to the governing body of the municipality containing 10 percent of the signatures of those persons eligible to vote in such referendum which signatures are affixed to the petition within 60 days prior to its submission.

History.—s. 2, ch. 67-396; ss. 1, 2, ch. 69-55.
Note.—Former s. 167.442.

200.111 Definition of "district."—The term "district" is defined to mean special districts having the power to levy taxes or require the levy of taxes, including but not limited to boards, commissions, authorities and agencies having authority to levy taxes or require the levy of taxes but shall not include special school districts or multicounty districts.

History.—s. 3, ch. 67-395; ss. 1, 2, ch. 69-55.
Note.—Former s. 193.323.

200.131 Existing millage in excess of limits; municipalities.—Applications for continued noncompliance with ss. 200.081 and 200.101 shall be submitted to the Department of Revenue, together with sales ratio studies in such method, form, and content as the department may require. If the department finds, on the basis of such studies, that the average assessment level of such municipality is not at least just value, such municipality shall be required to hold a referendum as set forth in s. 200.101 before assessing any millage in excess of 1 percent (10 mills), unless such municipality had caused a good faith program of reassessment to be commenced prior to January 1, 1971, or has commenced court proceedings prior to January 1, 1971, to require the responsible party to commence such good faith program of reassessment.

History.—s. 4, ch. 67-396; ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 1, ch. 69-278; s. 1, ch. 70-368; s. 59, ch. 73-333.
Note.—Former s. 167.444.

200.132 Municipal Financial Assistance Trust Fund; administration of grant program.—(1) The Department of Revenue shall administer a program of grants to municipalities within the amount appropriated each fiscal year for this purpose to the Municipal Financial Assistance Trust Fund. Each municipality which has qualified under the provisions of paragraph 218.23(1)(c) shall receive a pro rata distribution from the Municipal Financial Assistance Trust Fund created under s. 210.20(2)(a), to be distributed to the municipality in such proportion as the population of the municipality is to the total population of the other municipalities in the county qualified to receive distributions under this section. Counties which, under the constitution, exercise powers conferred by general law upon municipalities shall receive a share of that county's revenue in a ratio of the population of the unincorporated area of that county to the entire population of the county. Amounts distributed hereunder shall be

considered general revenues of the municipality and shall be subject to expenditure for any public purpose. Payment shall be made monthly during each fiscal year. For the purposes of this section, "population" means the latest official state estimate of population certified pursuant to s. 23.019. If there is no such annual certification of population for any urban service district, the population of such district shall be estimated by using the most current available data.

(2) Amounts deposited in the Municipal Financial Assistance Trust Fund are hereby appropriated exclusively for grants to municipalities as provided in subsection (1). No deduction from these amounts shall be made for the service charge provided in ss. 215.20 and 215.22.

History.—ss. 3, 4, ch. 71-364; s. 60, ch. 73-333; s. 1, ch. 74-629; s. 1, ch. 77-174; s. 2, ch. 77-409; s. 39, ch. 79-164.

cf.—s. 210.03 Prohibition against levying of cigarette taxes by municipalities.

200.141 Millage following consolidation of city and county functions.—Those cities or counties which now or hereafter provide both municipal and county services as authorized under ss. 9-11 and 24 of Art. VIII of the State Constitution of 1885 shall have the right to levy for county, district and municipal purposes a millage up to 20 mills on the dollar of assessed valuation under this section. For each increase in the county millage above 10 mills which is attributable to an assumption of municipal services by a county having "home rule," or for each increase in the municipal millage above 10 mills which is attributable to an assumption of county services by a city having "home rule," there shall be a decrease in the millage levied by each and every municipality which has a service or services assumed by the county, or by the county which has a service or services assumed by the city. Such decrease shall be equal to the cost of that service or services assumed, so that an amount equal to that cost shall be eliminated from the budget of the county or city giving up the performance of such service or services.

History.—s. 5, ch. 67-395; ss. 1, 2, ch. 69-55; s. 11, ch. 69-216.
Note.—Former s. 193.325.

200.151 Millage to replace lost revenue.—In the event any municipality should lose revenue through the loss of a proprietary activity or other source of revenue, the governing body of the municipality is authorized to increase the millage in an amount sufficient to restore such loss of revenue. In the event any municipality should relinquish any governmental function to a county or other governmental body, the governing body of such municipality shall reduce the millage in an amount which will equal the cost of such governmental function.

History.—s. 3, ch. 67-396; ss. 1, 2, ch. 69-55.
Note.—Former s. 167.443.

200.161 Legislative intent.—The Legislature hereby finds and determines that taxation on real and tangible personal property above the rate of 2 percent or 20 mills is oppressive and that there are many areas in the State of Florida in which the combined millage levied against real and tangible personal property by the various taxing authorities, including boards of county commissioners, municipalities, and various other districts and boards, far exceeds a rate of 2 percent or 20 mills. Thus, the Legislature hereby declares its intent to provide replacement revenues for the operation of local governmental bodies by the fiscal year 1970-1971, or as soon thereafter as possible, so that ad valorem or property taxation may be further reduced to such an extent that it is no longer oppressive and will not exceed an aggregate or total rate of 2 percent or 20 mills.

History.—s. 7, ch. 67-395; ss. 1, 2, ch. 69-55.
Note.—Former s. 193.327.

200.171 Mandamus to levy tax; limitations; etc.—In any suit brought in any court of this state seeking to compel the levy of any tax for the payment of any bonds, coupons or other evidences of indebtedness, or to establish a sinking fund for their ultimate redemption at maturity, the peremptory writ, if issued by the court, shall in no case require a levy in excess of the ability of the taxing unit involved to pay the taxes commanded to be levied; and if such taxing unit be one having other functions of civil government to perform, the court shall also take into consideration in commanding such levy, the necessity of such unit to make a reasonably ample levy of taxes for the purpose of raising revenue with which to pay for the operation of the ordinary functions of civil government which such unit performs; provided, this section shall not apply to bonds, coupons or other evidences of indebtedness issued subsequent to the passage of this law. The ability of the taxing unit involved to pay the taxes commanded to be levied shall be determined by the court within its sound discretion by the application of equitable considerations in view of all the conditions of the taxing unit bearing upon such ability to pay; and such ability to pay shall be first found and determined before the issuance of any such peremptory writ.

History.—s. 1, ch. 18301, 1937; CGL 1940 Supp. 2321(3); ss. 1, 2, ch. 69-55.
Note.—Former s. 192.34.

200.181 Bond payments; tax levies; restrictions.—

(1) None of the provisions of this chapter or of any other law, whether general, special or local or of the charter of any municipality or county, shall limit or restrict the rate or the amount of the ad valorem taxes levied for the payment of the principal of and the interest on any debt service whether secured by revenue certificates or by bonds for which the full faith and credit of any county, municipality or taxing district may be pledged, and such taxes shall be in addition to all other taxes authorized or limited by law.

(2) Nothing in this section shall prevent any municipality, county or school board from levying at least 5 mills of ad valorem tax during any fiscal year.

History.—ss. 1, 3, ch. 67-536; ss. 1, 2, ch. 69-55; s. 1, ch. 69-300.
Note.—Former s. 193.77.

200.191 Millages; definitions.—

(1) County millages shall be composed of three categories of countywide millage rates, as follows:

(a) General county millage, which shall be that nonvoted millage rate set by the governing body of the county.

(b) County debt service millage, which shall be

that millage rate necessary to raise taxes for debt service as authorized by a vote of the electors pursuant to s. 12, Art. VII of the State Constitution.

(c) County voted millage, which shall be that millage rate set by the governing body of the county as authorized by a vote of the electors pursuant to s. 9(b), Art. VII of the State Constitution.

(2) Municipal millages shall be composed of three categories of municipalwide millage rates, as follows:

(a) General municipal millage, which shall be that nonvoted millage rate set by the governing body of the municipality.

(b) Municipal debt service millage, which shall be that millage rate necessary to raise taxes for debt service as authorized by a vote of the electors pursuant to s. 12, Art. VII of the State Constitution.

(c) Municipal voted millage, which shall be that millage rate set by the governing body of the municipality as authorized by a vote of the electors pursuant to s. 9(b), Art. VII of the State Constitution.

(3) School millages shall be composed of four categories of countywide millage rates, as follows:

(a) Nonvoted district school operating millage, which shall be that nonvoted millage rate set by the county school board for current operating purposes.

(b) Voted district school operating millage, which shall be that millage rate set by the district school board for current school operating purposes as authorized by the electors pursuant to s. 9(b), Art. VII of the State Constitution.

(c) Voted district school capital improvement millage, which shall be that millage rate set by the district school board for capital improvements as authorized by the electors.

(d) Voted district school debt service millage, which shall be that millage rate set by the district school board as authorized by a vote of the electors pursuant to s. 12, Art. VII of the State Constitution.

(4) Special district millages shall be composed of two categories, as follows:

(a) Countywide millages, which shall be separated into two areas:

1. A millage rate set by the board of county commissioners, ex officio or otherwise, which shall be identified as to whether authorized by a special act approved by the electors, authorized pursuant to s. 15, Art. XII of the State Constitution, or otherwise; or

2. A millage rate set by a governing body of a special district independently of the board of county commissioners, which shall be identified as to whether authorized by a special act approved by the electors, authorized pursuant to s. 15, Art. XII of the State Constitution, or otherwise.

(b) Less than countywide millages, which shall be separated into two areas:

1. A millage rate set by the board of county commissioners or the governing body of a municipality, ex officio or otherwise, which shall be identified as to the area covered and as to whether authorized by a special act approved by the electors, authorized pursuant to s. 15, Art. XII of the State Constitution, or otherwise; or

2. A millage rate set by a governing body of a special district independently of the board of county commissioners or the governing body of a municipality, which shall be identified as to whether authorized by a special act approved by the electors, authorized pursuant to s. 15, Art. XII of the State Constitution, or otherwise.

(c) Millage rates set by multicounty special districts shall be reported by the respective county areas as provided above.

(5) At any time millage rates are published for the purpose of giving notice, the rates shall be stated in terms of dollars and cents per every thousand dollars of assessed property value.

History.—s. 9, ch. 73-349.

CHAPTER 201

EXCISE TAX ON DOCUMENTS

201.01 Documents taxable, generally.—There shall be levied, collected, and paid the taxes specified in this chapter, for and in respect to the several documents, bonds, debentures or certificates of stock and indebtedness, and other documents, instruments, matters, writings, and things described in the following sections, or for or in respect of the vellum, parchment, or paper upon which such document, instrument, matter, writing, or thing, or any of them, is written or printed by any person who makes, signs, executes, issues, sells, removes, consigns, assigns, records, or ships the same, or for whose benefit or use the same are made, signed, executed, issued, sold, removed, consigned, assigned, recorded, or shipped in the state. The documentary stamp taxes required under this chapter shall be affixed to and placed on all recordable instruments requiring documentary stamps according to law, prior to recordation. With respect to mortgages or trust deeds which do not incorporate the certificate of indebtedness, a notation shall be made on the note or certificate that the tax has been paid and that the proper stamps have been affixed to the mortgage or trust deed.

History.—s. 1, ch. 15787, 1931; CGL 1936 Supp. 1279(111); s. 1, ch. 61-278; s. 1, ch. 77-414.

201.02 Tax on deeds and other instruments relating to lands, etc.—

(1) On deeds, instruments, or writings whereby any lands, tenements, or other realty, or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser, or any other person by his direction, on each $100 of the consideration therefor the tax shall be 40 cents. When the full amount of the consideration for the execution, assignment, transfer, or conveyance is not shown in the face of such deed, instrument, document, or writing, the tax shall be at the rate of 40 cents for each $100 or fractional part thereof of the consideration therefor.

(2) The tax imposed by subsection (1) of this section shall also be payable upon documents by which the right is granted to a tenant-stockholder to occupy an apartment in a building owned by a cooperative apartment corporation.

(3) The tax imposed by subsection (2) shall be paid by the purchaser, and the document recorded in the office of the clerk of the circuit court as evidence of ownership.

(4) The tax imposed by subsection (1) of this section shall also be payable upon documents which convey or transfer, pursuant to s. 689.071, any beneficial interest in lands, tenements, or other realty, or any interest therein, even though such interest may be designated as personal property, notwithstanding the provisions of s. 689.071(4). The tax shall be paid upon execution of any such document.

History.—s. 1, ch. 15787, 1931; CGL 1936 Supp. 1279(111); s. 1, ch. 57-397; s. 1, ch. 63-533; s. 1, ch. 70-304; s. 1, ch. 71-362; ss. 2, 3, ch. 79-350.

201.04 Tax on bills of sale, agreements, transfers, etc., of stock or shares in corporations and interests therein.—

(1) On all sales, agreements to sell or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or profits or interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock interest rights or not, on each $100 of face value or fraction thereof the tax shall be 15 cents; and where such shares are without par or face value the tax shall be 15 cents on each $100 of actual value or fraction thereof but not to exceed 15 cents on each share; provided, that in case of sale, where evidence of transfer is shown only by the books of the corporation, the stamps shall be placed upon such books of the corporation; and

where the change of ownership is by transfer of the certificate, the stamps shall be placed upon the certificates; and in case of an agreement to sell or where the transfer is made by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned, shall show the date thereof, the name of the seller, the amount of the sale, and the matter or things to which it refers. Any person or corporation liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or corporation, or who makes any such sale, or who in pursuance of any such sale, delivers any certificate or evidence of the sale of any stock, interest or right, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) For the purposes of this section, the term "stock" includes corporate stock, shares however designated in a joint stock company, trust in the nature of a common law trust or Massachusetts trust, association or other trust in which the trustees are associated together in substantially the same manner as directors in a corporation for the purpose of carrying on a business enterprise. Such shares are declared to be personal property, and not interests in land, notwithstanding the nature of the property of which the trust shall consist, unless provided otherwise in the trust instrument.

History.—s. 1, ch. 15787, 1931; CGL 1936 Supp. 1279(111), 7473(4); s. 1, ch. 61-270; s. 2, ch. 63-533; s. 1, ch. 63-488; s. 103, ch. 71-136.

201.05 Tax on stock certificates.—On each original issue, whether organization or reorganization, of certificates of stock or shares however designated issued in the state, or certificates of profits, or of interest in property or accumulations, by any corporation or by any joint stock company or other association as set forth in s. 201.04, on each $100 of face value, or fraction thereof, the tax shall be 15 cents; provided, that where a certificate is issued without face value, the tax shall be 15 cents on each $100 of actual value or fraction thereof. The stamps representing the tax imposed by this section shall be attached to the stock books, and not to the certificates issued.

History.—s. 1, ch. 15787, 1931; CGL 1936 Supp. 1279(111); s. 1, ch. 61-270; s. 2, ch. 63-488; s. 3, ch. 63-533.

201.07 Tax on bonds, debentures and certificates of indebtedness.—On all bonds, debentures, or certificates of indebtedness issued in the state by any person, and all instruments and documents, however termed, issued by any corporation with interest coupons or in registered form, on each hundred dollars of the face value or fraction thereof, the tax shall be 15 cents; provided, however, that only that part of the value of the bonds, debentures, or certificates of indebtedness issued by any such person, the property of which is located within the state shall bear to the whole value of the property described in said instrument or obligation shall be taxed hereunder.

History.—s. 1, ch. 15787, 1931; CGL 1936 Supp. 1279(111); s. 4, ch. 63-533.

201.08 Tax on promissory notes, written obligations to pay money, assignments of wages, etc.; exception.—

(1) On promissory notes, nonnegotiable notes, written obligations to pay money, or assignments of salaries, wages, or other compensation made, executed, delivered, sold, transferred, or assigned in the state, and for each renewal of the same, on each $100 of the indebtedness or obligation evidenced thereby the tax shall be 15 cents on each $100 or fraction thereof. On mortgages, trust deeds, security agreements, or other evidences of indebtedness filed or recorded in this state, and for each renewal of the same, on each $100 of the indebtedness or obligation evidenced thereby the tax shall be 15 cents on each $100 or fraction thereof. Mortgages, including, but not limited to, mortgages executed without the state and recorded in the state, which incorporate the certificate of indebtedness, not otherwise shown in separate instruments, are subject to the same tax at the same rate. When there is both a mortgage, trust deed, or security agreement and a note, certificate of indebtedness, or obligation, the tax shall be paid on the mortgage, trust deed, or security agreement at the time of recordation. A notation shall be made on the note, certificate of indebtedness, or obligation that the tax has been paid and the proper stamps affixed to the mortgage, trust deed, or security agreement. If the mortgage, trust deed, security agreement, or other evidence of indebtedness subject to the tax levied by this section secures future advances, as provided in s. 697.04, the tax shall be paid at the time of recordation on the initial debt or obligation secured, excluding future advances; at the time and so often as any future advance is made, the tax shall be paid on all sums then advanced regardless of where such advance is made. Failure to pay the tax shall not affect the lien for any such future advance given by s. 697.04, but any person who fails or refuses to pay such tax due by him is guilty of a misdemeanor of the first degree. The mortgage, trust deed, or other instrument shall not be enforceable in any court of this state as to any such advance unless and until the tax due thereon upon each advance that may have been made thereunder has been paid.

(2) On promissory notes, nonnegotiable notes, written obligations to pay money, or other compensation, made, executed, delivered, sold, transferred, or assigned in the state, in connection with sales made under retail charge account services, incident to sales which are not conditional in character and which are not secured by mortgage or other pledge of purchaser, the tax shall be 15 cents on each $100 or fraction thereof of the gross amount of the indebtedness evidenced by said instruments, payable quarterly on such forms and under such rules and regulations as may be promulgated by the Department of Revenue. No documentary stamps shall be required to be attached to instruments under the provisions of this subsection.

(3) No documentary stamps shall be required on

promissory notes executed in compliance with s. 240.235(2), and the holder of such promissory notes shall not lose any rights incident to the payment of said stamp costs.

History.—s. 1, ch. 15787, 1931; CGL 1936 Supp. 1279(111); s. 1, ch. 28216, 1953; ss. 1, 2, ch. 61-277; s. 5, ch. 63-533; ss. 21, 35, ch. 69-106; s. 2, ch. 77-57; s. 2, ch. 77-414; s. 105, ch. 79-222; s. 6, ch. 79-350; s. 91, ch. 79-400.

201.09 Renewal of existing promissory notes and mortgages; exemption.—

(1) When any promissory note is given in renewal of any existing promissory note, which said renewal note only extends or continues the identical contractual obligations of the original promissory note and evidences part or all of the original indebtedness evidenced thereby, not including any accumulated interest thereon and without enlargement in any way of said original contract and obligation, such renewal note shall not be subject to taxation under this chapter if such renewal note has attached to it the original promissory note with canceled stamps affixed thereon showing full payment of the tax due thereon.

(2) When any mortgage, trust deed, security agreement, or other evidence of indebtedness evidences a promissory note which would not be subject to taxation pursuant to subsection (1), then such mortgage, trust deed, security agreement, or other evidence of indebtedness shall not be subject to taxation under this chapter.

History.—s. 1, ch. 19068, 1939; CGL 1940 Supp. 1279(118); s. 7, ch. 79-350.

201.10 Certificates of deposit issued by banks exempt.—All certificates of deposit issued by any bank, banking association, or trust company are exempt from the requirement for an excise tax imposed by this chapter.

History.—s. 2, ch. 19068, 1939; CGL 1940 Supp. 1279(119).

201.11 Administration of law by Department of Revenue.—

(1) The administration of this chapter shall be vested in the Department of Revenue, which shall prescribe suitable rules and regulations for the enforcement of the provisions thereof, and shall administer and enforce the taxes levied and imposed by this chapter. The Department of Revenue may enter upon the premises of any taxpayer, and examine or cause to be examined by any agent or representative designated by it for that purpose, any books, papers, records, or memoranda bearing upon the amount of taxes payable, and secure other information directly or indirectly concerned in the enforcement of this chapter. Any person, subject to this tax, who shall by any practice or evasion make it difficult to enforce the provisions of this chapter by inspection, or any person, agent or officer, who shall, after demand by the department or any agent or representative designated by it for that purpose, refuse to allow full inspection of the premises or any part thereof, or any books, records, documents, or other instruments in any way relating to the liability of the taxpayer for the tax herein imposed, or shall hinder or in anywise delay or prevent such inspection, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) The county comptroller or, if there be none, then the clerk of the circuit court, shall serve ex officio, and the Department of Revenue may appoint others, as agents for the collection of the tax imposed by this chapter. The department may adopt rules and regulations requiring the agents to meet certain standards, including, without limitation, a demonstrated volume of business or a geographical distribution. All agents shall be subject to audit and shall post a bond as may be required by the Department of Revenue. The Department of Revenue may purchase a blanket bond; however, all costs associated with such a bond shall be allocated by department regulation to those agents so bonded. An agent shall be compensated one-half of 1 percent of the value of the stamps sold as collection costs in the form of a deduction from the amount of the tax due and remitted by him, and the department shall allow the said deduction to the agent paying and remitting the tax in the manner as provided for by the department. However, no deduction or allowance shall be granted when there is a manifest failure to maintain proper records or make proper reports.

History.—s. 2, ch. 15787, 1931; CGL 1936 Supp. 1279(112), 7473(5); ss. 21, 35, ch. 69-106; s. 104, ch. 71-136; s. 1, ch. 71-344; s. 2, ch. 74-325; s. 1, ch. 76-199.

201.12 Duties of clerks of the circuit court.— Clerks of the circuit court shall report to the Department of Revenue the names and addresses of any and all individuals, firms or corporations, who shall fail to have affixed the required amount of stamps of any conveyance or taxable instrument or document which may be recorded in their respective offices; and any such clerk who knowingly fails to report any such violation within 30 days after recording of any taxable instrument or document, without such stamps, shall be deemed guilty of a misdemeanor and upon conviction punished accordingly.

History.—s. 2, ch. 15787, 1931; CGL 1936 Supp. 1279(113), 7473(6); ss. 21, 35, ch. 69-106.

201.13 Department of Revenue to furnish stamps for tax.—The Department of Revenue shall cause to be prepared and distributed for the payment of the taxes prescribed in this chapter, suitable stamps denoting the tax on the documents to which same are required to be affixed, and shall prescribe such method for affixing of said stamps as shall be necessary to carry out and comply with the intent and purpose of this chapter.

History.—s. 3, ch. 15787, 1931; CGL 1936 Supp. 1279(114); ss. 21, 35, ch. 69-106.

201.131 Metering machines.—

(1) The taxes imposed by this chapter may also be paid through the use of excise tax on documents stamp insignia to be applied by the use of metering machines. The Department of Revenue shall prescribe and promulgate appropriate rules and regulations governing the use of metering machines, the procedure for the payment of such excise taxes on documents through the use thereof, requiring adequate surety bonds of the nongovernmental users thereof to assure the proper use of such machines and the payment of all excise taxes on documents, and all other rules and regulations necessary and proper to govern the use of same.

(2) Users of such metering machines will have to supply such machines at their own expense.

(3) All provisions of this chapter governing the use of excise tax in documents stamps and pertaining to the payment of such excise taxes through the use of stamps shall likewise be applicable, where appropriate, to the payment of such taxes through the use of metering machines.

History.—s. 3, ch. 57-107; ss. 21, 35, ch. 69-106.

201.14 Cancellation of stamps when used, etc.—Whenever an adhesive stamp is used for denoting any tax imposed by this chapter on documents, the person using or affixing the same shall write or stamp or cause to be written or stamped thereon, the initials of his or its name, and the date upon which same is attached or used, so that the same may not again be used. Stamps shall be affixed in such manner that their removal will require continued application of steam or water; provided, that the Department of Revenue may prescribe such other method for the cancellation of such stamps as it may deem expedient.

History.—s. 5, ch. 15787, 1931; CGL 1936 Supp. 1279(116); ss. 21, 35, ch. 69-106.

201.15 Distribution of taxes collected.—All taxes collected under the provisions of this chapter shall be distributed as follows:

(1) Six-sevenths of the total taxes collected under the provisions of this chapter shall be paid into the State Treasury to the credit of the General Revenue Fund of the state, to be used and expended for the purposes for which said General Revenue Fund was created and exists by law.

(2) One-seventh of the total taxes collected under the provisions of this chapter shall be paid into the State Treasury to the credit of the Land Acquisition Trust Fund. Sums deposited in such fund pursuant to this section may be used for any purpose for which funds deposited in the Land Acquisition Trust Fund may lawfully be used and may be used to pay the cost of the collection and enforcement of the tax levied by this chapter.

History.—s. 6, ch. 15787, 1931; CGL 1936 Supp. 1279(117); s. 4, ch. 79-350.

201.16 Other laws made applicable to chapter.—All revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this chapter, so far as applicable, for the purpose of collecting stamp taxes omitted through mistake or fraud from any instrument, document, paper, or writing named herein.

History.—s. 3, ch. 15787, 1931; CGL 1936 Supp. 1279(115).

201.17 Penalties for failure to pay tax required.—

(1) Whoever makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever, without the full amount of the tax herein imposed thereon being fully paid, or whoever makes use of any adhesive stamp to denote any tax imposed by this chapter without canceling or obliterating such stamps as herein provided, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any document, instrument, or paper upon which the tax under this chapter is imposed and which, upon audit or at time of recordation, does not bear the proper value of stamps shall subject the person or persons liable for the tax upon the document, instrument, or paper to:

(a) Purchase of the stamps not affixed.

(b) Payment of a penalty to the Department of Revenue equal to 25 percent of the purchase price of the stamps not affixed. If it is determined by clear and convincing evidence that any part of a deficiency is due to fraud, there shall be added to the tax as a civil penalty, in lieu of the aforementioned penalty under this paragraph, an amount equal to 100 percent of the deficiency. These penalties are to be in addition to, and not in lieu of, any other penalties imposed by law.

(c) Payment of interest to the Department of Revenue, accruing from the date of recordation until paid, at the rate of 1 percent per month or fraction thereof, based on the purchase price of the stamps not affixed.

(3) The department may compromise any penalty on any proposed assessment which has not become final on July 1, 1977, if its investigation reveals that the penalty would be too severe or unjust.

History.—s. 4, ch. 15787, 1931; CGL 1936 Supp. 7473(7); s. 105, ch. 71-136; s. 2, ch. 71-344; s. 4, ch. 76-261; s. 1, ch. 77-281.

201.18 Penalties for illegal use of stamps, etc.—

(1) Whoever fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this chapter, any adhesive stamp used in pursuance of this chapter, or fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this chapter:

(a) Any adhesive stamp which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this chapter;

(b) Any adhesive stamp of insufficient value, or

(c) Any forged or counterfeited stamp.

(2) Whoever willfully removes or alters the cancellation or defacing marks of, or otherwise prepares any adhesive stamp with intent to use or cause the same to be used after it has already been used, or knowingly or willfully buys, sells, offers for sale, or gives away any such washed or restored stamp to any person for use, or knowingly uses the same, or whoever knowingly and without lawful excuse has in possession any washed, restored, or altered stamp which has been removed from any vellum, parchment, paper, instrument, writing, or document; or whoever knowingly or willfully prepares, buys, sells, offers for sale, or has in his or its possession any counterfeit stamps, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 4, ch. 15787, 1931; CGL 1936 Supp. 7473(7); s. 106, ch. 71-136; s. 3, ch. 71-344.

201.19 Forfeiture for illegally avoiding tax on notes.—Any person, either maker or payee, who shall attach to any original note any other note which is not in fact a renewal of the original note without paying the tax and affixing the stamps re-

quired by law on each and all of such notes, shall forfeit to the state a sum of money equal to twice the face value of all such notes as may be so attached, and the Department of Revenue shall direct the State Attorney of the judicial circuit within which such parties or any of them reside, or where the act was committed, to bring suit in the name of the state to collect the amount due, and such State Attorney shall institute and prosecute to judgment and collection the amount due, and the maker and the payee shall be jointly and severally liable for the payment thereof.

History.—s. 3, ch. 19068, 1939; CGL 1940 Supp. 1279(120); ss. 21, 35, ch. 69-106.

201.20 Penalties for illegally avoiding tax on notes.—Any person using the provisions of s. 201.09 to avoid the payment of any tax justly due shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 4, ch. 19068, 1939; CGL 1940 Supp. 7473(7a); s. 107, ch. 71-136; s. 4, ch. 71-344.

201.21 Notes and other written obligations exempt under certain conditions.—There shall be exempt from all excise taxes imposed by this chapter all promissory notes, nonnegotiable notes, and other written obligations to pay money bearing date subsequent to July 1, 1955, hereinafter referred to as "principal obligations," when the maker thereof shall pledge or deposit with the payee or holder thereof pursuant to any agreement commonly known as a wholesale warehouse mortgage agreement, as collateral security for the payment thereof, any collateral obligation or obligations, as hereinafter defined, provided all excise taxes imposed by this chapter upon or in respect to such collateral obligation or obligations shall have been paid. If the indebtedness evidenced by any such principal obligation shall be in excess of the indebtedness evidenced by such collateral obligation or obligations, the exemption provided by this section shall not apply to the amount of such excess indebtedness, and, in such event, the excise taxes imposed by this chapter shall apply and be paid only in respect to such excess of indebtedness of such principal obligation. The term "collateral obligation" as used in this section shall mean any note, bond, or other written obligation to pay money secured by mortgage, deed of trust, or other lien upon real or personal property. The pledging of a specific collateral obligation to secure a specific principal obligation, if required under the terms of the agreement, shall not invalidate the exemption provided by this section. The temporary removal of the document or documents representing one or more collateral obligations for a reasonable commercial purpose, [1]for a period not exceeding 60 days, shall not invalidate the exemption provided by this section.

History.—s. 1, ch. 29981, 1955; s. 8, ch. 79-350.

[1]Note.—The words "for a period" were inserted by the editors.

201.22 Financing statements under chapter 679 of the Uniform Commercial Code.—The excise tax on documents provided by this chapter shall be applicable to transactions covered by the Uniform Commercial Code to the same extent that it would be if the code had not been enacted. The clerk or filing officer shall not accept for filing or filing and recording any financing statement under chapter 679, unless there appears thereon the notation that the stamps required by this chapter have been placed on the promissory instruments secured by said financing statement and will be placed on any additional promissory instruments, advances or similar instrument that may be secured by said financing statement. The failure to pay the tax required by this chapter as so stated, shall be subject to the penalties provided by this chapter.

History.—s. 1, ch. 65-254.

201.23 Foreign notes and other written obligations exempt.—

(1) There shall be exempt from all excise taxes imposed by this chapter:

(a) All promissory notes, nonnegotiable notes, and other written obligations to pay money bearing date on or after July 1, 1977, if the makers thereof or the obligors thereunder, at the time of the making or execution thereof, are individuals residing outside the United States or business organizations or other persons located outside the United States.

(b) All drafts or bills of exchange drawn upon and, on or after July 1, 1977, accepted by a bank having an office in Florida, which arise out of transactions involving the importation or exportation of goods or the storage of goods abroad, or drawn by banks or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries, dependencies, or insular possessions, if at the date of the acceptance of any of the foregoing the drawer of the draft or bill of exchange or the persons for whose benefit the financing is conducted are individuals residing outside the United States or business organizations or other persons located outside the United States.

(c) Any promissory note, nonnegotiable note, or other written obligation to pay money if said note or obligation is executed and delivered outside this state and at the time of its making is secured only by a mortgage, deed of trust, or similar security agreement encumbering real estate located outside this state and if such promissory note, nonnegotiable note, or other written obligation for payment of money is brought into this state for deposit as collateral security under a wholesale warehouse mortgage agreement or for inclusion in a pool of mortgages deposited with a custodian as security for obligations issued by an agency of the United States Government or for inclusion in a pool of mortgages to be serviced for the account of a customer by a mortgage broker licensed or exempt from licensing under chapter 494.

(2) The exemptions provided in this chapter shall not apply:

(a) To mortgages, trust deeds, security agreements, or other evidences of indebtedness relating to the purchase or transfer of real property located in Florida and filed or recorded in the state, which shall be taxable as if they were entered into within this state.

(b) If the purpose of the financing evidenced by any instrument described in (1)(a) is to finance all or

any part of the purchase of real estate located in Florida or personal property for use in Florida. However, the obligee under any such instrument shall be entitled to rely on a written certificate by the makers thereof or the obligors thereunder that no part of the proceeds of such financing is intended for any such purpose.

(c) If, at the date of any instrument described in paragraph (1)(a) or at the date of acceptance of any instrument described in paragraph (1)(b), a majority of the equity securities of any maker of any instrument described in paragraph (1)(a) or of any obligor thereunder, or of any drawer or person for whose benefit the financing referred to in paragraph (1)(b) is conducted, are owned by individuals residing within the United States or business organizations or other persons located within the United States. However, the obligee under or acceptor of any such instrument shall be entitled to rely upon the written certificate of each maker, obligor, or person for whose benefit the financing is conducted, other than an individual, certifying that a majority of its equity securities are not owned by individuals residing within the United States or business organizations or other persons located within the United States.

(3) The provisions of this section shall not be construed so as to impair the obligation of any contract entered into prior to July 1, 1977.

History.—s. 1, ch. 77-463; s. 9, ch. 79-350; s. 92, ch. 79-400.

201.24 Obligations of municipalities, political subdivisions, and agencies of the state.—There shall be exempt from all taxes imposed by this chapter any obligation to pay money issued by a municipality, political subdivision, or agency of the state.

History.—s. 10, ch. 79-350.

CHAPTER 203

GROSS RECEIPTS TAXES

203.01 Tax on gross receipts for utility services.—Every person, including municipal corporations, receiving payment for electricity for light, heat or power, for natural or manufactured gas for light, heat or power, for use of telephones, and for the sending of telegrams and telegraph messages, shall report semiannually to the Department of Revenue, not later than January 31 for the 6 months ending December 31, and not later than July 31 for the 6 months ending June 30, under oath of the secretary or some other officer of such person, the total amount of gross receipts derived from business done within this state, or between points within this state, for the preceding 6 months and, at the same time, shall pay into the state treasury the sum of $1.50 upon each $100 of such gross receipts. The term "gross receipts" as used herein shall not include gross receipts of any person derived from the sale of natural gas to a public or private utility, including municipal corporations and rural electric cooperative associations, either for resale or for use as fuel in the generation of electricity. If any person fails to make such report to the department and pay the tax as herein provided, the department shall, after having given at least 5 days' notice to such person or some official or representative thereof within this state, estimate the amount of such gross receipts from such information as it may be able to obtain and shall add 10 percent of the amount of such taxes as a penalty, for the failure of such person to make report, and shall proceed to collect such tax, together with all costs and the penalty, the same as other delinquent taxes are collected; provided, no penalty shall be added as aforesaid if a return is made and the amount due is paid to the State Treasurer before the expiration of the time stated in the department's notice aforesaid.

History.—ss. 1, 2, ch. 15658, 1931; CGL 1936 Supp. 1279(108), (109); s. 7, ch. 22858, 1945; s. 1, ch. 57-819; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 10, ch. 75-292.
cf.—s. 1.01 Definition of person.

203.011 Certain credits authorized.—Whenever a purchase is made of any utility service and a tax is paid thereon by a public utility that is regulated by the Florida Public Service Commission, municipality or a rural electric cooperative association as provided in s. 203.01, and such public utility, municipality or rural electric cooperative association resells the same directly to consumers, such public utility, municipality or rural electric cooperative association shall be entitled and shall receive credit upon such taxes as may be due it under s. 203.01 to the extent of the tax paid or payable upon such utility service by the person, firm or corporation from whom such purchase was made.

History.—s. 1, ch. 28091, 1953; s. 1, ch. 57-820; s. 1, ch. 63-279; s. 1, ch. 65-52.

203.02 Powers of Department of Revenue.—The Department of Revenue may audit the reports provided for in s. 203.01 and each and every such person shall submit all records, books, papers and accounts as to business done to the department or its duly authorized agents for examination or investigation upon demand.

History.—s. 3, ch. 15658, 1931; CGL 1936 Supp. 1279(110); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106.

203.03 Penalties.—Any officer, agent, or representative of any such person who receives any payment for the furnishing of the things or the services above mentioned without first complying with the provisions of this chapter as required, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 4, ch. 15658, 1931; CGL 1936 Supp. 7455(3); s. 108, ch. 71-136.

203.04 Repeal of laws granting exemptions or exceptions.—

(1) All provisions of presently existing general, special or local statutes or laws, or parts thereof, including municipal charters and laws relating to quasi-municipal corporations, of this state granting or providing exemptions or exceptions, either directly or indirectly, from the gross receipts taxes imposed by chapter 203 are hereby repealed. This section shall not repeal, modify or amend any of the provisions of s. 203.01 or s. 203.011.

(2) No statute or law, general, special or local hereafter enacted which either directly or indirectly relates to exemptions or exceptions from taxation in this state shall be construed as including or extending to the gross receipts taxes imposed by chapter 203 unless its application to said chapter, either directly or indirectly, is clearly and specifically expressed and no repeals by implication shall be recognized in this connection. This is a rule of statutory construction to be applied to statutes and laws hereafter enacted.

(3) Subsection (1) shall be construed as applying to chapter 29334, 1953, as amended by chapter 31051, 1955; chapters 30415, 30576, 30845 and 31166, 1955; and chapters 57-1174 and 57-1348, all Laws of Florida. This enumeration of chapters, shall not be construed as being all inclusive.

History.—ss. 1-3, ch. 63-535.

203.05 Gross receipts taxes against express companies; reports; penalties; distribution.—

(1) Every express company doing business in this state shall annually, on October 1, make a report under oath to the Department of Revenue of the total amount of gross receipts derived from business done between points in this state during the year ending June 30, next preceding October 1 and shall at the same time pay to the department a sum equal to 2 percent upon the total amount of such gross

receipts, and if any such company shall fail to make such report and payment to the department as herein provided, on or before November 1 of any year, the department shall, after having given at least 5 days' notice to an official or representative of the company located in this state, estimate the amount of such gross receipts from such information as it may be able to obtain, and shall add 10 percent to the amount of such taxes as a penalty for the failure of such company to make report, and shall proceed to collect such tax, together with all costs and penalties thereon, the same as delinquent railroad taxes are collected; provided, that no penalty shall be added if a return is made and the amount due paid to the department before the expiration of the time stated in the notice required to be given by this section.

(2) Of the sum paid to the Department of Revenue, as provided by this section, one-half shall be distributed by the department among the various counties of this state in proportion to the assessed valuation thereof as shown by the assessment of the previous year, and the remaining one-half shall immediately be turned over to the treasury of the state as license money.

History.—s. 22, ch. 6421, 1913; RGS 889; s. 1, ch. 8556, 1921; CGL 1145; ss. 1, 2, ch. 69-55; ss. 21, 35, ch. 69-106; s. 24, ch. 70-243.

Note.—Former s. 195.13; s. 193.731.

203.06 Interest on delinquent payments.—Any payments as imposed in this chapter, if not received by the Department of Revenue on or before the due date as provided by law, shall include, as an additional part of such amount due, interest at the rate of 1 percent per month, accruing from the date due until paid.

History.—s. 5, ch. 76-261.

CHAPTER 205

LOCAL OCCUPATIONAL LICENSE TAXES

205.013 Short title.—This chapter shall be known and may be cited as the "Local Occupational License Tax Act."

History.—s. 1, ch. 72-306; s. 1, ch. 73-144.

205.022 Definitions.—When used in this chapter the following terms and phrases shall have the meaning ascribed to them in this section, except when the context clearly indicates a different meaning:

(1) "Local occupational license" means the method by which a local governing authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. It shall not mean any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection. Unless otherwise provided by law, these are deemed to be regulatory and in addition to, and not in lieu of, any local occupational license imposed under the provisions of this chapter.

(2) "Local governing authority" means the governing body of any county or incorporated municipality of this state.

(3) "Person" means any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and shall include the plural as well as the singular.

(4) "Taxpayer" means any person liable for taxes imposed under the provisions of this chapter; any agent required to file and pay any taxes imposed hereunder; and the heirs, successors, assignees and transferees of any such person or agent.

(5) "Classification" means the method by which a business or group of businesses is identified by size or type, or both.

(6) "Department" means the Department of Revenue.

(7) "Business," "profession," and "occupation" do not include the customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions in this state, which institutions are more particularly defined and limited as follows:

(a) "Religious institutions" shall mean churches and ecclesiastical or denominational organizations or established physical places for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on, and shall also mean church cemeteries.

(b) "Educational institutions" shall mean state tax-supported or parochial, church and nonprofit private schools, colleges, or universities conducting regular classes and courses of study required for accreditation by or membership in the Southern Association of Colleges and Secondary Schools, the Department of Education or the Florida Council of Independent Schools. Nonprofit libraries, art galleries, and museums open to the public are defined as educational institutions and eligible for exemption.

(c) "Charitable institutions" shall mean only nonprofit corporations operating physical facilities in this state at which are provided charitable services, a reasonable percentage of which shall be without cost to those unable to pay.

History.—s. 1, ch. 72-306; s. 1, ch. 73-144.

205.032 Levy; counties.—The governing body of a county may levy, by appropriate resolution or ordinance, an occupational license tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. However, such governing body shall first give at least 15 days' public notice between the first and last reading of such resolution or ordinance by publishing such notice in a newspaper of general circulation within its jurisdiction as defined by law. The said public notice shall contain the proposed classifications and rates applicable to the occupational license tax which is the subject thereof.

History.—s. 1, ch. 72-306; s. 1, ch. 73-144.

205.033 Conditions for levy; counties.—

(1) The following conditions are hereby imposed on the authority of a county governing body to levy an occupational license tax:

(a) The tax shall be based upon reasonable classifications and shall be uniform throughout any class.

(b) No occupational license tax levied hereunder shall be at a rate greater than the rate provided by chapter 205 in effect for the year beginning October 1, 1971.

(c) No license shall be issued for more than 1 year, and all licenses shall expire on October 1 of each year, except as otherwise provided by law.

(2) All business licenses may be transferred to a new owner when there is a bona fide sale of the business upon payment of a transfer fee of $3 and

presentation of the original license and evidence of the sale.

(3) Upon written request and presentation of the original license, any license may be transferred from one location to another location in the same county upon payment of a transfer fee of $3.

(4) The revenues derived from the occupational license tax, exclusive of the costs of collection and any credit given for municipal license taxes, shall be apportioned between the unincorporated area of the county and the incorporated municipalities located therein by a ratio derived by dividing their respective populations by the population of the county.

(5) The revenues so apportioned shall be sent to the governing authority of each municipality, according to its ratio, and to the governing authority of the county, according to the ratio of the unincorporated area, within 15 days following the month of receipt.

History.—s. 1, ch. 72-306; s. 1, ch. 73-144; s. 1, ch. 77-55.

205.042 Levy; municipalities.—The governing body of an incorporated municipality may levy, by appropriate resolution or ordinance, an occupational license tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. However, such governing body shall first give at least 15 days' public notice between the first and last reading of such resolution or ordinance by publishing such notice in a newspaper of general circulation within its jurisdiction as defined by law. The said public notice shall contain the proposed classifications and rates applicable to the occupational license tax which is the subject thereof. Such occupational license tax may be levied on:

(1) Any person who maintains a permanent business location or branch office within said municipality, for the privilege of engaging in or managing any business within its jurisdiction.

(2) Any person who maintains a permanent business location or branch office within said municipality, for the privilege of engaging in or managing any profession or occupation within its jurisdiction.

(3) Any person who does not qualify under the provisions of subsection (1) or subsection (2) and who transacts any business or engages in any occupation or profession in interstate commerce, if such license tax is not prohibited by s. 8 of Art. I of the United States Constitution.

History.—s. 1, ch. 72-306; s. 1, ch. 73-144.

205.043 Conditions for levy; municipalities.—

(1) The following conditions are hereby imposed on the authority of a municipal governing body to levy an occupational license tax:

(a) The tax shall be based upon reasonable classifications and shall be uniform throughout any class;

(b) No occupational license tax levied hereunder shall be at a rate greater than that in effect in such municipality for the year beginning October 1, 1971;

(c) No license shall be issued for more than 1 year and all licenses shall expire on October 1 of each year, except as otherwise provided by law.

(2) All business licenses may be transferred to a new owner when there is a bona fide sale of the business upon payment of a transfer fee of $3 and presentation of the original license and evidence of the sale.

(3) Upon written request and presentation of the original license, any license may be transferred from one location to another location in the same municipality upon payment of a transfer fee of $3.

(4) If the governing body of the county in which the municipality is located has levied an occupational license tax or subsequently levies such a tax, the collector of the county tax may issue the license and collect the tax thereon.

History.—s. 1, ch. 72-306; s. 1, ch. 73-144; s. 1, ch. 77-55.

205.053 Occupational licenses; dates due and delinquent; penalties.—

(1) All licenses shall be sold by the appropriate tax collector beginning September 1 of each year and shall be due and payable on October 1 of each year and expire on September 30 of the succeeding year. Provisions for partial licenses may be made in the resolution or ordinance authorizing such licenses. Those licenses not renewed by October 1 shall be considered delinquent and subject to a delinquency penalty of 10 percent for the month of October, plus an additional 5 percent penalty for each month of delinquency thereafter until paid. However, the total delinquency penalty shall not exceed 25 percent of the occupational license fee for the delinquent establishment.

(2) Any person engaging in or managing any business, occupation, or profession without first obtaining a local occupational license, if required hereunder, shall be subject to a penalty of 25 percent of the license determined to be due, in addition to any other penalty provided by law or ordinance.

History.—s. 1, ch. 72-306; s. 1, ch. 73-144.

205.063 Exemptions; motor vehicles.—Vehicles used by any person licensed under this chapter for the sale and delivery of tangible personal property at either wholesale or retail from his place of business on which a license is paid shall not be construed to be separate places of business, and no license may be levied on such vehicles or the operators thereof as salesmen or otherwise by a county or incorporated municipality, any other law to the contrary notwithstanding.

History.—s. 3, ch. 72-306; s. 1, ch. 73-144.

205.064 Farm, grove, horticultural, floricultural, tropical piscicultural, and tropical fish farm products; certain exemptions.—

(1) No local occupational license shall be required of any natural person for the privilege of engaging in the selling of farm, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom, except intoxicating liquors, wine, or beer, when such products were grown or produced by such natural person in the state.

(2) A wholesale farmers' produce market shall have the right to pay a tax of not more than $200 for a license that will entitle the market's stall tenants to engage in the selling of agricultural and horticultural products therein, in lieu of such tenants being

required to obtain individual local occupational licenses to so engage.

History.—s. 1, ch. 74-271.

205.162 Exemption allowed cripples, invalids, aged, etc.—

(1) All confirmed cripples or invalids physically incapable of manual labor, widows with minor dependents, and persons 65 years of age or older, with not more than 1 employee or helper, and who use their own capital only, not in excess of $1,000, shall be allowed to engage in any business or occupation in counties in which they live without being required to pay for a license; except that this exemption shall not apply to any of the occupations specified in ss. 205.311 and 205.341. The exemption provided by this section shall be allowed only upon the certificate of the county physician, or other reputable physician, that the applicant claiming the exemption is a confirmed cripple or invalid, the nature and extent of the disability being specified therein, and in case the exemption is claimed by a widow with minor dependents, or a person over 65 years of age, proof of the right to the exemption shall be made. Any person entitled to the exemption provided by this section shall, upon application and furnishing of the necessary proof as aforesaid, be issued a license which shall have plainly stamped or written across the face thereof the fact that it is issued under this section, and the reason for the exemption shall be written thereon.

(2) In no event under this or any other law shall any person, veteran or otherwise, be allowed any exemption whatsoever from the payment of any amount required by law for the issuance of a license to sell intoxicating liquors, malt and vinous beverages; or for the operation of any slot machine, punch board or any other gaming or gambling device.

History.—s. 1, ch. 67-433.

205.171 Exemptions allowed disabled veterans of any war or their unremarried spouses.—

(1) Any bona fide, permanent resident elector of the state who served as an officer or enlisted person in the United States Air Force or Air Force Reserve, United States Army or Army Reserve, National Guard, United States Navy or Naval Reserve, United States Coast Guard or Coast Guard Reserve, or United States Marine Corps or Marine Corps Reserve, or any temporary members thereof, who have actually been, or may hereafter be, reassigned by the air force, army, navy, coast guard, or marines to active duty during any war, declared or undeclared, armed conflicts, crises, etc., since the Spanish-American War, beginning April 21, 1896, who was honorably discharged from the Service of the United States, and who at the time of his or her application for a license as hereinafter mentioned shall be disabled from performing manual labor shall, upon sufficient identification, proof of being a permanent resident elector in the state, and production of an honorable discharge from the Service of the United States during the aforesaid period of time, respectively:

(a) Be granted a license to engage in any business or occupation in the state which may be carried on mainly through the personal efforts of the licensee as a means of livelihood and for which the state, county, or municipal license does not exceed the sum of $50 for each without payment of any license tax otherwise provided for by law; or

(b) Be entitled to an exemption to the extent of $50 on any license to engage in any business or occupation in the state which may be carried on mainly through the personal efforts of the licensee as a means of livelihood when the state, county, or municipal license for such business or occupation shall be more than $50. The exemption heretofore referred to shall extend to and include the right of licensee to operate an automobile-for-hire of not exceeding five-passenger capacity, including the driver, when it shall be made to appear that such automobile is bona fide owned or contracted to be purchased by the licensee and is being operated by him or her as a means of livelihood and that the proper license tax for the operation of such motor vehicle for private use has been applied for and attached to said motor vehicle and the proper fees therefor paid by the licensee.

(2) When any such person shall apply for a license to conduct any business or occupation for which either the county or municipal license tax as fixed by law shall exceed the sum of $50, the remainder of such license tax in excess of $50 shall be paid by him in cash.

(3) Each and every tax collecting authority of this state and of each county thereof and each municipality therein shall issue to such persons as may be entitled hereunder a license pursuant to the foregoing provision and subject to the conditions thereof. Such license when issued shall be marked across the face thereof "Veterans Exempt License"—"Not Transferable." Before issuing the same, proof shall be duly made in each case that the applicant is entitled under the conditions of this law to receive the exemption herein provided for. The proof may be made by establishing to the satisfaction of such tax collecting authority by means of certificate of honorable discharge or certified copy thereof that the applicant is a veteran within the purview of this section and by exhibiting:

(a) A certificate of government-rated disability to an extent of 10 percent or more;

(b) The affidavit or testimony of a reputable physician who personally knows the applicant and who makes oath that the applicant is disabled from performing manual labor as a means of livelihood;

(c) The certificate of the veteran's service officer of the county in which applicant lives, duly executed under the hand and seal of the chief officer and secretary thereof, attesting the fact that the applicant is disabled and entitled to receive a license within the meaning and intent of this section;

(d) A pension certificate issued to him or her by the United States by reason of such disability; or

(e) Such other reasonable proof as may be required by the tax collecting authority to establish the fact that such applicant is so disabled.

All licenses issued under this section shall be in the same general form as other state, county, and municipal licenses and shall expire at the same time as such other licenses are fixed by law to expire.

(4) All licenses obtained under the provisions of

this section by the commission of fraud upon any issuing authority shall be deemed null and void. Any person who has fraudulently obtained any such license, or who has fraudulently received any transfer of a license issued to another, and has thereafter engaged in any business or occupation requiring a license under color thereof shall be subject to prosecution as for engaging in a business or occupation without having the required license under the laws of the state. Such license shall not be issued in any county other than the county wherein said veteran is a bona fide resident citizen elector, unless such veteran applying therefor shall produce to the tax collecting authority in such county a certificate of the tax collector of his or her home county to the effect that no exemption from license has been granted to such veteran in his or her home county under the authority of this section.

(5) In no event under this or any other law shall any person, veteran or otherwise, be allowed any exemption whatsoever from the payment of any amount required by law for the issuance of a license to sell intoxicating liquors, malt and vinous beverages; for the operation of any slot machine, punchboard or any other gaming or gambling device; or for any of the occupations specified in ss. 205.311 and 205.341.

(6) The unremarried spouse of the deceased disabled veteran of any war in which the United States Armed Forces participated will be entitled to the same exemptions as the disabled veteran.

History.—s. 1, ch. 67-433; s. 38, ch. 71-355; s. 1, ch. 77-163; s. 93, ch. 79-400.

205.191 Religious tenets; exemption.—Nothing in this chapter shall be construed to require a license for practicing the religious tenets of any church.

History.—s. 1, ch. 67-433.

205.192 Charitable, etc., organizations; occasional sales, fund raising; exemption.—No occupational license shall be required of any charitable, religious, fraternal, youth, civic, service, or other such organization when the organization makes occasional sales or engages in fund-raising projects when the projects are performed exclusively by the members thereof and when the proceeds derived from the activities are used exclusively in the charitable, religious, fraternal, youth, civic, and service activities of the organization.

History.—s. 1, ch. 70-400.

205.193 Mobile home setup operations; exemption.—No county, municipality, or other unit of local government may require a duly licensed mobile home dealer or a duly licensed mobile home manufacturer, or an employee of such dealer or manufacturer, who performs setup operations as defined in s. 320.822 to be licensed to engage in such operations. However, such dealer or manufacturer shall be required to obtain a local occupational license for his permanent business location or branch office, which license shall not require for its issuance any conditions other than those required by chapter 320.

History.—s. 1, ch. 79-120.

[1]205.195 Veterinary medical practice.—No occupational license, whether state, county, or city, shall be issued to any person to practice veterinary medicine unless he shall present to the tax collector a valid current license issued by the Department of Professional Regulation.

History.—ss. 1, 2, ch. 79-228.

[1]Note.—Section 2, ch. 79-228, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended by ch. 77-457.

205.196 Pharmacies and pharmacists.—No state, county, or municipal licensing agency shall issue an occupational license to operate a pharmacy unless the applicant shall first exhibit a current permit issued by the Board of Pharmacy; however, no such occupational license shall be required in order to practice the profession of pharmacy.

History.—s. 2, ch. 79-226.

[1]205.197 Architecture.—Any person applying to the licensing official of any county or municipality for an occupational license to practice architecture shall, at the time of application, exhibit to the licensing official satisfactory evidence that the applicant possesses a valid certificate of registration, and no occupational license shall be granted until such evidence is presented.

History.—ss. 13, 19, ch. 79-273.

[1]Note.—Section 19, ch. 79-273, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976.

[1]205.198 Engineering.—Any person applying to the licensing official of any county or municipality for an occupational license to practice engineering shall, at the time of application, exhibit to the licensing official satisfactory evidence that the applicant possesses a valid certificate of registration, and no occupational license shall be granted until such evidence is presented.

History.—ss. 13, 42, ch. 79-243.

[1]Note.—Section 42, ch. 79-243, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

[1]205.199 Land surveying.—Any person applying to the licensing official of any county or municipality for an occupational license to practice land surveying shall, at the time of application, exhibit to the licensing official satisfactory evidence that the applicant possesses a valid certificate of registration, and no occupational license shall be granted until such evidence is presented.

History.—ss. 32, 42, ch. 79-243.

[1]Note.—Section 42, ch. 79-243, in effect provides that this section shall stand repealed on July 1, 1985, and shall be reviewed by the Legislature pursuant to the Regulatory Reform Act of 1976, as amended.

CHAPTER 206

MOTOR AND OTHER FUEL TAXES

PART I MOTOR FUELS (ss. 206.01-206.77)

PART II SPECIAL FUELS (ss. 206.85-206.97)

PART I

MOTOR FUELS

206.01 Definitions.—As used in part I of this chapter:

(1) "Motor fuel" means and includes what is commonly known and sold as gasoline and fuels containing a mixture of gasoline and other products.

(2) "Public highways" means and includes every way or place, of whatever nature generally open to the use of the public as a matter of right, for the purpose of vehicular travel, notwithstanding that the same shall have been temporarily closed for the purpose of construction, reconstruction, maintenance or repair.

(3) "Person" means and includes natural persons, corporations, copartnerships, firms, companies, agencies, or associations; state agencies; and counties, municipalities, or other political subdivisions of this state, singular or plural.

(4) "Distributor" is any person who holds a valid distributor of motor fuel license issued by the department and who:

(a) Imports or causes to be imported and sells at wholesale, retail, or otherwise, within this state, any motor fuel.

(b) Imports and withdraws for use within this state by himself or others any motor fuel from the tank car, truck, or other original container or package in which imported into this state.

(c) Manufactures, refines, produces, or compounds any motor fuel within this state and sells the same at wholesale or retail or otherwise within this state for use or consumption within this state.

(d) Imports into this state from any other state or foreign country or receives by any means into this state, and keeps in storage in this state for a period of 24 hours or more after the same loses interstate character as a shipment in interstate commerce any motor fuel which is intended to be used for consumption in this state.

(e) Is primarily liable under the gas tax laws of this state for the payment of motor fuel taxes.

(f) Was holding, on December 30, 1970, an unrevoked license issued by the department to engage in business as a distributor of motor fuel.

(g) Purchases or receives in this state for resale to dealers motor fuel upon which the tax has not been paid.

(5) "Department" means the Department of Revenue.

(6) "Duly licensed distributor" means and includes any distributor holding an unrevoked license issued by the department.

(7) "Gas tax" means and includes any tax imposed by the laws of the state upon or measured by the sale, use, distribution, or consumption of motor fuel.

(8) "Gas tax collection trust fund" means any fund or funds heretofore or hereafter created by the Legislature for the purpose of enforcing the gas tax laws of the state.

(9) "Dealer" means a person other than a distributor who sells motor fuel in this state.

History.—s. 1, ch. 16082, 1933; CGL 1936 Supp. 1167(62); s. 1, ch. 28100, 1953; s. 1, ch. 57-162; s. 2, ch. 61-119; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 1, ch. 75-286.
Note.—Former s. 207.01.

206.02 Application for license.—

(1) It is unlawful for any person to engage in business as a distributor of motor fuel within this state unless such person is the holder of an unrevoked distributor's license issued by the department to engage in such business. To procure such license, every person shall file with the department an application upon oath and in such form as the department may prescribe, setting forth:

(a) The name under which the person will transact business within the state;

(b) The location, with street number address, of its principal office or place of business within this state and the location where records will be made available for inspection;

(c) The name and complete residence address of the owner or the names and addresses of the partners, if such person is a partnership, or of the principal officers, if such person is a corporation or association; and if such person is a corporation organized under the laws of another state, territory, or country, he shall also file with the application a certified copy of the certificate or license issued by the Department of State showing that such corporation is authorized to transact business in the state.

(2)(a) Upon filing of an application for a license, and concurrently therewith, a bond of the character stipulated and in the amount provided for shall be filed with the department. No license shall issue upon any application unless accompanied by such a bond, except as provided in s. 206.05(1).

(b) Upon the filing of the application for a license, a filing fee of $5 shall be paid to the department.

History.—s. 2, ch. 16082, 1933; CGL 1936 Supp. 1167(63); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 10, 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 1, ch. 77-149.
Note.—Former s. 207.02.

206.025 Application by person whose license has been canceled; procedure.—In the event that any application for a license to transact business as a distributor in the state shall be filed by any person whose license at any time theretofore shall have been canceled for cause by the department, or in case the department is of the opinion that such application is not filed in good faith or that such application is filed by some person as a subterfuge for the real person-in-interest whose license or registration

theretofore shall have been canceled for cause by said department, the department may refuse to issue to such person a license to transact business as a distributor in the state.

History.—s. 2, ch. 16082, 1933; CGL 1936 Supp. 1167(63); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 54, ch. 78-95.
Note.—Former s. 207.03.

206.03 Licensing of distributors.—

(1) The application in proper form having been accepted for filing, the filing fee paid, and the bond accepted and approved, except as provided in s. 206.05(1), the department shall issue to such person a license to transact business as a distributor in the state, subject to cancellation of such license as provided by law.

(2) The license so issued by the department shall not be assignable, shall be valid only for the distributor in whose name issued, and shall be displayed conspicuously in the principal place of business of the distributor in the state.

(3) The department shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all duly licensed distributors.

History.—s. 2, ch. 16082, 1933; CGL 1936 Supp. 1167(63); s. 7, ch. 22858, 1945; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 2, ch. 77-149.
Note.—Former s. 207.04.

206.04 License number and cards; penalties. —Each distributor shall be assigned a license number upon qualifying for a license hereunder, and the department shall issue to each such licensee separate license cards for each tank truck operated by the distributor. Such license card shall indicate the number so assigned the distributor, the motor number of the truck authorized to be operated under such license card, and such other information as the department may prescribe. The license card shall be conspicuously displayed in the vehicle to which it is assigned, and any person operating a tank truck in this state conveying or transporting motor fuel without such license card or, if a common carrier, a bill of lading shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 16082, 1933; CGL 1936 Supp. 1167(63), 7794(5); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 116, ch. 71-136.
Note.—Former s. 207.05.

206.05 Bond required of licensed distributors.—

(1) Each distributor, except a municipality, county, school board, or special district which is licensed as a distributor under this part, shall file with the department a bond in a penal sum of not less than $3,000 or more than $35,000, said sum to be approximately 3 times the average monthly gas tax paid by, or due from, such distributor during the preceding 12 calendar months under the laws of this state. The bond shall be in such form as may be approved by the department, executed by some surety company duly licensed to do business under the laws of the state as surety thereon, and conditioned upon the prompt filing of true reports and the payment by such distributor to the department of any and all gas taxes which are now or which hereafter may be levied or imposed by the state, together with any and all penalties and interest thereon, and generally upon faithful compliance with the provisions of the gas tax laws of the state. The distributor shall be the principal obligor, and the state shall be the obligee.

(2) In the event that liability upon the bond thus filed by the distributor with the department shall be discharged or reduced, whether by judgment rendered, payment made, or otherwise, or if in the opinion of the department any surety on the bond theretofore given shall have become unsatisfactory or unacceptable, then the department may require the distributor to file a new bond with satisfactory sureties in the same amount, failing which the department shall forthwith cancel the license of said distributor. If such new bond is furnished by the distributor as above provided, the department shall cancel and surrender the bond of the distributor for which such new bond shall be substituted.

(3) In the event that the department shall decide that the amount of the existing bond is insufficient to insure payment to the state of the amount of the tax and any penalties and interest for which the distributor is or may at any time become liable, then the distributor shall forthwith, upon the written demand of the department, file additional bond in the same manner and form with like security thereon as hereinbefore provided, and the department shall forthwith cancel the license of any distributor failing to file an additional bond as herein provided.

(4) Any surety on any bond furnished by a distributor as above provided shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of 60 days from the date upon which such surety shall have filed with the department written request to be released and discharged. However, such request shall not operate to relieve, release or discharge such surety from any liability already accrued, or which shall accrue, before the expiration of said 60-day period. The department shall, promptly on receipt of notice of such request, notify the distributor who furnished the bond, and, unless the distributor shall on or before the expiration of the 60-day period file with the department a new bond with a surety company satisfactory to the department in the amount and form hereinbefore in this section provided, the department shall forthwith cancel the license of the distributor. If the new bond is furnished by the distributor as above provided, the department shall cancel and surrender the bond of the distributor for which the new bond shall be substituted.

History.—s. 3, ch. 16082, 1933; CGL 1936 Supp. 1167(64); s. 1, ch. 57-78; s. 1, ch. 63-299; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 3, ch. 77-149; s. 54, ch. 78-95.
Note.—Former s. 207.06.

206.055 Department may cancel licenses; surrender of bond.—

(1) If a distributor at any time:

(a) Knowingly files a false monthly report of the data or information required by the gas tax laws;

(b) Fails, refuses, or neglects to file the monthly report required by such laws; or,

(c) Fails to pay the gas tax as required by this

chapter and the laws of the state;

the department may cancel the license of the distributor.

(2) The department may cancel any license hitherto or hereafter issued to any distributor if it ascertains and finds that the person to whom such license has been issued is no longer engaged in business as a distributor and has not been so engaged for the period of 6 months immediately preceding such cancellation; but no license shall be canceled upon the request of any distributor until and unless the distributor has, prior to the date of such cancellation, paid to the state all gas taxes payable under the laws of the state, together with any and all penalties and fines accruing by reason of any failure on the part of said distributor to make accurate reports as required by the gas tax laws of Florida or to pay said taxes and penalties. In the event that the license of any distributor is canceled by the department as provided in this section, and in the further event that the distributor shall have paid to the state all gas taxes due and payable by it under the laws of this state, together with any and all penalties accruing by reason of any failure on the part of the distributor to make accurate reports or to pay said tax and penalties, the department shall cancel and surrender the bond theretofore filed by the distributor.

History.—s. 4, ch. 16082, 1933; CGL 1936 Supp. 1167(65); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 54, ch. 78-95.
Note.—Former s. 207.07.

206.06 Estimate of amount of gas taxes due and unpaid.—

(1) Whenever any distributor neglects or refuses to make and file any report for any calendar month, as required by the gas tax laws of this state, or files an incorrect or fraudulent report, or is in default in the payment of any gas taxes and penalties thereon payable under the laws of this state, the department, after giving at least 10 days' notice to the distributor, shall, from any information it may be able to obtain from its office or elsewhere, estimate the number of gallons of motor fuel with respect to which the distributor has become liable for taxes under the gas tax laws of this state and the amount of taxes due and payable thereon, to which sum shall be added a sum equal to 10 percent thereof as a penalty for the failure of such distributor or his default aforesaid.

(2) In any action or proceeding for the collection of the gas tax and any penalties or interest imposed in connection therewith, an assessment by the department of the amount of the tax due and interest or penalties due to the state shall constitute prima facie evidence of the claim of the state, and the burden of proof shall be upon the distributor to show that the assessment was incorrect or contrary to law.

History.—ss. 5, 24, ch. 16082, 1933; CGL 1936 Supp. 1167(66), (84); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.08.

206.07 Suits for collection of unpaid taxes.— Upon demand of the department, the Department of Legal Affairs, or any State Attorney of any judicial circuit, shall bring appropriate actions, in the name of the state or in the name of the Department of Revenue in the capacity of its office, for the recovery of the above-mentioned taxes, penalties, and interest, and judgment shall be rendered for the amount so found to be due together with costs. However, if it shall be found as a fact that such failure to pay was willful on the part of any distributor, judgment shall be rendered for double the amount of the tax found to be due with costs. The department may employ an attorney-at-law to institute and prosecute proper proceedings to enforce payment of the gas taxes provided for by the laws of this state and penalties and interest provided for by this chapter and fix the compensation for the services of said attorney-at-law.

History.—s. 5, ch. 16082, 1933; CGL 1936 Supp. 1167(66); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 11, 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.09.

206.075 Department's warrant for collection of unpaid taxes.—

(1) Upon the determination of the amount of unpaid taxes and penalties due, the department may issue a warrant, under its official seal, directed to the sheriff of any county of the state, commanding said sheriff to levy upon and sell the goods and chattels of such distributor found within his jurisdiction for the payment of the amount of such delinquency, with the added penalties and interest and the cost of executing the warrant and conducting the sale, and to return such warrant to the department and pay the department the money collected by virtue thereof. However, any surplus resulting from said sale after all payments of costs, penalties, and delinquent taxes have been made shall be returned to the defaulting distributor.

(2) The sheriff to whom any such warrant shall be directed shall proceed upon the same in all respects to and with like effect and in the same manner (with the exceptions herein noted) as prescribed by law in respect to executions issued against goods and chattels upon judgments by the several circuit courts.

(3) In the event there shall be a contest or claim of any kind with reference to the property levied upon or the amount of taxes, costs, or penalties due, such contest or claim shall be tried in the circuit court in and for the county in which the warrant was executed as nearly as may be in the same manner and means as such contest or claim would have been tried in such court had the warrant originally issued upon a judgment rendered by said court. The warrant issued as aforesaid shall constitute prima facie evidence of the amount of taxes, interest, and penalties due to the state by the distributor, and the burden of proof shall be upon the distributor to show that the amounts or penalties were incorrect.

(4) Nothing in this section shall be construed as forfeiting or waiving any rights to collect such taxes or penalties by an action upon any bond that may be filed with the department under the provisions of this chapter or by suit or otherwise, and in case such suit, action, or other proceeding is instituted for the collection of the tax, such suit, action, or other proceeding shall not be construed as waiving any other right herein provided. Any civil proceeding under this chapter shall not be construed as a waiver or estoppel in any criminal proceeding against such distributor under this chapter.

History.—s. 24, ch. 16082, 1933; CGL 1936 Supp. 1167(84); s. 7, ch. 22858, 1945; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.

Note.—Former s. 207.10.

206.08 Report from persons not distributors.—

(1) Every person purchasing or otherwise acquiring motor fuel in tank car, truck, or cargo lots and selling, using, consuming, or otherwise disposing of the same for delivery in Florida who is not required by the provisions of this chapter to be licensed as a distributor of motor fuel or by the laws of Florida to make reports, shall file a statement setting forth:

(a) The name under which such person is transacting business within the state;

(b) The location with street number address of such person's principal office or place of business within the state; and

(c) The name and address of the owner or the names and addresses of the partners, if such person is a partnership, or the principal officers, if such person is a corporation or association.

(2) On or before the fifteenth day of each calendar month, such person shall, on forms prescribed by the department, report to the department all purchases or other acquisition and sales or other disposition of motor fuel during the preceding calendar month, giving a record of each tank car, truck, or cargo lot delivered to a point within Florida. Such report shall set forth:

(a) From whom each tank car, truck, or cargo lot was purchased or otherwise acquired;

(b) The point of shipment;

(c) To whom sold or shipped;

(d) The point of delivery;

(e) The date of shipment;

(f) The name of the carrier, the initials and number of the car, and the number of gallons contained in the tank car, if shipped by rail;

(g) The name and owner of the boat, barge, or vessel and the number of gallons contained therein, if shipped by water;

(h) The name of the owner of the truck and the number of gallons contained in such truck, if shipped by truck; and any other additional information the department may require relative to such motor fuel.

History.—s. 6, ch. 16082, 1933; CGL 1936 Supp. 1167(67); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.11.

206.09 Reports from carriers transporting motor fuel or similar products.—

(1) Every railroad company, streetcar, suburban or interurban railroad company, pipeline company, water transportation company, and common carrier transporting motor fuel, casinghead gasoline, natural gasoline, naphtha, or distillate, either in interstate or intrastate commerce, to points within Florida and every person transporting motor fuel, casinghead gasoline, natural gasoline, naphtha, or distillate, by whatever manner, to a point in Florida from any point outside of said state, shall report under oath to the department on forms prescribed by the department all deliveries of motor fuel, casinghead gasoline, natural gasoline, naphtha, or distillate so made to points within the state.

(2) Such reports shall cover monthly periods and be submitted within 15 days after the close of the month covered by the report and shall show:

(a) The name and address of the person to whom the deliveries of motor fuel, casinghead gasoline, natural gasoline, naphtha, or distillate have actually and in fact been made;

(b) The name and address of the originally named consignee, if motor fuel, casinghead gasoline, natural gasoline, naphtha, or distillate has been delivered to any other than the originally named consignee;

(c) The point of origin, the point of delivery, the date of delivery, and the number and initials of each tank car and the number of gallons contained therein, if shipped by rail;

(d) The name of the boat, barge, or vessel and the number of gallons contained therein, if shipped by water;

(e) The license number of each tank truck and the number of gallons contained therein, if transported by motor truck;

(f) If delivered by other means, the manner in which such delivery is made; and

(g) Such other additional information relative to shipments of motor fuel as the department may require.

History.—s. 7, ch. 16082, 1933; CGL 1936 Supp. 1167(68); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.13.

206.10 Reports to be filed whether taxes due or not.—All statements or reports required by this chapter and the gas tax laws of this state to be made to the department monthly shall be filed each month regardless of whether or not a gas tax is due under the provisions of the laws of Florida.

History.—s. 17, ch. 16082, 1933; CGL 1936 Supp. 1167(78); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.14.

206.11 Penalties.—

(1) Any false or fraudulent statement or report submitted under the gas tax laws of this state and sworn to by a person knowing same to be false or fraudulent shall constitute perjury, and, upon conviction thereof, the person so convicted shall be punished as provided by law for conviction of perjury under s. 837.01.

(2) Any person:

(a) Who willfully refuses or neglects to make any statement, report, or return required by the provisions of this law;

(b) Who knowingly makes, or assists any other person in making, a false statement in a return or report or in connection with an application for refund of any tax;

(c) Who knowingly collects, or attempts to collect or causes to be paid to him or to any other person, either directly or indirectly, any refund of such tax without being entitled to the same; or

(d) Who violates any of the provisions of this chapter, a penalty for which is not otherwise provided,

shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. For a second or further offense, such person shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and in addition thereto the department may revoke

or suspend the license of any violator. Each day or part thereof during which any person engages in business as a distributor without being the holder of an uncanceled license as provided by this part shall constitute a separate offense within the meaning of this section. In addition to the penalty imposed by this chapter, the defendant shall be required to pay all gas taxes and penalties due to the state. The penalties provided in this section shall be in addition to those provided for in s. 206.44.

History.—s. 1, ch. 70-995; s. 115, ch. 71-136.

206.12 Retention of records by distributors and other persons.—

(1) Each distributor shall maintain and keep, for a period of 3 years, such record of motor fuel received, used, transferred, sold, and delivered within this state by such distributor, together with invoices, bills of lading, and other pertinent records and papers, as may be required by the department for the reasonable administration of the motor fuel tax laws of this state.

(2) Every person not a distributor purchasing motor fuel taxable under the laws of this state for the purpose of resale shall maintain and keep for a period of 1 year a record of motor fuel received, the amount of tax paid as part of the purchase price, together with delivery tickets, invoices, and bills of lading, and such other records as the department requires.

History.—s. 8, ch. 16082, 1933; CGL 1936 Supp. 1167(69), 7794(7); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.16.

206.13 Refund of taxes erroneously or illegally collected.—When any taxes or penalties imposed by this chapter have been erroneously or illegally collected, the department may permit the distributor within 1 year to take credit against a subsequent tax report for the amount of the erroneous or illegal amount overpaid, or the distributor may apply for refund as provided by s. 215.26.

History.—s. 1, ch. 70-995; s. 39, ch. 71-355.

206.14 Inspection of records; hearings; forms; rules and regulations.—

(1) The department shall have the authority to prescribe all forms upon which reports shall be made to it and any other forms required for the proper administration of this law and shall prescribe and publish all rules and regulations for the enforcement of this part, which rules and regulations shall have the force and effect of law.

(2) The department or any authorized deputy, employee, or agent is authorized to examine the records, books, papers, and equipment of distributors, dealers, or common carriers to verify the truth and accuracy of any statement or report and ascertain whether or not the tax imposed by this law has been paid.

(3) The department or any of its duly authorized agents shall have the power in the enforcement of the provisions of this part to hold hearings, administer oaths to witnesses, and take sworn testimony of any person and cause it to be transcribed into writing; and for such purposes the department shall be authorized to issue subpoenas and subpoenas duces tecum, compel the attendance of witnesses and records, and conduct such investigations as it may deem necessary.

(4) If any person unreasonably refuses access to such records, books, papers or other documents, or equipment, or if any person fails or refuses to obey such subpoenas duces tecum or to testify, except for lawful reasons, before the department or any of its authorized agents, the department shall certify the names and facts to the Clerk of the Circuit Court of any county, and the Circuit Court shall enter such order against such person in the premises as the enforcement of this law and justice shall require.

(5) In any action or proceeding for the collection of the tax and penalties or interest imposed in connection therewith, an assessment by the department of the amount of the tax, penalties, or interest due shall be prima facie evidence of the claim of the state, and the burden of proof shall be upon the person charged to show the assessment was incorrect and contrary to law.

History.—s. 9, ch. 16082, 1933; CGL 1936 Supp. 1167(70); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 31, ch. 74-382.
Note.—Former s. 207.17.

206.15 Gas taxes a lien on property.—If any person liable for the gas tax imposed by law neglects or refuses to pay it, the amount of the tax (including any interest, penalty, or addition to the tax, with any cost that may accrue in addition thereto) shall be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, then belonging to, or thereafter acquired by, the person, (whether the property is employed by the person in the prosecution of business or is in the hands of an assignee, trustee, or receiver for the benefit of creditors) from the date the taxes are due and payable. The lien shall have priority over any lien or encumbrance whatsoever except the lien of other state taxes having priority by law, and except that the lien shall not be valid as against any bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached before the time when the department has filed claim of lien in the office of the Clerk of the Circuit Court of the county where the principal place of business of the person is located or, if the person has no principal place of business in the state, in the office of the Department of State (for which no filing fee shall be required). The lien shall continue until the amount of the tax, with any penalties and interest subsequently accruing, is paid or the tax is barred under chapter 95. The department may issue a certificate of release of lien when the amount of the tax, with any penalties and interest subsequently accruing thereon, has been satisfied by the person, and the person may record it with the Clerk of the Circuit Court of the county where the claim of lien was filed.

History.—s. 10, ch. 16082, 1933; CGL 1936 Supp. 1167(71); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 32, ch. 74-382.
Note.—Former s. 207.18.

206.16 Officer, etc., selling property.—

(1) No sheriff, receiver, assignee, master, or other officer shall sell the property or franchise of any person for failure to pay gas taxes, penalties, or interest without first filing with the department a

statement containing the following information:

(a) The name of the plaintiff or party at whose instance or upon whose account the sale is made;

(b) The name of the person whose property or franchise is to be sold;

(c) The time and place of sale; and

(d) The nature of the property and the location of the same.

(2) The department, after receiving notice as aforesaid, shall furnish to the sheriff, receiver, trustee, assignee, master, or other officer having charge of the sale a certified copy or copies of all gas taxes, penalties, and interest on file in the office of the department as liens against such person, and, in the event there are no such liens, a certificate showing that fact, which certified copies or copy of certificate shall be publicly read by such officer at and immediately before the sale of the property or franchise of such person.

History.—s. 10, ch. 16082, 1933; CGL 1936 Supp. 1167(71); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.19.

206.17 Department to furnish certificates of liens.—The department shall furnish to any person applying therefor a certificate showing the amount of all liens for gas tax, penalties, and interest that may be of record in the files of the department against any person under the provisions of this part.

History.—s. 10, ch. 16082, 1933; CGL 1936 Supp. 1167(71); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.20.

206.175 Foreclosure of liens.—The department may file an action in the name of the state to foreclose the liens provided for herein. The procedure shall be the same as the procedure for foreclosure of mortgages on real estate. A certificate of the department setting forth the amount of gas taxes due shall be prima facie evidence of the matter therein contained. The action may be instituted at any time after the lien becomes effective and before it is barred under chapter 95. The title to the land conveyed by such deed shall be indefeasible as to all parties defendant in the action.

History.—s. 10, ch. 16082, 1933; CGL 1936 Supp. 1167(71); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 33, ch. 74-382.
Note.—Former s. 207.21.

206.18 Discontinuance or transfer of business; penalty.—

(1) Whenever a person ceases to engage in business as a distributor within the state by reason of the discontinuance, sale, or transfer of the business of such distributor, such person shall notify the department in writing at least 10 days prior to the time the discontinuance, sale, or transfer takes effect. Such notice shall give the date of discontinuance and, in the event of a sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee. All gas taxes, penalties, and interest not due and payable under the provisions of the laws of this state shall, notwithstanding such provisions, become due and payable concurrently with such discontinuance, sale, or transfer; and any such person shall, concurrently with such discontinuance, sale, or transfer, make a report, pay all such taxes, interest, and penalties, and surrender to the department the license certificate theretofore issued to said person by the department.

(2) Unless the above notice shall have been given to the department as above provided, such purchaser or transferee shall be liable to the state for the amount of all taxes, penalties, and interest under the laws of Florida accrued against any such distributor selling or transferring his business on the date of such sale or transfer, but only to the extent of the value of the property and business thereby acquired from such distributor.

(3) Nothing in this section shall be construed as releasing the distributor so transferring or discontinuing his business from liability for any gas taxes or for any interest or penalty due under the gas tax laws.

History.—s. 11, ch. 16082, 1933; CGL 1936 Supp. 1167(72), 7794(8); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.22.

206.19 Not to settle for less than amounts actually due.—The department shall have no right, power, or authority to settle or compromise with any distributor any claim of the state accruing under the gas tax laws of this state for a sum less than the full amount due, in conformity with this chapter.

History.—s. 12, ch. 16082, 1933; CGL 1936 Supp. 1167(73); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.23.

206.20 Transportation of motor fuel over public highways.—

(1) Every person hauling, transporting, or conveying motor fuel over any of the public highways of this state must, during the entire time he is so engaged, have in his possession an invoice or delivery ticket, bill of sale, or other record evidence showing the true name and address of the person from whom he has received the motor fuel, the number of gallons so originally received by him from said person, the true name and address of every person to whom he has made deliveries of said motor fuel, and the number of gallons so delivered to each of said persons, and the destination of the undelivered gallons. The person hauling, transporting or conveying such motor fuel shall, at the request of any person required by law to inquire into or investigate said matters, produce and offer for inspection said invoice or delivery ticket, bill of sale, or record evidence. If the person fails to produce the invoice or delivery ticket, bill of sale, or record evidence, or if, when produced, it fails clearly to disclose said information, the same shall be prima facie evidence of a violation of this section.

(2) The provisions of this section shall not apply to vehicles transporting motor fuel not in excess of 200 gallons contained in the fuel tank of such vehicle provided for the carrying of motor fuel for propelling same, which motor fuel is to be used solely for the motive power of such vehicle, to vehicles transporting motor fuel in quantities of not more than 5 gallons for emergency purposes, or to motor fuel being transported by common carrier in railroad cars.

History.—s. 13, ch. 16082, 1933; CGL 1936 Supp. 1167(74), 7794(9); s. 1, ch. 70-995.
Note.—Former s. 207.24.

206.204 Transportation of motor fuel by boats over the navigable waters of this state.—

(1) Every person hauling, transporting, or conveying motor fuel over any of the navigable waters of this state must, during the entire time he is so engaged, have in his possession an invoice or bill of sale or other record evidence showing the true name and address of the person from whom he has received said motor fuel and the true name and address of every person or persons to whom he has made or is making deliveries of same, and the number of gallons (that is, a person hauling, transporting or conveying said motor fuel must have in his possession record evidence of the name and address of the person from whom he has received the same, and also of the name and address of the person to whom he has delivered or is going to deliver the same, and the number of gallons). The person hauling, transporting or conveying said motor fuel shall at the request of any person authorized by law to inquire into or investigate said matters, produce and offer for inspection the invoice or bill of sale or other record evidence. If the person fails to produce the invoice or bill of sale or other record evidence, or if, when produced, it fails to clearly disclose said information, the same shall be prima facie evidence of a violation of this section.

(2) No person shall haul, transport, or convey motor fuel in boats over any of the navigable waters of the state, except in boats plainly and visibly marked on both sides and above the waterline thereof with the word "gasoline" or other name of the motor fuel being transported, in letters at least 4 inches high and of corresponding appropriate width, together with the name and address of the owner of the boat in which such motor fuel is contained.

(3) The provisions of this section shall not apply to boats transporting motor fuel to be used solely for their own motive power.

History.—s. 14, ch. 16082, 1933; CGL 1936 Supp. 1167(75), 7794(10); s. 1, ch. 70-995.

Note.—Former s. 207.25.

206.205 Forfeiture of vehicles and boats illegally transporting or delivering motor fuel.—

(1) The right of property in and to all conveyances, boats, and other vehicles of transportation, and all tanks and other equipment used in connection therewith, employed in the illegal transportation or delivery of motor fuel in this state for the purpose of illegally evading or avoiding any gas tax provided or imposed by the laws of this state, and all other personal property that may have been used by any person for the purpose of illegally evading or avoiding any such tax, or which may have been used to facilitate the illegal evasion or avoidance of any such tax, is declared not to exist in any person, and the same shall be forfeited. The department and its authorized agents and the several sheriffs, deputy sheriffs, and police officers of municipalities shall seize any and all such things, and the same shall be safely kept by the sheriff of the county until disposed of as provided by law. Every conveyance, boat, and other vehicle of transportation, and all tanks and other equipment used in connection therewith, as hereinabove described shall be seized and may be forfeited as provided by the Florida Uniform Contraband Transportation Act. All other personal property shall be seized and forfeited as provided by this section.

(2) The sheriff of the county, within 10 days after the receipt of any such things, shall make and subscribe to an affidavit in writing before some officer authorized by law to administer an oath, reciting such seizure, with the date, place, and things seized, giving a reasonably full description thereof, the name of the alleged owner and person from whose possession same were taken, if either or both be known to such sheriff, and a short statement of the circumstances under which said property was being used for the purpose of illegally evading or avoiding, or had been used for the purpose of illegally evading or avoiding, any gas tax provided or imposed by the laws of Florida.

(3) Within 10 days after the receipt of such things by the sheriff, the sheriff shall present such affidavit to the Judge of the Circuit Court of the county where such things were seized, and the Circuit Judge of said court shall direct that such sheriff shall serve written notice upon such owner and person from whose possession such things were taken, if known, and if he, it, or they be within the county, of time and place of the hearing upon such affidavit, which may be in term time or in vacation, and at any place within the judicial circuit as the Circuit Judge may fix, which notice shall be signed by the Circuit Judge citing such person to appear and show cause, if any, why such things should not be adjudged forfeited and disposed of as in this section provided.

(4) If such sheriff shall recite in his affidavit that such things were not taken from the possession of any person, or that the owner is unknown, or that either of such persons is without the county, conceals himself or themselves, or that personal service of such notice cannot be made by such sheriff for any good reason, the Circuit Judge shall by written order direct that, in lieu of personal notice of such hearing to any such person, written notice of such hearing shall be posted at the county courthouse door, directed to all persons interested in such things and giving notice of such seizure, and of the date and place thereof and a reasonable description of the things seized, and of the time and place of the hearing upon such affidavit, which notice shall be signed by the Circuit Judge.

(5) If at the time and place provided for the hearing upon such affidavit no person shall appear and claim such things, the affidavit of the sheriff shall stand as confessed and taken as true, and the recitals therein contained shall not thereafter be open to question in any other court or proceeding, and the Circuit Judge shall thereupon make an order in writing directing the sale thereof.

(6) Such sale shall be in the presence of the Clerk of the Circuit Court of the county and at such times and places and in such manner as the judge shall in his order direct.

History.—s. 16, ch. 16082, 1933; CGL 1936 Supp. 1167(77); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 20, ch. 73-334; s. 5, ch. 74-385.

Note.—Former s. 207.27.

cf.—ss. 943.41 et seq., Florida Uniform Contraband Transportation Act.

206.21 Trial of issues interposed by defense; sale, etc.—

(1) Should any person appear at the hearing provided for in s. 206.205 and claim the things seized and interpose any defense to the affidavit mentioned in said section, the Circuit Judge shall determine whether the evidence adduced proves beyond a reasonable doubt that such things are forfeited and make his written order accordingly. If he shall determine in the affirmative, such things shall be sold by the sheriff in the same manner and upon the same terms and conditions as provided in s. 206.205, but if he shall determine in the negative respecting all or any of such things, the part not forfeited shall be returned to the person legally entitled thereto.

(2) The hearing before the Circuit Judge shall be informal, and he may make all rules and orders to carry this section into effect. The sheriff may call upon the state attorney to assist him in preparing the affidavit herein mentioned and represent him at the hearing before the Circuit Judge, and in taking and perfecting any appeal from the final decision of the Circuit Judge.

(3) If the state, the sheriff, or the claimant shall be dissatisfied with the decision, he may appeal from the final decision of the court to the appropriate District Court of Appeal in the same manner and within the time as appeals in chancery are taken under the Florida Appellate Rules, and upon such appeal being entered such Circuit Judge shall cause to be reduced to writing and authenticate with his signature all oral evidence considered by him upon such hearing, and the same shall be filed with the papers in the case and thereby become a part of the record proper.

(4) If authorized by the State Constitution, appeal may be taken to the Supreme Court. No appeal taken by any party shall operate as a supersedeas, but such things shall remain in the custody of the sheriff pending such appeal and to abide the final decision of the appellate court.

History.—s. 16, ch. 16082, 1933; CGL 1936 Supp. 1167(77); s. 20, ch. 63-559; s. 1, ch. 70-995; s. 20, ch. 73-334.
Note.—Former s. 207.28.

206.215 Costs and expenses of proceedings.—

(1) For the performance of the duties required of the sheriff by the provisions of ss. 206.205 and 206.21 he shall receive the same fees provided by law for the arrest and return of persons charged with crime, including the same mileage and the actual cost of transporting such things, and all such fees and compensations shall be paid out of the proceeds of the sale.

(2) The clerks of the courts performing duties under the provisions aforesaid shall receive the same fees as prescribed by the general law for the performance of similar duties, and witnesses attending any investigation pursuant to subpoena shall receive the same mileage and per diem as if attending as a witness before the Circuit Court in term time.

(3) All fees and costs provided for shall be paid from the proceeds of the sale, or if there be no sale or if the proceeds of such sale be insufficient to meet such fees and costs then such fees and costs shall be paid out of the Gas Tax Collection Trust Fund or other funds available for the enforcement of the gas tax laws by the department.

(4) In the event the proceeds of the sale are more than sufficient to pay all costs and fees attending the sale, then the surplus thereof shall be sent to the department to be disposed of as provided for the disposition of the taxes collected under the gas tax laws of the state; provided, however, that any property seized under s. 206.205 against which there is existing a mortgage lien or retain title contract held by a person who has no knowledge that such property is being used for the purpose of illegally evading or avoiding the payment of the gas taxes provided for under the laws of the state, then such seizure shall not invalidate such lien or retain title contract, but the same shall be paid out of any funds derived from a sale of said property, provided the retain titleholder or mortgagee shall within 30 days after seizure come into court and set up his claim to such retained title lien or mortgage.

History.—s. 16, ch. 16082, 1933; CGL 1936 Supp. 1167(77); s. 2, ch. 61-119; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.29.

206.22 Restraining and enjoining violations.—Any person who violates any of the provisions of this part or who fails to pay gas taxes and all interest and penalties due by him to the state under the provisions of the laws of this state may be restrained and enjoined in a suit or other proceeding in any court of competent jurisdiction instituted in the name of the state by the Department of Legal Affairs or by any state attorney at the direction of the department from selling, consuming, using, distributing, or transporting any motor fuel which is taxable under the laws of this state until such person shall have paid all of said taxes, interest, and penalties due the state and complied with the provisions of this part. Any proceeding instituted under this section shall not operate as a bar to the prosecution of any person guilty of violating any of the criminal laws of the state.

History.—s. 19, ch. 16082, 1933; CGL 1936 Supp. 1167(80); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 11, 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.30.

206.23 Tax; must be stated separately.—Distributors shall add the amount of the gas tax to the price of the motor fuel sold by them and shall state the rate of the tax separately from the price of the motor fuel on all invoices. However, this section shall not apply to retail sales by a retail service station.

History.—s. 22, ch. 16082, 1933; CGL 1936 Supp. 1167(82); s. 1, ch. 70-995.
Note.—Former s. 207.31.

206.24 Department and agents may make arrests, seize property and execute warrants.—

(1) The department and its deputies, agents, and employees may make arrests without warrants for any violation of the provisions of this part. Any person arrested for violation of any provision of this part shall be surrendered without delay to the sheriff of the county in which the arrest was made and formal complaint made against him, in accordance with law.

(2) The department and its deputies, agents, and employees also may seize property as set out in ss.

206.205, 206.21, and 206.215, and upon said seizure being made shall surrender without delay such seized property to the sheriff of the county where said property was seized for further procedure as set out in said sections.

(3) When the department deems advisable, it may direct the warrant provided for in s. 206.075 to one of the said department's deputies, agents, and employees who shall then execute said warrant and proceed thereon in the same manner provided for sheriffs in such cases.

History.—s. 25, ch. 16082, 1933; CGL 1936 Supp. 1167(85); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.32.

206.25 Method for collection of tax cumulative.—The methods and means of effecting and enforcing the collection of gas taxes as set out in this part shall be in addition to, and not in lieu of, the methods and means of effecting and enforcing collection set out in the gas tax laws of Florida.

History.—s. 28, ch. 16082, 1933; CGL 1936 Supp. 1167(87); s. 1, ch. 70-995.
Note.—Former s. 207.33.

206.27 Records and files as public records.—The records and files in the office of the department appertaining to part I of this chapter shall be available to the public at any time during business hours. The department shall prepare a list each month of all distributors and others, together with the amount of gas tax paid thereby, and mail a copy thereof to each duly licensed distributor.

History.—s. 21, ch. 16082, 1933; CGL 1936 Supp. 1167(81); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.36.

206.28 Exchange of information among the states.—The department shall, upon request duly received from the officials to whom are entrusted the enforcement of the gas tax laws of any other state, forward to such officials any information which it may have in its possession relative to the manufacture, receipt, sale, use, transportation, or shipment by any person of motor fuel.

History.—s. 21, ch. 16082, 1933; CGL 1936 Supp. 1167(81); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.37.

206.29 Refunds to city transit companies; definitions.—

(1) "City transit system" as used in ss. 206.30-206.40 means any system of mass public transportation authorized to operate within any city, town, or municipality in this state, as distinguished from any over-the-road system of public transportation operating between one or more cities, towns, or municipalities. However, a city transit system as defined above may operate within 25 miles outside the corporate limits of any city, town, or municipality when such operation outside the corporate limits is found necessary adequately and efficiently to provide mass public transportation services for the city, town, or municipality involved. A city transit system as defined above shall not include taxicab or limousine operations.

(2) "City or cities" as used in ss. 206.30-206.40 includes collectively or individually any city, town, or municipality organized in this state by virtue of any general or special law enacted by the legislature.

History.—s. 1, ch. 63-451; s. 1, ch. 70-995.
Note.—Former s. 207.39.

206.30 Legislative findings.—It is hereby expressly recognized and declared by the legislature that mass public transportation is essential to the continued economic growth and development of the cities of this state and therefore essential to the general welfare of the state; that the constant population growth throughout the state has brought an ever-increasing use of private individual means of transportation, resulting in the overburdening of traffic arteries within our cities and thereby causing an increase in police requirements, higher cost of traffic regulation and law enforcement, and severe economic loss to and a blight on the central business districts in the cities; that relief of present city traffic congestion is essential to the continued economic growth and development of the cities of this state, and thus essential to the general welfare of this state; that further deterioration of the central areas of the cities must be prevented; that by reason of the heavy population growth and the increase in the use of private means of transportation, existing city transit systems have had to reduce route mileage and areas served, limit the hours of operation, and raise rates to compensate for the loss in revenue; that by reason of the reduced operations of the city transit systems as described herein, income and capital investment have declined while operating expenses have increased, resulting in the obsolescence of equipment and a further decline in services; that present excise taxes imposed on city transit systems by this part constitute but a minor source of revenue to the state but constitute a major item of cost to each city transit system; and that the vehicles used by the city transit systems do not operate normally over state maintained roads but operate primarily over streets and roads maintained by the cities involved. In view of the foregoing facts, the legislature finds that the improvement, revitalization, modernization, and expansion of the city transit systems of this state are necessary and proper in the best interest of the state, and in order to obtain these objectives the legislature finds it necessary to grant certain tax advantages to the city transit systems as set forth below.

History.—s. 2, ch. 63-451; s. 1, ch. 70-995.
Note.—Former s. 207.40.

206.31 Refunds on fuel used for city transit systems.—Any person who uses any motor fuel for a city transit system on which the taxes, as imposed by this chapter, have been paid shall be entitled to a refund of the first 4 cents of said state taxes. However, no refund shall be authorized unless sworn applications therefor containing such information as the department may determine shall be filed with it no later than January 31 immediately following the year for which refund is claimed.

History.—s. 3, ch. 63-451; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 39, ch. 71-355.
Note.—Former s. 207.41.

206.32 Powers and duties of department.—

(1) The department shall make such rules and regulations as are necessary to establish the procedure for procuring the refund provided for in s. 206.31 and to enforce the provisions of ss. 206.29-206.40.

(2) Agents of the department are authorized to go upon the premises of any person who has applied for or who has received a refund under s. 206.31, or of any licensed dealer or his duly authorized agent to make inspection to ascertain any matter connected with the operation of ss. 206.29-206.40 or the enforcement thereof. However, no agent shall enter the dwelling of any person without the occupant's consent or the authority from a court of competent jurisdiction.

History.—s. 4, ch. 63-451; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.42.

206.33 Permit for refunds required; procedure for issuance; bond.—

(1) No person shall secure a refund of tax under s. 206.31 unless such person is the holder of an unrevoked refund permit issued by the department before the purchase of the motor fuel, which permit shall be numbered and issued annually and entitle such person to make application for a refund under ss. 206.29-206.40.

(2) To procure a permit a person shall file with the department an application, on forms furnished by the department, stating that he is engaged in the business of city transit systems and that he intends to file an application for refund for the current calendar year, and shall furnish the department such other information as the department shall request.

(3) No person shall, in any event, be allowed a refund unless he has filed the application provided for above with the department. The permit shall be effective on the date issued by the department.

(4) If an applicant for a refund permit has violated any provisions of ss. 206.29-206.40 or regulation pursuant thereto or has been convicted of bribery, theft, or false swearing within the period of 5 years preceding the application or if the department has evidence of the applicant's financial irresponsibility, the department may require the applicant to execute a corporate surety bond of $1,000 to be approved by the department and conditioned upon the payment of all taxes, penalties, and fines for which such applicant may become liable under ss. 206.29-206.40.

History.—s. 5, ch. 63-451; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.43.

206.34 Sales; invoices required.—When motor fuel is sold to a person who claims to be entitled to refund under s. 206.31, the seller of such motor fuel shall make out a motor fuel invoice in accordance with such rules and in such form and containing such information as the department may require. No person shall execute a motor fuel invoice who is not a distributor or a duly authorized agent thereof. No refund invoices shall be executed for purchases from retail service stations.

History.—s. 6, ch. 63-451; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.44.

206.35 When refund claims allowed; procedure; right of refund nonassignable, exception; fee.—

(1) When the department is satisfied that a refund is proper it shall authorize the first 4 cents of the state taxes imposed by this chapter to be refunded as other refunds are made; and the amount shall be refunded and deducted by it from current gas tax receipts in its possession.

(2) The right to receive any refund under the provisions of this section shall not be assignable, except to the executor or administrator or the receiver, trustee in bankruptcy, or assignee in insolvency proceedings of such person entitled thereto.

(3) Claims shall be paid annually on a calendar year basis. Claims shall be filed not later than January 31 immediately following the year for which refund is claimed.

(4) The department shall deduct a fee of $2 for each claim, which $2 shall be deposited in the General Revenue Fund.

History.—s. 7, ch. 63-451; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.45.

206.36 Appropriation for payment of claims.—The department is authorized to withhold from gas tax revenues and special fuel tax revenues sufficient funds to make the refund provided for in s. 206.29.

History.—s. 8, ch. 63-451; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 207.46.

206.37 False information in permit or refund application.—No person shall knowingly make a false or fraudulent statement in an application for a refund permit or in a motor fuel refund invoice, or in an application for a refund of any taxes under this law; or fraudulently obtain a refund of such taxes; or knowingly aid or assist in making any such false or fraudulent statement or claim; or having bought motor fuel or any part thereof to be used for any person other than as provided in s. 206.29.

History.—s. 9, ch. 63-451; s. 1, ch. 70-995.
Note.—Former s. 207.47.

206.38 Revocation, suspension of refund permit.—

(1) The refund permit of any person who violates any provisions of s. 206.37 shall be revoked by the department and may not be reissued until 2 years have elapsed from the date of such revocation, and such person, whether or not his permit has been revoked by the department, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) The refund permit of any person who violates any provision of ss. 206.29-206.40, other than those contained in s. 206.37, may be suspended by the department for any period in its discretion not exceeding 6 months.

History.—s. 10, ch. 63-451; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 117, ch. 71-136.
Note.—Former s. 207.48.

206.40 Violations by persons other than refund permitholders.—Any person other than the holder of a refund permit who shall knowingly vio-

late any provision of ss. 206.29-206.39 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 13, ch. 63-451; s. 1, ch. 70-995; s. 118, ch. 71-136.
Note.—Former s. 207.51.

206.404 License tax upon dealers; dealer transfer fee.—Every dealer shall pay a license tax of $5 per annum to the state. No license shall be transferred without an application having been filed with the department and payment of a fee of $5.

History.—s. 1, ch. 15659, 1931; CGL 1936 Supp. 1167(16); s. 1, ch. 20303, 1941; s. 1, ch. 70-995; s. 2, ch. 75-286.
Note.—Former s. 208.01.

206.405 Receipt for payment of license tax.—The department shall issue to the dealer a receipt or certificate evidencing the payment of the license tax. Said receipt or certificate shall be posted on display and be so kept at all times open to the public view at the place of business for which same is issued.

History.—s. 4, ch. 15659, 1931; CGL 1936 Supp. 1167(19); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.02.

206.406 Disposition of license tax funds.—All moneys derived from the dealer's license tax shall be paid into the State Treasury to the credit of the General Revenue Fund.

History.—s. 5, ch. 15659, 1931; CGL 1936 Supp. 1167(20); s. 14, ch. 26869, 1951; s. 1, ch. 70-995.
Note.—Former s. 208.03.

206.41 Gasoline taxes imposed.—

(1) An excise or license tax of 6 cents per gallon, herein termed "gas tax," is imposed upon every gallon of motor fuel sold in this state, or brought into this state for use, upon which such tax has not been paid or the payment thereof not lawfully assumed by some person handling the same in this state. This levy of tax is upon the consumer but shall be paid upon the first sale or transfer of title, or use, within this state whether by a distributor or dealer, except as expressly provided in subsection (2), who shall act as agent for the state in the collection of said tax whether he be the ultimate seller or not.

(2)(a) Persons who hold valid distributors' licenses may purchase motor fuel without the tax imposed by this section being paid upon the first sale or transfer of title in this state as aforesaid for sale in wholesale quantities to dealers in the state and be liable for and pay the tax on all motor fuel so purchased and sold, and shall act as agents for the state in the collection and payment thereof. As a condition precedent to a distributor purchasing and selling motor fuel under this subsection without the tax being paid upon the first sale or transfer of title in this state, he must have made average monthly sales for the 12 months next preceding of not less than 40,000 gallons. Sales made under provisions of s. 206.62 shall be included in arriving at such average monthly sales.

(b) The sale of motor fuel for export from the state is exempt from the taxes imposed by part I of this chapter when exempted by any provision of the Constitution of the United States or of the State of Florida. The sale of motor fuel for export from the state which is not exempted from the taxes imposed by this chapter either by the Constitution of the United States or of the State of Florida shall also be exempt, but only if both the seller and the exporter of the motor fuel are duly licensed distributors of motor fuel under the terms of this part.

(3) Upon the payment or lawful assumption of the tax by the distributor or dealer, the amount of the tax paid or assumed shall be added to the sales price of the product sold, and the amount of the tax shall be stated separately from the price of the product on all sales or delivery slips, invoices, bills, or statements. However, this subsection shall not apply to retail sales by retail service stations. The delivery of the product sold shall be deemed to be made at the point of destination.

(4) The above "gas tax" is made up of two separate taxes:

(a) *First gas tax.*—A tax of 4 cents per gallon for the use of the Department of Transportation, except as provided in s. 206.625;

(b) *Second gas tax.*—A tax of 2 cents per gallon as levied by s. 16, Art. IX of the Constitution of 1885, as amended, and continued by s. 9(c), Art. XII of the 1968 Constitution.

(5) Motor fuel in the fuel tanks in any motor vehicle entering this state used to propel said motor vehicle shall be exempt from the taxes imposed by this part. Fuel tanks shall mean the reservoir or receptacle attached to the motor vehicle by the manufacturer as the container for fuel used to propel said vehicle.

History.—s. 1, ch. 15659, 1931; CGL 1936 Supp. 1167(16); s. 1, ch. 18298, 1937; CGL 1940 Supp. 1167(29a); s. 1, ch. 20303, 1941; s. 2, ch. 57-162; ss. 23, 35, ch. 69-106; s. 18, ch. 69-216; s. 1, ch. 70-342; s. 1, ch. 70-995; s. 3, ch. 75-286.
Note.—Former s. 208.04.
cf.—s. 7.52 Pinellas County.

206.42 Aviation motor fuel exempt from tax.—Each and every dealer in aviation motor fuel in the state by whatever name designated who sells aviation motor fuel testing 78 octane number (A.S.T.M. method D-357-33T) or higher, of such quality not adapted for use in ordinary motor vehicles, being designed for and sold and exclusively used for aircraft motors, is exempted from the payment of any and all excise taxes levied by the state upon such motor fuel.

History.—s. 1, ch. 16789, 1935; CGL 1936 Supp. 1167(102); s. 1, ch. 70-995.
Note.—Former s. 208.05.

206.43 Distributor to report to department monthly; deduction.—The taxes levied and assessed as provided in part I of this chapter shall be paid to the department monthly in the following manner:

(1) On or before the 20th day of each month the distributor shall mail to the department verified reports on forms prescribed by the department of the number of gallons of such products sold by him during the preceding month and shall at the same time pay to the department the amount of tax computed to be due. However, if the 20th day falls on a Saturday, a Sunday, or a federal or state legal holiday, returns shall be accepted if postmarked on the next succeeding workday. The distributor shall deduct from the amount of tax shown by the report to be payable an amount equivalent to 2 percent of the tax on motor fuels not exceeding 500,000 taxable gallons, and less an amount equivalent to 1 percent of

the tax on motor fuels in excess of 500,000 gallons but not exceeding 1 million taxable gallons, which is hereby allowed to the distributor on account of services and expenses in complying with the provisions of the law. However, this allowance shall not be deductible unless payment of tax is made on or before the 20th day of the month as herein required. The United States post-office date stamped on the envelope in which the report is submitted shall be considered as the date the report is received by the department.

(2) Such report shall show in detail the number of gallons so sold and delivered by the distributor in the state, and the distributor shall specify in his report the destination as to the county in the state to which the motor fuel was delivered for resale at retail or use. The total taxable gallons sold shall agree with the total gallons reported to the county destinations for resale at retail or use. All gallons of motor fuel sold shall be invoiced and shall name the county of destination for resale at retail or use.

(3) All persons purchasing tax-paid motor fuel for resale at wholesale shall, at the time of purchase, specify to the distributor the county or counties in which the motor fuel is to be delivered for resale at retail or use. If it results that such deliveries for use were inaccurately reported at the time of purchase, the person shall, within 5 days after the end of the month in which the motor fuel was purchased, file a corrected report with the distributor from whom the purchase was made. The report shall show the date and number of the purchase invoice being corrected.

(4) The taxes herein levied and assessed shall be in addition to any and all other taxes authorized, imposed, assessed, or levied on motor fuel under any laws of this state.

History.—s. 1, ch. 15659, 1931; CGL 1936 Supp. 1167(16); s. 1, ch. 20303, 1941; s. 1, ch. 24308, 1947; s. 1, ch. 26796, 1951; s. 1, ch. 65-360; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 1, ch. 72-65; s. 3, ch. 78-250.

Note.—Former s. 208.06.

206.44 Penalty for failure to report on time.—(1) If any distributor fails to make the report and payment to the department as provided in s. 206.43 on or before the twentieth day of the month succeeding the month for which the tax is due as therein provided, the department shall estimate the amount of such products sold by the distributor during such months from such information as the department may be able to obtain and shall add 10 percent to the amount of the taxes, as estimated, as the penalty for the failure of the distributor to make such report or payment, and shall proceed to collect the tax, together with the penalty and costs, and obtain the same as delinquent railroad taxes are collected by law. However, the department may waive the penalty for late filing if the distributor has regularly filed reports and made payments of the tax due for a period of 24 months in accordance with the provisions of s. 206.43, and the distributor files an acceptable excuse for the late filing under oath with the department.

(2) In addition to any other penalties, any payment that is not received by the department on or before the due date as provided in s. 206.43 shall bear interest at the rate of 1 percent per month, from the date due until paid.

History.—s. 2, ch. 15659, 1931; CGL 1936 Supp. 1167(17); s. 2, ch. 24308, 1947; s. 11, ch. 25035, 1949; s. 1, ch. 63-302; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 1, ch. 72-65; s. 6, ch. 76-261.

Note.—Former s. 208.07.

206.45 Payment of tax into State Treasury.—All moneys derived from the gas taxes imposed by part I of this chapter shall be paid into the State Treasury by the department, for deposit in the Gas Tax Collection Trust Fund, which fund is created and from which the following transfers shall be made:

(1) The first gas tax shall, after withholding and transferring such funds as are required under the provisions of s. 213.11, and after withholding $50,000 to be used as a revolving cash balance in the "Gas Tax Collection Trust Fund," and except as provided in s. 206.625, be transferred into the "State Transportation Trust Fund," which fund is created for use as provided by law.

(2) The second gas tax shall be remitted to the State Board of Administration for distribution as provided in the Constitution.

(3) The additional seventh cent gas tax collected pursuant to s. 206.60, as such may be amended by the 1971 Legislature, shall be distributed as therein provided.

(4) The additional eighth cent gas tax collected pursuant to s. 206.605 shall be distributed as therein provided.

History.—s. 3, ch. 15659, 1931; CGL 1936 Supp. 1167(18); s. 3, ch. 61-119; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 18, ch. 69-216; s. 2, ch. 70-342; s. 1, ch. 70-995; s. 2, ch. 71-232; s. 1, ch. 71-363; s. 1, ch. 73-57.

Note.—Former s. 208.08.

206.46 State Transportation Trust Fund; construction, etc., of roads.—All moneys in the State Transportation Trust Fund shall be used for the construction and maintenance of state roads, as otherwise provided by law, under the direction of the Department of Transportation, which department may from time to time make requisition on the Comptroller for funds to pay for the construction and maintenance of state roads. Money from said fund shall be drawn by the Comptroller by warrant upon the State Treasury pursuant to vouchers and shall be paid in like manner as other state warrants are paid out of the appropriated fund against which same are drawn. All sums of money necessary to provide for the payment of the warrants by the Comptroller drawn upon said fund are appropriated annually out of the fund for the purpose of making such payments from time to time.

History.—s. 6, ch. 15659, 1931; CGL 1936 Supp. 1167(21); s. 2, ch. 61-119; ss. 23, 35, ch. 69-106; s. 1, ch. 70-995; ss. 2, 3, ch. 73-57.

Note.—Former s. 208.09.

206.47 Distribution of second gas tax pursuant to s. 9, Art. XII, State Constitution.—(1) The second gas tax shall be allocated among the several counties in accordance with the formula stated in s. 16 of Art. IX of the State Constitution of 1885, as amended, to the extent necessary to comply with all obligations to or for the benefit of holders of bonds, revenue certificates, and tax anticipation certificates or any refundings thereof secured by any portion of the second gas tax allocated under the

provisions of s. 16, Art. IX of the State Constitution of 1885, as amended.

(2) The Department of Revenue will transmit the second gas tax as collected monthly to the State Board of Administration allocated and distributed to the credit of the several counties of the state based on the formula of distribution contained in s. 16, Art. IX of the Constitution of 1885, as amended.

(3) The State Board of Administration will calculate a distribution of the second gas tax received from the Department of Revenue under subsection (2), based on the formula contained in s. 9(c)(4), Art. XII of the revised State Constitution of 1968.

(4) The State Board of Administration shall allocate the second gas tax beginning with the tax collected January 1969 on the formula contained in s. 9(c)(4), Art. XII of the revised State Constitution of 1968, subject only to the debt service requirements of bonds pledging all or part of the second gas tax allocated under the provisions of s. 16, Art. IX of the State Constitution of 1885, as amended.

(5) The distribution factor, "the tax collected on retail sales or use in each county," shall be based upon a certificate of the Department of Revenue of the sales and use tax collected in each county as of June 30 for each fiscal year. The Department of Revenue shall furnish a certificate to the State Board of Administration on or before July 31 following the end of each fiscal year, and said certificate shall be conclusive as to the sales and use tax collected in each county for the prior fiscal year. The factor based on said certificate shall be applied to the gas tax collections for the following fiscal year beginning July 1 and ending June 30.

(6) The State Board of Administration will calculate a monthly allocation of the second gas tax received from the Department of Revenue based on the formula contained in s. 9(c)(4), Art. XII of the revised State Constitution of 1968, and credit to the account of each county the amount of the second gas tax to be allocated under said formula.

(7) The gas tax funds credited to each county will be first distributed to meet the debt service requirements, if any, of the s. 16, Art. IX debt assumed or refunded by the State Board of Administration payable from the second gas tax. The remaining gas tax funds credited to each county are surplus gas tax funds and shall be divided, 80 percent to the Department of Transportation and 20 percent to the board of county commissioners of the county for the acquisition and construction of roads. As provided in s. 339.08(4), the department is authorized to maintain on deposit with the State Board of Administration all proceeds of the 80 percent surplus of the second gas tax.

(8) The State Board of Administration shall retain a reasonable percentage of the total surplus gas tax in an amount to be determined by the board in each fiscal year and shall hold said funds in a reserve account to make any adjustments required for the distribution of the gas tax for the fiscal year. Funds in the reserve account may be invested in direct obligations of the United States maturing not later than June 30 of each fiscal year.

(9) The State Board of Administration will, in each fiscal year, distribute the 80 percent surplus gas tax allocated to each county to the debt service requirements of each bond issue pledging the 80 percent surplus accruing to that county under the provisions of s. 16, Art. IX of the State Constitution of 1885, as amended. The remaining 80 percent surplus gas tax funds will be advanced monthly, to the extent practicable, to the Department of Transportation for use in the county.

(10) The State Board of Administration will, in each fiscal year, distribute the 20 percent surplus gas tax allocated to each county to the debt service requirements of each bond issue pledging the 20 percent surplus accruing to that county under the provisions of s. 16, Art. IX of the State Constitution of 1885, as amended. The remaining 20 percent surplus gas tax funds will be advanced monthly, to the extent practicable, to the boards of county commissioners for use in the county.

(11) After receiving the gas tax collections for the twelfth month of each fiscal year, the State Board of Administration shall make a complete and total distribution of all earnings on investments and remaining gas tax collected during the fiscal year, taking into account all the requirements of s. 16, Art. IX of the State Constitution of 1885, as amended, of bonds pledging all or any portion of the second gas tax accruing thereunder, and s. 9(c), Art. XII of the revised State Constitution of 1968.

History.—s. 1, ch. 69-304; ss. 21, 23, 35, ch. 69-106; s. 1, ch. 70-995; s. 3, ch. 77-165.
Note.—Former s. 208.111.

206.48 Reports required of distributors.—Each distributor of motor fuels shall, when making his report to the Department of Revenue of the amount of such products sold in this state upon which the tax provided is due and payable by him to the department, at the same time report to the department each and every sale made by such distributor of any quantity of motor fuel which shall not have been at the time of such sale divested of its interstate character, which report shall show the name and business location of the person to whom the same is sold in this state. Every distributor shall, at the time other reports are required to be made to the department, report to the department each and every purchase of such products not theretofore divested of their interstate character made by such distributor upon which the tax is shown by the invoice thereof to have been assumed for report and payment by the distributor selling to him.

History.—s. 12, ch. 15659, 1931; CGL 1936 Supp. 1167 (27); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.15.

206.49 Invoice to show whether or not tax paid.—Each distributor, when selling to any other distributor any of the products taxed under this part, shall render an invoice of such sale to the purchaser, and upon such invoice the distributor rendering such invoice shall plainly state thereon whether or not the tax required will be reported and paid by him, and the purchaser buying and receiving such products may fully rely upon the statement made in such invoice.

History.—s. 13, ch. 15659, 1931; CGL 1936 Supp. 1167(28); s. 1, ch. 70-995.
Note.—Former s. 208.16.

206.50 Retail gasoline dealers, refund allowed.—Every person licensed to sell motor fuel at retail to the general public at posted retail prices, hereinafter referred to as "retail dealers," shall be entitled to a refund of 2 percent on the first gas tax, as defined in s. 206.41, imposed by the state, on such motor fuel purchased by such retail dealer to cover losses due to evaporation and shrinkage of such motor fuel, subject to the conditions set forth in the following sections.

History.—s. 1, ch. 29699, 1955; s. 1, ch. 70-995.
Note.—Former s. 208.181.

206.51 Requirements for refund.—

(1) No retail dealer shall be entitled to a refund unless he is the holder of a current certificate of license as prescribed by s. 206.405.

(2) The department shall not approve refund payment to any person other than a currently licensed retail dealer except the executor or administrator of the estate of the deceased currently licensed retail dealer.

History.—s. 2, ch. 29699, 1955; s. 1, ch. 63-332; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.182.

206.52 Application for refund.—

(1) Retail dealers holding a current certificate of license may file application for refunds provided by ss. 206.50-206.55 with the department. Said application shall be filed quarterly, within 6 months of date of purchase of motor fuel with respect to which refund is claimed, on forms prescribed by the department; shall be sworn to; and shall state total quantity of motor fuel purchased, location where purchased, period for which refund is claimed, date of purchase, from whom purchased, and any other information reasonably required by the department. Original or duplicate original invoice for each purchase of motor fuel made during the period for which refund is claimed shall be attached to said application.

(2) The department shall deduct a fee of $1 for each claim, which shall be deposited in the General Revenue Fund.

History.—s. 3, ch. 29699, 1955; s. 2, ch. 63-332; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.183.

206.53 Approval of application; payment of refund.—The department shall promptly examine each such application for refund and approve or disapprove it. If the department approves the application, it shall authorize the amount claimed to be refunded as other refunds are made, and the amount shall be refunded and deducted by it from current gas tax receipts. After refund is made, the invoices required under s. 206.52 shall be perforated and returned to the applicant.

History.—s. 4, ch. 29699, 1955; s. 3, ch. 63-332; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 54, ch. 78-95.
Note.—Former s. 208.184.

206.54 Refund overpayment; adjustment.—In the event of overpayment of any refund provided for in s. 206.53, the department shall refuse to make further refund until such overpayment is adjusted in a manner satisfactory to it.

History.—s. 5, ch. 29699, 1955; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.185.

206.55 False statement; penalty.—Any retail dealer who falsely swears to a refund application, knowing such statement to be false, is guilty of perjury; and upon conviction, in addition to the penalty prescribed by law, shall not be allowed to make future applications for refund during the current license year.

History.—s. 6, ch. 29699, 1955; s. 4, ch. 63-332; s. 1, ch. 70-995.
Note.—Former s. 208.186.

206.56 Failure to account for tax collected; embezzlement.—If any distributor collects from another, upon an invoice rendered, the tax in this part contemplated, and fails to report and pay the same to the department as provided, he shall be deemed to be guilty of embezzlement of funds, the property of the state, and upon conviction shall be punished as if convicted of larceny of a like sum.

History.—s. 15, ch. 15659, 1931; CGL 1936 Supp. 7254(1); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.19.
cf.—s. 812.014 Theft.

206.57 Gasoline tax imposed upon motor fuels in vehicle reservoirs.—

(1) A tax of 8 cents per gallon is fixed and levied on all motor vehicle fuel carried in reserve motor vehicle reservoirs upon which other gasoline taxes of this state have not been paid, and such tax shall be paid into the State Treasury to the credit of the General Revenue Fund.

(2) The terms "reserve motor vehicle reservoirs" and "reserve reservoirs" shall be deemed to be any reservoir or receptacle in, upon, or attached to any motor vehicle other than the reservoir provided by the manufacturer as the container for fuel used in propelling said motor vehicle.

(3) The term "motor vehicle fuel" shall be deemed to include any petroleum or petroleum products.

(4) The term "other gasoline taxes" shall be deemed to refer to any gasoline taxes provided by law, as long as any such law shall be in effect, and to apply to any gasoline taxes provided for by any subsequent statute.

(5) Gasoline inspection laws of the state are declared to be applicable to the enforcement of this section.

History.—ss. 1-3, ch. 16081, 1933; CGL 1936 Supp. 1167(55)-(57); s. 1, ch. 70-995; s. 3, ch. 71-363.
Note.—Former s. 208.20.
cf.—Ch. 525 Gasoline and oil inspection.

206.58 Duties of police officers; penalties, etc.—

(1) All sheriffs, deputy sheriffs, and police officers in their respective jurisdictions shall, with or without warrant, stop and detain any person operating a motor vehicle in this state when they have good cause to suspect that such person is carrying motor vehicle fuel in reserve reservoirs upon which the gasoline taxes in this state have not been paid, and seize any such motor vehicle fuel and reserve reservoirs containing such fuel that may be found and

arrest the parties so operating such motor vehicle or having such motor vehicle fuel and reserve reservoir containing such fuel in their possession. If such fuel is found in such quantities as to confirm the belief of the illegal carrying of the same, the fuel and the reserve reservoirs containing such fuel shall be prima facie evidence of the carrying of such fuel contrary to law.

(2) It is unlawful for any person to operate a motor vehicle in this state carrying motor vehicle fuel in reserve reservoirs upon which other gasoline taxes of this state have not been paid, and any person so operating a motor vehicle carrying motor vehicle fuel in reserve reservoirs upon which the other gasoline taxes of this state have not been paid or having such fuel in their possession shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Upon the conviction of the person arrested for the violation of the provisions of this section, the judge of the court trying the case, after such notice to the person convicted and any other person entitled to such notice, as the judge may deem reasonable, may issue to the officer so making the arrest and seizure a written order adjudging and declaring such motor vehicle fuel and reserve reservoirs containing such fuel, or either, forfeited and directing the officer to destroy the motor vehicle fuel or reserve reservoir containing such fuel. Such destruction shall be in the presence of the judge or the clerk of his court and at such time and place and in such manner as the judge shall in his order direct.

History.—ss. 4-6, ch. 16081, 1933; CGL 1936 Supp. 1167(58)-(60), 7794(4); s. 1, ch. 70-995; s. 119, ch. 71-136; s. 20, ch. 73-334.
Note.—Former s. 208.21.

206.59 Department to make rules; powers.—

(1) The department shall make rules and regulations, which shall have the force and effect of law, to govern reports and accounts by all persons dealing in or handling motor fuel for the purpose of enabling the department to ascertain whether or not any motor fuels are being dealt with, handled, or stored in this state under such circumstances as to become liable to the tax imposed by any law relating to a tax on motor fuel.

(2) The department is further given power to investigate, or cause to be investigated under its authority, all cases involving dealing in motor fuel by persons receiving, handling, or storing the same and to determine from such investigation whether or not any law relating to the gas tax is being evaded or illegally avoided, and the determination of the department in any case shall be prima facie valid and authentic in all courts in this state and all actions involving the validating of taxes on persons subject to the provisions of this chapter.

History.—s. 7, ch. 13756, 1929; CGL 1936 Supp. 1167(11); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.28.

206.60 Additional seventh cent tax upon motor fuel.—

(1) Every distributor of motor fuel, in addition to all other taxes required by law, shall pay an additional tax of 1 cent per gallon for every gallon of motor fuel sold or used by him on which the tax herein provided has not been paid or the payment thereof has not been assumed by a person preceding him in the handling of said lot of products. Delivery shall be deemed to be made at the point of destination. This additional license tax of 1 cent per gallon on motor fuel shall be paid to the department monthly as provided in s. 206.43.

(2) The proceeds of said tax are hereby appropriated for public transportation purposes in the manner following:

(a) The department, after deducting its expenses of collection, and provided that no deduction shall be made from said tax proceeds as presently provided for by ss. 215.20 and 215.22(2), shall monthly divide the proceeds of said tax into 4 equal parts and allocate said parts to the credit of each county upon the following formula distribution factors:

1. Three of the 4 parts in the ratio that the total taxable gallons sold and delivered to each county of the state for resale at retail or use during the previous state fiscal year bears to the total taxable gallons sold in the state.

2. One of the 4 equal parts in the ratio that the area of each county bears to the total area of all the counties.

(b)1. The Department of Revenue shall, from month to month, distribute the amount allocated to each of the several counties under paragraph (a) to the board of county commissioners of the county, who shall use said funds solely for the acquisition of rights-of-way; the construction, reconstruction, operation, maintenance, and repair of transportation facilities, roads, and bridges therein; or the reduction of bonded indebtedness of such county or of special road and bridge districts within such county, incurred for road and bridge or other transportation purposes. In the event the powers and duties relating to transportation facilities, roads, and bridges usually exercised and performed by boards of county commissioners are exercised and performed by some other or separate county board, such board shall receive the proceeds, exercise the powers, and perform the duties designated in this section to be done by the boards of county commissioners.

2. On and after October 1, 1971, the board of county commissioners of each county, or any separate board or local agency exercising the powers and performing the duties relating to transportation facilities, roads, and bridges usually exercised and performed by the boards of county commissioners, shall be assigned the full responsibility for the maintenance of transportation facilities in the county and of roads in the county road system.

3. In calculating the distribution of funds under paragraph (a), the Department of Revenue shall obtain from the auditor general the certification of the level of assessment in each district and shall pay only the amount of money which is derived by multiplying said ratio and the amount which would be due a district under paragraph (a). The funds which are raised under this section but are not distributed under this section shall be deposited in the Additional Gas Tax Pour-over Fund. All funds placed in the Additional Gas Tax Pour-over Fund shall be distributed in the same manner as provided in paragraphs (a) and (b) of this subsection.

4. Nothing in this paragraph as amended by

chapter 71-212, Laws of Florida, shall be construed to permit the expenditure of public funds in such manner or for such projects as would violate the state constitution or the trust indenture of any bond issue or which would cause the state to lose any federal aid funds for highway or transportation purposes; and the provisions of this paragraph shall be applied in a manner to avoid such result.

(3) The gasoline inspection laws of the state shall be and are declared to be applicable to the enforcement of this section.

(4) The license tax herein levied shall be in addition to all other license taxes levied under the laws of the state and in addition to the dealer's license tax for each place of business levied under the provisions of the laws of the state.

(5) It is hereby expressly recognized and declared by the legislature that all public roads and bridges being constructed or built or which will be hereafter constructed or built, including the acquisition of rights-of-way as incident thereto, either by the Department of Transportation or the several counties of the state, were, are, and will be, constructed and built as general public projects and undertakings and that the cost of the construction and building thereof, including the acquisition of rights-of-way as incident thereto, was, is, and will be, legitimate proper state expense incurred for a general public and state purpose. And it is expressly recognized and declared that the construction, reconstruction, maintenance, and acquisition of rights-of-way of all secondary roads are essential to the welfare of the state and that such roads when constructed, reconstructed, or maintained, or such rights-of-way when acquired, are and will be for a general public and state purpose. And the legislature has found and hereby declares that for the proper and efficient construction and maintenance of public highways designated state roads, it is in the best interest of the state to further integrate the activities of the Department of Transportation and the several boards of county commissioners as provided in subsection (2) in order that both state and local highway needs may be adequately provided for.

(6) It is declared to be the legislative intent that the funds derived from this section shall be used in such manner and for the purposes aforesaid to reduce the burden of ad valorem taxes in the several counties.

History.—ss. 1-11, 13, 14, ch. 20228, 1941; ss. 1-11, 13, 14, ch. 21639, 1943; ss. 1-11, 13, 14, ch. 22822, 1945; ss. 1-14, ch. 24172, 1947; ss. 1-14, ch. 25266, 1949; ss. 1-12, 14, 16-18, ch. 26321, 1949; s. 3, ch. 63-302; s. 7, ch. 63-253; s. 2, ch. 65-360; s. 5, ch. 65-371; s. 2, ch. 65-420; s. 1, ch. 67-198; ss. 21, 23, 35, ch. 69-106; s. 3, ch. 70-342; s. 1, ch. 70-995; ss. 1, 2, ch. 71-212; s. 61, ch. 73-333; s. 57, ch. 77-104; s. 4, ch. 77-165.

Note.—Former s. 208.44.

206.605 Additional eighth cent tax on motor fuel.—

(1) Every distributor of motor fuel, in addition to all other taxes required by law, shall pay an additional tax of 1 cent per gallon for every gallon of motor fuel sold or used by him or brought into this state by him for sale or use on which the tax herein provided has not been paid or the payment thereof has not been assumed by a person preceding him in the handling of said lot products. Delivery shall be deemed to be made at the point of destination. This additional license tax of 1 cent per gallon on motor fuel shall be paid to the department monthly, as provided in s. 206.43.

(2) The proceeds of said tax shall be transferred into the Revenue Sharing Trust Fund for Municipalities.

(3) Funds available under this section shall be used only for purchase of transportation facilities and road and street rights-of-way, construction, reconstruction, maintenance of roads and streets; for the adjustment of city-owned utilities as required by road and street construction, and the construction, reconstruction, transportation-related public safety activities, maintenance, and operation of transportation facilities. Municipalities are authorized to expend the funds received under this section in conjunction with other cities or counties or state or federal government in joint projects.

(4)(a) If any municipality subject to this section does not have the transportation facilities capability, the municipality may designate by resolution the projects to be undertaken, and the engineering may be thereafter performed and administered and the construction administered by the State Department of Transportation or, in the case of a municipality, by the appropriate county, if said county has the capability and agrees to undertake the projects.

(b) In the event the municipality desires the Department of Transportation either to perform or administer the engineering services or to administer the construction, or both, it must so indicate at the time of the presentation of the annual budget or it must so designate at the time the county presents its annual budget.

History.—s. 2, ch. 71-363; s. 16, ch. 72-360; s. 58, ch. 77-104.

206.61 Municipal taxes, limited.—No municipality or other political subdivision shall levy or collect any gas tax or other tax measured or computed by the sale, purchase, storage, distribution, use, consumption, or other disposition of motor fuel except such municipalities as are now levying such a tax under authorization of special laws. However, nothing herein shall prevent the levying by municipalities or other political subdivisions of reasonable flat license fees or taxes upon the business of selling gasoline at wholesale or retail.

History.—s. 23, ch. 26718, 1951; s. 1, ch. 70-995.

Note.—Former s. 209.22.

206.62 Certain sales to United States tax exempt; rules and regulations.—

(1) Every distributor of motor fuels shall be exempt from the payment of all excise taxes upon motor fuels sold by such distributor in the state to the United States or its departments or agencies when the motor fuel is sold and delivered by the distributor in bulk lots of not less than 500 gallons in each delivery to and for the exclusive use by the United States or its departments or agencies.

(2) The term "exclusive use by the United States or its departments or agencies" shall be construed to mean the consuming by the United States or its departments or agencies of the motor fuel in equipment, devices, or motors owned and operated by the United States or its departments or agencies and operated by contract flying schools training cadet aviators for the United States Air Force under con-

tract whereby the United States reimburses the contract flying school for the motor fuel so used.

(3) The term "exclusive use by the United States or its departments or agencies" shall be further construed to exclude specifically the use of motor fuel by any person, whether operating under contract with the United States or its departments or agencies or not, the original purchase by whom from a distributor of motor fuel in this state would have rendered such distributor liable for the payment of excise taxes upon such motor fuel under the laws of the state.

(4) The above definitions of the term "exclusive use by the United States or its departments or agencies," shall not be construed to be the sole meaning intended by the use of such term in this section, but such term shall be given its ordinary and usual meaning in all instances not specifically mentioned herein, and the enumeration of the above definitions shall be construed as an extension of the ordinary and usual meaning of the term "exclusive use."

(5) The department shall promulgate such rules and regulations and prescribe such forms as shall be necessary to effectuate and enforce the purpose of this section.

(6) If any subsection, provision, or clause of this section is declared to be invalid or unconstitutional and such invalidity or unconstitutionality shall have the effect of defeating or striking down the attempted exemption, it shall not affect the operation or validity of other statutes of the state providing for the taxation of every gallon of motor fuel sold in the state, it being hereby declared to be the legislative intent to grant exemption from taxation under conditions set forth in subsection (1) only in the event and to such extent that such exemption is lawful and constitutional; and it is further declared to be the legislative intent that if any subsection, provision or clause of this section is declared to be invalid or unconstitutional and such declaration shall have the effect of defeating or striking down the attempted exemption, the distributors of motor fuel shall pay each and every excise tax levied upon every gallon of motor fuel sold in the state.

History.—ss. 1-3, 5, ch. 21757, 1943; s. 1, ch. 22801, 1945; ss. 1-3, ch. 23676, 1947; s. 11, ch. 25035, 1949; s. 1, ch. 28191, 1953; s. 24, ch. 57-1; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.45.

206.625 Return of tax to municipalities.—

(1) Those portions of the first gas tax, imposed by s. 206.41, and the additional gas tax, imposed by s. 206.60, which result from the collection of such taxes paid by a municipality on gasoline for use in a motor vehicle operated by it shall be returned to the governing body of each such municipality for the construction, reconstruction, and maintenance of roads and streets within the municipality.

(2) The department shall promulgate such rules and regulations and shall prescribe such forms as shall be necessary to effectuate the purposes of this section.

History.—s. 4, ch. 70-342.
Note.—Former s. 208.461.

206.63 Definitions.—For the purposes of ss. 206.64-206.77, the following words and terms when used herein shall have the following meanings:

(1) "Agricultural purposes" shall be construed to mean motor fuel used in any tractor, vehicle, or other farm equipment which is used exclusively on a farm or for processing farm products on the farm and no part of which is used in any vehicle or equipment driven or operated upon the public highways of this state. This restriction shall not apply to the movement of farm vehicles or farm equipment between farms. The transporting of bees by water and the operating of equipment used in the apiary of a beekeeper shall be also deemed an agricultural purpose.

(2) "Commercial fishing purposes" shall be construed to mean motor fuel used in the operation of boats, vessels, and equipment used exclusively for the taking of fish, crayfish, oysters, shrimp, and sponges from the salt and fresh waters under the jurisdiction of the state for resale to the public, but shall in no way be construed to include fuel used for sports or pleasure fishing, no part of which is used in any vehicle or equipment driven or operated upon the highways of this state.

History.—s. 1, ch. 28098, 1953; s. 1, ch. 29916, 1955; s. 1, ch. 57-205; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.47.

206.64 Refunds on fuel used for agricultural or commercial fishing purposes; limitation; claims.—Any person who uses any motor fuel for agricultural purposes or commercial fishing purposes on which the tax, as imposed by this part, has been paid shall be entitled to a refund of the state tax except the 2 cents per gallon gas tax known as the second gas tax and the seventh cent gas tax as provided by s. 206.60. However, no refund shall be authorized unless sworn applications therefor containing such information as the department may determine are filed with it not later than January 31 immediately following the year for which refund is claimed. When claim is filed after January 31 and there is presented to the department a justified excuse for late filing and the last preceding claim has been filed on time, such late filing may be accepted through February of the year filed. No refund shall be authorized for purchases of less than 26 gallons at any one time, and no refund shall be authorized unless the amount due is for $5 or more in any 12-month period.

History.—s. 2, ch. 28098, 1953; s. 2, ch. 29916, 1955; s. 1, ch. 63-297; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.48.

206.65 Powers and duties of department.—Agents of the department are authorized to go upon the premises of any permitholder or any distributor or his duly authorized agent as defined in this part to make inspection to ascertain any matter connected with the operation of ss. 206.63-206.77 or the enforcement thereof. However, no agent shall enter the dwelling of any person without the occupant's consent or the authority from the court of competent jurisdiction.

History.—ss. 2, 10, 12, ch. 28098, 1953; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.49.

206.66 Permit for refunds required; procedure for issuance; bond.—

(1) No person shall secure a refund of tax under s. 206.64 unless such person is the holder of an unre-

voked refund permit issued by the department before the purchase of the motor fuel, which permit shall be numbered and issued annually and shall entitle such person to make application for a refund under ss. 206.63-206.77.

(2) To procure a permit every person shall file with the department an application, on forms furnished by the department, stating that he is engaged in the business of farming or commercial fishing and that he intends to file an application for refund for the current calendar year, and shall furnish the department such other information as the department shall request.

(3) No person shall in any event be allowed a refund unless he has filed the application provided for above with the department. The permit shall be effective on the date issued by the department and continuous from year to year so long as the permitholder files refund claims year to year. In the event he fails to file a claim for any year, then he must apply for a new permit.

(4) The department may, if applicant for a refund permit has violated any provision of ss. 206.63-206.77 or any regulation pursuant thereto, or been convicted of bribery, theft, or false swearing within the period of 5 years preceding the application or if the department has evidence of the applicant's financial irresponsibility, require the applicant to execute a corporate surety bond of $1,000 to be approved by the department, conditioned upon the payment of all taxes, penalties, and fines for which such applicant may become liable under ss. 206.63-206.77.

History.—ss. 3, 9, ch. 28098, 1953; s. 3, ch. 29916, 1955; s. 1, ch. 63-297; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.50.

206.67 Permit numbers; tax refund blanks.—The department shall annually assign each permitholder a new file number and furnish the permitholder with blank gas tax refund applications.

History.—s. 4, ch. 28098, 1953; s. 4, ch. 29916, 1955; s. 1, ch. 63-297; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.51.

206.68 Sales; quantities limited; invoices required, requirements.—

(1) When motor fuel is sold to a person who claims to be entitled to refund under s. 206.64, the seller of such motor fuel shall make out a sales invoice, which shall contain the following information:

(a) The name and post-office and resident address of the purchaser;

(b) The number of gallons purchased;

(c) The date on which purchase was made;

(d) The price paid for such refund motor fuel; and

(e) The name and place of business of the seller of the refund motor fuel.

(2) The sales invoice shall be retained by the purchaser for an attachment to his application for refund as a part thereof. No refund shall be allowed unless the seller executes such invoices and proof of payment of such taxes for which refund is claimed is attached. The department may refuse to grant a refund if the invoice in any particular is incomplete and fails to contain the full information required under ss. 206.63-206.77. When refund payment is made the department shall perforate the invoices and return them to the permitholder.

(3) Refund motor fuel shall not be sold or delivered in quantities of less than 26 gallons.

(4) No person shall execute a sales invoice, as described in subsection (1), except a distributor or a dealer or a duly authorized agent thereof. No refund invoices shall be executed for purchases from retail service stations, except that the department shall have authority to designate certain retail service stations as agents of distributors when no distributors are available to serve commercial fishermen.

History.—ss. 5, 10, 12, ch. 28098, 1953; s. 5, ch. 29916, 1955; s. 1, ch. 63-297; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.52.

206.69 Refund claim application forms.—The refund permitholder shall file with the department an application for refund on forms furnished by the department.

History.—s. 6, ch. 28098, 1953; s. 6, ch. 29916, 1955; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.53.

206.70 When refund claims allowed; procedure; right of refund nonassignable, exception; fee.—

(1) When the department is satisfied that a refund is proper, it shall authorize the amount of the state gas tax paid except the 2 cents per gallon gas tax known as the "second gas tax" and the seventh cent gas tax as provided by s. 206.60, to be refunded as other refunds are made; and the amount shall be refunded and deducted by it from current gas tax receipts in its possession. Such refunds shall be allowed only on motor fuel purchased in quantities of 26 gallons or more and used in machines, boats, and equipment listed by the claimant in his application for refund.

(2) The right to receive any refund under the provisions of this section shall not be assignable, except to the executor or administrator, or to the receiver, trustee in bankruptcy, or assignee in insolvency proceedings, of such person entitled thereto.

(3) Claims shall be paid annually on a calendar-year basis. Claims shall be filed not later than January 31 immediately following the year for which refund is claimed.

(4) The department shall deduct a fee of $2 for each claim, which $2 shall be deposited in the General Revenue Fund.

History.—ss. 2, 6, ch. 28098, 1953; s. 7, ch. 29916, 1955; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.54.

206.71 Appropriation for payment of claims.—The annual claims to be refunded shall not exceed $500,000, which amount shall be withheld from gas tax revenues available for the purpose of refund. In the event claims exceed this amount, the department shall reduce such refunds proportionally so that each claim shall receive the same percentage reduction.

History.—s. 2, ch. 28098, 1953; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.55.

206.72 Erroneous refunds.—If any gas taxes are erroneously refunded, the department shall advise the payee by registered mail of the erroneous refund. If the payee fails to reimburse the state with-

in 15 days after the receipt of letter, an action may be instituted by the department against such payee in the Circuit Court, and the department shall recover from the payee the amount of the erroneous refund plus a penalty of 20 percent.

History.—s. 8, ch. 28098, 1953; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.56.

206.73 Records of sales and purchases of motor fuel under refund permit.—

(1) Each distributor shall, in accordance with the department's requirements, keep at his principal place of business in this state, or at the bulk plant where the sale is made, a complete record or duplicate sales tickets of all such motor fuel sold by him for the refund provided for in s. 206.69, which records shall give the date of each such sale, the number of gallons sold, the name of the person to whom sold, and the sale price. No distributor or his agent or employee shall acknowledge or assist in the preparation of any claim for tax refund.

(2) Every person to whom a refund permit has been issued under this part shall, in accordance with the department's requirements, keep at his residence or principal place of business in this state a record of each purchase of motor fuel from a distributor or the distributor's authorized agent, the number of gallons purchased, the name of the seller, the date of the purchase, and the sale price.

(3) The records required to be kept under subsections (1) and (2) of this section shall at all reasonable hours be subject to inspection by the department or by any person duly authorized by it. Such records shall be preserved and shall not be destroyed until 3 years after the date the motor fuel to which they relate was sold or purchased.

History.—s. 7, ch. 28098, 1953; s. 1, ch. 63-297; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.57.

206.74 Department's records of refunds open to public.—The department shall keep a permanent record of the amount of refund claimed and paid to each claimant. Such records shall be open to public inspection.

History.—s. 9, ch. 28098, 1953; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.58.

206.75 False information in permit or refund application.—No person shall knowingly make a false or fraudulent statement in an application for refund permit or in an application for refund of any taxes under this part; or fraudulently obtain a refund of such taxes; or knowingly aid or assist in making any such false or fraudulent statement or claim; or having bought motor fuel or any part thereof to be used for any purpose other than as provided in s. 206.64.

History.—s. 9, ch. 28098, 1953; s. 1, ch. 63-297; s. 1, ch. 70-995.
Note.—Former s. 208.59.

206.76 Revocation, suspension of refund permit.—The refund permit of any person who shall violate any provision of s. 206.75 shall be revoked by the department and may not be reissued until 2 years have elapsed from the date of such revocation. The refund permit of any person who violates any other provision of this part may be suspended by the department for any period in its discretion not exceeding 6 months.

History.—s. 9, ch. 28098, 1953; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 208.60.

PART II

SPECIAL FUELS

206.85 Purpose.—The tax imposed by this part II of this chapter is levied for the purpose of providing revenue to be used by this state to defray in whole or in part the cost of constructing, widening, reconstructing, maintaining, resurfacing, and repairing the public highways of this state and the cost and expense incurred in the administration and enforcement of this part and for no other purpose whatsoever.

History.—s. 1, ch. 26718, 1951; s. 1, ch. 70-995.
Note.—Former s. 209.001.

206.86 Definitions.—As used in this part:

(1) "Special fuels" means any liquid product or gas product or combination thereof used in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance, or used for the generation of power, heat, light, or energy. This term shall include, but not be limited to, all forms of fuel commonly or commercially known or sold as diesel fuel, kerosene, butane gas, propane gas, and all other forms of liquefied petroleum gases, except such fuels that are subject to the tax imposed by part I of this chapter.

(2) "Motor vehicle" means any form of vehicle, machine, or mechanical contrivance which is propelled by any form of engine or motor which utilizes special fuel and is required, or which would be required, to be licensed under the motor vehicle license law if owned by a resident.

(3) "Public highways" includes every way or place of whatever nature generally open to the use of the public as a matter of right for the purpose of vehicular travel, notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance, or repair.

(4) "Person" includes any individual, association, firm, copartnership, corporation, receiver, trustee, conservator or other officer appointed by any state or federal court or state agency, or any county, municipality, or other political subdivision of this state.

(5) "Use" means the placing of special fuel into any receptacle on a motor vehicle from which fuel is supplied for the propulsion thereof.

(6) "User" includes any person who shall use special fuels within this state for the propulsion of a motor vehicle on the public highways of this state, even though the motor is also used for a purpose other than the propulsion of the vehicle.

(7) "Department" means the Department of Revenue.

(8) "Dealer" is any person who holds a valid dealer of special fuels license issued by the department and who:

(a) Imports and sells at wholesale or retail or otherwise within this state any of the special fuel as specified above;

(b) Imports, or causes to be imported, and withdraws for use within this state by himself or others any special fuels from the tank car, truck, or other original container or package in which imported into this state;

(c) Exports special fuels from this state to another state or foreign country;

(d) Manufactures, refines, produces, or compounds any special fuels within this state and sells the same at wholesale or retail or otherwise within this state;

(e) Imports into this state from any other state or foreign country or receives by any means into this state and keeps in storage in this state for a period of 24 hours or more after the same shall lose interstate character as a shipment in interstate commerce any special fuel which is intended to be used in this state;

(f) Is primarily liable under the special fuel tax laws of this state for the payment of special fuel taxes;

(g) Purchases or receives in this state special fuels in bulk quantities for resale to service stations, to a user or another dealer, or to the ultimate consumer for nontaxable consumption upon which the tax has not been paid; or

(h) Has both a taxable use and nontaxable consumption of the same special fuel in this state. However, this paragraph shall not require a person to be a dealer when his only purchases of special fuel are delivered into reservoirs attached to motor vehicles to fuel internal combustion engines attached to said motor vehicles.

(9) "Duly licensed dealer" means any dealer holding a valid license issued by the department.

(10) "Service station" means a person who purchases special fuel within the state and sells special fuel only for use.

History.—s. 1, ch. 19446, 1939; CGL 1940 Supp. 1167(103); s. 2, ch. 26718, 1951; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 4, ch. 75-286.

Note.—Former s. 209.01.

206.87 Levy of tax.—

(1) An excise tax of 8 cents per gallon is hereby imposed upon every gallon of special fuel used or sold in this state for use. Unless expressly provided to the contrary in this part, every sale shall be deemed to be for use in this state. This levy of tax is upon the consumer but shall be paid upon the first sale or transfer of title within this state by a dealer, except as expressly provided in this part, who shall act as agent for the state in the collection of said tax whether he be the ultimate seller or not.

(2) A dealer may purchase special fuel without the tax imposed by this section being paid upon the first sale or transfer of title in the state, and shall pay the tax on all special fuel used or sold by him and act as agent for the state in the collection and payment thereof.

(3) Upon payment or lawful assumption of the tax by the dealer, the amount of tax paid or assumed shall be added to the sale price of the product sold, and the amount of the tax shall be stated separately from the price of the product on all price display slips, bills, or statements which indicate the price of the product. The delivery of the product sold shall be deemed to be made at the point of destination.

(4) The following sales shall not be subject to the tax herein imposed:

(a) Sales by a dealer when the special fuel is delivered for home, industrial, commercial, agricultural, or marine purposes, for consumption other than use, or for resale pursuant to paragraph (c) hereof.

(b) Sales at the dealer's place of business of not more than 110 gallons by a dealer into a receptacle not connected to the fuel supply system of a motor vehicle for consumption other than use.

(c) Sales of 5 gallons or less by a person not a dealer who has no facilities for placing special fuel in the fuel supply system of a motor vehicle.

(d) Exports of special fuel by a dealer from the state when exempted by any provision of the Constitutions of the United States or the State of Florida. The sale for export from the state of special fuel which is not exempted from the taxes imposed by part II of this chapter by either the Constitution of the United States or of the state shall also be exempt, but only if both the seller and the exporter of the special fuel are duly licensed as dealers of special fuel under the terms of this part.

(e) Transfers or deliveries of special fuel into the fuel supply tank of a motor vehicle regularly engaged in interstate travel when such fuel is used on the highways of another state, provided:

1. The transfer or delivery shall occur within the State of Florida and be executed by a duly licensed dealer who is regularly engaged in interstate travel;
2. A similar tax is paid in another state; and
3. The tax is paid to the State of Florida on all special fuel brought into the state and used in the state.

Any licensed dealer claiming such exemption must have evidence of the payments of such tax, and must keep records showing the number of trips out of the state, the number of trips into the state, the number of gallons of special fuel carried out of state in fuel

tanks, and the number of gallons brought into the state in fuel tanks for use in this state. However, when the dealer maintains adequate records of vehicle consumption of fuel as related to miles traveled and such records show more mileage per gallon than standards determined by the department for mileage per gallon, the miles shown by such records may be used for computing the exemption on a mileage basis.

(f) Transfers or deliveries of special fuel into the fuel supply tank of a motor vehicle operated by a common carrier when the fuel is used on highways in another state, provided the common carrier is a duly licensed dealer who is under the jurisdiction of the Florida Public Service Commission and files timetables of schedules showing operations on regular routes in interstate commerce with the Public Service Commission and maintains a complete record of miles operated; and provided the tax on the special fuel deducted for use in another state is paid to the taxing authorities of that state. However, when the dealer maintains adequate records of vehicle consumption of fuel as related to miles traveled and such records show more mileage per gallon than standards determined by the department for mileage per gallon, the miles shown by such records may be used for computing the exemption on a mileage basis.

(g) Sales or use by a dealer of special fuel consumed by a power take-off for the purpose of turning a concrete mixer drum used in the manufacturing process which is mounted on a motor vehicle and which has no separate fuel tank or power unit.

(5) Sales or exports enumerated in paragraphs (4)(a), (b), and (d) shall not be exempt sales unless the sale or export is conducted by a person who is the holder of a valid license as a dealer of special fuels as issued by the department.

(6) The provisions of ss. 206.63-206.77 relating to refunds and refund procedures shall apply to purchases of 26 gallons or more of special fuel upon which the tax has been paid when such fuel is for nonhighway agricultural or marine purposes.

History.—s. 2, ch. 19446, 1939; CGL 1940 Supp. 1167(104); s. 3, ch. 26718, 1951; s. 1, ch. 70-995; s. 4, ch. 71-363; s. 1, ch. 72-87; s. 5, ch. 75-286; s. 3, ch. 78-299.
Note.—Former s. 209.02.

206.875 Allocation of tax.—

(1) All moneys derived from the taxes imposed by this chapter shall be paid into the State Treasury by the department for deposit in the "Special Motor Vehicle Fuel Tax Clearing Trust Fund," which fund is created and from which the following transfers shall be made: After withholding $10,000 from the proceeds of 4 cents of said tax, to be used as a revolving cash balance, all other moneys shall be transferred in the same manner and for the same purpose as provided by law for allocation of the taxes levied in part I.

(2) It is the intent of the Legislature that this section be construed to provide for the distribution of the appropriate portion of the special fuels tax imposed by this part, in the same manner as provided by ss. 206.29, 206.30, 206.31, 206.32, 206.33, 206.34, 206.35, 206.36, 206.37, 206.38, 206.39, 206.40, 206.41, 206.45, 206.60, 206.605, and 206.625.

History.—s. 3, ch. 19446, 1939; CGL 1940 Supp. 1167(105); s. 1, ch. 20554, 1941; s. 4, ch. 26718, 1951; s. 4, ch. 61-119; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 5, ch. 70-342; s. 6, ch. 75-286.
Note.—Former s. 209.03.

206.88 Appropriation for expenses of administration.—The legislature shall include in its appropriation act a sum sufficient for the payment by the department of expenses incident to the administration of this chapter, including legal expenses, costs and expenses incident to litigation, and the payment of such sums of money as the department may from time to time determine shall be refunded to any person making overpayment of such taxes.

History.—s. 4, ch. 19446, 1939; CGL 1940 Supp. 1167(106); s. 15, ch. 26869, 1951; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 209.04.

206.89 Licenses; necessity; prerequisites; issuance; nonassignability.—

(1) No person shall act as a dealer unless he holds a valid dealer's license issued by the department. However, a service station shall not be required nor be eligible to be licensed as a dealer. A person who has no facilities for placing special fuel into the supply system of a motor vehicle and who sells into containers of 5 gallons or less shall not be required to be licensed as a dealer.

(2) To procure a dealer's license, a person shall file with the department an application in such form as the department may prescribe, with a bond. No license shall be issued upon any application unless accompanied by said bond, except as provided in s. 206.90(1).

(3) When an application for a dealer's license is filed by a person whose license has been canceled for cause by the department or when the department is of the opinion that such application is not filed in good faith or is filed by some person as a subterfuge for the real person in interest whose license has theretofore been canceled, the department shall have authority, if the evidence warrants, to refuse to issue to said person a license.

(4) At the time of filing an application for a license, a filing fee of $5 shall be paid to the department for deposit into the General Revenue Fund.

(5) All requirements of this section having been complied with, the department shall issue to the applicant a license, and such license shall remain in effect until canceled as provided in this part.

(6) Said license shall not be assignable and shall be valid only for the dealer in whose name issued. It shall be displayed conspicuously by the dealer in the principal place of business for which it was issued.

History.—s. 5, ch. 19446, 1939; CGL 1940 Supp. 1167(107); s. 6, ch. 26718, 1951; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 4, ch. 77-149; s. 54, ch. 78-95.
Note.—Former s. 209.05.

206.90 Bond required of licensed dealers.—

(1) Every dealer, except a municipality, county, school board or special district which is licensed as a dealer under this part, shall file with the department a bond or bonds in the penal sum of not more than $35,000. The sum of said bond shall be approximately 3 times the average monthly special fuels tax paid or due by such dealer during the preceding 12

calendar months under this part, with a surety approved by the department, upon which the dealer shall be the principal obligor and the state shall be the obligee, conditioned upon the faithful compliance with the provisions of this part. If the sum of three times a dealer's average monthly tax is less than $50, no bond shall be required.

(2) When the liability upon the bond filed as provided in subsection (1) shall be discharged or reduced, whether by judgment rendered, payment made, or otherwise, or if in the opinion of the department any surety on the bond theretofore given has become unsatisfactory or unacceptable, the department may require the dealer to file a new bond with satisfactory surety in the same form and amount.

(3) If such new bond shall be furnished as provided in subsection (2), the department shall cancel and surrender the bond of the dealer for which such new bond shall be substituted. If the dealer fails to post the new bond, the department shall forthwith cancel the license of the dealer.

(4) If the department decides that the amount of the existing bond is insufficient to insure payment to the state of the amount of tax and any penalties and interest for which the dealer is liable, the dealer shall forthwith, upon the written demand of the department, file additional bond in the same manner and form with like security thereon. The department shall forthwith cancel the license of any dealer failing to file the additional bond.

(5) Any surety on any bond furnished by a dealer, as provided in this section, shall be released and discharged from all liability to the state accruing on such bond after the expiration of 60 days from the date upon which such surety has lodged with the department a written request to be released and discharged. Such request shall not operate to relieve, release, or discharge such surety from any liability already accrued, or which shall accrue, before the expiration of said 60-day period. The department shall, promptly on receipt of such request, notify the dealer who furnished such bond, and, unless the dealer shall on or before the expiration of the 60-day period file with the department a new bond with a surety company satisfactory to the department in the amount and form as provided in subsection (1), the department shall forthwith cancel the license of said dealer. If the new bond shall be furnished, the department shall cancel and surrender the bond of the dealer for which the new bond shall be substituted.

History.—s. 6, ch. 19446, 1939; CGL 1940 Supp. 1167(108); s. 7, ch. 26718, 1951; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 1, ch. 75-21; s. 5, ch. 77-149; s. 54, ch. 78-95.
Note.—Former s. 209.06.

206.91 Tax reports; computation and payment of tax.—

(1) For the purpose of determining the amount of tax imposed by s. 206.87, each dealer shall, not later than the 20th day of each calendar month, mail to the department on forms prescribed by the department, monthly reports which shall include the total gallons of special fuels sold for use or used by the dealer on which the tax has not been paid by a dealer in this state, during the preceding calendar month. However, if the 20th day falls on a Saturday, a Sunday, or a federal or state legal holiday, returns shall be accepted if postmarked on the next succeeding workday. The reports shall contain or be verified by a written declaration that such report is made under the penalties of perjury. The dealer shall deduct from the amount of tax shown by the report to be payable an amount equivalent to 2 percent of the tax on special fuels not exceeding 500,000 taxable gallons, and less an amount equivalent to 1 percent of the tax on special fuels in excess of 500,000 taxable gallons but not exceeding 800,000 taxable gallons, which is hereby allowed to the dealer on account of services and expenses in complying with the provisions of this part. This allowance shall not be deductible unless payment of tax is made on or before the 20th day of the month as herein required.

(2) At the time of filing the monthly report, each dealer shall pay to the department the full amount of special fuels tax for the preceding calendar month at the rate provided for in s. 206.87, less the amount allowable to the dealer on account of services and expenses as provided in subsection (1).

History.—s. 7, ch. 19446, 1939; CGL 1940 Supp. 1167(109); s. 8, ch. 26718, 1951; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 4, ch. 78-250.
Note.—Former s. 209.07.

206.92 Surrender of bond or license.—

(1) Upon receipt of a written request from any dealer to cancel the license, the department shall have the power to cancel such license, effective 60 days from the date of such written request. No such license shall be canceled unless the dealer has, prior to the date of such cancellation, paid to this state all taxes due and payable, together with all penalties and interest accruing under any of the provisions of this part, and unless the dealer has surrendered to the department the license certificate issued to him.

(2) If, upon investigation, the department ascertains and finds that any person to whom a license has been issued under this part is no longer engaged in the sale, use, transfer, or delivery of special fuels and has not been so engaged for a period of 6 months, the department shall have the power to cancel the license by giving such person 60 days' notice of the cancellation, mailed to his last known address, in which event the license certificate theretofore issued to such person shall be surrendered to the department.

(3) If any license is canceled by the department as provided in this section, and if the dealer has paid to this state all taxes due and payable, together with any and all penalties and interest accruing under this part, the department shall cancel and surrender the bond theretofore filed by said dealer.

History.—s. 8, ch. 19446, 1939; CGL 1940 Supp. 1167(110); s. 9, ch. 26718, 1951; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995.
Note.—Former s. 209.08.

206.93 Penalty for failure to report and pay taxes promptly.—If any person willfully fails to file the monthly report and pay the tax as provided in s. 206.91, the department shall revoke his license unless it appears that the failure to comply with this part was not due to fraud or to an intent to violate this part.

History.—s. 9, ch. 19446, 1939; CGL 1940 Supp. 1167(111); s. 10, ch. 26718, 1951; s. 3, ch. 63-512; s. 7, ch. 62-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 1, ch. 77-174; s. 54, ch. 78-95.

Note.—Former s. 209.09.

206.94 Department may estimate special fuels sold or used.—

(1) When any dealer neglects or refuses to file any report for any calendar month as required by s. 206.91 or files an incorrect or fraudulent report, the department shall determine, after investigation, the number of gallons of special fuels with respect to which the dealer has incurred liability under this part for any particular month or months and fix the amount of taxes due and payable thereon, to which sum shall be added a sum equal to 10 percent thereof as a penalty for the default of the dealer. However, the department may waive the penalty for late filing if the dealer has regularly filed reports and made payments of the tax due for a period of 24 months in accordance with the provisions of s. 206.91 and the dealer files an acceptable excuse under oath with the department for the late filing.

(2) Any payment that is not received by the department on or before the due date as provided in s. 206.91, in addition to any other penalties, shall bear interest at the rate of 1 percent per month of the amount due from the date due until paid.

History.—s. 10, ch. 19446, 1939; CGL 1940 Supp. 1167(112); s. 11, ch. 26718, 1951; s. 1, ch. 63-301; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 7, ch. 76-261.

Note.—Former s. 209.10.

206.95 Information privileged.—Any information obtained by the department or its agents or representative as a result of a report, investigation, or verification authorized to be made in this part, shall be confidential, and any person divulging any such information except upon order of a court of competent jurisdiction or except to an officer of the state entitled to receive the same in his official capacity shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

History.—s. 14, ch. 19446, 1939; CGL 1940 Supp. 1167(116), 7451(7); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 70-995; s. 120, ch. 71-136.

Note.—Former s. 209.14.

206.96 Reports from Department of Highway Safety and Motor Vehicles.—Upon the request of the department at the time of issuing a license plate to the owner of a motor vehicle, the Department of Highway Safety and Motor Vehicles shall determine the kind of fuel used to propel the motor vehicle, and for those motor vehicles using fuel other than gasoline, shall report to the Department of Revenue within 30 days the name and address of the owner, the make, and motor number of the vehicle. Forms for making such reports shall be furnished by the Department of Revenue.

History.—s. 22, ch. 26718, 1951; s. 7, ch. 63-253; s. 6, ch. 65-190; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 24, 35, ch. 69-106; s. 1, ch. 70-995.

Note.—Former s. 209.21.

206.97 Applicability of specified sections of part I.—The provisions of ss. 206.04, 206.055, 206.07, 206.075, 206.08, 206.09, 206.10, 206.11, 206.12, 206.13, 206.14, 206.15, 206.16, 206.17, 206.175, 206.18, 206.19, 206.20, 206.204, 206.205, 206.21, 206.215, 206.22, 206.23, 206.24, 206.25, 206.26, 206.28, 206.41(5), 206.49, 206.56, 206.57, 206.58, 206.59, 206.61, 206.62 of part I of this chapter, shall, as far as lawful or practicable, be applicable to the tax herein levied and imposed and to the collection thereof as if fully set out in this part II. However:

(1) "Distributor" means "dealer."

(2) "Motor fuel" means "special fuel."

(3) No provision of any such section shall apply if it conflicts with any provision of part II of this chapter.

History.—s. 1, ch. 70-995; s. 7, ch. 75-286.

CHAPTER 210

CIGARETTE TAXES

210.01 Definitions.—When used in this chapter the following words shall have the meaning herein indicated:

(1) "Cigarette" means any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

(2) "Persons" means any individual, copartnership, society, club, association, corporation, joint stock company, and any combination of individuals and also an executor, administrator, receiver, trustee or other fiduciary.

(3) "Sale" means any transfer, exchange or barter in any manner, or by any means whatever.

(4) "Retail sale" or "sale at retail" means a sale to a consumer or to any person for any purpose other than resale.

(5) "Dealer" means any wholesale dealer as hereinafter defined.

(6) "Wholesale dealer" means any person who sells cigarettes to retail dealers or other persons for purposes of resale only, or any person who operates more than one cigarette vending machine located in more than one place of business.

(7) "Retail dealer" means any person other than a wholesale dealer engaged in the business of selling cigarettes.

(8) "Package" means the individual package, box or other container in or from which retail sales of cigarettes are normally made or intended to be made.

(9) "Agent" means any person authorized by the Division of Alcoholic Beverages and Tobacco to purchase and affix adhesive or meter stamps under this chapter.

(10) "Division" means the Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation.

(11) "Use" means the consuming, giving away or disposing, in any manner, of cigarettes.

(12) "First sale" means the first use or consumption of cigarettes within this state.

(13) "Operating ad valorem millage" means all millages other than those fixed for debt service.

(14) "Distributing agent" means every person, firm or corporation in this state who acts as an agent for any person, firm or corporation outside or inside the state by receiving cigarettes in interstate or intrastate commerce and storing such cigarettes subject to distribution or delivery upon order from said principal to wholesale dealers and other distributing agents inside or outside this state.

(15) "Place of business" means any place where cigarettes are sold or where cigarettes are stored or kept for the purpose of sale or consumption; or if cigarettes are sold from a vending machine the place in which the vending machine is located.

(16) "Manufacturer's representative" means a person who represents a manufacturer of cigarettes but who has no place of business in this state where cigarettes are stored. A manufacturer's representative is required to obtain any cigarettes required by him through a wholesale dealer in this state and to make such reports as may be required by the Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation.

(17) "Exporter" means a person who transports tax exempt cigarettes into this state under bond for delivery beyond the borders of this state. Each permit shall entitle the permittee to store such cigarettes under bond at one location in this state pending shipment beyond the borders of this state.

(18) "Unstamped package" or "unstamped cigarettes" means a package on which the tax required by this chapter has not been paid, regardless of whether or not such package is stamped or marked with the indicia of any other taxing authority, or a package on which there has been affixed a counterfeit or fraudulent indicium or stamp.

History.—s. 1, ch. 21946, 1943; s. 1, ch. 22645, 1945; s. 1, ch. 24363, 1947; s. 1, ch. 26320, 1949; ss. 1, 2, ch. 29884, 1955; s. 1, ch. 61-399; s. 1, ch. 67-45; ss. 16, 35, ch. 69-106; s. 45, ch. 71-377; s. 1, ch. 73-123; s. 59, ch. 77-104; s. 3, ch. 77-421; s. 1, ch. 79-11.

210.02 Cigarette tax imposed; collection; etc.—

(1) An excise or privilege tax, in addition to all other taxes of every kind imposed by law, is imposed upon the sale, receipt, purchase, possession, consumption, handling, distribution, and use of cigarettes in this state, in the following amounts, except

as hereinafter otherwise provided, for cigarettes of standard dimensions:

(a) Upon all cigarettes weighing not more than 3 pounds per thousand, 10.5 mills on each cigarette.

(b) Upon all cigarettes weighing more than 3 pounds per thousand and not more than 6 inches long, 21 mills on each cigarette.

(c) Upon all cigarettes weighing more than 3 pounds per thousand and more than 6 inches long, 42 mills on each cigarette.

(2) The description of cigarettes contained in paragraphs (a), (b) and (c) of subsection (1) are hereby declared to be standard as to dimensions for taxing purposes as provided in this law and should any cigarette be received, purchased, possessed, sold, offered for sale, given away or used of a size other than of standard dimensions, the same shall be taxed at the rate of 1 cent on each such cigarette.

(3) Where cigarettes, as described in paragraph (1)(a) above, are packed in varying quantities of 20 cigarettes or less, the following rate shall govern:

(a) Packages containing 10 cigarettes or less require a 10.5-cent tax.

(b) Packages containing more than 10 but not more than 20 cigarettes require a 21-cent tax.

(4) Where cigarettes, as described in paragraph (1)(b) above, are packed in varying quantities of 20 cigarettes or less, the following rates shall govern:

(a) Packages containing 10 cigarettes or less require a 21-cent tax.

(b) Packages containing more than 10 but not more than 20 cigarettes require a 42-cent tax.

(5) Where cigarettes, as described in paragraph (1)(c) above, are packed in varying quantities of 20 cigarettes or less, the following rates shall govern:

(a) Packages containing 10 cigarettes or less require a 42-cent tax.

(b) Packages containing more than 10 but not more than 20 cigarettes require an 84-cent tax.

(6) This tax shall be paid by the dealer to the division for deposit and distribution as hereinafter provided upon the first sale or transaction within the state, whether or not such sale or transfer be to the ultimate purchaser or consumer. The seller or dealer shall collect the tax from the purchaser or consumer and the purchaser or consumer shall pay the tax to the seller. The seller or dealer shall be responsible for the collection of the tax and the payment of the same to the division. Whenever cigarettes are shipped from outside the state to anyone other than a distributing agent or wholesale dealer, the person receiving the cigarettes shall be responsible for the tax on said cigarettes and the payment of same to the division.

(7) It is the legislative intent that the tax on cigarettes shall be uniform throughout the state.

History.—s. 2, ch. 21946, 1943; s. 2, ch. 22645, 1945; s. 7, ch. 24337, s. 1, ch. 23871, s. 2, ch. 24363, 1947; s. 11, ch. 25035, s. 1, ch. 26320, 1949; s. 3, ch. 29884, 1955; ss. 1, 3, ch. 63-480; s. 1, ch. 65-442; s. 1, ch. 68-30; ss. 16, 35, ch. 69-106; ss. 40, 41, ch. 71-355; s. 6, ch. 72-360; s. 1, ch. 75-104; s. 1, ch. 77-409; s. 2, ch. 79-11.

210.03 Prohibition against levying of cigarette taxes by municipalities.—No municipality shall, after July 1, 1972, levy or collect any excise tax on cigarettes.

History.—s. 1, ch. 26320, 1949; s. 1, ch. 63-486; ss. 16, 35, ch. 69-106; s. 10, ch. 72-360.

210.04 Construction; exemptions; collection, etc.—

(1) The amount of taxes advanced and paid to the state aforesaid shall be added to and collected as a part of the sales price of the cigarettes sold or distributed, which amount may be stated separately from the price of the cigarettes on all display signs, sales and delivery slips, bills and statements which advertise or indicate the price of the product.

(2) The cigarette tax imposed shall be collected only once upon the same package or container of such cigarettes.

(3) No tax shall be imposed by this chapter upon cigarettes not within the taxing power of the state under the Commerce Clause of the United States Constitution.

(4) No tax shall be required to be paid:

(a) Upon cigarettes sold at post exchanges, ship service stores, ship stores, slop chests, or base exchanges to members of the Armed Services of the United States when such post exchanges, ship service stores, or base exchanges are operated under regulations of the Army, Navy, or Air Force of the United States or military, naval, or air force reservations in this state or when such ship stores or slop chests are operated under the regulations of the United States Navy on ships of the United States Navy; however, it is unlawful for anyone, including members of the Armed Services of the United States, to purchase such tax-exempt cigarettes for purposes of resale. Any person who resells, or offers for resale, tax-exempt cigarettes purchased at post exchanges, ship service stores, ship stores, slop chests, or base exchanges is guilty of a violation of the cigarette tax law, punishable as provided in s. 210.18(1).

(b) Upon the sale or gift of cigarettes by charitable organizations to bona fide patients in regularly established government veterans' hospitals in Florida for the personal use or consumption of such patients.

(5) It shall be presumed that all cigarettes are subject to the tax imposed by this chapter until the contrary is established, and the burden of proof that they are not taxable shall be upon the person having possession of them.

(6) The sale of single or loose unpacked cigarettes is prohibited. The division may authorize any person to give away sample packages of cigarettes, each to contain not less than two cigarettes upon which the taxes have been paid.

(7) Nothing in this chapter shall be construed to prohibit the sale of cigarettes, upon which the tax has been advanced, through the medium of vending machines where the tax is collected by the said vending machines.

(8) Except as hereinafter provided, all agents shall be liable for the collection and payment of the tax imposed by this chapter, and shall pay the tax to the division by purchasing, under such regulations as it shall prescribe, adhesive stamps of such design and denominations as it shall prescribe.

(9) Agents, located within or without the state,

shall purchase stamps and affix such stamps in the manner prescribed to packages or containers of cigarettes to be sold, distributed or given away within the state, in which case any dealer subsequently receiving such stamped packages of cigarettes will not be required to purchase and affix stamps on such packages of cigarettes. Provided however, that the division may, in its discretion, authorize manufacturers to distribute in the state, through their representatives, free sample packages or containers of cigarettes containing not less than two or more than five cigarettes without affixing any tax stamps provided that copies of shipping invoices to such representatives be furnished, and payment of all taxes imposed on said cigarettes by law be made, directly to the division not later than the 10th day of each calendar month.

History.—s. 2, ch. 21946, 1943; s. 2, ch. 22645, 1945; s. 3, ch. 24363, 1947; s. 11, ch. 25035, 1949; s. 1, ch. 26320, 1949; s. 1, ch. 28227, 1953; s. 1, ch. 57-169; ss. 16, 35, ch. 69-106; s. 11, ch. 72-360; s. 3, ch. 79-11; s. 3, ch. 79-317.

210.05 Preparation and sale of stamps; discount.—

(1) The tax imposed by this chapter shall be paid by affixing stamps in the manner herein set forth, or by affixing stamp insignia through the device of metering machines authorized in this chapter.

(2) The division shall prescribe, prepare and furnish stamps of such denominations and quantities as may be necessary for the payment of the tax imposed by this chapter, and may from time to time and as often as it deems advisable provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design. The division shall make provisions for the sale of such stamps at such places and at such time as it may deem necessary.

(3)(a) The division may appoint dealers in cigarettes, manufacturers of cigarettes, within or without the state as agent to buy or affix stamps to be used in paying the tax herein imposed, but an agent shall at all times have the right to appoint a person in his employ who is to affix the stamps to any cigarettes under the agent's control; provided, however, that any wholesale dealer in the state shall have the right to buy and affix such stamps. Whenever the division shall sell and deliver to any such agent or wholesaler any such stamps, such agent or wholesaler shall be entitled to receive as compensation for his services and expenses as such agent or wholesaler in affixing and accounting for the taxes represented by such stamps and to retain out of the moneys to be paid by him for such stamps, a discount of 2 percent of the par value of any amount of stamps purchased during any fiscal year from July 1 through June 30 of the following year; provided, that the discount shall be computed on the basis of 21 cents per pack. No such discount shall be allowed to a dealer, vendor, or distributor who sells or deals in any form of candy which resembles drug paraphernalia. Stamping locations approved by the division shall be responsible for computing the discount they receive pursuant to this paragraph, and said computations shall be retained by the stamping location for a period of 5 years and shall be available to the division. All stamps purchased from the division under this chapter shall be paid for in cash on delivery, except as hereinafter provided.

(b) Agents appointed by the division to affix stamps shall be authorized to purchase stamps by furnishing an irrevocable letter of credit or unconditional guaranty contract or by executing bond with a solvent surety company qualified to do business in this state, in an amount of 110 percent of the agent's estimated tax liability for 30 days, but not less than $2,000, conditioned upon said agent paying all taxes due the state arising hereunder. This form of payment in lieu of cash on delivery or its equivalent shall not preclude supplemental purchases for cash. Payment for each month's liability shall be due on or before the 10th day of the month following the month in which the stamps were sold. Default in the aforesaid bonding and payment provisions by any agent may result in the revocation of his privilege to purchase stamps except for cash on delivery for a period up to 12 months in the discretion of the division.

(4) The division may in its discretion revoke the authority of any agent failing to comply with the requirements of this chapter or the rules and regulations promulgated hereunder and such agent may in addition be punished in accordance with the provisions of this chapter.

(5) Agents or wholesale dealers may sell stamped but untaxed cigarettes to the Seminole Indian Tribe, or to members thereof, for retail sale. Agents or wholesale dealers shall treat such cigarettes and the sale thereof in the same manner, with respect to reporting and stamping, as other sales under this chapter, but agents or wholesale dealers shall not collect from the purchaser the tax imposed by s. 210.02. The purchaser hereunder shall be responsible to the agent or wholesale dealer for the services and expenses incurred in affixing the stamps and accounting therefor.

History.—s. 3, ch. 21946, 1943; s. 3, ch. 22645, 1945; s. 1, ch. 26320, 1949; s. 1, ch. 57-255; s. 2, ch. 63-480; s. 2, ch. 68-30; ss. 16, 35, ch. 69-106; s. 1, ch. 69-221; s. 2, ch. 71-364; s. 12, ch. 72-360; s. 60, ch. 77-104; s. 8, ch. 77-421; s. 1, ch. 78-442; s. 4, ch. 79-11; ss. 2, 4, ch. 79-317.

210.06 Affixation of stamps; presumption.—

(1) Every dealer within or without the state shall affix or cause to be affixed to such package or container of such cigarettes, stamps, evidencing the payment of the tax imposed by virtue of this chapter before such cigarettes are offered for sale or use or consumed or before they are otherwise disposed of in the state.

(2) Each retail dealer shall open such box, carton or other container of cigarettes prior to exposing for sale or selling such cigarettes and examine the packages contained therein for the purpose of ascertaining whether or not the said packages have affixed thereto the proper tax stamp. If unstamped or improperly stamped packages of cigarettes are discovered, the retail dealer shall immediately notify the dealer from whom said cigarettes were purchased. Upon such notification, the dealer from whom said cigarettes were purchased shall replace such unstamped or improperly stamped packages of cigarettes with those upon which stamps have been properly affixed, or immediately affix thereto the proper amount of stamps.

(3) Whenever any cigarettes are found in the

place of business of any such retail dealer, or in the possession of any other person without the stamps affixed, the presumption shall be that such cigarettes are kept in violation of the provisions of this law.

(4) Stamps shall be affixed to each package of cigarettes of an aggregate denomination not less than the amount of the tax upon the contents therein, and shall be affixed in such manner as to be visible to the purchaser. All stamps shall be affixed in the manner prescribed by the division.

History.—s. 4, ch. 21946, 1943; s. 4, ch. 22645, 1945; s. 1, ch. 26320, 1949; ss. 16, 35, ch. 69-106; s. 5, ch. 79-11.

210.07 Metering machines.—

(1)(a) The tax may also be paid through the use of cigarette tax stamp insignia to be applied by the use of metering machines. The division shall prescribe and promulgate appropriate rules and regulations governing the use of metering machines, the procedure for the payment of such cigarette taxes through the use thereof, requiring adequate surety bonds of the users thereof to assure the proper use of such machines and payment of all cigarette taxes that might come due by the users thereof, and all other rules and regulations necessary and proper to govern the use of same.

(b) The provisions of s. 210.05(3)(a) and (b) shall be applicable to cigarette taxes paid through the use of metering machines.

(2) All provisions of this chapter governing the use of cigarette tax stamps, the compiling of records, the making of reports, permits and revocation of permits, seizures and forfeitures, penalties, and all other provisions pertaining to the payment of cigarette taxes through the use of stamps, shall likewise be applicable to the payment of said taxes through the use of metering machines.

(3) Wholesale or retail dealers of cigarettes owning, leasing, furnishing, or operating cigarette vending machines shall affix to each such machine, in a conspicuous place, an identification sticker furnished by the division. Every sticker shall show the vending machine serial number and the name and address of the cigarette wholesale or retail dealer owning, leasing, furnishing, or operating said vending machine.

(4) No vending machine shall be allowed to operate in the state that does not have affixed thereto the identification sticker required by this section nor shall any vending machine be allowed to operate in the state that does not display at all times at least one package of each brand of the packages located therein so the same are clearly visible and arranged in such a manner that the cigarette tax stamps or meter impressions of stamps affixed thereto are clearly visible. It shall be the duty of any person, firm or corporation operating a cigarette vending machine in this state to furnish the division the location of the vending machine and to report within 30 days to the division any change of location of the vending machine.

History.—s. 5, ch. 21946, 1943; s. 5, ch. 22645, 1945; s. 1, ch. 26320, 1949; s. 2, ch. 57-169; s. 2, ch. 61-399; ss. 16, 35, ch. 69-106; ss. 2, 3, ch. 69-221; s. 6, ch. 79-11; s. 1, ch. 79-317.

210.08 Bond for payment of taxes.—Each dealer, agent or distributing agent shall file with the division a surety bond acceptable to the division in the sum of $10,000 as surety for the payment of all taxes; provided, however, that where in the discretion of the division the amount of business done by the dealer, agent or distributing agent is of such volume that a bond of less than $10,000 will be adequate to secure the payment of all taxes assessed as authorized by the Cigarette Tax Law, the division may accept a bond in a lesser sum than $10,000, but in no event shall it accept a bond of less than $1,000, and it may at any time in its discretion require any bond in an amount less than $10,000 to be increased not to exceed $10,000.

History.—s. 6, ch. 22645, 1945; s. 1, ch. 26320, 1949; s. 3, ch. 57-169; ss. 16, 35, ch. 69-106; s. 7, ch. 79-11.

210.09 Records to be kept; reports to be made; examination.—

(1) Every person who shall possess or transport any unstamped cigarettes upon the public highways, roads or streets of the state, shall be required to have in his actual possession invoices or delivery tickets for such cigarettes. The absence of such invoices or delivery tickets shall be prima facie evidence that such person is a dealer in cigarettes in this state and subject to the provisions of this chapter.

(2) The division is authorized to prescribe and promulgate by rules and regulations, which shall have the force and effect of the law, such records to be kept and reports to be made to the division by any distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting or possessing cigarettes for sale or distribution within the state as may be necessary to collect and properly distribute the taxes imposed by s. 210.02. All reports shall be made on or before the tenth day of the month following the month for which the report is made, unless the division by rule or regulation shall prescribe that reports be made more often.

(3) All distributing agents, wholesale dealers, agents, or retail dealers shall maintain and keep for a period of 3 years at the place of business where any transaction takes place, such records of cigarettes received, sold or delivered within the state as may be required by the division. The division or its duly authorized representative is hereby authorized to examine the books, papers, invoices and other records, stock of cigarettes in and upon any premises where the same are placed, stored and sold and equipment of any such distributing agents, wholesale dealers, agents or retail dealers, pertaining to the sale and delivery of cigarettes taxable under this chapter. To verify the accuracy of the tax imposed and assessed by this chapter, each person is hereby directed and required to give to the division or its duly authorized representatives the means, facilities and opportunity for such examinations as are herein provided for and required.

(4)(a) All persons who are either cigarette wholesalers, vending machine operators or distributing agents, and agents and employees of the same, are required to keep daily sales tickets or invoices of cigarette sales and it shall be the duty of said persons to see that each sales ticket and invoice handled by

them or on behalf of them show the correct name and address to whom sold and the number of packages or cartons of each brand sold. It shall also be the duty of said persons to see that each sales ticket or invoice correctly shows whether the same is inside or outside of a qualified municipality and if the sale is made within the limits of a qualified municipality, the correct name of the municipality must be indicated.

(b) The division shall suspend or revoke the license of any person who is either a cigarette wholesaler, vending machine operator or distributing agent upon sufficient cause appearing that the said persons, their agents or employees have failed to keep daily sales tickets or invoices in accordance with this section.

(5) Common carriers in this state are required to report to the division all packages or cartons of unstamped cigarettes which are refused by the consignee because of damage or otherwise. Authority in writing from the division must be obtained to sell or dispose of such unstamped cigarettes. Any dealer or distributing agent, who refuses any shipment or part of a shipment of unstamped cigarettes, must show in his next monthly report to the division the number of packages or cartons of cigarettes refused and the name of the common carrier from whom the cigarettes were refused.

History.—ss. 6, 10, 11, ch. 21946, 1943; ss. 7, 11, 12, ch. 22645, 1945; s. 1, ch. 26320, 1949; s. 4, ch. 29884, 1955; s. 4, ch. 57-169; s. 1, ch. 57-784; ss. 16, 35, ch. 69-106; s. 13, ch. 72-360; s. 9, ch. 78-95; s. 8, ch. 79-11.

210.10 General powers of the Division of Alcoholic Beverages and Tobacco.—

(1) The Division of Alcoholic Beverages and Tobacco is authorized to prescribe and promulgate all rules and regulations necessary to effectuate the provisions of this chapter and consistent with the terms hereof. All cigarette permits issued hereunder shall have printed thereon a notice to the effect that such permit is issued subject to the provisions of this chapter and said rules and regulations. The division shall provide upon request without charge to any applicant for a permit a copy of this chapter and the rules and regulations prescribed by it pursuant hereto.

(2) The division and all officers and employees under this chapter shall, in the administration thereof and in the administration of the State Beverage Law, have all the authority and power vested in officers and employees of the division as provided by s. 561.07, and such power and authority is hereby conferred upon the division and all officers and employees under this chapter with respect to the administration of this chapter and also with respect to the administration of the Beverage Law.

History.—s. 7, ch. 21946, 1943; s. 8, ch. 22645, 1945; s. 1, ch. 26320, 1949; s. 7, ch. 29615, 1955; ss. 16, 35, ch. 69-106; s. 6, ch. 77-421.

210.11 Refunds; sales of stamps and payment of tax.—Whenever any cigarettes upon which stamps have been placed, or upon which the tax has been paid by metering machine, have been sold and shipped into another state for sale or use therein, or have become unfit for use and consumption or unsalable, or have been destroyed, the dealer involved shall be entitled to a refund of the actual amount of the tax paid with respect to such cigarettes less any discount allowed by the division in the sale of the stamps or payment of the tax by metering machine, upon receipt of satisfactory evidence of the dealer's right to receive such refund, provided application for refund is made within 3 months of the date the cigarettes were shipped out of the state, became unfit or were destroyed. Only the division shall sell, or offer for sale, any stamp or stamps issued under this chapter. The division may redeem unused stamps lawfully in the possession of any person. The division may prescribe necessary rules and regulations concerning refunds, sales of stamps, and redemptions under the provisions of this chapter. Appropriation is hereby made out of revenues collected under this chapter for payment of such allowances.

History.—s. 8, ch. 21946, 1943; s. 9, ch. 22645, 1945; s. 1, ch. 26320, 1949; s. 5, ch. 29884, 1955; ss. 16, 35, ch. 69-106; s. 9, ch. 79-11.

210.12 Seizures; forfeiture proceedings.—

(1) The state, acting by and through the division, shall be authorized and empowered to seize, confiscate and forfeit for the use and benefit of the state, any cigarettes upon which taxes payable hereunder may be unpaid, and also any vending machine or receptacle in which such cigarettes are held for sale, or any vending machine that does not have affixed thereto the identification sticker required by the provisions of s. 210.07, or which does not display at all times at least one package of each brand of cigarettes located therein so the same is clearly visible and arranged in such a manner that the cigarette tax stamp or meter impression of the stamp affixed thereto is clearly visible. Such seizure may be made by the division, its duly authorized representative, any sheriff or deputy sheriff, or any police officer.

(2) The procedure for seizure, the listing, appraisal, advertisement and sale of the property seized, the bond of any claimant, the court proceedings, if any, including the parties, personal service of citation, and other personal services, the services by publication, judicial sale, and all other proceedings for the confiscation and forfeiture of the property for the nonpayment of the taxes shall be regulated, conducted, governed and controlled in the manner provided by chapter 562, relating to the seizure, confiscation and forfeiture of property under the beverage law which is incorporated herein by reference except to the extent that such sections may conflict or be inconsistent herewith.

(3) From the proceeds of any sale hereunder the division shall collect the tax on the property, together with a penalty of 50 percent thereof and the costs incurred in such proceedings; the balance, if any, shall be payable by the division to the person in whose possession the said property was found or as the court may direct.

(4) The distribution by the division of the proceeds of the sale from any cigarettes or other property that may be forfeited and confiscated hereunder, shall, after the payment of expenses of such forfeiture, be governed by the provisions of this chapter.

(5) No sale shall be made hereunder to any person except a licensed wholesale or retail dealer authorized to engage in the sale of cigarettes under the laws of Florida. All sales shall be made to the highest and best bidder for cash. The division shall provide for the payment of any taxes payable upon any ciga-

rettes sold hereunder before the same are delivered to any purchaser.

(6) The state attorney for the judicial circuit in which such property was seized shall act as the attorney for the division in such confiscation and forfeiture proceedings.

History.—s. 9, ch. 21946, 1943; s. 10, ch. 22645, 1945; s. 1, ch. 26320, 1949; s. 5, ch. 57-169; ss. 16, 35, ch. 69-106; s. 10, ch. 79-11.

210.13 Determination of tax on failure to file a return.—If a dealer fails to file any return required under this chapter, or having filed an incorrect or insufficient return, fails to file a correct or sufficient return, as the case may require, within 10 days after the giving of notice to him by the Division of Alcoholic Beverages and Tobacco that such return or corrected or sufficient return is required, the division shall determine the amount of tax due by such dealer any time within 3 years after the making of the earliest sale included in such determination and give written notice of such determination to such dealer. Such a determination shall finally and irrevocably fix the tax unless the dealer against whom it is assessed shall, within 30 days after the giving of notice of such determination, apply to the division for a hearing. Judicial review shall not be granted unless the amount of tax stated in the decision, with penalties thereon, if any, shall have been first deposited with the division, and an undertaking or bond filed in the court in which such cause may be pending in such amount and with such sureties as the court shall approve, conditioned that if such proceeding be dismissed or the decision of the division confirmed, the applicant for review will pay all costs and charges which may accrue against him in the prosecution of the proceeding. At the option of the applicant, such undertaking or bond may be in an additional sum sufficient to cover the tax, penalties, costs, and charges aforesaid, in which event the applicant shall not be required to pay such tax and penalties precedent to the granting of such review by such court.

History.—s. 12, ch. 21946, 1943; s. 13, ch. 22645, 1945; s. 1, ch. 26320, 1949; s. 1, ch. 63-512; ss. 16, 35, ch. 69-106; s. 9, ch. 78-95.

210.14 Warrant for collection of taxes.—

(1) In addition to all other remedies for the collection of any taxes due under the provisions of this chapter, the division may issue a warrant directed to the sheriff of any county commanding said sheriff to levy upon and sell the goods and chattels of the specified delinquent person found within his jurisdiction, for the payment of the amount of such delinquency plus a penalty equal to 50 percent of the amount thereof, and interest on the total at 1 percent per month and the cost of executing the warrant, and to return such warrant to the division and to pay it the money collected by virtue thereof within 60 days after receipt of such warrant. The sheriff shall, within 5 days after receipt of the warrant, file with the clerk of the circuit court of his county a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant, the amount of the tax and penalties for which the warrant was issued, and the date that such copy is filed. Said clerk shall be allowed the same fees as are allowed by law for similar services rendered in judgment execution proceedings.

(2) Thereupon the amount of such warrant so docketed shall become a lien upon the title to or the interest in real or personal property of the person against whom the warrant is issued. The sheriff to whom any such warrant shall be directed shall proceed upon the same in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against goods and chattels upon judgments by a court of record, and shall be entitled to the same fees for his services in executing the warrant to be collected in the same manner.

(3) In the discretion of the division a warrant of like terms, force and effect may be issued and directed to any officer or employee of the division and in the execution thereof such officer or employee shall have all the power conferred by law upon sheriffs, but he shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the division may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the state had recovered judgment therefor and execution thereon had been returned satisfied.

History.—s. 13, ch. 21946, 1943; s. 14, ch. 22645, 1945; s. 1, ch. 26320, 1949; s. 6, ch. 29884, 1955; ss. 16, 35, ch. 69-106; s. 8, ch. 76-261; s. 11, ch. 79-11.
cf.—s. 562.17 Collection of unpaid beverage taxes.

210.15 Permits.—

(1)(a) Every person, firm, or corporation desiring to deal in cigarettes as a distributing agent, wholesale dealer, or exporter within this state shall file an application for a cigarette permit for each place of business with the Division of Alcoholic Beverages and Tobacco. Every application for a cigarette permit shall be made on forms furnished by the division and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place of business within the state, and such other information as the division may require. If the applicant has or intends to have more than one place of business dealing in cigarettes within this state, the application shall state the location of each place of business. If the applicant is an association, the application shall set forth the names and addresses of the persons constituting the association, and if a corporation, the names and addresses of the principal officers thereof and any other information prescribed by the division for the purpose of identification. The application shall be signed and verified by oath or affirmation by the owner, if a natural person, and in the case of an association or partnership, members or partners thereof, and in the case of a corporation, by an executive officer thereof or by any person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of this authority. The cigarette permit for a distributing agent shall be issued annually for which an annual fee of $5 shall be charged.

(b) The holder of any duly issued, annual permit for a distributing agent shall be entitled to a renewal of his annual permit from year to year as a matter of course, on or before July 1, upon making applica-

tion to the division and upon payment of this annual permit fee.

(c) The permit for a wholesale dealer or exporter shall be issued only to persons of good moral character, who are not less than 18 years of age. Wholesale dealer or exporter permits to corporations shall be issued only to corporations whose officers are of good moral character and not less than 18 years of age. There shall be no exemptions from the permit fees herein provided to any persons, association of persons or corporation, any law to the contrary notwithstanding. No wholesale dealer or exporter permit shall be issued to any person who has been convicted within the past 5 years of any offense against the cigarette laws of this state or who has been convicted in this state, any other state, or the United States during the past 5 years of any offense designated as a felony by such state or the United States, or to a corporation, any of whose officers have been so convicted. The term "conviction" shall include an adjudication of guilt on a plea of guilty or a plea of nolo contendere, or the forfeiture of a bond when charged with a crime.

(d) The division may refuse to issue a wholesale or exporter permit to any person, firm or corporation whose permit under the cigarette law has been revoked or to any corporation, an officer of which has had his permit under the cigarette law revoked, or to any person who is or has been an officer of a corporation whose permit has been revoked under the cigarette law. Any permit issued to a firm or corporation prohibited from obtaining such permit under the cigarette law may be revoked by the division.

(e) Prior to an application for a wholesale dealer or exporter permit being approved, the applicant shall file a set of fingerprints on forms provided by the division. The applicant shall also file a set of fingerprints for any person or persons interested directly or indirectly with the applicant in the business for which the permit is being sought, when so required by the division. If the applicant or any person interested with the applicant, either directly or indirectly, in the business for which the permit is sought shall be such a person as is within the definition of persons to whom a wholesale dealer or exporter permit shall be denied, then the application may be denied by the division. If the applicant is a partnership, all members of the partnership are required to file said fingerprints, or if a corporation, all principal officers of the corporation are required to file said fingerprints. The cigarette permit for a wholesale dealer or exporter shall be originally issued at a fee of $100, which sum is to cover the cost of the investigation required before issuing such permit.

(f) The cigarette permit for a wholesale dealer or exporter shall be renewed from year to year as a matter of course, at an annual cost of $100, on or before July 1, upon making application to the division and upon payment of the annual renewal fee.

(g) Permittees, by acceptance of their permits, agree that their places of business or vehicles transporting cigarettes shall always be subject to be inspected and searched without search warrants for the purpose of ascertaining that all provisions of this chapter are complied with by authorized employees of the division and also by sheriffs, deputy sheriffs and police officers during business hours or during any other time such premises are occupied by the permittee or other persons. Retail cigarette dealers and manufacturers' representatives by dealing in cigarettes, agree that their places of business or vehicles transporting cigarettes shall always be subject to inspection and search without search warrant for the purpose of ascertaining that all provisions of this chapter are complied with by authorized employees of the division and also by sheriffs, deputy sheriffs and police officers during business hours or other times when the premises are occupied by the retail dealer or manufacturers' representatives or other persons.

(h) No retail sales of cigarettes may be made at a location for which a wholesale dealer, distributing agent, or exporter permit has been issued. The excise tax on sales made to any traveling location, such as an itinerant store or industrial caterer, shall be paid into the General Revenue Fund unallocated. Cigarettes may be purchased for retail purposes only from a person holding a wholesale dealer permit. The invoice for the purchase of cigarettes must show the place of business for which the purchase is made and the cigarettes cannot be transferred to any other place of business for the purpose of resale.

(2) The division may not sell stamps or approve the use of meter machines to evidence the payment of the taxes on cigarettes except to qualified wholesale dealers.

(3) Upon approval of the application, the division shall grant and issue to each applicant a cigarette permit for each place of business set forth in his application. Cigarette permits shall not be assignable and shall be valid only for the persons in whose names issued and for the transaction of business at the places designated therein and shall at all times be conspicuously displayed at the places for which issued.

(4) All permits of distributing agents, wholesale dealers, or exporters shall remain in force and effect until July 1 following their issuance, or until suspended, surrendered, or revoked for cause by the division.

(5) Whenever any permit issued under the provisions of this chapter is destroyed or lost, the holder thereof shall immediately make application for a duplicate permit on a form prescribed by the division, which application shall be filed with the division. The said application shall be under oath and shall state that the applicant is a holder of a valid permit which has been destroyed or lost as the case may be and that the said permit has not been suspended, surrendered, or revoked for cause by the division.

(6) Applicants for a permit hereunder, by the acceptance of such permit, agree that their places of business covered by such permit shall always be subject to be inspected and searched without search warrant by the division or any of its authorized assistants and also by sheriffs, deputy sheriffs or police officers.

(7) The division shall promulgate suitable rules for carrying out the provisions of this section.

(8) Every person, firm, corporation, or business

entity who deals in, or sells, stores, or operates as a wholesaler dealer in, cigarettes, or who acts as a cigarette distributing agent or exporter in any manner whatsoever, and who does so without a cigarette permit as required by this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 14, ch. 21946, 1943; s. 15, ch. 22645, 1945; s. 1, ch. 26320, 1949; ss. 7, 8, ch. 29884, 1955; s. 6, ch. 57-169; s. 3, ch. 61-399; s. 2, ch. 63-486; s. 2, ch. 67-45; ss. 16, 35, ch. 69-106; s. 3, ch. 76-168; s. 8, ch. 77-121; s. 1, ch. 77-421; s. 1, ch. 77-457; ss. 1, 3, ch. 78-351.
cf.—s. 1.01 Definition of minor.

210.16 Revocation or suspension of permit.—

(1) The Division of Alcoholic Beverages and Tobacco is given full power and authority upon sufficient cause appearing of the violation of any of the provisions of this chapter by any wholesale dealer receiving a permit to engage in business under this chapter to revoke the permit of such wholesale dealer.

(2) The division may suspend for a reasonable period of time, in its discretion, the permits of wholesale dealers issued under the provisions of this chapter for the same causes and under the same limitations as is authorized hereunder to revoke the permits of such wholesale dealers.

(3) No wholesale dealer whose permit for any place of business has been revoked shall engage in business under this chapter at such place of business after such revocation until a new permit is issued to him. No wholesale dealer whose permit for any place of business has been revoked shall be permitted to have said permit renewed, or to obtain an additional cigarette permit for any other place of business, for a period of 6 months after the date such revocation becomes final.

(4) In lieu of the suspension or revocation of permits, the Division of Alcoholic Beverages and Tobacco may impose civil penalties against holders of permits for violations of this chapter or rules and regulations relating thereto. No civil penalty so imposed shall exceed $1,000 for each offense, and all amounts collected shall be deposited with the State Treasurer to the credit of the General Revenue Fund. If the holder of the permit fails to pay the civil penalty, his permit shall be suspended for such period of time as the division may specify.

History.—s. 14, ch. 21946, 1943; s. 15, ch. 22645, 1945; s. 1, ch. 26320, 1949; s. 1, ch. 63-512; ss. 16, 35, ch. 69-106; s. 1, ch. 72-159; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 9, ch. 78-95; ss. 2, 3, ch. 78-351.

210.161 Examination of records.—The division, or any employee designated by it, shall have the power and authority to examine into the business, books, records, and accounts of any permittee and to issue subpoenas to said permittee or any other person from whom information is desired and to take depositions of witnesses within or without the state. The division, or any employee designated by it, may administer oaths and issue subpoenas. The provisions of the civil law of the state in relation to enforcing obedience to a subpoena lawfully issued by a judge or other person duly authorized to issue subpoenas in civil cases shall apply to a subpoena issued by the division, or any employee designated by it, as authorized in this section, and may be enforced by writ of attachment to be issued by the division, or any employee designated by it, for such witness to compel him to attend before the division, or any employee designated by it, and give his testimony and to bring and produce such books, papers, and documents as may be required for examination. The division, or any employee designated by it, may punish any willful refusal to so appear or give testimony by citation of any witness before the circuit court which shall punish such witness for contempt as in cases of refusal to obey the orders and process of the circuit court. The division may in such cases pay such attendance and mileage fees as are permitted to witnesses in civil cases appearing before the circuit court.

History.—s. 2, ch. 78-351.

210.18 Penalties for tax evasion; reports by sheriffs.—

(1) Any person who possesses or transports any unstamped packages of cigarettes upon the public highways, roads, or streets in the state for the purpose of sale, or, who sells or offers for sale unstamped packages of cigarettes in violation of the provisions of this chapter, or, who willfully attempts in any manner to evade or defeat any tax imposed by this chapter, or the payment thereof, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person, who shall have been convicted of a violation of any provision of the Cigarette Tax Law and shall thereafter be convicted of a further violation of the Cigarette Tax Law, shall, upon conviction of said further offense, be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any wholesale or retail dealer who shall fail, neglect or refuse to comply with, or shall violate the provisions of this chapter or the rules and regulations promulgated by the division under this chapter shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any wholesale or retail dealer, who shall have been convicted of a violation of any provision of the Cigarette Tax Law and shall thereafter be convicted of a further violation of the Cigarette Tax Law, shall, upon conviction of said further offense, be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any person who falsely or fraudulently makes, forges, alters, or counterfeits any stamp or impression die used in meter machines prescribed by the division under the provisions of this chapter, or causes or procures to be falsely or fraudulently made, forged, altered or counterfeited any such stamp or die, or knowingly and willfully utters, purchases, passes or tenders as true any such false, altered, or counterfeited stamp or die impression shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4)(a) Any person or corporation who shall own or have in his or its possession any cigarettes upon which a tax is imposed by the cigarette law, or which would be imposed if such cigarettes were manufactured in or brought into this state in accordance with the regulatory provisions of the cigarette law, and upon which such tax has not been paid shall, in addition to the fines and penalties otherwise provided in the cigarette law, be personally liable for the amount of the tax imposed on such cigarettes, and

the division may collect such tax from such person by suit or otherwise.

(b) This subsection shall not apply to manufacturers or distributors licensed under the cigarette law, to state bonded warehouses, or to persons possessing not in excess of three cartons of such cigarettes, which cigarettes shall have been purchased by said possessor outside of the state in accordance with the laws of the place where purchased and brought into this state by said possessor. The burden of proof that such cigarettes were purchased outside the state and in accordance with the laws of the place where purchased shall in all cases be upon the possessor of such cigarettes.

(5)(a) All cigarettes on which taxes are imposed by the cigarette law or would be imposed if such cigarettes were manufactured in or brought into this state in accordance with the regulatory provisions of such law, which shall be found in the possession or custody or within the control of any person for the purpose of being sold or removed by him in fraud of the cigarette law or with design to evade payment of said taxes may be seized by the division or any supervisor, sheriff, deputy sheriff, or other law enforcement agent and shall be forfeited to the state.

(b) This subsection shall not apply to persons possessing not in excess of three cartons of cigarettes, which cigarettes shall have been purchased by said possessor outside of the state in accordance with the laws of the place where purchased and brought into this state by said possessor.

(6)(a) Every person, firm, or corporation, other than a licensee under the provisions of this chapter, who possesses, removes, deposits, or conceals, or aids in the possessing, removing, depositing, or concealing of, any unstamped cigarettes not in excess of 50 cartons shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In lieu of the penalties provided in said sections, however, the person, firm, or corporation may pay the tax plus a penalty equal to the amount of the tax authorized under s. 210.02 on the unstamped cigarettes.

(b) Every person, firm, or corporation, other than a licensee under the provisions of this chapter, who possesses, removes, deposits, or conceals, or aids in the possessing, removing, depositing, or concealing of, any unstamped cigarettes in excess of 50 cartons is presumed to have knowledge that they have not been taxed and is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) This section shall not apply to persons possessing not in excess of three cartons of such cigarettes purchased by said possessor outside of the state in accordance with the laws of the place where purchased and brought into this state by said possessor. The burden of proof that such cigarettes were purchased outside the state and in accordance with the laws of the place where purchased shall in all cases be upon the possessor of such cigarettes.

(7) Any sheriff, deputy sheriff, or police officer, upon the seizure of any unstamped cigarettes under this section, shall promptly report such seizure to the division or its representative, together with a description of all such unstamped cigarettes seized so that the state may be kept informed as to the size and magnitude of the illicit cigarette business.

(8)(a) It is unlawful for any person to conspire with any other person or persons to do any act in violation of the provisions of this chapter, when any one or more of such persons does or commits any act to effect the object of the conspiracy.

(b) Any person who violates the provisions of this subsection:

1. If the act conspired to be done would constitute a misdemeanor, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the act conspired to be done would constitute a felony, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 16, ch. 21946, 1943; s. 17, ch. 22645, 1945; s. 1, ch. 26320, 1949; ss. 16, 35, ch. 69-106; s. 1, ch. 69-253; s. 1, ch. 69-254; s. 1, ch. 69-275; s. 1, ch. 69-276; s. 1, ch. 69-397; s. 121, ch. 71-136; s. 20, ch. 73-334; s. 61, ch. 77-104; s. 2, ch. 77-421; s. 12, ch. 79-11.

210.19 Records to be kept by division.—The division shall keep records showing the total amount of taxes collected, which records shall be open to the public during the regular office hours of the division.

History.—s. 1, ch. 26320, 1949; ss. 16, 35, ch. 69-106; s. 14, ch. 72-360; s. 13, ch. 79-11.

210.20 Employees and assistants; distribution of funds.—

(1) The division under the applicable rules of the Department of Administration shall have the power to employ such employees and assistants and incur such other expenses as may be necessary for the administration of this chapter, within the limits of an appropriation for the operation of the Department of Business Regulation as may be authorized by the General Appropriations Act.

(2) As collections are received by the division from such cigarette taxes, it shall pay the same into a trust fund in the state treasury designated "Cigarette Tax Collection Trust Fund" which shall be paid and distributed as follows:

(a) The division shall from month to month certify to the Comptroller the amount derived from the cigarette tax imposed by s. 210.02, less the service charge provided for in s. 215.22, specifying the amounts to be transferred from the Cigarette Tax Collection Trust Fund and credited on the basis of two-twenty-firsts to the Municipal Financial Assistance Trust Fund, eleven-twenty-firsts of the net collections to the Revenue Sharing Trust Fund for Municipalities, and one-twenty-first of the net collections to the Revenue Sharing Trust Fund for Counties.

(b) The division shall from month to month certify to the Comptroller the amount derived from the cigarette tax imposed by s. 210.02 on all cigarettes sold at retail on any property of the Inter-American Center Authority, created by chapter 554, and such amount, less the service charge provided for in s. 215.22, shall be paid to said Inter-American Center Authority by warrant drawn by the Comptroller upon the state treasury, which amount is hereby appropriated monthly out of such Cigarette Tax Collection Trust Fund.

(3) After all distributions hereinabove provided

for have been made, the balance of the revenue produced from the tax imposed by this chapter shall be deposited in the General Revenue Fund.

History.—s. 17, ch. 21946, 1943; s. 18, ch. 22645, 1945; s. 1, ch. 26320, 1949; s. 16, ch. 26869, 1951; s. 1, ch. 29827, 1955; s. 7, ch. 57-169; s. 2, ch. 61-119; s. 3, ch. 61-493; s. 1, ch. 67-437; ss. 3, 5, ch. 68-30; ss. 16, 35, ch. 69-106; ss. 8, 9, ch. 72-360; s. 3, ch. 77-409; s. 14, ch. 79-11.

210.22 Declaration of legislative intent.—In the event that any section or clause hereof shall for any reason be held or declared invalid, the same shall be eliminated and the remaining portion or portions hereof shall remain in full force and effect as if such invalid clause or section had not been incorporated herein, provided that ss. 210.03 and 210.20 are declaratory of the specific legislative intent in the passage of this chapter, and should either of said sections be declared unconstitutional, ineffective or invalid, then in such event, the entire chapter shall become inoperative and void.

History.—s. 3, ch. 26320, 1949.

CHAPTER 211

TAX ON PRODUCTION OF OIL AND GAS AND SEVERANCE OF SOLID MINERALS

PART I TAX ON PRODUCTION OF OIL AND GAS (ss. 211.01-211.20)

PART II TAX ON SEVERANCE OF SOLID MINERALS (ss. 211.30-211.34)

PART I

TAX ON PRODUCTION OF OIL AND GAS

211.01 Definitions.—Whenever used in this chapter, the following words and terms shall have the definition and the meaning ascribed to them in this section, unless the intention to give a more limited meaning is disclosed by the context:

(1) The word "department" means the Department of Revenue.

(2) The word "annual" means the calendar year, or the taxpayer's fiscal year, when permission is obtained from the department to use a fiscal year as a tax period in lieu of a calendar year.

(3) The word "value" means the sales price, or market value, at the mouth of the well. If the oil or gas is exchanged for something other than cash, or if there is no sale at the time of severance, or if the relation between the buyer and the seller is such that the consideration paid, if any, is not indicative of the true value or market price, then the department shall determine the value of the oil or gas subject to tax, considering the sales price for cash at the place where produced of oil or gas of like quality. Where gas is returned to a horizon or horizons in the field where produced either through wells on the lease from which produced or on other leases, that portion of the gas so returned shall not be considered in arriving at the value of the gas produced.

(4) The word "taxpayer" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind liable for the tax imposed by this chapter.

(5) The word "oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and which are not the results of condensation of gas after it leaves the reservoir.

(6) The word "gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in subsection (5) above.

(7) The word "severed" means the extraction or withdrawal from below the surface of the soil or water of any oil or gas, whether such extraction or withdrawal shall be by natural flow, mechanically enforced flow, pumping, or any other means employed to get the oil or gas from below the surface of the soil or water, and shall include the withdrawal by any means whatsoever of oil or gas upon which the tax has not been paid, from any surface reservoir, natural or artificial, or from a water surface, and the recovery of escaped oil or gas on which the tax has not been paid.

(8) The word "person" means any natural person, firm, copartnership, joint venture, association, corporation, estate, trust, receiver, or any other group, or combination acting as a unit, and the plural as well as the singular number.

(9) The word "producer" means any person, owning, controlling, managing or leasing any oil or gas property, or oil or gas well, and any person who produces in any manner any oil or gas by taking it from the earth or water in this state, and shall include any person owning any royalty or other interest in any oil or gas or its value, whether produced by him, or by some other person on his behalf, either by lease contract or otherwise.

(10) The word "barrel," for oil measurements, means a barrel of 42 U.S. gallons of 231 cubic inches per gallon, computed at a temperature of 60 degrees Fahrenheit.

(11) The term "cubic feet," for gas measurement, means the volume of gas expressed in cubic feet and computed at a base pressure of 4 ounces per square inch above the average atmosphere barometric pressure of 144/10 pounds per square inch, a standard base and flowing temperature of 60° Fahrenheit; correction to be made for pressure according to Boyle's Law, and for specific gravity according to test made by the balance method.

(12) The word "production," for oil measurement, means the total gross amount of oil produced and saved, including all royalty or other interest; that is, the amount for the purpose of the tax imposed by this chapter shall be measured or determined by tank tables compiled to show 100 percent

of the full capacity of tanks without deduction for overage or losses in handling. Allowance for any reasonable and bona fide deduction for basis sediment and water, and for correction of temperature to 60° Fahrenheit will be allowed. If the amount of oil produced has been measured or determined by tank tables compiled to show less than 100 percent of the full capacity of tanks, then such amount shall be raised to a basis of 100 percent for the purpose of the tax imposed by this chapter.

(13) The word "production," for gas measurement, means the total gross amount of gas produced and sold, or used, including all royalty or other interest; that is, the amount for the purpose of the tax imposed by this chapter shall be measured or determined by meter readings showing 100 percent of the full volume expressed in cubic feet.

(14) The term "gathering system" means the pipelines, pumps, compressors, meters, and other property used in gathering or removing oil or gas from the property on which it is produced, the tanks used for storage at a central place, loading racks and equipment for loading oil into tank cars or other transporting media, and all other equipment and appurtenances necessary to a gathering system for transferring oil or gas into trunk pipelines.

History.—s. 1, ch. 22784, 1945; s. 1, ch. 23883, 1947; s. 11, ch. 25035, 1949; ss. 21, 35, ch. 69-106; s. 46, ch. 71-377.

211.015 Tax on small wells.—All wells producing less than 100 barrels of oil per day or oil produced by tertiary methods shall be taxed at the rate of 5 percent of the gross value at the point of production. The proceeds from this tax shall be distributed in the same manner as the first and second gas tax.

History.—s. 2, ch. 77-408.

211.02 Levy of oil and gas tax and amount thereof; first and second taxes; basis of tax.—

(1) There is hereby levied, to be collected hereafter, as provided herein, an excise tax upon every person engaging or continuing within this state in the business of producing or severing oil or gas, as defined herein, from the soil or water for sale, transport, storage, or profit or for commercial use. The amount of such tax shall be measured by the value of the oil produced and saved, and by the value of the gas produced and sold, or used, and is hereby levied and assessed at the following rates: For oil, 8 percent of the gross value thereof at the point of production; and for gas, 5 percent of the gross value thereof at the point of production; said tax on oil and gas being made up of separate taxes, being:

(a) *First oil tax:* 37.5 percent of the total tax for the state for the use of the General Revenue Fund and 50 percent of the total tax for the state for the use of the Conservation and Recreation Lands Trust Fund.

(b) *Second oil tax:* 12.5 percent of the total tax for the county in which the oil is produced for the use of the general revenue fund of the board of county commissioners.

(c) *First gas tax:* 30 percent of the total tax for the state for the use of the General Revenue Fund and 50 percent of the total tax for the state for the use of the Conservation and Recreation Lands Trust Fund.

(d) *Second gas tax:* 20 percent of the total tax for the county in which the gas is produced for the use of the general revenue fund of the board of county commissioners.

(2) It is the intention of the Legislature to impose the first oil and gas tax as a state excise tax and to impose the second oil and gas tax as a county excise tax to compensate the county in which oil and gas is produced for the loss of ad valorem taxes by reason of the provision of this chapter, and to make it possible for the board of county commissioners of such county to provide the additional public services that will be required in a county where oil and gas are produced.

(3) The tax is hereby levied upon the basis of the entire production in this state, including what is known as the royalty interest, on which production the amount of such tax shall be a lien, regardless of the place of sale or to whom sold, or by whom used, or the fact that the delivery may be made to points outside the state; and the tax shall accrue at the time such oil is severed from the soil or water, and in its natural, unrefined, or unmanufactured condition, provided, however, oil and gas used for lease operations on the lease where produced shall not be taxed hereunder.

History.—s. 2, ch. 22784, 1945; s. 2, ch. 23883, 1947; s. 1, ch. 77-408; s. 6, ch. 79-255.

211.03 Measure of value.—In computing the tax levied under this chapter, where the gross proceeds of sales of such oil or gas are taken as the measure of the value of such products for the purpose of computing the tax, if such products shall have been sold on a delivered price, the actual freight charge prepaid by the taxpayer or included in the invoice price on such products to the place of delivery shall be deducted from the gross proceeds of sales used in determining the amount of the tax.

History.—s. 3, ch. 22784, 1945; s. 3, ch. 23883, 1947.

211.031 Exclusion from value of production.—The value of any oil or gas production shall not include any wellhead or other production taxes imposed by the United States on producers to the extent such tax or taxes do not provide a credit or deduction for the taxes imposed by this chapter.

History.—s. 3, ch. 77-408.

211.04 Assessment upon escaped oil; claims against same.—

(1) When any regular monthly report required from taxpayers by this chapter does not disclose the actual source of any oil taxable under this chapter, but does show such oil to have escaped from a well or wells and to have been recovered from streams, lakes, ravines, or other natural depression; it shall be the duty of the department to collect, in addition to the excise tax herein imposed, an additional amount equal to 12½ percent of the gross value of such escaped oil. The department shall hold such additional collection in a special escrow account for a period of 12 months from the date of the collections, during which time any person or persons, who claim to be the rightful owner or owners of any royalty interest in the escaped oil, may present proper and satisfactory proof of such ownership to the de-

partment. If the department shall be satisfied as to the ownership of such escaped oil, then it shall pay to such claimant or claimants a proportionate part of such additional collection held in escrow, according to their proper interest or interests. No payment to any claimant shall be made, however, before it is approved by the Department of Legal Affairs or before it is ordered by any court having proper jurisdiction.

(2) After the lapse of 12 months from the date of any additional collection, if no claim or claims have been made to it, or to the balance remaining of it after the payment by the department of any claim or claims, the department shall distribute the additional collection or any balance of it in the same manner as is herein provided for the distribution of the tax imposed by this chapter.

History.—s. 4, ch. 22784, 1945; s. 4, ch. 23883, 1947; ss. 11, 21, 35, ch. 69-106.

211.05 Penalty for failure to pay tax.—Should the taxpayer fail to pay when due the tax levied hereunder and same becomes delinquent, such tax as a penalty for such delinquencies shall bear interest at the rate of 18 percent per annum from the date such tax is due and payable and shall be collected in the manner hereinafter provided. If any taxpayer shall fail to make the report or return herein required as to the production of oil or gas from any well in this state it shall be the duty of the department to examine the books, records and files of such taxpayer to ascertain the amount and value of such production, to compute the tax thereon as herein provided, and it shall add thereto the cost of such examination, together with any penalties accrued thereon.

History.—s. 5, ch. 22784, 1945; s. 5, ch. 23883, 1947; ss. 21, 35, ch. 69-106.

211.06 Oil and gas tax trust fund; distribution.—

(1) All taxes herein levied and collected shall be placed in a special fund known as the oil and gas tax trust fund and shall be monthly distributed by the department as follows:

(a) The proceeds from the first oil and gas tax shall be paid into the state treasury to the credit of the general revenue fund of the state.

(b) The proceeds from the second oil and gas tax shall be paid into the general revenue fund of the board of county commissioners of the county in which the tax is imposed.

(2) The department is authorized and empowered to adjust and make proper settlements and refunds in cases of overpayment of the tax or where payment is made when no tax is due or when payment is made through error, under regulations prescribed by it, and there is hereby appropriated a sufficient amount for the Comptroller to refund said taxes, when and if on proper application and proof filed with him within 1 year from the date of the payment of such taxes, he deems it necessary to make such refunds, and this provision shall in no way prejudice any right of action that may accrue to any person liable for the payment of the tax to contest in any court of competent jurisdiction the payment of any or all of the taxes imposed herein.

History.—s. 6, ch. 22784, 1945; s. 6, ch. 23883, 1947; s. 2, ch. 61-119; s. 1, ch. 65-146; ss. 21, 35, ch. 69-106.

211.07 When taxes due; statements; information; penalties; powers of Department of Revenue.—

(1) The taxes levied hereunder shall be due and payable on or before the 25th day of the calendar month next succeeding the calendar month in which the tax accrued.

(2) Every producer of oil or gas, as defined in this chapter, shall on or before the 25th day of each calendar month file with the department a statement on forms prescribed by the department, showing the location of each oil or gas well operated or controlled by such producer during the last preceding calendar month, the kind of oil or gas produced; the gross quantity thereof produced, and the actual cash value thereof at the time and place of production, including any and all premiums received from the sale thereof; the amount of royalty payable thereof; and, where such royalty is claimed to be exempt from taxation by law, the facts on which such claim of exemption is based; and such other information as the department may require. Such statement shall be accompanied by a return showing the amount of tax payable on the oil or gas covered by such report, together with a remittance for the amount of the tax due. Such statement and report shall be mailed or sent to the office of the department and shall be signed by the taxpayer or duly authorized agent of the taxpayer and shall be verified by oath.

(3) The department shall have the power to require any person engaged in the production of oil or gas, and the purchaser thereof, or the owner of any royalty interest therein to furnish any information by it deemed necessary for the purpose of computing correctly the amount of tax to be levied and collected under the provisions of this chapter; and to examine the books, records and files of such persons, and shall have power to conduct hearings and compel the attendance of witnesses and the production of books, records and papers of any person.

(4) Any person or any member of any firm, association or corporation, or any officer, official, agent or employee of any corporation who shall fail or refuse to testify; or who shall fail or refuse to produce any books, records or papers which the department shall require; or who shall fail or refuse to furnish any other evidence which the department may require; or who shall fail or refuse to answer any competent questions which may be put to him by the department, touching the business, property, assets or effects of any such person, firm, association or corporation, or relating to the gross production tax imposed by this chapter, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; and each day such refusal on the part of such person shall constitute a separate and distinct offense.

(5) The department shall have the power and authority to ascertain and determine whether or not any return herein required to be filed with it is a true and correct return of the gross products and of the value, quantity or volume thereof of such person

engaged in the production of oil or gas; and, if any person has made an untrue or incorrect return of the gross production or value, or quantity, or volume thereof, as hereinbefore required, or shall have failed or refused to make such return, the department shall, under rules and regulations prescribed by it ascertain the correct amount of either, and compute said tax.

History.—s. 7, ch. 22784, 1945; s. 7, ch. 23883, 1947; ss. 21, 35, ch. 69-106; s. 122, ch. 71-136.

211.08 Common carriers to furnish information; inspection of bills of lading.—

(1) When requested by the department, all transporters, railroads, motor vehicles, pipelines, or other carriers, of oil or gas out of, within, or across the state shall be required to furnish the Department of Natural Resources such information relative to the transportation of such oil or gas as may be required.

(2) The department shall have authority to inspect bills of lading, waybills, or other similar documents, and such books and records as may relate to the transportation of oil or gas in the facilities of each transporter herein referred to; and the department shall further be empowered to demand the production of such bills of lading, waybills or other similar documents and books and records relating to the transportation of oil or gas at any point in the state which it may designate.

(3) Provided, however, that in case of common carriers using bills of lading or waybills prescribed or approved by the Interstate Commerce Commission, such common carriers shall only be required to keep the usual records at office or offices in this state where such records usually are kept.

History.—s. 8, ch. 22784, 1945; s. 8, ch. 23883, 1947; s. 11, ch. 25035, 1949; ss. 21, 25, 35, ch. 69-106.

211.09 Collection of tax.—

(1) The tax hereby imposed is levied upon the producers of such oil or gas in the proportion of their ownership at the time of severance, but, except as otherwise herein provided, shall be paid by the person in charge of the production operations, who is hereby authorized, empowered and required to deduct from any amount due to producers of such production at the time of severance, the proportionate amount of the tax herein levied before making payments to such producers; said tax shall become due and payable as provided by this chapter, and such tax shall constitute a first lien upon any of the oil or gas so produced, when in the possession of the original producer, or any purchaser of such oil or gas in its unmanufactured state or condition.

(2) When any person in charge of production operations shall sell the oil or gas produced by him to any person under contracts requiring such purchaser to pay all owners of such oil or gas direct, then the person in charge of the production operations may not be required to deduct the tax herein levied, but, in which event, such deduction shall be made by the purchaser before making payments to each owner of such oil or gas, and the purchaser in that case shall account for the tax; provided that nothing herein shall be construed as releasing the person in charge of production operations from liability for the payment of said tax.

(3) When any person in charge of production operations shall sell oil or gas produced by him on the open market, or shall use or dispose of the oil or gas for fuel or any purpose other than for lease operations on the lease where produced, he shall withhold the tax imposed by this chapter, and, if he is required to pay other interest holders, is hereby authorized, empowered and required to deduct from any amounts due them the amount of the tax levied and due under the provisions of this chapter before making payment to them.

(4) Every person in charge of production operations by which oil or gas is severed from the soil or water in this state, who fails to deduct and withhold, as required herein, the amount of tax from sale or purchase price, when such oil or gas is sold or purchased under contract or agreement, or on the open market, or otherwise, shall be liable to the state for the full amount of taxes, interest, and penalties due which should have been deducted, withheld and remitted to the state; and the department shall proceed to collect the tax from the person in charge of production operations, under the provisions of this chapter, as if he were the producer of the oil and gas.

History.—s. 9, ch. 22784, 1945; s. 9, ch. 23883, 1947; ss. 21, 35, ch. 69-106.

211.10 Procedure where tax in dispute.—When the title to any oil or gas that has been severed or is being severed from the soil or water, is in dispute, or whenever the producer of such oil or gas, or the purchaser thereof, shall be withholding payments on account of litigation, or for any other reason, such producer or purchaser is hereby authorized, empowered and required to deduct from the gross amount thus held, the amount of the tax herein levied and imposed, and to make remittance thereof to the department as provided by this chapter.

History.—s. 10, ch. 22784, 1945; s. 10, ch. 23883, 1947; ss. 21, 35, ch. 69-106.

211.11 Lien of tax.—The tax, interest, and penalty shall constitute and remain a lien upon the property, assets, and effects of the taxpayer until paid or until barred under chapter 95, and may be recovered in an action by the department on behalf of the state in any county where the property, assets, and effects are located. All penalties and other revenue derived hereunder in addition to any delinquent tax shall be apportioned in the same manner as the taxes are apportioned.

History.—s. 11, ch. 22784, 1945; s. 11, ch. 23883, 1947; ss. 21, 35, ch. 69-106; s. 34, ch. 74-382.

211.12 Delinquent taxes.—When any tax provided for in this chapter shall become delinquent the department shall issue its warrant directed to the sheriff of any county wherein the same or any part thereof accrued for the collection of said tax, interest and penalty; and the sheriff to whom the said warrant shall be directed shall proceed to levy upon the property, assets and effects of the person, firm, association or corporation against whom said tax is assessed and shall sell the same and make return thereof as upon execution and such sheriff shall execute and deliver to the purchaser a bill of sale or deed as the case may be. The state, through the Department of Revenue, shall be authorized to make

bids at any such sale to the amount of the tax, penalty and costs accrued. In the event such bid is successful, the sheriff shall issue proper muniment of title to the department which shall hold such title for the use and benefit of the state; and any taxpayer or transferee of such taxpayer shall have the right at any time within 30 days from the date of such sale to redeem such property upon the payment of all taxes, penalties and costs accrued to the date of redemption. Such applicants shall not be entitled to a credit upon such taxes, penalties and costs by reason of any revenue that might have accrued to the state or other purchaser under sale prior to such redemption. After the expiration of the period of redemption herein provided for, the department may sell such property at public auction upon giving a 7-day notice in writing, said notice to be published in one issue in a newspaper of general circulation published in the county in which such property is located, to the highest and best bidder for cash, or, if such newspaper is not published in said county, then such notice shall be published in a newspaper of general circulation published in Leon County. Upon a sale had thereof or when a redemption is made the department, for and on behalf of the state, shall issue bill of sale or quitclaim deed as the case may be, to the successful bidder or other redemptioner. Such muniment of title shall be executed by the department.

History.—s. 12, ch. 22784, 1945; s. 12, ch. 23883, 1947; ss. 21, 35, ch. 69-106.

211.13 Tax exclusive.—No other excise or license tax in addition to the tax provided herein shall be imposed by the state, counties, municipalities, drainage districts, road, school and other taxing districts within this state upon any person who produces in any manner any oil or gas by taking it from the earth or water of this state. The several property appraisers of this state and tax assessors of the cities therein, when assessing the value of any land for ad valorem taxes, shall not increase the value thereof by reason of the fact that there may be oil or gas under the surface of such land, inasmuch as it is impossible under known valuation methods to accurately ascertain the true value of oil and gas in place and taxation thereof is more certainly accomplished after its capture or severance from the earth or water. The value of land for ad valorem tax purposes shall not be increased by reason of the location thereon of any producing oil or gas equipment or machinery used in and around any oil or gas well and actually used in the operation thereof.

History.—s. 13, ch. 22784, 1945; s. 13, ch. 23883, 1947; s. 19, ch. 72-360; s. 1, ch. 77-102.

211.17 Rules and regulations.—The department shall prescribe rules and regulations and appropriate forms for effectuating the purposes of s. 211.18.

History.—s. 14, ch. 22784, 1945; s. 14, ch. 23883, 1947; ss. 21, 35, ch. 69-106; s. 40, ch. 79-164.

211.18 Records.—It shall be the duty of the clerk of the circuit court to keep a record book to be provided by the board of county commissioners of the county for the purpose of accepting for record any subsurface owner's interest in real estate of said county and any owner of subsurface interest in the lands of said county may register with the clerk the name of such owner, his address, the description of the land in which he has subsurface interest and such recording shall entitle such subsurface owner to notice by registered mail with return receipt requested of nonpayment of taxes by the surface owner, sale of tax certificates affecting the surface of said lands, application for tax deed of the surface interest and any foreclosure proceedings against said lands for unpaid taxes thereon, and no tax deed nor foreclosure proceedings shall affect such subsurface owner's interest if the notice hereby provided for is not given. For his services in registering such subsurface owner's interest as herein provided, the clerk shall receive a fee of $1, plus the fee per page for recording now provided by law. Where an owner of a subsurface interest or interests has registered with the clerk of the circuit court of the county in which said subsurface interest is located, the name of such owner, his address, and the description of the land in which he has subsurface interests pursuant to the provisions of chapter 22784, Acts of 1945, such registration shall be and operate as a registration of his subsurface interests and shall entitle the owner thereof to the notices and immunities hereinabove provided the same as if such owner had registered with said clerk his subsurface interests under and pursuant to this chapter.

History.—s. 14, ch. 22784, 1945; s. 14, ch. 23883, 1947.

211.20 Construction of chapter.—Nothing in this chapter shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due under existing laws, prior to July 1, 1947, whether such assessment, appeal, suit, claim or action shall have been begun before the said date, or shall thereafter be begun; and any existing law amended or repealed by this chapter is expressly continued in full force, effect and operation for the purpose of the assessment and collection of any taxes due under it prior to July 1, 1947, and for the imposition of any penalties, forfeitures or claims for a failure to comply therewith.

History.—s. 16, ch. 22784, 1945; s. 16, ch. 23883, 1947.

PART II

TAX ON SEVERANCE OF SOLID MINERALS

211.30 Definitions.—In addition to the definitions contained in s. 211.01 of part I, the following words and terms shall have the definition and meaning ascribed to them in this section, unless the inten-

tion to give a more limited meaning is disclosed by the context:

(1) The words "solid mineral" mean all solid minerals, including, but not limited to, clay, gravel, phosphate rock, lime, shells (excluding live shellfish), stone, sand, and any rare earths which have heretofore been discovered or may be discovered in the future, which are contained in the soils or waters of this state.

(2) The word "severed" means the extraction or withdrawal from the soil or water of this state, either on or below the surface, of any solid minerals.

(3) The word "producer" means any person severing solid minerals from the soils and waters of this state.

(4) The word "production," for measuring solid minerals, means the total gross amount severed from the soils and waters of this state from any type of production unit, including but not limited to mines, quarries, pits, or other sites of extraction.

(5) The word "value" means the sales price or true market price of the solid mineral at the point of severance. If the solid mineral is exchanged for something other than cash or is not sold but is further refined, processed, or otherwise retained, or if the relation between the buyer and seller is such that the consideration paid, if any, is not indicative of the true market price, the true market price shall be determined by the average market price per ton of the solid mineral at the point of severance for the year for which the tax is being paid. This shall be determined by the Department of Revenue after notice and hearing to the taxpayers affected. When there is no market value or evidence of sales of a solid mineral within the state, the department may use the true market value in this state of a comparable mineral in competition with the solid mineral the value of which is being determined or such other method as may be determined to arrive most equitably at the value of the solid mineral. In calculating or determining the true market price at the point of severance, it is the intent of the legislature not to include any shipping, handling, processing, or other charges arising between the point of severance and point of sale.

(6) The words "point of severance" mean that point, at which the solid mineral being severed is identifiable as to kind and quality and is capable of being transported for use or further processing.

(7) The words "site of severance" mean the mine, quarry, pit, or other geographical location at which a solid mineral is actually being severed from the soils and waters of this state.

(8) The words "taxable year" means calendar year.

History.—s. 1, ch. 71-105; s. 1, ch. 75-40.

211.31 Levy of tax on severance of solid minerals; rate, basis, distribution, and implementation of tax.—

(1) There is hereby levied, to be collected as provided herein, an excise tax upon every person engaging in the business of severing solid minerals from the soils and waters of this state for commercial use. Except as provided in subsections (3) and (4), such tax shall be 5 percent of the value at the point of severance of the identifiable solid minerals severed. The proceeds of the tax imposed by this subsection, excluding the amount credited for ad valorem tax payments, shall be paid into the State Treasury as follows:

(a) 50 percent to the credit of the Conservation and Recreation Lands Trust Fund of the state; and

(b) 50 percent to the credit of the Land Reclamation Trust Fund established for refunds under the provisions of s. 211.32(3).

(2) The 5 percent rate provided in subsection (1) shall be suspended for a period of 4 years beginning July 1, 1971. In its place the following rates shall be applicable for the periods set forth:

(a) July 1, 1971 through June 30, 1973—3 percent of the value of solid minerals severed.

(b) July 1, 1973 through June 30, 1975—4 percent of the value of solid minerals severed.

(3) Until July 1, 1983, the excise tax upon persons engaged in the business of severing phosphate rock from the soils and waters of this state for commercial use shall be 10 percent of the value at the point of severance of the identifiable phosphate rock severed. The proceeds from the 10 percent tax imposed by this subsection, excluding the amount credited for ad valorem tax payments, shall be paid into the State Treasury as follows:

(a) 50 percent to the credit of the Conservation and Recreation Lands Trust Fund;

(b) 25 percent to the credit of the General Revenue Fund of the state;

(c) 20 percent to the credit of the Nonmandatory Land Reclamation Trust Fund which is established for reclamation and acquisition of unreclaimed lands disturbed by phosphate mining and not subject to mandatory reclamation; and

(d) 5 percent to the credit of the Phosphate Research Trust Fund which is created to carry out the purposes set forth in s. 378.101.

(4) On and after July 1, 1983, the excise tax upon persons engaged in the business of severing phosphate rock from the soils and waters of this state for commercial use shall be 8 percent of the value at the point of severance of the identifiable phosphate rock severed, unless additional funding of the Nonmandatory Land Reclamation Trust Fund is approved by law. The proceeds from the 8 percent tax imposed by this subsection, excluding the amount credited for ad valorem tax payments, shall be paid into the State Treasury as follows:

(a) 50 percent to the credit of the Conservation and Recreation Lands Trust Fund;

(b) 43.75 percent to the credit of the General Revenue Fund of the state; and

(c) 6.25 percent to the credit of the Phosphate Research Trust Fund.

(5) On April 1, 1980, and annually thereafter until such funding ends, the Executive Director of the Department of Natural Resources shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives as to the sufficiency of the Nonmandatory Land Reclamation Trust Fund and whether the funding of that fund needed substantially to complete the Master Reclamation Plan as provided in s. 378.021 should be decreased, increased, or otherwise modified by law.

(6) Interest earned on funds within any trust

fund created under this part shall be invested and reinvested to the credit of such trust fund in accordance with s. 215.44.

(7) The expenses of administering this part and ss. 378.011, 378.021, 378.031, and 378.101 shall be borne by the Land Reclamation Trust Fund, the Nonmandatory Land Reclamation Trust Fund, and the Phosphate Research Trust Fund.

History.—ss. 1, 3, ch. 71-105; s. 2, ch. 75-40; s. 1, ch. 77-406; s. 1, ch. 78-136; s. 7, ch. 79-255.

cf.—s. 193.481 Assessment of oil, mineral, and other subsurface rights.

211.32 Tax on solid minerals; credit for ad valorem taxes and royalties; certain exclusions; refund for restoration and reclamation.—

(1)(a) A taxpayer shall be entitled to a credit against the tax imposed by this part in an amount equal to the full amount of ad valorem taxes paid upon the separately assessed mineral interest of the real property upon which the site of severance is located. However, in no event shall the ad valorem tax credit exceed 20 percent of the taxes due under this part.

(b) The amount of ad valorem taxes allowed for credit may be accumulated from year to year on property upon which a site of severance may be or is located.

(c) A credit for payment of ad valorem taxes shall be allowed only if the taxpayer has a program for reclamation and restoration of the site of severance approved by, and filed with, the Department of Natural Resources.

(2) Solid minerals which are extracted by the owner of the site of severance for the purposes of improving the site of severance and, so long as a reclamation plan is approved by the county, when the site of severance is located in accordance with subsection (3)(a), or by the state, should the county not have provision for approving such a plan, solid minerals upon which a sales tax is ultimately paid to the state or which are sold to governmental agencies in this state, including cities and counties, shall not be subject to the tax imposed by this part.

(3)(a) Each taxpayer shall institute and complete a reclamation and restoration program upon each site of severance subject to the taxes imposed by this part, in accordance with criteria adopted by the Department of Natural Resources, which shall include the following standards:

1. Control of the physical and chemical quality of the water draining from the area of operation;
2. Soil stabilization, including contouring and vegetation;
3. Elimination of health and safety hazards;
4. Conservation and preservation of remaining natural resources; and
5. Time schedule for the completion of the program and the various phases thereof.

The Department of Natural Resources may adopt as criteria local ordinances which, at the minimum, meet the above standards. The mandatory obligation to institute and complete a reclamation and restoration program under this paragraph shall not apply to acres disturbed by the severance of solid minerals before July 1, 1975. However, if such acres are included within sites of severance that are subject to reclamation and restoration programs approved by the Department of Natural Resources, such acres shall be treated as being subject to this paragraph for purposes of the refunds provided under paragraph (d).

(b) The reclamation and restoration program may include qualified sites other than the site of severance upon which the taxes were paid. The Department of Natural Resources may adopt a list of sites qualifying under this paragraph, which must meet, at the minimum, the following qualifications:

1. The restoration or reclamation of the site and the program to be instituted is in the public interest; and
2. The location of the site is in an area where economic considerations would not be conducive to immediate restoration or reclamation of the site.

(c) As part of accomplishing a program of restoration and reclamation at a particular site of severance or at other sites qualified pursuant to paragraph (b), the taxpayer may request the Department of Natural Resources to accept a portion or portions of the site as state land. Such a request shall be accompanied by an offer to transfer to the state title to the land involved and suitable ingress thereto and egress therefrom. If such request is granted by the Department of Natural Resources, the refund under this election shall be computed on the fair market value of the land at the time of transfer, as determined by the taxpayer and the Department of Natural Resources, with the approval of the Board of Trustees of the Internal Improvement Trust Fund and concurred in after public hearing by said board.

(d) The Comptroller shall, upon written verification of compliance with paragraph (a), paragraph (b), or paragraph (c) by the Department of Natural Resources, and upon verification of the cost of the restoration and reclamation program or, if paragraph (c) is elected, the fair market value of the land, grant refunds, to be paid from the Land Reclamation Trust Fund, of the taxes paid under this part, in an amount equal to 100 percent of the costs incurred in complying with paragraph (a) or paragraph (b), or 100 percent of the fair market value of the land transferred in complying with paragraph (c), subject to the following limitations:

1. A taxpayer shall not be entitled to refunds in excess of the amount of taxes paid by the taxpayer under this part which are deposited in the Land Reclamation Trust Fund.
2. A taxpayer shall not be entitled to the payment of a refund for costs incurred in connection with a particular restoration and reclamation program unless and until the taxpayer is accomplishing the program in reasonable compliance with the criteria established by the Department of Natural Resources.

(e) Claims for reclamation refunds under paragraph (d) shall be filed on an annual basis within 60 days after the taxpayer has paid the tax imposed under this part for the preceding taxable year. The taxpayer may include in the claim for refund all costs incurred in complying with paragraphs (a) or (b), or the values of all land transferred in complying with paragraph (c), for the period July 1, 1971, through December 31 of the preceding taxable year,

to the extent that such costs or values have not been previously allowed for refund purposes.

(f) To encourage the rapid accomplishment of reclamation, the taxes credited to the Land Reclamation Trust Fund shall be available for refund to the taxpayer under paragraph (d) for a maximum period of 5 years from the date the tax is paid. In allocating the tax paid into the Land Reclamation Trust Fund for a particular taxable year to refunds claimed and received by the taxpayer, the taxes first paid into the trust fund shall be deemed the taxes first paid out in refunds. The department shall determine by July 1 of each year that portion of the Land Reclamation Trust Fund for which refund claims have not been timely filed and allowed in accordance with this paragraph, and such portion shall be transferred to the General Revenue Fund.

(g) If, during any 3 consecutive taxable years, a taxpayer has not performed work under any approved reclamation and restoration program and if, at the end of such 3-year period, the taxpayer has completed reclamation on all lands he is obligated to reclaim pursuant to paragraph (a), then all moneys in the Land Reclamation Trust Fund to the taxpayer's account at the end of such period shall be transferred to the General Revenue Fund.

(h) If the Department of Natural Resources determines that a taxpayer has abandoned a reclamation program subject to this part or has failed to complete such program by the completion date specified by the Department of Natural Resources, and if the Department of Natural Resources further determines that the taxpayer, after 60 days' notice of such deficiency from the Department of Natural Resources, has failed to return work on the reclamation program to a rate of progress that would reasonably insure completion of the program within not more than 6 months after the date of such deficiency notice from the Department of Natural Resources or within not more than 6 months from the completion date established by the Department of Natural Resources, whichever period is longer, then such reclamation program shall be permanently ineligible for purposes of reclamation refunds under this part.

(i) In determining a taxpayer's compliance with completion dates specified by the Department of Natural Resources for reclamation programs under this part, such completion dates shall be extended by the period of any delays attributable to causes beyond the reasonable control of the taxpayer.

(j) The Department of Natural Resources shall be empowered to institute a civil action in any court of competent jurisdiction for the purpose of obtaining injunctive relief necessary to compel a taxpayer, or any person or persons claiming a fee interest in the land subject to reclamation, to comply with the mandatory reclamation provisions of paragraph (a). If a person other than the taxpayer is compelled to reclaim land pursuant to this paragraph, then such person shall be entitled to receive the reclamation refunds that would be available to the taxpayer under paragraph (d) if the taxpayer had performed said reclamation.

(k) The obligation to reclaim under paragraph (a) shall run with the land and shall be enforceable against any person claiming a fee interest in the land subject to said obligation.

(l) The amendments by ch. 75-40, Laws of Florida, to paragraphs (d), (e), (f) and (g) shall apply to the balance in the Land Reclamation Trust Fund on July 1, 1975, regardless of the date the taxes were paid that gave rise to said balance and to refund claims filed on or after July 1, 1975, regardless of the date the reclamation costs were incurred on which the claim is based.

(m) Notwithstanding any other provision in this part, refunds from the taxes levied under this part based upon the severance of solid minerals before July 1, 1978, shall be paid from the Land Reclamation Trust Fund for so long as funds remain available only for the cost of restoration and reclamation of land:

1. Disturbed by the severance of solid minerals prior to July 1, 1975; or

2. Included within a site of severance on or before July 1, 1977, for which a restoration and reclamation program was filed with the Department of Natural Resources on or before July 1, 1977.

History.—s. 1, ch. 71-105; ss. 3, 6, ch. 75-40; s. 2, ch. 77-406; ss. 2, 7, ch. 78-136.

211.33 Administration of the severance tax; estimated tax; confidentiality of returns.—

(1) For the 1977 taxable year, the department shall determine the value of solid minerals by March 1, 1978. The tax imposed by this part for the 1977 tax year shall be due on or before April 1, 1978, and shall be paid at the same time the annual return is filed. Increased taxes imposed by this act shall apply to the severance of solid minerals and to the performance of land reclamation occurring on and after July 1, 1977. The annual return shall be signed by the taxpayer or his duly authorized agent and shall be verified by oath. The return shall be filed on or before April 1 for the preceding taxable year and shall include the following:

(a) The location of each site of severance operated or controlled by the taxpayer during the taxable period and the total number of acres in each site;

(b) The kind and quantity of the solid minerals severed;

(c) The value of the severed resources at the point of severance;

(d) If claiming an ad valorem tax credit, copies of the ad valorem tax return and receipts for payment thereof; and

(e) Such other information as the department may require.

(2)(a) For the taxable year commencing January 1, 1978, and all subsequent taxable years, every taxpayer shall make a declaration of estimated tax for the taxable year, in such form as the department shall prescribe. The term "estimated tax" shall mean the amount the taxpayer estimates to be his tax under this part for the taxable year. A taxpayer may amend a declaration under regulations prescribed by the department.

(b) The declaration is required to be filed on or before the first day of the fifth month of the taxable year. The estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the required filing of the declaration; the second and third installments shall be paid on or before the first day of the seventh and tenth months

of the taxable year, respectively; and the fourth installment shall be paid on or before the first day of the next taxable year.

(c) If an amended declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect the increase or decrease in the estimated tax occasioned by such amendment.

(3)(a) For the taxable year commencing January 1, 1978, and all subsequent taxable years, the department shall determine the value of solid minerals by March 1 of the year following the close of the taxable year.

(b) The department shall provide by regulation for a credit against estimated taxes of any amount determined by the department to be an overpayment of the tax imposed by this part for the preceding tax year.

(c) Except as provided in subsection (5), the taxpayer shall pay the amount of any tax due for the preceding tax year by April 1.

(4) Any amount paid as estimated tax shall be deemed assessed upon the due date for the taxpayer's return for the taxable year.

(5)(a) Except as provided in paragraph (d), the taxpayer shall be liable for interest at the rate of 12 percent per year and for a penalty in an amount determined at the rate of 10 percent per year upon the amount of any underpayment of estimated tax determined under this subsection.

(b) For purposes of this subsection, the amount of any underpayment of estimated tax shall be the excess of:

1. The amount of the installment which would be required to be paid if the estimated tax were equal to 80 percent of the tax shown on the return for the taxable year or, if no return were filed, 80 percent of the tax for such year, over

2. The amount, if any, of the installment paid on or before the last date prescribed for payment.

(c) The period of the underpayment for which interest and penalties shall apply shall commence on the date the installment was required to be paid and shall terminate on the date on which the amount of underpayment is paid. For purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subparagraph (b)1. for such installment date.

(d) No penalty or interest for underpayment of any installment of estimated tax shall be imposed if the total amount of all such payments made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the lesser of:

1. An amount equal to 80 percent of the tax finally due for the taxable year; or

2. An amount equal to the tax shown on the taxpayer's return for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding year.

(6) The information contained in any tax return or declaration of any estimated taxes shall be confidential; however, this shall not be construed to prohibit the publication of statistics so classified as to prevent the identification of particular returns when more than one return is made by a particular segment of the industry and identification would adversely affect competitive conditions.

History.—s. 1, ch. 71-105; s. 4, ch. 75-40; s. 3, ch. 77-406; s. 94, ch. 79-400.

211.34 Local ordinances not preempted.—Nothing in this act shall be deemed to preempt local ordinances that impose stricter land reclamation standards.

History.—s. 5, ch. 75-40.

CHAPTER 212

TAX ON SALES, USE, AND OTHER TRANSACTIONS

212.01 Short title.—This chapter shall be known as the "Florida Revenue Act of 1949" and the taxes imposed herein shall be in addition to all other taxes imposed by law.

History.—s. 1, ch. 26319, 1949.

212.02 Definitions.—The following terms and phrases when used in this chapter, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and shall include any political subdivision, municipality, state agency, bureau or department, and the plural as well as the singular number.

(2) "Sale" means and includes:

(a) Any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

(b) The rental of living quarters, sleeping or housekeeping accommodations in hotels, apartment houses or roominghouses, tourist or trailer camps, as hereinafter defined in this chapter.

(c) The producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting.

(d) The furnishing, preparing, or serving for a consideration of any tangible personal property for consumption on or off the premises of the person furnishing, preparing, or serving such tangible personal property which includes the sale of meals or prepared food by an employer to his employees.

(e) A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price.

(3)(a) "Retail sale" or a "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property, and shall mean and include all such transactions that may be made in lieu of retail sales or sales at retail. A resale must be in strict compliance with rules and regulations and any dealer making a sale for resale which is not in strict compliance with rules and regulations shall himself be liable for and pay the tax.

(b) The terms "retail sales," "sales at retail," "use," "storage," and "consumption" shall include the sale, use, storage or consumption of all tangible advertising materials imported or caused to be imported into this state. Tangible advertising material shall include displays, display containers, brochures, catalogs, pricelists, point of sale advertising and technical manuals or any tangible personal property which does not accompany the product to the ultimate consumer.

(c) The terms "retail sales," "sale at retail," "use," "storage," and "consumption" shall not include materials, containers, labels, sacks, or bags intended to be used one time only for packaging tangible personal property for sale, and shall not include the sale, use, storage, or consumption of industrial materials for future processing, manufacture, or conversion into articles of tangible personal property for resale when such industrial materials become a component or ingredient of the finished product. However, said terms shall include the sale, use, storage, or consumption of tangible personal property, including fuels, used and dissipated in fabricating, converting, or processing tangible personal property for sale.

(d) The term "gross sales" means the sum total of all retail sales of tangible personal property as defined herein, without any deduction whatsoever of any kind or character, except as provided in this chapter.

(4) "Sales price" means the total amount paid for tangible personal property, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses or any other expense whatsoever. Sales price also includes the consideration for a transaction which requires both labor and material to alter, remodel, maintain, adjust or repair tangible personal property. Trade-ins or discounts allowed and taken at the time of sale shall not be included within the purview of this subsection.

(5) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor or service costs, transportation charges, or any expenses whatsoever.

(6) "Lease," "let," or "rental" means leasing or renting of living quarters, sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps and real property, the same being defined as follows:

(a) Every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where sleeping accommodations are supplied for pay to transient or permanent guests or tenants, in which ten or more rooms are furnished for the accommodation of such guests, and having one or more dining rooms or cafes where meals or lunches are served to such transient or permanent guests, such sleeping accommodations and dining rooms or cafes being conducted in the same building or buildings in connection therewith, shall, for the purpose of this chapter, be deemed a hotel.

(b) Any building or part thereof, where separate accommodations for two or more families living independently of each other are supplied to transient or permanent guests or tenants, shall for the purpose of this chapter be deemed an apartment house.

(c) Every house, boat, vehicle, motor court, trailer court or other structure or any place or location kept, used, maintained, advertised or held out to the public to be a place where living quarters or sleeping or housekeeping accommodations are supplied for pay to transient or permanent guests or tenants, whether in one or adjoining buildings, shall for the purpose of this chapter be deemed a roominghouse.

(d) In all hotels, apartment houses and roominghouses within the meaning of this chapter, the parlor, dining room, sleeping porches, kitchen, office and sample rooms shall be construed to mean "rooms."

(e) A "tourist camp" is a place where two or more tents, tent houses, or camp cottages are located and offered by a person or municipality for sleeping or eating accommodations, most generally to the transient public for either a direct money consideration or an indirect benefit to the lessor or owner in connection with a related business.

(f) A "trailer camp" is a place where space is offered, with or without service facilities, by any persons or municipality to the public for the parking and accommodation of two or more automobile trailers which are used for lodging, for either a direct money consideration or an indirect benefit to the lessor or owner in connection with a related business, such space being hereby defined as living quarters, and the rental price thereof shall include all service charges paid to the lessor.

(g) "Lease," "let," or "rental" also means the leasing or rental of tangible personal property and the possession or use thereof by the lessee or rentee for a consideration, without transfer of the title of such property, except as expressly provided to the contrary herein. Provided that, where two taxpayers, in connection with the interchange of facilities, rent or lease property, each to the other, for use in providing or furnishing any of the services mentioned in s. 167.431, the term "lease" or "rental" shall mean only the net amount of rental involved. The term "lease," "let," or "rental" does not mean hourly, daily, or mileage charges, to the extent that such charges are subject to the jurisdiction of the United States Interstate Commerce Commission, when such charges are paid by reason of the presence of railroad cars owned by another on the tracks of the taxpayer.

(h) "Real property" means any interest in the surface of real property unless said property is:

1. Assessed as agricultural property under s. 193.461.
2. Used exclusively as dwelling units.
3. Property subject to tax on parking, docking or storage spaces under s. 212.03(6).

(7) "Storage" means and includes any keeping or retention in this state of tangible personal property for use or consumption in this state, or for any purpose other than sale at retail in the regular course of business.

(8) "Use" means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, or interest therein, except that it shall not include the sale at retail of that property in the regular course of business.

(9) "Business" means any activity engaged in by any person, or caused to be engaged in by him, with the object of private or public gain, benefit, or advantage, either direct or indirect. Except for sales of motor vehicles, the term "business" shall not be con-

strued in this chapter to include occasional or isolated sales or transactions involving tangible personal property by a person who does not hold himself out as engaged in business, but shall include other charges for the sale or rental of tangible personal property, sales of or charges of admission, communication services, all rentals and leases of living quarters, other than low-rent housing operated under chapter 421, sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, and all rentals of real property, other than low-rent housing operated under chapter 421, all leases or rentals of parking lots or garages for motor vehicles, docking or storage spaces for boats in boat docks or marinas as defined in this chapter and made subject to a tax imposed by this chapter. Any tax on such sales, charges, rentals, admissions, or other transactions made subject to the tax imposed by this chapter shall be collected by the state, county, municipality, any political subdivision, agency, bureau, or department, or other state or local governmental instrumentality in the same manner as other dealers, unless specifically exempted by this chapter.

(10) "Retailer" means and includes every person engaged in the business of making sales at retail, or for distribution, or use, or consumption, or storage to be used or consumed in this state.

(11) The term "department" means the Department of Revenue.

(12) "Tangible personal property" means and includes personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses, including electric power or energy, boats, motor vehicles as defined in s. 320.01(1), aircraft as defined in s. 330.01, and all other types of vehicles. The term "tangible personal property" shall not include stocks, bonds, notes, insurance, or other obligations or securities; intangibles as defined by the intangible tax law of the state; or pari-mutuel tickets sold or issued under the racing laws of the state.

(13) The term "use tax" referred to in this chapter includes the use, the consumption, the distribution, and the storage as herein defined.

(14) The term "intoxicating beverages" or "alcoholic beverages" referred to in this chapter includes all such beverages as are so defined or may be hereafter defined by the laws of the state.

(15) The terms "cigarettes" or "tobacco" or "tobacco products" referred to in this chapter include all such products as are defined or may be hereafter defined by the laws of the state.

(16) The term "admissions" means and includes the net sum of money after deduction of any federal taxes for admitting a person or vehicle or persons to any place of amusement, sport, or recreation or for the privilege of entering or staying in any place of amusement, sport, or recreation, including but not limited to theaters, outdoor theaters, shows, exhibitions, games, races, or any place where charge is made by way of sale of tickets, gate charges, seat charges, box charges, season pass charges, cover charges, greens fees, participation fees, entrance fees, or other fees or receipts of anything of value measured on an admission or entrance or length of stay or seat box accommodations in any place where there is any exhibition, amusement, sport, or recreation, and all dues paid to private clubs providing recreational facilities, including but not limited to golf, tennis, swimming, yachting and boating facilities. The term "admissions" shall not mean or include charges for admission by any organization described in s. 170(c) of the Internal Revenue Code of 1954, as amended, to live performances of ballet, dance, or choral performances, concerts (instrumental and vocal), plays (with and without music), operas, and readings, ocean science centers, museums of science, historical museums, and botanical and zoological gardens, and exhibitions of paintings, sculpture, photography, and graphic and craft arts.

(17) "In this state" or "in the state" means within the exterior limits of Florida and includes all territory within these limits owned by or ceded to the United States.

(18) "Nurseryman" or "grower" means any person engaged in the production of nursery stock or horticultural plants.

(19) "Solar energy system" means equipment and requisite hardware which provide and are used for the collection, transfer, storage, and use of incident solar energy for water heating, space heating, cooling, or other application which would otherwise require the use of a conventional source of energy such as petroleum products, natural gas, manufactured gas, or electricity. This subsection is repealed effective June 30, 1984.

History.—s. 2, ch. 26319, 1949; ss. 1-3, ch. 26871, 1951; s. 1, ch. 29883, 1955; s. 13, ch. 59-1; ss. 1-4, ch. 59-288; s. 3, ch. 61-274; s. 1, ch. 63-526; s. 7, ch. 63-253; ss. 1-3, ch. 65-329; s. 5, ch. 65-371; s. 2, ch. 65-420; s. 1, ch. 67-180; ss. 1, 2, ch. 68-27; s. 1, ch. 68-119; ss. 21, 35, ch. 69-106; ss. 1-3, ch. 69-222; s. 1, ch. 70-206; s. 1, ch. 71-360; s. 47, ch. 71-377; s. 2, ch. 71-986; s. 3, ch. 73-240; s. 1, ch. 76-7; s. 1, ch. 77-174; s. 1, ch. 77-412; s. 1, ch. 78-250; ss. 1, 3, ch. 79-339; s. 1, ch. 79-359.

212.03 Transient rentals tax; rate, procedure, enforcement, exemptions, etc.—

(1) It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing, or letting any living quarters, sleeping or housekeeping accommodations in, from, or a part of, or in connection with any hotel, apartment house, roominghouse, tourist or trailer camp, as hereinbefore defined in this chapter. For the exercise of said privilege a tax is hereby levied as follows: in the amount equal to 4 percent of and on the total rental charged for such living quarters, sleeping or housekeeping accommodations by the person charging or collecting the rental; provided that such tax shall apply to hotels, apartment houses, roominghouses, tourist or trailer camps, as hereinbefore defined in this chapter, whether or not there be in connection with any of the same, any dining rooms, cafes, or other places where meals or lunches are sold or served to guests.

(2) The tax provided for herein shall be in addition to the total amount of the rental and shall be charged by the lessor or person receiving the rent in and by said rental arrangement to the lessee or person paying the rental, and shall be due and payable at the time of the receipt of such rental payment by the lessor or person, as defined in this chapter, who receives said rental or payment. The owner, lessor, or person receiving the rent shall remit the tax to the department at the times and in the manner here-

inafter provided for dealers to remit taxes under this chapter. The same duties imposed by this chapter upon dealers in tangible personal property respecting the collection and remission of the tax, the making of returns, the keeping of books, records, and accounts and the compliance with the rules and regulations of the department in the administration of this chapter shall apply to and be binding upon all persons who manage or operate hotels, apartment houses, roominghouses, tourist and trailer camps, and the rental of condominium units, and to all persons who collect or receive such rents on behalf of such owner or lessor taxable under this chapter.

(3) Where rentals are received by way of property, goods, wares, merchandise, services or other things of value, the tax shall be at the rate of 4 percent of the value of said property, services or other things of value.

(4) The tax levied by this section shall not apply to, be imposed upon, or collected from any person who shall have entered into a bona fide written lease for longer than 6 months in duration for continuous residence at any one hotel, apartment house, roominghouse, tourist or trailer camp, or condominium, or to any person who shall reside continuously longer than 6 months at any one hotel, apartment house, roominghouse, tourist or trailer camp, or condominium and shall have paid the tax levied by this section for 6 months of residence in any one hotel, roominghouse, apartment house, tourist or trailer camp, or condominium. Notwithstanding other provisions of this chapter, no tax shall be imposed upon rooms provided guests when there is no consideration involved between the guest and the public lodging establishment. Further, any person who, on the effective date of this act, has resided continuously for 6 months at any one hotel, apartment house, roominghouse, tourist or trailer camp, or condominium, or, if less than 6 months, has paid the tax imposed herein until he shall have resided continuously for 6 months, shall thereafter be exempt, so long as such person shall continuously reside at such location. The Department of Revenue shall have the power to reform the rental contract for the purposes of this chapter if the rental payments are collected in other than equal daily, weekly, or monthly amounts so as to reflect the actual consideration to be paid in the future for the right of occupancy during the first 6 months.

(5) The tax imposed by this section shall constitute a lien on the property of the lessee or rentee of any sleeping accommodations in the same manner as and shall be collectible as are liens authorized and imposed by ss. 713.68 and 713.69.

(6) It is the legislative intent that every person is engaging in a taxable privilege who leases or rents parking or storage spaces for motor vehicles in parking lots or garages or who leases or rents docking or storage spaces for boats in boat docks or marinas. For the exercise of this privilege a tax is hereby levied at the rate of 4 percent on the total rental charged.

(7)(a) Full-time students enrolled in an institution offering postsecondary education and military personnel currently on active duty who reside in the facilities described in subsection (1) shall be exempt from the tax imposed by this section. The department shall be empowered to determine what shall be deemed acceptable proof of full-time enrollment. The exemption contained in this subsection shall apply irrespective of any other provisions of this section. The tax levied by this section shall not apply to or be imposed upon or collected on the basis of rentals to any person who resides in any building or group of buildings intended primarily for lease or rent to persons as their permanent or principal place of residence.

(b) It is the intent of the Legislature that this subsection provide tax relief for persons who rent living accommodations rather than own their homes, while still providing a tax on the rental of lodging facilities that primarily serve transient guests.

(c) The rental of facilities, including trailer lots, which are intended primarily for rental as a principal or permanent place of residence is exempt from the tax imposed by this chapter. The rental of facilities that primarily serve transient guests is not exempt by this subsection. In the application of this law, or in making any determination against the exemption, the department shall consider and be guided by, among other things:

1. Whether or not a facility caters primarily to the traveling public;

2. Whether less than half of the total rental units available are occupied by tenants who have a continuous residence in excess of 3 months; and

3. The nature of the advertising of the facility involved.

(d) The provisions of this subsection shall become effective March 1, 1972, but shall not be construed to exempt taxes on rentals paid, or for services received, prior to March 1, 1972.

(e) The rental of living accommodations in migrant labor camps is not taxable under this section. "Migrant labor camps" are defined as one or more buildings or structures, tents, trailers, or vehicles, or any portion thereof, together with the land appertaining thereto, established, operated, or used as living quarters for seasonal, temporary, or migrant workers.

History.—s. 3, ch. 26319, 1949; s. 4, ch. 26871, 1951; ss. 2, 3, ch. 29883, 1955; ss. 2, 7, ch. 63-526; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; s. 3, ch. 68-27; s. 2, ch. 68-119; ss. 4, 5, ch. 69-222; s. 15, ch. 69-353; ss. 21, 35, ch. 69-106; s. 1, ch. 71-986; s. 2, ch. 79-359.

cf.—Ch. 85 Enforcement of statutory liens.

212.031 Lease or rental of real property.—

(1)(a) It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing, or letting any real property unless such property is:

1. Assessed as agricultural property under s. 193.461.

2. Used exclusively as dwelling units.

3. Property subject to tax on parking, docking or storage spaces under s. 212.03(6).

(b) When a lease involves multiple use of real property wherein a part of the real property is subject to the commercial rental tax herein, and a part of the property would be excluded from the tax under subparagraphs 1., 2., or 3. of paragraph (a), the department shall determine from the lease and such other information as may be available, that portion

of the total rental charge which is exempt from the tax imposed by this section.

(c) For the exercise of such privilege a tax is levied in the amount equal to 4 percent of and on the total rent charged for such real property by the person charging or collecting the rental.

(d) Where the rental of any such real property is paid by way of property, goods, wares, merchandise, services or other thing of value, the tax shall be at the rate of 4 percent of the value of the property, services or other things of value.

(2)(a) The tenant actually occupying, using or entitled to the use of any property the rental from which is subject to taxation under this section shall pay the tax to his immediate landlord or other person granting the right to such tenant to occupy or use such real property.

(b) It is the further intent of this Legislature that only one tax be collected on the rental payable for the occupancy or use of any such property and that the tax so collected shall not be pyramided by a progression of transactions and further that the amount of the tax due the state shall not be decreased by any such progression of transactions.

(3) The tax imposed by this section shall be in addition to the total amount of the rental and shall be charged by the lessor or person receiving the rent in and by a rental arrangement with the lessee or person paying the rental and shall be due and payable at the time of the receipt of such rental payment by the lessor or other person who receives said rental or payment. The owner, lessor or person receiving the rent shall remit the tax to the department at the times and in the manner hereinafter provided for dealers to remit taxes under this chapter. The same duties imposed by this chapter upon dealers in tangible personal property respecting the collection and remission of the tax, the making of returns, the keeping of books, records and accounts and the compliance with the rules and regulations of the department in the administration of this chapter shall apply to and be binding upon all persons who manage any leases or operate real property, hotels, apartment houses, roominghouses, tourist and trailer camps, and to all persons who collect or receive such rents on behalf of such owner or lessor taxable under this chapter.

(4) The tax imposed by this section shall constitute a lien on the property of the lessee of any real estate in the same manner as, and shall be collectible as are liens authorized and imposed by ss. 713.68 and 713.69.

(5) No money paid to a merchants' association by a lessee shall be considered rent for the purposes of this section, whether or not the payment of the money to the association is a condition of the lease. As used in this subsection, "merchants' association" means a corporation not for profit organized and existing for the sole and exclusive purpose of promoting the businesses of a group of merchants.

(6) When space is subleased to a convention or industry trade show in a convention hall, exhibition hall, or auditorium, whether publicly or privately owned, the sponsor who holds the prime lease is subject to tax on the prime lease and the sublease shall be exempt.

History.—s. 6, ch. 69-222; ss. 21, 35, ch. 69-106; s. 3, ch. 71-986; s. 2, ch. 77-194; s. 1, ch. 78-107; s. 95, ch. 79-400.

212.04 Admissions tax; rate, procedure, enforcement, etc.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who sells or receives anything of value, by way of admissions. For the exercise of said privilege a tax is levied as follows:

(1) At the rate of 4 percent of sales price, or the actual value received from such admissions said 4 percent to be added and collected with all such admissions from the purchaser thereof and such tax shall be paid for the exercise of the privilege as defined in the preceding paragraph. Each ticket shall reflect on its face the actual sales price of admission and the tax shall be computed and collected on the basis of each such admission price.

(2)(a) The sale price or actual value of admissions shall, for the purpose of this chapter, be that price remaining after deduction of federal taxes, if any, imposed upon said admission and the rate of tax on each admission shall be according to the brackets established by s. 212.12(10).

(b)1. No tax shall be levied on admissions to athletic or other events held by elementary schools, junior high schools, middle schools, high schools, community colleges, deaf and blind schools, facilities of the youth services programs of the Department of Health and Rehabilitative Services, and state correctional institutions when only student, faculty, or inmate talent is utilized.

2. No tax shall be levied on dues, membership fees, and admission charges imposed by not-for-profit sponsoring organizations or community or recreational facilities. To receive this exemption, the sponsoring organization or facility must qualify as a not-for-profit entity under the provisions of s. 501(c)(3) of the United States Internal Revenue Code of 1954, as amended.

(c) No municipality of the state shall hereafter levy an excise tax on admissions.

(d) The taxes imposed by this section shall be collected in addition to the admission tax collected pursuant to s. 550.09, but the amount collected under s. 550.09 shall not be subject to taxation under this chapter.

(3) Such taxes shall be paid and remitted at the same time and in the same manner as provided for remitting taxes on sales of tangible personal property, as hereinafter provided.

(4) Each person, who, after November 1, 1949, exercises the privilege of charging admission taxes, as herein defined, shall apply for and at that time shall furnish the information and comply with the provisions of s. 212.18, not inconsistent herewith and receive from the department a certificate of right to exercise such privilege, which certificate shall apply to each place of business where such privilege is exercised, and shall be in the manner and form prescribed by the department. Such certificate shall be issued upon payment to the department of a registration fee of $1 by the applicant. Each person exercising the privilege of charging such admission taxes as herein defined shall cause such records and ac-

s showing the admission which shall be in the as the department may from time to time pre-be, inclusive of records of all tickets numbered d issued for a period of not less than 3 years, and nclusive of all bills or checks of customers who are charged any of the taxes defined herein, showing the charge made to each for a period of not less than 3 years. The department shall be empowered to use each and every one of the powers granted herein to the department to discover the amount of tax to be paid by each such person and to enforce the payment thereof as are hereby granted the department for the discovery and enforcement of the payment of taxes hereinafter levied on the sales of tangible personal property. The failure of any person to pay such taxes before the twenty-first day of the succeeding month after the same are collected shall render such person liable to the same penalties that are hereafter imposed upon such person for being delinquent in the payment of taxes imposed upon the sales of tangible personal property, and the failure of any person to render returns and to pay taxes as prescribed herein shall render such person subject to the same penalties, by way of charges for delinquencies, at the rate of 5 percent per month for a total amount of tax delinquent up to a total of 25 percent of such tax, and at the rate of 50 percent penalty for attempted evasion of payment of any such tax, or for any attempt to file false or misleading returns that are required to be filed by the department.

(5) All of the provisions of this chapter relating to collection, investigation, discovery and aids to collection of taxes upon sales of tangible personal property shall likewise apply to all privileges described or referred to in this section, and the obligations imposed in this chapter upon "retailers" are hereby imposed upon the seller of such admissions. Where tickets or admissions are sold and not used but returned and credited by the seller, the seller may apply to the department for a credit allowance for such returned tickets or admissions where advance payments have been made by the buyer and have been returned by the seller upon such form and in such manner as the department may from time to time prescribe, and the department may upon obtaining satisfactory proof of the refunds on the part of seller credit the seller for taxes paid upon admissions that have been returned unused to the purchaser of those admissions. The seller of admissions upon the payment of the taxes before they become delinquent and the rendering of the returns in accordance with the requirement of the department, and as provided in this law, shall be entitled to a discount of 3 percent of the amount of taxes upon the payment of the same before the same become delinquent, in the same manner as permitted the sellers of tangible personal property in this chapter.

(6) Admission taxes required to be paid by this chapter shall be paid to the department by the owner or the collector of such admission, and where any place of business is sold or transferred by any owner, wherein such admission taxes have or are accruing, such owner shall be obligated before such sale becomes effective to notify the department of such pending sale and secure from the department a certificate of registration as prescribed in this section, and the purchaser shall become obligated to withhold from the sales price such sum of money as will safely be required to discharge all accrued admission taxes upon such places of business, and upon the failure of any such purchaser to withhold, he shall become obligated to pay all accrued admission taxes, and the same shall become a lien upon all of the purchaser's assets until the same have been paid and fully discharged.

(7) The taxes under this section shall become a lien upon the assets of the owner of any business exercising the privilege of selling admissions, and the collection of such admissions, as defined hereunder, and shall remain a lien until fully paid and discharged, and such lien may be enforced in the manner provided hereinafter for the enforcement of the collection of taxes imposed upon the sales of tangible personal property.

(8) The word "owners" as used in this chapter shall be taken to include and mean all persons obligated to collect and pay over to the state the tax imposed under this section, inclusive of all holders of certificates of registration issued as herein provided, and wherever the words "owner" or "owners" are used herein it shall be taken to mean and include all persons liable for such admission taxes unless and except it appears from the context that the words are descriptive of property owners.

History.—s. 4, ch. 26319, 1949; ss. 5, 6, ch. 26871, 1951; s. 4, ch. 29883, 1955; s. 2, ch. 57-109; s. 2, ch. 61-274; s. 3, ch. 63-526; s. 7, ch. 63-253; s. 4, ch. 65-329; s. 5, ch. 65-371; s. 2, ch. 65-420; s. 2, ch. 67-180; s. 4, ch. 68-27; s. 7, ch. 69-222; ss. 21, 35, ch. 69-106; s. 1, ch. 72-220; s. 1, ch. 74-126; s. 35, ch. 77-147; s. 2, ch. 78-220; s. 4, ch. 79-359.

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state. For the exercise of said privilege a tax is levied on each taxable transaction or incident and shall be due and payable, according to the brackets set forth in s. 212.12(10), as follows:

(1)(a) At the rate of 4 percent of the sales price of each item or article of tangible personal property when sold at retail in this state, the tax to be computed on each taxable sale for the purpose of remitting the amount of tax due the state, and to include each and every retail sale.

(b) Occasional or isolated sales of aircraft, boats, and motor vehicles of a class or type which is required to be registered, licensed, titled, or documented in this state or by the United States Government shall be subject to tax at the rate provided in this subsection.

(c) This subsection shall not apply to the sale of a boat by or through a registered dealer under this chapter to a purchaser who removes such boat from this state within 10 days after the date of purchase or, when the boat is repaired or altered, within 10 days after completion of such repairs or alterations. In no event shall the boat remain in this state more than 90 days after the date of purchase. This exemption shall not be allowed unless the seller:

1. Obtains from the purchaser within 90 days from the date of sale written proof that the purchaser licensed, registered, or documented the boat outside of the state;

2. Requires the purchaser to sign an affidavit that he has read the provisions of this section; and

3. Makes the affidavit a part of his permanent record.

In the event the purchaser fails to remove the boat from this state within 10 days after purchase or, when the boat is repaired or altered, within 10 days after completion of such repairs or alterations, or permits the boat to return to this state within 6 months from date of departure, the purchaser shall be liable for use tax on the cost price of the boat and, in addition thereto, payment of a penalty to the Department of Revenue equal to the tax payable. This penalty shall be in lieu of the penalty imposed by s. 212.12(2) and is mandatory and shall not be waived by the department.

(2) At the rate of 4 percent of the cost price of each item or article of tangible personal property when the same is not sold but is used, consumed, distributed or stored for use or consumption in this state.

(3) At the rate of 4 percent of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein, except the rental of motion-picture film where an admission is charged for viewing such film and the lease or rental of a motor vehicle to one lessee or rentee for a period of not less than 12 months where tax was paid on the acquisition of such vehicle by the lessor, where the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to said business.

(4) At the rate of 4 percent of the lease or rental price paid by lessee or rentee, or contracted or agreed to be paid by lessee or rentee, to the owner of the tangible personal property.

(5) At the rate of 4 percent on charges for all telegraph messages and long distance telephone calls beginning and terminating in this state; on recurring charges to regular subscribers for local telephone service and for wired television service; on all charges for the installation of telephonic, wired television, and telegraphic equipment; and, at the same rate, on all charges for electrical power or energy. Telephone and telegraph services originating within this state and completed outside this state or originating outside this state and completed within this state are not taxable. The provisions of s. 212.17(3), regarding credit for tax paid on charges subsequently found to be worthless, shall be equally applicable to any tax paid under the provisions of this section on charges for telephone and telegraph services and electric power subsequently found to be uncollectible. The word "charges" in this subsection shall not include any excise or similar tax levied by the federal government, any political subdivision of the state, or any municipality upon the purchase or sale of telephone, wired television or telegraph service, or electric power, which tax is collected by the seller from the purchaser.

(6) At the rate of 4 percent on the sale, rental, use, consumption, or storage for use in this state of machines and equipment and parts and accessories therefor used in manufacturing, processing, compounding, producing, mining, or quarrying personal property for sale or to be used in furnishing communications, transportation or public utility services. However, in the case of any written agreement executed prior to July 1, 1971, which became binding before the effective date of this act, for the sale, rental, use, consumption, or storage for use in this state of such property, the dealer making such agreement and paying the tax, or his assigns, may apply to the department within 3 years after the effective date of this act and, upon furnishing sworn proof of the existence of such binding written agreement and of the payment of such taxes, shall obtain a refund of 25 percent of the tax paid with respect to such property.

(7) The said tax shall be collected by the dealer as defined herein and remitted by him to the state at the time and in the manner as hereinafter provided.

(8) The tax so levied is and shall be in addition to all other taxes, whether levied in the form of excise, license or privilege taxes, and shall be in addition to all other fees and taxes levied.

History.—s. 5, ch. 26319, 1949; s. 3, ch. 59-289; s. 4, ch. 63-526; ss. 5, 6, ch. 68-27; ss. 8, 9, ch. 69-222; s. 4, ch. 71-360; s. 1, ch. 76-6; s. 2, ch. 78-74.

212.051 Equipment or machinery for pollution control; subject to sales or use tax.—Notwithstanding any provision to the contrary, sales, use, or privilege taxes shall be collected with respect to any facility, device, fixture, equipment or machinery used primarily for the control or abatement of pollution or contaminants from manufacturing or industrial plants or installations, and any structure, machinery or equipment installed in the reconstruction or replacement of such facility, device, fixture, equipment or machinery.

History.—s. 22, ch. 69-222.

212.055 Discretionary tax; charter counties; administration and collection.—

(1) Each charter county which adopted a charter prior to June 1, 1976, may levy, subject to the provisions of s. 125.0165 [F. S. 1976 Supp.], a discretionary 1 percent tax on all 4 percent taxable transactions under the provisions of this chapter, except that the sales amount above $1,000 of any one transaction shall not be taxable.

(2) The department shall administer and collect the tax authorized under the provisions of this section in the same manner and pursuant to the same procedures utilized with respect to the administration and collection of the tax otherwise imposed under the provisions of this chapter. The receipts of any tax levied under the provisions of this section shall be distributed by the department on a regular and periodic basis to the governing authority of the county which levies the tax.

History.—s. 2, ch. 76-284.

212.06 Sales, storage, use tax; collectible from dealers; dealers defined; dealers to collect from purchasers; legislative intent as to scope of tax.—

(1)(a) The aforesaid tax at the rate of 4 percent of

the retail sales price as of the moment of sale, 4 percent of the cost price as of the moment of purchase or 4 percent of the cost price as of the moment of commingling with the general mass of property in this state, as the case may be, shall be collectible from dealers as herein defined on the sale at retail, the use, the consumption, the distribution and the storage for use or consumption in this state, of tangible personal property. The full amount of the tax upon credit sales, installment sales, and sales made on any kind of deferred payment plan shall be due at the moment of the transaction in the same manner as a cash sale.

(b) Any person who manufactures, produces, compounds, processes or fabricates in any manner tangible personal property for his own use shall pay tax upon the cost of the product manufactured, produced, compounded, processed or fabricated without any deduction therefrom on account of the cost of material used, labor or service costs or transportation charges, notwithstanding the provisions of s. 212.02(5) defining "cost price." However, fabrication labor shall not be taxable when a person is using his own equipment and his own personnel, for his own account, as a producer, subproducer, or coproducer of video tapes or motion pictures prepared for showing on screens or through television, for either theatrical, commercial, advertising, or educational purposes.

(2)(a) The term "dealer" as used in this chapter shall include every person who manufactures or produces tangible personal property for sale at retail, for use, consumption or distribution, or for storage to be used or consumed in this state.

(b) The term "dealer" is further defined to mean every person, as used in this chapter, who imports or causes to be imported, tangible personal property from any state or foreign country, for sale at retail, for use, or consumption, or distribution, or for storage to be used or consumed in this state.

(c) The term "dealer" is further defined to mean every person, as used in this chapter, who sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use, or consumption, or distribution, or storage to be used or consumed in this state, tangible personal property as defined herein.

(d) The term "dealer" is further defined to mean any person who has sold at retail, or used, or consumed, or distributed, or stored for use or consumption in this state, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of said tangible personal property.

(e) The term "dealer" is further defined to mean any person, as used in this chapter, who leases or rents tangible personal property, as defined in this chapter, for a consideration, permitting the use or possession of said property without transferring title thereto, except as expressly provided for to the contrary herein.

(f) The term "dealer" is further defined to mean any person as used in this chapter, who maintains or has within this state, directly or by a subsidiary, an office, distributing house, salesroom, or house, warehouse or other place of business.

(g) "Dealer" also means and includes every person who solicits business either by direct representatives, indirect representatives, manufacturers' agents, or by distribution of catalogs or other advertising matter or by any other means whatsoever and by reason thereof receives orders for tangible personal property from consumers, for use, consumption, distribution and storage for use or consumption in the state, and such dealer shall collect the tax imposed by this chapter from the purchaser and no action either in law or in equity on a sale or transaction as provided by the terms of this chapter may be had in this state by any such dealer unless it be affirmatively shown that the provisions of this chapter have been fully complied with.

(h) "Dealer" also means and includes every person who, as a representative, agent, or solicitor, of an out-of-state principal or principals, solicits, receives and accepts orders from consumers in the state for future delivery and whose principal refuses to register as a dealer.

(i) "Dealer" also means and includes the state, county, municipality, any political subdivision, agency, bureau or department or other state or local governmental instrumentality.

(j) The term "dealer" is further defined to mean any person who has leased living quarters, sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, real property, space or spaces in parking lots or garages for motor vehicles or docking or storage space or spaces for boats in boat docks or marinas, or who has purchased communication services or electric power or energy, and who cannot prove that the tax levied by this chapter has been paid to the vendor or lessor on any such transactions.

(3) Every dealer making sales, whether within or outside the state, of tangible personal property, for distribution, storage, or use or other consumption, in this state, shall at the time of making sales, collect the tax imposed by this chapter from the purchaser.

(4) On all tangible personal property imported or caused to be imported from other states, territories, the District of Columbia, or any foreign country, and used by him, the dealer as herein defined, shall pay the tax imposed by this chapter on all articles of tangible personal property so imported and used, the same as if the said articles had been sold at retail for use or consumption in this state. For the purposes of this chapter, the use, or consumption, or distribution, or storage to be used or consumed in this state of tangible personal property, shall each be equivalent to a sale at retail, and the tax shall thereupon immediately levy and be collected in the manner provided herein, provided there shall be no duplication of the tax in any event.

(5)(a) It is not the intention of this chapter to levy a tax upon tangible personal property imported, produced or manufactured in this state for export, provided that tangible personal property shall not be considered as being imported, produced or manufactured for export unless the importer, producer or manufacturer delivers the same to a licensed exporter for exporting, or to a common carrier for shipment outside the state or mails the same by United States

mail to a destination outside the state; or in the case of aircraft being exported under their own power to a destination outside the continental limits of the United States, or in the case of parts and equipment installed on aircraft of foreign registry, by submission to the department of duly authenticated copies of an aircraft manifest and a duly signed and validated United States customs declaration, each showing the departure of the aircraft and the export of the parts and equipment from the continental United States; and further with respect to aircraft, the canceled United States registry of said aircraft; nor is it the intention of this chapter to levy a tax on radio and television broadcasting, or any sale which the state is prohibited from taxing under the constitution or laws of the United States. Every retail sale made to a person physically present at the time of sale shall be presumed to have been delivered in this state.

(b) It is not the intention of this chapter to levy a tax upon the sale, use, storage, consumption, or distribution in this state, whether by the importer, exporter, or another person, of any telecommunications satellite or any associated launch vehicle, including components of, and parts and motors for, any such satellite or launch vehicle, imported or caused to be imported into this state for the purpose of export by means of launching into space. This intention is not affected by:

1. The destruction in whole or in part of the satellite or launch vehicle.
2. The failure of a launch to occur or be successful.
3. The absence of any transfer of title to, or possession of, the satellite or launch vehicle after launch.
4. Anything in this chapter to the contrary.

(6) It is however, the intention of this chapter to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this state of tangible personal property after it has come to rest in this state and has become a part of the mass property of this state.

(7) The provisions of this chapter shall not apply in respect to the use or consumption of tangible personal property, or distribution or storage of tangible personal property for use or consumption in this state, upon which a like tax equal to or greater than the amount imposed by this chapter has been lawfully imposed and paid in another state. The proof of payment of such tax shall be made according to rules and regulations of the department. If the amount of tax paid in another state is not equal to or greater than the amount of tax imposed by this chapter, then the dealer shall pay to the department an amount sufficient to make the tax paid in the other state and in this state equal to the amount imposed by this chapter.

(8) Use tax will apply and be due on tangible personal property imported or caused to be imported into this state for use, consumption, distribution or storage to be used or consumed in this state; provided, however, that it shall be presumed that tangible personal property used in another state for 6 months or longer before being imported into this state was not purchased for use in this state. The rental or lease of tangible personal property which is used or stored in this state shall be taxable without regard to its prior use or tax paid on purchase outside this state.

(9) The taxes imposed by this chapter shall not apply to the use, sale or distribution of religious publications, bibles, hymn books, prayer books, vestments, altar paraphernalia, sacramental chalices and like church service and ceremonial raiments and equipment.

(10) No title certificate shall be issued on any boat or any vehicle, or, if no title is required by law, no license or registration shall be issued for any boat or vehicle, unless there be filed with such application for title certificate or license or registration certificate a receipt issued by an authorized dealer or a designated agent of the Department of Revenue, evidencing the payment of the tax imposed by this chapter where the same is payable. For the purpose of enforcing this provision, all county tax collectors and all persons or firms authorized to sell or issue boat and vehicle licenses are hereby designated agents of the department and are required to perform such duty in the same manner and under the same conditions prescribed for their other duties by the constitution or any statute of this state. All transfers of title to boats, motor vehicles, and all other vehicles are presumed to be taxable transactions until otherwise shown.

History.—s. 6, ch. 26319, 1949; ss. 7, 8, ch. 26871, 1951; s. 5, ch. 29883, 1955; ss. 1, 2, ch. 59-397; ss. 1, 2, ch. 59-289; s. 1, ch. 61-275; s. 1, ch. 61-279; s. 7, ch. 63-253; s. 1, ch. 65-392; s. 5, ch. 65-329; s. 5, ch. 65-371; s. 2, ch. 65-420; s. 3, ch. 67-180; s. 7, ch. 68-27; s. 3, ch. 68-119; ss. 21, 35, ch. 69-106; s. 10, ch. 69-222; ss. 1, 2, ch. 69-383; s. 1, ch. 70-373; s. 5, ch. 71-360; s. 1, ch. 74-32.

212.07 Sales, storage, use tax; tax added to purchase price; dealer not to absorb; liability of purchasers who cannot prove payment of the tax; penalties; general exemptions.—

(1) The privilege tax herein levied measured by retail sales shall be collected by the dealers from the purchaser or consumer.

(2) Dealers shall, as far as practicable, add the amounts of the tax imposed under this chapter to the sale price and the tax shall be separately stated as Florida tax on any charge tickets, sales slips, invoices or other tangible evidence of sale, and such tax shall constitute a part of such price, charge or proof of sale which shall be a debt from the purchaser or consumer to the dealer, until paid, and shall be recoverable at law in the same manner as other debts. Any dealer who shall neglect, fail or refuse to collect the tax herein provided upon any, every and all retail sales made by him or his agents or employees of tangible personal property which is subject to the tax imposed by this chapter shall be liable for and pay the tax himself.

(3) Any dealer who shall fail, neglect or refuse to collect the tax herein provided, either by himself or through his agents or employees, shall, in addition to the penalty of being liable for and paying the tax himself, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) A dealer engaged in any business taxable under this chapter shall not advertise or hold out to the public, in any manner, directly or indirectly, that he will absorb all or any part of the tax, or that he will

relieve the purchaser of the payment of all or any part of the tax, or that the tax will not be added to the selling price of the property sold or released or when added that it or any part thereof will be refunded either directly or indirectly by any method whatsoever. A person who violates this provision with respect to advertising or refund shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A second or subsequent offense shall constitute a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) The gross proceeds derived from the sale in this state of livestock, poultry and other farm products, direct from the farm are exempted from the tax levied by this chapter, provided that such sales are made directly by the producers. The producers shall be entitled to such exemptions although said livestock so sold in this state may have been registered with a breeders or registry association prior to said sale and although said sale takes place at a livestock show or race meeting, so long as said sale is made by the original producer and within this state. When sales of livestock, poultry or other farm products are made to consumers by any person, as defined herein, other than a producer, they are not exempt from the tax imposed by this chapter. The foregoing exemption shall not apply to ornamental nursery stock offered for retail sale by the producer.

(6) It is specifically provided that the "use tax" as defined herein shall not apply to livestock and livestock products, to poultry and poultry products, to farm and agricultural products, when produced by the farmer and used by him and members of his family and his employees on the farm.

(7) Provided, however, that each and every agricultural commodity sold by any person, other than a producer, to any other person who purchases not for direct consumption but for the purpose of acquiring raw products for use or for sale in the process of preparing, finishing, or manufacturing such agricultural commodity for the ultimate retail consumer trade shall be and is exempted from any and all provisions of this chapter, including payment of the tax applicable to the sale, storage, use, transfer or any other utilization or handling thereof, except when such agricultural commodity is actually sold as a marketable or finished product to the ultimate consumer, and in no case shall more than one tax be exacted.

(8) The term agricultural commodity, for the purposes hereof, shall mean horticultural, poultry and farm products, and livestock and livestock products.

(9) Any person who has purchased at retail, used, consumed, distributed, or stored for use or consumption in this state tangible personal property, admissions, communication services, or leased tangible personal property, or who has leased any commercial offices or buildings, real property, space or spaces in parking lots or garages for motor vehicles or docking or storage space, or spaces for boats in boat docks or marinas and cannot prove that the tax levied by this chapter has been paid to his vendor or lessor shall be directly liable to the state for any tax, interest, or penalty due on any such taxable transactions.

History.—s. 7, ch. 26319, 1949; s. 1, ch. 28297, 1953; s. 1, ch. 61-276; s. 6, ch. 65-329; s. 4, ch. 68-119; s. 11, ch. 69-222; s. 123, ch. 71-136; s. 6, ch. 71-360.

212.08 Sales, rental, storage, use tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following tangible personal property are hereby specifically exempt from the tax imposed by this chapter.

(1) EXEMPTIONS; GENERAL GROCERIES.—There shall be exempt from the tax imposed by this chapter foods and drinks for human consumption and candy, but only when the price at which said candy is sold is 25 cents or less. Unless the exemption provided by subsection (7)(b) for school lunches or the exemption provided by subsection (7)(l) for meals provided by certain nonprofit organizations pertains, none of such items of food and drink shall mean:

(a) Foods and drinks served, prepared, or sold in or by restaurants, drugstores, lunch counters, cafeterias, hotels, or other like places of business or by any business or place required by law to be licensed by the Division of Hotels and Restaurants of the Department of Business Regulation;

(b) Foods and drinks sold ready for immediate consumption from vending machines, pushcarts, motor vehicles, or any other form of vehicle;

(c) Soft drinks; or

(d) Foods cooked and prepared on the seller's premises and sold ready for immediate consumption either on or off the premises.

(2) EXEMPTIONS, MEDICAL.—

(a) There shall be exempt from the tax imposed by this chapter medicine compounded in a retail establishment by a pharmacist licensed by the state, according to an individual prescription or prescriptions written by a practitioner of the healing arts licensed by the state, and common household remedies recommended and generally sold for the relief of pain, ailments, distress, or disorders of the human body, according to a list prescribed and approved by the Department of Health and Rehabilitative Services, which said list shall be certified to the Department of Revenue from time to time and be included in the rules promulgated by the Department of Revenue. There shall also be exempt from the tax imposed by this chapter artificial eyes and limbs; eyeglasses; dentures; hearing aids; crutches; prosthetic and orthopedic appliances; feminine hygiene products, including, but not limited to, sanitary panties, sanitary belts, sanitary napkins, and tampons; and funerals. Funeral directors shall pay tax on all tangible personal property used by them in their business.

(b) For the purposes of this subsection, the term prosthetic and orthopedic appliances means any apparatus, instrument, device, or equipment used to replace or substitute for any missing part of the body, to alleviate the malfunction of any part of the body, or to assist any disabled person in leading a normal life by facilitating such person's mobility. Such apparatus, instrument, device, or equipment shall be exempted according to a list prescribed and

approved by the Department of Health and Rehabilitative Services, which list shall be certified to the Department of Revenue from time to time and be included in the rules promulgated by the Department of Revenue. This subsection shall be strictly construed and enforced.

(3) EXEMPTIONS, PARTIAL; CERTAIN FARM EQUIPMENT.—There shall be taxable at the rate of 3 percent the sale, use, consumption, or storage for use in this state of self-propelled or power-drawn farm equipment used exclusively by a farmer on a farm owned, leased, or sharecropped by him in plowing, planting, cultivating, or harvesting crops. The rental of self-propelled or power-drawn farm equipment shall be taxed at the rate of 4 percent.

(4) EXEMPTIONS, ITEMS BEARING OTHER EXCISE TAXES, ETC.—Also exempt are water (not exempting mineral water or carbonated water); all fuels used by a public or private utility, including municipal corporations and rural electric cooperative associations, in the generation of electric power or energy for sale; and motor fuels and special fuels on which a tax is imposed by chapter 206. All other fuels are taxable, except that those used by vehicles which are licensed as common carriers by the Interstate Commerce Commission or by the Civil Aeronautics Board to transport persons or property in interstate or foreign commerce and vessels used to transport persons or property in interstate or foreign commerce are taxable only to the extent provided herein. The basis of the tax shall be the ratio of intrastate mileage to interstate or foreign mileage traveled by the carrier during the previous fiscal year of the carrier, such ratio to be determined at the close of the carrier's fiscal year. This ratio shall be applied each month to the total purchases made in this state of gasoline and other fuels to establish that portion of the total used and consumed in intrastate movement and subject to tax under this chapter. Alcoholic beverages and malt beverages are not exempt. The terms "alcoholic beverages" and "malt beverages" as used in this subsection shall have the same meaning ascribed to them in ss. 561.01(4) and 563.01, respectively. It is determined by the legislature that the classification of alcoholic beverages made in this subsection for the purpose of extending the tax imposed by this chapter is reasonable and just, and it is intended that such tax be separate from, and in addition to, any other tax imposed on alcoholic beverages.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(a) *Items in agricultural use and certain nets.*—There shall be exempt from the tax imposed by this chapter nets designed and used exclusively by commercial fisheries; feeds for raising poultry and livestock on farms, including race horses and all other horses not used for agricultural purposes, and for feeding dairy cows; fertilizers, insecticides, herbicides, and fungicides used for application on crops or groves; portable containers used for processing farm products; field and garden seeds; nursery stock, seedlings, cuttings, or other propagative material purchased for growing stock; cloth, plastic, and other similar materials used for shade, mulch, or protection from frost or insects on a farm; and liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised; however, such exemption shall not be allowed unless the purchaser or lessee signs a certificate stating that the item to be exempted is for the exclusive use designated herein.

(b) *Machinery and equipment used to increase productive output.*—

1. Industrial machinery and equipment purchased for use in new businesses which manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations shall be considered exempt from the tax imposed by this chapter upon an affirmative showing by the taxpayer to the satisfaction of the department that said items will be used in a new business in this state. Said purchases must be made prior to the date said business first begins its productive operations, and delivery of the purchased item must be made within 12 months of said date.

2. Industrial machinery and equipment purchased for use in expanding manufacturing facilities or plant units which manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations in this state shall be considered exempt from any amount of tax imposed by this chapter in excess of $100,000 per calendar year upon an affirmative showing by the taxpayer to the satisfaction of the department that said items will be used to increase the productive output of said expanded business by not less than 10 percent.

3. The exemptions provided by subparagraphs 1. and 2. shall inure to the taxpayer only through refund of previously paid taxes. Said refund shall be made within 30 days of formal approval by the department of the taxpayer's application.

4. The department shall promulgate regulations governing the manner and form in which said refund applications shall be made and may establish guidelines as to the requisites for an affirmative showing of increased productive output.

5. The exemptions provided in subparagraphs 1. and 2. shall not apply to machinery or equipment purchased or used by electric utility companies, communications companies, phosphate or other solid minerals severance, mining, or processing operations, oil or gas exploration or production operations, printing or publishing firms, any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business Regulation, or any firm which does not manufacture, process, compound, or produce for sale items of tangible personal property.

6. For the purposes of the exemptions provided in subparagraphs 1. and 2., these terms shall have the following meanings:

a. "Machinery and equipment" shall include parts and accessories only to the extent that the exemption thereof is consistent with the provisions of this paragraph.

b. "Productive output" means the number of units actually produced by a single plant or operation in a single continuous 12-month period, irrespective of sales. Increases in productive output shall be measured by the output for 1 year immediately following the completion of installation of such machinery or equipment over the output for 1 year immediately preceding said installation. The units

used to measure productive output shall be physically comparable between the two periods.

(6) EXEMPTIONS; POLITICAL SUBDIVISIONS, COMMUNICATIONS.—There shall also be exempt from the tax imposed by this chapter sales made to the United States Government, the state, or any county, municipality or political subdivision of this state; provided this exemption shall not include sales of tangible personal property made to contractors employed either directly or as agents of any such government or political subdivision thereof when such tangible personal property goes into or becomes a part of public works owned by such government or political subdivision thereof, except public works in progress or for which bonds or revenue certificates have been validated on or before August 1, 1959; and further provided this exemption shall not include sales, rental, use, consumption, or storage for use in any political subdivision or municipality in this state of machines and equipment and parts and accessories therefor used in the generation, transmission, or distribution of electrical energy by systems owned and operated by a political subdivision in this state except sales, rental, use, consumption or storage for which bonds or revenue certificates are validated on or before January 1, 1973, for transmission or distribution expansion. Likewise exempt are newspapers, film rentals, when an admission is charged for viewing such film, and charges for services rendered by radio and television stations, including line charges, talent fees or license fees and charges for films, video tapes, and transcriptions used in producing radio or television broadcasts.

(7) MISCELLANEOUS EXEMPTIONS.—

(a) *Religious, charitable, educational, and veteran.*—There shall be exempt from the tax imposed by this chapter articles of tangible personal property sold or leased direct to or by churches or sold or leased to nonprofit religious, nonprofit educational, or nonprofit charitable institutions and state headquarters for veteran organizations when used in carrying on their customary nonprofit religious, nonprofit educational, nonprofit charitable, or veteran organization activities, including church cemeteries.

(b) *School books and school lunches.*—This exemption shall apply to school books used in regularly prescribed courses of study, and school lunches served to students, in public, parochial or nonprofit schools operated for and attended by pupils of grades 1 through 12. School books and food sold or served at community colleges and other institutions of higher learning are taxable.

(c) *Restrictive definitions.*—The provisions of this section authorizing exemptions from tax shall be strictly defined, limited, and applied in each category as follows:

1. "Religious institutions" shall mean churches and established physical places for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on.

2. "Educational institutions" shall mean state tax-supported or parochial, church and nonprofit private schools, colleges, or universities conducting regular classes and courses of study required for accreditation by or membership in the Southern Association of Colleges and Secondary Schools, Department of Education, or the Florida Council of Independent Schools. Nonprofit libraries, art galleries, and museums open to the public are defined as educational institutions and eligible for exemption. The term "educational institutions" shall include private nonprofit corporations whose purpose is to raise funds for colleges and universities located in this state.

3. "Charitable institutions" shall mean only nonprofit corporations operating physical facilities in Florida at which are provided charitable services, a reasonable percentage of which shall be without cost to those unable to pay.

4. "Veteran organizations" shall mean nationally chartered veteran organizations holding a current exemption from federal income tax under s. 501(c)(19) of the Internal Revenue Code, or, in the case of the Disabled American Veterans, Department of Florida, Inc., and its auxiliaries, under s. 501(c)(4) of said code.

(d) *Hospital meals and rooms.*—Also exempt from payment of the tax imposed by this chapter on rentals and meals are patients and inmates of any hospital or other physical plant or facility designed and operated primarily for the care of persons who are ill, aged, infirm, mentally or physically incapacitated or otherwise dependent on special care or attention.

(e) *Professional services.*—

1. Also exempted are professional, insurance or personal service transactions which involve sales as inconsequential elements for which no separate charges are made.

2. The above exempted personal service transactions do not exempt the sale of information services involving the furnishing of printed, mimeographed, multigraphed matter or matter duplicating written or printed matter in any other manner, other than professional services and services of employees, agents or other persons acting in a representative or fiduciary capacity or information services furnished to newspapers and radio and television stations. Information services shall mean and include the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons.

(f) *Magazines.*—There shall likewise be exempt from the tax imposed by this chapter subscriptions to magazines entered as second-class mail sold for an annual or longer period of time.

(g) *Volunteer fire departments.*—Also exempt are firefighting and rescue service equipment and supplies purchased by volunteer fire departments, duly chartered under the Florida Statutes as corporations not for profit.

(h) *Guide dogs for the blind.*—Also exempt are the sale or rental of guide dogs for the blind, commonly referred to as "seeing-eye dogs," and the sale of food or other items for said guide dogs.

1. The department shall issue a consumer's certificate of exemption to any blind person who holds an identification card as provided for in s. 413.091 and who either owns or rents, or contemplates the ownership or rental of, a guide dog for the blind. The consumer's certificate of exemption shall be issued

without charge and shall be of such size as to be capable of being carried in a wallet or billfold.

2. The department shall make such rules concerning items exempt from tax under the provisions of this paragraph as may be necessary to provide that any person authorized to have a consumer's certificate of exemption need only present such a certificate at the time of paying for exempt goods and shall not be required to pay any tax thereon.

(i) *Household fuels.*—Also exempt from payment of the tax imposed by this chapter are sales of utilities to residential households in this state by utility companies who pay the gross receipts tax imposed under s. 203.01, and sales of fuel to residential households, including oil, kerosene, liquefied petroleum gas, coal, wood and other fuel products used in the household for the purposes of heating, cooking, lighting, and refrigeration, regardless of whether such sales of utilities and fuels are separately metered and billed direct to the residents or are metered and billed to the landlord. If any part of the utility or fuel is used for a nonexempt purpose the entire sale shall be taxable. The landlord shall provide a separate meter for nonexempt utility or fuel consumption.

(j) *Flags.*—Also exempt are sales of the flag of the United States and the official state flag of Florida.

(k) *Crustacea bait.*—Also exempt from the tax imposed by this chapter shall be the purchase by commercial fishermen of bait intended solely for use in the entrapment of *Callinectes sapidus* and *Menippe mercenaria.*

(l) *Meals provided by certain nonprofit organizations.*—There shall be exempt from the tax imposed by this chapter the sale of prepared meals by a nonprofit volunteer organization to handicapped, elderly, or indigent persons when such meals are delivered as a charitable function by the organization to such persons at their place of residence.

(m) *Artificial commemorative flowers.*—Also exempted from the tax imposed by this chapter is the sale of artificial commemorative flowers by bona fide nationally chartered veterans' organizations.

(n) *Aircraft.*—Also exempt is any sale, including an occasional or isolated sale, of an aircraft to an air carrier which is based in the state and which is subject to regulation by the Florida Public Service Commission.

(o) *"Boiler" fuels.*—Purchases of natural gas, residual oil, coal, or wood, wood residues, or wood bark used in an industrial manufacturing, processing, compounding, or production process at a fixed location in this state shall be exempt from the taxes imposed by this chapter. This exemption shall not apply to the use of boiler fuels used by any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business Regulation.

(p) *Resource recovery equipment.*—Also exempt is resource recovery equipment which is owned and operated by or on behalf of any county or municipality, certified by the Department of Environmental Regulation under the provisions of s. 403.715.

(q) *Solar energy systems and components.*—Also exempt from payment of the tax imposed by this chapter is the sale at retail, rental, use, consumption, distribution, or storage to be used or consumed in this state of a solar energy system or any component thereof. The Florida Solar Energy Center shall from time to time certify to the department a list of equipment and requisite hardware considered to be a solar energy system or component thereof. This paragraph is repealed effective June 30, 1984.

(8) PARTIAL EXEMPTIONS, VESSELS ENGAGED IN INTERSTATE OR FOREIGN COMMERCE.—

(a) The sale or use of vessels and parts thereof used to transport persons or property in interstate or foreign commerce shall be subject to the taxes imposed in this chapter only to the extent provided herein. The basis of the tax shall be the ratio of intrastate mileage to interstate or foreign mileage traveled by the carrier during the previous fiscal year. The ratio would be determined at the close of the carrier's fiscal year. This ratio shall be applied to the total purchases of such vessels and parts thereof each month to establish that portion of the total used and consumed in intrastate movement and subject to the tax at the applicable rate. Items, appropriate to carry out the purposes for which a vessel is designed or equipped and used, purchased by the owner, operator, or agent of a vessel for use on board such vessel shall be deemed to be parts of the vessel upon which the same are used or consumed. Vessels and parts thereof used to transport persons or property in interstate and foreign commerce are hereby determined to be susceptible to a distinct and separate classification for taxation under the provisions of this chapter.

(b) The partial exemption provided for in this subsection shall not be allowed unless the purchaser signs an affidavit stating that the item or items to be partially exempted are for the exclusive use designated herein and setting forth the extent of such partial exemption. Any person furnishing a false affidavit to such effect for the purpose of evading payment of any tax imposed under this chapter shall be subject to the penalties set forth in s. 212.12 and as otherwise provided by law.

(c) It is the intent of the Legislature that neither subsection (4) or this subsection, whether as currently in effect or as amended by chapter 73-240, Laws of Florida, and in effect between June 22, 1973, and June 13, 1977, shall be construed as imposing the tax provided by this chapter on vessels used as common carriers, contract carriers, or private carriers, engaged in interstate or foreign commerce, except to the extent provided by the pro-rata formula provided in subsection (4) and in paragraph (a).

(9) PARTIAL EXEMPTIONS, VEHICLES ENGAGED IN INTERSTATE OR FOREIGN COMMERCE.—Vehicles which are licensed as common carriers by the Interstate Commerce Commission or by the Civil Aeronautics Board and parts thereof used to transport persons or property in interstate or foreign commerce are subject to tax imposed in this chapter only to the extent provided herein. The basis of the tax shall be the ratio of intrastate mileage to interstate or foreign mileage traveled by the carrier during the previous fiscal year of the carrier, such ratio to be determined at the close of the carrier's fiscal year. This ratio shall be applied each month to

the total purchases of such vehicles and parts thereof which are used in Florida to establish that portion of the total used and consumed in intrastate movement and subject to tax under this chapter. Vehicles which are licensed as common carriers by the Interstate Commerce Commission or the Civil Aeronautics Board and parts thereof used to transport persons or property in interstate and foreign commerce are hereby determined to be susceptible to a distinct and separate classification for taxation under the provisions of this chapter.

(10) PARTIAL EXEMPTION; MOTOR VEHICLE SOLD TO RESIDENT OF ANOTHER STATE.—The tax collected on the sale of a new or used motor vehicle in this state to a resident of another state shall be an amount equal to the sales tax which would be imposed on such sale under the laws of the state of which the purchaser is a resident, except that such tax shall not exceed the tax that would otherwise be imposed under this chapter. At the time of the sale, the purchaser shall execute a notarized statement of his intent to license the vehicle in the state of which he is a resident within 10 days of the sale and of the fact of the payment to the State of Florida of a sales tax in an amount equivalent to the sales tax of his state of residence and shall submit the statement to the appropriate sales tax collection agency in his state of residence.

(11) PARTIAL EXEMPTION; FLYABLE AIRCRAFT.—

(a) The tax imposed on the sale by a manufacturer of flyable aircraft, who designs such aircraft, which sale may include necessary equipment and modifications placed on such flyable aircraft prior to delivery by the manufacturer, shall be an amount equal to the sales tax which would be imposed on such sale under the laws of the state in which the aircraft will be domiciled.

(b) This partial exemption shall only apply if the purchaser is a resident of another state who will not use the aircraft in this state, or if the purchaser is a resident of another state and uses the aircraft in interstate or foreign commerce, or if the purchaser is a resident of a foreign country.

(c) The maximum tax collectible under this subsection shall not exceed 4 percent of the sales price of such aircraft. No Florida tax shall be imposed on the sale of such aircraft if the state in which the aircraft will be domiciled does not allow Florida sales or use tax to be credited against its sales or use tax. Furthermore, no tax shall be imposed on the sale of such aircraft if the state in which the aircraft will be domiciled has enacted a sales and use tax exemption for flyable aircraft or if the aircraft will be domiciled outside the United States.

(d) The purchaser shall execute a sworn affidavit attesting that he is not a resident of Florida and stating where the aircraft will be domiciled. If the aircraft is subsequently used in this state within 6 months of the time of purchase, in violation of the intent of this subsection, the purchaser shall be liable for payment of the full use tax imposed by this chapter and shall be subject to the penalty imposed by s. 212.12(2), which penalty shall be mandatory.

(e) The provisions of s. 212.12(1) notwithstanding, manufacturers of flyable aircraft granted the partial sales tax exemption under this subsection shall be allowed to retain a 10 percent deduction of the amount of sales tax due on sales of flyable aircraft manufactured by them if such manufacturers conform to the provisions of this chapter.

(12) No transactions shall be exempt from the tax imposed by this chapter except those expressly exempted herein. Except for s. 423.02, all special or general laws granting tax exemptions, to the extent they may be inconsistent or in conflict with this chapter, including but not limited to the following designated laws, shall yield to and be superseded by the provisions of this subsection: ss. 153.76, 258.14, 315.11, 323.15(6), 340.20, 348.65, 348.762, 349.13, 374.132, 616.07, 623.09, 637.131, 637.151, 637.291, and 637.311 and the following Laws of Florida, acts of the year indicated: s. 31, ch. 30843, 1955; s. 19, ch. 30845, 1955; s. 12, ch. 30927, 1955; s. 8, ch. 31179, 1955; s. 15, ch. 31263, 1955; s. 13, ch. 31343, 1955; s. 16, ch. 59-1653; s. 13, ch. 59-1356; s. 12, ch. 61-2261; s. 19, ch. 61-2754; s. 10, ch. 61-2686; s. 11, ch. 63-1643; s. 11, ch. 65-1274; s. 16, ch. 67-1446; and s. 10, ch. 67-1681.

History.—s. 8, ch. 26319, 1949; ss. 1, 2, ch. 26323, 1949; s. 9, ch. 26871, 1951; s. 1, ch. 28082, 1953; ss. 7, 33, ch. 29615, 1955; ss. 6-8, ch. 29883, 1955; s. 1, ch. 57-76; s. 1, ch. 57-398; s. 1, ch. 57-821; s. 1, ch. 57-1968; s. 1, ch. 57-1971; s. 1, ch. 59-287; ss. 1, 2, ch. 59-402; ss. 1, 2, ch. 59-448; s. 1, ch. 61-464; s. 2, ch. 61-276; s. 1, ch. 61-274; s. 7, ch. 63-253; ss. 5, 6, ch. 63-526; s. 1, ch. 63-565; s. 6, ch. 65-190; s. 1, ch. 65-358; ss. 7-9, ch. 65-329; s. 1, ch. 65-331; s. 5, ch. 65-371; s. 2, ch. 65-420; s. 4, ch. 67-180; ss. 8-12, 15, ch. 68-27; s. 1, ch. 69-99; ss. 15, 16, 19, 21, 24, 35, ch. 69-106; ss. 12-16, 19, ch. 69-222; ss. 2, 3, ch. 70-206; s. 2, ch. 70-373; s. 7, ch. 71-360; s. 1, ch. 71-985; s. 70, ch. 72-221; s. 1, ch. 72-289; s. 1, ch. 73-240; s. 1, ch. 74-4; s. 1, ch. 74-134; s. 1, ch. 74-305; ss. 1, 4, ch. 75-65; s. 35, ch. 77-147; s. 1, ch. 77-193; s. 1, ch. 77-194; s. 2, ch. 77-412; s. 1, ch. 78-59; s. 1, ch. 78-67; s. 1, ch. 78-77; s. 1, ch. 78-176; s. 1, ch. 78-220; s. 1, ch. 78-249; s. 1, ch. 78-270; s. 1, ch. 78-299; s. 1, ch. 78-329; s. 1, ch. 78-411; s. 41, ch. 79-164; ss. 2, 3, ch. 79-339; s. 96, ch. 79-400.

212.081 Legislative intent.—It is hereby declared to be the legislative intent of the amendments to ss. 212.08, 212.11(1), 212.12(10) and 212.20 by chapter 57-398, Laws of Florida:

(1) To raise the additional revenue required to meet the appropriations of the Legislature, by amending the sales and use tax exemptions previously allowed on clothing, fabrics, lubricating oil and grease and cigarettes included in this section. By amending the sales and use tax exemption on alcoholic and malt beverages to exclude from such exemption alcoholic and malt beverages consumed on the premises, and imposing a partial tax on motor vehicles, by increasing the tax on industrial machinery from $300 to $1,000 and further restricting and clarifying the definition of such machinery; and by eliminating all other exemptions allowed by s. 212.08, not specifically mentioned herein.

(2) To aid in the enforcement of this chapter by recognizing the effect of court rulings involving such enforcement and to incorporate herein substantial rulings of the department which have been recognized as necessary to supplement the interpretation of some of the terms used in this section.

(3) To arrange the exemptions allowed in this section in more orderly categories thereby eliminating some of the confusion attendant upon the present arrangement where cross-exemptions frequently occur.

(a) It is further declared to be the legislative intent that the tax levied by this chapter and imposed by this section is not a tax on motor vehicles as property but a tax on the privilege to sell, to rent, to use

or to store for use in this state motor vehicles; that such tax is separate from and in addition to any license tax imposed on motor vehicles; and that such tax is not intended as an ad valorem tax on motor vehicles as prohibited by the constitution.

(b) It is also the legislative intent that there shall be no pyramiding or duplication of excise taxes levied by the state under this chapter and no municipality shall levy any excise tax upon any privilege, admission, lease, rental, sale, use or storage for use or consumption which is subject to a tax under this chapter unless permitted by general law; provided, however, that this provision shall not impair valid municipal ordinances which are in effect and under which a municipal tax is being levied and collected on July 1, 1957.

(4) It is hereby declared to be the legislative intent that revenue produced by this law [ch. 59-402 amending s. 212.08(5) and (7)] together with other available general revenue in excess of money required to meet the general revenue appropriations shall accrue to the sixth fund, the same being the Working Capital Fund, as provided by law.

(5) It is hereby declared to be the legislative intent that all purchases made by banks are subject to state sales tax in the same manner as is provided by law for all other purchasers. It is further declared to be the legislative intent that if for any reason the sales tax on federal banks is declared invalid, that sales tax shall not apply or be applicable to purchases made by state banks.

History.—s. 1, ch. 57-398; s. 3, ch. 59-402; s. 4, ch. 61-274; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106.

212.085 Fraudulent claim of exemption; penalties.—When any person shall fraudulently, for the purpose of evading tax, issue to a vendor or to any agent of the state a certificate or statement in writing in which he claims exemption from sales tax, such person, in addition to being liable for payment of the tax plus a mandatory penalty of 100 percent of the tax, shall be liable for fine and punishment as provided by law for a conviction of a misdemeanor of the second degree, as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 3, ch. 78-59.

212.09 Trade-ins deducted.—

(1) Where used articles are taken in trade, or a series of trades, as a credit or part payment on the sale of new articles, the tax levied by this chapter shall be paid on the sales price of the new article, less the credit for the used article taken in trade.

(2) Where used articles are taken in trade, or a series of trades, as a credit or part payment on the sale of used articles, the tax levied by this chapter shall be paid on the sales price of the used article less the credit for the used article taken in trade.

History.—s. 9, ch. 26319, 1949.

212.091 Written agreements for improvement of real estate; refund.—In all cases of written agreements for the improvement of real property which become binding before April 1, 1968, the contractor making said improvements shall pay the sales or use tax at the rates provided in this chapter. However, upon application by said contractor or assigns to the department within 3 years after the effective date of this chapter, and upon sworn proof by said contractor or assigns of the existence of such binding written agreement and of payment of such additional sales or use taxes, the department shall forthwith make refund to the applicant of said additional sales or use taxes.

History.—s. 16, ch. 68-27; s. 20, ch. 69-222; ss. 21, 35, ch. 69-106.

212.10 Sale of business; liability for tax, procedure, penalty for violation.—

(1) If any dealer liable for any tax, interest or penalty levied hereunder shall sell out his business or stock of goods, he shall make a final return and payment within 15 days after the date of selling the business; his successor, successors, or assigns, shall withhold a sufficient portion of the purchase money to safely cover the account of such taxes, interest, or penalties due and unpaid until such former owner shall produce a receipt from the department showing that they have been paid or a certificate stating that no taxes, interest, or penalty are due. If the purchasers of a business or stock of goods shall fail to withhold sufficient amount of the purchase money as above provided, he shall be personally liable for the payment of the taxes, interest and penalties accruing and unpaid on account of the operation of the business by any former owner, owners or assigns.

(2) If any dealer liable for any tax, interest or penalty shall quit the business without the benefit of a purchaser and there is no successor, successors or assigns, he shall make a final return and payment within 15 days. Any person failing to file such final return and make payment shall be denied the right to engage in any business in the state until he has filed such final return and paid any moneys due, and the Department of Legal Affairs is hereby authorized to proceed by injunction, when requested by the department to do so, to prevent by injunction any activity in the performance of further business activity until such tax is paid, and any temporary injunction enjoining further business activity shall be granted without notice by any judge or chancellor authorized by law to grant injunctions.

(3) In the event any dealer is delinquent in the payment of the tax herein provided for, the department may give notice of the amount of such delinquency by registered mail to all persons having in their possession or under their control any credits or other personal property belonging to such dealer or owing any debts to such dealer at the time of receipt by them of such notice. All persons so notified shall within 5 days after receipt of the notice advise the department of all such credits, other personal property, or debts in their possession, under their control, or owing by them. After receiving the notice the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the department consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever period expires the earlier. All persons notified shall likewise within 5 days advise the department of any subsequent credits or other personal property belonging to such dealer or any debts incurred and owing to such dealer which may come

within their possession or under their control during the time prescribed by the notice or until the department consents to a transfer or disposition whichever expires the earlier. If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice to be effective shall be delivered or mailed to the office of such bank at which such deposit is carried or at which such credits or personal property is held. If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld hereunder, to the extent of the value of the property or the amount of the debts thus transferred or paid he shall be liable to the state for any indebtedness due under this chapter from the person with respect to whose obligation the notice was given if solely by reason of such transfer or disposition the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given. All such credits or other personal property or debts are subject to garnishment by the department for satisfaction of the delinquent tax due.

(4) Any violation of the provisions of this section shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 10, ch. 26319, 1949; s. 1, ch. 59-426; s. 3, ch. 61-276; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; s. 6, ch. 67-180; ss. 11, 21, 35, ch. 69-106; s. 124, ch. 71-136.

212.11 Tax returns and regulations.—

(1) The taxes levied hereunder upon rentals, admissions, and sales of tangible personal property shall be due and payable monthly on the first day of each month, and for the purpose of ascertaining the amount of tax payable under this chapter, it shall be the duty of all dealers to make a return, on or before the 20th day of the month, to the department, upon forms prepared and furnished by it, showing the rentals, admissions, gross sales or purchases as the case may be, arising from all leases, rentals, admissions, sales or purchases taxable under this chapter during the preceding calendar month; however, the department may authorize a quarterly return and payment when the tax remitted by the dealer for the preceding quarter did not exceed $100 and may authorize a semiannual return and payment when the tax remitted by the dealer for the preceding 6 months did not exceed $200. The department shall accept returns if postmarked on or before the 20th day of the month; if the 20th day falls on a Saturday, Sunday, or federal or state legal holiday, returns shall be accepted if postmarked on the next succeeding workday. Any dealer who operates two or more places of business for which returns are required to be filed with the department, and who maintains records for such places of business in a central office or place, shall have the privilege on each reporting date of filing a consolidated return for all such places of business in lieu of separate returns for each such place of business; however, such consolidated returns must clearly indicate the amounts collected within each county of the state.

(2) Gross proceeds from rentals or leases of tangible personal property shall be reported and the tax shall be paid with respect thereto in accordance with such rules and regulations as the department may prescribe.

(3) Except as otherwise expressly provided for herein, it is hereby declared to be the intention of this chapter to impose a tax on the gross proceeds of all leases and rentals of tangible personal property in this state where the lease or rental is a part of the regularly established business, or the same is incidental or germane thereto.

History.—s. 11, ch. 26319, 1949; s. 10, ch. 26871, 1951; s. 2, ch. 57-398; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; s. 7, ch. 67-180; s. 15, ch. 68-27; s. 19, ch. 69-222; ss. 21, 35, ch. 69-106; s. 1, ch. 73-85; s. 1, ch. 75-50; s. 2, ch. 78-59; s. 2, ch. 78-250.

212.12 Dealer's credit for collecting tax; penalties for noncompliance; powers of Department of Revenue in dealing with delinquents; brackets applicable to taxable transactions; records required.—

(1) For the purpose of compensating the lessors of real and personal property taxed hereunder, and for the purpose of compensating dealers in tangible personal property and for the purpose of compensating owners of places where admissions are collected, as compensation for the keeping of prescribed records and the proper accounting and remitting of taxes by them, such seller, lessor, owner and dealer shall be allowed 3 percent of the amount of the tax due and accounted for and remitted to the department, in the form of a deduction in submitting his report and paying the amount due by him, and the department shall allow the said deduction of 3 percent of the amount of the tax to the person paying the same for remitting the tax in the manner herein provided, and for paying the amount due to be paid by him provided, however, that the 3 percent allowance shall not be granted nor shall any deduction be permitted where the tax is delinquent at the time of payment, or where there is a manifest failure to maintain proper records or make proper prescribed reports; and as further compensation to dealers in tangible personal property for the keeping of prescribed records and collection of taxes and remitting the same.

(2) When any person, firm, or corporation required hereunder to make any return or to pay any tax imposed by this chapter shall fail to make such return or shall fail to pay such tax, within the time required hereunder, in addition to all other penalties provided herein, and by the laws of Florida in respect to such taxes, a specific penalty shall be added to the tax in the amount of 5 percent if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days, or fraction thereof, during the time which the failure continues, not to exceed, however, a total penalty of 25 percent in the aggregate; however, in no event shall the penalty be less than $5. In the case of a false or fraudulent return or a willful intent to evade payment of any tax imposed under this chapter, in addition to the other penalties provided by law, the person making such false or fraudulent return or willfully attempting to evade the payment of such a tax shall be liable to a specific penalty of 50 percent of the tax bill and for fine and punishment as provided by law for a conviction of a misdemeanor of the second degree.

(3) When any dealer, or other person charged herein, fails to remit the tax, or any portion thereof,

on or before the day when such tax shall be required by law to be paid, there shall be added to the amount due interest at the rate of 1 percent per month of the amount due from the date due until paid.

(4) All penalties and interest imposed by this chapter shall be payable to and collectible by the department in the same manner as if they were a part of the tax imposed.

(5) The department, for good cause shown by written request, may extend, but not to exceed 30 days, the time for making any returns required under the provisions of this chapter, and may compromise penalties after its investigation reveals that the penalty would be too severe or unjust, but interest shall be collected. If an extension is granted, there shall be collected a charge of 0.75 percent of the tax to be remitted, for an extension of 15 days or less, or a charge of 1.5 percent of such tax, for an extension of more than 15 days. No other penalty or interest shall be collected if such tax is remitted within the extension time granted. In lieu of paying the interest charge imposed by this subsection, a dealer may remit an estimated amount of tax by the 20th day of the month following the month of collection. Any dealer who remits an estimated tax payment shall be granted a normal extension period in which to file and remit the actual tax due without the interest charge provided hereunder being imposed, unless the estimated tax payment remitted by the dealer is less than 90 percent of the actual tax due for that month.

(6)(a) The department is authorized to audit or inspect the records and accounts of dealers defined herein and correct by credit any overpayment of tax and, in the event of a deficiency, an assessment shall be made and collected. No administrative finding of fact is necessary prior to the assessment of any tax deficiency.

(b) In the event any dealer or other person charged herein fails or refuses to make his records available for inspection so that no audit or examination has been made of the books and records of such dealer or person, fails or refuses to register as a dealer or fails to make a report and pay the tax as provided by this chapter; or makes a grossly incorrect report, or makes a report that is false or fraudulent, then, in such event, it shall be the duty of the department to make an assessment from an estimate based upon the best information then available to it for the taxable period of retail sales of such dealer, the gross proceeds from rentals, the total admissions received, amounts received from leases of tangible personal property by such dealer, or of the cost price of all articles of tangible personal property imported by the dealer for use or consumption or distribution or storage to be used or consumed in this state, together with interest, plus penalty, if such have accrued, as the case may be. Then the department shall proceed to collect such taxes, interest and penalty on the basis of such assessment, which shall be considered prima facie correct; and the burden to show the contrary shall rest upon the dealer, seller, owner or lessor, as the case may be.

(7) The department is given the power to prescribe the records to be kept by all persons subject to taxes imposed by this chapter and it shall be the duty of every person required to make a report and pay any tax under this chapter, and every person receiving rentals, and owners of places of admission, to keep and preserve suitable records of the sales, leases, rentals, admissions, or purchases, as the case may be, taxable under this chapter, and such other books of account as may be necessary to determine the amount of the tax due hereunder, and other information as may be required by the department; and it shall be the duty of every such person so charged with such duty, moreover, to keep and preserve, for a period of 3 years, all invoices and other records of goods, wares and merchandise, records of admissions, leases and rentals and all other subjects of taxation under this chapter; and all such books, invoices and other records shall be open to examination at all reasonable hours to the department or any of its duly authorized agents.

(8) In the event the dealer has imported the tangible personal property and he fails to produce an invoice showing the cost price of the articles as defined in this chapter, which are subject to tax, or the invoice does not reflect the true or actual cost price as defined herein, then the department shall ascertain, in any manner feasible, the true cost price, and assess and collect the tax thereon with interest plus penalties, if such have accrued on the true cost price as assessed by it. The assessment so made shall be considered prima facie correct, and the duty shall be on the dealer to show to the contrary.

(9) In the case of the lease or rental of tangible personal property, or other rentals as herein defined and taxed, if the consideration given or reported by the lessor, person receiving rental or dealer does not, in the judgment of the department, represent the true or actual consideration, then the department is authorized to ascertain the same and assess and collect the tax thereon in the same manner as above provided, with respect to imported tangible property, together with interest, plus penalties, if such have accrued.

(10) Taxes imposed by this chapter upon the privilege of the use, consumption, or storage for consumption, or sale of tangible personal property, admissions and rentals, and communication services as herein taxed shall be collected upon the basis of an addition of the tax imposed by this chapter to the total price of such admissions, rentals, communication services or sale price of such article or articles that are purchased, sold or leased at any one time by or to a customer or buyer, and the dealer, or person charged herein, is required to pay a privilege tax in the amount of the tax imposed by this chapter on the total of his gross sales of tangible personal property, admissions, and rentals, communication services and such person or dealer shall add the tax imposed by this chapter to the price, rental or admissions, and communication services and collect the total sum from the purchaser, admittee, lessee or consumer. Notwithstanding the rate of taxes imposed upon the privilege of sales, admissions and rentals, and communication services, the following brackets shall be applicable to all 4 percent taxable transactions:

(a) On single sales of less than 10 cents no tax shall be added.

(b) On single sales in amounts from 10 cents to 25 cents, both inclusive, 1 cent shall be added for taxes.

(c) On sales in amounts from 26 cents to 50 cents, both inclusive, 2 cents shall be added for taxes.

(d) On sales in amounts from 51 cents to 75 cents, both inclusive, 3 cents shall be added for taxes.

(e) On sales in amounts from 76 cents to $1, both inclusive, 4 cents shall be added for taxes.

(f) On sales in amounts of more than $1, 4 percent shall be charged upon each dollar of price, plus the above bracket charges upon any fractional part of a dollar.

(11) In charter counties which have adopted the discretionary 1 percent tax, the following brackets shall be applicable to all taxable transactions which would otherwise have been 4 percent taxable transactions:

(a) On single sales of less than 10 cents, no tax shall be added.

(b) On single sales in amounts from 10 cents to 20 cents, both inclusive, 1 cent shall be added for taxes.

(c) On sales in amounts from 21 cents to 40 cents, both inclusive, 2 cents shall be added for taxes.

(d) On sales in amounts from 41 cents to 60 cents, both inclusive, 3 cents shall be added for taxes.

(e) On sales in amounts from 61 cents to 80 cents, both inclusive, 4 cents shall be added for taxes.

(f) On sales in amounts from 81 cents to $1, both inclusive, 5 cents shall be added for taxes.

(g) On sales in amounts from $1 up to, and including, the first $1,000 in price, 5 percent shall be charged upon each dollar of price, plus the above bracket charges upon any fractional part of a dollar.

(h) On sales in amounts of more than $1,000 in price, 5 percent shall be added upon the first $1,000 in price; and 4 percent shall be added upon each dollar of price in excess of the first $1,000 in price, plus the bracket charges upon any fractional part of a dollar as provided for in subsection (10).

(12) It is hereby declared to be the legislative intent that wherever in the construction, administration or enforcement of this chapter there may be any question respecting a duplication of the tax, that the end consumer, or last retail sale shall be the sale intended to be taxed and insofar as may be practicable there be no duplication or pyramiding of the tax.

(13) In order to aid the administration and enforcement of the provisions of this chapter with respect to the rentals, each lessor of any hotel, apartment house, roominghouse, tourist or trailer camp, or any interest therein, or any portion thereof, inclusive of owners, property managers, lessors, landlords, hotel, apartment house and roominghouse operators and all licensed real estate agents within the state leasing or renting such property, shall be required to keep a record of each and every such lease or rental transaction which is taxable under this chapter, in such a manner and upon such forms as the department may prescribe, and to report such transaction to the department or its designated agents, and to maintain such records for a period of not less than 3 years, subject to the inspection of the department and its agents, and upon failure by such owner, property manager, lessor, landlord, hotel, apartment house, roominghouse, tourist or trailer camp operator, or real estate agent to keep and maintain such records and to make such reports upon the forms and in the manner prescribed, such owner, property manager, lessor, landlord, hotel, apartment house, roominghouse, tourist or trailer camp operator, receiver of rent, or real estate agent shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for the first offense; and for subsequent offenses, they shall each be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 12, ch. 26319, 1949; s. 11, ch. 26871, 1951; s. 3, ch. 57-109; s. 3, ch. 57-398; s. 4, ch. 61-276; s. 7, ch. 63-253; s. 10, ch. 65-329; s. 5, ch. 65-371; s. 2, ch. 65-420; s. 8, ch. 67-180; s. 13, ch. 68-27; s. 17, ch. 69-222; ss. 21, 35, ch. 69-106; s. 125, ch. 71-136; s. 10, ch. 76-261; s. 3, ch. 76-284; s. 3, ch. 78-59.

212.13 Records required to be kept; power to inspect.—

(1) For the purpose of enforcing the collection of the tax levied by this chapter, the department is hereby specifically authorized and empowered to examine at all reasonable hours the books, records and other documents of all transportation companies, agencies, or firms that conduct their business by truck, rail, water, aircraft, or otherwise, in order to determine what dealers, or other persons charged with the duty to report or pay a tax under this chapter, are importing or are otherwise shipping in articles or tangible personal property which are liable for said tax. In the event said transportation company, agency or firm shall refuse to permit such examination of its books, records, or other documents by the department as aforesaid, it shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. The department shall have the right to proceed in any chancery court to seek a mandatory injunction or other appropriate remedy to enforce its right against the offender, as granted by this section, to require an examination of the books and records of such transportation company or carrier.

(2) Each dealer, as defined in this chapter, shall secure, maintain, and keep for a period of 3 years a complete record of tangible personal property received, used, sold at retail, distributed or stored, leased or rented by said dealer, together with invoices, bills of lading, gross receipts from such sales and other pertinent records and papers as may be required by the department for the reasonable administration of this chapter, and all such records which are located or maintained in this state shall be open for inspection by the department at all reasonable hours at such dealer's store, sales office, general office, warehouse or place of business located in this state. Any dealer who maintains such books and records at a point outside this state must make such books and records available for inspection by the department where the general records are kept. Any dealer subject to the provisions of this chapter who violates these provisions is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) For the purpose of enforcement of this chapter, every manufacturer and seller of tangible personal property licensed within this state is required to permit the department to examine his books and records at all reasonable hours, and upon his refusal the department may require him to permit such ex-

amination by resort to the circuit courts of this state, subject however to the right of removal of the cause to the judicial circuit wherein such person's business is located or wherein such person's books and records are kept, provided further that such person's books and records are kept within the state.

(4) For the further purpose of enforcement of this chapter every wholesaler of tangible personal property licensed within this state is required to permit the department to examine his books and records at all reasonable hours. He must also maintain such books and records for a period of not less than 3 years in order to disclose the sales of all goods sold, and to whom sold, and also the amount of items sold, in such form and in such manner as the department may reasonably require, and so as to permit the department to determine the volume of goods sold by wholesalers to dealers, as defined under this chapter, and the dates and amounts of sales made. The department may require any manufacturer or wholesaler who refuses to keep such records or to permit such inspection through the circuit courts of Florida to submit to such inspection, subject however to the right of removal of the cause as hereinbefore provided in this section.

History.—s. 13, ch. 26319, 1949; s. 4, ch. 57-109; s. 1, ch. 59-290; s. 5, ch. 61-276; s. 7, ch. 63-253; s. 11, ch. 65-329; s. 5, ch. 65-371; s. 2, ch. 65-420; s. 9, ch. 67-180; ss. 21, 35, ch. 69-106; s. 126, ch. 71-136.

212.14 Department's powers; hearings, subpoena; distress warrants; time for assessments.—

(1) Any person required to pay a tax imposed under this chapter, or to make a return, either or both, and who renders a return or makes a payment of a tax with intent to deceive or defraud the state, and to prevent the state from collecting the amount of taxes imposed by this chapter, or otherwise fails to comply with the provisions of this chapter for the taxable period for which any return is made, or any tax is paid, or any report is made to the department, may be required by the department to show cause at a time and place to be set by the department, after 10 days' notice in writing requiring such books, records or papers as the department may require relating to the business of such person for such tax period, and the department may require such person, or persons, or their employee or employees to give testimony under oath and answer interrogatories by the department, or an assistant, respecting the sale, use, consumption, distribution or storage rental of real or personal property within the state, or admissions collected therein, or the failure to make a true report thereof, as provided by this chapter, or failure to pay the true amount of the tax required to be paid under this chapter. At said hearing, in the event such person fails to produce such books, records or papers, or to appear and answer questions within the scope and investigation relating to matters concerning taxes to be imposed under this chapter, or prevents or impedes his or her agents or employees from giving testimony, then the department is authorized under this chapter to estimate any unpaid deficiencies in taxes to be assessed against such person upon such information as may be available to it and to issue a distress warrant for the collection of such taxes, interest or penalties estimated by him to be due and payable, and such assessment shall be deemed prima facie correct. In such cases said warrant shall be issued to any sheriff in the state where such person owns or possesses any property and such property as may be required to satisfy any such taxes, interest or penalties shall be by such sheriff seized and sold under said distress warrant in the same manner as property is permitted to be seized and sold under distress warrants issued to secure the payments of delinquent taxes as hereinafter provided, and the department shall also have the right to writ of garnishment to subject any indebtedness due to the delinquent dealer by a third person in any goods, money, chattels or effects of the delinquent dealer in the hands, possession or control of the third person in the manner provided by law. Respecting the place for the holding of a hearing, by the department or its agents, as provided in this section, the person whose tax return or report being investigated may by written request to the department require the hearing be set at a place within the judicial circuit of Florida wherein the person's business is located, or within the judicial circuit of Florida wherein such person's books and records are kept.

(2) Wherever returns are required to be made to the department hereunder the full amount of the taxes required to be paid as shown by said return shall be paid and accompany said return, and the failure to remit said full amount of taxes at the time of making said return shall cause said taxes to become delinquent. All taxes and all interest and penalties imposed under this chapter shall be paid to the department at Tallahassee, or to such designated offices throughout the state as the department may from time to time designate and in the form of remittance required by it.

(3) The department may require all reports of taxes to be paid under this chapter to be accompanied with a written statement, of the person or by an officer of any firm or corporation required to pay such taxes setting forth such facts as the department may reasonably require in order to advise the department as to the amount of taxes that are due and payable upon said return. Filing of return not accompanied by payment is prima facie evidence of conversion of the money due. Any person or any duly authorized corporation officer or agent, members of any firm or incorporated society, or organization who refuses to make a return and pay the taxes due, as required by the department and in the manner and in the form that the department may require, or to state in writing that the return is correct to the best of his knowledge and belief, as so required by the department, shall be subject to a penalty of 6 percent per annum of the amount due and shall upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The signing of a written return shall have the same legal effect as if made under oath without the necessity of appending such oath thereto.

(4) In all cases where it is necessary to insure compliance with the provisions of this chapter, the department shall require a cash deposit, bond or other security as a condition to a person obtaining or retaining a dealer's certificate of registration under

this chapter. Such bond shall be in the form and such amount as the department deems appropriate under the particular circumstances. Every person failing to produce such cash deposit, bond or other security as provided for herein shall not be entitled to obtain or retain a dealer's certificate of registration under this chapter, and the Department of Legal Affairs is hereby authorized to proceed by injunction, when so requested by the Department of Revenue, to prevent such person from doing business subject to the provisions of this chapter until such cash deposit, bond or other security is posted with the department, and any temporary injunction for this purpose may be granted by any judge or chancellor authorized by law to grant injunctions. Any security required to be deposited may be sold by the department at public sale if it becomes necessary so to do in order to recover any tax, interest or penalty due. Notice of such sale may be served personally or by mail upon the person who deposited such security. If by mail, notice sent to the last known address as the same appears on the records of the department shall be sufficient for the purpose of this requirement. Upon such sale, the surplus, if any, above the amount due under this chapter shall be returned to the person who deposited the security.

(5) Any person entering into a contract for the repair, alteration, construction or improvement of realty who is required to obtain a contractor's occupational license under the laws of this state shall, before entering into the performance of such contract, secure a dealer's certificate of registration, unless such person has held such contractor's occupational license for a period of at least 12 months immediately preceding the date of the contract. As a prerequisite for the issuance of such dealer's certificate of registration, the dealer shall execute and file with the department a good and valid bond endorsed by a surety company authorized to do business in this state, or with sufficient sureties to be approved by the department, conditioned that all taxes which may accrue to the state under this chapter will be paid when due; provided, however, that any taxpayer may pay the tax in advance on any contract in lieu of furnishing bond. Every person failing to procure the certificate of registration required by this law shall be denied the right to perform such contract until he complies with such requirement, and the Department of Legal Affairs is hereby authorized to proceed by injunction, when so requested by the Department of Revenue, to prevent any activity in the performance of such contract until the certificate of registration is secured, and any temporary injunction enjoining the execution of such contract may be granted without notice by any judge or chancellor now authorized by law to grant injunctions. The bond shall remain in full force and effect during the terms of the contract or until such time as the department has issued a formal certificate of clearance stating that the tax due on the contract has been paid.

(6) The amount of any tax imposed under this chapter may be determined and assessed within 3 years after the first day of the month following the date on which the tax becomes due and payable. However, this limitation shall be tolled by a request for inspection and examination of a dealer's books and records by the department within that period, in which event the period for which tax due may be determined and assessed shall be the 3 years immediately preceding the first day of the month in which a request for inspection and examination of the books and records has been made by the department.

(7) The department or any person authorized by it in writing is authorized to make and sign assessments, tax warrants, assignments of tax warrants and satisfaction of tax warrants.

History.—s. 14, ch. 26319, 1949; s. 9, ch. 29883, 1955; s. 24, ch. 57-1; s. 1, ch. 57-109; s. 2, ch. 59-426; ss. 1-3, ch. 59-449; s. 6, ch. 61-276; s. 7, ch. 63-253; s. 12, ch. 65-329; s. 5, ch. 65-371; s. 2, ch. 65-420; s. 1, ch. 65-2444; s. 11, ch. 67-180; ss. 11, 21, 35, ch. 69-106; s. 127, ch. 71-136; s. 2, ch. 73-240.

212.141 Validation of assessments made prior to July 1, 1965.—

(1) Any tax assessment made under the authority of chapter 212, prior to July 1, 1965, by the State Comptroller or by any employee, agent or assistant authorized by the comptroller to make such assessment or by the State Revenue Commission or by any employee, agent or assistant of the commission authorized by the commission to make such assessment is validated and confirmed as an act of the State Comptroller or the commission, as the case may be.

(2) It is the intent of the Legislature that any such assessment made as provided in subsection (1) when such assessment is made on forms or stationery bearing the letterhead of the State Comptroller or State Revenue Commission is hereby validated and confirmed as an act of the State Comptroller or the State Revenue Commission, as the case may be, whether or not the word "State Comptroller" or "State Revenue Commission" appears above the signature of the person signing said assessment.

History.—ss. 1, 2, ch. 65-2443.

212.15 Taxes declared state funds; penalties for failure to remit taxes; due and delinquent dates; judicial review.—

(1) The taxes imposed by this chapter shall become state funds at the moment of collection and shall for each month be due to the department on the first day of the succeeding month and delinquent on the 21st day of such month. All returns postmarked after the 20th day of such month are delinquent.

(2) Any person who, with intent to unlawfully deprive or defraud the state of its moneys or the use or benefit thereof, fails to remit taxes collected pursuant to this chapter is guilty of theft of state funds, punishable as follows:

(a) If the total amount of stolen revenue is less than $100, the offense is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Upon a second conviction within a 36-month period, the offender is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Upon a third or subsequent conviction within a 3-year period, the offender is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the total amount of stolen revenue is $100 or more, the offense is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(c) If the total amount of stolen revenue is $20,000 or more, the offense is a felony of the second

degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Prosecution of a misdemeanor under this section shall commence no later than 2 years from the date of the offense. Prosecution of a felony under this section shall commence no later than 5 years from the date of the offense.

(4) All taxes collected under this chapter shall be remitted to the department. In addition to criminal sanctions, the department is empowered, and it shall be its duty, when any tax becomes delinquent or is otherwise in jeopardy under this chapter, to issue a warrant for the full amount of the tax due or estimated to be due, with the interest, penalties, and cost of collection, directed to all and singular the sheriffs of the state, and mail the warrant to the clerk of the circuit court of the county where any property of the taxpayer is located. Upon receipt of the warrant, the clerk of the circuit court shall record it, and thereupon the amount of the warrant shall become a lien on any real or personal property of the taxpayer in the same manner as a recorded judgment. The department may issue a tax execution to enforce the collection of taxes imposed by this chapter and deliver it to any sheriff. The sheriff shall thereupon proceed in the same manner as prescribed by law for executions and shall be entitled to the same fees for his services in executing the warrant to be collected. The department may also have a writ of garnishment to subject any indebtedness due to the delinquent dealer by a third person in any goods, money, chattels, or effects of the delinquent dealer in the hands, possession, or control of the third person in the manner provided by law for the payment of the tax due. Upon payment of the execution, warrant, judgment, or garnishment, the department shall satisfy the lien of record within 30 days.

(5) In any action involving the legality of any tax assessed under this chapter, the court shall inquire into and determine the legality and validity of the same and shall render decrees setting aside such tax assessment or any part of the same which is contrary to law, provided that the complainant shall in every case, except when the taxes assessed, including interest and penalties, have been paid to the department prior to the institution of suit, tender into court and file with the complaint the full amount of the assessment complained of, including any interest and penalties included in such assessment, or file with the complaint a cash bond or a surety bond endorsed by a surety company authorized to do business in this state or by such sureties as may be approved by the court, conditioned to satisfy any judgment or decree in full, including the taxes complained of, costs, interest, and penalties.

History.—s. 15, ch. 26319, 1949; s. 12, ch. 26871, 1951; s. 3, ch. 59-426; s. 7, ch. 61-276; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; s. 12, ch. 67-180; s. 1, ch. 69-267; ss. 21, 35, ch. 69-106; s. 1, ch. 71-8; s. 42, ch. 71-355; s. 54, ch. 78-95; s. 5, ch. 79-359.

212.151 Jurisdiction of suits for violation of Revenue Act; collection of tax; service on retailers, dealers or vendors not qualified to do business in state.—

(1) All suits brought hereafter by the department against any retailer, dealer, or vendor for any violation of this chapter, and for the purpose of effecting collection of any tax due from any dealer, including garnishment proceedings regardless of the amount, shall be brought thereon in the circuit courts of this state having jurisdiction of the subject matter.

(2) Every retailer, dealer or vendor not qualified to do business in this state shall designate with the department an agent for service within the state, for the purpose of enforcing this chapter. If a retailer, dealer or vendor has not designated, or shall fail to designate, with the department an agent for service within the state, then the Secretary of State shall be deemed the agent for service, or any agent or employee of the retailer, dealer or vendor within the state shall be deemed agent for service.

History.—s. 10, ch. 29883, 1955; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; s. 13, ch. 67-180; ss. 10, 21, 35, ch. 69-106.

212.16 Importation of goods; permits; seizure for noncompliance; procedure; review.—

(1) For the protection of the revenue of this state, to prevent the illegal importation of tangible personal property which is subject to tax in this state, and to strengthen and make more effective the manner and method of enforcing payment of the tax imposed by this chapter, the department is hereby authorized and empowered to put into operation a system of permits whereby any person or dealer as defined in this chapter may import tangible personal property by truck, automobile, or other means of transportation other than a common carrier, without having said truck, automobile, or other means of transportation, seized and subjected to legal proceedings for its forfeiture. Such system of permits shall require the person or dealer who desires to import tangible personal property into this state, which property is subject to tax imposed by this chapter, to apply to the department or its designated agent for a certificate of registration and a permit stating the kind of vehicle used, the name of the driver, the license number of the vehicle, the kind or character of tangible personal property to be imported, the date, the name and address of the consignee and such other information as the department may deem necessary to prevent the illegal transportation of tangible personal property into this state. Such certificate of registration and permit shall be free of cost to the applicant and forms for such certificate of registration and permit may be obtained from the department or its designated agents.

(2) The importation into this state of tangible personal property which is subject to tax, by truck, automobile, or other means of transportation other than a common carrier without having first obtained a certificate of registration and permit as hereinabove described, (if the tax imposed by this chapter on the said tangible personal property has not been paid) shall be construed as an attempt to evade payment of the said tax and the same is hereby prohibited and the said truck, automobile or other means of transportation, other than that of common carrier, and said taxable property may be seized by the department in order to secure the same as evidence in a trial and the same shall be subject to forfeiture and sale in the manner provided for in this chapter. No certificate of registration or permit shall be required to transport personal effects of a driver, owner, or passengers of any private automobile or carrier vehi-

cle not engaged in carrying goods for resale within the state. The department may issue a certificate of registration and permit to a person who is regularly or frequently importing into this state tangible personal property in trucks owned by him in connection with his own business, requiring that reports, copies of sales documents, and other information may be filed at regular or frequent intervals with the department after importation of tangible personal property subject to the tax, and the department may require as a condition for the issuance of such certificate of registration and permit that such person post a bond payable to the department in an amount sufficient to guarantee payment of the tax on such goods as may be imported by such person, which amount the department shall set.

(3) Subject to the above stated exception of private vehicles, any truck, automobile, or other means of transportation other than a common carrier which is used to import into this state tangible personal property which is subject to tax under this chapter, together with the contents thereof, is hereby declared to be contraband and subject to confiscation unless a certificate of registration and permit as hereinabove described was first obtained. The department may confiscate any such truck, automobile, or other means of transportation other than a common carrier together with its contents whenever the same is found to be importing without the certificate of registration and permit tangible personal property, the sale or use of which is taxable under this chapter. Such permit shall be posted in or on the vehicle or made immediately available for inspection. The department or its agent is authorized hereby to turn over to any sheriff or constable for safekeeping any vehicle or property seized hereunder, and such sheriff or constable shall collect from the vehicle owner costs provided by the general law for performing similar service.

(4) Upon seizure for confiscation, the department or its representatives shall appraise the value of the vehicle and its said contents according to its best judgment and shall deliver to the person, if any found in possession of such property, a receipt showing the fact of seizure, from whom seized, the place of seizure, a description of the vehicle and contents seized. A copy of said receipt shall be filed in the office of the department and shall be open to public inspection.

(5) The department, or any representative of the department, shall within 30 days advertise the said vehicle and its contents or other property so seized for sale to the highest bidder by one proper notice in a newspaper published in the county where the property is to be sold, if the county has such a newspaper, if there is no newspaper in such county, then by notice on the courthouse door, at least 30 days prior to the date of sale and contain a description of the vehicle and property to be sold.

(6) Any person claiming any property so seized as contraband goods may, at any time before the sale, file with the department, at Tallahassee, a claim in writing stating his interest in the article seized. The department shall determine the claim.

(7) In the event the ruling of the department is favorable to the claimant, the department shall deliver to the claimant the vehicle or property so seized. If the ruling of the department is adverse to the claimant, the department shall proceed to sell such contraband goods in accordance with the foregoing provisions of this chapter. The expense of storage and transportation shall be adjudged as part of the cost of the proceedings in such manner as the department shall fix pending any proceeding to recover a vehicle or other property seized under this chapter. The department may order delivery thereof to any claimant who shall execute with one or more sureties, approved by the department, and deliver to the department, a bond in favor of the state for the payment of a sum double the appraised value thereof as of the time of any hearing; and if the vehicle or other property is not returned at the time of the hearing, the bond shall stand in lieu of, and be forfeited in the same manner as, such vehicle or other property.

(8) The confiscated vehicle or goods shall not be sold pending any judicial review but shall be stored by the department until the final disposition of said case.

(9) Within the discretion of the department, the claimant may be awarded possession of the confiscated goods pending any judicial review; however, the claimant shall be required to execute a bond payable to the state in an amount double the value of the property seized, the sureties to be approved by the department. The condition of the bond shall be that the obligors shall pay to the state the full value of the vehicle or goods seized unless upon certiorari the decision of the department shall be reversed and the property awarded to the claimant.

(10) If no claim is interposed, such vehicle or other goods shall be forfeited without further proceedings and the same sold as hereinabove provided. The above procedure is the sole remedy of any claimant, and no court shall have jurisdiction to interfere therewith by replevin, injunction, or supersedeas or in any other manner.

(11) Any funds derived from the sale of confiscated vehicles or other goods shall be distributed or allocated in the same manner as other funds derived from the taxing statute.

History.—s. 16, ch. 26319, 1949; s. 8, ch. 61-276; s. 4, ch. 63-512; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 54, ch. 78-95.

212.17 Credits for returned goods, rentals or admissions; additional powers of department.—(1) In the event purchases are returned to the dealer by the purchaser or consumer after the tax imposed by this chapter has been collected or charged to the account of the consumer or user, the dealer shall be entitled to reimbursement of the amount of tax collected or charged by him, in the manner prescribed by the department; and in case the tax has not been remitted by the dealer to the department, the dealer may deduct the same in submitting his return upon receipt of a signed statement of the dealer as to the gross amount of such refunds during the period covered by said signed statement, which period shall not be longer than 90 days. The department shall issue to the dealer an official credit memorandum equal to the net amount remitted by the dealer for such tax collected. Such memorandum shall be accepted by the department

at full face value from the dealer to whom it is issued, in the remittance for subsequent taxes accrued under the provisions of this chapter; provided, in cases where a dealer has retired from business and has filed a final return, a refund of tax may be made if it can be established to the satisfaction of the department that the tax was not due.

(2) A dealer who has paid the tax imposed by this chapter on tangible personal property sold under a retained title, conditional sale, or similar contract, or under a contract wherein the dealer retains a security interest in the property pursuant to chapter 679, may take credit or obtain a refund for the tax paid by him on the unpaid balance due him when he repossesses (with or without judicial process) the property within 12 months following the month in which the property was repossessed. When such repossessed property is resold, the sale is subject in all respects to the tax imposed by this chapter.

(3) A dealer who has paid the tax imposed by this chapter on tangible personal property may take a credit or obtain a refund for any tax paid by him on the unpaid balance due on worthless accounts within 12 months following the month in which the bad debt has been charged off for federal income tax purposes. If any accounts so charged off for which a credit or refund has been obtained are thereafter in whole or in part paid to the dealer, the amount so paid shall be included in the first return filed after such collection and the tax paid accordingly.

(4) The department shall design, prepare, print and furnish to all dealers, or make available to said dealers, all necessary forms for filing returns and instructions to insure a full collection from dealers and an accounting for the taxes due, but failure of any dealer to secure such forms shall not relieve such dealer from the payment of said tax at the time and in the manner herein provided.

(5) The department and its assistants are hereby authorized and empowered to administer the oath for the purpose of enforcing and administering the provisions of this chapter.

(6) The department shall have the power to make, prescribe and publish reasonable rules and regulations not inconsistent with this chapter, or the other laws, or the constitution of this state, or the United States, for the enforcement of the provisions of this chapter and the collection of revenue hereunder, and such rules and regulations shall when enforced be deemed to be reasonable and just.

(7) The department, where admissions or rental payments are made and thereafter returned to the payers, after the taxes thereon have been paid, shall return or credit the taxpayer for taxes so paid on the moneys returned in the same manner as is provided for returns or credits of taxes where purchases or tangible personal property are returnable to a dealer.

History.—s. 17, ch. 26319, 1949; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; s. 14, ch. 67-180; s. 1, ch. 67-518; ss. 21, 35, ch. 69-106; s. 1, ch. 78-23; s. 4, ch. 78-59.

212.18 Administration of law; rules and regulations.—

(1) The cost of preparing and distributing the reports, forms and paraphernalia for the collection of said tax and the inspection and enforcement duties required herein shall be borne by the revenue produced by this chapter, provisions for which are hereinafter made.

(2) The department shall administer and enforce the assessment and collection of the taxes, interest, and penalties imposed by this chapter. It is authorized to make and publish such rules and regulations not inconsistent with this chapter, as it may deem necessary in enforcing its provisions in order that there shall not be collected on the average more than the rate levied herein. The department is authorized to and it shall provide by rule and regulation a method for accomplishing this end. It shall prepare instructions to all persons required by this chapter to collect and remit the tax to guide such persons in the proper collection and remission of such tax and to instruct such persons in the practices that may be necessary for the purpose of enforcement of this chapter and the collection of the tax imposed hereby. The use of tokens in the collection of this tax is hereby expressly forbidden and prohibited.

(3) Every person desiring to engage in or conduct business in this state as a dealer, as defined in this chapter, or to lease, rent, or let living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, or tourist or trailer camps, as defined in this chapter, shall file with the department a certificate of registration for each place of business, showing the name of the interested persons in such business, their residences, the address of the business, and such other data as the department may reasonably require. The application shall be made to the department before the person, firm, copartnership, or corporation may engage in such business, and it shall be accompanied by a registration fee of $5. The department, upon receipt of such application, will grant to the applicant a separate certificate of registration for each place of business, which certificate may be canceled by the department or its designated assistants for any failure by such certificate holder to comply with any of the provisions of this chapter. The certificate shall not be assignable and shall be valid only for the person, firm, copartnership, or corporation to whom issued, and such certificate shall be placed in a conspicuous place in the business or businesses for which it is issued and so displayed at all times. No person shall engage in business as a dealer or in leasing, renting, or letting of living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, or tourist or trailer camps as hereinbefore defined without first having obtained such a certificate or after such certificate has been canceled, and no person shall receive any license from any authority within the state to engage in any such business without first having obtained such a certificate or after such certificate has been canceled. The engaging in the business of selling or leasing tangible personal property or as a dealer, as defined in this chapter, or the engaging in leasing, renting, or letting of living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, or tourist or trailer camps as hereinbefore defined without such certificate first had and obtained or after being canceled by the department is prohibited. Failure or

refusal of any person, firm, copartnership, or corporation to so qualify where required hereunder is a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or subject to injunctive proceedings as provided by law.

(4) The department is hereby given the authority to purchase such supplies and equipment as may be necessary and incur any other necessary expenses as are proper for the enforcement and administration of this chapter.

History.—s. 18, ch. 26319, 1949; s. 9, ch. 61-276; s. 7, ch. 63-253; s. 13, ch. 65-329; s. 5, ch. 65-371; s. 2, ch. 65-420; s. 15, ch. 67-180; ss. 21, 35, ch. 69-106; s. 128, ch. 71-136; s. 5, ch. 78-59; s. 54, ch. 78-95.

212.19 All state agencies to cooperate in administration of law.—The department is further empowered to call on any state agency, department, bureau or board for any and all information which may, in its judgment, be of assistance in administering or preparing for the administration of this chapter, and such state agency, department, bureau or board is hereby authorized, directed and required to furnish such information.

History.—s. 19, ch. 26319, 1949; s. 12, ch. 57-1; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106.

212.20 Funds collected, disposition; additional powers of department; operational expense.—

(1) The department shall pay over to the Treasurer of the State all funds received and collected by it under the provisions of this chapter, to be credited to the account of the General Revenue Fund of the state.

(2) The department is authorized to employ all necessary assistants to administer this chapter properly and is also authorized to purchase all necessary supplies and equipment which may be required for this purpose.

(3) The estimated amount of money needed for the administration of this chapter shall be included by the department in its annual legislative budget request for the operation of its office.

History.—s. 20, ch. 26319, 1949; s. 7, ch. 29615, 1955; ss. 13, 24, ch. 57-1; s. 4, ch. 57-398; s. 13, ch. 59-1; s. 1, ch. 59-336; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 1, ch. 73-305.

212.21 Declaration of legislative intent.—

(1) If any section, subsection, sentence, clause, phrase or word of this chapter is for any reason held or declared to be unconstitutional, invalid, inoperative, ineffective, inapplicable, or void, such invalidity or unconstitutionality shall not be construed to affect the portions of this chapter not so held to be unconstitutional, void, invalid, or ineffective, or affect the application of this chapter to other circumstances not so held to be invalid, it being hereby declared to be the express legislative intent that any such unconstitutional, illegal, invalid, ineffective, inapplicable or void portion or portions of this chapter did not induce its passage, and that without the inclusion of any such unconstitutional, illegal, invalid, ineffective or void portions of this chapter, the legislature would have enacted the valid and constitutional portions thereof.

(2) It is hereby declared to be the specific legislative intent to tax each and every sale, admission, use, storage, consumption or rental levied and set forth in this chapter, except as to such sale, admission, use, storage, consumption, or rental, as shall be specifically exempted therefrom by this chapter, subject to the conditions appertaining to such exemption. It is further declared to be the specific legislative intent that should any exemption or attempted exemption from the tax or the operation or imposition of the tax or taxes be declared to be invalid, ineffective, inapplicable, unconstitutional or void for any reason, such declaration shall not affect the tax or taxes imposed herein, but such sale, admission, use, storage, consumption or rental or any of them exempted or attempted to be exempted from the tax or taxes or the operation or the imposition of the tax or taxes, shall be subject to the tax or taxes and the operation and imposition thereof to the same extent as if such exemption or attempted exemption had never been included herein.

(3) It is further declared to be the specific legislative intent to exempt from the tax or taxes or from the operation or the imposition thereof only such sales, admissions, uses, storages, consumption or rentals in relation to or in respect of the things set forth by this chapter as exempted from the tax to the extent that such exemptions are in accordance with the provisions of the constitutions of the state and of the United States. It is further declared to be the specific legislative intent to tax each and every taxable privilege made subject to the tax or taxes, except such sales, admissions, uses, storages, consumptions or rentals as are specifically exempted therefrom by this chapter to the extent that such exemptions are in accordance with the provisions of the constitutions of the state and of the United States.

(4) It being further declared to be the specific legislative intent that in the event any exemption or attempted exemption of any sale, admissions, use, storage, consumption or rental from the tax or taxes imposed by this chapter is for any reason declared to be unconstitutional, ineffective, inapplicable or void, that then and in such event each and every such sale, admission, use, storage, consumption or rental shall be subject to the tax or taxes imposed by this chapter as fully and to the same extent as if such exemption or attempted exemption had never been included herein, it being declared to be the specific legislative intent that no unconstitutional, invalid, ineffective, inapplicable or void exemption or attempted exemption or exemptions or attempted exemptions induced the passage of this chapter, it being further declared to be the specific legislative intent that without the inclusion herein of any such unconstitutional, invalid, ineffective, inapplicable or void exemption or attempted exemption, exemptions or attempted exemptions, the valid portions of this chapter would have been enacted.

(5) It is the legislative intent that the repeal of any provision heretofore exempting in whole or part any item or transaction from the tax imposed by this chapter shall result in the full imposition of the applicable tax to any such item or transaction.

History.—s. 21, ch. 26319, 1949; s. 16, ch. 67-180; s. 14, ch. 68-27; s. 18, ch. 69-222.

212.22 Savings provision.—Nothing herein contained shall be construed as repealing any general or special act authorizing a municipality to levy a special tax upon admission tickets which said tax is now being levied by such municipality.

History.—s. 23, ch. 26319, 1949.

CHAPTER 213

STATE REVENUE LAWS; GENERAL PROVISIONS

213.01 State revenue laws; legislative intent.—It is hereby declared to be legislative intent that the revenue laws of the state be administered in a fair, efficient and impartial manner. It is further declared to be legislative intent that in order to insure the fair, efficient and impartial administration of the revenue laws of the state, that the collection of revenue insofar as is provided herein be the administrative responsibility of the elected officials of this state.

History.—s. 1, ch. 63-253.

213.04 Bond of executive director.—The executive director of the department shall, before he enters upon the discharge of the duties of his office, give bond conditioned upon the faithful discharge of the duties of said office in such amounts and under such conditions as may be prescribed by the Department of Revenue.

History.—s. 4, ch. 63-253; ss. 21, 35, ch. 69-106.

213.05 Department of Revenue; control and administration of revenue laws.—The Department of Revenue shall have the responsibility of regulating, controlling, and administering all revenue laws and performing all other duties provided in: Chapter 201, excise tax on documents; chapter 203, gross receipts taxes, generally; chapter 205, local occupational license taxes; chapter 206, taxation of motor and other fuels; chapter 211, tax on production of oil and gas and severance of solid minerals; chapter 212, tax on sales, use and other transactions; and chapter 220, income tax code.

History.—s. 5, ch. 63-253; s. 4, ch. 65-371; ss. 10, 21, 35, ch. 69-106; s. 43, ch. 71-355; s. 62, ch. 73-333; s. 1, ch. 79-9; s. 42, ch. 79-164.

cf.—s. 20.21 Department of Revenue.

s. 214.02 Department to collect taxes re nonproperty taxes.

213.051 Service of subpoenas.—For the purpose of administering and enforcing the provisions of the revenue laws of this state, the Executive Director of the Department of Revenue, or any of his assistants designated in writing by him, shall be authorized to serve subpoenas and subpoenas duces tecum issued by the state attorney relating to investigations concerning the taxes enumerated in s. 213.05.

History.—s. 6, ch. 78-59.

213.06 Rules and regulations.—The Department of Revenue shall be authorized to adopt such rules and regulations as are necessary to carry out the intent and purposes of this act.

History.—s. 6, ch. 63-253; ss. 21, 35, ch. 69-106.

213.071 Certification under seal of certain records by executive director.—The executive director of the Department of Revenue may certify under appropriate seal, copies of any records, papers or documents placed in his custody, keeping and care by law. Such certified copies shall have the same force and effect as evidence as would the original records, papers or documents.

History.—s. 1, ch. 65-41; ss. 21, 35, ch. 69-106.

213.072 Records of the Department of Revenue; confidential.—

(1) The records of the Department of Revenue of individual accounts and reports required under chapter 212 are confidential and shall not be subject to inspection by the public or release by the department except in accordance with proper judicial process or as otherwise provided by law. However, a dealer may authorize the department in writing to divulge information concerning his account. Nothing herein shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular accounts or reports, to prohibit compliance with any formal agreement between the Department of Revenue and the federal government for the exchange of information, or to prohibit the disclosure of such information to properly qualified legislative committees.

(2) The Department of Revenue may, at its discretion, furnish to the multistate tax commission any information contained in tax returns, reports, and related schedules and documents filed pursuant to the laws of this state and contained in the report of an audit or investigation made with respect thereto, provided only that said information be furnished solely for tax purposes. Such information may pertain to any period open to audit by this state.

History.—s. 1, ch. 70-450; s. 1, ch. 73-322.

213.10 Deposit of tax moneys collected.—Any and all tax moneys collected by the Department of Revenue shall be deposited in the appropriate fund as provided by law.

History.—s. 10, ch. 63-253; ss. 21, 35, ch. 69-106.

213.11 Gasoline tax; transfer to Department of Natural Resources.—The Department of Revenue is directed to pay and transfer to the Department of Natural Resources, or to such other successor agency as may be charged with controlling noxious aquatic vegetation in this state, a sum equal to 2 percent of all revenue collected under the first gasoline tax, imposed by chapter 206. However, such

revenue collected under the first gas tax shall not exceed two million eight hundred thousand dollars. Such sum shall be transferred by the Department of Revenue at the same time the remainder of the first gasoline tax is transferred into the state transportation trust fund, as provided for in s. 206.45(1). All funds so transferred to the Department of Natural Resources or other agency shall be used for eradication, control, and research of water hyacinths and noxious aquatic vegetation.

History.—s. 1, ch. 71-232; ss. 2, 3, ch. 73-57; s. 1, ch. 73-217.

213.12 Certain state-chartered financial institutions; immunity from certain state and local taxes.—

(1) All banks, trust companies, and Morris Plan banks now or hereafter chartered under the laws of the state shall have the same immunity from state and local taxation that national banking associations have from time to time under the Statutes of the United States.

(2) All credit unions now or hereafter chartered under the laws of the state shall have the same immunity from state and local taxation that federally chartered credit unions have from time to time under the Statutes of the United States.

(3) No tax may be imposed by the state or any of its political subdivisions on any savings and loan association or its franchise, surplus, deposits, assets, reserves, loans, or income which is greater than the least onerous imposed by the state on any other financial institution as defined in chapter 658.

History.—s. 1, ch. 72-153.

CHAPTER 214

ADMINISTRATION OF DESIGNATED NONPROPERTY TAXES

PART I ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW (ss. 214.01-214.25)

PART II PENALTIES, INTEREST, AND ENFORCEMENT (ss. 214.40-214.52)

PART III TAX CRIMES (ss. 214.60-214.62)

PART IV APPORTIONMENT (ss. 214.70-214.73)

PART I

ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

214.01 Application of chapter and short title.—This chapter shall be applicable only to such nonproperty taxes (taxes not based upon the assessed value of property) as are expressly made subject to the provisions hereof. This chapter shall be known and may be cited as the "Tax Administration Act of 1971."

History.—s. 19, ch. 71-359.

214.02 Collection authority.—The Department of Revenue, hereinafter referred to as "the department," shall collect the taxes imposed by laws made applicable to this chapter and shall pay all moneys received by it under such laws into the general revenue fund of the state.

History.—s. 19, ch. 71-359.

214.03 Assessment.—

(1) The amount of tax which is shown to be due on any return shall be deemed assessed on the date of filing the return, including any amended returns showing an increase of tax. In the event the amount of tax is understated on the taxpayer's return due to a mathematical error, the department shall notify the taxpayer that the amount of tax in excess of that shown on the return is due and has been assessed. Such notice of additional tax due shall not be considered a notice of deficiency, nor shall the taxpayer have any right of protest. In the case of a return properly filed without a computation of the tax due, the tax computed by the department on the basis of the return shall be deemed assessed on the date the return is filed.

(2) Whenever a notice of deficiency has been issued, the amount of the deficiency shall be deemed assessed on the date provided in s. 214.08 if no protest is filed or, if a protest is filed, on the date when the decision of the department with respect to the protest becomes final, as provided in s. 214.11(4).

(3) Any amount paid as tax or in respect to tax under this chapter shall be deemed assessed upon the date of receipt of payment.

History.—s. 19, ch. 71-359.

214.04 Limitation on assessment.—No deficiency shall be assessed with respect to a taxable year for which a return was filed unless a notice of deficiency for such year was issued not later than the date prescribed in s. 214.09.

History.—s. 19, ch. 71-359.

214.05 Notice and demand.—

(1) As soon as practicable after an amount payable under this chapter is deemed assessed under s. 214.03 or any other provision of this chapter, the department shall give notice of the amount unpaid to each taxpayer liable for any unpaid portion of such assessment and shall demand payment thereof. The amount stated in such notice shall be payable upon receipt of such notice, at the place and time stated in such notice.

(2) No notice and demand need be issued when a deficiency has been determined by a proceeding in court for review of an assessment.

History.—s. 19, ch. 71-359.

214.06 Deficiency determinations.—

(1) As soon as practicable after a return is filed, the department shall examine it to determine the correct amount of tax. If the department finds that the amount of tax shown on the return is less than the correct amount and the difference is not solely the result of mathematical error, it shall issue a notice of deficiency to the taxpayer, setting forth the amount of additional tax and any penalties proposed

to be assessed. The findings of the department under this subsection shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax and penalties due.

(2) If a taxpayer fails to file a tax return, the department shall determine the amount of tax due according to its best judgment and information, and it shall issue a notice of deficiency to the taxpayer, setting forth the amount of tax and any penalties proposed to be assessed. The amount so determined by the department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due.

(3) An erroneous refund shall be considered deficiency of tax on the date made, and shall be deemed assessed and shall be collected as provided in ss. 214.03 and 214.05.

History.—s. 19, ch. 71-359.

214.07 Notice of deficiency.—A notice of deficiency issued under this chapter shall set forth, in addition to the amount of tax and any penalties, a computation of the adjustments giving rise to the proposed assessment and the reason or reasons therefor.

History.—s. 19, ch. 71-359.

214.08 Assessment after notice.—Upon the expiration of 60 days after the date on which it was issued (150 days, if the taxpayer is outside the United States), a notice of deficiency shall constitute an assessment of the amount of tax and penalties specified therein, except for amounts as to which the taxpayer shall have filed a protest with the department under s. 214.11.

History.—s. 19, ch. 71-359.

214.09 Limitations on notices and deficiencies.—

(1) Except as otherwise provided in this section:

(a) A notice of deficiency shall be issued not later than 3 years after the date on which the return was filed, and

(b) No deficiency shall be assessed or collected with respect to the taxable year for which the return was filed unless such notice is issued within such period.

(2) If the taxpayer omits from a return an amount properly includable which is in excess of 25 percent of the amount of gross income or property value, as the case may be, which is stated in the return, a notice of deficiency may be issued not later than 6 years after the date on which the return was filed. For purpose of this subsection, no amount shall be deemed omitted if such amount, or the item giving rise to such amount, is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the department of the nature and the amount of such item.

(3) If no return is filed, or if a false and fraudulent return is filed with intent to evade the tax made applicable to this chapter, a notice of deficiency may be issued at any time.

(4) If, before the expiration of the time prescribed in this section for the issuance of a notice of deficiency, both the department and the taxpayer have consented in writing to its issuance after such time, such notice may be issued at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(5) In any case in which there has been an erroneous refund of tax, a notice of deficiency may be issued at any time within 2 years from the making of such refund, or within 5 years from the making of such refund, if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact. However, if such notice of deficiency is issued after the time limitation prescribed in subsection (1) or subsection (2), the amount of any proposed assessment set forth in such notice shall be limited to the amount of such erroneous refund.

(6) If a protest has been filed with respect to a notice of deficiency and the decision of the department on such protest has become final, the department shall be barred from issuing a further or additional notice of deficiency for the taxable years involved in such protest, except in the case of fraud or mathematical error or as provided in subsection (5).

(7) For purposes of this section, a tax return filed before the last day prescribed by law, including any extension thereof, shall be deemed to have been filed on such last day.

History.—s. 19, ch. 71-359.

214.10 Waiver of restrictions on assessment.—At any time, whether or not a notice of deficiency has been issued, a taxpayer shall have the right to waive the restrictions on assessment and collection of the whole or any part of any proposed assessment of tax by a signed notice in writing filed with the department in such form as the department may by regulation prescribe.

History.—s. 19, ch. 71-359.

214.11 Protest of proposed assessment.—

(1) Within 60 days (150 days if the taxpayer is outside the United States) after the issuance of a notice of deficiency, the taxpayer may file with the department a written protest against the proposed assessment in such form as the department may by regulation prescribe, setting forth the portion or portions of the proposed deficiency protested and the grounds on which such protest is based.

(2) Whenever a protest is filed, the department shall reconsider the proposed assessment.

History.—s. 19, ch. 71-359; s. 54, ch. 78-95.

214.12 Jeopardy assessments.—

(1) If the department finds that a taxpayer is about to depart from the state, to conceal its property, or to do any other act tending to prejudice or render wholly or partly ineffectual the normal procedures for collection of any amount of tax, penalty, or interest made subject to this chapter, or if the department otherwise finds that the collection of such amount will be jeopardized by delay, the department shall issue to the taxpayer a notice of such findings and shall make demand for the immediate payment of such amount, whereupon such amount shall be deemed assessed and shall become immediately due and payable.

(2) If, within 5 days after issuance of a notice and

demand, or within the period of any extension of time the department may grant, the taxpayer does not comply with such notice or show to the department that the findings in such notice are erroneous, the department may file a notice of jeopardy assessment lien in the office of the clerk of the circuit court of the county in which any property of the taxpayer may be located, and it shall notify the taxpayer of such filing. A jeopardy assessment lien shall have the same scope and effect as other liens prescribed by this chapter.

(3) If the notice and demand relate to the taxpayer's current taxable period or year, the department shall declare the taxable period or year of the taxpayer immediately terminated, and the notice and demand shall relate to the period or year declared terminated and shall include therein income, deductions, and values accrued or accumulated up to the date of termination if not otherwise properly includable in respect of such taxable year or period.

(4) If the taxpayer believes that he does not owe some or all of the amount for which the jeopardy assessment lien against him has been filed, or that no jeopardy to the revenue in fact exists, he may protest to the department, whereupon the department shall determine whether or not such jeopardy assessment lien will be released.

History.—s. 19, ch. 71-359; s. 54, ch. 78-95.

214.13 Overpayments; credits.—

(1) If, after a return has been filed, the department finds that the tax paid with the return is more than the correct amount, it shall credit or refund the overpayment as is appropriate.

(2) In the case of any overpayment, the department may within the applicable period of limitations credit the amount of such overpayment, including any interest allowed thereon, against any part of the liability in respect of the tax giving rise to the overpayment of the taxpayer who made the overpayment, refunding any balance to such taxpayer.

History.—s. 19, ch. 71-359.

214.14 Overpayments; interest.—Interest shall be allowed and paid at the rate of 6 percent per year upon any overpayment in respect of a tax made subject to this chapter, except that if any overpayment is refunded within 9 months after the last date prescribed for filing the return of such tax, including any extension thereof, or within 9 months after the return was filed, whichever is later, no interest shall be allowed on such overpayment. For purposes of this section, no amount of tax for any taxable year shall be treated as having been paid before the date on which the tax return for such year was due under applicable law, without regard to any extension of the time for filing such return.

History.—s. 19, ch. 71-359.

214.15 Overpayments; refunds.—

(1) Every claim for refund shall be filed with the department in writing, in such form as the department may by regulation prescribe, and shall state the amount claimed, the specific grounds upon which the claim is founded, and the taxable years or periods involved.

(2) As soon as practicable after a claim for refund is filed, the department shall examine the claim and either issue a notice of refund, abatement, or credit to the claimant or issue a notice of denial.

History.—s. 19, ch. 71-359; s. 54, ch. 78-95.

214.16 Limitations on claims for refund.—

(1) Except as otherwise provided in this section:

(a) A claim for refund shall be filed not later than 3 years after the date the return was filed or 1 year after the date the tax was paid, whichever is the later; and

(b) No credit or refund shall be allowed or made with respect to the taxable year for which a claim was filed unless such claim is filed within such period.

(2) If, before the expiration of the time prescribed in this section for filing a claim for refund, both the department and the claimant shall have consented in writing to its filing after such time, such claim may be filed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) The amount of any credit or refund resulting from a claim for refund shall be limited as follows:

(a) If the claim was filed during the 3-year period prescribed in subsection (1), the amount of the credit or refund shall not exceed the portion of tax paid within the period, equal to 3 years plus the period of any extension of time for filing the return, immediately preceding the filing of the claim.

(b) If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the year immediately preceding the filing of the claim.

(4) For purposes of this section, a tax return filed on or before the last day prescribed by law for the filing of such return, determined without regard to any extensions thereof, shall be deemed to have been filed on such last day.

History.—s. 19, ch. 71-359.

214.17 Access to books and records.—All books, records, and other papers and documents which are required by applicable law to be kept shall be subject to inspection by the department or its duly authorized agents and employees at all times during business hours.

History.—s. 19, ch. 71-359.

214.18 Investigations.—For the purpose of administering and enforcing the provisions of applicable tax laws, the department or any officer, agent, or employee of the department designated by the executive director in writing or by regulation may:

(1) Hold investigations concerning any matters;

(2) Require the attendance of any individual, or any officer or employee of a taxpayer, having knowledge of such matters; and

(3) Take testimony and require proof for its information.

In the conduct of any investigation, neither the department nor any officer, agent, or employee thereof shall be bound by the technical rules of evidence, and the informality in any proceeding or in the manner

of taking testimony shall not invalidate any order, decision, rule, or regulation made or approved or confirmed by the department. Any officer or employee of the department authorized by the executive director or regulation shall have power to administer oaths. The books, papers, records, and memoranda of the department, or parts thereof, may be proved in any investigation or legal proceeding by a reproduced copy thereof, under the certificate of the executive director, and any such reproduced copy shall, without further proof, be admitted into evidence before the department or in any legal proceeding.

History.—s. 19, ch. 71-359; s. 54, ch. 78-95.

214.19 Actions to recover taxes.—At any time that the department might commence proceedings for a levy under part II of this chapter, it may bring an action in any court of competent jurisdiction within or without the state, in the name of the state, to recover the amount of any taxes, penalties, and interest due and unpaid under any law made applicable to this chapter. In any such action, a certificate of the department showing the amount of the delinquency shall be prima facie evidence of the correctness of such amount, the validity of its assessment, and its compliance with all the provisions of this chapter.

History.—s. 19, ch. 71-359.

214.20 Production of witnesses and records.—

(1) The department, or any officer or employee of the department designated by the executive director in writing or by regulation, shall at its or his own instance, or on the written request of any other party to the proceeding, issue subpoenas requiring the attendance of, and the giving of testimony by, witnesses and issue subpoenas duces tecum requiring the production of books, papers, records, or memoranda. All subpoenas and subpoenas duces tecum issued under this chapter may be served by any person of full age.

(2) Witnesses other than employees of the state shall be entitled to receive for attendance and travel the same fees as witnesses before the circuit courts of this state, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed for the department or any officer or employee thereof, such fees shall be paid in the same manner as other expenses of the department. When the witness is subpoenaed for any other party, the cost of subpoena service and the witness fee shall be borne by the party at whose instance the witness is summoned, and the department may, in its discretion, require a deposit or advance payment to cover the cost of such service and witness fee. Subpoenas issued hereunder shall be served in the same manner as subpoenas issued from the circuit courts.

(3) Any circuit court of the state, or any judge thereof, upon application of the department or any officer or employee thereof or upon the application of any other party to the proceeding may, in its or his discretion, compel the attendance of witnesses, the production of books, papers, records, or memoranda, and the giving of testimony before the department or any officer or employee thereof conducting an investigation authorized by this chapter in the same manner as the production of evidence may be compelled before said court.

History.—s. 19, ch. 71-359; s. 54, ch. 78-95.

214.21 Confidentiality and information sharing.—

(1) Except as provided in subsections (2), (3), and [1](4), all information received by the department from returns filed under laws made applicable to this chapter, or from any investigation conducted under the provisions of this chapter, shall be confidential except for official purposes within the department or pursuant to official procedures for collection of any state tax or enforcement of any civil or criminal penalty or sanction imposed by this chapter or by another statute imposing a state tax. Any officer or employee of the department who shall divulge any such information in any manner, except for such purposes and pursuant to order of the department or in accordance with a proper judicial order, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 or more than $5,000 or be imprisoned for not less than 1 month or more than 1 year, or be both so fined and imprisoned, in the discretion of the court.

(2) Nothing contained in this chapter shall prevent the department from publishing or making available to the public the names and addresses of persons filing returns under applicable laws, or from publishing or making available reasonable statistics concerning the operation of a tax, provided the contents of returns are grouped into aggregates in such a way that the information contained in any individual return is not thereby disclosed.

(3) The department may make available to the Secretary of the Treasury of the United States or his delegate or the proper officer or his delegate of any other state imposing taxes made applicable to this chapter, for exclusively official purposes, information received by the department in the administration of any such tax law, but such permission shall be granted only if the United States or such other state, as the case may be, grants the department substantially similar privileges.

(4)(a) Any information received by the Department of Revenue in connection with the administration of taxes pursuant to this chapter, including but not limited to information contained in returns and reports filed by persons subject to tax, shall be made available by the department to the Auditor General or his authorized agent in the performance of his official duties; however, no information shall be disclosed to the Auditor General or his authorized agent when such disclosure is prohibited by federal law. The Auditor General and his authorized agent shall be subject to the same requirements of confidentiality and subject to the same penalties for violation of the requirements as is the department. The provisions of this subsection shall prevail over any conflicting provision of law unless the conflicting provision contains a specific exemption from this subsection.

(b) This subsection shall expire and cease to take effect on July 1, 1981.

History.—s. 19, ch. 71-359; s. 1, ch. 75-293; ss. 1, 2, ch. 79-251.
[1]Note.—Subsection (4) expires on July 1, 1981.

214.22 Amounts less than $1.—

(1) The department may by regulation provide that if a total amount of less than $1 is payable, refundable, or creditable, such amount either may be disregarded or shall be disregarded if it is less than 50 cents and increased to $1 if it is 50 cents or more.

(2) The department may by regulation provide that any amount which is required to be shown or reported on any return or other document required under laws made applicable to this chapter shall, if such amount is not a whole dollar, be increased to the nearest whole dollar when the fractional part of a dollar is 50 cents or more and decreased to the nearest whole dollar when the fractional part of a dollar is less than 50 cents.

History.—s. 19, ch. 71-359.

214.23 Procedure for notices.—Whenever notice is required by this chapter, such notice shall, if not otherwise provided, be given or issued by mailing it by registered or certified mail to the taxpayer concerned at his last known address as shown on the most recently filed return under applicable law or, if no return has previously been filed, at the address shown on the corporation report last filed under s. 607.357.

History.—s. 19, ch. 71-359; s. 54, ch. 78-95; s. 2, ch. 79-9.

214.24 Closing agreements.—The department may by regulation prescribe the manner and form of closing agreements by which the department and taxpayers may agree that any liability for tax, penalties, or interest under laws made applicable to this chapter, shall be forever barred, absent fraud or misrepresentation of a material fact.

History.—s. 19, ch. 71-359.

214.26 Actions involving legality of tax or penalty.—In any case involving the legality of any tax or penalty assessed under this chapter, the complainant shall, except where the taxes assessed, including penalties and interest, have been paid to the department prior to the institution of suit, tender into court and file with the complaint the full amount of the assessment complained of, including penalties and interest, or file with the complaint a cash bond or a surety bond endorsed by a surety company authorized to do business in this state or by such sureties as may be approved by the court, conditioned to satisfy any judgment or decree in full, including the taxes complained of, costs, penalties, and interest.

History.—s. 2, ch. 78-79.

PART II

PENALTIES, INTEREST, AND ENFORCEMENT

214.40 Penalties; failure to file timely returns.—

(1) In case of failure to file any tax return required under laws made applicable to this chapter on the date prescribed therefor, including any extensions thereof, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be added as a penalty to the amount of tax due with such return 5 percent of the amount of such tax, if the failure is not for more than 1 month, plus an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate. For purposes of this section, the amount of tax due with any return shall be reduced by any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which was properly allowable on the date the return was required to be filed.

(2) In case of failure to file any tax return required by s. 220.22, notwithstanding that no tax is shown to be due thereon, a penalty in the amount of $25 for each month or portion thereof, not to exceed $150 in the aggregate, shall be assessed and paid for each such failure to file. This subsection shall only apply to corporations when they also are required to file a federal income tax return.

(3) If any penalty is assessed under subsection (1) for failure to file a return by the prescribed date, no penalty under subsection (2) for failure to file a return with no tax shown to be due shall be assessed with respect to the same return.

History.—s. 19, ch. 71-359; s. 4, ch. 74-324.

214.41 Penalties; failure to pay tax.—

(1) If any part of a deficiency is due to negligence or intentional disregard of rules and regulations prescribed by or under applicable law, but without intent to defraud, there shall be added to the tax as a penalty an amount equal to 5 percent of the deficiency.

(2) If any part of a deficiency is due to fraud, there shall be added to the tax as a penalty, in lieu of the penalty under subsection (1), an amount equal to 50 percent of the deficiency.

(3) For purposes of this section, the amount shown as tax by the taxpayer upon a return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed by law for the filing of such return, including any extensions of the time for such filing.

History.—s. 19, ch. 71-359.

214.42 Assessment of penalties.—The penalties provided by this part shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes. Any reference in this chapter to the tax imposed by laws made applicable to this chapter shall be deemed a reference to penalties provided by this part.

History.—s. 19, ch. 71-359.

214.43 Interest on deficiencies.—

(1) If any amount of tax imposed by laws made applicable to this chapter is not paid on or before the date, determined without regard to any extensions, prescribed for payment of such tax, interest on the unpaid amount at the rate of 12 percent per year shall be paid from such date to the date of payment.

(2) Interest prescribed by this section on any tax or penalty shall be deemed assessed upon the assessment of the tax or penalty to which such interest relates, and shall be collected and paid in the same manner as taxes. Any reference in this chapter to the tax imposed by laws made applicable to this chapter shall be deemed a reference to interest imposed by this section.

(3) No interest shall be imposed upon the interest provided by this section.

(4) Interest shall be paid in respect to any penalty which is not paid within 20 days of the notice and demand therefor, but only for the period from the date of the notice and demand to the date of payment.

(5) If notice and demand is made for the payment of any amount due under laws made applicable to this chapter, and if such amount is paid within 30 days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(6) Any tax, interest, or penalty imposed by applicable laws or this chapter which has been erroneously refunded and which is recoverable by the department shall bear interest at the rate of 12 percent per year from the date of payment of such refund.

History.—s. 19, ch. 71-359; s. 11, ch. 76-261.

214.44 Liens; attachment and notice.—

(1) The state shall have a lien for all or any portion of the tax or any penalty, or for any amount of interest which may be due, upon all the real and personal property of any taxpayer assessed with a tax under applicable laws or this chapter.

(2) If the lien arises from an assessment pursuant to a notice of deficiency, such lien shall not attach, and the notice described in subsection (3) shall not be filed, until all proceedings in court for review of such assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted.

(3) The lien created by assessment pursuant to a notice of deficiency shall expire unless a notice of lien is filed as provided in this part within 5 years from the date all proceedings in court for the review of such assessment have terminated or the time for the taking thereof has expired without such proceeding being instituted. The lien created by assessment pursuant to the filing of a return without payment of the tax shown to be due, or the penalty or interest properly due, shall expire unless a notice of lien is filed within 5 years from the date such return was filed with the department.

History.—s. 19, ch. 71-359.

214.45 Liens; priority and filing.—

(1) Nothing in this part shall be construed to give the state a preference over the perfected rights of any bona fide purchaser, mortgagee, judgment creditor, or other lienholder in existence prior to the filing of notice of lien or of jeopardy assessment lien in the office of the clerk of the circuit court in the county in which the property subject to the lien is located.

(2) The clerks of the circuit courts of the several counties shall establish and maintain a file and index book for liens arising under this chapter and the laws made applicable hereto, in the manner and form prescribed by the department, which shall contain numerical and alphabetical indexes. Each entry in the file shall show the name and address of the taxpayer named in the notice, the tax to which the lien relates, the serial number of the notice, the date and hour of filing, whether the lien is a regular lien or a jeopardy assessment lien, and the amount of taxes, penalties, and interest due and unpaid at the time the notice is filed.

History.—s. 19, ch. 71-359.

214.46 Liens; duration.—The liens arising under applicable laws and this chapter shall continue in effect for 5 years from the date of filing the notice of lien, unless sooner released or otherwise discharged.

History.—s. 19, ch. 71-359.

214.47 Liens; release.—

(1) The department may release all or any portion of the property subject to a lien if it determines that the release will not endanger or jeopardize the collection of the amount secured thereby.

(2) The department shall release all or any portion of the property subject to a lien upon a final determination of a court of competent jurisdiction that the taxpayer does not owe some or all of the amount secured by the lien or that no jeopardy to the revenue exists.

(3) The department shall release the lien against any taxpayer whenever the tax, penalties and interest covered by the lien are paid.

History.—s. 19, ch. 71-359.

214.48 Liens; certificates of release.—

(1) The department shall issue a certificate of complete or partial release of lien:

(a) To the extent that the fair market value of any property subject to the lien exceeds 200 percent of the amount of the lien plus the amount of all prior liens upon such property;

(b) To the extent that such lien expires or otherwise becomes unenforceable;

(c) To the extent that the amount of such lien is paid, together with any interest which may become due between the date when the notice of lien is filed and the date when the amount of such lien is paid;

(d) To the extent that there is furnished to the department, on such form as the department may prescribe and with such surety or sureties as are

satisfactory to the department, a bond that is conditioned upon the payment of 200 percent of the amount of such lien, plus any interest which may become due after the notice of lien is filed and before the amount thereof is fully paid; and

(e) To the extent and under the circumstances specified in s. 214.47.

(2) A certificate of complete or partial release of any lien shall be conclusive that the lien upon the property covered by the certificate is extinguished to the extent indicated by such certificate.

(3) The clerks of the circuit court shall permanently attach the certificates of release to the notice of lien or notice of jeopardy assessment lien and record same whenever a certificate of complete or partial release of lien issued by the department is presented for filing in the office where a notice of such lien was filed.

History.—s. 19, ch. 71-359.

214.49 Liens; costs.—The department shall not be required to furnish any bond or to make a deposit or to pay any costs or fees of any court or officer thereof in any legal proceedings or in connection with the recordation in any county of any notice or other document filed by the department pursuant to the provisions of this chapter.

History.—s. 19, ch. 71-359.

214.50 Liens; foreclosure.—In addition to any other remedy provided by the laws of this state, and provided that no hearing or proceedings for review provided by this chapter shall be pending and that the time for the taking of review shall have expired, the department may foreclose in any court of competent jurisdiction any lien on real or personal property for any tax, penalty, or interest to the same extent and in the same manner as in the enforcement of other liens. Any proceeding to foreclose shall be instituted not more than 5 years after the filing, or availability for filing, of the notice of lien under the provisions of s. 214.45.

History.—s. 19, ch. 71-359.

214.51 Collection procedures.—

(1) In addition to any other remedy provided by the laws of this state, if any tax imposed by laws made applicable to this chapter is not paid within the time required by this chapter, the department, or someone designated by it, may cause a demand to be made on the taxpayer for the payment thereof. If such tax remains unpaid for 10 days after such demand has been made and no proceedings have been taken to review the same, the department may issue a warrant directed to any sheriff or other person authorized to serve process, commanding said sheriff or other person to levy upon and sell the real and personal property of the taxpayer found within his jurisdiction for the payment of the amount thereof, including penalties, interest, and the cost of executing the warrant. Such warrant shall be returned to the department together with the money collected by virtue thereof within the time therein specified, which shall not be less than 20 nor more than 90 days from the date of the warrant. The sheriff or other person to whom such a warrant shall be directed shall proceed upon the same in all respects and with like effect as is prescribed by law for executions issued against property upon judgments of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. No proceedings for a levy under this section shall be commenced more than 5 years after the filing of the notice of lien under the provisions of this part.

(2) Whenever an execution or writ of attachment issued from any court for the enforcement or collection of any tax liability created by laws made applicable to this chapter shall be levied by any sheriff or other authorized person upon any personal property, and such property shall be claimed to be exempt from execution or attachment by any person other than the defendant in the execution or attachment, then it shall be the duty of the person making such claim to give notice in writing of his claim and of his intention to prosecute the same to the sheriff or other person within 10 days after the making of said levy. The giving of such notice shall be a condition precedent to any legal action against the sheriff or other authorized person for wrongful levy or seizure or for sale of said property, and any such person who fails to give notice within said time shall be forever barred from bringing any legal action against such sheriff or other person for injury or damages to or conversion of said property.

History.—s. 19, ch. 71-359.

214.52 Liability of transferees.—The liability of a transferee of a taxpayer for any tax, penalty, or interest due shall be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates. The term "transferee" shall include any corporation or other person which succeeds by operation of law or otherwise to substantially all of the business or property of a taxpayer.

History.—s. 19, ch. 71-359.

PART III

TAX CRIMES

214.60 Willful and fraudulent acts.—Any taxpayer who is subject to the provisions of this chapter and who willfully fails to file a return or keep required books and records, files a fraudulent return, willfully violates any rule or regulation of the department, or willfully attempts in any other manner to evade or defeat any tax imposed by laws made applicable to this chapter or the payment thereof, shall, in addition to other penalties, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 19, ch. 71-359.

214.61 Willful failure to pay over.—Any person who accepts money from a taxpayer that is due to the department, for the purpose of acting as the taxpayer's agent to make the payment to the department, but who willfully fails to remit such payment

to the department when due or who purports to make such payment but willfully fails to do so because his check or other remittance fails to clear the bank or other depository against which it is drawn shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 19, ch. 71-359.

214.62 Aiding and abetting.—Any person who aids, abets, counsels, or conspires to commit any of the acts described in s. 214.60 or s. 214.61 shall be subject to fine or imprisonment to the same extent as the perpetrator of such act.

History.—s. 19, ch. 71-359.

PART IV

APPORTIONMENT

214.70 Definition.—The term "tax base" as used in this part shall mean the amount to which a tax rate is applied under any law made applicable to this chapter, exclusive of any exemptions from, or credits against, such tax which are authorized by the law imposing such tax.

History.—s. 19, ch. 71-359.

214.71 Apportionment; general method.—Except as otherwise provided in ss. 214.72 and 214.73, the base upon which any tax made applicable to this chapter shall be apportioned shall be determined by multiplying same by a fraction the numerator of which is the sum of the property factor, the payroll factor, and the sales factor and the denominator of which is 3. In the event any of the factors described in subsections (1), (2), or (3) has a denominator which is zero or is determined by the department to be insignificant, the denominator of the apportionment fraction shall be reduced by the number of such factors.

(1) The property factor is a fraction the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year or period and the denominator of which is the average value of such property owned or rented and used everywhere.

(a) Real and tangible personal property owned by the taxpayer shall be valued at original cost. Real and tangible personal property rented by the taxpayer shall be valued at eight times the net annual rental rate paid by the taxpayer less any annual rental rate received from subrentals.

(b) The average value of real and tangible personal property shall be determined by averaging the value at the beginning and the end of the taxable year or period, unless the department determines that an averaging of monthly values during the taxable year or period is reasonably required to reflect properly the average value of the taxpayer's real and tangible personal property.

(2) The payroll factor is a fraction the numerator of which is the total amount paid in this state during the taxable year or period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the taxable year or period.

(a) The term "compensation" shall mean wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(b) Compensation is paid in this state if:

1. The employee's service is performed entirely within the state; or

2. The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state; or

3. Some of the employee's service is performed in the state and

a. The base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or

b. The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed and the employee's residence is in this state.

[1](3) The sales factor is a fraction the numerator of which is the total sales of the taxpayer in this state during the taxable year or period and the denominator of which is the total sales of the taxpayer everywhere during the taxable year or period.

(a)1. Sales of tangible personal property are in this state if the property is delivered or shipped to a purchaser within this state, regardless of the f.o.b. point or other conditions of the sale.

[2]2. When citrus fruit is delivered by a cooperative for a grower-member, by a grower-member to a cooperative, or by a grower-participant to a Florida processor, the sales factor for such growers for such citrus fruit delivered to such processor shall be the same as the sales factor for the most recent taxable year of that processor. That sales factor, expressed only as a percentage and not in terms of the dollar volume of sales, so as to protect the confidentiality of the sales of the processor, shall be furnished on the request of such a grower promptly after it has been determined for that taxable year.

[2]3. Reimbursement of expenses under an agency contract between a cooperative, a grower-member of a cooperative, or a grower and a processor will not be deemed a sale within this state.

(b) Sales of a financial organization, including, but not limited to, banking and savings institutions, investment companies, real estate investment trusts, and brokerage companies, shall be in this state if derived from:

1. Fees, commissions, or other compensation for financial services rendered within this state;

2. Gross profits from trading in stocks, bonds, or other securities managed within this state;

3. Interest and dividends received within this state;

4. Interest charged to customers at places of business maintained within this state for carrying debit balances of margin accounts, without deduction of any costs incurred in carrying such accounts; and

5. Any other gross income resulting from the operation as a financial organization within this state.

In computing the amounts referred to in this paragraph, any amount received by a member of an affiliated group (determined under s. 1504(a) of the Internal Revenue Code, but without reference to whether any such corporation is an "includable corporation" under s. 1504(b) of the Internal Revenue Code) from another member of such group shall be included only to the extent such amount exceeds expenses of the recipient directly related thereto.

History.—s. 19, ch. 71-359; s. 2, ch. 71-980; s. 43, ch. 79-164; s. 1, ch. 79-326.

[1]Note.—Section 3, ch. 79-326, provides that the amendment to subsection (3) by that act, with the exception of subparagraphs (a) 2. and 3., "operate retroactively to the date on which official publication of the 1973 Florida Statutes occurred."

[2]Note.—Section 3, ch. 79-326, provides that this subparagraph applies to "any taxpayer whose accounting year begins after December 31, 1978."

214.72 Apportionment; methods for special industries.—

(1)(a) Except as provided in paragraph (b), the tax base of an insurance company for a taxable year or period shall be apportioned to this state by multiplying such base by a fraction the numerator of which is the direct premiums written for insurance upon properties and risks in this state and the denominator of which is the direct premiums written for insurance upon properties and risks everywhere. For purposes of this paragraph, the term "direct premiums written" means the total amount of direct premiums written, assessments, and annuity considerations, as reported for the taxable year or period on the annual statement filed by the company with the commissioner of insurance in the form approved by the National Convention of Insurance Commissioners or such other form as may be prescribed in lieu thereof.

(b) If the principal source of premiums written by an insurance company consists of premiums for reinsurance accepted by it, the tax base of such company shall be apportioned to this state by multiplying such base by a fraction the numerator of which is the sum of:

1. Direct premiums written for insurance upon properties and risks in this state, plus

2. Premiums written for reinsurance, accepted in respect to properties and risks in this state,

and the denominator of which is the sum of direct premiums written for insurance upon properties and risks everywhere plus premiums written for reinsurance accepted in respect to properties and risks everywhere. For purposes of this paragraph, premiums written for reinsurance accepted in respect to properties and risks in this state, whether or not otherwise determinable, may, at the election of the company, either be determined on the basis of the proportion which premiums written for reinsurance accepted from companies resident in or having a regional home office in the state bears to premiums written for reinsurance accepted from all sources or, alternatively, on the basis of the proportion which the sum of the direct premiums written for insurance upon properties and risks in this state by each ceding company from which reinsurance is accepted bears to the sum of the total direct premiums written by each such ceding company for the taxable year.

(2) The tax base for a taxpayer furnishing transportation services, for the purpose of computing a tax on those activities, shall be apportioned to this state by multiplying such base by a fraction the numerator of which is the revenue miles of the taxpayer in this state and the denominator of which is the revenue miles of the taxpayer everywhere.

(a) For transportation other than by pipeline, a revenue mile is the transportation of one passenger or 1 net ton of freight the distance of 1 mile for a consideration. When a taxpayer is engaged in the transportation of both passengers and freight, the fraction shall be determined by means of an average of the passenger revenue mile fraction and the freight revenue mile fraction, weighted to reflect the taxpayer's relative railway operating income from total passenger and total freight service as reported to the Interstate Commerce Commission, in the case of transportation by railroad, or weighted to reflect the taxpayer's relative gross receipts from passenger and freight transportation, in case of transportation other than by railroad.

(b) For transportation by pipeline, a revenue mile is the transportation by pipeline of 1 barrel of oil, 1,000 cubic feet of gas, or any specified quantity of any other substance the distance of 1 mile for a consideration.

(c) For purposes of paragraph (a), in computing the revenue miles of any taxpayer engaged in furnishing air or sea transportation services to or from points in the state from or to points outside the state but in the continental United States, the "revenue miles in this state" shall include all miles traversed from points of origin in the state to the point at which the carrier crosses the northern land border of the state, the meridian of longitude 87°30' west from Greenwich, or the parallel of latitude 31° north from the equator, as the case may be, and with respect to transportation emanating outside the state but in the continental United States, all miles traversed from such crossing places to points of destination in this state. The "revenue miles in this state" shall also include all miles traversed between points in this state, even though the route of travel is not wholly over the land mass of the state. The department may prescribe standard mileage tables for the purpose of determining revenue miles in the state under this paragraph, rather than requiring taxpayers to compute from their records the actual number of miles traversed within such boundaries or points from time to time.

History.—s. 19, ch. 71-359; s. 63, ch. 73-333.

214.73 Apportionment; other methods.—If the apportionment methods of ss. 214.71 and 214.72 do not fairly represent the extent of a taxpayer's tax base attributable to this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's tax base, if reasonable:

(1) Separate accounting;

(2) The exclusion of any one or more factors;

(3) The inclusion of one or more additional factors which will fairly represent the taxpayer's tax base attributable to this state; or

(4) The employment of any other method which will produce an equitable apportionment.

History.—s. 19, ch. 71-359.

CHAPTER 215

FINANCIAL MATTERS; GENERAL PROVISIONS

215.85 Direct deposit of public funds.

215.01 Fiscal year.—The fiscal year shall begin on July 1 and end on June 30 in each and every year.

History.—s. 5, ch. 515, 1853; RS 405; GS 597; RGS 1032; s. 1, ch. 10124, 1925; s. 1, ch. 10130, 1925; CGL 1343.

215.02 Manner of paying money into the treasury.—Whenever any officer of this state or other person desires to pay any money into the Treasury of the state on account of his indebtedness to the state, he shall first go into the Department of Banking and Finance, and there ascertain from the department's books the amount of his indebtedness to the state, and thereupon the department shall give him a memorandum or certificate of the amount of such indebtedness, and on what account. Second, he shall take said certificate with him to the Department of Insurance and deliver the same and pay over to the Insurance Commissioner and Treasurer the amount called for in said certificate. Third, the Insurance Commissioner and Treasurer shall receive the money, make a proper entry thereof, file the certificate of the Department of Banking and Finance, and give a certificate to the party paying over the money, acknowledging the receipt of the money, and on what account; which certificate thus received, the party shall return to the Department of Banking and Finance, on receipt of which the department shall give the party a receipt for the amount, and enter a credit on the party's account in his books for the amount thus paid by him to the Insurance Commissioner and Treasurer, and file the certificate received from the Insurance Commissioner and Treasurer.

History.—s. 1, ch. 1292, 1861; RS 406; GS 598; RGS 1033; CGL 1344; ss. 12, 13, 35, ch. 69-106.

215.03 Party to be reimbursed on reversal of judgment for state.—Whenever upon appeal in civil cases, any judgment in favor of the state has been or shall be reversed and set aside, which may have been paid in part by the appellant, the Comptroller shall issue his warrant upon the Treasurer to reimburse the appellant for all sums paid in discharge of such judgment and cost, provided the appellant shall adduce satisfactory evidence to the Comptroller of the sums paid as aforesaid.

History.—s. 1, ch. 723, 1855; GS 615; RGS 1051; CGL 1362; s. 21, ch. 63-559.

215.04 Department of Banking and Finance to report delinquents.—The Department of Banking and Finance shall report to the state attorney of the proper circuit the name of any delinquent officer whose delinquency concerns the department, so soon as such delinquency shall occur; and the state attorney shall proceed forthwith against such delinquent.

History.—s. 4, Mar. 4, 1839; RS 407; GS 599; RGS 1034; CGL 1345; ss. 12, 35, ch. 69-106.

215.05 Department of Banking and Finance to certify accounts of delinquents.—When any revenue officer or other person accountable for public money shall neglect or refuse to pay into the treasury the sum or balance reported to be due to the state, upon the adjustment of his account, the Department of Banking and Finance shall immediately hand over to the state attorney of the proper circuit the statement of the sum or balance certified under its seal of office, so due; and the state attorney shall institute suit for the recovery of the same, adding to the sum or balance stated to be due on such account the commissions of the delinquent, which shall be forfeited in every instance where suit is commenced and judgment is obtained thereon, and an interest of 8 percent per annum from the time of the delinquent's receiving the money until it shall be paid into the State Treasury.

History.—s. 1, Feb. 10, 1832; RS 408; GS 600; RGS 1035; CGL 1346; ss. 12, 35, ch. 69-106.

215.06 Certified accounts of delinquents as evidence.—In every case of delinquency, where suit has been or shall be instituted, the certified statement provided for in s. 215.05, shall be admitted as evidence and shall be prima facie proof of the facts therein stated. All copies of bonds, contracts, or other papers relating to or connected with the settlement of any account between the state and an individual, when certified as aforesaid to be true copies of the original, may be annexed to such statement aforesaid, and shall have equal validity and be entitled to the same degree of credit which would be due to the original papers if produced and authenticated in court; provided, where suit is brought upon a bond or other sealed instrument, and the defendant shall plead non est factum, or upon motion to the court, such plea or motion being verified by the oath of the defendant, it is lawful for the court to take the same into consideration, and, if it shall appear necessary for the attainment of justice, to require the production of the original bond, contract, or other paper specified in such affidavit.

History.—s. 2, Feb. 10, 1832; RS 409; GS 601; RGS 1036; CGL 1347.

215.07 Preference of state in case of insolvency.—When any revenue officer or other person now indebted or hereafter becoming indebted to the state, by bond or otherwise, shall become insolvent, or when the estate of any deceased debtor in the hands of executors or administrators shall not be sufficient to pay all the debt due from the deceased, the debt due to the state shall be first satisfied; and the priority established shall be deemed to extend as well to cases in which a debtor, not having sufficient property to pay all his debts, shall make a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed or absent debtor shall be attached by process of law, as to cases in which the party shall be insolvent.

History.—s. 5, Feb. 10, 1832; RS 410; GS 602; RGS 1037; CGL 1348.

215.08 Delinquent collectors to be reported to State Attorney.—The Department of Revenue, the county court judge, the chairman of the board of county commissioners and the members of the said board representing the same, after sufficient time has expired to receive the reports required of the tax collector by law and they have not received them, or if the collector has failed to turn over money collected to either the proper state or county officer as provided by law, shall report the same to the state attorney of the circuit in which the collector resides; and the state attorney shall institute such proper proceedings, both civil and criminal, as are author-

ized by law; and the said state attorney shall, in case the said defaulting tax collector shall either attempt to collect taxes or perform any other act prohibited by law, or shall fail or refuse to deliver all the official tax rolls and books, with the statement required by law, to his successor or the person appointed by the Governor to perform the duties appertaining to the office of the collector of any county in lieu of any such defaulting collector, apply in a summary way, by petition to the circuit court or to the judge thereof in vacation, of the proper county, for an order prohibiting and enjoining in the one case such defaulting collector from collecting or attempting to collect taxes, or performing any other act prohibited to him by law, and requiring him in the other case to deliver to his successor, or to the person appointed by the Governor to perform his duties as aforesaid, all the official tax rolls and books, with the statement required by law; and the said court or judge in vacation may make such order and compel the performance of, or obedience to, such order by attachment and punishment as for a contempt of court.

History.—s. 3, ch. 1977, 1874; RS 411; GS 603; RGS 1038; CGL 1349; ss. 21, 35, ch. 69-106; s. 20, ch. 73-334.

215.09 Delinquent collectors; forfeiture of commissions.—For any failure on the part of any tax collector to make reports or to pay over any money as required by law, he shall forfeit for every week's delay one-fifth of his commissions, and if the delay extends beyond 30 days he shall forfeit all commissions on all amounts to which such failure applies, and all future commissions upon all collections to be made; provided, that the Department of Revenue, for good cause shown, may suspend the force and operation of this section with regard to such defaulting collector.

History.—s. 5, ch. 1977, 1874; RS 412; GS 604; RGS 1039; CGL 1350; ss. 21, 35, ch. 69-106.

215.10 Delinquent collectors; suspension.—For a failure or refusal of any tax collector or other officer, whose duty it is to perform any act connected with the assessment or collection of taxes, to perform any duty or act, to make any return, or pay over any money required by law, the Governor, by his written order, may suspend any such defaulting or noncomplying collector or other officer from office, and from further acting in his office until his further order, but not beyond the adjournment of the next session of the Senate; and appoint or designate some other person to perform and discharge all the duties of such collector or other officer, who shall discharge such duties until the further order of the Governor, but not beyond the adjournment of the next session of the Senate, and to whom the official tax rolls, books and statements as required by law shall be delivered.

History.—s. 4, ch. 1977, 1874; RS 413; GS 605; RGS 1040; CGL 1351.

215.11 Defaulting officers; Department of Banking and Finance to report to clerk.—The Department of Banking and Finance shall, within 90 days after the expiration of the term of office of any tax collector, sheriff, clerk of the circuit or county court, treasurer, or any other officer of any county who has the collection, custody, and control of any state funds, who shall be in arrears in his accounts with the state, make up and forward to the clerk of the circuit court of such county a statement of his accounts with the state.

History.—s. 1, ch. 3854, 1889; RS 417; GS 606; RGS 1041; CGL 1352; ss. 12, 35, ch. 69-106; s. 20, ch. 73-334.

215.12 Defaulting officers; duty of clerk.—The clerk of the circuit court to whom any such statement shall be forwarded, shall file the same in his office, and within 10 days thereafter shall furnish each of the sureties of such delinquent officer with an abstract of such statement, showing the amount of indebtedness of such delinquent officer to the state, and shall at the same time furnish the sureties with a statement showing his indebtedness to the county, if there be any.

History.—s. 2, ch. 3854, 1889; RS 418; GS 607; RGS 1042; CGL 1353.

215.15 School appropriations to have priority.—Appropriations, other than from the General Revenue Fund, made for school purposes under any statute or law, shall be payable out of the first funds available after payment of the salaries of public officers and other current expenses as hereinbefore provided, and the moneys for such appropriations shall be available as fast as they come in, without waiting for the whole amount of any such appropriation to be received into the Treasury.

History.—s. 2, ch. 5603, 1907; RGS 1053; s. 1, ch. 19001, 1939; CGL 1364.

215.16 School appropriations from General Revenue Fund.—

(1) All state appropriations, from the General Revenue Fund, for the benefit of the uniform system of public free schools and the state institutions of higher learning shall be on a parity with all other state appropriations for all other purposes from the general revenue fund; provided, that the appropriations by the Legislature of the proceeds from specific tax levies set aside and earmarked for a particular purpose shall not be affected by this section.

(2) If the state appropriations from the General Revenue Fund for the benefit of the uniform system of public free schools and the state institutions of higher learning cannot be paid in full during any given year, they shall be diminished only in the same proportion that appropriations for all other purposes from the General Revenue Fund are diminished during such year.

History.—ss. 1, 2, ch. 19001, 1939; CGL 1940 Supp. 892.

[1]215.18 Transfers between funds; limitation.—Whenever there exists in any fund provided for by s. 215.32 a deficiency which would render such fund insufficient to meet its just requirements, and there shall exist in the other funds in the State Treasury moneys which are for the time being or otherwise in excess of the amounts necessary to meet the just requirements of such last-mentioned funds, the State Administration Commission, with the concurrence of the Governor, may order a temporary transfer of moneys from one fund to another in order to meet temporary deficiencies in a particular fund without resorting to the necessity of borrowing money and paying interest thereon. The fund from which any money is temporarily transferred shall be re-

paid the amount transferred from it not later than the end of the fiscal year in which such transfer is made, the date of repayment to be specified in the order of the State Administration Commission.

History.—s. 2, ch. 12295, 1927; CGL 1365; s. 24, ch. 57-1; s. 1, ch. 59-82; s. 15, ch. 63-572; s. 1, ch. 72-224.

[1]Note.—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to the Executive Office of the Governor.

215.195 State-Federal Relations Trust Fund.—

(1) CREATION.—There is created, within the Executive Office of the Governor, the State-Federal Relations Trust Fund.

(2) APPLICATION FOR ALLOCABLE STATEWIDE OVERHEAD.—Each state agency making application for federal grant or contract funds shall, in accordance with the Statewide Cost Allocation Plan, include in its application a prorated share of the cost of services provided by state central service agencies which are reimbursable to the state pursuant to the provisions of Federal Management Circular 74-4.

(3) DEPOSIT OF OVERHEAD IN THE TRUST FUND.—If an application for federal grant or contract funds is approved, the state agency receiving the federal grant or contract shall identify that portion representing reimbursement of allocable statewide overhead and deposit that amount into the State-Federal Relations Trust Fund.

(4) USE OF MONEYS DEPOSITED IN THE TRUST FUND.—Moneys deposited in the State-Federal Relations Trust Fund shall be used to support the activities and operations of a state-federal relations office in Washington, D. C., as provided in s. 14.23, including the staff of the Washington office and five positions in the Executive Office of the Governor in Tallahassee, to provide adequate research, analysis, and statistical support to the Washington office for the conduct of its business and to effectuate its purpose, and to provide support services for each.

(5) DISPOSITION OF EXCESS MONEYS DEPOSITED IN THE TRUST FUND.—As of June 30 each year, the fund shall consist of an amount equal to that certified pursuant to s. 216.301 (undisbursed balances), plus 25 percent of the amount appropriated for the current fiscal year for the purposes authorized in subsection (4). All funds in excess of the above shall revert to the General Revenue Fund unallocated.

History.—ss. 1-4, ch. 77-419; s. 1, ch. 78-350; s. 8, ch. 79-190.

215.20 Certain moneys and certain trust funds to contribute to the General Revenue Fund.—A deduction of 4 percent, representing the estimated pro rata share of the cost of general government paid from the General Revenue Fund, shall be made from the moneys and trust funds enumerated in s. 215.22. The deduction shall be as provided in s. 215.22. All such deductions shall be deposited in the General Revenue Fund.

History.—s. 2, ch. 20890, 1941; s. 1, ch. 61-493; s. 1, ch. 63-567.

215.22 Certain moneys and certain trust funds enumerated.—The following described moneys and trust funds, by whatever name designated, shall be those from which the deductions authorized by s. 215.20 shall be made:

(1) The first gas tax levied pursuant to the provisions of s. 206.41.

(2) The 7th cent additional tax upon gasoline or other like products of petroleum levied pursuant to the provisions of s. 206.60.

(3) All taxes levied on motor fuels other than gasoline, exclusive of 2 cents of said tax, levied pursuant to the provisions of s. 206.87.

(4) The Professional Regulation Trust Fund.

(5) All income of a revenue nature deposited in the General Inspection Trust Fund and subsidiary accounts thereof, unless a different percentage is authorized in s. 570.20.

(6) All income of a revenue nature received by the Division of Pari-mutuel Wagering.

(7) All income of a revenue nature deposited in the Florida Citrus Advertising Trust Fund created in s. 601.15(7), including transfers from any subsidiary accounts thereof, unless a different percentage is authorized in the aforesaid section.

(8) All income of a revenue nature deposited in the Special Disability Trust Fund created in s. 440.49(4)(h)1.

(9) All income of a revenue nature deposited in the Workers' Compensation Administration Trust Fund created in s. 440.50(1)(a).

(10) All transfers to the Special Employment Security Administration Trust Fund created in s. 443.14(2).

(11) All income of a revenue nature deposited in the Employment Security Administration Trust Fund created in s. 443.14(1).

(12) All income of a revenue nature deposited in the [2]Municipal Firemen's Pension Trust Fund created in s. 175.041.

(13) All income of a revenue nature deposited in the Municipal Police Officers' Retirement Trust Fund created in s. 185.03.

(14) All income of a revenue nature deposited in the Liquefied Petroleum Gas Administrative Trust Fund created in s. 527.02.

(15) All income of a revenue nature deposited in the State Fire Marshal Trust Fund named in s. 624.516.

(16) All income of a revenue nature deposited in the Insurance Commissioner's Regulatory Trust Fund created in s. 624.523.

(17) All income of a revenue nature deposited in the Educational Certification and Service Trust Fund created in s. 231.30.

(18) All income of revenue nature deposited in the Cigarette Tax Collection Trust Fund created in s. 210.20.

(19) All income of a revenue nature deposited in the [1][Land Acquisition Trust Fund] created in s. 253.01.

(20) All income of a revenue nature deposited in the Motorboat Revolving Trust Fund created in s. 371.171.

(21) All income of a revenue nature deposited in the State Game Trust Fund established in s. 372.09.

(22) All income derived from outdoor advertising and overweight violations which is deposited in the State Transportation Trust Fund created in s. 206.45.

(23) All income of a revenue nature deposited in

the Agents and Solicitors County License Tax Trust Fund created in s. 624.506.

(24) The motor carrier road tax levied pursuant to the provisions of chapter 323, unless a different percentage is authorized in the aforesaid chapter.

(25) The trust fund of the Division of Hotels and Restaurants, as defined in s. 509.071, with the exception of those fees collected for the purpose of funding of the hospitality education program as stated in s. 509.302.

The enumeration of the above moneys or trust funds shall not prohibit the applicability thereto of s. 215.24 should the Governor determine that for the reasons mentioned in said s. 215.24 said money or trust fund should be exempt herefrom, as it is the purpose of this law to exempt all trust funds from its force and effect where, by the operation of this law, federal matching funds or contributions to any trust fund would be lost to the state.

History.—s. 4, ch. 20890, 1941; s. 2, ch. 61-493; s. 2, ch. 63-235; s. 1, ch. 63-249; s. 16, ch. 63-572; s. 2, ch. 63-496; ss. 1, 28-30, ch. 65-269; s. 4, ch. 65-337; ss. 32, 35, ch. 69-106; ss. 53, 60, 65, ch. 69-353; s. 1, ch. 69-394; s. 2, ch. 71-98; s. 45, ch. 71-355; ss. 2, 3, ch. 73-57; s. 2, ch. 75-184; s. 62, ch. 77-104; s. 3, ch. 79-36; s. 63, ch. 79-40.

[1]**Note.**—The uncommitted fund balance and all revenues subsequently accruing to the Internal Improvement Trust Fund were transferred to the Land Acquisition Trust Fund. See s. 15, ch. 75-22.

[2]**Note.**—See s. 3, ch. 79-380, which renamed the "Municipal Firemen's Pension Trust Fund" as the Municipal Firefighters' Pension Trust Fund."

215.23 When contributions to be made.—The deduction hereby required shall be paid into the General Revenue Fund by the Department of Banking and Finance or by the State Treasurer, as the case may be, for quarterly periods ending March 31, June 30, September 30, and December 31 of each year, and when so paid into the General Revenue Fund shall thereupon become a part of said fund to be accounted for and disbursed as provided by law with respect to the General Revenue Fund.

History.—s. 5, ch. 20890, 1941; ss. 12, 35, ch. 69-106.

215.24 Exemptions where federal contributions.—

(1) Should any state fund be the recipient of federal contributions, either by the matching of state funds or by a general donation to state funds, and the payment of moneys into the General Revenue Fund under this law should cause such fund to lose federal assistance, the Governor shall certify to the Department of Banking and Finance and to the State Treasurer that said fund is for that reason exempt from the force and effect of this law.

(2) Should it be determined by the Governor that by reason of payments already made into the General Revenue Fund by any fund under this law, such fund is subject to the loss of federal assistance, then the Governor shall certify to the Department of Banking and Finance and to the State Treasurer that such fund is exempt from the provisions of this law, and the Department of Banking and Finance or the State Treasurer, as the case may be, shall thereupon refund and pay over to such fund any amount or amounts previously paid into the General Revenue Fund by such fund.

History.—s. 6, ch. 20890, 1941; s. 5, ch. 61-493; ss. 12, 35, ch. 69-106.

215.25 Manner of contributions; rules and regulations.—The Department of Banking and Finance and the State Treasurer are hereby authorized to ascertain and determine the manner in which the required amounts shall be deducted and paid and to adopt and effectuate such rules and procedure as may be necessary for carrying out the provisions of this law. Such rules and procedure shall be approved by the Executive Office of the Governor.

History.—s. 7, ch. 20890, 1941; ss. 2, 3, ch. 67-371; ss. 12, 31, 35, ch. 69-106; s. 95, ch. 79-190.

215.26 Repayment of funds paid into State Treasury through error, etc.—

(1) The Comptroller of the state may refund to the person who paid same, or his heirs, personal representatives or assigns, any moneys paid into the State Treasury which constitute:

(a) An overpayment of any tax, license or account due;

(b) A payment where no tax, license or account is due; and

(c) Any payment made into the State Treasury in error;

and if any such payment has been credited to an appropriation, such appropriation shall at the time of making any such refund, be charged therewith. There are appropriated from the proper respective funds from time to time such sums as may be necessary for such refunds.

(2) Application for refunds as provided by this section shall be filed with the Comptroller, except as otherwise provided herein, within 3 years after the right to such refund shall have accrued else such right shall be barred. The Comptroller may delegate the authority to accept an application for refund to any state agency vested by law with the responsibility for the collection of any tax, license, or account due. Such application for refund shall be on a form approved by the Comptroller and shall be supplemented with such additional proof as the Comptroller deems necessary to establish such claim; provided, such claim is not otherwise barred under the laws of this state. Upon receipt of an application for refund, the state agency to which the funds were paid shall make a determination of the amount due. If an application for refund is denied, in whole or in part, such state agency shall so notify the applicant stating the reasons therefor. Upon approval of an application for refund, such state agency shall furnish the Comptroller with a properly executed voucher authorizing payment.

(3) No refund of moneys referred to in this section shall be made of an amount which is less than $1, except upon application.

History.—s. 1, ch. 22008, 1943; s. 14, ch. 57-1; s. 1, ch. 57-18; s. 1, ch. 59-181; s. 1, ch. 63-271; s. 2, ch. 78-352.

cf.—s. 11.065 Limitation on claims against state.

215.28 United States Securities, purchase by state and county officers and employees; deductions from salary.—

(1) Upon the request in writing, signed by any officer or employee of the state, or of any county, or other political subdivision or subordinate agency of the state or any county, any officer or employee who acts as disbursing agent for the payment of salaries

and wages is hereby authorized and empowered to deduct from the salary or wages of such officer or employee, periodically, such sum as authorized by such written application, for the purchase of United States Securities.

(2) The participation in such payroll deduction plan by any officer or employee shall be entirely voluntary at all times, and any officer or employee may from time to time increase or decrease the amount to be so deducted, or cancel his payroll deduction authorization, or change the form of registration for securities to be purchased.

(3) All deductions so made by any such disbursing authority shall be deposited in a trust account separate and apart from the funds of the state, county or subordinate agency. Such account will be subject to withdrawal only for the purchase of United States Securities on behalf of officers and employees, or for refunds to such persons in accordance with the provisions of this law. Whenever the sum of $18.75 or the purchase price of the security requested to be purchased is accumulated from deductions so made from the salaries or wages of an officer or employee, such disbursing agent shall arrange the purchase of the bond or security applied for and have it registered in the name or names requested in the deduction authorization. Securities so purchased will be delivered in such manner as may be convenient for the issuing agent and the purchaser.

(4) Upon request, the disbursing agent will advise the officer or employee of the amount accumulated in his account for the purchase of United States Securities. A periodic statement showing amounts accumulated to the credit of the officer or employee need not be issued.

(5) When an officer or employee leaves the service of the state, county or subordinate governmental agency, the payroll deduction authorization will be canceled automatically and any amount credited to the officer or employee's account shall immediately be refunded and paid to the officer or employee entitled to receive the same. In case of death of an officer or employee, the payroll deduction authorization will be canceled automatically and any amount to the credit of the officer or employee's account will be paid immediately to the surviving spouse, children or parents of the officer or employee, according to and as provided by ss. 222.15 and 222.16.

(6) The disbursing agent is authorized to promulgate such reasonable rules and regulations with reference to the handling of such payroll deduction plan as will promote the purposes thereof and as shall most conveniently meet the facilities of the office of such disbursing agent.

History.—ss. 1-6, ch. 21794, 1943.

215.29 Classification of Comptroller's warrants; report.—All disbursements made by the state upon Comptroller's warrants countersigned by the Governor shall be classified according to officers, offices, bureaus, divisions, boards, commissions, institutions, or other agencies and undertakings and shall be further classified according to personal services, contractual services, commodities, current charges, current obligations, capital outlays, debt payments, investments, and such additional classifications as may be prescribed or authorized by law; and such detail classifications shall be printed in the Comptroller's annual reports.

History.—s. 1, ch. 22901, 1945.

215.31 State funds; deposit in State Treasury.—Revenue, including licenses, fees, imposts, or exactions collected or received under the authority of the laws of the state by each and every state official, office, employee, bureau, division, board, commission, institution, agency or undertaking of the state shall be promptly deposited in the State Treasury, and immediately credited to the appropriate fund as herein provided, properly accounted for by the Department of Banking and Finance as to source and no money shall be paid from the State Treasury except as appropriated and provided by the annual General Appropriations Act, or as otherwise provided by law.

History.—s. 2, ch. 22833, 1945; ss. 12, 35, ch. 69-106; s. 1, ch. 73-305.

215.311 State funds; exceptions.—The provisions of s. 215.31 shall not apply to funds collected by and under the direction and supervision of the Division of Blind Services of the Department of Education as provided under ss. 413.011, 413.041 and 413.051; however, nothing in this section shall be construed to except from the provisions of s. 215.31 any appropriations made by the state to the division.

History.—s. 1, ch. 29872, 1955; ss. 19, 35, ch. 69-106; s. 22, ch. 77-259.

215.32 State funds; segregation.—

(1) All moneys received by the state shall be deposited in the State Treasury unless specifically provided otherwise by law and shall be deposited in and accounted for by the State Treasurer and the Department of Banking and Finance within the following funds, which funds are hereby created and established:

(a) General Revenue Fund,
(b) Trust funds,
(c) Working Capital Fund, and
(d) Federal Revenue Sharing Fund.

(2) The source and use of each of the aforesaid funds shall be as follows:

(a) The General Revenue Fund shall consist of all moneys received by the state from every source whatsoever, except as provided in paragraphs (b) and (c) of this subsection. Said moneys shall be expended pursuant to General Revenue Fund Appropriations Acts or transferred as provided in paragraph (c) of this subsection.

(b)1. The trust funds shall consist of moneys received by the state which under law or under trust agreement are segregated for a purpose authorized by law. The [1]Administration Commission of the Department of Administration shall have the power and authority to approve the establishment of any trust fund it deems necessary to preserve the integrity of any moneys received or collected by a state agency for a specific use or purpose authorized by law. The state agency receiving or collecting such moneys shall be responsible for their proper expenditure as provided by law.

2. In order to maintain a minimum number of trust funds in the State Treasury, each state agency may consolidate, if permitted under the terms and conditions of their receipt, the trust funds adminis-

tered by it; provided, however, the agency employs effectively a uniform system of accounts sufficient to preserve the integrity of such trust funds; and provided further, that such consolidation is approved by the [1]Administration Commission of the Department of Administration.

3. All such moneys are hereby appropriated for the purpose for which they were received, to be expended in accordance with the law or trust agreement under which they were received, subject always to other applicable laws relating to the deposit or expenditure of moneys in the State Treasury.

(c) The Working Capital Fund shall consist of an amount, not more than 10 percent of the amount of net revenue of the General Revenue Fund for the preceding fiscal year, which accrues from moneys in the General Revenue Fund which are in excess of the amount needed to meet the General Revenue Fund Appropriation Acts, as determined by the Executive Office of the Governor. Said moneys are hereby appropriated for transfer to the General Revenue Fund whenever it is determined by the Administration Commission that revenue collections in the General Revenue Fund will be less than the estimated amount recommended to the Legislature by the Executive Office of the Governor during the same fiscal year and when the Administration Commission determines, after consultation with the Legislative Appropriations Committees, that it would be more prudent to transfer the Working Capital Funds than to reduce agency operating budgets pursuant to s. 216.221. When not required to meet General Revenue Fund appropriations, said moneys shall be used as a revolving fund for transfers as provided by s. 215.18, and, when the Comptroller determines that said moneys are not needed for either type of transfer, they may be temporarily invested as provided in ss. 215.44-215.53.

(d) The Federal Revenue Sharing Fund shall consist of all moneys received by the state from any federal revenue sharing act. Said funds shall be expended pursuant to appropriation acts or as otherwise provided for by law.

History.—s. 3, ch. 22833, 1945; s. 1, ch. 59-91; s. 2, ch. 59-257; s. 1, ch. 61-119; s. 1, ch. 65-266; s. 3, ch. 65-420; ss. 2, 3, ch. 67-371; ss. 12, 31, 35, ch. 69-106; s. 1, ch. 73-196; ss. 1, 2, ch. 73-316; s. 1, ch. 77-352; s. 15, ch. 79-190.

[1]**Note.**—See ss. 1 and 19, ch. 79-190, which, respectively, created an Administration Commission as part of the Executive Office of the Governor and deleted the Administration Commission as an organizational unit of the Department of Administration.

215.321 Regulatory Trust Fund.—All funds received pursuant to chapters 494, 516, 520, 559, parts I and IV, and 657, shall be deposited into the Regulatory Trust Fund.

History.—s. 1, ch. 72-174; s. 1, ch. 72-222; s. 44, ch. 79-164.

215.34 State funds; noncollectible items; procedure.—

(1) Any check, draft, or other order for the payment of money in payment of any licenses, fees, taxes, commissions or charges of any sort authorized to be made under the laws of the state and deposited in the State Treasury as provided herein, which may be returned for any reason by the bank or other payor upon which same shall have been drawn shall be forthwith returned by the State Treasurer for collection to the state officer or the state agency making the deposit. In such case, the Treasurer is hereby authorized to issue a debit memorandum charging the proper fund or account to which same shall have been originally credited and shall send a copy of said debit memorandum to the state agency making the deposit and to the Comptroller stating the reasons for returning the said check, draft, or other order. Such procedure for handling noncollectible items shall not be construed as paying funds out of the State Treasury without an appropriation, but shall be considered as an administrative procedure for the efficient handling of state records and accounts.

(2) Whenever a check, draft, or other order for the payment of money is returned by the State Treasurer to a state officer or state agency for collection, the officer or agency shall add a $5 service fee to the amount due. The $5 service fee shall be in addition to all other penalties imposed by law. Proceeds from this fee shall be deposited in the same fund as the collected item.

(3) When a county or municipal official or agency is acting for a state official or agency in the collection of fees or other charges, the service fee collected under this section shall be retained by the collector of the fee.

History.—s. 5, ch. 22833, 1945; s. 1, ch. 75-56.

215.35 State funds; warrants and their issuance.—All warrants issued by the Comptroller shall be numbered in chronological order commencing with number one in each fiscal year and each warrant shall refer to the Comptroller's voucher by the number thereof, which voucher shall also be numbered as above set forth. Each warrant shall state the name of the payee thereof and the amount allowed, and said warrant shall be stated in words at length. No warrant shall issue until same has been authorized by an appropriation made by law but such warrant need not state or set forth such authorization. The Comptroller shall register each warrant in his office. The warrants shall be coded to show the fund, account, purpose and department involved in the issuance of such warrant. In those instances where the expenditure of funds of regulatory boards or commissions has been provided for by laws other than the annual appropriation bill, warrants shall issue upon requisition to the State Comptroller by the governing body of such board or commission.

History.—s. 6, ch. 22833, 1945; s. 1, ch. 73-305.

215.36 State funds; laws not repealed.—Nothing in ss. 215.31-215.32, 215.34-215.36 shall be construed as repealing ss. 215.20, 215.22 to 215.25, inclusive, or as affecting the proceeds of 2 cents per gallon of the total tax levied by state law upon gasoline and other like products of petroleum now known as the second gas tax, and upon other fuels used to propel motor vehicles, placed in the State Treasury and divided and distributed as required by s. 16 of Art. IX of the Constitution of 1885 as adopted by the 1968 revised Constitution or by s. 9, Art. XII of said revision.

History.—s. 7, ch. 22833, 1945; s. 18, ch. 69-216.

215.37 Department of Professional Regulation and the boards to be financed from fees collected; moneys deposited in trust fund; 4 per-

cent to General Revenue Fund; appropriation.—

(1) All fees, licenses, and other charges assessed by each board within the Department of Professional Regulation shall be collected by the Department of Professional Regulation and shall be deposited in the State Treasury into the Professional Regulation Trust Fund to the credit of the department.

(2) The department shall be financed solely from revenue collected by it from fees and other charges, and all such revenue is hereby appropriated to the department. All salaries and expenses of the department shall be paid as budgeted after the budget has been approved by the [1]secretary of the Department of Administration or within the conditions and limitations of the appropriation for that purpose which may be included in the General Appropriations Act.

(3) The department shall be charged 4 percent of all revenue collections (excluding refunds, grants, donations, etc.) made and credited to its account. The amount so charged shall be deposited in the General Revenue Fund unallocated.

(4) The department shall submit a biennial legislative budget by division and operating budgets as required of all governmental subdivisions in chapters 215 and 216, to be based upon anticipated revenues.

(5) The department shall maintain separate revenue accounts in the Professional Regulation Trust Fund for every profession within the department. The department shall, to the extent practicable, provide for the proportionate allocation among the accounts of expenses incurred by the department in the performance of its duties with respect to each regulated profession. The department shall provide each board an annual report of revenue and allocated expenses related to the regulation of that profession, and these reports shall be used by the board to determine the amount of licensing fees for each profession regulated by the department.

History.—s. 8, ch. 28115, s. 3, ch. 28231, 1953; s. 24, ch. 57-1; s. 13, ch. 59-1; s. 1, ch. 61-514; s. 12, ch. 63-195; s. 2, ch. 65-170; s. 4, ch. 65-295; s. 4, ch. 65-420; ss. 2, 3, ch. 67-371; ss. 6, 30, 31, 35, ch. 69-106; s. 16, ch. 69-353; s. 2, ch. 72-29; s. 1, ch. 72-304; s. 1, ch. 73-305; s. 64, ch. 73-333; s. 1, ch. 73-353; s. 9, ch. 75-201; s. 37, ch. 77-147; s. 15, ch. 78-140; s. 26, ch. 78-155; s. 2, ch. 78-253; s. 22, ch. 78-436; s. 4, ch. 79-36; s. 96, ch. 79-190.

[1]**Note.**—See s. 10, ch. 79-190, which abolished the Division of Budget of the Department of Administration and transferred all records, property, and funds of the division to the Executive Office of the Governor.

215.42 Purchases from appropriations, proof of delivery.—The State Comptroller may require proof, as he deems necessary, of delivery and receipt of purchases before honoring any voucher for payment from appropriations made in the General Appropriations Act or otherwise provided by law.

History.—s. 20, ch. 28115, s. 14, ch. 28231, 1953.

215.422 Warrants, vouchers, and invoices; processing time limits; agency compliance.—

(1) The voucher authorizing payment of an invoice submitted to an agency of the state, required by law to be filed with the Comptroller, shall be filed with the Comptroller not later than 15 days after receipt of the invoice and receipt, inspection, and approval of the goods or services, except that in the case of a bona fide dispute the voucher shall contain a statement of the dispute and authorize payment only in the amount not disputed. If a voucher filed within the 15-day period is returned by the Department of Banking and Finance because of an error, it shall nevertheless be deemed timely filed. The 15-day filing requirement may be waived by the Department of Banking and Finance on a showing of exceptional circumstances in accordance with rules and regulations of the department.

(2) The warrant in payment of an invoice submitted to an agency of the state shall be mailed not later than 15 days after filing of the voucher authorizing payment. However, this requirement may be waived by the Department of Banking and Finance on a showing of exceptional circumstances in accordance with rules and regulations of the department.

(3)(a) Each agency of the state which is required by law to file vouchers with the Comptroller shall keep a record of the date of receipt of the invoice, dates of receipt, inspection, and approval of the goods or services, date of filing of the voucher, and date of mailing of the warrant in payment thereof. If the voucher is not filed or the warrant is not mailed within the time required, an explanation in writing by the agency head shall be attached to the voucher.

(b) If a warrant in payment of an invoice is not mailed by a state agency within 45 days after receipt of the invoice and receipt, inspection, and approval of the goods and services, the agency shall be liable to the vendor, in addition to the amount of the invoice, for interest at a rate of 1 percent per month or portion thereof on the unpaid balance from the expiration of said 45-day period until such time the warrant is mailed to the vendor. The provisions of this paragraph shall apply only to undisputed amounts for which payment has been authorized. In the case of an error on the part of the vendor, the 45-day period shall begin to run upon receipt of a corrected invoice by the agency. The provisions of this paragraph shall not apply when the filing requirement under subsection (1) or subsection (2) has been waived by the Department of Banking and Finance. The various state agencies shall be responsible for initiating the penalty payments required by this subsection and shall use this subsection as authority to make such payments. The budget request submitted to the Legislature shall specifically disclose the amount of any interest paid by any agency pursuant to this subsection.

(4) If the terms of the invoice provide a discount for payment in less than 30 days, agencies of the state shall preferentially process it and use all diligence to obtain the saving by compliance with the invoice terms.

(5) The Department of Banking and Finance is authorized and directed to adopt and promulgate rules and regulations to implement this section.

(6) Persistent failure to comply with this section by any agency of the state shall constitute good cause for discharge of employees duly found responsible, or predominantly responsible, for failure to comply.

(7) In order to alleviate any hardship that may be caused to a health care provider as a result of delay in receiving reimbursement for services, any payment or payments for hospital, medical, or other health care services which are to be reimbursed by the state, either directly or indirectly, shall be made to the health care provider not more than 35 days

from the date eligibility for payment of such claim is determined.

History.—s. 1, ch. 74-7; s. 1, ch. 77-174; s. 1, ch. 78-352; s. 3, ch. 79-106.

215.425 Extra compensation claims prohibited.—No extra compensation shall be made to any officer, agent, employee, or contractor after the service shall have been rendered, or the contract made; nor shall any money be appropriated or paid on any claim, the subject matter of which shall not have been provided for by preexisting laws, unless such compensation or claim be allowed by bill passed by two-thirds of the members elected to each house of the Legislature. The provisions of this section shall not apply to extra compensation given to state employees who are included within the senior management group pursuant to rules adopted by the Department of Administration.

History.—Formerly s. 11, Art. XVI of the Constitution of 1885, as amended; converted to statutory law by s. 10, Art. XII of the Constitution as revised in 1968; s. 27, ch. 77-190.

215.43 Public bonds, notes, and other securities.—

(1) DEFINITIONS.—As used in this section, the following words and term shall have the following meanings:

(a) The word "unit" shall mean any department, board, commission or other agency of Florida, or any county, city, town, village, district or any other political subdivision of the state, heretofore or hereafter created or established, or any board, commission, authority or other public agency or instrumentality which is now or may hereafter be authorized by law to issue bonds.

(b) The term "governing body" shall mean the officer or officers, or the department, board, body, council, commission, authority or other agency which is authorized by law to take the proceedings which are required to authorize or to provide for the issuance of bonds.

(c) The word "bonds" shall include all bonds, notes, certificates and other similar obligations and securities of a unit whether payable in whole or in part from the proceeds of ad valorem taxes, revenues or any other source.

(2) EXECUTION OF PUBLIC SECURITIES.—

(a) Any bonds heretofore or hereafter authorized to be issued by any unit under the provisions of any general, special or local law heretofore or hereafter enacted and any interest coupons attached thereto may, if so authorized by the governing body of such unit, bear or be executed with the facsimile signature of any official authorized by such law to sign or to execute such bonds or coupons; provided, however, that each such bond shall be manually signed by at least one official of such unit. In case any such law shall provide for the sealing of such bonds with the official or corporate seal of such unit or of its governing body or any official thereof, a facsimile of such seal may be imprinted on the bonds if so authorized by the governing body of such unit, and it shall not be necessary in such case to impress such seal physically upon such bonds.

(b) In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and any bond may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such bond shall be the proper officers to sign such bond although at the date of such bond such persons may not have been such officers.

History.—ss. 1, 2, ch. 57-763.

215.431 Issuance of bond anticipation notes.—Each of the counties, school boards, districts, authorities and municipalities in the state shall have power, at any time and from time to time after the issuance of bonds thereof shall have been authorized, whether such bonds be general, special, revenue or other obligations of such county, school board, district, authority, or municipality, and, if the approval of such bonds at an election is required after the holding of such election, to borrow money for the purposes for which such bonds are to be issued in anticipation of the receipt of the proceeds of the sale of such bonds and within the authorized maximum amount of such bond issue. Any such loan shall be paid within 3 years after the date on which the issuance of such bonds shall have been authorized or, if such bonds shall have been approved at an election, within 5 years after the date on which such election shall have been held. Bond anticipation notes shall be issued for all moneys borrowed under the provisions of this law, and such notes may be renewed from time to time, but all such notes shall mature within the time above limited for the payment of the original loan. Such notes shall be authorized by resolution of the governing body of the issuer and shall be in such denomination or denominations, shall bear interest at such rate or rates not exceeding the maximum rate permitted by law or by the resolution or ordinance authorizing the issuance of the bonds, whichever shall be the lesser, shall be in such form and shall be executed in such manner, all as such governing body shall prescribe. Such notes may be sold at either public or private sale or, if such notes shall be renewal notes, they may be exchanged for notes then outstanding on such terms as the governing body shall determine. The governing body may, in its discretion, retire any such notes by means of current revenues, in lieu of retiring them by means of bonds, provided, however, that before the retirement of such notes by any means other than the issuance of bonds it shall amend or repeal the resolution or ordinance authorizing the issuance of the bonds in anticipation of the proceeds of the sale of which such notes shall have been issued so as to reduce the authorized amount of the bond issue by the amount of the notes so retired. Such amendatory or repealing resolution or ordinance shall take effect upon its passage and need not be published. All powers and rights conferred by this law shall be in addition to and supplemental to those conferred by any other general or special law and shall be liberally construed to effectuate the purposes hereof.

History.—s. 1, ch. 59-127.

215.44 Board of Administration; powers and duties in relation to investment of funds of state agencies.—

(1) Except where otherwise specifically provided by the State Constitution and subject to any limitations of the trust agreement relating to a trust fund, the Board of Administration, hereinafter sometimes referred to as "board," composed of the Governor as chairman, the State Treasurer, and the State Comptroller, shall invest all the trust funds and all agency funds of each state agency, as defined in s. 216.011, to the fullest extent that is consistent with the cash requirements and investment objectives of the particular trust fund or agency fund.

(2) The board shall have the power to make purchases, sales, exchanges, investments, and reinvestments for and on behalf of any of the funds or accounts referred to in subsection (1), and it shall be the duty of the board to see that moneys invested under the provisions of ss. 215.44-215.53 are at all times handled in the best interests of the state.

(3) Notwithstanding any law to the contrary, all investments made by the State Board of Administration pursuant to ss. 215.44-215.53 shall be subject to the restrictions and limitations contained in s. 215.47.

(4) The board shall prepare and approve an operating budget each fiscal year consistent with the provisions of chapter 216. The approved operating budget shall be submitted to the legislative appropriation committees and the Executive Office of the Governor prior to July 1 of each year.

History.—ss. 1, 2, ch. 57-353; ss. 1, 10, ch. 67-354; s. 46, ch. 71-355; s. 1, ch. 77-270; s. 97, ch. 79-190.

215.45 Sale and exchange of securities.—Securities or investments purchased or held under the provisions of this chapter may be sold or exchanged for other securities or investments; provided, however, that no sale or exchange shall be at a price less than the market price of the securities or investments to be sold or exchanged unless such sale or exchange has received the unanimous approval of the board.

History.—s. 3, ch. 57-353.

215.46 Collection of defaulted investments.—In the event of default in the payment of principal of, or interest on, any investments made, the Attorney General, upon request of the board, is authorized to institute the proper proceedings to collect such matured principal or interest, and may, with the approval of the board, accept proposals for the exchange of bonds for refunding bonds or other evidences of indebtedness at interest rates to be agreed upon with the obligor, and to make such compromises, adjustments, or disposition of interest or defaulted principal, or to make such compromises or adjustments as to future payments of interest or principal, as deemed advisable for the purposes of protecting the funds invested.

History.—s. 4, ch. 57-353.

215.47 Investments; authorized securities.—Subject to the limitations and conditions of the State Constitution or of the trust agreement relating to a trust fund, moneys available for investments under ss. 215.44-215.53 may be invested as follows:

(1) Without limitation in:

[1](a) Bonds, notes, or other obligations of the United States or those guaranteed by the United States or for which the credit of the United States is pledged for the payment of the principal and interest or dividends thereof.

[1](b) State bonds pledging the full faith and credit of the state and revenue bonds additionally secured by the full faith and credit of the state.

[1](c) Bonds of the several counties or districts in the state containing a pledge of the full faith and credit of the county or district involved.

[1](d) Bonds issued or administered by the State Board of Administration secured solely by a pledge of all or part of the 2 cents second gasoline tax accruing under the provisions of s. 16, Art. IX of the State Constitution of 1885, as amended, or of s. 9, Art. XII of the 1968 revised State Constitution.

[1](e) Bonds issued by the State Board of Education pursuant to ss. 18 and 19 of Art. XII of the State Constitution of 1885, as amended, or to s. 9, Art. XII of the 1968 revised State Constitution, as amended.

[1](f) Bonds issued by the Florida Outdoor Recreational Development Council pursuant to s. 17 of Art. IX of the State Constitution of 1885, as amended.

[1](g) Bonds issued by the Florida State Improvement Commission, Florida Development Commission, or Division of Bond Finance of the Department of General Services.

[1](h) Savings accounts in, or certificates of deposit of, any bank incorporated under the laws of this state or any national bank organized under the laws of the United States doing business and situated in this state, to the extent that such savings accounts are insured by the Federal Government or an agency thereof, and if the certificates of deposit are secured in the manner prescribed in chapter 18.

(i) Obligations of the Federal Farm Credit Banks and obligations of the Federal Home Loan Bank and its district banks.

(j) Obligations of the Federal Home Loan Mortgage Corporation, including participation certificates.

(k) Obligations guaranteed by the Government National Mortgage Association.

(2) Not more than 25 percent of any fund in:

(a) Bonds, notes, or obligations of any municipality or political subdivision or any agency or authority of this state, if such obligations are rated by at least two nationally recognized rating services in any one of the three highest classifications approved by the Comptroller of the Currency for the investment of the funds of national banks. However, if only one nationally recognized rating service shall rate such obligations, then such rating service must have rated such obligations in any one of the two highest classifications heretofore mentioned.

(b) Savings accounts of any savings and loan association or bank incorporated under the laws of this state or in savings accounts of any federal savings and loan association or national bank domiciled in this state, to the extent that such investments are insured by the Federal Government or any agency thereof and additional sums not to exceed 15 percent of the net worth of the institution, the amount to be

determined by the Governor, Comptroller, and Treasurer, as the State Board of Administration.

(c) Notes secured by first mortgages on Florida real property, insured or guaranteed by the Federal Housing Administration or the Veterans' Administration.

(d) Interest-bearing obligations of the International Bank for Reconstruction and Development or the Inter-American Development Bank.

(e) Deferred payment tax certificates offered for sale by a county pursuant to s. 197.0168(2)(b).

(f) Investments collateralized by first mortgages covering single-family Florida residences, provided such mortgages do not exceed $60,000, do not exceed 80 percent of value, are not delinquent, and are originated by a lender regulated by the state or Federal Government and the aggregate of the collateral furnished is at least 150 percent of the aggregate investment under this subsection. The mortgages used for collateral shall be segregated by the lending institution so that said segregation may be confirmed by independent audit. In the event any such mortgage used as collateral becomes more than 3 months delinquent, the lender shall immediately substitute therefor a mortgage of equal or greater value.

(3) Not more than 25 percent of any fund in:

(a) Common stock, preferred stock, and interest-bearing obligations of a corporation having an option to convert into common stock, issued by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided the corporation is listed, and has been listed for at least 36 consecutive months, on any one or more of the recognized national stock exchanges in the United States. However, the board shall not invest more than 3 percent of the assets of any fund in common stock, preferred stock, and interest-bearing obligations having an option to convert into common stock, of any one issuing corporation, and the aggregate investment of any fund in any one issuing corporation shall not exceed 3 percent of the outstanding capital stock of that corporation.

(b) Group annuity contracts of the pension investment type with insurers licensed to do business in this state, except that amounts invested by the board with any one insurer shall not exceed 3 percent of their assets.

(4) Not more than 80 percent of any fund, in interest-bearing obligations with a fixed maturity of any corporation within the United States, if such obligations are rated by at least two nationally recognized rating services in any one of the three highest classifications approved by the Comptroller of the Currency for the investment of the funds of national banks. However, if only one nationally recognized rating service shall rate such obligations, then such rating service must have rated such obligations in any one of the two highest classifications heretofore mentioned.

(5) For the purpose of determining the above investment limitations, the value of bonds shall be the par value thereof, and the value of evidences of ownership and interest-bearing obligations having an option to convert to ownership shall be the cost thereof.

History.—s. 5, ch. 57-353; s. 1, ch. 61-462; s. 1, ch. 63-341; s. 1, ch. 63-446; s. 1, ch. 65-551; s. 2, ch. 67-354; ss. 22, 35, ch. 69-106; s. 18, ch. 69-216; s. 1, ch. 70-47; ss. 1, 2, ch. 73-183; s. 65, ch. 73-333; s. 14, ch. 77-301; s. 2, ch. 79-262.

[1]**Note.**—Section 2, ch. 79-262, purported to amend all of subsection (1), but did not republish paragraphs (a)-(h). Paragraphs (a)-(h) are republished here, however, as apparent legislative intent was not to repeal them.

215.48 Consent and ratification of appropriate board or agency.—By and with the consent and approval of any constitutional board or agency now having the constitutional power to make investments, and in accordance with the provisions of ss. 215.44-215.53, the State Board of Administration shall have the power to make purchases, sales, exchanges, investments and reinvestments for and on behalf of any such board.

History.—s. 6, ch. 57-353; s. 3, ch. 67-354; s. 45, ch. 79-164.

215.49 Making funds available for investment.—

(1) It shall be the duty of each state agency now or hereafter charged with the administration of the funds referred to in s. 215.44 to make such moneys available for investment as fully as is consistent with the cash requirements of the particular fund and to transfer such funds to the board for investment.

(2) Monthly and more often as circumstances require, such official or agency shall notify the State Board of Administration of the amount available for investment, the moneys shall be transferred to the board and the investment shall be made by the board. Such notification shall include the name and number of the fund for which the investments are to be made, and of the life of the investment if the principal sum is to be required for meeting obligations; provided, however, that nothing herein shall be construed as legislative intent to make available for investment any funds other than those referred to in s. 215.44.

(3) If requested by the board, it shall be the duty of each state agency referred to in s. 215.44 to furnish the board an inventory of all securities in the particular fund, together with such additional information as may be requested.

History.—s. 7, ch. 57-353; s. 4, ch. 67-354.

215.50 Custody of securities purchased; interest, etc.—

(1) All securities purchased or held may, with the approval of the board, be in the custody of the State Treasurer or the State Treasurer as treasurer ex officio of the board, or be deposited with a bank or trust company to be held in safekeeping by such bank or trust company for the collection of principal and interest, or of the proceeds of the sale thereof.

(2) It shall be the duty of the board or of the State Treasurer, as custodian of the securities of the board, to collect the interest or other income on, and the principal of such securities in their custody as the said sums become due and payable and to pay the same, when so collected, into the investment account of the fund to which the investments belong.

History.—s. 8, ch. 57-353; s. 5, ch. 67-354.

215.51 Investment accounts; changes, notice, etc.—

(1) The board shall keep, for each fund for which investments are made, a separate account, to be designated by name and number, which shall record the individual amounts and the totals of all investments belonging to such fund. Every receipt and collection or disbursement when received or made shall be immediately reported to the board for recording to the particular fund to which it belongs.

(2) The board shall make written report monthly to each and every interested state official or agency the changes in investments made during the preceding month for their respective fund or funds, and, in addition, shall furnish the details on the investment transaction of any fund upon written request of such state official or agency or head thereof.

History.—s. 9, ch. 57-353.

215.515 Investment accounts; charges for services.—

(1) The Board of Administration shall make reasonable charges for all investment services performed for any agency or fund in accordance with the provisions of ss. 215.44-215.53 or other provisions of law. The agency or fund shall pay the charges, and such sums as may be necessary for this purpose are hereby appropriated from earnings on investments held by such agency or fund. The amount to be paid by each agency or fund shall be determined in such proportion as the service rendered to each agency or fund bears to the total service rendered to all agencies and funds.

(2) The charges established and any revisions thereof shall be reviewed by the Department of Administration. The review, and any recommendations of the Department of Administration accompanying the review, may be considered by the board prior to the adoption of the charges or revision thereof by the board.

History.—s. 2, ch. 77-270; s. 97, ch. 79-400.

215.52 Rules and regulations.—The board shall have the power and authority to make reasonable rules and regulations necessary to carry out the provisions of ss. 215.44-215.53.

History.—s. 10, ch. 57-353; s. 6, ch. 67-354.

215.53 Powers of existing officers, boards, and agencies not affected.—It is the intent of the Legislature that transfer of the powers, duties and responsibilities of existing state agencies made by ss. 215.44-215.53 to the board shall include only the particular powers, duties, and responsibilities hereby transferred, and all other existing powers shall in no way be affected by said sections. The powers, duties and responsibilities conferred by ss. 215.44-215.53 upon the board are additional and supplemental to the existing powers of the officers composing the said board.

History.—s. 11, ch. 57-353; s. 7, ch. 67-354.

215.55 Flood Control Trust Fund; county distribution.—The funds collected and deposited in the Flood Control Trust Fund shall be distributed annually to the county in which the money is collected, as follows: Fifty percent to the board of county commissioners and 50 percent to the school board in such counties.

History.—s. 1, ch. 59-204; s. 2, ch. 61-119; s. 1, ch. 69-300; s. 63, ch. 77-104.

215.57 Short title.—Sections 215.57-215.83 shall be known and may be cited as the "State Bond Act."

History.—s. 1, ch. 69-230.

215.58 Definitions.—The following words or terms when used in this act shall have the following meanings:

(1) "Governor" shall mean the Governor of the state or any Acting Governor or other person then exercising the duties of the office of Governor.

(2) "Treasurer" shall mean the Insurance Commissioner and Treasurer.

(3) "Comptroller" shall mean the State Comptroller.

(4) "State" shall mean the State of Florida.

(5) "Department" shall mean the Department of General Services.

(6) "Division" shall mean the Division of Bond Finance of said department.

(7) "Board" shall mean the governing board of said division, which shall be composed of the Governor and cabinet.

(8) "Director" shall mean the chief administrator of the division, who shall act on behalf of the division when authorized by the board, as provided by this act.

(9) "State agency" shall mean any board, commission, authority, or other state agency heretofore or hereafter created by the constitution or statutes of the state.

(10) "Bonds" shall mean state bonds, or any revenue bonds, certificates or other obligations heretofore or hereafter authorized to be issued by said division or by any state agency.

(11) "State bonds" shall mean bonds pledging the full faith and credit of the State of Florida.

(12) "Legislature" shall mean the State Legislature.

(13) "Constitution" shall mean the existing constitution of the state, or any constitution hereafter adopted by the people of the state, together with all amendments thereof.

History.—s. 2, ch. 69-230; ss. 13, 35, ch. 69-106.

215.59 State bonds, revenue bonds; issuance.—

(1) The issuance of state bonds pledging the full faith and credit of the state, pursuant to s. 11, Art. VII of the State Constitution, is hereby authorized upon approval by vote of the electors, except as otherwise authorized by said s. 11, Art. VII. The amount of such state bonds, other than refunding bonds, the projects to be financed thereby, and the date of such vote of the electors shall be as provided by law.

(2) The issuance of revenue bonds payable solely from funds derived from sources other than state tax revenues or rents or fees paid from state tax revenues, pursuant to s. 11(c), Art. VII of the State Constitution, is hereby authorized without a vote of the electors in the manner provided by law.

(3) All bonds hereby authorized shall be issued in the manner provided by the Constitution or by the division in the manner provided by this act, subject to all other applicable provisions of law.

History.—ss. 3, 6, ch. 69-230.

215.60 State bonds for financing road acquisition and construction.—

(1) The issuance of state bonds to finance the acquisition and construction of roads, primarily payable from the revenues provided for by s. 9(c), Art. XII of the State Constitution and pledging the full faith and credit of the state, is hereby authorized, pursuant to the provisions of said section of the Constitution and this act.

(2) The State Board of Administration is hereby designated as the state fiscal agency to make the determinations required by said s. 9(c), Art. XII of the Constitution in connection with the issuance of such bonds.

History.—s. 4, ch. 69-230.

215.61 State system of public education capital outlay bonds.—

(1) The issuance of school bonds, payable primarily from revenues as provided in s. 18, Art. XII of the State Constitution of 1885, as amended, and additionally secured by pledging the full faith and credit of the state, is hereby authorized pursuant to the provisions of s. 9(d), Art. XII of the State Constitution and the provisions of ss. 215.57-215.83, "The State Bond Act."

(2) The issuance of bonds to finance or refinance capital outlay projects authorized by the Legislature for the state system of public education, primarily payable from revenues as provided in s. 19, Art. XII of the State Constitution of 1885, as amended, and additionally secured by pledging the full faith and credit of the state, is hereby authorized pursuant to the provisions of s. 9(a)(2), Art. XII of the State Constitution and the provisions of ss. 215.57-215.83, "The State Bond Act."

(3) No bonds authorized by s. 9(a)(2), Art. XII of the State Constitution shall be issued in an amount exceeding 90 percent of the amount which the State Board of Education determines can be serviced by the revenues derived from the gross receipts tax levied and collected pursuant to chapter 203. In determining the amount which can be serviced by the gross receipts tax, the State Board of Education shall utilize the average annual amount of revenue collected for the 24 months immediately preceding the most recent January 1 or July 1 prior to the date of issuance of any such bonds. However, 100 percent of the amount required to provide for the debt service for the current fiscal year of the bonds issued prior to July 1, 1975, under the provisions of s. 9(a)(2), Art. XII of the State Constitution shall be deducted in making the determination.

(4) With respect to the bonds authorized by s. 9, Art. XII of the State Constitution, the Division of Bond Finance shall act as the agent of the State Board of Education pursuant to ss. 215.57-215.83, "The State Bond Act."

(5) The State Board of Education shall have the power to make and enforce all rules and regulations necessary to the full exercise of the powers herein granted.

History.—s. 5, ch. 69-230; s. 13, ch. 75-292; s. 6, ch. 76-280.

215.62 Division of Bond Finance.—

(1) There is hereby created a division of the Department of General Services of the state to be known as the Division of Bond Finance. The Governor shall be the chairman of the governing board of the division, the Comptroller shall be the secretary of said board and the Treasurer shall be the treasurer of said board for the purposes of this act. The division shall be a public body corporate for the purposes of this act.

(2) Any action of the division shall be taken pursuant to resolution which shall be in effect upon passage by a majority of the members of the board and need not be posted or published, and a majority of the board shall be and constitute a quorum for all meetings.

(3) The employees of the division shall be required to give such bond as the board may require, but the board may provide for payment of such employee bond premiums from moneys available for administrative expenses of the division.

(4) The members of said board shall not receive any additional salary for services in such capacity, but shall be entitled to their necessary traveling and other expenses in the performance of their duties and obligations as members of the board.

(5) The board shall have power to adopt such rules and regulations as may be necessary for carrying out the duties of the division. The board shall hold regular and special meetings at such places and times, in such manner, and after such notice as may be provided by resolution adopted by the board or upon call of the chairman.

History.—s. 7, ch. 69-230.

215.63 Transfer to Division of Assets and Liabilities of the Revenue Bond Department of Development Commission.—

(1) All personnel, assets, and liabilities of the Revenue Bond Department of the Florida Development Commission, including all real and personal property and fees earned but not yet deposited in the Revenue Bond Fee Trust Fund of said commission, shall be transferred to the division as of July 1, 1969, and after such date all obligations of said commission in connection with outstanding bond issues shall be assumed and performed either by the division or by the State Board of Administration, as provided by law or by contract. Any bond proceedings taken by the Florida Development Commission prior to July 1, 1969, when ratified by the board shall be deemed to have been taken by the board and the division on behalf of said commission, and any further necessary services in connection with such bond issues shall be performed by the board or the division in the manner provided by this act.

(2) Any legal commitments, contracts, or other obligations heretofore entered into or assumed by the Florida Development Commission in connection with its revenue bond program outstanding on July 1, 1969, are hereby charged to and shall be per-

formed by the division. All of the powers and duties granted to and vested in the Florida Development Commission by any statutes and laws of this state relating to the revenue bond program of said commission are granted to, vested in and shall be exercised by the division, and all of said statutes and laws not expressly repealed hereby shall remain in full force and effect, subject to the powers and duties therein prescribed being performed by the division.

History.—s. 8, ch. 69-230.

215.64 Powers of the division.—The division shall have power:

(1) To sue and be sued in the corporate name of the division and to adopt a corporate seal.

(2) To issue any bonds of the state heretofore or hereafter authorized by law or by the State Constitution, and to issue bonds on behalf of any state agency heretofore or hereafter authorized by law upon application of such state agency. Such bonds issued on behalf of a state agency may be issued in the name of the State of Florida, or in the sole name of such state agency if required by law.

(3) To exercise all of the powers relating to the issuance of bonds of any state agency, the terms and details thereof, the security pledged therefor, and the rights and remedies relating to the holders of said bonds as fully and to the same extent as such state agencies could exercise such powers under the statutes in effect at the time of the issuance of such bonds relating to such state agencies, and it is hereby expressly provided that all pledges or security for bondholders and all covenants and agreements made pursuant to this act, whether such bonds are issued directly in the name of the State of Florida or in the name of the State of Florida on behalf of the state agency, shall be and constitute valid and legally binding pledges and covenants of both the State of Florida and the state agency and shall be fully enforceable by any holder of such bonds against either the state or such agency or the state and such agency jointly.

(4) To employ the services of a director of the division to be designated by the Governor with the concurrence of the board. The director may also serve as general counsel of the division and as assistant secretary of the board and in such capacities shall be authorized to perform duties provided by appropriate regulations or resolutions of the board under conditions and limitations included therein.

(5) To employ or retain persons, firms, or corporations as engineers, attorneys, financial advisors or consultants, and such other consultants and employees as it may deem necessary or advisable for the carrying out and performing of the duties and obligations of the division, and to fix and determine the compensation of all such persons, firms, or corporations.

(6) To prepare resolutions and all other necessary proceedings for approval by the board relating to the authorization, validation, issuance and sale of any bonds to be issued by the state and any bonds to be issued for and on behalf of any state agency. Any resolution or other proceedings had or taken by the board or the division on behalf of any state agency shall be deemed to be the resolution or other proceedings of such state agency as fully and to the same extent as if such state agency had originally adopted such resolution or other proceedings.

(7) To sell at such place or places and under such terms and conditions as the board shall determine in conformity with this act, all state bonds authorized by law and the bonds issued on behalf of any state agency as provided in this act.

(8) To request any state agency on behalf of which the division is issuing bonds to adopt any necessary resolutions or other proceedings and to take any necessary actions in connection with the issuance of such bonds, and no resolution or other proceeding shall be adopted or action taken by any state agency relating to bonds of such state agency which the division has been requested to issue without the approval and consent of the board.

(9) To exercise the power of eminent domain, as provided by s. 288.15(2), to carry out the objects and purposes of the State Bond Act and to take such other proceedings and actions as may be necessary to perform and carry out the provisions of this act. It is hereby expressly declared that it is the intent of this act that the division have all the powers necessary or advisable to enable the board and the division to carry out and perform the powers provided in this act, and this act shall be construed liberally to effectuate such purpose.

(10) To remit the proceeds of any bonds sold for any state agency for use in the manner provided in proceedings adopted by such state agency and approved and consented to by the board, or adopted by the board on behalf of such state agency, and to remit the proceeds of any state bonds for use in the manner provided in the acts of the Legislature and the proceedings approved by the board authorizing the issuance of such state bonds. The division is authorized to retain from the proceeds of any state bonds or bonds issued on behalf of any state agency the amount of its fees, costs and expenses in connection with all proceedings and acts taken in connection with the authorization, issuance and sale of such bonds, including a proportionate part of the general overhead costs of the operation and administration of the division in its carrying out of the purposes of this act. The determination of the division as to the proper proportion and amount of such fees, costs and expenses to be charged against each issue of bonds shall be final and conclusive when approved by the board and the State Board of Administration.

History.—s. 9, ch. 69-230; s. 5, ch. 73-135.

215.65 Bond Fee Trust Fund, expenditures; schedule of fees.—

(1) There is created a Bond Fee Trust Fund, which shall be maintained as a separate fund. The unencumbered surplus of this fund shall never exceed the sum of $225,000 at the end of any fiscal year.

(2) All expenses of the division incident to the issuance and sale of any bonds, notes, or certificates issued or proposed to be issued pursuant to the provisions of this act shall be paid from said trust fund. Such expenses shall include but not be limited to costs of validating, printing and delivering the bonds, printing the prospectus, publishing notices of sale of the bonds, salaries of personnel of the division, and necessary administrative expenses.

(3) The division shall adopt a schedule of fees and expenses, to be approved by the State Board of Administration before becoming effective, which may be revised from time to time as conditions warrant with the approval of the State Board of Administration, designed so that the Bond Fee Trust Fund will be reimbursed for general administrative expenses of the division as well as all direct out-of-pocket expenses. The fees charged to and all expenses paid for and on behalf of each bond issue shall be paid and reimbursed to the Bond Fee Trust Fund from the proceeds of the sale of the bonds, if such bonds are sold, or from such other source as may be agreed to by the state agency requesting the services of the division, if for any reason the bonds are not sold.

History.—s. 10, ch. 69-230; s. 48, ch. 71-355; s. 1, ch. 73-135.

215.66 Request for issuance of bonds; procedure requirements.—

(1) Before any bonds may be issued by the division on behalf of a state agency, such state agency shall file a request with the division by appropriate resolution for approval of the issuance of such proposed bonds, which request shall state such facts and shall have annexed thereto such exhibits in regard to such bonds and to such state agency and its financial condition as may be required by the division.

(2) In any case in which any bonds proposed by any state agency shall be required by the Constitution or statutes to be submitted to the qualified electors or qualified electors who are freeholders for approval or disapproval at a bond election prior to the issuance of such bonds, the request shall be filed with the division at least 60 days prior to the date of the holding of such proposed bond election. No such bond election shall be held on the question of the issuance of such bonds until the Legislature has approved the holding of such bond election.

History.—s. 11, ch. 69-230.

215.67 Issuance of state bonds.—All state bonds shall be issued by the division. No state bonds shall be issued by the division until the issuance thereof has been approved by the electors, if such approval is required by the Constitution or laws of the state. If such approval has been obtained in such bond election or if no such approval is required, such state bonds may be issued by the division when the official or the board, commission, or other agency of the state authorized by law to provide for the acquisition or construction of the projects to be financed with the proceeds of such state bonds or for the issuance thereof has filed with the division its request for the division to issue such state bonds for the purposes and in the manner provided in this act and other applicable statutes or provisions of the State Constitution.

History.—s. 12, ch. 69-230.

215.68 Issuance of bonds; form; maturity date, execution, sale, etc.—

(1) The board is empowered to authorize, by resolution duly adopted, the issuance by the division, at one time or from time to time of any state bonds or bonds on behalf of any state agency.

(2) Such bonds may:

(a) Be issued in either coupon or registered form or both;

(b) Have such date or dates of issue and such maturities, not exceeding in any event 40 years from the date of issuance thereof;

(c) Bear interest at not exceeding 7½ percent per annum;

(d) Have such provisions for registration of coupon bonds and conversion and reconversion of bonds from coupon to registered form or from registered form to coupon form;

(e) Have such provisions for payment at maturity and redemption prior to maturity at such time or times and at such price or prices; and

(f) Be payable at such place or places within or without the state as the board shall determine by resolution.

The foregoing terms and conditions do not supersede the limitations provided in chapter 348, part I, relating to the issuance of bonds.

(3) Such bonds may be signed by such officers of the board or state agency as shall be provided for by resolution of the board. The signatures may be manual or facsimile signatures, but at least one of such signatures shall be a manual signature. The coupons shall be signed with the facsimile signatures of such officials of the board or state agency as said board shall determine. In case any officer whose signature or facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before delivery of such bonds or coupons, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes as fully and to the same extent as if he had remained in office until such delivery.

(4) All bonds issued under the provisions of this act shall be and have, and are hereby declared to be and have, all the qualities and incidents of negotiable instruments under the Uniform Commercial Code—Investment Securities Law of the state.

(5)(a) The division may sell such bonds at such price or prices as the board may determine to be for the best interest of the state or of the state agency on behalf of which such bonds are issued, but no such sale shall be made at an average net interest cost rate of more than 7½ percent per annum, without reference to prior redemption provisions; provided, however, that no state bonds shall be sold at less than par and accrued interest.

(b) All of such bonds shall be sold at public sale at such place or places within the state as the board shall determine to receive proposals for the purchase of such bonds. Notice of such sale shall be published at least once at least 10 days prior to the date of sale in one or more newspapers or financial journals published within or without the state, and shall contain such terms as the board shall deem advisable and proper under the circumstances; provided, that if no bids are received at the time and place called for by such notice of sale, or if all bids received are rejected, such bonds may again be offered for sale upon a shorter period of reasonable notice provided for by resolution of the board.

(c) All proposals for the purchase of any bonds offered for sale by the division shall be opened in

public. Such bonds shall be awarded by resolution of the board to the bidder offering to purchase such bonds at the lowest net interest cost, such cost to be determined by deducting the total amount of premium bid from or adding the total amount of discount bid to the aggregate amount of interest which will accrue on such bonds until their respective maturities, without reference to any provisions for prior redemption of such bonds.

(d) No bid conforming to the notice of sale may be rejected unless all bids are rejected. If the bids rejected are legally acceptable bids under the notice of sale, such bonds shall not be sold thereafter except upon public sale after publication of notice of sale as provided herein.

(6) No bonds of the state or of any state agency shall be issued by the division unless the face or reverse thereof contains a certificate, executed either manually or with his facsimile signature by the secretary or assistant secretary of the board, to the effect that the issuance of such bonds has been approved under the provisions of this act by the board. Such certificate shall be conclusive evidence as to approval of the issuance of such bonds by the board and that the requirements of this act and all of the laws relating to such bonds or to any state agency on behalf of which the bonds are to be issued have been fully complied with.

(7) The division shall have the authority with approval of the board to issue bond anticipation notes in the name of the state, or in the name of the state agency on behalf of which a bond issue is to be sold by the division, in anticipation of the receipt of the proceeds of the bonds in the same manner and subject to the same limitations and conditions provided by s. 215.431. The rights and remedies of the holders of said notes shall be the same rights and remedies which they would have if they were the holders of the definitive bonds in anticipation of which they are issued, and all of the covenants, agreements, or other proceedings relating to the definitive bonds in anticipation of which such bond anticipation notes are issued shall be a part of the proceedings relating to the issuance of said notes as fully and to the same extent as if incorporated verbatim therein.

(8) Prior to the preparation of definitive bonds, the division may be authorized by the board to issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery under such terms and conditions as the board shall deem advisable. The board may also provide for the replacement of any bonds which shall become mutilated or be destroyed, stolen, or lost under such terms and conditions as the board shall deem advisable.

History.—s. 13, ch. 69-230; s. 49, ch. 71-355; s. 3, ch. 73-135; s. 20A, ch. 73-302.

215.685 State, county, municipal, etc., bonds; maximum rate of interest.—

(1) Bonds, certificates, or other obligations of any type or character, authorized and issued by counties, municipalities, towns, villages, districts, commissions, authorities, or any other public body, agency, or political subdivision of the state may bear interest at a rate not to exceed 7.5 percent per annum.

(2) Upon the request of the issuing unit and when it appears to be in the best interest of the public, the State Board of Administration may authorize, for a specific issue or reissue of bonds, certificates, or other obligations of any type or character authorized and issued by a county, municipality, district, commission, authority, or any other public body or agency or political subdivision of the state, a rate of interest in excess of the maximum rate set by law.

(3) All laws or parts of laws, whether special or general, in conflict herewith are expressly repealed and superseded by this section, provided that nothing contained herein shall affect or apply to any act authorizing bonds or other obligations having a higher interest rate limitation or no interest rate limitation.

History.—ss. 1, 2, ch. 69-1739; s. 1, ch. 74-259.

215.69 State Board of Administration to administer funds.—

(1) The State Board of Administration is hereby designated and appointed as the agent of the board and the division to administer all debt service funds for bonds issued pursuant to this act, except as otherwise provided herein.

(2) Upon sale and delivery of any bonds by the division pursuant to this act and disbursement of the proceeds thereof in the manner provided by the proceedings authorizing the issuance of such bonds, the State Board of Administration shall take over the management, control, bond trusteeship, administration, custody, and payment of all debt service or other funds or assets available for such bonds and shall cause to be entered in its records a description of all bonds issued pursuant to this act, giving their amount, date, the times fixed for payment of principal and interest, the rate or rates of interest, the place or places at which the principal and interest will be payable, the denomination or denominations and purpose of issuance, together with the name of the state agency or state officials vested with the authority and power to levy, fix, and establish the taxes, revenues, or other funds for the payment of the principal and interest on such bonds, and reserves therefor, and a reference to the statute under which such bonds are issued. Upon assuming such trusteeship, the State Board of Administration shall succeed to all the statutory powers of the division and other state agencies with regard to such bonds.

(3) The State Board of Administration shall have authority to require the state officials and the state agencies on behalf of which the division shall have issued bonds to promptly forward the necessary taxes, revenues, or other funds for the payment of the principal of or interest on such bonds, and reserves therefor, and any other funds required by the proceedings which authorized such bonds to the State Board of Administration.

(4) The State Board of Administration shall also be the agent of the division for the investment of all funds of the division, including all reserve funds, and the State Board of Administration shall invest all such funds in the securities provided in the proceedings which authorized the issuance of such bonds, or, if no provisions for such investments are provided in such proceedings, then such funds shall be invested

in the manner provided in s. 215.47.

(5) The State Board of Administration shall also act as the trustee of any sinking funds or other funds if the proceedings which authorized the issuance of such bonds provide for a trustee of such funds and no bank or trust company is designated as trustee of such funds in such proceedings.

(6) The provisions of this section shall not prevent, however, the designation by the board of a bank or trust company to serve as a trustee for the purposes of this act.

(7) The State Board of Administration shall maintain all records required to be maintained as to outstanding bond issues pursuant to s. 215.63 and this section, and it shall not be necessary for the Division of Bond Finance to duplicate such records or to maintain separate accounts for any of such issues.

History.—s. 14, ch. 69-230; s. 2, ch. 73-135.

215.70 State Board of Administration to act in case of defaults.—

(1) If funds sufficient for the payment of the principal and interest due at any time on any bonds of the state or on any bonds issued on behalf of any state agency shall not be remitted to the State Board of Administration in sufficient time to pay the same when due, the State Board of Administration shall succeed to all the powers of the state officials or state agency on behalf of which such bonds were issued relating to the collection of taxes, revenues, or any other funds pledged for the payment of the principal of or interest on said bonds. It shall be the duty of the State Board of Administration to take over and enforce the levy, fixing, and collecting of such taxes, revenues, or other pledged funds and to apply same in the manner provided in the proceedings which authorized the issuance of such bonds.

(2) The provisions of this section shall not prevent, however, the appointment of a receiver for any of the properties or facilities of any state agency for which any revenues or other funds have been pledged, upon the default of such state agency in the manner provided in the resolution or other proceedings which authorized the bonds issued by the division on behalf of such state agency.

History—s. 15, ch. 69-230.

215.71 Application of bond proceeds.—The division shall remit the proceeds of such bonds, after first deducting its fees, costs and expenses as provided in this act, for application in the manner provided in the laws relating to such bonds and in the proceedings authorizing the issuance of such bonds.

History.—s. 16, ch. 69-230.

215.72 Covenants with bondholders.—

(1) The board shall have power to enter into valid and legally binding covenants between the State of Florida or any state agency and the holders of any bonds, including, without limitation:

(a) The manner and method of determining and paying rates, fees or other charges for services and facilities of revenue-producing facilities;

(b) Insurance on revenue-producing facilities;

(c) Limitations on the powers of the board, the division, or any state agency on behalf of which the bonds are issued to construct, acquire or operate or permit the construction, acquisition or operation of any roads, bridges, tunnels, structures, facilities, or properties which would materially and adversely affect the revenues derived from the facilities financed with the proceeds of such bonds;

(d) Terms and conditions for modification or amendment of any provisions or covenants in the proceedings authorizing the issuance of such bonds;

(e) Provisions for and limitations on the appointment of a trustee for bondholders for any properties or facilities financed by the issuance of such bonds;

(f) Provisions as to the appointment of a receiver of any facilities or properties financed by the issuance of such bonds on default of payment of principal or interest on such bonds or violation of any covenants or conditions contained in the proceedings which authorized the issuance of such bonds or the provisions or requirements of this act;

(g) Provisions for the execution and implementation of trust agreements with the State Board of Administration or banks or trust companies within or without the state regarding the holding and disposition of taxes or revenues derived from such properties or facilities or other funds pledged for such bonds and the proceeds of such bonds;

(h) Provisions as to the rank and priority of any bonds issued in relation to subsequent bonds issued for the same purpose or purposes, or payable from the same taxes, revenues or other funds; and

(i) Any other matters deemed necessary or advisable to enhance the security of such bonds and the marketability thereof and which are customary in accordance with the market requirements for the sale of such bonds.

(2) All such covenants and agreements, in addition to the provisions of this act, shall constitute valid and legally binding contracts between the state or any state agency on behalf of which such bonds are issued and the holders of such bonds, and shall be enforceable by any such holder or holders by mandamus or other appropriate action, suit or proceeding at law or in equity in any court of competent jurisdiction.

History.—s. 17, ch. 69-230.

215.73 Approval by State Board of Administration.—All bonds proposed to be issued by the division shall be approved by the State Board of Administration as to fiscal sufficiency prior to validation by the division.

History.—s. 18, ch. 69-230.

215.74 Pledge of "second gas tax"; consent by counties and state agency supervising state road system.—Any portion of the "second gas tax" provided for and allocated to the account of each of the several counties by s. 9(c), Art. XII of the State Constitution may be pledged and used for the payment of bonds issued by the division; provided, however, that such funds shall only be pledged and used with the consent of the state agency supervising the state road system and the governing body of the

county to the account of which such portion of the second gas tax is allocated.

History.—s. 19, ch. 69-230.

215.75 Bonds securities for public bodies.—All bonds issued by the division, either for the state or on behalf of any state agency pursuant to this act, shall be and constitute legal investments for state, county, municipal, and all other public funds, and for banks, savings banks, insurance companies, executors, administrators, trustees, and all other fiduciaries, and shall also be and constitute securities eligible as collateral deposits for all state, county, municipal, or other public funds.

History.—s. 20, ch. 69-230.

215.76 Exemption from taxation.—As the exercise of the powers conferred by this act constitutes the performance of essential public functions, all properties, revenues or other assets of the division or of any state agency on behalf of which bonds are issued under this act, and all bonds issued hereunder and the interest thereon, shall be exempt from all taxation by the state or any county, municipality, political subdivision, agency, or instrumentality of the state. The exemption granted by this section shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

History.—s. 21, ch. 69-230; s. 6, ch. 73-327.

215.77 Trust funds.—The proceeds of all bonds and all taxes, revenues, or other funds provided for in this act and the proceedings which authorized the issuance of such bonds shall be and constitute trust funds and shall be used and applied solely in the manner and for the purposes provided in this act and the proceedings which authorized the issuance of such bonds.

History.—s. 22, ch. 69-230.

215.78 Remedies.—Any holder of bonds issued under the provisions of this act or of any of the coupons appertaining thereto, except to the extent the rights herein given may be restricted by the resolution or other proceedings authorizing the issuance of such bonds, may by civil action, mandamus, or other proceedings, protect and enforce any and all rights of such bondholders granted hereunder or under the proceedings authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this act or by such proceedings by the state or any state agency on behalf of which such bonds are issued, including the levying, fixing, establishing and collecting of taxes, revenues or other funds and the performance and carrying out of all the provisions of this act and all covenants and agreements in the proceedings which authorized the issuance of such bonds.

History.—s. 23, ch. 69-230.

215.79 Refunding bonds.—

(1) The board is authorized to provide by resolution for the issuance by the division of refunding bonds of the state, or on behalf of any state agency, for the purpose of refunding any bonds then outstanding. The board is further authorized to provide by resolution for the issuance of bonds for the combined purposes of paying the cost of the construction or acquisition of capital projects and refunding any bonds then outstanding. Any outstanding bonds may be so refunded when they shall mature or shall be subject to redemption prior to maturity within 10 years from the date of issuance of such refunding bonds or can be acquired for voluntary exchange. The proceeds of any refunding bonds may, if the bonds to be refunded have not matured and are not then subject to prior redemption, be invested in direct obligations of the United States maturing not later than the date upon which such outstanding bonds will mature or the first date upon which such outstanding bonds will be subject to redemption prior to maturity, but not in any event later than 10 years from the date of the issuance of such refunding bonds.

(2) The amount of refunding bonds to be issued for the purposes of refunding outstanding bonds, or for refunding outstanding bonds and the construction or acquisition of capital projects, may be increased in the amount necessary for the payment of all costs and expenses of the issuance of such bonds and also for the purpose of depositing in escrow until the date upon which any outstanding bonds will mature or will be subject to redemption prior to maturity, in any event not later than 10 years from the date of issuance of said bonds, all interest and redemption premiums which will accrue to and including the date of the redemption of said outstanding bonds. In determining the amount of such refunding bonds to be issued, the amounts of any discounts or interest on such direct obligations of the United States to be deposited in escrow, which will accrue to and be deposited in the escrow account prior to the maturity date or the earliest ensuing redemption date of the outstanding bonds being so refunded, may be taken into account. Deposit in escrow of direct obligations of the United States in an amount which, at maturity, together with interest to accrue thereon prior to the maturity date or the earliest ensuing redemption date of the outstanding bonds being refunded, will equal the total amounts of principal, interest, and any redemption premiums required to redeem or retire such outstanding bonds on such date or dates shall be sufficient to terminate the lien of such outstanding bonds on all funds except such escrow fund.

History.—s. 24, ch. 69-230; s. 4, ch. 73-135.

215.80 Annual report.—The division or the State Board of Administration shall cause to be made at least once each year a comprehensive report of all debt service or other sinking funds for any bonds issued by the division for the state or any state agencies and the status of all such funds and accounts. Copies of such report shall be filed with the secretary or assistant secretary of the board and shall be open to public inspection.

History.—s. 25, ch. 69-230.

215.81 Pledge of state.—The state does hereby covenant and agree with the holders of the bonds issued pursuant to this act that the state will not limit or restrict the rights hereby vested in the board or the division or in any state agency on behalf of which such bonds are issued:

(1) To construct, acquire, improve, maintain and operate any capital projects financed with the proceeds of bonds issued pursuant to this act;

(2) To levy, fix, establish and collect such taxes, revenues or other funds which are pledged for the payment of the principal of and interest on said bonds, or reserves therefor;

(3) To fulfill the terms of any covenants and agreements made with the holders of bonds issued pursuant to this act

or in any way to impair the rights or remedies of the holders of such bonds until all such bonds together with the interest thereon are fully paid and discharged.

History.—s. 26, ch. 69-230.

215.82 Validation required.—

(1) All bonds issued pursuant to this act shall be validated in the manner provided by law through proceedings instituted by the attorneys for the division under chapter 75; provided, that nothing herein shall be construed to prevent sale or delivery of any bonds or notes after entry of a judgment of validation by the circuit court.

(2) Bonds issued pursuant to this act shall be validated in the manner provided by chapter 75. In actions to validate bonds to be issued in the name of the State Board of Education under s. 9(a) and (d), Art. XII of the State Constitution and bonds to be issued pursuant to chapter 259, the Land Conservation Act of 1972, the complaint shall be filed in the circuit court of the county where the seat of state government is situated, the notice required to be published by s. 75.06 shall be published only in the county where the complaint is filed, and the complaint and order of the circuit court shall be served only on the state attorney of the circuit in which the action is pending.

History.—s. 27, ch. 69-230; s. 6, ch. 73-135.

215.821 Issuance of bonds by state agencies.—Prior to July 1, 1969, state agencies may issue bonds directly under the laws relating to such state agencies. Any state agency may, however, make application for the issuance of such bonds on behalf of such state agency by the division as provided in ss. 215.57-215.83 at any time after July 1, 1969; and, in such event, all the provisions of ss. 215.57-215.83 shall apply to such bonds issued by the division on behalf of any state agency making such application. The provisions of ss. 215.57-215.83 shall apply to all state agencies on and after July 1, 1969, and all bonds of such state agencies shall thereafter be issued by the division on behalf of such state agencies under the provisions of ss. 215.57-215.83, except in cases in which the State Constitution provides for the issuance of such bonds by the state agency. In any such case a state agency may request the division to act as the agent of such state agency in the sale of such bonds and to render any assistance in the preparation and dissemination of information and preparation of proceedings for the issuance of such bonds under such terms and conditions as shall be agreed upon by the board.

History.—s. 28, ch. 69-230; s. 50, ch. 71-355.

215.83 Construction of law.—The provisions of this act shall be liberally construed to effect its purposes. The exercise of the powers provided by this act and the issuance of bonds hereunder shall not be subject to the limitations and provisions of any other law or laws which are inconsistent with the provisions of this act, and any provisions of any other laws relating to the issuance of bonds by any state agency which are inconsistent with the provisions of this act are hereby superseded to the extent of such inconsistent provisions.

History.—s. 29, ch. 69-230.

215.85 Direct deposit of public funds.—

[1](1) SHORT TITLE.—This act shall be known and may be cited as the "Direct Deposit of Public Funds Act."

(2) LEGISLATIVE INTENT.—It is the legislative intent that this act shall constitute authorization for all public agencies to withdraw, pay, or disburse all public funds in their control by direct deposit to the account of the person entitled to receive such funds. This act is not intended to limit existing statutory authority for the direct deposit of public funds, but rather to allow in similar fashion all public agencies to employ this method.

(3) DEFINITIONS.—

(a) The term "governing board or officer" means each individual or group of individuals, including, but not limited to, trustees, having lawful authority to withdraw, pay, or disburse public funds from the depository thereof.

(b) The term "public funds" means all moneys under the jurisdiction or control of the state, a county, or a municipality, including any district, authority, commission, board, or agency thereof, and shall include all manner of pension and retirement funds and all other funds held, as trust funds or otherwise, for any public purpose.

(4) DISBURSEMENT OF PUBLIC FUNDS; DIRECT DEPOSIT.—

(a) For the purpose of providing for the direct deposit of public funds under the circumstances herein specified, each governing board or officer is authorized to establish the form or forms of checks, warrants, or other instruments for the withdrawal, payment, or disbursement of the public funds under its control, and to change the form thereof from time to time. However, nothing in this section shall be construed as eliminating or impairing the requirements of any statute, rule, or ordinance relating to any official or other action or signatures necessary to authorize the withdrawal, payment, or disbursement of such public funds.

(b) If authorized in writing by the person entitled to the withdrawal, payment, or disbursement of public funds, such checks, warrants, or other instruments may provide for direct deposit of the public funds to the account of the person entitled to receive the same in any financial institution which is designated in writing by such person and which has lawful authority to accept such deposits. The written authorization of the person entitled to receive such

public funds shall be filed with the appropriate governing board or officer. Direct deposit of public funds may be by any electronic or other medium approved for such purpose by the governing board or officer having jurisdiction or control of such public funds.

(5) INVESTMENT OF PUBLIC FUNDS.—Notwithstanding any other provision of law, the governing board or officer of any local government who has the authority to invest funds is authorized to transfer funds by electronic or other medium for purposes of investment to any depository authorized by law to receive funds or in the Local Government Surplus Funds Trust Fund. A written record shall be kept of all transfers made pursuant to this section.

History.—ss. 1-5, ch. 78-406.

[1]**Note.**—"This act," as used in this subsection, includes amendments to ss. 136.06, 155.11, and 219.05 by ss. 6, 7, and 8, respectively, of ch. 78-406.

CHAPTER 216

PLANNING AND BUDGETING

216.011 Definitions.—

(1) For the purpose of fiscal affairs of the state, appropriations acts, legislative budgets, and approved budgets, the following terms shall have the meaning indicated:

(a) "Legislative budget" means a request to the legislature, filed pursuant to s. 216.023, or supplemental detailed requests filed with the Legislature, for the amounts of money such agency or branch believes will be needed in the performance of the functions that it is authorized, or which it is requesting authorization by law, to perform.

(b) "Appropriations act" means the Legislature's authorization, based upon legislative budgets or based upon legislative findings of the necessity for an authorization when no legislative budget is filed, for the expenditure of amounts of money by an agency and the legislative branch for stated purposes in the performance of the functions it is authorized by law to perform.

(c) "Approved budget" means an operating budget consistent with the General Appropriations Act or special appropriations acts and prepared in accordance with s. 216.181.

(d) "Budget entity" means a unit or function at the lowest level to which funds are specifically appropriated in the appropriations act.

(e) "State agency" or "agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch, or the judicial branch, as herein defined, of state government.

(f) "Perquisites" means those things, or the use thereof, or services of a kind which confer on the officers or employees receiving same some benefit that is in the nature of additional compensation, or which reduces to some extent the normal personal expenses of the officer or employee receiving the same, and shall include, but not be limited to, such things as quarters, subsistence, utilities, laundry services, medical service, use of state-owned vehicles for other than state purposes, servants paid by the state, and other similar things.

(g) "Fiscal year of the state" means a period of time beginning July 1 and ending on the following June 30, both dates inclusive.

(h) "Biennium" means two consecutive fiscal years beginning July 1 of every odd-numbered year.

(i) "Revolving fund" means a cash fund maintained within or outside of the State Treasury and established from an appropriation, to be used by an agency in making authorized expenditures.

(j) "Appropriation" means a legal authorization to make expenditures for specific purposes within the amounts authorized in the appropriations act.

(k) "Continuing appropriation" means an appropriation automatically renewed without further legislative action, period after period, until altered or

revoked by the Legislature.

(l) "Expenditure" means the creation or incurring of a legal obligation to disburse money.

(m) "Disbursement" means the payment of an expenditure.

(n) "Salary" means the cash compensation for services rendered for a specific period of time.

(o) "Other personal services" means the compensation for services rendered by a person who is not a regular or full-time employee filling an established position. This shall include, but not be limited to, temporary employees, student or graduate assistants, common or casual labor, consultant fees, and other services specifically budgeted by each agency in this category.

1. In distinguishing between payments to be made from salaries appropriation and other-personal-services appropriation, those persons filling an established position shall be paid from salaries appropriations and those persons performing services for a state agency, but who are not filling an established position, shall be paid from the other-personal-services appropriations.

2. It is further intended that those persons paid from salaries appropriations shall be state officers or employees and shall be eligible for membership in a state retirement system and those paid from other-personal-services appropriations shall not be eligible for such membership.

(p) "Expense" means the usual, ordinary, and incidental expenditures by an agency, including, but not limited to, such items as contractual services, commodities and supplies of a consumable nature, current obligations, and fixed charges, and excluding expenditures classified as operating capital outlay. Payments to other funds or local, state or federal agencies are included in this budget classification of expenditure.

(q) "Operating capital outlay" means equipment, including bound books, fixtures and other tangible personal property of a nonexpendable nature, the normal expected life of which is 1 year or more.

(r) "Fixed capital outlay" means real property (land, buildings including appurtenances, fixtures and fixed equipment, structures, etc.,) including additions, replacements, major repairs, and renovations to real property which materially extend its useful life or materially improve or change its functional use and including operating capital outlay necessary to furnish and operate a new or improved facility.

(s) "Position" means the work, consisting of duties and responsibilities, assigned to be performed by an officer or employee.

(t) "Full-time position" means a position authorized for the entire normally established work period, daily, weekly, monthly or annually.

(u) "Part-time position" means a position authorized for less than the entire normally established work period, daily, weekly, monthly or annually.

(v) "Title of position," or "class of positions" means the official name assigned to a position or class of positions.

(w) "Pay plan" means a document which formally describes the philosophy, methods, procedures and the salary schedule for compensating employees for work performed.

(x) "Salary schedule" means an official document which contains a complete list of classes and their assigned salary ranges.

(y) "Authorized position" means a position included in an approved budget. In counting the number of authorized positions, part-time positions may be converted to full-time equivalents.

(z) "Established position" means an authorized position which has been classified in accordance with a classification and pay plan as provided by law.

(aa) "Position number" means the identification number assigned to an established position.

(bb) "Reclassification" means changing an established position in one class in a series to the next higher or lower class in the same series or to a class in a different series which is the result of a natural change in the duties and responsibilities of the position.

(cc) "Judicial branch" means the various officers, courts, commissions, or other units of the judicial branch of state government supported in whole or in part by appropriations made by the Legislature.

(dd) "Legislative branch" means the various officers, committees, and other units of the legislative branch of state government.

(ee) "Program component" means an aggregation of generally related objectives which, because of their special character, related workload, and interrelated output, can logically be considered an entity for purposes of organization, management, accounting, reporting, and budgeting.

(ff) "Annual salary rate" means the salary estimated to be paid or actually paid a position or positions on an annualized basis.

(gg) "Consultation" means to deliberate and seek advice in an open and forthright manner with the full committee, a subcommittee thereof, the chairman or the staff as deemed appropriate by the chairman of the respective appropriations committee.

(2) For purposes of this chapter, the following terms shall have the meaning indicated:

[1](a) "Department" means the Department of Administration.

[2](b) "Commission" means the Administration Commission composed of the Governor and Cabinet.

[1](c) "Secretary" means the secretary of the Department of Administration.

History.—s. 31, ch. 69-106; s. 6, ch. 71-354; s. 2, ch. 77-352; s. 16, ch. 79-190.

[1]**Note.**—See s. 10, ch. 79-190, which abolished the Division of Budget of the Department of Administration and which transferred all statutory powers, duties, and functions of the Department of Administration under various sections of ch. 216 to the Executive Office of the Governor.

[2]**Note.**—See s. 10, ch. 79-190, which, respectively, created an Administration Commission as part of the Executive Office of the Governor and deleted the Administration Commission as an organizational unit of the Department of Administration.

216.023 Legislative budgets to be furnished by agencies.—

(1) Each agency, except the state courts system as defined in s. 25.382, shall submit an annual legislative budget to the Governor, as chief budget officer of the state, in the form and manner, and at such time as may be prescribed by the [1]department. The state courts system shall submit its legislative budget directly to the Legislature with a copy to the

[1]department in the form and manner as prescribed by this section. However, no state agency shall submit its legislative budget later than November 1 each year.

(2) Each agency shall by November 1 submit to the [1]Department of Administration and the legislative appropriations committees, in the manner prescribed by the [1]department, a statement of the number, for each pay grade and classification, of salaried full-time and part-time employees and the number of other-personal-services employees employed by the agency as of September 30 of the year in which the agency submits its legislative budget request.

History.—s. 31, ch. 69-106; s. 1, ch. 77-314; s. 3, ch. 77-352; s. 11, ch. 79-190.

[1]**Note.**—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to the Executive Office of the Governor.

216.031 Budgets for operational expenditures.—The legislative budget submitted by each state agency showing the amounts needed for operational expenditures during the next biennium shall contain the following:

(1) A financial plan of operations showing, to the level of detail established pursuant to s. 216.023, the prior year's expenditures compared to appropriations, the estimated operating budget for the current year, and the proposed operating budgets for each of the 2 years of the next biennium. However, the legislative budget request for the State University System shall be expressed in terms of the amounts for the various programs as prescribed in s. 240.271, and in the specific appropriation categories, including the special units budgets, prescribed in the prior appropriations act.

(2) A statement and such other detailed information as may be necessary for the Legislature to evaluate:

(a) The effectiveness of current programs, including justification for those programs or other major issues selected, in advance of the agencies' submission of their budget requests, for detailed examination by the appropriations committees.

(b) Proposed improvements in existing programs.

(c) The justification for proposed new programs.

(3) A complete itemized list of estimated revenues to be collected, classified by sources of revenue and funds in which to be deposited.

(4) A copy of the balance sheets for the prior 2 fiscal years and such other financial statements, schedules, and reports as may be required pursuant to law or as may be prescribed by the [1]department.

(5) A schedule and other such detailed information as may be necessary to identify the federal-grants-in-aid portion of the agency's legislative budget request, as may be prescribed by the [1]department in consultation with the appropriations committees of the Legislature.

(6) Workload and other performance indicators, as prescribed by the [1]department pursuant to s. 216.023.

History.—s. 31, ch. 69-106; s. 7, ch. 71-354; s. 4, ch. 77-352; s. 40, ch. 79-222.

[1]**Note.**—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to the Executive Office of the Governor.

216.043 Budgets for capital outlay.—The legislative budget submitted by each state agency showing the amounts needed for fixed capital outlay during the next biennium shall contain:

(1) An estimate in itemized form showing the amounts needed for fixed capital outlay expenditures, to include a detailed statement of program needs, estimated construction costs and square footage, site costs, operating capital necessary to furnish and equip for operating a new or improved facility, and the anticipated sources of funding during the next biennium.

(2) Proposed fixed capital outlay projects, including proposed operational standards related to programs and utilization, an analysis of continuing operating costs, and such other data as the [1]Department of Administration shall deem necessary to analyze the relationship of agency needs and program requirements to construction requirements. The plan shall also include the availability and suitability of privately constructed and owned buildings and facilities to the needs and program requirements of the agency.

History.—s. 31, ch. 69-106; s. 1, ch. 75-243; s. 5, ch. 77-352.

[1]**Note.**—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to the Executive Office of the Governor.

216.044 Budget evaluation by Department of General Services.—Concurrently with the submission of the fixed capital outlay legislative budget to the [1]Department of Administration, the agency shall submit a copy of the budget to the Department of General Services for evaluation. The Department of General Services may advise the [1]Department of Administration and the Legislature regarding alternatives to the proposed fixed capital outlay project and make recommendations relating to the construction requirements of the building or facility.

History.—s. 2, ch. 75-243; s. 1, ch. 77-174; s. 6, ch. 77-352.

[1]**Note.**—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to the Executive Office of the Governor.

216.045 Supplemental appropriations; approval.—During the regular legislative session in even-numbered years, the Legislature may adjust the biennial appropriations act. The Governor shall submit all recommended budget increases or decreases to the Legislature at least 45 days prior to annual sessions in even-numbered years. The recommended changes shall include the information required in s. 216.162.

History.—s. 7, ch. 77-352.

216.051 Copies of agency budgets to legislative appropriations committees.—Copies of the aforesaid legislative budgets of each state agency, except the state courts system as defined in s. 25.382, shall also be forwarded to the legislative appropriations committees by the [1]department.

History.—s. 31, ch. 69-106; s. 12, ch. 79-190.

[1]**Note.**—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to

the Executive Office of the Governor.

216.071 Reports of Legislature.—No right to require reports from the Legislature or from any committee thereof is granted by this chapter.

History.—s. 31, ch. 69-106.

216.081 Data on legislative expenses.—

(1) On or before November 1 in each even-numbered year, in sufficient time to be included in the Governor's budget report to the Legislature, estimates of the financial needs of the legislative branch during the ensuing biennium shall be furnished to the Governor pursuant to chapter 11.

(2) All of the data relative to the legislative branch shall be for information and guidance in estimating the total financial needs of the state for the ensuing biennium; but none of these estimates shall be subject to revision or review by the Governor, and they must be included in his budget report to the Legislature.

History.—s. 31, ch. 69-106; s. 9, ch. 71-354; s. 8, ch. 77-352.

216.091 Statements by Comptroller to Governor.—

(1) On or before December 15, annually, the Comptroller shall furnish to the Governor the statements, classified and itemized in strict accordance with the budget classifications adopted by the [1]department, and consistent with the provisions of s. 216.023, as follows:

(a) A statement showing the balance standing to the credit of the several appropriations for each state agency and the legislative branch supported from any form of taxation or licenses, fees, imposts, or exactions at the end of the prior fiscal year.

(b) A statement showing the annual expenditures and revenues from each appropriation account and the total annual expenditures and revenues from all appropriation accounts, in the prior fiscal year.

(c) An itemized and complete financial balance sheet for the state at the close of the prior fiscal year.

(d) Such other statements as the Governor shall request.

(2) Copies of the statements required by this section shall be furnished to the legislative appropriations committees as requested.

History.—s. 31, ch. 69-106; s. 9, ch. 71-354; s. 9, ch. 77-352.

[1]Note.—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to the Executive Office of the Governor.

216.102 Filing of state agency balance sheets; handling by Comptroller; penalty for noncompliance.—

(1) On or before September 30 of each year, each agency supported by any form of taxation or licenses, fees, imposts, or exactions shall file with the Comptroller and the Auditor General a balance sheet and a statement of operation, prepared in compliance with generally accepted governmental accounting principles, as of June 30 of each year showing all assets, liabilities, equities, income, and expenditures of the respective agency.

(2) It shall be the duty of the Comptroller to:

(a) Compile the respective balance sheets and statements of operation filed pursuant to subsection (1) into one balance sheet and one statement of operation and include a copy of the same in his annual report.

(b) Furnish the Governor with a copy of said compiled balance sheet pursuant to s. 216.091(3).

(c) Certify to the [1]Department of Administration that each agency has complied with the requirements of subsection (1).

(3) Should any agency fail to comply with the provisions of subsection (1), the [1]Department of Administration may withhold releases of appropriations until such time as the Comptroller certifies the agency's compliance.

History.—s. 31, ch. 69-106; s. 1, ch. 74-29.

[1]Note.—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to the Executive Office of the Governor.

216.111 Financial statements and schedules, reports, etc., submission by governmental entities.—Every state agency shall submit balance sheets, financial statements and schedules, program performance reports, and other reports required for planning and programming in accordance with the state development plan as may be required by the Executive Office of the Governor under the rules and regulations promulgated hereunder.

History.—s. 31, ch. 69-106; s. 4, ch. 73-349; s. 98, ch. 79-190.

216.121 Information to be furnished the [1]Department of Administration.—Each state agency, upon request, shall promptly furnish to the [1]Department of Administration any information in relation to the affairs or activities of such agency in such form as the [1]department may prescribe. The [1]department shall have authority to examine and inspect any and all records and programs of such state agencies.

History.—ss. 31, 35, ch. 69-106; s. 10, ch. 71-354.

[1]Note.—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to the Executive Office of the Governor.

216.131 Public hearings on legislative budgets.—The Governor may provide for public hearings on any and all legislative budgets to be included in his budget recommendations to the Legislature, which shall be held at such time as he may fix. The Governor may require the attendance at these hearings of the heads or responsible representatives of all state agencies supported by any form of taxation or licenses, fees, imposts, or exactions.

History.—s. 31, ch. 69-106.

216.141 Budget system procedures; planning and programming by state agencies.—

(1) The [1]department, in consultation with the Senate and House Appropriations Committees and the Auditor General, and utilizing the coding system of the State of Florida Accounting System, shall prescribe a budget system and related reporting and evaluating systems to provide for continuous planning and programming and for effective management practices for the efficient operations of all state agencies.

(2) The accounting system developed by the Auditor General pursuant to s. 11.46 is hereby designated as the State of Florida Accounting System. The Comptroller, as chief fiscal officer, shall use the

State of Florida Accounting System for accounting purposes in the performance of and accounting for all of his constitutional and statutory duties and responsibilities. However, no state agency is relieved from the responsibility for maintaining accounting records necessary for effective management of its programs and functions. The Auditor General may appoint a committee of users for the purpose of advising him relative to the design and implementation of the State of Florida Accounting System. The State of Florida Accounting System shall be operational in all state agencies no later than July 1, 1980.

(3) The Comptroller, with the concurrence of the Auditor General, shall develop and implement a plan to implement the State of Florida Accounting System in all state agencies. This plan shall be presented by the Comptroller to the Legislative Auditing Committee no later than August 31, 1977. Thereafter, a revised plan and status report shall be submitted by him to the Legislative Auditing Committee no later than August 31 of each year, until 1980, at which time a final report will be issued. The Comptroller shall then incorporate the plan in his annual legislative budget requests to be submitted pursuant to s. 216.031.

(4) The Auditor General shall retain all duties and responsibilities under s. 11.46. No changes or modifications shall be made to the State of Florida Accounting System without his approval until July 1, 1980, at which time the total responsibility for the operation of the State of Florida Accounting System shall be transferred to the Comptroller, pursuant to s. 17.14. Thereafter, the Comptroller shall notify the Auditor General of any changes or modifications to the State of Florida Accounting System.

(5) The Comptroller shall report quarterly to the President of the Senate and to the Speaker of the House as to the disposition of the funds expended by him in implementing this section. The Comptroller, in implementing the provisions of this section, shall contract with the Legislature for all data processing and teleprocessing equipment and services supporting the State of Florida Accounting System.

(6) No later than July 1, 1980, all data processing equipment utilized in implementing the provisions of this section shall be transferred to an agency within the executive branch of state government.

History.—s. 31, ch. 69-106; s. 8, ch. 69-82; s. 11, ch. 71-354; s. 1, ch. 77-10; s. 98, ch. 79-400.

[1]**Note.**—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to the Executive Office of the Governor.

216.151 Duties of the [1]secretary of the Department of Administration.—It shall be the duty of the [1]secretary of the Department of Administration to:

(1) Assist the Governor in making a detailed study of each of the several state agencies, with a view toward ascertaining and determining the needs thereof, whether changes should be made in existing organizations, their activities and methods of operation, what appropriation should be made therefor, whether the operations and activities of different agencies or within the same agencies should be combined, consolidated or integrated, or whether the same should be regrouped and rearranged, all to the end of securing greater economy without sacrificing efficiency in the operations of such agencies.

(2) Prepare an analysis of the legislative budgets submitted by state agencies covering their respective operational and fixed capital outlay requirements.

(3) Prepare for the Governor such other data as will reflect the financial condition of the state and its agencies at the close of the prior fiscal year and an estimate of what that condition will be at the close of the current fiscal year.

(4) Prepare a statement of policy to assure that fixed capital outlay appropriations recommended by the Governor will be consistent with recommended operational standards related to programs and utilization.

(5) Perform such other duties as may be required by law or by the Governor.

History.—s. 31, ch. 69-106; s. 11, ch. 71-354; s. 3, ch. 75-243; s. 1, ch. 77-174.

[1]**Note.**—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to the Executive Office of the Governor.

216.162 Budget to be furnished Legislature; copies to members.—

(1) At least 45 days prior to the scheduled annual legislative session in each odd-numbered year, the Governor shall furnish each Senator and Representative a copy of the recommended budget for each state agency, based on his own conclusions and judgment. The recommended budget shall be referenced to the legislative budget requests prescribed in ss. 216.031 and 216.043 and shall be distinctly separated into two sections: Section One of the budget shall be entitled "operations," and Section Two shall be entitled "fixed capital outlay."

(2) Within each section prescribed in subsection (1) there shall be a distinct computation for each fiscal year in the biennium. The provisions of this subsection shall also apply to budgets submitted in accordance with ss. 216.031 and 216.043. The recommended budget shall also include the following:

(a) A consolidated financial balance sheet for the state at the close of the prior 2 fiscal years as furnished by the Comptroller.

(b) A statement showing his estimate of the condition of the State Treasury for the current biennium, and for the next biennium, based upon his estimated revenues and proposed appropriations.

(c) Recommendations on sources of any additional revenue required to fund his proposed appropriations.

(d) A summary statement of the estimated revenues and the amount of appropriations requested by each state agency and as recommended by him.

(e) His recommendation for fixed capital outlay appropriations for the next biennium.

(f) Explanations and justification, expressed in terms of program effectiveness measures, program efficiency measures, workload or production measures, staffing standards, or any other criteria deemed appropriate by him to evaluate the delivery of governmental service and to explain his recommendations and such other supporting schedules and exhibits as may be determined by him.

History.—s. 31, ch. 69-106; s. 11, ch. 71-354; s. 10, ch. 77-352.

216.172 Meetings of appropriations committees.—

(1) The appropriations committees of the House of Representatives and of the Senate, being in charge of appropriation measures, shall sit in open sessions while considering the budget. The committees may cause the attendance of agency heads or responsible representatives of the state agencies to furnish such information and answer such questions as the committees shall require, and to these sessions shall be admitted, with the right to be heard, all persons interested in the estimates.

(2) Each member of the Cabinet and each department headed by the Governor and Cabinet, in addition to submitting their budget requests to the Governor, may submit their budget requests directly to the appropriate committees of the Legislature and may make presentations directly to the Legislature pertaining to such requests.

History.—s. 31, ch. 69-106; s. 11, ch. 71-354.

216.181 Agency approved budget for operations and fixed capital outlay.—

(1) On or before July 1 of any year in which an appropriation is made, the chairmen of the legislative appropriations committees shall jointly transmit a statement of intent, including performance and workload measures as appropriate, to the [1]office and the Auditor General relative to differences, if any, between the General Appropriations Act and budgets submitted pursuant to s. 216.162. The [1]office shall furnish such information to each affected state agency. The statement of intent shall act as additional directions to the [1]office and each affected state agency relative to the purpose, objectives, and spending philosophy of the appropriations act.

(2) The [1]department shall transmit to each state agency an approved budget for operational and fixed capital outlay expenditures, consistent with such information furnished by the Legislature pursuant to subsection (1), which shall be in a format and contain such information as prescribed by the [1]department, consistent with the provisions of s. 216.023, or, in lieu thereof for lump sum appropriations, may require the submission of a detailed plan from the agency affected, consistent with the legislative appropriations acts. The [1]department shall furnish each agency an approved annual salary rate for each budget entity containing a salary appropriation, based on an actual salary rate and consistent with information furnished pursuant to subsection (1). All subsequent approved budget amendment requests shall be processed by the [1]Department of Administration within 30 days from receipt of request.

(3) A copy of such approved budgets or any subsequent amendments thereto shall be transmitted in writing to the chairmen of the legislative appropriations committees and to the Auditor General. The legislative appropriations committees may give their advice to the [1]department or the commission on any matter contained in the approved budgets or amendments thereto.

(4) Each state agency shall develop the internal management procedures and budgets necessary to assure compliance with the approved budget.

(5) Any department under direct supervision of a member of the cabinet or of a board consisting of the Governor and members of the cabinet which contends that its approved budget is not consistent with legislative intent shall have the right to have the issue reviewed by the Administration Commission, which shall decide such issue by majority vote. The appropriations committees of the Legislature may advise the Administration Commission on the issue.

(6) The [1]department shall certify the amounts approved for operations and fixed capital outlay, together with any relevant supplementary materials or information, to the Comptroller, and such certification shall be the Comptroller's guide with reference to the expenditures of each state agency pursuant to s. 216.192.

(7) The provisions of this section shall not apply to the budgets for the legislative branch.

History.—s. 31, ch. 69-106; s. 8, ch. 69-82; s. 12, ch. 71-354; s. 11, ch. 77-352; s. 14, ch. 79-190.

[1]**Note.**—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to the Executive Office of the Governor.

216.182 Approval of fixed capital outlay.—

(1) The [1]Department of Administration shall have the authority to approve the program plan of fixed capital outlay projects to assure that each is consistent with legislative policies for operations, including approved operational standards related to program and utilization and reasonable continuing operating costs.

(2) Any department under the direct supervision of a member of the cabinet or of a board consisting of the Governor and members of the cabinet which contends that the determination of the program plan by the [1]Department of Administration pursuant to subsection (1) is contrary to the orderly implementation of legislative authorization shall have the right to have the issue reviewed by the Administration Commission, which shall decide such issue by majority vote. The appropriations committees of the Legislature may advise the Administration Commission on the issue.

History.—s. 4, ch. 75-243; s. 12, ch. 77-352.

[1]**Note.**—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to the Executive Office of the Governor.

216.192 Release of appropriations, revision of budgets.—

(1) The [1]department shall furnish the Comptroller an annual plan for the release of appropriations. Such releases shall at no time exceed the total appropriations available to a state agency, or the approved budget for such agency if less. The Comptroller shall enter such releases in his records in accordance with the release plan prescribed by the [1]department, unless otherwise amended as provided by law. The [1]department shall transmit a copy of the approved annual releases to the head of the state agency, the chairmen of the legislative appropriations committees, and the Auditor General. The Comptroller shall authorize all expenditures to be made from the appropriations on the basis of such releases and in accordance with the approved budget and not otherwise. Expenditures shall be authorized only in accordance with legislative authorizations. Nothing herein shall preclude periodic reexamination and revision by the [1]department of the annual plan for release of appropriations and the notification of the

parties of all such revisions.

(2) Any department under the direct supervision of a member of the cabinet or of a board consisting of the Governor and members of the cabinet which contends that the plan for releases of funds appropriated to it is contrary to an orderly implementation of legislative authorization shall have the right to have the issue reviewed by the Administration Commission, which shall decide such issue by majority vote. The appropriations committees of the Legislature may advise the Administration Commission on the issue.

(3) The [1]department shall make releases within the amounts appropriated and as requested for all appropriations to the legislative branch, and the provisions of subsections (1) and (2) shall not apply to the legislative branch.

(4) The legislative appropriations committees may advise the Comptroller, the [1]secretary, or the commission relative to the release of any funds under this section.

History.—s. 31, ch. 69-106; s. 8, ch. 69-82; s. 13, ch. 71-354; s. 13, ch. 77-352.
[1]Note.—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to the Executive Office of the Governor.

216.201 Services of [1]department to be available to Legislature.—During the legislative session the services of the [1]department shall be available to the Legislature for procuring such fiscal or other data as it may require.

History.—s. 31, ch. 69-106; s. 14, ch. 71-354.
[1]Note.—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to the Executive Office of the Governor.

216.212 Budgets for federal funds; expenditure of federal funds restricted.—

(1) Every state agency, when making requests or preparing budgets to be submitted to the Federal Government for funds, equipment, material, or services, shall submit such request or budget to the [1]department for approval before submitting it to the proper federal authority. However, the [1]department may specifically authorize any agency to submit specific types of grant proposal directly to the Federal Government.

(2) When such federal authority has approved the request or budget, the state agency shall resubmit it for approval and release of funds as provided by ss. 216.181 and 216.192, unless funds have been included in the approved budget.

(3) Federal moneys appropriated by Congress to be used for state purposes, whether by itself or in conjunction with moneys appropriated by the Legislature, shall not be expended unless appropriated by the Legislature. However, the [1]office may, after consultation with the legislative appropriations committees, approve the receipt and expenditure of funds from federal and other sources. The [1]office shall budget and recommend the expenditure of federal funds in the 1981-1983 biennial budget. The chairmen of the legislative appropriations committees may waive these provisions as appropriate by written agreement. However, federal and other fund sources for the State University System which do not carry a continuing commitment on future appropriations are hereby appropriated for the purpose received.

History.—s. 31, ch. 69-106; s. 14, ch. 71-354; s. 14, ch. 77-352; s. 17, ch. 79-190.
[1]Note.—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to the Executive Office of the Governor.

216.221 Appropriations as maximum; adjustments of budgets.—

(1) All appropriations shall be maximum appropriations, based upon the collection of sufficient revenues to meet and provide for such appropriations. It shall be the duty of the Governor, as chief budget officer, to insure that revenues collected will be sufficient to meet the appropriations and that no deficit shall occur in any state fund. If, in the opinion of the Governor, a deficit will occur, he shall so certify to the commission, and the commission may, by affirmative action, reduce all state agency approved budgets and releases a sufficient amount to prevent a deficit in any fund.

(2) The Comptroller shall also have the duty to insure that revenues being collected will be sufficient to meet the appropriations and that no deficit shall occur in any fund of the state. If, in his opinion, the revenues to be collected will be insufficient to meet appropriations, he shall report his opinion to the Governor in writing. In the event the Governor does not certify a deficit within 10 days from the Comptroller's report or in the event the commission does not act within 10 days from certification of a deficit by the Governor as provided by subsection (1), the Comptroller shall report his findings and opinion to the commission. The commission may, by majority vote, uniformly adjust all state agency operating budgets and releases by such percentage as may be necessary to prevent any deficit in any fund.

(3) All actions taken pursuant to this section shall be reported to the legislative appropriations committees, and the committees may advise the Governor, the Comptroller, or the commission concerning such action.

History.—s. 31, ch. 69-106; s. 14, ch. 71-354.

216.231 Release of certain classified appropriations; approval of Administration Commission.—

(1) Any appropriation to the [1]department which is classified as "emergency," or "deficiency," may be released only with the approval of the Governor and three other members of the Administration Commission. The state agency desiring the use of any such appropriation shall submit to the [1]department application therefor in writing setting forth the facts from which the alleged need arises. The commission shall, at a public hearing, review such application promptly and approve or disapprove the same as the circumstances may warrant. All actions of the commission shall be reported to the legislative appropriation committees, and the committees may advise the commission relative to the release of such funds.

(a) The release of appropriated funds classified as "deficiency" shall be approved only when a General Revenue Fund appropriation for a state agency's operations is inadequate because the workload or cost of the operation exceeds that anticipated by the Legislature and a determination has been made by the Administration Commission that the deficien-

cy will result in an impairment of an agency's activities to the extent that the agency is unable to carry out its program as provided by the Legislature in the general appropriations acts. These funds shall not be used to create any new agency or program, for increases of salary, or for the construction or equipping of additional buildings.

(b) The release of appropriated funds classified as "emergency" shall be approved only when an act or circumstance caused by an act of God, civil disturbance, natural disaster, or other circumstance of an emergency nature threatens, endangers, or damages the property, safety, health, or welfare of the state or its citizens, which condition has not been provided for in appropriation acts of the Legislature. Funds allocated for this purpose may be used to pay overtime pay to personnel of agencies called upon to perform extra duty because of civil disturbances or natural disasters and to provide the required state match for federal grants under the Federal Disaster Relief Act.

(2) Notwithstanding any other provisions of law, moneys appropriated in any appropriations act for discretionary contingencies to the Governor may be expended at his discretion to promote general government and intergovernmental cooperation and to enhance the image of the state. All funds expended for such purposes shall be accounted for, and a report showing the amount expended, the names of the persons receiving same, and the purpose of each expenditure shall be annually reported to the Auditor General and the legislative appropriation committees.

History.—s. 31, ch. 69-106; s. 1, ch. 71-84; s. 14, ch. 71-354; s. 15, ch. 77-352.
[1]**Note.**—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to the Executive Office of the Governor.

216.241 Initiation or commencement of new programs; approval.—No state agency shall initiate or commence any new program or make changes in its current programs that require additional state financing unless funds have been specifically appropriated therefor or unless the commission expressly approves such changes or new programs. No new programs may be initiated nor any changes made to existing programs that materially affect the policy direction of the program without first consulting with the legislative appropriations committees. All such approvals shall be reported to the legislative appropriations committees.

History.—s. 31, ch. 69-106; s. 18, ch. 79-190.

216.251 Salary appropriations; limitations.—

(1) The annual rate of salary of any officer or employee filling the position specifically named in an item in the appropriations acts shall be as provided in one of the following paragraphs:

(a) In the amount appropriated for such position;

(b) The amount appropriated in an item for the named positions in that item, shall be divided by the indicated number of such positions, and the resulting quotient shall be the annual rate of salary of each such position; or

(c) Within the amounts appropriated where such salary may be otherwise fixed pursuant to law.

(2)(a) The salary for each position not specifically indicated in the appropriations acts shall be as provided in one of the following subparagraphs:

1. Within the classification and pay plan provided for in chapter 110.

2. Within the classification and pay plan established by the Board of Trustees for the Florida School for the Deaf and the Blind of the Department of Education and approved by the State Board of Education for academic and academic administrative personnel.

3. Within the classification and pay plan approved and administered by the Board of Regents for those positions in the State University System which are determined by the Board of Regents of the Division of Universities of the Department of Education to be teaching and research faculty positions and comparable administrative and professional positions.

4. Within the classification and pay plan approved by the Senate, the House of Representatives, the Joint Legislative Management Committee, or the Legislative Auditing Committee, as the case may be, for employees of the Legislature.

5. The salary of all positions not specifically included in this subsection shall be set by the commission.

(b) Salary payments shall be made only to employees filling established positions included in the agency's approved budgets and amendments thereto as may be provided by law. However, reclassification of established positions may be accomplished when justified in accordance with the established procedures for reclassifying positions.

History.—ss. 15, 31, 35, ch. 69-106; s. 15, ch. 71-354.

216.262 Authorized positions.—

(1)(a) Unless otherwise expressly provided by law, the total number of authorized positions shall not exceed the total provided in the appropriations acts. In the event any state agency finds that the number of positions so provided is not sufficient to administer its authorized programs, it may file an application with the [1]department, and, if the agency and the [1]department certify there are no authorized positions available for addition, deletion, or transfer within the agency as provided in paragraph (b), the commission may, after a public hearing, authorize an increase in the number of positions for the following reasons only:

1. To implement or provide for continuing federal grants or changes in grants not previously anticipated;

2. To implement lump sum appropriations made by the legislature; however, the number of positions shall be limited to the number authorized in the appropriation act for each lump sum;

3. To meet emergencies, as determined by the [1]department, that were not provided for in the appropriations acts;

4. To satisfy new federal regulation or changes therein;

5. To take advantage of opportunities to reduce operating expenditures or to increase the revenues of the state; and

6. To authorize positions which were not fixed by the Legislature through error in drafting the appropriations acts, after consultation with the chairmen of the legislative appropriations committees.

A copy of the application, the certification, and the final authorization shall be filed with the legislative appropriations committees and with the Auditor General. The legislative appropriations committees may advise the commission relative to any authorization for increasing the number of positions.

(b) The [1]department, under such procedures and qualifications as it deems appropriate, shall, upon agency request, delegate to any state agency or department authority to add and delete authorized positions or transfer authorized positions from one budget entity to another budget entity within the same division, and may approve additions and deletions of authorized positions or transfers of authorized positions within the state agency when such changes would enable the agency to administer more effectively its authorized and approved programs.

(c) No individual employed by a state agency may hold more than one employment during his normal working hours with the state, such working hours to be determined by the head of the state agency affected, unless approved by the [2]department.

(d) No individual employed by a state agency may fill more than a total of one full-time equivalent established position, receive compensation simultaneously from any appropriation other than appropriations for salaries, or receive compensation simultaneously from more than one state agency unless approved by the [2]department during each fiscal year.

(e) No perquisites shall be furnished by a state agency unless approved by the [2]Division of Personnel during each fiscal year. Whenever a state agency is to furnish those things defined as perquisites herein, the [2]Department of Administration shall approve the kind and monetary value of such perquisites before the same may be furnished.

(f) If goods and services are to be sold to officers and employees of a state agency rather than being furnished as perquisites, the kind and selling price thereof shall be approved by the [2]department during each fiscal year before such sales are made. The selling price may be deducted from any amounts due by the state to any person receiving such things. The amount of cash so deducted shall be faithfully accounted for. This provision shall not apply to sales to officers or employees of items generally sold to the public and shall not apply to meals which may be provided without charge to volunteers under a volunteer service program approved by the [2]department.

(2) The [1]department shall report all such approvals made pursuant to subsection (1) and the reasons for such approvals to the legislative appropriations committees and the Auditor General.

(3) The provisions of paragraphs (1)(c) and (d) shall not apply to an individual filling a position the salary of which has been specifically fixed or limited by law. Unless specifically authorized by law, an individual filling or performing the duties of a position the salary of which has been specifically fixed or limited by law shall not receive compensation from more than one appropriation, or in excess of the amount so fixed or limited by law, regardless of any additional duties performed by him in any capacity or position. However, this subsection shall not prohibit additional compensation from an educational appropriation to any person holding a position the salary of which is specifically fixed or limited by law, provided such compensation shall not exceed payment for more than one course of instruction during any one academic term and that such compensation is approved as provided in paragraphs (1)(c) and (d). Any compensation received by any person pursuant to the provisions of this subsection shall not be computed as a part of average final compensation for retirement purposes under the provisions of chapter 121.

(4) No full-time position shall be filled by more than the equivalent of one full-time officer or employee, except as provided for in rules to be adopted by the [2]Department of Administration.

History.—ss. 31, 35, ch. 69-106; s. 8, ch. 69-82; s. 16, ch. 71-354; s. 1, ch. 73-314; s. 1, ch. 73-326; s. 1, ch. 74-258; s. 1, ch. 75-150; s. 1, ch. 76-248; s. 1, ch. 77-66; s. 16, ch. 77-352.

[1]**Note.**—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in s. 216.262(1)(a) and (b) and (2) to the Executive Office of the Governor.

[2]**Note.**—See s. 10, ch. 79-190, which abolished the Division of Budget of the Department of Administration and transferred all records, property, and funds of the division and the powers, duties, and functions of the department provided for in s. 216.262(1)(a) and (b) and (2) to the Executive Office of the Governor.

216.271 Revolving funds.—

(1) No revolving fund may be established pursuant to s. 18.101(2), unless approved by the Executive Office of the Governor during each biennium.

(2) Where the Executive Office of the Governor approves a revolving or petty cash fund for making refunds or other payments which are approved by the Comptroller, the same shall be established from an account within the appropriate fund to be known as payments for revolving funds from funds not otherwise appropriated. Reimbursements made from revolving or petty cash funds shall be made in strict accordance with the provisions of s. 215.26(2). No payments of salaries or travel expenses shall be made from any revolving fund outside the State Treasury, unless approved by the Comptroller.

(3) Vouchers for reimbursement of expenditures from revolving funds established under this section shall be presented in a routine manner to the Comptroller for approval and payment, the proceeds of which shall be returned to the revolving or petty cash fund involved.

(4) The revolving or petty cash fund authorized herein shall be properly maintained and accounted for by the agency requesting same and, upon the expiration of the need therefor, shall be returned in the amount originally established to the appropriate fund for credit to the payments for revolving funds account therein.

History.—s. 31, ch. 69-106; s. 17, ch. 71-354; s. 17, ch. 77-352; s. 99, ch. 79-190.

216.275 Clearing accounts.—No clearing account may be established outside the State Treasury pursuant to subsection 18.101(1) unless approved by the [1]department during the biennium. Each agency desiring to maintain a clearing account outside the State Treasury shall submit a written request to do so to the [1]department in accordance with the format and manner prescribed by the [1]department. The

[1]department shall maintain a listing of all clearing accounts approved during the biennium.

History.—s. 1, ch. 75-91; s. 18, ch. 77-352.

[1]**Note.**—See s. 50, ch. 79-190, which amended s. 18.101(1) to change the authority for approval of the establishment of clearing accounts outside the State Treasury from the Department of Administration to the Treasurer.

216.281 Appropriations, construction of terms.—For the purpose of appropriation of moneys in the State Treasury, the following words shall have the meaning indicated:

(1) "Shall be paid a salary of $....." (or words of similar import) means the fixing of the annual rate of cash compensation to be paid to the individual filling the specified position from moneys appropriated for that purpose and shall not be construed as an appropriation or as a continuing appropriation.

(2) "Shall be reimbursed for expenses" (or words of similar import) means that such expenses are to be paid from moneys appropriated for that purpose and shall not be construed as an appropriation or as a continuing appropriation.

History.—s. 31, ch. 69-106.

216.292 Appropriations nontransferable; exceptions.—

(1) Unless otherwise expressly provided by law, appropriations shall be expended only for the purpose for which appropriated, except that if deemed necessary said moneys may be transferred as provided in subsections (2) and (3) when it is determined to be in the best interests of the state. Appropriations for fixed capital outlay shall not be expended for any other purpose, and appropriations shall not be transferred between state agencies unless specifically authorized by law.

(2) The head of each department, whenever deemed necessary by reason of changed conditions, may transfer appropriations funded from identical sources and transfer the amounts included within the total approved budget and releases as furnished pursuant to ss. 216.181 and 216.192, as follows:

(a) Between categories of appropriations within a budget entity, if no category of appropriation is increased or decreased by more than 5 percent of the approved budget by all action taken under this authority.

(b) Additionally, between budget entities within identical categories of appropriations, if no category of appropriation is increased or decreased by more than 5 percent of the approved budget by all action taken under this authority. Such authorized revisions, together with related changes, if any, in the plan for release of appropriations, shall be transmitted by the state agency to the Comptroller for entry in his records in the manner and format prescribed by the [1]Department of Administration in consultation with the Comptroller. A copy of such revision shall be furnished the [1]department, the chairmen of the legislative committees, and the Auditor General.

(3) Transfers of appropriations in excess of that provided in subsection (2) but within a state agency may be authorized by the commission, pursuant to the request of the agency filed with the [1]department, if deemed necessary and in the best interests of the state.

(4) The [1]department shall report all such approvals and the reasons for such approvals to the legislative appropriations committees. The committees may advise the commission relative to any transfers made hereunder.

History.—s. 31, ch. 69-106; s. 18, ch. 71-354.

[1]**Note.**—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to the Executive Office of the Governor.

cf.—s. 20.19(4), (8) District administrator may transfer certain funds.

216.301 Appropriations; undisbursed balances.—

(1)(a) Any balance of any appropriations, except appropriations for fixed capital outlay, not disbursed but expended or contracted to be expended shall, at the end of each fiscal year, be certified by the head of the affected state agency or the legislative branch to the [1]department, showing in detail to whom obligated and the amount of such obligation. The [1]department shall review and approve or disapprove any or all of the items and amounts so certified, and the [1]department shall furnish the Comptroller, the legislative appropriations committees, and the Auditor General a detailed listing of the items and amounts approved as legal encumbrances against the undisbursed balance of said appropriations. Any such encumbered balance remaining undisbursed on December 31 of the same calendar year in which such certification was made shall revert to the fund from which appropriated and be available for reappropriation. In the event the aforesaid certification is not made and the obligation is proven to be legal, due, and unpaid, then the same shall be paid and charged to the appropriation for the current fiscal year of the state agency or the legislative branch affected.

(b) Any balance of any appropriation, except for fixed capital outlay, not expended or contracted to be expended at the end of each fiscal year shall revert to the fund from which appropriated and be available for reappropriation by the Legislature.

(2)(a) Any balance of any appropriation for fixed capital outlay not disbursed but expended or contracted or committed to be expended shall, at the end of each fiscal year, be certified by the head of the affected state agency to the [1]department, showing in detail the commitment or to whom obligated and the amount of such commitment or obligation. The [1]department shall review and approve or disapprove any or all of the items and amounts so certified, and the [1]department shall furnish the Comptroller, the legislative appropriations committees, and the Auditor General a detailed listing of the items and amounts approved as legal encumbrances against the undisbursed balances of said appropriations. In the event the aforesaid certification is not made and the balance of the appropriation has reverted and the obligation is proven to be legal, due, and unpaid, then the same shall be presented to the Legislature for its consideration.

(b) Such certification as herein required shall be in the form and on the date approved by the [1]department. Any balance not so certified shall revert to the fund from which appropriated and be available for reappropriation.

(3)(a) Notwithstanding the provisions of subsection (2), the unexpended balance of any appropriation for fixed capital outlay subject to but not under the terms of a general construction contract prior to

April 1 of the second fiscal year of the appropriation shall revert on April 1 of such year to the fund from which appropriated and shall be available for reappropriation. The [1]department shall, not later than April 20 of each year, furnish the Comptroller, the legislative appropriations committees, and the Auditor General a report listing in detail the items and amounts reverting under the authority of this subsection, including the agency affected and the fund to which reverted.

(b) For the purpose of this subsection, the fiscal year beginning July 1, 1975, shall be deemed the "second fiscal year" of any appropriation for fixed capital outlay made on or before July 1, 1974.

(c) Nothing in this subsection shall be construed to impair the obligation of any contract in existence on or before the effective date of this act.

History.—s. 31, ch. 69-106; s. 8, ch. 69-82; s. 19, ch. 71-354; s. 5, ch. 75-243; s. 19, ch. 77-352.

[1]Note.—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in this section to the Executive Office of the Governor.

216.311 Unauthorized agency contracts in excess of appropriations; penalty.—

(1) No agency of the state government shall contract to spend, or enter into any agreement to spend, any moneys in excess of the amount appropriated to such agency unless specifically authorized by law, and any contract or agreement in violation of this chapter shall be null and void.

(2) Any person who willfully contracts to spend, or enters into an agreement to spend, any money in excess of the amount appropriated to the agency for whom the contract or agreement is executed is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—ss. 15, 31, 35, ch. 69-106; s. 19, ch. 71-354; s. 66, ch. 73-333; s. 20, ch. 77-352; s. 100, ch. 79-190; s. 106, ch. 79-222.

216.321 Construction of chapter 216 as unauthorized expenditures and disbursements.— Nothing contained in any legislative budget or operating budget shall be construed to be an administrative or legislative construction affirming the existence then of the lawful authority to make an expenditure or disbursement for any purpose not otherwise authorized by laws of the particular agency or legislative branch and the general laws relating to the expenditure or disbursement of public funds.

History.—s. 31, ch. 69-106.

216.331 Disbursement of state moneys.—All moneys in the State Treasury shall be disbursed by state warrant, drawn by the Comptroller and countersigned by the Governor upon the State Treasury, payable to the ultimate beneficiary.

History.—s. 31, ch. 69-106.

216.341 Disbursement of county health unit trust funds.—County health unit trust funds may be expended by the Department of Health and Rehabilitative Services for the respective county health departments in accordance with budgets and plans agreed upon by the county authorities of each county and the Department of Health and Rehabilitative Services. The limitations on appropriations provided in s. 216.262(1),(2) shall not apply to county health unit trust fund.

History.—s. 31, ch. 69-106.

216.345 Professional or other organization membership dues; payment.—

(1) A state department, agency, bureau, commission, or other component of state government, upon approval by the agency head or the designated agent thereof, may utilize state funds for the purpose of paying dues for membership in a professional or other organization only when such membership is essential to the statutory duties and responsibilities of the state agency.

(2) Upon certification by a professional or other organization that it does not accept institutional memberships, the agency may authorize the use of state funds for the payment of individual membership dues when such membership is essential to the statutory duties and responsibilities of the state agency by which the individual is employed. However, approval shall not be granted to pay membership dues for maintenance of an individual's professional or trade status in any association or organization, except in those instances where agency membership is necessary and purchase of an individual membership is more economical.

(3) Each agency shall promulgate specific criteria to be used to determine justification for payment of such membership dues.

(4) The agency shall report all such payments made pursuant to subsection (1) to the Comptroller, the executive Office of the Governor, the chairmen of the Senate Appropriations Committee and the House Appropriations Committee, and the Auditor General on or before September 30 of each year.

History.—s. 1, ch. 74-91; s. 1, ch. 77-39; s. 101, ch. 79-190.

[1]216.351 Subsequent inconsistent laws.—Subsequent inconsistent laws shall supersede this chapter only to the extent that they do so by express reference to this section.

History.—s. 31, ch. 69-106.

[1]Note.—See s. 18, ch. 79-212 (General Appropriations Act), which provides that, "Notwithstanding section 216.351, Florida Statutes, any provision of this act inconsistent with the provisions of chapter 216, Florida Statutes, shall supersede said chapter during the 1979-81 biennium."

cf.—s. 20.19(4), (8) District administrator may transfer certain funds.

216.359 Reports relating to effect of chapter 78-299, Laws of Florida.—The Executive Office of the Governor, in cooperation with the Departments of Revenue and Commerce shall submit to the Legislature a preliminary report on or before April 1, 1979, and a final report on or before January 1, 1981. Such report shall include:

(1) The number of new employment positions created in the state subsequent to July 1, 1978;

(2) The degree to which the credits made available by chapter 78-299, Laws of Florida, may have contributed to the creation of such employment positions;

(3) Additional value of capital outlay; and

(4) Projections of expected growth in employment positions and capital investment in the state.

History.—s. 7, ch. 78-299; s. 102, ch. 79-190.

CHAPTER 217

SURPLUS PROPERTY

217.01 Purpose.—The purpose of this chapter is to provide authority in Florida through a designated state agency for the procurement and distribution of surplus federal property for educational, health, and civil defense purposes as provided under federal law.

History.—s. 1, ch. 65-173.

217.02 Definitions.—As used in this act:

(1) "Department" means the Department of General Services.

(2) "Surplus property" means any federal property which has been declared excess by a federal agency, including the Department of Defense, and made available for procurement and distribution in the state in compliance with the Federal Property and Administrative Services Act of 1949, and subsequent amendments thereto.

History.—s. 1, ch. 65-173; ss. 22, 35, ch. 69-106; s. 49, ch. 71-377.

217.03 Authority to contract with federal agencies.—The state is granted authority to enter into any contract with the United States or any other owner or disposal agency thereof for the lease, purchase, or other procurement of any equipment, supplies, materials or other property real or personal offered for lease or disposal, or to accept donations from such federal agencies as provided for under the Federal Property and Administrative Services Act of 1949 and subsequent amendments thereto, or any other federal law provided for the procurement and distribution of federal surplus property.

History.—s. 1, ch. 65-173.

217.04 Department of General Services as state agency to negotiate with federal agency.—The Department of General Services is designated the official agency of the state to negotiate with any federal agency in accordance and compliance with the Federal Property and Administrative Services Act of 1949 and subsequent amendments thereto, and any other federal law or regulation providing for the procurement and distribution of federal surplus personal property.

History.—s. 1, ch. 65-173; ss. 22, 35, ch. 69-106; s. 64, ch. 77-104.
cf.—s. 253.03 Concerning federal surplus real property.

217.045 Division of Surplus Property; assistance to state agencies.—The Surplus Property Division of the Department of General Services may follow whatever procedure is deemed necessary to enable state agencies to take advantage of the sale of any surplus material sold by the Federal Government or its disposal agencies.

History.—s. 2, ch. 77-112.

217.05 Continuation of commitments made by Development Commission.—Any legal commitments, contracts or other obligations heretofore entered into or assumed by the commission in connection with its procurement and distribution of surplus property pursuant to state and federal laws outstanding on the effective date of this law are charged to and shall be performed by the department.

History.—s. 1, ch. 65-173; ss. 22, 35, ch. 69-106.

217.07 Transfer of surplus property assets to department.—The State Treasurer is authorized to transfer to the department any funds unexpended in the surplus property division revolving trust fund account in the state treasury. This revolving fund shall remain in existence as a separate trust fund as long as the surplus property program exists. Upon termination of the program any remaining funds shall be disposed of as provided by federal law.

History.—s. 1, ch. 65-173; ss. 22, 35, ch. 69-106; s. 68, ch. 73-333.

217.11 Division's authorization relative to construction of warehouses and other facilities.—The Division of Building Construction and Property Management of the department is authorized to construct and maintain such warehouses and other facilities necessary for carrying out the purposes of this chapter.

History.—s. 1, ch. 65-173; ss. 22, 35, ch. 69-106; s. 2, ch. 75-70.

217.12 Department's authority relative to additional restrictions.—The department, when deemed necessary, may impose additional state restrictions on any equipment or surplus property other than the federal restrictions imposed under the

Federal Property and Administrative Services Act of 1949.

History.—s. 1, ch. 65-173; ss. 22, 35, ch. 69-106.

217.13 Officers and employees.—The department is authorized to appoint or employ such agents, officers or employees as it shall deem necessary for carrying out the provisions of this chapter.

History.—s. 1, ch. 65-173; ss. 22, 35, ch. 69-106; s. 70, ch. 73-333.

217.14 Adoption of rules and regulations.—The department is authorized to adopt, promulgate, and repeal rules to implement the provisions of and carry out the purpose of this chapter, in compliance with chapter 120.

History.—s. 1, ch. 65-173; ss. 22, 35, ch. 69-106; s. 1, ch. 77-117.

217.15 Assembly and distribution of information.—The department is authorized to secure, gather and assemble from the United States, or any owning or disposal agency thereof, information relating to the lease, sale or procurement and distribution of any equipment, supplies, materials or other property, real or personal, offered for procurement or distribution under the provisions of the Federal Property and Administrative Services Act of 1949, or any amendments thereto, or any other law providing for the disposal of surplus property. The department shall distribute and disseminate such information to the several boards, commissions, departments, state agencies and officers of the state, and the several counties of the state, boards of county commissioners, school boards, and other county agencies and officers, and municipalities of the state, and officers thereof, authorized by law to make purchases of material, supplies, and equipment or other property, real or personal, for state, county or municipal uses or purposes. The department may act as agent for any board, commission, department, state agency or officer of the state, or any of the several counties of the state, boards of county commissioners, school boards, and any other county agency and officer, or municipality of the state, and officers thereof, to enter a bid or bids in its or their behalf for any surplus property, real or personal, offered for lease, sale or other disposal by the United States, or any owning or disposal agency thereof, and as such agent to make any down payment or payment in full required in connection with such bidding.

History.—s. 1, ch. 65-173; ss. 22, 35, ch. 69-106; s. 1, ch. 69-300.

217.16 Authority granted to other public entities of the state.—The authority granted to the state by s. 217.03, pertaining to surplus property is also granted to the following public entities of the state:

(1) Every county of the state, boards of county commissioners, school boards, or other county agency, and every county officer authorized by law to make purchases of material, supplies and equipment or other property, real or personal, for county use or purposes.

(2) Every municipality of the state, and every officer thereof, authorized by law to make purchases of material, supplies and equipment or other property, real or personal, for municipal use or purposes.

History.—s. 1, ch. 65-173; s. 1, ch. 69-300.

217.17 Designation of officers or employees in connection with bids and payment of moneys.—The department and any public entity listed in s. 217.16, may designate by appropriate resolution or order any officer, employee or agency to enter a bid or bids in its or their behalf for any surplus property, real or personal, offered for lease, sale or other disposal by the United States, or any owning or disposal agency thereof, and may authorize such officer, employee or agency to make any down payment, or payment in full, required in connection with such bidding.

History.—s. 1, ch. 65-173; ss. 22, 35, ch. 69-106.

217.18 Exemption from compliance with laws relative to sealed bids.—The authority granted by ss. 217.03 and 217.16, may be exercised by the grantees of such authority without reference to the requirements of any general or special law, charter or ordinance, providing for advertising for sealed bids, inviting or receiving competitive bids, or the letting of contracts to the lowest and best bidder, and with respect to, and to the extent of, the contracts herein authorized, all general or special laws, charters or ordinances relating to advertising for sealed bids, inviting or receiving competitive bids, or the letting of contracts to the lowest and best bidder, are hereby abrogated, in order to effectuate the purposes of this law.

History.—s. 1, ch. 65-173.

217.19 Terms for contracts pursuant to ss. 217.03 and 217.16.—The contracts authorized by ss. 217.03 and 217.16, may be entered into for cash, or upon such credit terms or plan not in conflict with organic law, and as may be deemed advisable or expedient; any general or special law, charter or ordinance to the contrary is hereby modified to the extent of permitting entering into the contracts herein authorized, in order to effectuate the purposes of this chapter.

History.—s. 1, ch. 65-173.

217.20 Construction of ch. 65-173.—No provisions of ss. 217.01-217.19 shall be construed as in anywise repealing, altering, modifying or qualifying any general or special law, charter or ordinance, relating to advertising for sealed bids, inviting or receiving competitive bids, or the letting of contracts to the lowest and best bidder, or purchasing of property on credit terms, except to the extent herein provided.

History.—s. 1, ch. 65-173.

CHAPTER 218

FINANCIAL MATTERS PERTAINING TO POLITICAL SUBDIVISIONS

PART I GENERAL FINANCIAL PROVISIONS RELATING TO POLITICAL SUBDIVISIONS (ss. 218.01-218.06)

PART II REVENUE SHARING ACT OF 1972 (ss. 218.20-218.26)

PART III LOCAL FINANCIAL MANAGEMENT AND REPORTING (ss. 218.30-218.38)

PART IV INVESTMENT OF LOCAL GOVERNMENT SURPLUS FUNDS (ss. 218.40-218.411)

PART V FINANCIAL EMERGENCIES (ss. 218.50-218.504)

PART I

GENERAL FINANCIAL PROVISIONS RELATING TO POLITICAL SUBDIVISIONS

218.01 Authority to accept benefits of bankruptcy acts.—For the purpose of rendering effective the privilege and benefits of any amendments to the bankruptcy laws of the United States that may be enacted for the relief of municipalities, taxing districts and political subdivisions, the state represented by its legislative body gives its assent to, and accepts the provisions of any such bankruptcy laws that may be enacted by the Congress of the United States for the benefit and relief of municipalities, taxing districts and political subdivisions and its several municipalities, taxing districts and political subdivisions, at the discretion of the governing authorities thereof, may institute and conduct and carry out, by any appropriate bankruptcy procedure that may be enacted into the laws of the United States for the purpose of conferring upon municipalities, taxing districts and political subdivisions, relief by proceedings in bankruptcy in the federal courts.

History.—s. 1, ch. 15878, 1933; CGL 1936 Supp. 1365(2).

218.02 Disposition of unused funds relating to the refunding of bonds.—

(1) All funds heretofore or hereafter raised or created by any county or taxing district for the purpose of applying toward the payment of interest or principal of refunding bonds of such county or taxing district, when such refunding bonds are not issued and such funds not otherwise lawfully disposed of, shall revert back to the county or special taxing district to be used by the governing body or board of such county or taxing district for such general and lawful purposes of the county or taxing district raising such funds as in the judgment and discretion of such governing body or board shall seem to the best interest of the county or taxing district.

(2) For the purpose of carrying out the intent of this section, every officer or board, now or hereafter having the custody of any of the said funds shall transmit and return the same to the governing body or board of the county or taxing district, taking receipt therefor from such governing body or board.

History.—ss. 1, 2, ch. 15907, 1933; CGL 1936 Supp. 1365(4).

218.03 Creation of political subdivisions validated.—The creation, organization and existence of all cities, towns, counties, special tax school districts, special road and bridge districts, bridge districts and all other districts in this state which have heretofore issued or taken proceedings toward the issuance of any bonds for the purpose of financing or aiding in financing any work, undertaking or project financed or to be financed in whole or in part by a loan or grant heretofore made or agreed to be made to such public body by the United States acting through the Federal Emergency Administrator of Public Works are validated, ratified, approved and confirmed.

History.—s. 2, ch. 17750, 1937; CGL 1940 Supp. 1365(44).

218.04 Proceedings relating to certain bonds sold, etc., to Federal Government validated.—All proceedings heretofore taken in connection with the authorization or issuance of any issue of bonds, all or a part of which have heretofore been purchased by the United States through the Federal Emergency Administrator of Public Works, or an agreement for the purchase of all or a part of which has heretofore been entered into by the United States through the Federal Emergency Administrator of Public Works, issued or to be issued for the purpose of financing or aiding in the financing of any work, undertaking or project by any public body are validated, ratified, approved and confirmed notwithstanding any lack of power of such public body, or the governing board, council, commission or officers thereof, to authorize such bonds, or to execute the same, and notwithstanding any defects or irregularities in such pro-

ceedings or in such sale, execution or delivery, and all bonds heretofore or hereafter issued pursuant to such proceedings shall constitute binding, legal, valid, and enforceable obligations of such public body.

History.—s. 3, ch. 17750, 1937; CGL 1940 Supp. 1365(45).

218.05 Certain bonds sold to Federal Government, etc., validated.—

(1) All bonds heretofore issued for the purpose of financing or aiding in financing any work, undertaking or project by any public body to which any loan or grant has heretofore been made or agreed to be made by the United States through the Federal Emergency Administrator of Public Works for the purpose of financing or aiding in financing of such work, undertaking or project, including all proceedings for the authorization and issuance of such bonds and the sale, execution and delivery thereof, are validated, ratified, approved and confirmed, notwithstanding any lack of power of such public body or the governing board, council or commission or officers thereof, to authorize and issue such bonds, or to sell, execute or deliver the same, and notwithstanding any defects or irregularities in such proceedings, or in such sale, execution or delivery; and such bonds are and shall be binding, legal, valid and enforceable obligations of such public body.

(2) The term "bonds" includes bonds, notes, warrants, debentures, certificates of indebtedness, revenue certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenues, income or property of a public body, including all instruments or obligations payable from a special fund.

History.—ss. 1, 4, ch. 17750, 1937; CGL 1940 Supp. 1365(43),(45).

218.06 Transfer of funds by county commissioners with relation to public works grants.—

(1) Boards of county commissioners of the several counties of the state, whenever it may be necessary to meet the requirements of the United States Government with reference to obtaining grants of federal funds in connection with the program of the Public Works Administration, may by resolution of such board, transfer and expend such sums of money as may be necessary to obtain said grant, from any fund to such other fund as may be necessary to meet said requirements and carry out the intent and purposes of the said transfer; provided, however, that no such transfer may be made by any county of the state without first having obtained the approval of the Department of Banking and Finance thereto, and in the counties of the state where there is provision for a budget commission, without first having also obtained the approval of said budget commission to said transfer.

(2) The Department of Banking and Finance and the budget commissions of the several counties of the state in which there are provisions for such budget commissions, may approve such transfers whenever in their opinion such transfers are necessary and proper.

History.—s. 1, ch. 18023, 1937; CGL 1940 Supp. 1373(73); ss. 12, 35, ch. 69-106.

PART II

REVENUE SHARING ACT OF 1972

218.20 Short title.—This part shall be known, and may be cited, as the "Florida Revenue Sharing Act of 1972."

History.—s. 1, ch. 72-360; s. 1, ch. 73-349; s. 1, ch. 74-194.

218.21 Definitions.—As used in this part, the following words and terms shall have the meanings ascribed them in this section, except where the context clearly indicates a different meaning:

(1) "Unit of local government" means a county or municipal government and shall not include any special district as defined in part III.

(2) "County" means a political subdivision of the state as established pursuant to s. 1, Art. VIII of the State Constitution.

(3) "Municipality" means a municipality created pursuant to general or special law and metropolitan and consolidated governments as provided in s. 6(e) and (f) of Art. VIII of the State Constitution. Such municipality must have held an election for its legislative body pursuant to law and established such a legislative body which meets pursuant to law.

(4) "Department" means the Department of Revenue.

(5) "Entitlement" means the amount of revenue which would be shared with an eligible unit of local government if the distribution from trust funds were based solely on the formula computation.

(6) "Guaranteed entitlement" means the amount of revenue which must be shared with an eligible unit of local government so that:

(a) No eligible county shall receive less funds from the Revenue Sharing Trust Fund for Counties in any fiscal year than the amount received in the aggregate from the state in fiscal year 1971-1972 under the provisions of the then existing s. 210.20(2)(c), tax on cigarettes; s. 323.16 (4), road tax; and s. 199.292(4), tax on intangible personal property.

(b) No eligible municipality shall receive less funds from the Revenue Sharing Trust Fund for Municipalities in any fiscal year than the aggregate amount it received from the state in fiscal year 1971-1972 under the provisions of the then existing s. 210.20(2)(a), tax on cigarettes; s. 323.16(3), road tax; and s. 206.605, tax on motor fuel; except that any government exercising municipal powers pursuant to s. 6(f), Art. VIII of the State Constitution shall not receive less funds from any such revenue sharing trust fund than the aggregate amount it received from the state in the preceding state fiscal year un-

der the provisions of this part, plus a 7 percent increase in such amount.

(7) "Minimum entitlement" means the amount of revenue, as certified by a unit of local government and determined by the department, which must be shared with a unit of local government so that such unit will receive the amount of revenue necessary to meet its obligations as a result of pledges or assignments or trusts entered into which obligated funds received from revenue sources or proceeds which by terms of this act shall henceforth be distributed out of revenue sharing trust funds.

(8) "Population" means the latest official state estimate of population certified pursuant to s. 23.019 or, if there is no independent annual certification of population for any urban service district necessary to the requirements of this part, the population of such district shall be determined by applying the latest available percentage distribution to the population of the area affected.

(9) "All receipts available" means the amount estimated to be available for distribution during the fiscal year as determined, and as amended from time to time, by the department.

History.—s. 1, ch. 72-360; s. 1, ch. 73-349; s. 1, ch. 74-194; s. 1, ch. 77-174.

218.215 Revenue sharing trust funds; creation and distribution.—

(1) The Revenue Sharing Trust Fund for Counties is hereby created. All revenue designated for deposit in such fund shall be deposited by the appropriate agency. The distribution to the several counties shall be made monthly as provided in ss. 218.23 and 218.26.

(2) The Revenue Sharing Trust Fund for Municipalities is hereby created. All revenue designated for deposit in such fund shall be deposited by the appropriate agency. The distribution to the several municipalities shall be made monthly as provided in ss. 218.23 and 218.26.

History.—s. 1, ch. 72-360; s. 1, ch. 73-349; s. 1, ch. 74-194.
Note.—Former s. 218.24.

218.23 Revenue sharing with units of local government.—

(1) To be eligible to participate in revenue sharing beyond the minimum entitlement in any fiscal year, a unit of local government is required to have:

(a) Reported its finances for its most recently completed fiscal year to the Department of Banking and Finance pursuant to s. 218.32.

(b) Made provisions for annual postaudits of its financial accounts in accordance with provisions of law.

(c) Levied, as shown on its most recent financial report pursuant to s. 218.32, ad valorem taxes, exclusive of taxes levied for debt service or other special millages authorized by the voters, to produce the revenue equivalent to a millage rate of 3 mills on the dollar based on the 1973 taxable values as certified by the property appraiser pursuant to s. 193.122(2) or, in order to produce revenue equivalent to that which would otherwise be produced by such 3-mill ad valorem tax, to have collected an occupational license tax or a utility tax, or both of these taxes, in combination with the ad valorem tax. If a new municipality is incorporated, the provisions of this paragraph shall apply to the taxable values for the year of incorporation as certified by the property appraiser. For the distribution in fiscal year 1974-1975, the taxable values shall be the 1972 taxable values as certified by the property appraiser.

(d) Certified that persons in its employ as police officers, as defined in s. 943.10(1), meet the qualifications for employment as established by the Police Standards and Training Commission; that its salary structure and salary plans meet the provisions of chapter 943; and that no police officer is compensated for his services at an annual salary rate of less than $6,000. However, the department may waive the minimum police officer salary requirement if a city or county certifies that it is levying ad valorem taxes at 10 mills.

(2) The distribution to a unit of local government under this part is determined by the following formula:

(a) First, the entitlement of an eligible unit of local government shall be computed on the basis of the apportionment factor provided in s. 218.245, which shall be applied for all eligible units of local government to all receipts available for distribution in the respective revenue sharing trust fund.

(b) Second, revenue shared with eligible units of local government for any fiscal year shall be adjusted so that no eligible unit of local government shall receive less funds than its guaranteed entitlement.

(c) Third, revenue shared with units of local government for any fiscal year shall be adjusted so that no unit of local government shall receive less funds than its minimum entitlement.

(d) Fourth, after the adjustment provided in paragraphs (b) and (c), and after deducting the amount committed to all the units of local government, the funds remaining in the respective trust funds shall be distributed to those eligible units of local government which qualify to receive additional moneys beyond the guaranteed entitlement, on the basis of the additional money of each qualified unit of local government in proportion to the total additional money of all qualified units of local government.

History.—s. 1, ch. 72-360; s. 1, ch. 73-349; s. 1, ch. 74-194; s. 1, ch. 74-628; s. 1, ch. 77-102; s. 65, ch. 77-104.
Note.—Former s. 218.22.

218.245 Revenue sharing; apportionment.—

(1) The apportionment factor for all eligible counties shall be composed of three equally weighted portions as follows:

(a) Each eligible county's percentage of the total population of all eligible counties in the state.

(b) Each eligible county's percentage of the total population of the state residing in unincorporated areas of all eligible counties.

(c) Each eligible county's percentage of total sales tax collections in all eligible counties during the preceding year.

(2) The apportionment factor for all eligible municipalities shall be composed of three equally weighted portions as follows:

(a) The proportion of the population of a given municipality to the total population of all the eligible municipalities in the state, as adjusted by the following factors:

1. For a municipality with a population in excess

of 50,000, the population shall be adjusted by multiplying its population by a factor of 1.791.

2. For a municipality with a population in excess of 20,000, but less than 50,001, the population shall be adjusted by multiplying its population by a factor of 1.709.

3. For a municipality with a population in excess of 5,000, but less than 20,001, the population shall be adjusted by multiplying its population by a factor of 1.425.

4. For a municipality with a population in excess of 2,000, but less than 5,001, the population shall be adjusted by multiplying its population by a factor of 1.135.

(b) The proportion of the sales tax collected within a given municipality to the total sales tax collected within all the eligible municipalities in the state. The sales tax collected within a given municipality shall be derived by allocating the amount of sales tax collections for the county in which the municipality is located to each municipality in the county on the basis of the proportion of each municipality's population to the total population of the county.

(c) The ratio of the relative local ability to raise revenue, to be determined:

1. By dividing the per capita nonexempt assessed real and personal property valuation of all eligible municipalities by the per capita nonexempt real and personal property valuation of each eligible municipality.

2. By multiplying the population of an eligible municipality by the percentage applicable to that municipality as established under subparagraph 1.

3. By dividing the population, as recalculated to reflect the relative local ability, by the total recalculated population of all eligible municipalities in the state.

(d) For a metropolitan or consolidated government, as provided by s. 3, s. 6(e), or s. 6(f) of Art. VIII of the State Constitution, the population or sales tax collections of the unincorporated area or areas outside of urban service districts, if such have been established, as determined in paragraphs (a) through (c) above and after adjustments made as provided therein, shall be further adjusted by multiplying the adjusted or recalculated population or sales tax collections, as the case may be, by a percentage which is derived by dividing:

1. The total amount of ad valorem taxes levied by the county government on real and personal property in the area of the county outside of municipal limits, as created pursuant to general or special law, or outside of urban service district limits, where such are established; by

2. The total amount of ad valorem taxes levied on real and personal property by the county and municipal governments.

History.—s. 1, ch. 72-360; s. 1, ch. 73-349; s. 1, ch. 74-194.
Note.—Former ss. 218.22 and 218.23.
cf.—s. 23.019 Population census determination.

218.25 Limitation of shared funds; holders of bonds protected.—Local governments shall not use any portion of the moneys received in excess of the guaranteed entitlement from the revenue sharing trust funds created by this part to assign, pledge, or set aside as a trust for the payment of principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness, and there shall be no other use restriction on revenues shared pursuant to this part. The state does hereby covenant with holders of bonds or other instruments of indebtedness issued by local governments prior to July 1, 1972, that it is not the intent of this part to affect adversely the rights of said holders or to relieve local governments of the duty to meet their obligations as a result of previous pledges or assignments or trusts entered into which obligated funds received from revenue sources which by terms of this part shall henceforth be distributed out of the revenue sharing trust funds.

History.—s. 1, ch. 72-360; s. 1, ch. 73-349; s. 1, ch. 74-194.

218.26 Administration; distribution schedule.—

(1) The department is empowered to promulgate rules and regulations and to issue special instructions to local governments as required to carry out the provisions of this part.

(2) The department shall, for all taxes collected and received into the revenue sharing trust funds, establish a schedule of equal monthly distribution for any computation period. The department is authorized to receive funds pursuant to s. 215.18 at any time in order to make such monthly payments by the 25th day of the month.

(3)(a) The department shall compute the apportionment factors once each fiscal year for use during the fiscal year. The computation shall be made prior to July 25 of each fiscal year and shall be based upon information submitted and certified to the department prior to June 1 of each year.

(b) The apportionment factors shall, except in the case of error, remain in effect for the fiscal year.

(4) It shall be the duty of each agency and unit of local government required to submit certified information to the department pursuant to the administration of this part to file timely information. Any unit of local government failing to provide timely information required pursuant to the administration of this part shall, by such action, authorize the department to utilize the best information available or, if no such information is available, to take any necessary action, including disqualification, either partial or entire, and shall further, by such action, waive any right to challenge the determination of the department as to its share, if any, pursuant to the privilege of receiving shared revenues under this part.

History.—s. 1, ch. 72-360; s. 1, ch. 73-349; s. 1, ch. 74-194.

PART III

LOCAL FINANCIAL MANAGEMENT AND REPORTING

218.30 Short title.—This part shall be known and may be cited as the "Uniform Local Government Financial Management and Reporting Act."

History.—s. 2, ch. 73-349.

218.31 Definitions.—As used in this part, except where the context clearly indicates a different meaning:

(1) "Unit of local government" means a county, municipality, or special district.

(2) "Unit of local general purpose government" means a county or a municipality established by general or special law.

(3) "Local governing authority" means the governing body of a unit of local general purpose government.

(4) "Department" means the Department of Banking and Finance.

(5) "Special district" means a local unit of special government, except district school boards and community college districts, created pursuant to general or special law for the purpose of performing prescribed specialized functions, including urban service functions, within limited boundaries.

(6) "Dependent special district" means a special district whose governing head is the local governing authority, ex officio, or otherwise, or whose budget is established by the local government authority.

(7) "Independent special district" means a special district whose governing head is an independent body, either appointed or elected, and whose budget is established independently of the local governing authority, even though there may be appropriation of funds generally available to a local governing authority involved.

(8) "County fee officers" means those county officials who are assigned specialized functions within county government and whose budgets are established independently of the local governing body, even though said budgets may be reported to the local governing body or may be composed of funds either generally or specially available to a local governing authority involved.

(9) "Verified report" means a report that has received such test or tests by the department so as to accurately and reliably present the data which have been submitted by units of local government for inclusion in said report.

(10) "Short-term debt" means any debt with a maturity of less than 1 year from the date of issuance.

(11) "Revenue bonds" means any obligations issued by a unit to pay the cost of a project or improvement thereof, or combination of one or more projects or improvements thereof, and payable from the earnings of such project and any other special funds authorized to be pledged as additional security therefor.

(12) "Limited revenue bonds" means any obligations issued by a unit to pay the cost of a project or improvement thereof, or combination of one or more projects or improvements thereof, and payable from funds, exclusive of ad valorem taxes, special assessments, or earnings from such projects or improvements.

(13) "Industrial development bond" means any obligation the interest on which is exempt from income taxes under the provisions of s. 103(b) of the United States Internal Revenue Code and the payment of the principal or interest on which under the terms of such obligation or any underlying arrangement is, in whole or in major part:

(a) Secured by any interest in property used or to be used in a trade or business or in payments in respect of such property.

(b) To be derived from payments in respect of property, or borrowed money, used or to be used in a trade or business.

History.—s. 2, ch. 73-349; s. 4, ch. 79-183.

218.32 Financial reporting; units of local government.—

(1)(a) Each unit of local government, within 90 days after the close of its fiscal year, shall complete its financial statements for the previous fiscal year, which statements shall be prepared in compliance with generally accepted government accounting principles.

(b) Each unit of local government shall submit a copy of a financial report covering its operations during the preceding fiscal year within 180 days after the close of the fiscal year. The financial report shall be consistent with the standards established by the United States Bureau of the Census and shall contain such information and be in such form as may be required by the department to adequately assess the financial conditions of the unit of local government. The information in the financial report submitted to the department shall, except for municipalities with annual budgets of less than $100,000, be completed by a certified public accountant retained by the unit of local government and paid from its public funds. The certified public accountant shall certify that the report has been completed in accordance with instructions provided by the department and is produced from the audited financial statements required by s. 11.45(3).

(c) If the department fails to receive the financial report within such period, it shall notify the Legislative Auditing Committee of such failure to report. Following receipt of notification of failure to report, the Legislative Auditing Committee may:

1. In the case of a city or county, notify the Department of Revenue and the Department of Banking and Finance that the local unit of government has failed to comply. Upon notification, the department shall withhold any funds payable to such governmental entity until the required report is received by the department.

2. In the case of a special district, notify the Department of Community Affairs that the special district has failed to provide the required financial report. Upon notification, the department shall proceed pursuant to ss. 189.008 and 189.009.

(2) The department shall annually file a verified

report, by May 1, with the Governor and Legislature showing, in detail, the numbers and types of units of local government, the revenues, both locally derived and derived from intergovernmental transfers, and expenditures of such units. The report shall include, but not be limited to, analyses of:

(a) Retirement information on all local retirement systems as provided by the Division of Retirement of the Department of Administration.

(b) Bonded indebtedness of all units of local government, including general obligation bonds, revenue bonds, industrial development bonds, limited revenue bonds, special assessment bonds, and short-term debt, as provided by the Division of Bond Finance of the Department of General Services, and any additional items of data or analyses thereof as developed by the department.

(3) Failure by any unit of local government to file timely a copy of a financial statement shall, in addition to any other penalties provided by law, authorize the department to employ personnel or send departmental personnel to such unit of local government in order to complete and file such financial statements. The expenses related to the completion and filing of such financial statement shall be charged to the unit of local government. Upon failure by the unit to pay such charge within 15 days of billing, the department shall so certify to the Comptroller who shall forward the amount so certified to the department from any funds due to the unit of local government under any revenue sharing or tax sharing fund established by the state, except as otherwise provided by the State Constitution. The department shall include in its annual report a statement of all units failing to file a report and of those units for which the department provided a report pursuant to this subsection.

(4) The Department of Transportation shall recommend to the Department of Banking and Finance no later than April 1, 1978, uniform program data to be furnished by each local government as a part of its annual financial report submitted pursuant to s. 218.32. Such data shall include, but not be limited to, miles of new construction, miles resurfaced or reconstructed, miles maintained, work performed by county or municipal forces and by contract, contracts let, and such other pertinent information as determined by the Department of Transportation. The Department of Transportation shall compile an annual comprehensive transportation report for presentation to the Legislature no later than March 15 of each year.

History.—s. 2, ch. 73-349; s. 15, ch. 77-165; s. 46, ch. 79-164; s. 5, ch. 79-183.

218.33 Units of local government; establishment of uniform fiscal years and accounting practices and procedures.—

(1) Every unit of local government shall begin its fiscal year on October 1 of each year and end it on September 30.

(2) The department is empowered and authorized to make such reasonable rules and regulations regarding uniform accounting practices and procedures by units of local government in this state, including a uniform classification of accounts, as it deems necessary to assure the use of proper accounting and fiscal management techniques by such units.

(3) Any word, sentence, phrase, or provision of any special act, municipal charter, or other law that prohibits or restricts a unit of local government from complying with this section or any rules or regulations promulgated hereunder is hereby nullified and repealed to the extent of such conflict.

History.—s. 2, ch. 73-349; s. 66, ch. 77-104.

218.34 Special districts; financial matters.—

(1) The governing body of each special district shall make appropriations for each fiscal year which, in any one year, shall not exceed the amount to be received from taxation and other revenue sources. It shall be unlawful for any officer of a special district to draw money from the treasury except in pursuance of appropriation made by law.

(2) The proposed budget of a dependent special district shall be contained within the general budget of the local governing authority and be clearly stated as the budget of the dependent special district. Financial reporting shall be made in the same fashion as provided by rules of the department.

(3) The proposed budget of an independent special district located solely within one county shall be filed with the clerk of the county governing authority by September 1 of each year.

(4) The local governing authority may, in its discretion, review and approve the budget or tax levy of any special district located solely within its boundaries.

(5) Each special district shall make provision for annual postaudit of its financial accounts in accordance with the rules of the department.

History.—s. 2, ch. 73-349.

218.345 Special districts; investments.—

(1) The governing body of each special district shall, by resolution to be adopted from time to time, invest and reinvest any surplus public funds in its control or possession in:

(a) The Local Government Surplus Funds Trust Fund, as created by s. 218.405;

(b) Negotiable direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States Government at the then prevailing market price for such securities;

(c) Interest-bearing time deposits or savings accounts in banks organized under the laws of this state, in national banks organized under the laws of the United States and doing business and situated in this state, in savings and loan associations which are under state supervision, or in federal savings and loan associations located in this state and organized under federal law and federal supervision, provided that any such deposits are secured by collateral as may be prescribed by law; or

(d) Obligations of the Federal Farm Credit Banks, Federal Home Loan Mortgage Corporation, or Federal Home Loan Bank or its district banks, including Federal Home Loan Mortgage Corporation participation certificates, or obligations guaranteed by the Government National Mortgage Association.

(2)(a) All securities purchased by any such governing body under this section shall be properly ear-

marked and immediately placed for safekeeping in a safety-deposit box in a bank or institution carrying adequate safety-deposit box insurance within the district, and no withdrawal of such securities in whole or in part shall be made from such safety-deposit box except upon authority evidenced by resolution of the governing body of the district.

(b) The governing body may also receive bank trust receipts in return for investment of surplus funds in securities. Any trust receipts received must enumerate the various securities held, together with the specific number of each security held. The actual securities on which the trust receipts are issued may be held by any bank depository chartered by the United States Government or the State of Florida or their designated agents.

(3) When the money invested in such securities is needed in whole or in part for the purposes originally intended, the governing body of the special district is authorized to sell such security or securities at the then prevailing market price and to pay the proceeds of such sale into the proper account or fund of the district.

(4) For the purposes of this section, the term "surplus funds" is defined as funds in any general or special account or fund of the district held or controlled by the governing body of the district, which funds in reasonable contemplation will not be needed for the purposes intended within a reasonable time from the date of such investment.

(5) Any surplus public funds subject to any contract or agreement on the date of this enactment shall not be invested contrary to said contract or agreement.

(6) The provisions of this section are supplemental to any and all other laws relating to the legal investments of special districts.

History.—s. 5, ch. 77-394; s. 3, ch. 79-119; s. 5, ch. 79-262.

218.35 County fee officers; financial matters.—

(1) Each county fee officer shall establish an annual budget for his office which shall clearly reflect the revenues available to said office and the functions for which money is to be expended. The budget shall be balanced; that is, the total of estimated receipts, including balances brought forward, shall equal the total of estimated expenditures and reserves. The budgeting of segregated funds shall be made in such manner that the relation between program and revenue source as provided by law is retained.

(2) The clerk of the circuit court, functioning in his capacity as clerk of the circuit and county courts and as clerk of the board of county commissioners, shall prepare his budget in two parts:

(a) The budget relating to the state court system, including recording, which shall be filed with the state courts administrator as well as with the board of county commissioners; and

(b) The budget relating to the requirements of the clerk as clerk of the board of county commissioners, county auditor, and custodian or treasurer of all county funds and other county-related duties.

(3) Each county fee officer shall make provision for establishing a fiscal year beginning October 1 and ending September 30 of the following year, and shall report his finances annually upon the close of each fiscal year to the county fiscal officer for inclusion in the annual financial report by the county.

(4) The proposed budget of a county fee officer shall be filed with the clerk of the county governing authority by September 1 preceding the fiscal year for the budget.

History.—s. 2, ch. 73-349.

218.36 County officers; record and report of fees and disposition of same.—

(1) Each county officer who receives any expenses or compensation in fees, commissions, or other remuneration, shall keep a complete record of all fees, commissions, or other remuneration collected by him and shall make an annual report to the board of county commissioners within 15 days of the close of his fiscal year. Such report shall specify in detail the purposes, character, and amount of all official expenses and the amount of net income or unexpended budget balance as of the close of the fiscal year. All officers shall prepare such reports and subscribe under oath as to their accuracy and propriety.

(2) On or before the date for filing the annual report, each county officer shall pay into the county general fund all money in excess of the sum to which he is entitled under the provisions of chapter 145. Whenever a tax collector has money in excess, he shall distribute the excess to each governmental unit in the same proportion as the fees paid by the governmental unit bear to the total fee income of his office. Any excess held by a property appraiser shall be divided into parts for each governmental unit which was billed and which paid for the operation of the property appraiser's office, in the same proportion as the governmental units were originally billed. Such part shall be an advance on the current year's bill, if any.

(3) The board of county commissioners shall, on the 16th day following the close of the fiscal year, notify the governor of the failure of any county officer to comply with the provisions of this section. Such notification shall specify the name of the officer and the office held by him at the time of such failure and shall subject said officer to suspension from office at the governor's discretion.

(4) Compliance by a county officer with the provisions of this section shall exempt said officer from making any report required pursuant to s. 116.03.

History.—s. 2, ch. 73-349; s. 17, ch. 74-234; s. 1, ch. 77-102.

218.37 Powers and duties of Division of Bond Finance; advisory council.—

(1) The Division of Bond Finance of the Department of General Services, with respect to both general obligation bonds and revenue bonds, shall:

(a) Provide information, upon request of a unit of local government, on the preliminary planning of a new bond issue.

(b) Collect, maintain, and make available information on outstanding bonds of local units of government.

(c) Serve as a clearinghouse for information on all local bond issues.

(d) Undertake or commission studies on methods to reduce the costs of state and local bond issues.

(e) Recommend changes in law and in local prac-

tices to improve the sale and servicing of local bonds.

(f) Issue a regular newsletter to issuers, underwriters, investors, and the public, describing proposed new bond issues, new bond sales, refundings, and other pertinent information relating to local and state bonds. The division may charge fees for subscriptions to the newsletter.

(g) Issue an annual report to the Legislature describing the operations of the division relating to this section and s. 218.38.

(h) Provide the Department of Banking and Finance with current available information on all outstanding bond issues and new bond issues of units of local government.

(2) The Division of Bond Finance of the Department of General Services may adopt rules to implement the provisions of this section and s. 218.38.

(3) The governing board of the Division of Bond Finance shall appoint an advisory council to consult and assist the division with the implementation of this section. The council shall consist of the following:

(a) Two representatives of the municipal investment banking industry.

(b) Two representatives of local units of government.

(c) Two representatives from the general public.

(4) A member of the council is not entitled to a salary for duties performed as a member of the council, except that the members, other than public officers, shall receive the per diem authorized for legislators, and each member is entitled to reimbursement for travel and other necessary expenses incurred in the performance of official duties.

History.—s. 6, ch. 79-183.

218.38 Notice of bond issues required; verification.—

(1) Each unit of local government authorized by law to issue general obligation bonds or revenue bonds, including special assessment bonds, shall furnish the Division of Bond Finance of the Department of General Services a complete description of all outstanding bonds and shall also provide the division with any notice of sale or official statement for the purpose of offering bonds, prior to sale, for inclusion into the bond newsletter. Failure to submit prior notice of a proposed new bond issue shall not affect the validity of the bond issue.

(2) Each unit of local government authorized by law to issue general obligation bonds or revenue bonds, including special assessment bonds, shall, on dates established by the Division of Bond Finance of the Department of General Services, verify the information held by the division relating to the bonded obligations of the unit of local government.

(3) If a unit of local government fails to verify, pursuant to subsection (2), the information held by the division, or fails to provide a complete description of all outstanding bonds pursuant to subsection (1), the division shall notify the Legislative Auditing Committee of such failure to comply. Following receipt of such notification of failure to comply with these provisions, the Legislative Auditing Committee may:

(a) In the case of a city or county, notify the Department of Revenue and the Department of Banking and Finance that the local unit of government has failed to comply. Upon notification, the Department [1]of Banking and Finance shall withhold any funds payable to such governmental entity until the required information is received by the division.

(b) In the case of a special district, notify the Department of Community Affairs that the special district has failed to comply. Upon notification, the Department [1]of Banking and Finance shall proceed pursuant to ss. 189.008 and 189.009.

History.—s. 7, ch. 79-183.

[1]Note.—The words "of Banking and Finance" were inserted by the editors to clarify the reference to "the department."

PART IV

INVESTMENT OF LOCAL GOVERNMENT SURPLUS FUNDS

218.40 Short title.—This part shall be known, and may be cited, as the "Investment of Local Government Surplus Funds Act."

History.—s. 1, ch. 77-394.

218.401 Purpose.—It is the intent of this part to promote, through state assistance, the maximization of net interest earnings on invested surplus funds of local units of government, thereby reducing the need for imposing additional taxes.

History.—s. 1, ch. 77-394.

218.403 Definitions.—The following words or terms, when used in this part, shall have the following meanings:

(1) "Chief financial officer" means the mayor, manager, administrator, clerk, comptroller, treasurer, director of finance, or other local government official, regardless of the title of his office, charged with administering the fiscal affairs of a unit of local government.

(2) "Governing body" means the body or board in which the legislative power of a unit of local government is vested.

(3) "Surplus funds" means any funds in any general or special account or fund of a unit of local government which in reasonable contemplation will not be immediately needed for the purposes intended.

(4) "Trust fund" means the pooled investment fund created by s. 218.405 and known as the Local Government Surplus Funds Trust Fund.

(5) "Unit of local government" means a county, municipality, school district, special district, or any other political subdivision of the state.

History.—s. 1, ch. 77-394.

218.405 Local Government Surplus Funds Trust Fund; creation.—There is hereby created a Local Government Surplus Funds Trust Fund to be administered by the State Board of Administration and to be composed of local government surplus funds deposited therein by units of local government under the procedures established in this part.

History.—s. 1, ch. 77-394.

218.407 Local government investment authority.—

(1) Upon determination by the governing body that it is in the interest of the unit of local government to deposit surplus funds in the trust fund, a resolution by the governing body shall be filed with the State Board of Administration authorizing investment of its surplus funds in the trust fund established by this part and other investments authorized by s. 215.47. The resolution shall name the local government official, who may be the chief financial or administrative officer of the local government, responsible for deposit and withdrawal of such funds and shall state the approximate cash flow requirements of the local government for the surplus funds to be invested.

(2) The provisions of this part shall not impair the power of a unit of local government to hold funds in deposit accounts with banking institutions or to invest funds as otherwise authorized by law.

History.—s. 1, ch. 77-394.

218.409 Administration of the trust fund.—

(1) Upon receipt of the resolution from the local governing body, the State Board of Administration shall accept all wire transfers of funds into the trust fund. The State Board of Administration shall also wire transfer invested local government funds to the local government upon request of the local government official named in the resolution.

(2) The State Board of Administration shall administer the investment trust funds on behalf of the participants and shall have the power to invest such funds.

(3) The State Board of Administration shall invest moneys in the trust fund with that degree of judgment and care, under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived. The State Board of Administration may purchase such surety or other bonds as may be necessary for its officials in order to protect the fund.

(4) All investments may be purchased jointly for the participants in the trust fund. The board may also purchase investments for a pooled investment account in which all participants may share pro rata, as determined by rule of the board, in the capital gain, income, or losses, subject to any penalties for early withdrawal.

(5) The State Board of Administration shall keep a separate account, designated by name and number of each participating local government. Individual transactions and totals of all investments, or the share belonging to each participant, shall be recorded in the accounts.

(6) The State Board of Administration shall report semiannually or upon request to every participant having a beneficial interest in the trust fund. The report shall show the changes in investments made during the preceding period. The report shall delineate, in a manner which is in accordance with generally accepted governmental accounting procedures, those funds on deposit, the manner in which the funds are invested, and the interest earnings thereon. The State Board of Administration shall furnish upon request the details of an investment transaction to any participant.

(7) Costs incurred in carrying out the provisions of this part shall be deducted from the interest earnings accruing to the trust fund. Such deductions shall be prorated among the participant local governments in the percentage that each participant's deposits bear to the total trust fund.

(8)(a) The principal, and any part thereof, of each and every account constituting the trust fund shall be subject to payment at any time from the moneys in the fund or as otherwise provided by agreement between the State Board of Administration and the investing unit.

(b) An order or warrant may not be issued upon any account for a larger amount than the share of the particular account to which it applies, and if such order or warrant is issued, the responsible official shall be personally liable under his bond for the entire overdraft resulting from the payment if made.

History.—s. 1, ch. 77-394.

218.411 Authorization for state technical and advisory assistance.—

(1) The State Board of Administration is authorized, upon request, to assist local governments in investing funds that are temporarily in excess of operating needs by:

(a) Explaining investment opportunities to such local governments through publication and other appropriate means.

(b) Acquainting such local governments with the state's practice and experience in investing short-term funds.

(c) Providing, in cooperation with the Department of Community Affairs, technical assistance to local governments in investment of surplus funds.

(2) The State Board of Administration may establish fees to cover the cost of such services, which shall be paid by the unit of local government requesting such service. Such fees shall be deposited to the credit of the appropriation or appropriations from which the costs of providing the services have been paid or are to be charged.

History.—s. 1, ch. 77-394.

PART V

FINANCIAL EMERGENCIES

218.50 Short title.—Sections 218.50-218.504 shall be known as the "Local Government Financial Emergencies Act."

History.—s. 8, ch. 79-183.

218.501 Purpose.—The purpose of this act is:

(1) To preserve and protect the fiscal solvency of units of local government.

(2) To assist local governmental units in providing their essential services without interruption and in meeting their financial obligations.

(3) To assist units of local government through the improvement of local financial management procedures.

History.—s. 8, ch. 79-183.

218.502 Definitions.—As used in ss. 218.50-218.504, except where the context clearly indicates a different meaning, "unit of local government" means a county, municipality, or special district.

History.—s. 8, ch. 79-183.

218.503 Determination of financial emergency.—

(1) A unit of local government shall be in a state of financial emergency when any of the following conditions occur:

(a) Failure within the same fiscal year in which due to pay short-term loans from banks or failure to make bond debt service payments when due.

(b) Failure to transfer at the appropriate time, due to lack of funds:

1. Taxes withheld on the income of employees; or

2. Employer and employee contributions for:

a. Federal Social Security; or

b. Any pension, retirement, or benefit plan of an employee.

(c) Failure for one pay period to pay, due to lack of funds:

1. Wages and salaries owed to employees; or

2. Retirement benefits owed to former employees.

(d) Budget deficits for 2 successive years.

(e) Noncompliance of the local government retirement system with actuarial conditions provided by law.

(2) A unit of local government shall notify the Governor and the Legislative Auditing Committee when one or more of the above conditions have occurred or will occur if action is not taken to assist the unit of local government.

(3) Upon determination that one or more of the conditions in subsection (1) exist, the Governor shall have authority to implement measures as set forth in ss. 218.50-218.504 to resolve the financial emergency. Such measures may include, but shall not be limited to:

(a) Requiring approval of the local unit's budget by the Governor.

(b) Authorizing a state loan to the unit of local government and providing for repayment of same.

(c) Prohibiting a unit of local government from issuing bonds, notes, certificates of indebtedness, or any other form of debt until such time as it is no longer subject to this section.

(d) Making such inspections and reviews of records, information, reports, and assets of the unit of local government, in which inspections and reviews the appropriate local officials shall cooperate.

(e)1. Establishing a financial emergencies board to oversee the activities of the local government. The board, if established, shall be appointed by the Governor. The Governor shall select a chairman and such other officers as are necessary. The board shall adopt such rules as are necessary for conducting board business. The board shall have authority to:

a. Make such reviews of records, reports, and assets of the local government as needed.

b. Consult with the officials of the unit of local government and appropriate state officials regarding any necessary steps to bring the books of account, accounting systems, financial procedures, and reports of the local government into compliance with state requirements.

c. Review the operations, management, efficiency, productivity, and financing of functions and operations of the unit of local government.

2. The recommendations and reports made by the board shall be submitted to the Governor for appropriate action.

(f) Requiring and approving a plan, to be prepared by the appropriate state agency in conjunction with the unit of local government, prescribing actions that will cause the local unit to no longer be subject to this section. Such plan shall include, but not be limited to:

1. Providing for payment in full of all payments due or to come due on debt obligations, pension payments, and all payments and charges imposed or mandated by federal or state law and for all judgments and past-due accounts, as priority items of expenditures.

2. A basis of priority budgeting or zero-based budgeting, resulting in the elimination of the lowest priority items which are not affordable.

3. A prohibition on a level of operations which can be sustained only with nonrecurring revenues.

(4) During the financial emergency period, the local governmental unit may not seek application of laws under the bankruptcy provisions of the United States Constitution except upon the prior approval of the Governor.

History.—s. 8, ch. 79-183.

218.504 Cessation of state action.—The Governor shall have the authority to terminate all state actions pursuant to ss. 218.50-218.504. Cessation of state action shall not occur until the Governor has determined that:

(1) The unit of local government:

(a) Has established and is operating an effective financial accounting and reporting system.

(b) Has corrected or eliminated the fiscal emergency conditions outlined in s. 218.503.

(2) No new fiscal emergency conditions exist.

History.—s. 8, ch. 79-183.

CHAPTER 219

COUNTY PUBLIC MONEY, HANDLING BY STATE AND COUNTY

219.01 Definitions.—The following words, terms and phrases, when used in this act, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

(1) For the purposes of this act, the term "officer" shall be taken to mean a county officer, including an officer whose authority is ordinarily confined to a district within a county, whose duties require or authorize him to collect public money; the term "officer" shall not include any board or commission or any member thereof acting as such.

(2) The term "public money" shall be taken to mean and include all money collected by a county officer which he is required or authorized by law, as such county officer, to collect, and underpayments, overpayments, partial payments and deposits of such money, except his salary when his sole compensation is provided by such salary.

History.—s. 1, ch. 57-349.

219.02 Handling of public money.—

(1) It shall be the duty of each officer to issue a receipt for each collection of public money made by him, a copy of which receipt shall be retained by the officer and shall be a public record. The receipt may be printed and registered by a cash register or validating machine, or may be by prenumbered license, or may be by prenumbered receipt blank. In addition to the foregoing alternative methods, any one or more of which may be used by the officer, he may use also any other form or method prescribed or approved by the Department of Banking and Finance which will record collections of public money in a manner adequate for a proper postaudit. The forms, the methods, the built-in characteristics of the cash register or validating machine, and the procedures for their use shall be prescribed or approved by the department. The Department of Banking and Finance shall furnish the forms prescribed by it and keep a record of the prenumbered receipt blanks issued by it to each officer. The officer shall keep safely all unused receipt blanks issued to him.

(2) It shall be the duty of each officer to keep safely all the public money collected by him. Each officer shall exercise all possible care for the protection of the public money in his custody, and all public money shall be kept separate in the depository and shall not be commingled with personal funds.

(3) It shall be the duty of the several boards of county commissioners to provide suitable facilities, and adequate insurance, for the protection of the public money in the respective county offices; provided, that if it shall appear to an officer that the facilities or the insurance provided by the board of county commissioners are inadequate, he may, with the approval of the Department of Banking and Finance, provide the additional facilities and insurance found to be necessary, and may charge the cost thereof to the expense of his office.

History.—s. 2, ch. 57-349; ss. 12, 35, ch. 69-106.

219.03 Deputies and employees.—Each deputy and employee handling public money in county offices may be placed under bond by the officer, and the premium on the bond may be charged to the expense of the office.

History.—s. 3, ch. 57-349.

219.04 Cash book.—

(1) Each officer as defined in this act, shall keep a cash book, or books, wherein shall be entered daily all receipts and disbursements of public money, either by items or by summaries of itemized entries in other records, including machine tapes, kept in such office. The cash book shall be balanced, it shall show the amount of money on hand, and shall be a permanent record of the office.

(2) The cash book and the lists and records subsidiary to it and essential to the proper identification of and accounting for public money received or disbursed shall be on forms prescribed by or approved by the Department of Banking and Finance.

History.—s. 4, ch. 57-349; ss. 12, 35, ch. 69-106.

219.05 Depositories.—

(1) Public money, as defined in this act, may be deposited in a depository qualified under the provisions of chapter 136, and the regulations of the Department of Banking and Finance pursuant thereto. Such deposits shall be made sufficiently often to keep the amount of the money in the office within the insurance coverage; provided, that any public money may be paid directly to the officer, person or fund entitled to receive it, without first depositing it in the depository, if a receipt is taken and the transaction is properly recorded in the cash book.

(2) The title of each depository account shall include the name of the office, the name of the county, and such other suitable designation as may be required or desired, and withdrawals shall be made only by checks signed with the title of the account, by such officer, or by his duly authorized and bonded deputy or employee, or by warrants as provided in s. 136.06.

(3) Whenever a county office is vacated by any officer who carries a depository account carried under this act, the retiring officer shall transfer each of his official depository accounts to the incoming officer, and if he should fail to do so, the depository shall transfer such account or accounts to the person succeeding to the office, upon his written request, and exhibition to the said depository of his commission.

(4) No handling or service charges shall be de-

ducted by the depository from the amounts deposited. Any handling or service charges which are authorized by the depository agreement or by applicable federal law shall be billed to the board of county commissioners and paid by the said board from the general fund of the county.

(5) The Department of Banking and Finance shall prescribe and furnish the necessary forms and regulations to carry out the purposes of this section.

History.—s. 5, ch. 57-349; s. 7, ch. 59-23; ss. 12, 35, ch. 69-106; s. 8, ch. 78-406.

219.06 Income and expenses.—

(1) Each officer whose compensation for his official duties is paid wholly or partly by fees or commissions, or fees and commissions, shall handle all collections of fees, commissions, and other compensation for his official duties in the same manner as other public money is herein required to be handled, and shall record them in detail sufficient to furnish the information required for the sworn statement required by s. 145.12(1), to be made to the board of county commissioners.

(2) Fees and commissions collected in the same transactions with collections of other public funds may be kept or deposited with such other public funds, and accounted for with them, until distribution is made of such other public funds.

(3) The officer may withdraw from the earnings of the office for his personal use at any time any amount which, together with previous withdrawals, shall not exceed his interest therein if his compensation were calculated to that time, prorated according to the number of days that had elapsed since the beginning of the calendar year.

(4) Disbursements made from the earnings of an officer for the expenses of the office shall be made by check payable to the person performing the service or furnishing the goods, supported by an itemized bill or voucher, except that a petty cash fund may be maintained for necessary cash expenditures and such petty cash fund may be reimbursed from time to time by checks supported by vouchers showing the purposes of the expenditures.

History.—s. 6, ch. 57-349.

219.07 Disbursements.—Each officer shall, not later than 7 working days from the close of the week in which the officer received the funds, distribute the money which is required to be paid to other officers, agencies, funds, or persons entitled to receive the same; provided, that distributions or partial distributions may be made more frequently; and provided further, that money required by law or court order, or by the purpose for which it was collected, to be held and disbursed for a particular purpose in a manner different from that set out herein shall be held and disbursed accordingly. Further, money collected by the county officer on behalf of the state shall be deposited directly to the account of the State Treasury not later than 7 working days from the close of the week in which the officer received the funds.

History.—s. 7, ch. 57-349; s. 1, ch. 59-177; s. 2, ch. 76-224.
cf.—s. 116.01 Payment of public funds into treasury.

219.075 Investment of surplus funds by county officers.—

(1)(a) Except when another procedure is prescribed by law or by ordinance as to particular funds, a tax collector or any other county officer having, receiving, or collecting any money, either for his office or on behalf of and subject to subsequent distribution to another officer of state or local government, while such money is surplus to current needs of his office or is pending distribution, shall invest such money, without limitation, in:

1. The Local Government Surplus Funds Trust Fund, as created by s. 218.405;

2. Bonds, notes, or other obligations of the United States guaranteed by the United States or for which the credit of the United States is pledged for the payment of the principal and interest or dividends; or

3. Interest-bearing time deposits or savings accounts in banks organized under the laws of this state, in national banks organized under the laws of the United States and doing business and situated in this state, in savings and loan associations which are under state supervision, or in federal savings and loan associations located in this state and organized under federal law and federal supervision, provided that any such deposits are secured by collateral as may be prescribed by law.

(b) These investments shall be planned so as not to slow the normal distribution of the subject funds. The investment earnings shall be reasonably apportioned and allocated and shall be credited to the account of, and paid to, the office or distributee, together with the principal on which such earnings accrued.

(2) Except when another procedure is prescribed by law, ordinance, or court order as to particular funds, the tax collector shall, as soon as feasible after collection, deposit in a bank designated as a depository of public funds, as provided in s. 659.24, all taxes, fees, and other collections received by him and held prior to distribution to the appropriate taxing authority. Immediately after such funds have cleared and have been properly credited to his account, the tax collector shall invest such funds according to the provisions of this section. The earnings from such investments shall be apportioned at least quarterly on a pro-rata basis to the appropriate taxing authorities. However, the tax collector may deduct therefrom such reasonable amounts as are necessary to provide for costs of administration of such investments and deposits.

(3) The State Board of Administration may establish a schedule and guidelines to be followed by tax collectors making deposits and investments under the provisions of subsection (2).

History.—s. 1, ch. 75-110; s. 1, ch. 77-174; s. 3, ch. 77-394; s. 6, ch. 79-262.
Note.—Former s. 125.315.

219.08 Continuing duty.—Each of the duties required to be performed or done under the provisions of this act which is not done or performed at or within the time or times herein prescribed shall continue to be the duty of the person charged therewith until it is actually and completely performed.

History.—s. 8, ch. 57-349.

CHAPTER 220

INCOME TAX CODE

PART I

TITLE; DECLARATIONS OF INTENT; DEFINITIONS

220.01 Short title.—This chapter shall be known and may be cited as the "Florida Income Tax Code."

History.—s. 1, ch. 71-984.

220.02 Legislative intent.—

(1) It is the intent of the Legislature in enacting this code to impose a tax upon all corporations, organizations, associations, and other artificial entities which derive from this state or from any other jurisdiction permanent and inherent attributes not inherent in or available to natural persons, such as perpetual life, transferable ownership represented by shares or certificates, and limited liability for all owners. It is the intent of the Legislature to subject such corporations and other entities to taxation hereunder for the privilege of conducting business, deriving income, or existing within the state. This code is not intended to tax, and shall not be construed so as to tax, natural persons who engage in a trade or business or profession in this state under their own or any fictitious name, whether individually as proprietorships or in partnerships with others, estates of decedents or incompetents, or testamentary trusts. However, corporations or other taxable entities which are or which become partners with one or more natural persons shall not, merely by reason of being a partner, exclude from their net income subject to tax their respective share of partnership net income. This statement of intent shall be given preeminent consideration in any construction or interpretation of this code in order to avoid any conflict between this code and the mandate in Art. VII, s. 5 of the State Constitution that no income tax shall be levied upon natural persons who are residents and citizens of this state.

(2) It is the intent of the Legislature that the tax levied by this code shall be construed to be an excise or privilege tax measured by net income, and that said tax shall not be deemed or construed to be a property tax or a tax on property or a tax measured by the value of property for any purpose.

(3) It is the intent of the Legislature that the income tax imposed by this code shall utilize, to the greatest extent possible, concepts of law which have been developed in connection with the income tax laws of the United States, in order to:

(a) Minimize the expenses of the Department of Revenue and difficulties in administering this code;

(b) Minimize the costs and difficulties of taxpayer compliance; and

(c) Maximize, for both revenue and statistical purposes, the sharing of information between the state and the Federal Government.

(4) It is the intent of the Legislature that the tax imposed by this code shall be prospective in effect only. Consistent with this intention and the intent expressed in subsection (3), it is hereby declared to be the intent of the Legislature that:

(a) "Income," for purposes of this code, including gains from the sale, exchange, or other disposition of property, shall be deemed to be created for Florida income tax purposes at such time as said income is realized for federal income tax purposes;

(b) No accretion of value, no accrual of gain, and no acquisition of a right to receive or accrue income which has occurred or been generated prior to November 2, 1971, shall be deemed to be "property," or an interest in property, for any purpose under this code; and

(c) All income realized for federal income tax purposes after November 2, 1971, shall be subject to taxation in full by this state and shall be taxed in the manner and to the extent provided in this code.

(5) It is the intent of the Legislature that if there is included in any taxpayer's net income subject to tax under this code any item or items of income which are determined to be improperly so included because of a conflict with any federal statute, the Constitution of the United States, or the State Constitution, all such items of income shall be excluded from the net incomes of all taxpayers subject to tax

under this code, but all other provisions of this chapter, and their application, shall not be invalidated or in any way impaired by such required exclusion of an item or items of income.

History.—s. 1, ch. 71-984; s. 1, ch. 72-278.

220.03 Definitions.—

(1) SPECIFIC TERMS.—When used in this code, and when not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the following terms shall have the following meanings:

(a) "Affiliated group of corporations" means two or more corporations which constitute an affiliated group of corporations as defined in section 1504(a) of the Internal Revenue Code.

(b) "Corporation" includes all domestic corporations; foreign corporations qualified to do business in this state or actually doing business in this state; joint-stock companies; common law declarations of trust, under chapter 609; corporations not for profit, under chapter 617; agricultural cooperative marketing associations, under chapter 618; professional service corporations, under chapter 621; foreign unincorporated associations, under chapter 622; private school corporations, under chapter 623; foreign corporations not for profit which are carrying on their activities in this state; and all other organizations, associations, legal entities, and artificial persons which are created by or pursuant to the statutes of this state, the United States, or any other state, territory, possession, or jurisdiction. The term "corporation" shall not include proprietorships, even if using a fictitious name; partnerships of any type, as such; state or public fairs or expositions, under chapters 615 and 616; estates of decedents or incompetents; testamentary trusts; or private trusts.

(c) "Department" means the Department of Revenue of this state.

(d) "Director" means the executive director of the Department of Revenue and, when there has been an appropriate delegation of authority, his delegate.

(e) "Earned," "accrued," "paid," and "incurred" shall be construed according to the method of accounting upon the basis of which a taxpayer's income is computed under this code.

(f) "Fiscal year" means an accounting period of 12 months or less ending on the last day of any month other than December or, in the case of a taxpayer with an annual accounting period of 52-53 weeks under subsection 441(f) of the Internal Revenue Code, the period determined under that subsection.

(g) "Includes" and "including," when used in a definition contained in this code, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(h) "Internal Revenue Code" means the United States Internal Revenue Code of 1954, as amended and in effect on January 1, 1979, except as provided in subsection (3).

(i) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, including limited partnerships; and the term "partner" includes a member having a capital or a profits interest in a partnership.

(j) "Regulations" includes rules promulgated, and forms prescribed, by the department.

(k) "Returns" includes declarations of estimated tax required under this code.

(l) "State," when applied to a jurisdiction other than Florida, means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any political subdivision of any of the foregoing.

(m) "Taxable year" means the calendar or fiscal year upon the basis of which net income is computed under this code, including, in the case of a return made for a fractional part of a year, the period for which such return is made.

(n) "Taxpayer" means any corporation subject to the tax imposed by this code, and shall include all corporations for which a consolidated return is filed under s. 220.131.

(2) DEFINITIONAL RULES.—When used in this code and neither otherwise distinctly expressed nor manifestly incompatible with the intent thereof:

(a) The word "corporation" or "taxpayer" shall be deemed to include the words "and its successors and assigns" as if these words, or words of similar import, were expressed;

(b) Any term used in any section of this code with respect to the application of, or in connection with, the provisions of any other section of this code shall have the same meaning as in such other section; and

(c) Any term used in this code shall have the same meaning as when used in a comparable context in the Internal Revenue Code and other statutes of the United States relating to federal income taxes, as such code and statutes are in effect on January 1, 1979. However, if subsection (3) is implemented, the meaning of any term shall be taken at the time the term is applied under this code.

(3) FUTURE FEDERAL AMENDMENTS.—On or after January 1, 1972, when expressly authorized by law, any amendment to the Internal Revenue Code shall be given effect under this code in such manner and for such periods as are prescribed in the Internal Revenue Code, to the same extent as if such amendment had been adopted by the legislature of this state. However, any such amendment shall have effect under this code only to the extent that the amended provision of the Internal Revenue Code shall be taken into account in the computation of net income subject to tax hereunder.

(4) It is the intent of the Legislature that all amendments to the Internal Revenue Code shall be given effect under the Florida Income Tax Code in such manner and for such periods as are prescribed in the Internal Revenue Code, to the same extent as if such amendments had been adopted by the Legislature of the state.

History.—s. 1, ch. 71-984; ss. 2, 3, ch. 72-278; s. 1, ch. 73-321; s. 1, ch. 74-324; s. 2, ch. 75-293; s. 1, ch. 76-173; s. 1, ch. 77-402; ss. 1, 2, ch. 78-58; s. 1, ch. 79-35.

PART II

TAX IMPOSED; APPORTIONMENT

220.11 Tax imposed.—

(1) A tax measured by net income is hereby imposed on every taxpayer for each taxable year commencing on or after January 1, 1972, and for each taxable year which begins before and ends after January 1, 1972, for the privilege of conducting business, earning or receiving income in this state, or being a resident or citizen of this state. Such tax shall be in addition to all other occupation, excise, privilege, and property taxes imposed by this state or by any political subdivision thereof, including any municipality or other district, jurisdiction, or authority of this state.

(2) The tax imposed by this section shall be an amount equal to 5 percent of the taxpayer's net income for the taxable year.

History.—s. 1, ch. 71-984.

cf.—s. 631.719 Credit for assessments paid by insurers.

220.12 Net income defined.—

(1) For purposes of this code, a taxpayer's net income for a taxable year which commences on or after January 1, 1972, shall be that share of its adjusted federal income for such year which is apportioned to this state under s. 220.15, less the exemption allowed by s. 220.14.

(2) For purposes of this code, a taxpayer's net income for a taxable year which begins before and ends after January 1, 1972, shall be that amount which bears the same ratio to the taxpayer's share of adjusted federal income which is apportioned to this state for the entire year as the number of days in such year after December 31, 1971, bears to the total number of days in such year, less a like proportion of the exemption allowed by s. 220.14, unless the taxpayer elects to compute net income for such taxable year in the manner and under the conditions provided in subsection (3).

(3)(a) If the taxpayer so elects, in the case of a taxable year beginning before and ending after January 1, 1972, there shall be taken into account in computing adjusted federal income, before apportionment, only those items earned, received, paid, incurred, or accrued after December 31, 1971, and the exemption provided by s. 220.14 shall be limited to that amount which bears the same ratio to the total exemption allowable under such section, determined without regard to this subsection, as the number of days in such year after December 31, 1971, bears to the total number of days in such year.

(b) The election provided by this subsection shall be made not later than the due date, including any extensions thereof, for filing taxpayer's return for the taxable year, in such manner as the department may by regulation prescribe. However, no such election shall be valid unless the director has given his written approval at the time of such filing or unless the director fails to object to said election in writing within 30 days after such filing.

(c) The method of computing adjusted federal income under this subsection shall be considered extraordinary and shall only be allowed by the director in special situations where the taxpayer has demonstrated that the method for determining net income which is prescribed in subsection (2) will not reasonably reflect that portion of the taxpayer's income attributable to the period after December 31, 1971.

History.—s. 1, ch. 71-984.

220.13 Adjusted federal income defined.—

(1) "Adjusted federal income" shall mean an amount equal to the taxpayer's taxable income as defined in subsection (2), or said taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(a) *Additions.*—There shall be added to such taxable income:

1. The amount of income tax paid or accrued as a liability to this state under this code which is deductible from gross income in the computation of taxable income for the taxable year;

2. The amount of interest which is excluded from taxable income under subsection 103(a) of the Internal Revenue Code or any other federal law, less the associated expenses disallowed in the computation of taxable income under subsection 265(2) of the Internal Revenue Code or any other law;

3. In the case of a regulated investment company or real estate investment trust, an amount equal to the excess of the net long-term capital gain for the taxable year over the amount of the capital gain dividends attributable to the taxable year.

(b) *Subtractions.*—

1. In computing the net operating loss deduction allowable for federal income tax purposes under s. 172 of the Internal Revenue Code for the taxable year, the net capital loss allowable for federal income tax purposes under s. 1212 of the Internal Revenue Code for the taxable year, the excess charitable contribution deduction allowable for federal income tax purposes under s. 170(d)(2) of the Internal Revenue Code for the taxable year, and the excess contributions deductions allowable for federal income tax purposes under s. 404 of the Internal Revenue Code for the taxable year, there shall be subtracted from taxable income, in order to arrive at adjusted federal income, such amounts as reflect the following limitations:

a. No deduction shall be allowed for net operating losses, net capital losses, and excess contribution deductions under ss. 170(d)(2) and 404 of the Internal Revenue Code which are carried forward from taxable years ending prior to January 1, 1972; and

b. The net operating loss, net capital loss, and excess contributions deductions under ss. 170(d)(2) and 404 of the Internal Revenue Code, respectively, allowable for any taxable year beginning before and ending after January 1, 1972, shall be limited to an amount which bears the same ratio to the taxpayer's net operating loss, net capital loss, and excess contributions deductions under ss. 170(d)(2) and 404 of the Internal Revenue Code, respectively, for the entire taxable year as the number of days in such year after

December 31, 1971, bears to the total number of days in such year, unless the taxpayer elects to account separately for income under s. 220.12(3) of this code, in which case the net operating loss, net capital loss, and excess contributions deductions under ss. 170(d)(2) and 404 of the Internal Revenue Code, respectively, allowable for such year shall be determined on the basis of the items actually earned, received, paid, incurred, or accrued after December 31, 1971; and

c. A net operating loss and a capital loss shall never be carried back as a deduction to a prior taxable year, but all deductions attributable to such losses shall be deemed net operating loss carryovers and capital loss carryovers, respectively, and treated in the same manner, to the same extent, and for the same time periods as are prescribed for such carryovers in ss. 172 and 1212, respectively, of the Internal Revenue Code.

2. There shall be subtracted from such taxable income any amount included therein:

a. Under s. 78 or s. 951 of the Internal Revenue Code;

b. Which was derived from sales outside the United States, and from sources outside the United States as interest, as a royalty, or as compensation for technical or other services; and

c. Which was received as a dividend from a corporation which neither transacts any substantial portion of its business in the United States nor regularly maintains any substantial portion of its assets within the United States.

However, as to any amount subtracted under this subparagraph, there shall be added to such taxable income all expenses deducted on the taxpayer's return for the taxable year which are attributable, directly or indirectly, to such subtracted amount.

3. In computing "adjusted federal income" for taxable years beginning after December 31, 1976, there shall be allowed as a deduction the amount of wages and salaries paid or incurred within this state for the taxable year for which no deduction is allowed pursuant to s. 280C of the Internal Revenue Code (relating to credit for employment of certain new employees).

(c) *Installment sales.*—

1. Unless there has been an election under subparagraph 2., any taxpayer which returns any portion of its income for federal income tax purposes under section 453 of the Internal Revenue Code, whether or not as a dealer, shall file its return under this code, and shall compute its adjusted taxable income, including income derived from transactions treated for federal tax purposes as installment sales, in accordance with the regular method by which the taxpayer accounts, under section 446(c) of the Internal Revenue Code, for transactions which are not installment sales. In preparing its return under this code, the taxpayer shall adjust taxable income, as defined in subsection (2), by excluding therefrom all installment sale income reported in the taxable year with respect to income realized from installment sales prior to January 1, 1972 and by including therein the full amount of all income realized from installment sales, under an accrual method of accounting, on or after said date. However, for a taxable year which begins before and ends after January 1, 1972, the ratio set forth in subsection 220.12(2) shall not be applied to the taxpayer's apportioned share of installment sale income in computing net income.

2. Any taxpayer which has elected for federal income tax purposes to report any portion of its income on the installment basis under section 453 of the Internal Revenue Code may elect so to return income from installment sales for purposes of this code. However, the election provided by this subparagraph shall only be allowed if:

a. The election is made not later than the due date, including any extensions thereof, for filing the taxpayer's return under this code, in such manner as the department may prescribe; and

b. The taxpayer consents in writing, at the time of its election, to the filing of its return without the adjustments to taxable income which are described in subparagraph 1.

Notwithstanding any other provision of this paragraph, if the election is not made for the taxpayer's first taxable year under this code in which a portion of its income is so returned for federal tax purposes, an election under this subparagraph may be made at any time thereafter if the taxpayer files amended returns for all prior periods ending after January 1, 1972, and pays the additional tax that would have been due, including interest from the due date of the original return until the tax due on each amended return is paid, as though an original election under this subparagraph, adjusted as required under subparagraphs 4. and 5. had been timely made. By filing such amended returns, the taxpayer shall be deemed to have waived any statute of limitations defense and to have made the election as if it had been made on the original return.

3. If the taxpayer is a dealer or otherwise returns a portion of its income under section 453 of the Internal Revenue Code, an election under subparagraph 2. must be made for the taxpayer's first taxable year under this code in which a portion of its income is so returned for federal tax purposes, and said election shall apply to all subsequent taxable years for which installment sale treatment is elected for federal income tax purposes, unless the department consents in writing to the revocation of such election prior to the first taxable year for which such revocation would apply.

4. If an election is made under subparagraph 2., then, in lieu of returning the entire amount of installment sale income returned for federal income tax purposes, the taxpayer may include in income for each taxable year under this code only the amount of income which is specified in subparagraph 5., in which event the taxpayer shall also add to taxable income, as defined in subsection (2), all expenses deducted on its federal return for the taxable year with respect to installment sale income excluded from Florida net income under this provision, including collection costs and the expenses attributable to servicing sales contracts.

5. The amount to be included in taxable income

under subparagraph 4. shall be limited to the sum of the following amounts:

a. An amount equal to 100 percent of the income derived from installment sale transactions consummated on or after January 1, 1972;

b. An amount equal to 70 percent of the income returned for federal income tax purposes in the taxable year which was derived from installment sale transactions consummated prior to January 1, 1972 and after December 31, 1970;

c. An amount equal to 50 percent of the income returned for federal income tax purposes in the taxable year which was derived from installment sale transactions consummated prior to January 1, 1971 and after December 31, 1968;

d. An amount equal to 25 percent of the income returned for federal income tax purposes in the taxable year which was derived from installment sale transactions consummated prior to January 1, 1969 and after December 31, 1966; and

e. An amount equal to 10 percent of the income returned for federal income tax purposes in the taxable year which was derived from installment sale transactions consummated prior to January 1, 1967.

6. The department may by regulation prescribe the methods or procedures for computing the amounts included and excluded from taxable income under subparagraphs 4. and 5.

(2) For purposes of this section, a taxpayer's taxable income for the taxable year shall mean taxable income as defined in section 63 of the Internal Revenue Code and properly reportable for federal income tax purposes for the taxable year, but subject to the limitations set forth in paragraph (1)(b) with respect to the deductions provided by sections 172 (relating to net operating losses), 170(d)(2) (relating to excess charitable contributions), 404(a)(1)(D) (relating to excess pension trust contributions), 404(a)(3)(A) and (B) (to the extent relating to excess stock bonus and profit-sharing trust contributions), 404(d) (relating to excess contributions under the 1939 code) and 1212 (relating to capital losses) of the Internal Revenue Code, except that, subject to the same limitations:

(a) "Taxable income," in the case of a life insurance company subject to the tax imposed by section 802 of the Internal Revenue Code, shall mean life insurance company taxable income; however, the amount of said income determined under paragraph 802(b)(3) of the Internal Revenue Code which shall be taken into account for purposes of this code shall never exceed, cumulatively, the excess of amounts determined under said paragraph as of the close of the taxpayer's taxable year over the amount determined under said paragraph as of December 31, 1971;

(b) "Taxable income," in the case of a mutual insurance company subject to the tax imposed by section 821(a) or (c) of the Internal Revenue Code, shall mean mutual insurance company taxable income or taxable investment income, as the case may be;

(c) "Taxable income," in the case of an insurance company subject to the tax imposed by section 831(a) of the Internal Revenue Code, shall mean insurance company taxable income;

(d) "Taxable income," in the case of a regulated investment company subject to the tax imposed by section 852 of the Internal Revenue Code, shall mean investment company taxable income;

(e) "Taxable income," in the case of a real estate investment trust subject to the tax imposed by section 857 of the Internal Revenue Code, shall mean real estate investment trust taxable income;

(f) "Taxable income," in the case of a corporation which is a member of an affiliated group of corporations filing a consolidated income tax return for the taxable year for federal income tax purposes, shall mean taxable income of such corporation for federal income tax purposes as if such corporation had filed a separate federal income tax return for the taxable year and each preceding taxable year for which it was a member of an affiliated group, unless a consolidated return for the taxpayer and others is required or elected under s. 220.131;

(g) "Taxable income," in the case of a cooperative corporation or association, shall mean the taxable income of such organization determined in accordance with the provisions of section 1381 through 1398 of the Internal Revenue Code;

(h) "Taxable income," in the case of an organization which is exempt from the federal income tax by reason of section 501(a) of the Internal Revenue Code, shall mean its unrelated business taxable income as determined under section 512 of the Internal Revenue Code; and

(i) "Taxable income," in the case of a corporation for which there is in effect for the taxable year an election under section 1372 of the Internal Revenue Code, shall mean the amount of income subject to tax at the corporate level under paragraph 1372(b)(1) of the Internal Revenue Code for each taxable year.

History.—s. 1, ch. 71-984; ss. 4, 7, ch. 72-278; s. 1, ch. 73-321; s. 6, ch. 74-324; s. 1, ch. 78-230.

220.131 Adjusted federal income; affiliated groups.—

(1) Subject to subsection (5), any corporation subject to tax under this code which is the parent company of an affiliated group of corporations may elect, not later than the due date for filing its return for the taxable year, including any extensions thereof, to consolidate its taxable income with that of all other members of the group subject to tax under this code and to return such consolidated taxable income hereunder, in which case all such other members must consent thereto in such manner as the department may by regulation prescribe. Any Florida parent company of an affiliated group of corporations may elect to consolidate its taxable income with all other members of the affiliated group, even though some of its members are not subject to tax under this code, provided:

(a) Each member of the group consents to such filing by specific written authorization at the time the consolidated return is filed;

(b) The affiliated group so filing under this code has filed a consolidated return for federal income tax purposes for the same taxable year; and

(c) The affiliated group so filing under this code is composed of the identical component members as have consolidated their taxable incomes in said federal return.

(2) Subject to subsection (5), the director may re-

quire a consolidated return for those members of an affiliated group of corporations which are subject to tax and which would be eligible to elect to consolidate their incomes under subsection (1), if the filing of separate returns for such corporations would improperly reflect the taxable incomes of said corporations or of said group.

(3) The filing of a consolidated return for any taxable year shall require the filing of consolidated returns for all subsequent taxable years so long as the filing taxpayers remain members of the affiliated group or, in the case of a group having component members not subject to tax under this code, so long as a consolidated return is filed by such group for federal income tax purposes, unless the director consents to the filing of separate returns.

(4) The computation of consolidated taxable income for the members of an affiliated group of corporations subject to tax hereunder shall be made in the same manner and under the same procedures, including all intercompany adjustments and eliminations, as are required for consolidating the incomes of affiliated corporations for the taxable year for federal income tax purposes in accordance with section 1502 of the Internal Revenue Code, and the amount shown as consolidated taxable income shall be the amount subject to tax under this code.

(5) No taxpayer may apportion adjusted federal income under s. 214.72 as a member of an affiliated group which files a consolidated return under this section on the basis of apportionment factors described in s. 214.71, and no taxpayer may apportion under s. 214.71 as a member of an affiliated group which files a consolidated return on the basis of an apportionment factor described in s. 214.72, but no taxpayer shall be barred from filing as a member of an affiliated group if it apportions adjusted federal income in the same manner as the parent company and all other filing members of the group.

History.—s. 1, ch. 71-984.

220.14 Exemption.—

(1) In computing a taxpayer's liability for tax under this code, there shall be exempt from the tax $5,000 of net income as defined in s. 220.12 or such lesser amount as will, without increasing the taxpayer's federal income tax liability, provide the state with an amount under this code which is equal to the maximum federal income tax credit which may be available from time to time under federal law.

(2) In the case of a taxable year for a period of less than 12 months, the exemption allowed by this section shall be prorated on the basis of the number of days in such year to 365.

(3) Only one exemption shall be allowed to taxpayers filing a consolidated return under this code.

(4) Notwithstanding any other provision of this code, not more than one exemption under this section shall be allowed to the Florida members of a controlled group of corporations, as defined in section 1563 of the Internal Revenue Code with respect to taxable years ending on or after December 31, 1970, filing separate returns under this code. The exemption described in this section shall be divided equally among such Florida members of the group, unless all of such members consent, at such time and in such manner as the department shall by regulation prescribe, to an apportionment plan providing for an unequal allocation of such exemption.

History.—s. 1, ch. 71-984.

220.15 Apportionment of adjusted federal income.—Adjusted federal income as defined in s. 220.13 shall be apportioned to this state in accordance with part IV of chapter 214, and for the purpose of applying said part to this code:

(1) The term "sales" in paragraph 214.71(3)(a) shall mean all gross receipts of the taxpayer except interest, dividends, rents, royalties, and gross receipts from the sale, exchange, maturity, redemption, or other disposition of securities; except that:

(a) Rental income shall be included in the term "sales" whenever a significant portion of the taxpayer's business consists of leasing or renting real or tangible personal property;

(b) Royalty income shall be included in the term "sales" whenever a significant portion of the taxpayer's business consists of dealing in or with the production, exploration, or development of minerals; and

(2) The term "financial organization" in paragraph 214.71(3)(b) shall include any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, or investment company; and

(3) The term "everywhere" in part IV of chapter 214, which is used in the computation of apportionment factor denominators, shall mean "in all states of the United States, the District of Columbia, or any political subdivision of the foregoing"; and

(4) In lieu of the equally weighted three-factor apportionment fraction based on property, payroll, and sales which is described in s. 214.71, there shall be used for purposes of the tax imposed by this code an apportionment fraction composed of a sales factor representing 50 percent of the fraction, a property factor representing 25 percent of this fraction, and a payroll factor representing 25 percent of the fraction. However, upon application in accordance with paragraph (a), any taxpayer shall be entitled to a refund of tax, in an amount determined under paragraph (b), if it can establish that the aggregate amount of its net income subject to tax under this code and in all other states for the taxable year exceeds 100 percent of the taxpayer's taxable income, as determined for federal income tax purposes, for the taxable year.

(a) Any taxpayer eligible for a refund under this subsection shall make application therefor in accordance with procedures set forth in part I of chapter 214. All applications for refund under this subsection shall be accompanied by a copy of the taxpayer's federal income tax return for the taxable year, copies of every return filed by the taxpayer in the states in which it has conducted business for the taxable year, and verification in the form of canceled checks or other receipts of the taxpayer's payments of the amounts shown to be due on the several returns filed with the refund application.

(b) The refund to which any taxpayer shall be entitled under this subsection shall be equal to 5 percent of the lesser of:

1. The excess of the amount subject to tax for the taxable year under this code over the amount which would have been subject to tax if the taxpayer had computed net income for purposes of this code on the basis of the apportionment fraction described in s. 214.71; or

2. The excess of the aggregate amount of net income subject to tax in Florida and in all other states for the taxable year over the amount of federal taxable income for the taxable year.

(c) For purposes of this subsection, the terms "net income subject to tax" and "amount subject to tax" shall mean the amount against which a rate or rates are applied in determining the taxpayer's dollar liability for tax in any jurisdiction.

History.—s. 1, ch. 71-984; s. 5, ch. 72-278; s. 3, ch. 75-293.

PART III

RETURNS; DECLARATIONS; RECORDS

220.21 Returns and records; regulations.—Every taxpayer liable for the tax imposed by this code shall keep such records, render such statements, make such returns and notices, and comply with such rules and regulations, as the department may from time to time prescribe. The director may require any taxpayer or class of taxpayers, by notice or by regulation, to make such returns and notices, render such statements, and keep such records as the director deems necessary to determine whether such taxpayer or taxpayers are liable for tax under this code.

History.—s. 1, ch. 71-984.

220.22 Returns; filing requirement.—

(1) A return with respect to the tax imposed by this code shall be made by every taxpayer for each taxable year in which such taxpayer either is liable for tax under this code or is required to make a federal income tax return, regardless of whether such taxpayer is liable for tax under this code.

(2) Every Florida partnership having any partner subject to tax under this code, shall make an information return setting forth:

(a) All items of income, gain, loss, and deduction;

(b) The names and addresses of all partners subject to tax hereunder who would be entitled to share in the net income of the partnership if distributed;

(c) The amount and proportion of the distributive share of each partner-taxpayer; and

(d) Such other pertinent information as the department may by form or regulation prescribe.

(3) Whenever a receiver, trustee in bankruptcy, or assignee, by order of law or otherwise, has possession of or holds title to all or substantially all of the property or business of a taxpayer, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the returns and notices required of such taxpayer.

History.—s. 1, ch. 71-984.

220.221 Returns; signing and verification.—

(1) A return or notice required of a taxpayer shall be signed by an officer duly authorized so to act or, in the case of a return or notice made by a fiduciary under subsection 220.22(3), by the fiduciary. The fact that an officer or fiduciary has signed a return or notice shall be prima facie evidence that the individual was authorized to sign such document on behalf of the taxpayer.

(2) A return or notice for a partnership shall be signed by any one of the general partners, and the fact that a partner has signed a return or notice shall be prima facie evidence that such partner was authorized to sign such document on behalf of the partnership.

(3) Each return or notice required to be filed under this code shall be verified by a written declaration that it is made under the penalties of perjury, and if prepared by someone other than the taxpayer the return shall also contain a declaration by the preparer that it was prepared on the basis of all information of which the preparer had knowledge.

History.—s. 1, ch. 71-984.

220.222 Returns; time and place for filing.—

(1) Returns required by this code shall be filed with the office of the department in Leon County or at such other place as the department may by regulation prescribe. All returns required for a DISC (Domestic International Sales Corporation) under paragraph 6011(e)(2) of the Internal Revenue Code shall be filed on or before the 1st day of the 10th month following the close of the taxable year; all partnership information returns shall be filed on or before the 1st day of the 5th month following the close of the taxable year; and all other returns shall be filed on or before the 1st day of the 4th month following the close of the taxable year or the 15th day following the due date, without extension, for the filing of the related federal return for the taxable year, unless under subsection (2) one or more extensions of time, not to exceed 6 months in the aggregate, for any such filing is granted.

(2)(a) When a taxpayer has been granted an extension or extensions of time within which to file its federal income tax return for any taxable year, and if the requirements of s. 220.32 are met, the filing of a written request for such extension or extensions with the department shall automatically extend the due date of the return required under this code until 15 days after the expiration of the federal extension or until the expiration of 6 months from the original due date, whichever first occurs.

(b) The department may grant an extension or extensions of time for the filing of any return required under this code upon receiving a prior written request therefor if good cause for an extension is shown. However, the aggregate extensions of time

under paragraphs (a) and (b) shall not exceed 6 months. No extension granted under this paragraph shall be valid unless the taxpayer complies with the requirements of s. 220.32.

History.—s. 1, ch. 71-984; s. 6, ch. 72-278; s. 3, ch. 74-324; s. 2, ch. 79-326.

220.23 Federal returns.—

(1) Any taxpayer required to make a return for a taxable year under this code may, at any time that a deficiency could be assessed or a refund claimed under this code in respect of any item reported or properly reportable on such return or any amendment thereof, be required to furnish to the department a true and correct copy of any return which may pertain to such item and which was filed by such taxpayer under the provisions of the Internal Revenue Code.

(2) In the event the taxable income, any item of income or deduction, or the income tax liability reported in a federal income tax return of any taxpayer for any taxable year is adjusted by amendment of such return or as a result of any other recomputation or redetermination of federal taxable income or loss, if such adjustment would affect any item or items entering into the computation of such taxpayer's net income subject to tax for any taxable year under this code, the following special rules shall apply:

(a) The taxpayer shall notify the department of such adjustment by filing either an amended return or such other report as the department may by regulation prescribe, which return or report:

1. Shall show the taxpayer's name, address, and employer identification number; the adjustments; the taxpayer's revised net income subject to tax and revised tax liability under this code; and such other information as the department may by regulation prescribe;

2. Shall be signed by a person required to sign the original return or by a duly authorized representative; and

3. Shall be filed not later than 60 days after such adjustment has been agreed to or finally determined for federal income tax purposes, or after any federal income tax deficiency or refund, abatement, or credit resulting therefrom has been assessed, paid, or collected, whichever shall first occur.

(b) If the amended return or other report filed with the department concedes the accuracy of a federal change or correction, any deficiency in tax under this code resulting therefrom shall be deemed assessed on the date of filing such amended return or report, and such assessment shall be timely, notwithstanding any other provision contained in part I of chapter 214.

(c) In any case where notification of an adjustment is required under paragraph (a), then notwithstanding any other provision contained in part I of chapter 214:

1. A notice of deficiency may be issued at any time within 2 years after the date such notification is given; or

2. If a taxpayer either fails to notify the department or fails to report a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, a notice of deficiency may be issued at any time;

3. In either case, the amount of any proposed assessment set forth in such notice shall be limited to the amount of any deficiency resulting under this code from recomputation of the taxpayer's income for the taxable year after giving effect only to the item or items reflected in the adjustment.

(d) In any case when notification of an adjustment is required by paragraph (a), a claim for refund may be filed within 2 years after the date on which such notification was due, regardless of whether such notice was given, notwithstanding any other provision contained in part I of chapter 214. However, the amount recoverable pursuant to such a claim shall be limited to the amount of any overpayment resulting under this code from recomputation of the taxpayer's income for the taxable year after giving effect only to the item or items reflected in the adjustment required to be reported.

History.—s. 1, ch. 71-984.

220.24 Declaration of estimated tax.—

(1) Every taxpayer shall make a declaration of estimated tax for the taxable year, in such form as the department shall prescribe, if the amount payable as estimated tax can reasonably be expected to be more than $2,500. The term "estimated tax" shall mean the amount which the taxpayer estimates to be his tax under this code for the taxable year or, in the case of a taxable year of less than 12 months, an amount of tax determined in accordance with regulations prescribed by the department.

(2) A taxpayer may amend a declaration, under regulations prescribed by the department.

History.—s. 1, ch. 71-984.

220.241 Declaration; time for filing.—A declaration of estimated tax under this code shall be filed on or before the first day of the fifth month of each taxable year, except that if the minimum tax requirement of subsection 220.24(1) is first met:

(1) After the third month and before the sixth month of the taxable year, the declaration shall be filed on or before the first day of the seventh month;

(2) After the fifth month and before the ninth month of the taxable year, the declaration shall be filed on or before the first day of the tenth month; or

(3) After the eighth month and before the twelfth month of the taxable year, the declaration shall be filed for the taxable year on or before the first day of the succeeding taxable year.

History.—s. 1, ch. 71-984.

220.242 Declaration as return.—All of the provisions of this part and of s. 214.21, relating to confidentiality, shall be applicable with respect to declarations of estimated tax unless manifestly inconsistent therewith. However, the declaration required of a preparer other than the taxpayer under subsection (3) of s. 220.22 shall not be required with respect to declarations of estimated tax.

History.—s. 1, ch. 71-984.

220.25 Auditor General; access to information received by department.—

(1) Any information received by the Department of Revenue in connection with the operation and enforcement of this code, including but not limited to

information contained in returns and reports filed by persons subject to tax, shall be made available by the department to the Auditor General or his authorized agent in the performance of his official duties; however, no information shall be disclosed to the Auditor General or his authorized agent when such disclosure is prohibited by federal law. The Auditor General and his authorized agent shall be subject to the same requirements of confidentiality and subject to the same penalties for violation of the requirements as the department. The provisions of this section shall prevail over any conflicting provision of law unless the conflicting provision contains a specific exemption from this section.

(2) This section shall expire and cease to take effect on July 1, 1981.

History.—ss. 1, 2, ch. 79-250.

PART IV

PAYMENTS

220.31 Payments; due date.—

(1) Every taxpayer required to file a return under this code or a notification under subsection 220.23(2) shall, without assessment, notice, or demand, pay any tax due thereon to the department at the place fixed for filing, including payment to such depository institutions throughout the state as the department may by regulation designate, on or before the date fixed for filing such return, determined without regard to any extension of time for filing the return, or notification, pursuant to regulations prescribed by the department.

(2) Except as to estimated tax payments under s. 220.33, the payment required under this section shall be the balance of tax remaining due after giving effect to the following:

(a) Any amount of tentative tax or estimated tax paid by a taxpayer for a taxable year pursuant to s. 220.32 or s. 220.33 shall be deemed to have been paid on account of the tax imposed by this code for such taxable year; and

(b) Any amount of a tax overpayment which is credited against the taxpayer's liability for the taxable year under s. 214.13 shall be deemed to have been paid on account of the tax imposed by this code for such taxable year.

History.—s. 1, ch. 71-984.

220.32 Payments of tentative tax.—

(1) In connection with any extension of the time for filing a return under subsection 220.222(2), the taxpayer shall file a tentative tax return and pay, on or before the date prescribed by law for the filing of such return, determined without regard to any extensions of time for such filing, an amount estimated to be the balance of its proper tax for the taxable year after giving effect to any estimated tax payments under s. 220.33 and any tax credit under s. 214.13.

(2) The department shall by regulation prescribe the manner and form for filing tentative returns.

(3) Interest on any amount of tax due and unpaid during the period of any extension shall be payable as provided in s. 214.43.

History.—s. 1, ch. 71-984.

220.33 Payments of estimated tax.—A taxpayer required to file a declaration of estimated tax pursuant to s. 220.24 shall pay such estimated tax as follows:

(1) If the declaration is required to be filed on or before the first day of the fifth month of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the required filing of the declaration; the second and third installments shall be paid on or before the first day of the seventh and tenth months of the taxable year, respectively; and the fourth installment shall be paid on or before the first day of the next taxable year.

(2) If the declaration is required to be filed on or before the first day of the seventh month of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of required filing of the declaration; the second installment shall be paid on or before the first day of the tenth month of the taxable year; and the third installment shall be paid on or before the first day of the next taxable year.

(3) If the declaration is required to be filed on or before the first day of the tenth month of the taxable year, the estimated tax shall be paid in two equal installments: at the time of required filing of the declaration for such taxable year and on or before the first day of the next taxable year, respectively.

(4) If the declaration is required to be filed on or before the first day of the succeeding taxable year, the estimated tax shall be paid in full at the time of such required filing.

(5) If the declaration is filed after the time prescribed in s. 220.241 due to the grant of an extension of time for filing, subsections (1) through (4) of this section shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in s. 220.241 and without regard to the extension, and the remaining installments shall be paid at the time at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

(6) If an amended declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect the increase or decrease in the estimated tax occasioned by such amendment.

(7) The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the department.

History.—s. 1, ch. 71-984.

220.34 Special rules relating to estimated tax.—

(1) Any amount paid as estimated tax shall be deemed assessed upon the due date for the taxpayer's return for the taxable year, determined

without regard to any extensions of time for filing such return.

(2) No interest or penalty shall be due or paid with respect to a failure to pay estimated taxes except the following:

(a) Except as provided in paragraph (d), the taxpayer shall be liable for interest at the rate of 6 percent per year and for a penalty in an amount determined at the rate of 10 percent per year upon the amount of any underpayment of estimated tax determined under this subsection.

(b) For purposes of this subsection, the amount of any underpayment of estimated tax shall be the excess of:

1. The amount of the installment which would be required to be paid if the estimated tax were equal to 80 percent of the tax shown on the return for the taxable year or, if no return were filed, 80 percent of the tax for such year, over

2. The amount, if any, of the installment paid on or before the last date prescribed for payment.

(c) The period of the underpayment for which interest and penalties shall apply shall commence on the date the installment was required to be paid, determined without regard to any extensions of time, and shall terminate on the earlier of the following dates:

1. The first day of the fourth month following the close of the taxable year; or

2. With respect to any portion of the underpayment, the date on which such portion is paid.

For purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subparagraph (b)1. for such installment date.

(d) No penalty or interest for underpayment of any installment of estimated tax shall be imposed if the total amount of all such payments made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the lesser of:

1. An amount equal to the tax computed at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on the return for, and the law applicable to, the preceding taxable year; or

2. An amount equal to 80 percent of the tax finally due for the taxable year; or

3. An amount equal to the tax shown on the taxpayer's return for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of 12 months.

(e) For purposes of paragraphs (b) and (d), the term "tax" shall mean the excess of the tax imposed by this code over all amounts properly credited against such tax for the taxable year.

(f) The application of this subsection to taxable years of less than 12 months shall be in accordance with regulations prescribed by the department.

(g) The provisions of this subsection shall not apply with respect to any taxable year beginning before January 1, 1972.

(3) The department may provide by regulation for a credit against estimated taxes for any taxable year of any amount determined by the taxpayer or by the department to be an overpayment of the tax imposed by this code for a preceding taxable year.

History.—s. 1, ch. 71-984.

PART V

ACCOUNTING

220.41 Taxable year.—

(1) For purposes of the tax imposed by this code and the returns required to be filed, the taxable year of a taxpayer shall be the same as the taxable year of such taxpayer for federal income tax purposes.

(2) If the taxable year of a taxpayer is changed for federal income tax purposes, the taxable year of such taxpayer for purposes of this code shall be similarly changed.

(3) Notwithstanding the provisions of subsections (1) and (2), if the department terminates the taxable year of a taxpayer under the provisions of chapter 214 relating to jeopardy assessments, the tax shall be computed for the period determined by such action.

History.—s. 1, ch. 71-984.

220.42 Methods of accounting.—

(1) For purposes of this code, a taxpayer's method of accounting shall be the same as such taxpayer's method of accounting for federal income tax purposes, except as provided in subsection (3). If no method of accounting has been regularly used by a taxpayer, net income for purposes of this code shall be computed by such method as in the opinion of the department fairly reflects income.

(2) If a taxpayer's method of accounting is changed for federal income tax purposes, the taxpayer's method of accounting for purposes of this code shall be similarly changed.

(3) Any taxpayer which has elected for federal income tax purposes to report any portion of its income on the completed contract method of accounting under Treasury Regulation 1.451-3(b)(2) may elect to return the income so reported on the percentage of completion method of accounting under Treasury Regulation 1.451-3(b)(1), provided the taxpayer regularly maintains its books of account and reports to its shareholders on the percentage of completion method. The election provided by this subsection shall be allowed only if it is made, in such manner as the department may prescribe, not later than the due date, including any extensions thereof, for filing a return for the taxpayer's first taxable year under this code in which a portion of its income is returned on the completed contract method of ac-

counting for federal tax purposes. An election made pursuant to this subsection shall apply to all subsequent taxable years of the taxpayers unless the department consents in writing to its revocation.
History.—s. 1, ch. 71-984; s. 9, ch. 72-278.

220.43 Reference to federal determinations.—
(1) To the extent not inconsistent with the provisions of this code or forms or regulations prescribed by the department, each taxpayer making a return under this code shall take into account the items of income, deduction, and exclusion on such return in the same manner and amounts as reflected in such taxpayer's federal income tax return for the same taxable year.
(2) A final determination under the Internal Revenue Code adjusting any item or items of income, deduction, or exclusion for any taxable year shall be prima facie correct for purposes of this code to the extent such item or items enter into the determination of net income under this code.
(3) If there has been implementing legislation under subsection 220.03(3), and to the extent required in regulations prescribed by the department, any taxpayer making a return under this code may be required to indicate the item or items of income, deduction, and exclusion which would enter into the determination of income if this code were amended to incorporate the Internal Revenue Code as amended and in effect for such taxable year.
History.—s. 1, ch. 71-984.

220.44 Adjustments.—If it appears to the director that any agreement, understanding, or arrangement exists between any taxpayers, or between any taxpayer and any other person, which causes any taxpayer's net income subject to tax to be reflected improperly or inaccurately, the director may adjust any item or items of income, deduction, or exclusion, or any factor taken into account in apportioning income to this state, to the extent necessary clearly to reflect the net income of such taxpayer.
History.—s. 1, ch. 71-984.

PART VI

MISCELLANEOUS

220.51 Promulgation of rules and regulations.—In accordance with the Administrative Procedure Act, chapter 120, the department is authorized to make, promulgate, and enforce such reasonable rules and regulations, and to prescribe such forms relating to the administration and enforcement of the provisions of this code, as it may deem appropriate, including:
(1) Rules for initial implementation of this code and for taxpayers' transitional taxable years commencing before and ending after January 1, 1972;
(2) Rules or regulations to clarify whether certain groups, organizations, or associations formed under the laws of this state or any other state, country, or jurisdiction shall be deemed "taxpayers" for the purposes of this code, in accordance with the legislative declarations of intent in s. 220.02; and
(3) Regulations relating to consolidated reporting for affiliated groups of corporations, in order to provide for an equitable and just administration of this code with respect to multicorporate taxpayers.
History.—s. 1, ch. 71-984.

220.52 Arrangement and captions.—No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular sections or provisions of this code, nor shall any caption be given any legal effect.
History.—s. 1, ch. 71-984.

220.53 Adoption of chapter 214.—The tax imposed by this chapter is hereby made subject to chapter 214, as that chapter is modified by s. 220.15 and by paragraphs 220.23(2)(c) and (d).
History.—s. 1, ch. 71-984.

220.54 Administration of law.—The cost of preparing and distributing printed documents, reports, forms, and paraphernalia for the collection of the tax imposed by this code and the inspection and enforcement duties required in connection therewith shall be borne by this state through a general revenue appropriation to the department.
History.—s. 2, ch. 74-324.

PART VII

SPECIAL RULES RELATING TO TAXATION OF BANKS AND SAVINGS ASSOCIATIONS

220.62 Definitions.—For purposes of this part:
(1) The term "bank" shall mean a bank holding company registered under the Bank Holding Company Act of 1956 of the United States, 12 U.S.C. ss. 1841-1849, as amended, or a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia), of any state, or of any territory, a substantial part of the business of which consists of receiving deposits and making loans and discounts or of exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency and which is subject by law to supervision and examination by state, territorial, or federal authority having supervision over banking institutions. The term "bank" shall also include any banking association, corporation, or other

similar organization organized and operated under the laws of any foreign country, which banking association, corporation, or other organization is also operating in this state pursuant to s. 659.67.

(2) The term "savings association" shall mean any savings association, building and loan association, savings and loan association, or mutual savings bank not having capital stock, whether subject to the laws of this or any other jurisdiction.

History.—s. 8, ch. 72-278; s. 1, ch. 73-152; s. 6, ch. 78-299.

220.63 Franchise tax imposed on banks and savings associations.—

(1) A franchise tax measured by net income is hereby imposed on every bank and savings association for each taxable year commencing on or after January 1, 1973 and for each taxable year which begins before and ends after January 1, 1973. The franchise tax base of any bank for a taxable year which begins before and ends after January 1, 1972, shall be prorated in the manner prescribed for the proration of net income under s. 220.12(2).

(2) The tax imposed by this section shall be an amount equal to 5 percent of the bank or savings association's franchise tax base for the taxable year.

(3) For purposes of this part, the franchise tax base shall be adjusted federal income, as defined in s. 220.13, less $5,000.

(4) Nothing contained in this part shall be construed to prohibit a savings association, in computing its franchise tax base, from claiming the maximum deduction allowed under s. 593 of the Internal Revenue Code.

History.—s. 8, ch. 72-278; s. 2, ch. 73-152.

220.64 Adoption of parts III-VI.—To the extent not manifestly incompatible with the provisions of this part, parts III-VI of this code shall apply to the franchise tax imposed by this part. Under rules prescribed in s. 220.131, a consolidated return may be filed by any affiliated group of corporations composed of one or more banks or savings associations, its or their Florida parent corporation, and any nonbank or nonsavings subsidiaries of said parent.

History.—s. 8, ch. 72-278; s. 3, ch. 73-152.

220.65 Discharge of tax liability.—The tax imposed by this part shall be in lieu of, and no bank or savings association shall be subject to, the tax imposed under part II.

History.—s. 8, ch. 72-278; s. 4, ch. 73-152.

220.67 Pre-1976 taxation of banks and savings associations under this part.—

(1) A bank or savings association, as defined in s. 220.62, which has its place of commercial domicile located outside this state shall not be required to file a return or pay a tax under this chapter for each year ending before January 1, 1976.

(2) A bank or savings association, as defined in s. 220.62, which has its place of commercial domicile in this state shall not apportion its net income under s. 220.15 or chapter 214, but shall be subject to tax on 100 percent of its franchise tax base, regardless of where earned, under this part for each taxable year ending before January 1, 1976.

History.—s. 5, ch. 73-152.

220.68 Credit against tax.—There shall be allowed as a credit against the tax imposed by part VII for the taxable year an amount which shall not exceed whichever of the following is the lesser:

(1) The intangible tax imposed upon, and paid by, any bank or savings association pursuant to s. 199.032(1); or

(2) Forty percent of the tax due pursuant to part VII before the credit.

However, the credit granted in this section shall be allowed only if the department is permitted by all appropriate federal agencies to audit the accounts and records of the bank or savings association claiming the credit, in order to determine that all taxes due the State of Florida are in fact paid, and the credit shall not be granted for any taxable year in which the department is denied access to such accounts and records.

History.—s. 6, ch. 73-152.

220.69 Special rules for foreign banks and foreign savings associations.—A bank or savings association, as defined in s. 220.62, which has its place of commercial domicile outside this state and which is not required to qualify to do business in this state shall not be required to file a return or pay a tax under this code, provided such organization receives no tax benefit by way of apportionment or allocation in its state of commercial domicile by virtue of its income producing activities conducted in this state. It is the express intent of the legislature that this section shall not apply to a bank or savings association having its commercial domicile outside this state unless 100 percent of its tax base attributable to its business activities conducted within this state is subject to taxation by the state of its commercial domicile.

History.—s. 7, ch. 73-152.

TITLE XV

HOMESTEAD AND EXEMPTIONS

CHAPTER 222

METHOD OF SETTING APART HOMESTEAD AND EXEMPTIONS

222.01 Designation of homestead by owner before levy.—Whenever any person, being the head of a family, residing in this state desires to avail himself of the benefit of the provisions of the constitution and laws exempting property as a homestead from forced sale under any process of law, he may make a statement, in writing, containing a description of the real property, mobile home, or modular home claimed to be exempt and declaring that the same is the homestead of the party in whose behalf such claim shall be made. Such statement shall be signed by the person making the same and recorded in the circuit court.

History.—s. 1, ch. 1715, 1869; RS 1998; GS 2520; RGS 3875; CGL 5782; s. 20, ch. 73-334; s. 2, ch. 77-299.

cf.—s. 4, Art. X, State Const.

s. 196.141 Homestead exemptions, duty of property appraiser.

222.02 Designation of homestead after the levy.—Whenever a levy is made upon the lands, tenements, mobile home, or modular home of such head of a family whose homestead has not been set apart and selected, such person, his agent or attorney, may in writing notify the officer making such levy, by notice under oath made before any officer of this state duly authorized to administer the same, at any time before the day appointed for the sale thereof, of what he regards as his homestead, with a description thereof, and the remainder only shall be subject to sale under such levy.

History.—s. 2, ch. 1715, 1869; RS 1999; GS 2521; RGS 3876; CGL 5783; s. 3, ch. 77-299.

222.03 Survey at instance of dissatisfied creditor.—If the creditor in any execution or process sought to be levied is dissatisfied with the quantity of land selected and set apart, and shall himself, or by his agent or attorney, notify the officer levying, the officer shall at the creditor's request cause the same to be surveyed, and when the homestead is not within the corporate limits of any town or city, the person claiming said exemption shall have the right to set apart that portion of land belonging to him which includes the residence, or not, at his option, and if the first tract or parcel does not contain 160 acres, the said officer shall set apart the remainder from any other tract or tracts claimed by the debtor, but in every case taking all the land lying contiguous until the whole quantity of 160 acres is made up. The person claiming the exemption shall not be forced to take as his homestead any tract or portion of a tract, if any defect exists in the title, except at his option. The expense of such survey shall be chargeable on the execution as costs; but if it shall appear that the person claiming such exemption does not own more than 160 acres in the state, the expenses of said survey shall be paid by the person directing the same to be made.

History.—s. 3, ch. 1715, 1869; s. 1, ch. 1944, 1873; RS 2000; GS 2522; RGS 3877; CGL 5784.

222.04 Sale after survey.—After such survey has been made, the officer making the levy may sell the property levied upon not included in such property set off in such manner.

History.—s. 4, ch. 1715, 1869; RS 2001; GS 2523; RGS 3878; CGL 5785.

222.05 Setting apart leasehold.—Any person owning and occupying any dwelling house, including a mobile home used as a residence, or modular home, on land not his own which he may lawfully possess, by lease or otherwise, and claiming such house, mobile home, or modular home as his homestead, shall be entitled to the exemption of such house, mobile home, or modular home from levy and sale as aforesaid.

History.—s. 5, ch. 1715, 1869; RS 2002; GS 2524; RGS 3879; CGL 5786; s. 1, ch. 77-299.

222.06 Method of exempting personal property; inventory.—

(1) When a levy is made by writ of execution, writ of attachment, or writ of garnishment upon any personal property, money, choses in action, or other property of a personal nature which may be exempt from levy and sale by any process upon which levy shall have been made, the debtor, if he wishes to claim such property as exempt from sale, as aforesaid, shall make or cause to be made, within 10 days from the date of the levy, an inventory of the whole of his personal property, affixing thereto true and correct cash valuations thereof; shall attach to such inventory an affidavit made by himself or his attorney or authorized agent that the inventory contains a true and correct list or schedule of all the personal property owned by him in this state, and the true cash value thereof; and shall in such schedule designate which property he claims to be exempt or wishes to have set aside as his exemption.

(2) The original of the inventory and affidavit shall be filed with the court which issued the writ. A copy thereof shall be served upon the judgment creditor or plaintiff or his attorney or agent, and one copy shall be delivered to the sheriff of the county through whose department service was made. Thereafter, the judgment creditor or his agent or attorney shall have 20 days to file any objection to the inventory and affidavit served by the debtor. In the event that the plaintiff or his agent or attorney do not file any contest or objection within the 20-day period, he shall be deemed to have admitted the truth of inventory or affidavit, and the judgment debtor shall be entitled to an order of the court exempting those items claimed by the defendant in the inventory. In the event of an objection being filed by the plaintiff or his attorney, the court shall set a hearing on said objection by notice of hearing of either party and shall thereafter hold a hearing to determine the validity of the objection claimed by the plaintiff.

(3) If notice of contest is filed as aforesaid, the court shall appoint a disinterested appraiser who is a citizen of the county and who, after having made oath before the court that he will faithfully appraise such property, shall appraise the same at its cash value and affix to the several items or property enumerated in the inventory or schedule its cash value, and the appraisement shall be signed and sworn to by the appraiser.

(4) Notice of the time and place of appraisement shall be given to the creditor or his attorney or agent at least 24 hours before the making of the appraisement. The appraiser shall be entitled to a reasonable fee as determined by the court, and the same shall be allowed as costs, but no costs shall be required of the debtor for the proceedings to appraise and exempt any property claimed by him to be exempt; however, any property owned by him, over and above the amount allowed by law as exempt, shall be liable to sale under such process and for the costs of this proceeding.

(5) During this period of time, the sheriff shall safeguard any property seized under the writ until a true copy of a court order has been delivered clearly stating which property has been exempted under the contested inventory and ordering the sale of the property which remains under levy. If more than 90 days elapse after delivery of the inventory or schedule and affidavit, and no court order has been received, then the sheriff shall sell the items under levy and shall remit these funds as provided in s. 56.275. The prevailing party at the time of the hearing may be entitled to reasonable attorney's fees and shall be entitled to costs. The costs shall include, but not be limited to, appraisal fees, storage fees, and such other costs incurred as a result of said levy.

(6) No inventory or schedule to exempt personal property from sale shall be accepted prior to a levy on such personal property.

(7) This section is repealed on July 1, 1980.

History.—s. 7, ch. 1715, 1869; RS 2003; GS 2525; ss. 1, 2, ch. 6927, 1915; RGS 3880; CGL 5787; ss. 11, 12, ch. 79-396.

222.07 Defendant's rights of selection.—Upon the completion of the inventory the person entitled to the exemption, his agent or attorney, may select from such an inventory an amount of property not exceeding, according to such appraisal, the amount of value exempted; but if the person so entitled, or his agent or attorney, does not appear and make such selection, the officer shall make the selection for him, and the property not so selected as exempt may be sold.

History.—s. 8, ch. 1715, 1869; RS 2004; GS 2526; RGS 3881; CGL 5788.

222.08 Jurisdiction to set apart homestead and exemption.—The circuit courts have equity jurisdiction to order and decree the setting apart of homesteads and of exemptions of personal property from forced sales.

History.—s. 2, ch. 3246, 1881; RS 2005; GS 2527; RGS 3882; CGL 5789.

222.09 Injunction to prevent sale.—The circuit courts have equity jurisdiction to enjoin the sale of all property, real and personal, that is exempt from forced sale.

History.—s. 1, ch. 3246, 1881; RS 2006; GS 2528; RGS 3883; CGL 5790.

222.10 Jurisdiction to subject property claimed to be exempt.—The circuit courts have equity jurisdiction upon bill filed by a creditor or other person interested in enforcing any unsatisfied judgment or decree, to determine whether any property, real or personal, claimed to be exempt, is so exempt, and in case it be not exempt, the court shall, by its decree subject it, or so much thereof as may be necessary, to the satisfaction of said judgment or decree and may enjoin the sheriff or other officer from setting apart as exempt property, real or personal, which is not exempt, and may annul all ex-

emptions made and set apart by the sheriff or other officer.

History.—s. 3, ch. 3246, 1881; RS 2007; GS 2529; RGS 3884; CGL 5791.

222.11 Exemption of wages from garnishment.—No writ of attachment or garnishment or other process shall issue from any of the courts of this state to attach or delay the payment of any money or other thing due to any person who is the head of a family residing in this state, when the money or other thing is due for the personal labor or services of such person.

History.—s. 1, ch. 2065, 1875; RS 2008; GS 2530; RGS 3885; CGL 5792.

222.12 Proceedings for exemption.—Whenever any money or other thing due for labor or services as aforesaid is attached by such process, the person to whom the same is due and owing may make oath before the officer who issued the process that the money attached is due for the personal labor and services of such person, and he is the head of a family residing in said state. When such an affidavit is made, notice of same shall be forthwith given to the party, or his attorney, who sued out the process, and if the facts set forth in such affidavit are not denied under oath within 2 days after the service of said notice, the process shall be returned, and all proceedings under the same shall cease. If the facts stated in the affidavit are denied by the party who sued out the process within the time above set forth and under oath, then the matter shall be tried by the court from which the writ or process issued, in like manner as claims to property levied upon by writ of execution are tried, and the money or thing attached shall remain subject to the process until released by the judgment of the court which shall try the issue.

History.—s. 2, ch. 2065, 1875; RS 2009; GS 2531; RGS 3886; CGL 5793.

222.13 Life insurance policies; disposition of proceeds.—

(1) Whenever any person residing in the state shall die leaving insurance on his life, the said insurance shall inure exclusively to the benefit of the person for whose use and benefit such insurance is designated in the policy, and the proceeds thereof shall be exempt from the claims of creditors of the insured unless the insurance policy or a valid assignment thereof provides otherwise. Notwithstanding the foregoing, whenever the insurance, by designation or otherwise, is payable to the insured or his estate or to his executors, administrators, or assigns, the insurance proceeds shall become a part of the insured's estate for all purposes and shall be administered by the personal representative of the estate of the insured in accordance with the probate laws of the state in like manner as other assets of the insured's estate.

(2) Payments as herein directed shall, in every such case, discharge the insurer from any further liability under the policy, and the insurer shall in no event be responsible for, or be required to see to, the application of such payments.

History.—s. 1, ch. 1864, 1872; RS 2347; s. 1, ch. 4555, 1897; s. 1, ch. 5165, 1903; GS 3154; RGS 4977; CGL 7065; s. 1, ch. 29861, 1955; s. 1, ch. 59-333; s. 1, ch. 63-230; s. 1, ch. 70-376; s. 51, ch. 71-355.

222.14 Exemption of cash surrender value of life insurance policies and annuity contracts from legal process.—The cash surrender values of life insurance policies issued upon the lives of citizens or residents of the state and the proceeds of annuity contracts issued to citizens or residents of the state, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured or of any creditor of the person who is the beneficiary of such annuity contract, unless the insurance policy or annuity contract was effected for the benefit of such creditor.

History.—s. 1, ch. 10154, 1925; CGL 7066; s. 1, ch. 78-76.

222.15 Wages due deceased employee may be paid wife, etc.—

(1) It is lawful for any employer, in case of the death of an employee, to pay to the wife or husband, and in case there is no wife or husband, then to the child or children, provided the child or children be over the age of 18 years, and in case there is no child or children, then to the father or mother, any wages or traveling expenses that may be due said employee at the time of his death.

(2) It is also lawful for the Division of Employment Security of the Department of Labor and Employment Security, in case of death of any unemployed individual, to pay to those persons referred to in subsection (1) any unemployment compensation payments that may be due said individual at the time of his death.

History.—s. 1, ch. 7366, 1917; RGS 4979; CGL 7068; s. 1, ch. 20407, 1941; s. 1, ch. 63-165; ss. 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 10, ch. 79-7.
cf.—s. 215.28 Payroll deductions due deceased employee.

222.16 Wages or unemployment compensation payments so paid not subject to administration.—Any wages, traveling expenses, or unemployment compensation payments so paid under the authority of s. 222.15 shall not be considered as assets of the estate and subject to administration; provided, however, that the traveling expenses so exempted from administration shall not exceed the sum of $300.

History.—s. 2, ch. 7366, 1917; RGS 4980; CGL 7069; s. 2, ch. 20407, 1941; s. 2, ch. 63-165.
cf.—s. 215.28 Payroll deductions.

222.17 Manifesting and evidencing domicile in Florida.—

(1) Any person who shall have established a domicile in this state may manifest and evidence the same by filing in the office of the Clerk of the Circuit Court for the county in which the said person shall reside, a sworn statement showing that he resides in and maintains a place of abode in that county which he recognizes and intends to maintain as his permanent home.

(2) Any person who shall have established a domicile in the State of Florida, but who shall maintain another place or places of abode in some other state or states, may manifest and evidence his domicile in this state by filing in the office of the Clerk of the Circuit Court for the county in which he resides, a sworn statement that his place of abode in Florida constitutes his predominant and principal home,

and that he intends to continue it permanently as such.

(3) Such sworn statement shall contain, in addition to the foregoing, a declaration that the person making the same is, at the time of making such statement, a bona fide resident of the state, and shall set forth therein his place of residence within the state, the city, county and state wherein he formerly resided, and the place or places, if any, where he maintains another or other place or places of abode.

(4) Any person who shall have been or who shall be domiciled in a state other than the State of Florida, and who has or who may have a place of abode within the State of Florida, or who has or may do or perform other acts within the State of Florida, which independently of the actual intention of such person respecting his domicile might be taken to indicate that such person is or may intend to be or become domiciled in the State of Florida, and if such person desires to maintain or continue his domicile in such state other than the State of Florida, he may manifest and evidence his permanent domicile and his intention to permanently maintain and continue his domicile in such state other than the State of Florida, by filing in the office of the Clerk of the Circuit Court in any county in the State of Florida in which he may have a place of abode or in which he may have done or performed such acts which independently may indicate that he is or may intend to be or become domiciled in the State of Florida, a sworn statement that his domicile is in such state other than the State of Florida, as the case may be, naming such state where he is domiciled and stating that he intends to permanently continue and maintain his domicile in such other state so named in said sworn statement. Such sworn statement shall also contain a declaration that the person making the same is at the time of the making of such statement a bona fide resident of such state other than the State of Florida, and shall set forth therein his place of abode within the State of Florida, if any. Such sworn statement may contain such other and further facts with reference to any acts done or performed by such person which such person desires or intends not to be construed as evidencing any intention to establish his domicile within the State of Florida.

(5) The sworn statement permitted by this section shall be signed under oath before an official authorized to take affidavits. Upon the filing of such declaration with the Clerk of the Circuit Court, it shall be the duty of the clerk in whose office such declaration is filed to record the same in a book to be provided for that purpose. For the performance of the duties herein prescribed, the Clerk of the Circuit Court shall collect a service charge for each declaration as provided in s. 28.24.

(6) It shall be the duty of the Department of Legal Affairs to prescribe a form for the declaration herein provided for, and to furnish the same to the several clerks of the circuit courts of the state.

(7) Nothing herein shall be construed to repeal or abrogate other existing methods of proving and evidencing domicile except as herein specifically provided.

History.—ss. 1-6, ch. 20412, 1941; s. 1, ch. 26896, 1951; ss. 11, 35, ch. 69-106; s. 15, ch. 70-134.

222.18 Exempting disability income benefits from legal processes.—Disability income benefits under any policy or contract of life, health, accident, or other insurance of whatever form, shall not in any case be liable to attachment, garnishment, or legal process in the state, in favor of any creditor or creditors of the recipient of such disability income benefits, unless such policy or contract of insurance was effected for the benefit of such creditor or creditors.

History.—s. 1, ch. 20741, 1941.

222.19 Surviving spouse as head of family; defined.—

(1) It is the declared intention of the Legislature that the purpose of the constitutional exemption of the homestead is to shelter the family and the surviving spouse, and such purpose should be carried out in a liberal spirit and in favor of those entitled to the exemption.

(2) The head-of-family status required to qualify the owner's property for homestead exemption, permitting such property to be exempt from forced sale under process of any court as set forth in s. 4, Art. X of the State Constitution, shall inure to the benefit of the surviving tenant by the entirety or spouse of the owner. The acquisition of this status shall inure to the surviving spouse irrespective of the fact that there are not two persons living together as one family under the direction of one of them who is recognized as the head of the family.

History.—s. 1, ch. 76-36.

222.20 Nonavailability of federal bankruptcy exemptions.—In accordance with the provision of s. 522(b) of the Bankruptcy Code of 1978 (11 U.S.C. s. 522(b)), residents of this state shall not be entitled to the federal exemptions provided in s. 522(d) of the Bankruptcy Code of 1978 (11 U.S.C. s. 522(d)). Nothing herein shall affect the exemptions given to residents of this state by the State Constitution and the Florida Statutes.

History.—s. 1, ch. 79-363.

TITLE XVI

EDUCATION

CHAPTER 228

PUBLIC EDUCATION: GENERAL PROVISIONS

228.001 Name.—All of the laws of Florida relating to public education shall be known as and shall comprise "The Florida School Code."

History.—s. 2, ch. 29764, 1955; s. 1, ch. 72-221.

228.002 Purpose; construction.—The purpose of the Florida School Code is for the establishment, maintenance and support of public education in the state and the provisions thereof shall be liberally construed to the end that its objects may be effected. It is declared to be the legislative intent that if any section, subsection, sentence, clause or provision of the Florida School Code is held invalid, the remainder of the code shall not be affected.

History.—s. 3, ch. 29764, 1955; s. 1, ch. 67-181; s. 1, ch. 72-221.

228.01 State plan for public education.—It is the purpose of the state plan for public education to insure the establishment of a state system of schools, courses, classes, institutions, and services adequate to meet the educational needs of all citizens of the state.

History.—s. 201, ch. 19355, 1939; CGL 1940 Supp. 892(20); s. 1, ch. 72-221.

228.02 State system of public education established.—There is organized and established in keeping with the state plan for public education a state system of public education which shall be maintained and supported as hereinafter provided.

History.—s. 202, ch. 19355, 1939; CGL 1940 Supp. 892(21); s. 1, ch. 72-221.

228.03 Scope of state system.—The state system of public education includes such school systems, schools, institutions, agencies, services, and types of instruction as may be provided and authorized by law, or by regulations of the state board within limits prescribed by law.

History.—s. 203, ch. 19355, 1939; CGL 1940 Supp. 892(22); s. 1, ch. 72-221.
cf.—s. 229.041 Regulations of state board have force of law.

228.04 Uniform system of public schools included.—As required by s. 1, Art. IX of the Constitution, this state system of public education shall include the uniform system of free public schools as established and which shall be liberally maintained.

History.—s. 204, ch. 19355, 1939; CGL 1940 Supp. 892(23); s. 22, ch. 69-216; s. 1, ch. 72-221.

228.041 Specific definitions.—Specific definitions shall be as follows and wherever such defined words or terms are used in the Florida School Code they shall be used as follows:

(1) STATE SYSTEM OF PUBLIC EDUCATION.—The state system of public education shall consist of such publicly supported and controlled schools, institutions of higher education, other educational institutions, and other educational services as may be provided or authorized by the Constitution and laws of Florida.

(a) *Public schools.*—The public schools shall consist of kindergarten classes; elementary and secondary school grades and special classes; and adult, part-time, vocational, and evening schools, courses, or classes authorized by law to be operated under the control of school boards.

(b) *Community colleges.*—Community colleges shall consist of all educational institutions operated by local community college district boards of trustees under specific authority and regulations of the state board and offering courses and programs of

general and academic education parallel to that of the first and second years of work in institutions in the State University System, of occupational education, and of adult continuing education.

(c) *Institutions of higher education.*—The institutions of higher education shall consist of all state-supported educational institutions offering work above the public school level, other than community colleges, that are authorized and established by law, together with all activities and services authorized by law to be administered by or through each of those institutions.

(d) *Other educational institutions.*—Other state-supported institutions primarily of an educational nature shall be considered parts of the state system of public education. The educational functions of other state-supported institutions not primarily of an educational nature but which have specific educational responsibilities shall be considered responsibilities belonging to the state system of public education.

(e) *Other educational services.*—These shall include health services and such special services and functions as may be authorized by law or by regulations of the state board as prescribed by law and as are considered necessary to improve, promote, and protect the adequacy and efficiency of the state system of public education.

(2) DISTRICT SCHOOL SYSTEM.—A district school system is a part of the state system of public education and shall consist of all schools, courses, agencies and services under the control of a school board.

(3) SCHOOL DISTRICT.—A school district is a district created and existing pursuant to s. 4, Art. IX of the State Constitution.

(4) SCHOOL DISTRICT MILLAGE ELECTION.—A school district millage election is the election which may be held at any time for the purpose of voting the school district tax levy, except that not more than one election shall be held during any 12-month period.

(5) SCHOOL.—A school is an organization of pupils for instructional purposes on an elementary, secondary or other public school level, approved under regulations of the state board.

(6) SCHOOL CENTER.—A school center is a place of location of any school or schools on the same or on adjacent sites or on a site under the control of the principal and within a reasonable distance of the main center as prescribed by regulations of the State Board of Education.

(7) SCHOOL PLANT.—A school plant includes all physical features incident to or necessary to accommodate pupils and teachers and the activities of the educational program of each school center. It includes site, playgrounds and equipment, athletic field, the school building or buildings with all their mechanical and educational equipment, gymnasiums, vocational buildings, bus sheds, teachers' homes, and other equipment wherever located necessary to provide an adequate school program.

(8) SCHOOL OFFICERS.—The officers of the state system of public education shall be the Commissioner of Education and the members of the State Board of Education, and for each district school system the officers shall be the superintendent of schools and members of the school board.

(9) INSTRUCTIONAL PERSONNEL.—"Instructional personnel" shall mean any member of the instructional staff as defined by regulations of the state board and shall be used synonymously with the word "teacher" and shall include teachers, librarians, and others engaged in an instructional capacity in the schools. A student who is enrolled in an institution of higher education approved by the state board for teacher training and who is jointly assigned by such institution of higher education and a school board to perform practice teaching under the direction of a regularly employed and certificated teacher shall be accorded the same protection of the laws as that accorded the certificated teacher while serving such supervised internship, except for the right to bargain collectively with employees of the school board.

(10) ADMINISTRATIVE PERSONNEL.—Administrative personnel comprises the superintendent, supervisors, principals, and those persons who may be employed as professional administrative assistants to the superintendent or to the principal, but does not include secretarial, clerical, or other office assistants.

(a) *Supervisor.*—A supervisor is a non-school-based employee, qualified in accordance with s. 231.15, who is assigned responsibility for working directly with teachers and other personnel in improvement of the instructional program.

(b) *Principal.*—A principal is an employee, qualified in accordance with s. 231.15, who is assigned responsibility for administrative direction and instructional supervision at an individual school. For purposes of classification, he may be either:

1. A building principal who is designated as the administrative head of a school; or

2. An assistant principal who is assigned limited administrative and supervisory duties within a school.

(c) *Professional administrative assistant.*—A professional administrative assistant is an employee assigned responsibility as an administrative or supervisory head of a support activity, noninstructional activity, or district-level function.

(11) PARENT AND SCHOOL PATRON.—The terms "parent" and "school patron" shall be interpreted to refer to either or both parents, to any guardian, or to any person in parental relationship to a child or exercising supervisory authority in place of a parent over a child of public school age.

(12) SCHOOL GRADE.—A school grade is one of the divisions or sections of the public school program which represents the work of a school year.

(13) SCHOOL DAY.—A school day for any group of pupils is that portion of the day in which school is actually in session and shall comprise not less than 5 net hours excluding intermissions for all grades above the third; not less than 4 net hours for the first three grades; and not less than 3 net hours in kindergarten, or the equivalent as calculated on a weekly basis under regulations of the state board. The minimum length of the school day herein specified may be decreased under regulations of the state board. However, senior high school students who lack three

credits or less shall be allowed to attend as a school day that portion of the day necessary to earn needed credits.

(14) SCHOOL MONTH.—A school month shall consist of 20 school days, excluding any school holidays.

(15) SCHOOL HOLIDAY.—A school holiday is a legal or other prescribed holiday falling on a regular school day during which schools are authorized in accordance with regulations of the state board not to be in session.

(16) SCHOOL VACATION PERIOD.—That period of the school year beginning on or before December 24 and continuing for a period of time to be fixed by the school board which shall include January 1, shall be set apart as a vacation period, and during that time schools shall not be in session and that time shall not be considered a part of the school month. Any period when schools are not in session between the end of 1 school year and the beginning of the next school year shall also be considered a school vacation period.

(17) SCHOOL YEAR.—The school year shall comprise the period during which the schools are regularly in session for the minimum number of 180 days of instruction or the equivalent on an hourly basis for pupils as specified by regulations of the state board for pupils plus periods for preschool and post-school conferences as approved under regulations of the state board.

(18) SCHOOL FISCAL YEAR.—The school fiscal year shall begin on July 1 and shall end at the close of June 30 in each and every year.

(19) EXCEPTIONAL STUDENTS.—The term "exceptional student" means any child or youth who has been certified by a specialist qualified under regulations of the state board to examine students who may be unsuited for enrollment in a regular class of the public schools or is unable to be adequately educated in the public schools without the provision of special classes, instruction, facilities, or related services, or a combination thereof. The term "exceptional student" includes the following: The mentally retarded, the speech-impaired, the deaf and hard of hearing, the blind and partially sighted, the crippled and other health-impaired, the emotionally disturbed and socially maladjusted, those with specific learning disabilities, and the gifted.

(20) SPECIAL EDUCATION SERVICES.—The term "special education services" means such related services in addition to instruction of the exceptional child as transportation, diagnostic and evaluation services, social services, physical and occupational therapy, job placement, orientation and mobility training, braillists, typists and readers for the blind, specified materials and equipment, and other such services as approved by regulations of the state board.

(21) YEAR OF SERVICE.—The minimum time which may be recognized in administering the state program of education, not including retirement, as a year of service by a school employee shall be full-time actual service, and beginning July, 1963, such service shall also include sick leave and holidays for which compensation was received but excluding all other types of leave and holidays for a total of more than one-half of the number of days required for the normal contractual period of service for this position held, which shall be 196 days or longer, or the minimum required for the district to participate in the minimum foundation program in the year service was rendered, or the equivalent for service performed on a daily or hourly basis; provided further that absence from duty after the date of beginning service shall be covered by leave duly authorized and granted; provided further that the school board shall have authority to establish a different minimum for local district school purposes.

(22) SCHOOL LUNCH PERSONNEL.—For the purpose of the Florida School Code, wherever the words "school lunch personnel" appear they shall be construed to mean school food service personnel.

(23) COMMUNITY COLLEGE DISTRICT.—A community college district is a part of the state system of public education. It shall consist of such centers, courses and services as are authorized by the state board under control of the district board of trustees.

(24) VOCATIONAL EDUCATION DEFINED.—Vocational education is defined as meaning that instruction not leading to a baccalaureate degree, either graded or ungraded, listed below:

(a) Instruction which is given to persons for the purpose of developing occupational proficiency necessary for gainful employment;

(b) Instruction in exploratory courses designed to familiarize persons with the world of work and motivating them to pursue courses in vocational education;

(c) Instruction in prevocational or technically oriented industrial arts; or

(d) Instruction in vocationally oriented home economics.

(25) TEACHER AIDE.—A teacher aide is any paid person appointed by a school board to assist members of the instructional staff in carrying out their instructional or professional duties and responsibilities.

(26) SCHOOL VOLUNTEER.—A school volunteer is any nonpaid person who may be appointed by a school board or its designee. School volunteers may include, but not be limited to, parents, senior citizens, students, and others who assist the teacher or other members of the school staff.

(27) SUSPENSION.—Suspension is the temporary removal of a student from his regular school program for a period not to exceed 10 school days.

(28) EXPULSION.—Expulsion is the removal of the right and obligation of a student to attend a public school under conditions set by the school board, and for a period of time not to exceed the remainder of the term or school year and 1 additional year of attendance.

(29) CORPORAL PUNISHMENT.—Corporal punishment is the moderate use of physical force or physical contact by a teacher or principal as may be necessary to maintain discipline or to enforce school rule. However, the term "corporal punishment" shall not include the use of such reasonable force by a teacher or principal as may be necessary to protect himself or other students from disruptive students.

(30) ALTERNATIVE MEASURES FOR STU-

DENTS WITH SPECIAL NEEDS.—Alternative measures for students with special needs are measures designed to meet the special needs of a student that cannot be met by regular school curricula, including, but not limited to, student services, parent conferences, physical examinations, remedial techniques, educational alternatives, and properly supervised activities relating to the upkeep and maintenance of school facilities, notwithstanding the provisions of chapter 450 to the contrary.

History.—s. 2, ch. 19203, 1939; CGL 892(216); s. 46, ch. 23726, 1947; s. 4, ch. 29764, 1955; ss. 1, 2, ch. 57-217; ss. 1, 2, ch. 59-371; s. 1, ch. 61-288; s. 1, ch. 63-495; s. 1, ch. 63-376; s. 1, ch. 65-183; ss. 1, 2, 13, ch. 65-239; s. 1, ch. 65-506; s. 1, ch. 67-387; s. 1, ch. 67-438; ss. 1-3, ch. 68-5; ss. 1, 10, ch. 68-24; s. 1, ch. 69-171; s. 29, ch. 69-216; s. 1, ch. 69-300; s. 7, ch. 69-344; ss. 1, 17, ch. 69-402; s. 1, ch. 70-193; s. 1, ch. 71-76; s. 1, ch. 71-95; s. 1, ch. 71-162; s. 1, ch. 71-164; s. 1, ch. 71-192; s. 1, ch. 71-193; s. 1, ch. 71-289; ss. 52, 53, ch. 71-355; s. 1, ch. 72-221; s. 25, ch. 73-345; s. 16, ch. 74-227; ss. 1, 2, ch. 74-351; s. 3, ch. 75-284; s. 2, ch. 75-306; s. 1, ch. 76-236; ss. 1, 2, ch. 77-274; s. 8, ch. 78-416; s. 12, ch. 78-423.

Note.—Former s. 242.17; s. 236.161; s. 229.0118.

228.051 Organization and support of required public schools.—The public schools of the state shall provide 13 consecutive years of instruction, beginning with kindergarten, and shall also provide such instruction for exceptional children as may be required by law. The funds for support and maintenance of such schools shall be derived from state, district, federal, or other lawful sources or combinations of sources, and shall include any tuition fees charged nonresidents as provided by law. Public schools, institutions, and agencies providing this instruction shall constitute the uniform system of free public schools prescribed by Art. IX of the State Constitution and shall include the following:

[1](1) KINDERGARTEN.—Kindergarten classes, comprising children between the ages as provided by s. 232.04, shall be established by the school board, provided sufficient children of these ages are available to make possible an organization of at least 20 such children at any school. Such classes shall be implemented on a statewide basis in annual increments so that all such children shall be served by the 1973-1974 school year.

(2) ELEMENTARY SCHOOLS.—Elementary schools shall comprise all classes and grades through the sixth grade or, upon decision by the school board when authorized by regulations of the state board, may include work through the eighth grade.

(3) SECONDARY SCHOOLS.—Secondary schools shall include junior high schools with grades 7 to 9, inclusive; high schools with grades 10 to 12, inclusive; junior-senior high schools with grades 7 to 12, inclusive; or, upon decision by the school board when authorized by regulations of the state board, 4-year high schools comprising grades 9 to 12, inclusive.

History.—ss. 213, 216, ch. 19355, 1939; CGL 1940 Supp. 892(32), (35); s. 2, ch. 23726, 1947; s. 9, ch. 29764, 1955; s. 3, ch. 57-252; s. 1, ch. 59-388; s. 7, ch. 65-239; s. 5, ch. 68-5; s. 1, ch. 68-12; ss. 2, 4, ch. 68-24; s. 22, ch. 69-216; s. 1, ch. 69-300; s. 1, ch. 72-221; s. 7, ch. 79-288.

[1]**Note.**—Section 7, ch. 79-288, amended subsection (1), effective July 1, 1980, to read:

(1) KINDERGARTEN.—Kindergarten classes, comprising children between the ages as provided by s. 232.04, shall be established by the school board.

Note.—Former ss. 228.13 and 228.16.

228.061 Other public schools; nursery schools, special schools and courses.—The public schools of Florida may, in addition to the schools prescribed in s. 228.051, include nursery schools, special schools, courses and classes as authorized below:

(1) NURSERY SCHOOLS.—Nursery schools shall comprise classes for children who have attained the ages prescribed by s. 232.05 and may be established in the discretion of the school board where sufficient children of these ages are available to make possible an organization of at least 20 such children at any school center. Such schools or classes shall be supported and maintained from district taxes, from such funds supplemented by tuition charges, or from funds from federal or other lawful sources, exclusive of state sources.

(2) OTHER SCHOOLS, COURSES, AND CLASSES.—

(a) There may be established, at the discretion of the school board, other schools, courses, and classes pursuant to law or by regulations of the state board for:

1. Giving instruction in applied arts and sciences;
2. Rehabilitating atypical, dependent, and delinquent children;
3. Promoting the education of adults;
4. Furnishing part-time, evening, and vocational schools and classes;
5. Providing technical or vocational training for persons regardless of age; and
6. Offering other types of instruction of a similar nature.

(b) Such schools, courses, and classes shall be supported by state, district, and federal funds or by any combinations of these funds supplemented by funds from such other lawful sources as may be available, including tuition or matriculation fees as may be authorized by regulations of the state board.

History.—s. 214, ch. 19355, 1939; CGL 1940 Supp. 892(33); s. 7, ch. 29764, 1955; s. 1, ch. 57-252; s. 2, ch. 68-12; s. 3, ch. 68-24; s. 4, ch. 68-5; s. 1, ch. 69-262; s. 1, ch. 69-300; s. 1, ch. 72-221; s. 1, ch. 77-174.

Note.—Former s. 228.14.

[1]228.071 Community education.—

(1) SHORT TITLE.—This section shall be known and may be cited as the "Florida Community Education Act."

(2) PURPOSE.—Community education promotes a more efficient use of schools and other community facilities through an extension of personnel, buildings, and equipment. The purpose of this section is to provide state leadership and financial support to encourage and assist school boards, the board of trustees of the Florida School for the Deaf and the Blind, and other governmental or nongovernmental agencies in the establishment and maintenance of community education.

(3) DEFINITIONS.—The following terms, wherever used or referred to in this section, have the following meanings:

(a) "Community education" means:

1. The process in which a school or other public or available facility is utilized as a community center operated in conjunction with educational, recreational, social, civic, cultural, health, and other public, private, and governmental organizations and agencies to provide educational, recreational, cultural, social, health, and community services for persons of all ages in the community in accordance with the needs, interests, and concerns of that community. Community education includes, but is not limited

to, maximum utilization of human, physical, and financial resources of a community in providing learning experiences and services for community members of all ages, systematic involvement of representative community members in the identification of needs and community involvement in suggesting or implementing organizational structures to meet these identified needs, and inter-agency coordination and cooperation; and

2. The composite of those activities and services described in a grant application of a board pursuant to rules of the State Board of Education.

(b) "Community education coordinator" means that person who is employed by a board on a full-time basis to promote, organize, coordinate, and direct community education.

(c) "Board" means a district school board or the board of trustees of the Florida School for the Deaf and the Blind.

(d) "Department" means the Department of Education.

(e) "Operational funds" means funds appropriated to provide a coordinator or director with supplies, materials, and part-time clerical assistance as provided by rules of the State Board of Education.

(4) COMMUNITY EDUCATION GRANT.—Pursuant to rules adopted by the State Board of Education, each school board and the board of trustees for the Florida School for the Deaf and the Blind may submit to the department a request for a community education grant. A board applying for a grant shall include in its grant application a description of its community education process. The board shall give priority to centers serving the maximum number of persons within the limits of resources available and to programs which will allow for matching funds or for joint funding from the Federal Government or other public or private sources and which may be efficiently and effectively developed in conjunction with community education.

(5) COMMUNITY EDUCATION GRANTS.—

(a) For those grant applications approved for funding, the department shall authorize distribution of a community education grant not to exceed one-half of the total compensation of each person employed as a community education coordinator on a full-time basis by a board during the fiscal year for which a community education grant is authorized.

(b) Pursuant to rules adopted by the State Board of Education, the department shall authorize distribution of operational funds.

(6) TECHNICAL ASSISTANCE.—The department is authorized to provide such technical assistance as is necessary to develop and maintain community education. The department may use its own staff or such consultants as may be necessary to accomplish this purpose.

(7) RECOMMENDATIONS BY COMMISSIONER.—The Commissioner of Education shall recommend the level of funding for community education each fiscal year and make any other recommendations or reports he deems necessary or as required by rules of the State Board of Education.

(8) BUDGET.—The department shall include in its legislative budget funds necessary to implement this section.

(9) USE OF SCHOOL PROPERTY.—The buildings, land, equipment, and other property owned by a board may be used by the providers of community education on a shared or leased basis.

(10) JOINT PROPERTY.—A board, jointly with other governmental bodies, may acquire, own, maintain, and dispose of real and personal property for use in community education.

History.—ss. 1-9, ch. 70-318; s. 1, ch. 70-439; s. 1, ch. 72-221; s. 18, ch. 73-338; ss. 1, 2, ch. 74-364; s. 35, ch. 75-284; s. 10, ch. 76-223; s. 1, ch. 79-242; ss. 12, 16, ch. 79-385.

[1]**Note.**—Section 16, ch. 79-385, provides that, if chapter 231 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by chapter 77-457, or as subsequently amended, it is the intent of the Legislature that chapter 79-385 shall also be repealed on the same date as is therein provided.

Note.—Former s. 228.162.

228.081 Other public educational services.—The general control of other public educational services shall be vested in the state board except as provided herein. The state board shall, at the request of the Department of Health and Rehabilitative Services, advise as to standards and requirements relating to education to be met in all state schools or institutions under their control which provide educational programs. The Department of Education shall provide supervisory services for the educational programs of all such schools or institutions. The direct control of any of these services provided as part of the district program of education shall rest with the school board. These services shall be supported out of state, district, federal, or other lawful funds, depending on the requirements of the services being supported.

History.—s. 219, ch. 19355, 1939; CGL 1940 Supp. 892(38); s. 3, ch. 23726, 1947; s. 1, ch. 69-300; ss. 15, 19, 35, ch. 69-106; s. 1, ch. 72-221; s. 6, ch. 77-335.

Note.—Former s. 228.19.

228.091 Trespass upon grounds or facilities of public schools; penalties; arrest.—

(1) Any person who:

(a)1. Is not a student, officer, or employee of a public school;

2. Does not have legitimate business on the campus; or

3. Is not a parent, guardian, or person who has legal custody of a student enrolled at such school; or

(b)1. Is a student currently under suspension or expulsion; or

2. Is an employee who is not required by his employment by such school to be on the campus or any other facility owned, operated, or controlled by the governing board of any such school

and who enters or remains upon the campus or any other facility owned by any such school, and thereon commits any act which disrupts the orderly conduct of the activities of such campus or facility, commits a trespass upon the grounds of a public school facility and is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who:

(a)1. Is not a student, officer, or employee of a public school;

2. Does not have legitimate business on the campus; or

3. Is not a parent, guardian, or person who has

legal custody of a student enrolled at such school; or

(b)1. Is a student currently under suspension or expulsion; or

2. Is an employee who is not required by his employment by the school to be on the campus or any other facility owned, operated, or controlled by the governing board of such school

and who enters or remains upon the campus or other facility of such school after the chief administrative officer of such school, or any employee thereof designated by him to maintain order on such campus or facility, has directed such person to leave such campus or facility or not to enter upon the same, shall be guilty of the offense of trespass upon the grounds of a public school facility and is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any peace officer may arrest either on or off the premises and without warrant any person he has probable cause for believing has committed the offense of trespass upon the grounds of a public school facility. Such arrest shall not render the peace officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

History.—s. 1, ch. 68-3; s. 1, ch. 72-10; s. 1, ch. 72-221; s. 1, ch. 77-425; s. 48, ch. 79-164.

Note.—Former s. 228.21.

228.092 Retention of records of students attending nonpublic schools.—

(1) DEFINITIONS.—As used in this section:

(a) "Nonpublic school" means any school described in s. 229.808(2).

(b) "Defunct nonpublic school" means any nonpublic school which has terminated the operation of an education or training program, or which has no students in attendance, or which has dissolved as a business entity.

(c) "Student records" means those records, files, documents, and other materials which contain information directly related to students which are maintained by a nonpublic school or by a person acting for such institution and which are accessible to other professional personnel to facilitate the instruction, guidance, and educational progress of students. Information contained in student records shall be classified as follows:

1. Permanent information, which includes verified information of clear educational importance, containing the following: student's full name and any known changes thereto due to marriage or adoption; authenticated birthdate, place of birth, race, and sex; last known address of student; names of student's parents or guardian; name and location of last school attended; number of days present and absent; date enrolled; date withdrawn; courses taken and record of achievement; and date of graduation or program achievement.

2. Temporary information, which includes verified information subject to change, containing, but not limited to, the following: health information, standardized test scores, honors and activities, personal attributes, work experience, teacher and counselor comments, and special reports.

(2) TRANSFER OF STUDENT RECORDS.—All nonpublic schools which become defunct shall transfer all permanent information contained in student records to the superintendent of schools of the public school district in which the nonpublic school was located; or, if the nonpublic school is a member of a nonpublic school system or association, such school may transfer such records to the principal office of such system or association, which shall constitute full compliance with this subsection. In the event that such nonpublic school system or association becomes defunct, it shall transfer all the permanent information contained in its files to the superintendent of schools of the public school district in which the nonpublic school was located.

(3) DEPARTMENT RESPONSIBILITIES.—All nonpublic schools which become defunct shall notify the Management Information Service Section in the Department of Education of the date of transfer of student records, the location of storage, the custodian of such records, and the number of records to be stored. The department shall act as a clearinghouse and maintain a registry of such transfers of student records.

(4) INTENT.—It is not the intent of the Legislature to limit or restrict the use or possession of any student records while a school is operational, but to facilitate access to academic records by former students seeking to continue their education or training after a nonpublic school has become defunct.

History.—s. 1, ch. 77-133; s. 2, ch. 79-177.

cf.—s. 246.217 License period and renewals.

228.093 Pupil and student records and reports; rights of parents, guardians, pupils, and students; notification; penalty.—

(1) PURPOSE.—The purpose of this section is to protect the rights of pupils and students and their parents or guardians with respect to pupil and student records and reports as created, maintained, and used by public educational institutions in the state. The intent of the Legislature is that pupils and students and their parents or guardians shall have rights of access, rights of challenge, and rights of privacy with respect to such records and reports, and that rules shall be available for the exercise of these rights.

(2) DEFINITIONS.—As used in this section:

(a) "Records" and "reports" mean any and all official records, files, and data directly related to pupils and students which are created, maintained, and used by public educational institutions, including all material that is incorporated into each pupil's or student's cumulative record folder and intended for school use or to be available to parties outside the school or school system for legitimate educational or research purposes. Materials which shall be considered as part of a pupil's or student's record shall include, but not necessarily be limited to: identifying data; academic work completed; level of achievement records, including grades and standardized achievement test scores; attendance data; scores on standardized intelligence, aptitude, and psychological tests; interest inventory results; health data; family background information; teacher or counselor ratings and observations; verified reports of serious or recurrent behavior patterns; and any other evidence, knowledge, or information recorded in any medium, including, but not limited to, handwriting,

typewriting, print, magnetic tapes, film, microfilm, and microfiche, and maintained and used by an educational agency or institution or by a person acting for such agency or institution. However, the terms "records" and "reports" do not include:

1. Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which records are in the sole possession of the maker thereof and are not accessible or revealed to any other person except a substitute for any of such persons. An example of records of this type are instructor's grade books.

2. Records of law enforcement units of the institution which are maintained solely for law enforcement purposes and which are not available to persons other than officials of the institution or law enforcement officials of the same jurisdiction in the exercise of that jurisdiction.

3. Records made and maintained by the institution in the normal course of business which relate exclusively to a pupil or student in his or her capacity as an employee and which are not available for use for any other purpose.

4. Records created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity or assisting in that capacity, and which are created, maintained, or used only in connection with the provision of treatment to the pupil or student and are not available to anyone other than persons providing such treatment. However, such records shall be open to a physician or other appropriate professional of the pupil's or student's choice.

5. Directory information as defined in this section.

6. Other information, files, or data which do not permit the personal identification of a pupil or student.

7. Letters or statements of recommendation or evaluation which were confidential under Florida law and which were received and made a part of the pupil's or student's educational records prior to July 1, 1977.

(b) "Child" means any person who has not reached the age of majority.

(c) "Pupil" means any child enrolled in any instructional program or activity conducted under the authority and direction of a district school board.

(d) "Student" means any child or adult who is enrolled or who has been enrolled in any instructional program or activity conducted under the authority and direction of an institution comprising a part of the state system of public education and with respect to whom an educational institution maintains educational records and reports or personally identifiable information, but does not include a person who has not been in attendance as an enrollee at such institution.

(e) "Directory information" includes the pupil's or student's name, address, telephone number if it is a listed number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the pupil or student.

(f) "Chief executive officer" means that person, whether elected or appointed, who is responsible for the management and administration of any public educational body or unit, or the chief executive officer's designee for pupil or student records; that is, the superintendent of a district school system, the director of the area vocational-technical center, the president of a community college, or the president of an institution in the State University System, or their designees.

(3) RIGHTS OF PARENT, GUARDIAN, PUPIL, OR STUDENT.—The parent or guardian of any pupil or student who attends or has attended any public school, area vocational-technical training center, community college, or institution of higher education in the State University System shall have the following rights with respect to any records or reports created, maintained, and used by any public educational institution in the state. However, whenever a pupil or student has attained 18 years of age, or is attending an institution of postsecondary education, the permission or consent required of, and the rights accorded to, the parents of the pupil or student shall thereafter be required of and accorded to the pupil or student only, unless the pupil or student is a dependent pupil or student of such parents as defined in Title 26 U.S.C. s. 152 (section 152 of the Internal Revenue Code of 1954). The State Board of Education shall formulate, adopt, and promulgate rules whereby parents, guardians, pupils, or students may exercise these rights:

(a) *Right of access.*—

1. Such parent, guardian, pupil, or student shall have the right, upon request directed to the appropriate school official, to be provided with a list of the types of records and reports, directly related to pupils or students, as maintained by the institution which the pupil or student attends or has attended.

2. Such parent, guardian, pupil, or student shall have the right, upon request, to be shown any record or report relating to such pupil or student maintained by any public educational institution. When the record or report includes information on more than one pupil or student, the parent, guardian, pupil, or student shall be entitled to receive, or be informed of, only that part of the record or report which pertains to the pupil or student who is the subject of the request. Upon a reasonable request therefor, the institution shall furnish such parent, guardian, pupil, or student with an explanation or interpretation of any such record or report.

3. Copies of any list, record, or report requested under the provisions of this paragraph shall be furnished to the parent, guardian, pupil, or student upon request.

4. The State Board of Education shall establish rules to be followed by all public educational institutions in granting requests for lists, or for access to reports and records or for copies or explanations thereof under this paragraph. However, access to any report or record requested under the provisions of subparagraph 2. shall be granted within 30 days after receipt of such request by the institution. Fees may be charged for furnishing any copies of reports

or records requested under subparagraph 3., but such fees shall not exceed the actual cost to the institution of producing such copies.

(b) *Right of waiver of access to confidential letters or statements.*—Such parent, guardian, pupil, or student shall have the right to waive the right of access to letters or statements of recommendation or evaluation, except that such waiver shall apply to recommendations or evaluations only if:

1. The parent, guardian, pupil, or student is, upon request, notified of the names of all persons submitting confidential letters or statements; and

2. Such recommendations or evaluations are used solely for the purpose for which they were specifically intended.

Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from, any public agency or public educational institution in Florida.

(c) *Right to challenge and hearing.*—Such parent, guardian, pupil, or student shall have the right to challenge the content of any record or report to which such person is granted access under paragraph (a), in order to insure that the record or report is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the pupil or student and to provide an opportunity for the correction, deletion, or expunction of any inaccurate, misleading, or otherwise inappropriate data or material contained therein. Any challenge arising under the provisions of this paragraph may be settled through informal meetings or discussions between the parent, guardian, pupil, or student and appropriate officials of the educational institution. If the parties at such a meeting agree to make corrections, to make deletions, to expunge material, or to add a statement of explanation or rebuttal to the file, such agreement shall be reduced to writing and signed by the parties, and the appropriate school officials shall take the necessary actions to implement the agreement. If the parties cannot reach an agreement, upon the request of either party, a hearing shall be held on such challenge under rules promulgated by the State Board of Education. Upon request of the parent, guardian, pupil, or student, the hearing shall be exempt from the requirements of s. 286.011. Such rules shall include at least the following provisions:

1. The hearing shall be conducted within a reasonable period of time following the request for the hearing.

2. The hearing shall be conducted, and the decision rendered, by an official of the educational institution or other party who does not have a direct interest in the outcome of the hearing.

3. The parent, guardian, pupil, or student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under this paragraph.

4. The decision shall be rendered in writing within a reasonable period of time after the conclusion of the hearing.

5. The appropriate school officials shall take the necessary actions to implement the decision.

(d) *Right of privacy.*—Every pupil or student shall have a right of privacy with respect to the educational records kept on him. No state or local educational agency, board, public school, area vocational-technical center, community college, or institution of higher education in the State University System shall permit the release of personally identifiable records or reports of a pupil or student, or of any personal information contained therein, without the written consent of the pupil's or student's parent or guardian, or of the pupil or student himself if he is qualified as provided in this subsection, to any individual, agency, or organization. However, personally identifiable records or reports of a pupil or student may be released to the following persons or organizations:

1. Officials of schools, school systems, area vocational-technical centers, community colleges, or institutions of higher learning in which the pupil or student seeks or intends to enroll, and a copy of such records or reports shall be furnished to the parent, guardian, pupil, or student upon request.

2. Other school officials, including teachers within the educational institution or agency, who have legitimate educational interests in the information contained in the records.

3. The United States Secretary of Health, Education, and Welfare, the United States Commissioner of Education, the Director of the National Institute of Education, the Assistant Secretary for Education, the Comptroller General of the United States, or state or local educational authorities who are authorized to receive such information subject to the conditions set forth in applicable federal statutes and regulations of the U. S. Department of Health, Education, and Welfare, or in applicable state statutes and rules of the State Board of Education.

4. Other school officials, in connection with a pupil's or student's application for, or receipt of, financial aid.

5. Individuals or organizations conducting studies for or on behalf of an institution or a board of education for the purpose of developing, validating, or administering predictive tests, administering pupil or student aid programs, or improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of pupils or students and their parents by persons other than representatives of such organizations and if such information will be destroyed when no longer needed for the purpose of conducting such studies.

6. Accrediting organizations, in order to carry out their accrediting functions.

7. For use as evidence in pupil or student expulsion hearings conducted by a district school board pursuant to the provisions of chapter 120.

8. Appropriate parties in connection with an emergency, if knowledge of the information in the pupil's or student's educational records is necessary to protect the health or safety, of the pupil, student, or other individuals.

Nothing contained in this paragraph shall prohibit any educational institution from publishing and releasing to the general public directory information relating to a pupil or student if the institution elects to do so. However, no educational institution shall release, to any individual, agency, or organization

which is not listed in subparagraphs 1.-8., directory information relating to the student body in general or a portion thereof unless it is normally published for the purpose of release to the public in general. Any educational institution making directory information public shall give public notice of the categories of information which it has designated as directory information with respect to all pupils or students attending the institution and shall allow a reasonable period of time after such notice has been given for a parent, guardian, pupil, or student to inform the institution in writing that any or all of the information designated should not be released.

(4) NOTIFICATION.—Every parent, guardian, pupil, and student entitled to rights relating to pupil and student records and reports under the provisions of subsection (3) shall be notified annually, in writing, of such rights and that the institution has a policy of supporting the law, the types of information and data generally entered in the pupil and student records as maintained by the institution, and the procedures to be followed in order to exercise such rights. The notification shall be general in form and in a manner to be determined by the State Board of Education, and may be incorporated with other printed materials distributed to pupils and students, such as being printed on the back of school assignment forms or report cards for pupils attending kindergarten or grades 1 through 12 in the public school system, and being printed in college catalogs or in other program announcement bulletins for students attending postsecondary institutions.

(5) PENALTY.—In the event that any public school official or employee, State University System official or employee, area vocational-technical center official or employee, community college official or employee, or any district school board official or employee refuses to comply with any of the provisions of this section, the aggrieved parent, guardian, pupil or student shall have an immediate right to bring an action in the circuit court to enforce the violated right by injunction. Any aggrieved parent, guardian, pupil, or student who brings such an action and whose rights are vindicated may be awarded attorney's fees and court costs.

(6) The provisions of this section shall also apply to any pupil or student records which any nonpublic educational institution that is no longer operating has deposited with the district school superintendent in the county where the nonpublic educational institution was located, with the clerk of the circuit court of that county, with the Department of Education, with the Division of Archives and Records Management of the Department of State, or with any other public agency.

History.—ss. 1, 4, ch. 77-60.

228.101 Display of flags.—Every publicly supported and controlled school, institution of higher education and other educational institution as may be provided or authorized by the constitution and laws of Florida shall display daily the flag of the United States and the official flag of Florida when the weather permits upon one building or on a suitable flagstaff upon the grounds of each state educational institution and upon every district school building or the grounds of the same except when the institution or school is closed for vacation; provided, that for a school center at which two or more school buildings are located on the same or on adjacent sites one flag may be displayed for the entire group of buildings.

History.—s. 206, ch. 19355, 1939; CGL 1940 Supp. 892(25); s. 1, ch. 29789, 1955; s. 3, ch. 65-239; s. 1, ch. 69-300; s. 1, ch. 72-221.
Note.—Former s. 228.06.

228.111 School officers to turn over money and property to successors.—Every school officer shall turn over to his successor or successors in office, on retiring, all books, papers, documents, records, funds, money, and property of whatever kind which he may have acquired, received, and held by virtue of his office and shall take full receipt for them from his successor and shall make in correct form all reports required by the state. No school officer who receives any salary or compensation for his services shall be entitled to be paid or compensated for the last month of his services until the provisions of this section have been fully observed. Any person violating the provisions of this section shall forfeit his compensation for the last month served and shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 207, ch. 19355, 1939; CGL 1940 Supp. 892(26), 8115(1); s. 1, ch. 20970, 1941; s. 130, ch. 71-136; s. 2, ch. 71-164; s. 54, ch. 71-355; s. 1, ch. 72-221.
Note.—Former s. 228.07.
cf.—s. 230.33 Superintendent to make records available to successor.

228.121 Nonresident tuition fee.—

(1) Pupils in grades kindergarten through 12 whose parent, parents, or guardians are nonresidents of Florida shall be charged a tuition fee or $50 payable at the time the pupil is enrolled.

(2) For the purposes of this section, a nonresident is defined as a person who has lived in Florida less than 1 year, has not purchased a home which is occupied by him as his residence prior to the enrollment of his child or children in school, and has not filed a manifestation of domicile in the county where the child is enrolled.

(3) No tuition shall be charged pupils whose parent, parents, or guardian are in the federal military service or are civilian employees, the cost of whose education is provided in part or in whole by federal subsidy to state-supported schools, or whose parent, parents, or guardian are migratory agricultural workers.

(4) Funds as set forth in this section shall be collected by the school in which the child is enrolled and remitted to the school board for the district in which the funds are collected. The school board shall use the funds for the operation and maintenance of its schools.

History.—s. 1, ch. 72-221; s. 72, ch. 73-333.

228.151 Sources of State School Fund.—The State School Fund shall be derived from the following sources:

(1) The proceeds of all lands that have been or may hereafter be granted to the state by the United States for public school purposes;

(2) Donations to the state when the purpose is not specified;

(3) Appropriations by the state;

(4) The proceeds of escheated property or forfeitures; and

(5) Twenty-five percent of the sales of public lands which are now or may hereafter be owned by the state.

History.—Formerly s. 4, Art. XII of the Constitution of 1885, as amended, converted to statutory law by s. 10, Art. XII of the Constitution as revised in 1968; s. 1, ch. 72-221.

228.195 School food service programs.—

(1) DECLARATION OF PURPOSE.—In recognition of the demonstrated relationship between good nutrition and the capacity of children to develop and learn, it is declared to be the policy of the state to safeguard the health and well-being of Florida children by providing standards for school food service and by requiring school districts to establish and maintain an appropriate nonprofit school food service program consistent with the nutritional needs of children.

(2) STATE RESPONSIBILITY.—The commissioner of education shall recommend, and the State Board of Education shall prescribe, rules and standards covering all phases of the administration and operation of the school food service programs.

(3) SCHOOL DISTRICT RESPONSIBILITY.—Each district school board shall consider the recommendations of the district superintendent and adopt policies to provide for an appropriate food and nutrition program for children consistent with regulations and standards prescribed by the state board.

(4) STATE SUPPORT.—The state shall provide the state National School Lunch Act matching requirements. The funds provided shall be distributed in such a manner as to comply with the requirements for state matching under the National School Lunch Act.

History.—ss. 1-4, ch. 72-316; s. 1, ch. 79-354.

228.201 Mandatory screening or testing for sickle-cell trait prohibited.—No person, firm, corporation, unincorporated association, state agency, unit of local government, or any public or private entity shall require screening or testing for the sickle-cell trait as a condition for employment, for admission into any state educational institution or state-chartered private educational institution, or for becoming eligible for adoption if otherwise eligible for adoption under the laws of this state.

History.—s. 4, ch. 78-35.
Note.—Also published at ss. 63.043 and 448.076.

CHAPTER 229

FUNCTIONS OF STATE EDUCATIONAL AGENCIES

PART I STATE BOARD OF EDUCATION (ss. 229.011-229.121)

PART II COMMISSIONER OF EDUCATION (ss. 229.501-229.59)

PART III DEPARTMENT OF EDUCATION (ss. 229.75-229.85)

PART I

STATE BOARD OF EDUCATION

229.011 State functions.—Public education is basically a function and responsibility of the state. The responsibility for establishing such minimum standards and regulations as shall tend to assure efficient operation of all schools and adequate educational opportunities for all children is retained by the state.

History.—s. 301, ch. 19355, 1939; CGL 1940 Supp. 892(41); ss. 9, 13, ch. 65-239.

Note.—Former s. 229.01.

229.012 Composition of the State Board of Education.—The State Board of Education shall consist of the Governor, the Secretary of State, the Attorney General, the Comptroller, the Treasurer, the Commissioner of Agriculture, and the Commissioner of Education. The Governor shall be the chairman of the board, and the Commissioner of Education shall be its secretary and executive officer.

History.—s. 315, ch. 19355, 1939; CGL 1940 Supp. 892(55); s. 20, ch. 29764, 1955; ss. 10, 13, ch. 65-239; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 69-389.

Note.—Former s. 229.15.

229.021 Meeting dates.—On or before July 1 of each year the state board shall designate and set aside 1 day each month as a regular meeting day. Special meetings may be held on request of the Commissioner of Education.

History.—s. 304, ch. 19355, 1939; CGL 1940 Supp. 892(44); s. 13, ch. 65-239; s. 1, ch. 69-300.

Note.—Former s. 229.04.

229.031 Quorum.—Four members of the state board shall constitute a quorum. No business may be transacted at any meeting unless a quorum is present.

History.—s. 305, ch. 19355, 1939; CGL 1940 Supp. 892(45); s. 13, ch. 65-239; s. 2, ch. 69-389.

Note.—Former s. 229.05.

229.041 Regulations and standards have force of law.—All rules and regulations and minimum standards adopted or prescribed by the state board in carrying out the provisions of the school code shall, if not in conflict therewith, have the full force and effect of law.

History.—s. 306, ch. 19355, 1939; CGL 1940 Supp. 892(46); s. 13, ch. 65-239.

Note.—Former s. 229.06.

229.053 General powers of state board.—

(1) The State Board of Education is the chief policy-making and coordinating body of public education in Florida. It has the general powers to determine, adopt or prescribe such policies, rules, regulations, or standards as are required by law or as it may find necessary for the improvement of the state system of public education. Except as otherwise provided herein it may, as it shall find appropriate, delegate its general powers to the Commissioner of Education or the directors of the divisions of the department.

(2) The board has the following duties:

(a) To adopt comprehensive educational objectives for public education;

(b) To adopt comprehensive long-range plans and short-range programs for the development of the state system of public education;

(c) To exercise general supervision over the divisions of the Department of Education, including the Division of Universities, to the extent necessary to insure coordination of educational plans and programs and resolve controversies and to coordinate the academic calendars of universities, community colleges, and public schools to minimize problems of articulation and student transfers, to assure that students moving from one level of education to the next have acquired competencies necessary for satisfactory performance at that level, and to insure maximum utilization of facilities;

(d) To adopt for public universities and community colleges, and from time to time modify, minimum standards of college-level communication and computation skills generally associated with successful performance in college through the baccalaureate level and to approve tests and other assessment procedures which measure student achievement of those skills;

(e) To adopt and transmit to the Governor as chief budget officer of the state on official forms fur-

nished for such purposes, on or before November 1 of each year, estimates of expenditure requirements for the State Board of Education, the Commissioner of Education, and all of the boards, institutions, agencies, and services under the general supervision of the State Board of Education for the ensuing fiscal year;

(f) To hold meetings, transact business, keep records, adopt a seal, and perform such other duties as may be necessary for the enforcement of all laws and regulations relating to the state system of public education;

(g) To have possession of and manage all lands granted to or held by the state for educational purposes;

(h) To administer the state school fund;

(i) To approve plans for cooperating with the Federal Government and, pursuant thereto, by regulation to accept funds, create subordinate units, and provide the necessary administration required by any federal program;

(j) To approve plans for cooperating with other public agencies in the development of regulations and in the enforcement of laws for which the state board and such agencies are jointly responsible;

(k) To approve plans for cooperating with appropriate nonpublic agencies for the improvement of conditions relating to the welfare of schools;

(l) To authorize, approve, and require to be used such forms as are needed to promote uniformity, accuracy, or completeness in executing contracts, keeping records, or making reports;

(m) To create such subordinate advisory bodies as may be required by law or as it may find necessary for the improvement of education; and

(n) To constitute the State Board for Vocational Education or other structures as may be required by federal law.

History.—ss. 15, 31, 35, ch. 69-106; s. 1, ch. 75-19; s. 107, ch. 79-222.

229.064 Bond issue pursuant to s. 9(d), Art. XII; interest rate.—Any bonds hereafter issued by the State Board of Education in accordance with the provisions of s. 9(d), Art. XII of the State Constitution of 1968, which, by reference adopted s. 18, Art. XII of the State Constitution of 1885, as said section was originally approved at the general election of November, 1952, and as said s. 18 was thereafter amended at the general election of November, 1964, shall bear interest at not exceeding 7.5 percent per annum.

History.—s. 1, ch. 68-117; s. 1, ch. 69-161; s. 31, ch. 69-216; s. 3, ch. 72-221.

229.065 Bond issue for fixed capital outlay, 1971-1973 biennium.—The State Board of Education is authorized to issue bonds in the amount of $65 million during the 1971-1973 biennium in accordance with the provisions of s. 9, Art. XII of the State Constitution.

History.—s. 1, ch. 72-194.

229.0651 Bond issues; 1973-1975 biennium.—The State Board of Education is authorized to issue bonds in the amount of $117 million during the 1973-1975 biennium in accordance with the provisions of s. 9, Art. XII of the State Constitution.

History.—s. 1, ch. 74-345.

229.066 Community college indebtedness; bonds and tax anticipation certificates; payment.—

(1) The indebtedness incurred for the benefit of community colleges and represented by bonds or motor vehicle tax anticipation certificates issued from time to time by the State Board of Education, hereinafter called "state board," pursuant to s. 18, Art. XII of the State Constitution of 1885 on behalf of the several former county boards of public instruction shall not be considered by the state board in determining the amount of bonds or motor vehicle tax anticipation certificates which the state board may issue from time to time on behalf of the several school districts under the provisions of s. 9(d), Art. XII of the State Constitution, as amended at the general election held on November 7, 1972, hereinafter called "school capital outlay amendment." Such indebtedness incurred on behalf of community colleges, as described above, shall be considered by the state board in determining the amount of bonds or motor vehicle tax anticipation certificates which the state board may issue from time to time on behalf of the several community college districts under the provisions of the school capital outlay amendment.

(2) The debt service requirements on the indebtedness incurred for the benefit of community colleges and represented by bonds or motor vehicle tax anticipation certificates issued from time to time by the state board on behalf of the several former county boards of public instruction, as described in subsection (1), shall be paid from funds distributable pursuant to the school capital outlay amendment to the credit of the several community college districts, and not from funds distributable pursuant to the school capital outlay amendment to the credit of the several school districts.

(3) Nothing herein shall ever be construed to authorize the state board to affect adversely or impair the contractual rights created and vested by reason of the prior issuance of bonds or motor vehicle tax anticipation certificates by the state board.

History.—ss. 1-3, ch. 73-267.

229.085 Custody of educational funds.—

(1) All funds received by the Department of Education shall be deposited in the State Treasury subject to disbursement in such manner and for such purpose as the Legislature may by law provide. However, funds held in trust for student organizations which are established and operated in conjunction with public school or community college programs may, upon approval by the state board, be exempted from this section and deposited outside the State Treasury.

(2) There is created in the Department of Education the Projects, Contracts, and Grants Trust Fund. If, in executing the terms of such grants or contracts for specific projects, the employment of personnel shall be required, such personnel shall not be subject to the requirements of s. 216.262(1)(a). Effective July 1, 1979, the personnel employed to plan and adminis-

ter such projects shall be considered in time-limited employment not to exceed the duration of the grant or until completion of the project, whichever first occurs. Such employees shall not acquire retention rights under the Career Service System, the provisions of s. 110.051(1) to the contrary notwithstanding. Any employee holding permanent career service status in a Department of Education position who is appointed to a position under the Projects, Contracts, and Grants Trust Fund shall retain such permanent status in the career service position.

History.—s. 9, ch. 72-333; s. 8, ch. 75-302; s. 1, ch. 79-112.

229.111 State board authorized to accept gifts.—

(1) The State Board of Education shall have authority to accept, on behalf of the state system of public education or of any school fund established or recognized by law, any gift or bequest of money, royalty or other personal or real property given or bequeathed to the state system of public education, or to any school fund established or recognized by law; provided, that no conditions shall be attached to any such gift or bequest of money, royalty or other personal or real property given or bequeathed for the purposes designated herein which are contrary to the provisions of law or regulations of the state board relating to the use or expenditure of the fund.

(2) The State Treasurer shall be treasurer and custodian of all such gifts and bequests of money, royalty and other personal property given or bequeathed for the purposes designated herein. He shall receive and provide for the proper custody and disbursement of any such funds, in accordance with the provisions of law and regulations of the state board.

History.—ss. 1, 2, ch. 20879, 1941; s. 13, ch. 65-239.
Note.—Former s. 229.24.

229.121 State board authorized to exchange land.—

(1) The State Board of Education of this state is hereby authorized in its discretion to exchange land of the State School Fund held by said board for other land in this state held by any other state agency, or by any county in this state, or by any person, private or corporate, where such exchange will be advantageous to said fund.

(2) The said State Board of Education shall have authority to fix the terms and conditions of any such exchange and to select and agree upon the lands to be conveyed to and to be received by said board, and to make and enter into contracts and agreements therefor. To be acceptable, the land to be received by said board in exchange shall be free of tax or other debt and shall be clear as to title.

(3) In making exchange of land, the said board may in its discretion convey said land without the reservation of oil, gas, or of phosphate and other minerals required by s. 270.11, where deeds to land received in exchange convey title in fee simple without such reservations, or to determine the part or parts to be reserved and the part or parts to be conveyed so as to facilitate exchange on a basis as nearly equal as may be.

(4) The land comprising part of the state school fund shall not be subject to taxes of any kind whatsoever, but shall enjoy constitutional immunity therefrom, nor shall taxes of any kind be imposed thereon; nor, since not subject to tax, shall the state or any state agency be liable for taxes or the equivalent thereof sought to be imposed upon said land. All outstanding tax sale certificates against land of the state school fund are hereby canceled.

(5) Any such exchanges of land heretofore made by said State Board of Education are hereby confirmed and validated.

History.—ss. 1-5, ch. 25186, 1949; s. 13, ch. 65-239; s. 55, ch. 71-355; s. 6, ch. 72-221.
Note.—Former s. 229.241.

PART II

COMMISSIONER OF EDUCATION

229.501 Bond of Commissioner of Education.—Before entering upon the duties of his office, the Commissioner of Education shall execute with two good and sufficient sureties approved by the state board or with a surety company authorized to do business in Florida, a bond in the amount of $5,000, the premium for which shall be paid from money appropriated for the operation of the Department of Education.

History.—s. 312, ch. 19355, 1939; CGL 1940 Supp. 892(52); s. 13, ch. 65-239; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300.
Note.—Former s. 229.12.
cf.—s. 113.07 Bonds of officials.

229.512 Commissioner of Education, general powers and duties.—The Commissioner of Education is the chief educational officer of the state, and he has the following general powers and duties:

(1) To appoint staff necessary to carry out his powers and duties, except that appointment of all division directors shall be subject to approval by the state board, except the Board of Regents, whose members shall be appointed pursuant to s. 240.207, and the State Community College Coordinating Board, whose members shall be appointed pursuant to s. 240.307;

(2) To advise and counsel with the State Board of Education on all matters pertaining to education; to recommend to the State Board of Education actions and policies as, in his opinion, should be acted upon or adopted; and to execute or provide for the execution of all acts and policies as are approved;

(3) To call such special meetings of the State Board of Education as he deems necessary;

(4) To keep such records as are necessary to set forth clearly all acts and proceedings of the state board;

(5) To have a seal for his office with which, in connection with his own signature, he shall authenticate true copies of decisions, acts, or documents;

(6) To assemble all data relative to the preparation of the long-range plan for the development of the state system of public education; to propose for adoption by the State Board of Education such a plan; and to propose revisions in the plan as may be necessary;

(7) To recommend to the State Board of Education policies and steps designed to protect and preserve the principal of the State School Trust Fund and to provide an assured and stable income from the fund, and to execute such policies and actions as are approved;

(8) To investigate and submit proposals for sale of all school lands held by the state for educational purposes; to recommend policies for rental, use, or improvement of such lands and for preserving them from trespass or injury, and to execute such policies as are approved;

(9) To submit to the State Board of Education, at least 30 days prior to the date fixed herein recommendations of expenditures for the State Board of Education, the Commissioner of Education and all of the boards, institutions, agencies and services under the general supervision of the State Board of Education for the ensuing fiscal year;

(10) To recommend ways and means of cooperating with the Federal Government in carrying out any or all phases of the educational program and to recommend policies for administering funds which may be appropriated by Congress and apportioned to the state for any or all educational purposes;

(11) To recommend policies for cooperating with other public agencies in carrying out those phases of the program in which such cooperation is required by law or is deemed by him to be desirable and to cooperate with public and nonpublic agencies in planning and bringing about improvements in the educational program;

(12) To prepare for approval of the State Board of Education such forms and procedures as are deemed necessary to be used by the Board of Regents, boards of trustees of community colleges, district school boards and all other educational agencies to assure uniformity, accuracy and efficiency in the keeping of records, the execution of contracts, the preparation of budgets or the submission of reports; to furnish at state expense, when deemed advisable by him, those forms which can more economically and efficiently be provided; and

(13) To arrange for the preparation, publication and distribution of materials relating to the state system of public education which will supply information concerning needs, problems, plans and possibilities; also to prepare and publish annually reports giving statistics and other useful information pertaining to the state system of public education; to have printed copies of school laws, forms, instruments, instructions and regulations of the State Board of Education and to provide for the distribution of the same.

History.—s. 15, ch. 69-106; ss. 7, 8, ch. 72-221; s. 2, ch. 75-302; s. 109, ch. 79-222.

229.514 Commissioner of Education; authority to reallocate duties and functions assigned to the department.—

(1) The Commissioner of Education, with the consent of the State Board of Education, is authorized to reallocate duties and functions specifically assigned to the Department of Education. Those functions or agencies assigned generally to the department without specific designation to a unit of the department may be allocated and reallocated to a unit of the department at the discretion of the commissioner. The commissioner may establish, abolish, or consolidate bureaus, sections, and subsections of the department in order to promote the efficient and effective operation of the department. The commissioner is also authorized and directed to abolish selected positions in the overall reorganization of the department in order to comply with the number of authorized positions for 1974-1975.

(2) The Commissioner of Education shall not have the authority to establish, abolish, or consolidate bureaus, sections, and subsections after July 1, 1975, unless such action is approved by the Executive Office of the Governor or by law.

History.—ss. 1-3, ch. 74-263; s. 3, ch. 77-123; s. 103, ch. 79-190.

229.55 Educational accountability; short title; intent.—

(1) SHORT TITLE.—This act shall be known and may be cited as the "Educational Accountability Act of 1976."

(2) INTENT.—The intent of the Legislature is to:

(a) Provide a system of accountability for education in Florida which guarantees that each student is afforded similar opportunities for educational advancement without regard to geographic differences and varying local economic factors.

(b) Provide information for education decision-makers at the state, district, and school levels so that resources may be appropriately allocated and the needs of the system of public education met in a timely manner.

(c) Provide information about costs of educational programs and the differential effectiveness of differing instructional programs so that the educational process may be improved continually.

(d) Guarantee to each student in the Florida system of public education that the system provides instructional programs which meet minimum performance standards compatible with the state's plan for education.

(e) Provide a more thorough analysis of program costs and the degree to which the various districts are meeting the minimum performance standards established by the State Board of Education.

(f) Provide information to the public about the performance of the Florida system of public education in meeting established goals and providing effective, meaningful, and relevant educational experiences designed to give students at least the mini-

mum skills necessary to function and survive in today's society.

History.—s. 1, ch. 76-223.

229.551 Educational management.—

(1) The department is directed to identify all functions which under the provisions of this act contribute to, or comprise a part of, the state system of educational accountability and to establish within the department the necessary organizational structure, policies, and procedures for effectively coordinating such functions. Such policies and procedures shall clearly fix and delineate responsibilities for various aspects of the system and for overall coordination of the total system. The commissioner shall perform the following duties and functions:

(a) Coordination of department plans for meeting educational needs and for improving the quality of education provided by the state system of public education;

(b) Coordination of management information system development for all levels of education and for all divisions of the department, to include the development and utilization of cooperative education computing networks for the state system of public education;

(c) Development of data base definitions and all other items necessary for full implementation of a comprehensive management information system as required by s. 229.555;

(d) Coordination of all planning functions for all levels and divisions within the department;

(e) Coordination of all cost accounting and cost reporting activities for all levels of education, including public schools, vocational-technical programs, community colleges, and institutions in the State University System;

(f) Administration of the educational research and development program created by s. 229.561; and

(g) Development and coordination of a common course designation and numbering system for community colleges and the State University System which shall improve program planning, increase communication among community colleges and universities, and facilitate the transfer of students. However, such a system shall not encourage or require course content prescription or standardization or uniform course testing, and the continuing maintenance of the system shall be accomplished by appropriate faculty committees.

(2) It is the intent of the Legislature that the commissioner, as appropriate, draw upon the expertise and the staff of all appropriate departments and agencies of the state in assuring that the system of educational accountability is administered in the most effective and efficient manner possible.

(3) As a part of the system of educational accountability, the department shall:

(a) Develop minimum performance standards for various grades and subject areas, as required in ss. 229.565 and 229.57.

(b) Administer the statewide assessment testing program created by s. 229.57.

(c) Develop and administer an educational evaluation program, including the provisions of the Plan for Educational Assessment developed pursuant to s. 9, chapter 70-399, Laws of Florida, and adopted by the State Board of Education.

(d) Review the annual reports required by s. 229.575.

(e) Review each district's school advisory committees as required by s. 229.58.

(f) Conduct the program evaluations required by s. 229.565.

(g) Maintain a listing of college-level communication and computation skills defined by the Articulation Coordinating Committee as being associated with successful student performance through the baccalaureate level and submit the same to the State Board of Education for approval.

(h) Maintain a listing of tests and other assessment procedures which measure and diagnose student achievement of college-level communication and computation skills and submit the same to the State Board of Education for approval.

(i) Maintain for the information of the State Board of Education and the Legislature a file of data compiled by the Articulation Coordinating Committee to reflect achievement of college-level communication and computation competencies by students in state universities and community colleges.

(j) Perform any other functions that may be involved in educational planning, research, and evaluation or that may be required by the commissioner, the State Board of Education, or law.

History.—s. 8, ch. 68-13; s. 1, ch. 69-300; s. 13, ch. 72-221; s. 3, ch. 75-302; s. 2, ch. 76-223; s. 108, ch. 79-222.

229.555 Educational planning and information systems.—

(1) EDUCATIONAL PLANNING.—

(a) The commissioner shall be responsible for all planning functions for the department, including collection, analysis, and interpretation of all data, information, test results, evaluations, and other indicators that are used to formulate policy, identify areas of concern and need, and serve as the basis for short-range and long-range planning. Such planning shall include assembling data, conducting appropriate studies and surveys, and sponsoring research and development activities designed to provide information about educational needs and the effect of alternative educational practices.

(b) Each district school board shall maintain a continuing system of planning and budgeting which shall be designed to aid in identifying and meeting the educational needs of students and the public. Provision shall be made for coordination between district school boards and community college boards of trustees concerning the planning for vocational and adult educational programs. The major emphasis of the system shall be upon locally determined goals and objectives, the state's plan for education, and the minimum performance standards developed by the Department of Education. The system shall be structured to meet the specific management needs of the district. The system of planning and budgeting shall insure that the budget adopted by the district school board reflects the plan the board has also adopted. Each district school board shall utilize its system of planning and budgeting to emphasize a system of school-based management in which individual school centers become the principal planning units and eventually to integrate planning and

budgeting at the school level.

(2) COMPREHENSIVE MANAGEMENT INFORMATION SYSTEMS.—The commissioner shall develop and implement an integrated information system for educational management. The system shall support, as feasible, the management decisions to be made in each division of the department and at the individual school and district levels. Similar data elements among divisions and levels shall be compatible. The system shall be based on an overall conceptual design; the information needed for such decisions, including fiscal, student, program, personnel, facility, community, evaluation, and other relevant data; and the relationship between costs and effectiveness. By February 1, 1977, the commissioner shall develop and submit to the Legislature the conceptual design, the specifications, a costed implementation plan, and a phased schedule for development, installation, testing, and validation of a management information system for public school educational management. Phased implementation of this system shall begin no later than July 1, 1977. The system shall be managed and administered by the commissioner and shall include a district subsystem component to be administered at the district level. Each district school system with a unique management information system shall assure that compatibility exists between its unique system and the district component of the state system to the extent that all data required as input to the state system shall be made available in the appropriate input format.

(a) The specific responsibilities of the commissioner shall include the following:

1. Consulting with school district representatives in the development of the system design model and implementation plans for the management information system for public school education management;

2. Providing operational definitions for the proposed system;

3. Determining the information and specific data elements required for the management decisions made at each educational level, recognizing that the primary unit for information input shall be the individual school;

4. Developing standardized terminology and procedures to be followed at all levels of the system;

5. Developing a standard transmittal format to be used for collection of data from the various levels of the system;

6. Developing appropriate computer programs to assure integration of the various information components dealing with students, personnel, facilities, fiscal, program, community, and evaluation data;

7. Developing the necessary programs to provide statistical analysis of the integrated data provided in subparagraph 6. in such a way that required reports may be disseminated, comparisons may be made, and relationships may be determined in order to provide the necessary information for making management decisions at all levels;

8. Developing output report formats which will provide district school systems with information for making management decisions at the various educational levels;

9. Developing a phased plan for distributing computer services equitably among all public schools and school districts in Florida as rapidly as possible. The first phase of the plan shall deal with data processing to meet state and district management needs and shall be submitted to the Legislature on or before February 1, 1977. The plan shall describe alternatives available to the state in providing such computing services and shall contain estimates of the cost of each alternative, together with a recommendation for action. In developing such plan, the feasibility of shared use of computing hardware and software by school districts, community colleges, and universities shall be examined. Laws or administrative rules regulating procurement of data processing equipment, communication services, or data processing services by state agencies shall not be construed to apply to local agencies which share computing facilities with state agencies;

10. Assisting the district school systems in establishing their subsystem components and assuring compatibility with current district systems;

11. Establishing procedures for continuous evaluation of system efficiency and effectiveness;

12. Initiating a reports-and forms-management system to ascertain that duplication in collection of data does not exist and that forms and reports are prepared in a logical and uncomplicated format, resulting in a reduction in the number and complexity of required reports, particularly at the school level; and

13. Initiating such other actions as are necessary to carry out the intent of the Legislature that a management information system for public school management needs be implemented.

(b) The specific responsibilities of each district school system shall include:

1. Establishing a district level reports-and forms-control management system by July 1, 1977.

2. With assistance from the commissioner, developing systems compatibility between the state management information system and unique local systems.

3. Providing, with the assistance of the department, inservice training dealing with management information system purposes and scope, a method of transmitting input data, and the use of output report information.

4. Establishing a plan for continuous review and evaluation of local management information system needs and procedures.

5. Advising the commissioner of all district management information needs.

6. Transmitting required data input elements to the appropriate processing locations in accordance with guidelines established by the commissioner.

7. Determining required reports, comparisons, and relationships to be provided to district school systems by the system output reports, continuously reviewing these reports for usefulness and meaningfulness, and submitting recommended additions, deletions, and change requirements in accordance with the guidelines established by the commissioner.

8. Being responsible for the accuracy of all data elements transmitted to the department.

(c) It is the intent of the Legislature that the

expertise in the state system of public education, as well as contracted services, be utilized to hasten the plan for full implementation of a comprehensive management information system.

History.—s. 3, ch. 76-223.

229.561 Educational research and development.—There is hereby created an Educational Research and Development Program which shall be administered by a director of research and development under the direction of the Commissioner of Education. It is the intent of the Legislature that funds shall be allocated each year for the sole purpose of sponsoring projects which shall provide information designed to identify areas of critical concern and assess the effects of alternative educational practices so that the needs of students may be met. The director of research and development, under the direction of the Commissioner of Education, shall develop and implement an educational research and development program as hereinafter provided. Support for the research and development program shall be included in the budget request of the commissioner.

(1) DIRECTOR OF RESEARCH AND DEVELOPMENT.—The program shall be administered by a director of research and development who shall be responsible to the Commissioner of Education.

(a) The director shall be appointed by the Commissioner of Education from a list of individuals recommended by the board of advisors.

(b) The duties and responsibilities of the director shall include:

1. Attending all meetings of the board of advisors and acting in an advisory capacity to the board.

2. Keeping the minutes of all official actions and proceedings of the board and such other records as may be necessary to provide complete information regarding educational research and development.

3. Submitting annual budget recommendations to the commissioner of education.

4. Employing staff sufficient to oversee and administer all operational research and development projects.

5. Reviewing all project applications and making any recommendations he deems necessary to the board of advisors and Commissioner of Education.

6. Publicizing all board of advisors' meetings and disseminating information relating to educational research and development projects.

[1](2) BOARD OF ADVISORS FOR EDUCATIONAL RESEARCH AND DEVELOPMENT.—The State Board of Education shall, from a list of individuals submitted by the Commissioner of Education, appoint 14 members of the Board of Advisors for Educational Research and Development. The board shall, as nearly as practicable, reflect the social and geographic composition of the state.

(a) The board shall not exceed 16 members, from the following categories:

1. Five teachers from the public schools, selected from a list of 15 teachers nominated for "Florida Teacher of the Year."

2. Two public school administrators from the local district level, selected from a list of six nominees submitted by the Florida Association of Secondary School Principals and the Florida Elementary School Principals Association.

3. Two parents with children attending the public schools, from a list of six nominees submitted by the Florida Parent Teachers Association.

4. Two district school board members, selected from a list of six nominees submitted by the Florida School Boards Association.

5. One university professor teaching at a public university in the state, selected from a list of three nominees submitted by the Board of Regents.

6. One university professor teaching at a private university in the state, from a list of three nominees submitted by the State Board of Independent Colleges and Universities.

7. One community college instructor teaching at a public community college in the state, selected from a list of three nominees submitted by the State Community College Council.

8. The board shall also include one member of the House of Representatives selected by the Speaker of the House of Representatives and one member of the Senate selected by the President of the Senate.

(b) The director of research and development shall act as secretary and ex officio member of the board.

(c) The terms of appointment for each member shall be 3 years or until a successor is appointed, except in case of an appointment to fill a vacancy, in which case the appointment shall be for the unexpired term. The terms of the initial members shall expire as follows: Six on July 1, 1975; five on July 1, 1976; and five on July 1, 1977. The board shall hold not less than four annual meetings, not more than two of which shall be in Tallahassee, for the purpose of carrying out the duties and responsibilities assigned to it, such meetings to be held according to a schedule arranged by the Commissioner of Education.

(d) As soon as practicable following appointment of the board of advisors, the commissioner shall call an organizational meeting of the board. From among its members, the board shall elect a chairman to preside over meetings of the board and to perform any other duties directed by the board or required by its duly adopted policies or operating procedures. The duties and responsibilities of the board shall include:

1. Submitting annually to the commissioner a priority list of specific educational and education-related issues which are designed to improve the effectiveness of public education in Florida.

2. Reviewing periodically the activities of each project sponsored by the Educational Research and Development Program and making recommendations to the commissioner concerning the operation of such projects.

3. Reviewing annually the evaluative data on each project sponsored by the Educational Research and Development Program and making recommendations to the commissioner concerning the potential benefits the project findings and results have for education in Florida and suggesting strategies for implementing the findings in the state, including priorities, target areas, phasing, and sequence.

4. Acting in an advisory capacity to the director of research and development and the commissioner

in the development of guidelines and specifications for projects to be sponsored by the Educational Research and Development Program.

5. Recommending to the commissioner projects which should be approved for sponsorship by the Educational Research and Development Program.

6. Reviewing all project specifications, including funding.

7. Recommending to the commissioner a list of persons qualified to be appointed director of educational research and development.

(e) After reviewing the evaluative data from each sponsored project, the board shall annually file with the commissioner a comprehensive report on the status of all projects sponsored or partially supported by educational research and development funds. This report shall include: A description of the project, the current status of the project, the present and prior funding of the project, assessment of the results or products produced by the project, and the recommendations of the board of advisors.

(f) Members of the board of advisors shall be entitled to receive per diem and expenses for travel while carrying out their official business as members of the board. Such expenses shall be paid in accordance with s. 112.061. The Department of Education shall approve payment of such expenses in accordance with established rules and regulations.

(g) No member of the Board of Advisors for Educational Research and Development shall directly or indirectly receive funds from any project sponsored or supported under the provisions of this section.

(3) REQUESTS FOR PROJECT GRANTS.—Requests for project funds shall be submitted to the director of research and development and the board of advisors, pursuant to guidelines established by the board of advisors. All requests for projects sponsored under the provisions of this section shall include, but not be limited to: The specific objectives of the project, the controls to be used to insure the validity of data, an appropriate design for evaluation of the project, procedures for an assessment of the project's objectives, and adequate methods for dissemination of the results of the project.

(4) WAIVER OF REGULATIONS.—In the event the Commissioner of Education is provided evidence that a State Board of Education regulation or a district school board regulation will inhibit the success of a project, the State Board of Education, or the district school board with regard to the district school board regulation, upon hearing the evidence presented by the Commissioner of Education, shall have authority to waive the impeding regulation. Any waiver of a regulation authorized by the State Board of Education or the district school board shall not be greater than necessary to insure the success of the project, and such waiver shall not continue beyond the actual period of the project's operation. The Commissioner of Education shall not approve any project requiring a waiver of state board or district school board regulations prior to receiving evidence of the official action by the State Board of Education or the district school board that the impeding regulations have been waived for the purpose of the project.

History.—ss. 1, 2, ch. 69-401; ss. 31, 35, ch. 69-106; s. 15, ch. 74-337; s. 4, ch. 76-223; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subsection prior to that date.

229.565 Educational evaluation procedures.—

(1) MINIMUM STANDARDS.—The State Board of Education shall approve minimum student performance standards in the various program categories and chronological grade levels, especially in reading, writing, and mathematics, which the Commissioner of Education determines shall best indicate the status of the state system of public education.

(2) EDUCATION EVALUATION.—The Commissioner of Education shall periodically examine and evaluate procedures, records, and programs in each district to determine compliance with law and rules established by the state board. Such evaluations shall include, but not be limited to:

(a) Reported full-time equivalent membership in each program category.

(b) The organization of all special programs to ensure compliance with law and the criteria established and approved by the state board pursuant to the provisions of this section and ss. 230.23(4)(m) and 233.0682.

(c) The procedures for identification and placement of students in educational alternative programs for students who are disruptive or unsuccessful in a normal school environment and for diagnosis and placement of students in special programs for exceptional students, to determine that the district is following the criteria for placement established by rules of the state board and the procedures for placement established by that district school board.

(d) Procedures for screening, identification, and assignment of instructional strategies of the Florida Primary Education Program, or an approved alternative program as provided in s. 230.2312, and any other provisions of the program.

(e) An evaluation of the standards by which the school district evaluates basic and special programs for quality, efficiency, and effectiveness.

(f) Determination of the ratio of administrators to teachers in each school district, which information shall be reported to the Legislature as a part of the commissioner's report required by s. 229.575(1).

(g) Compliance with the cost accounting and reporting requirements of s. 237.34 and the extent to which the percentage expenditure requirements therein are being met.

(3) ASSISTANCE AND ADJUSTMENTS.—If discrepancies or deficiencies are found, the Commissioner of Education shall provide information and assistance to the superintendent and personnel of the district in correcting the cited deficiencies. If it is determined that approved criteria and procedures for the placement of students and the conduct of programs have not been followed by the district, appropriate adjustments in that district's full-time equivalent student count shall be made, and any

excess funds shall be deducted from subsequent allocations of state funds to that district.

History.—s. 5, ch. 76-223; s. 4, ch. 78-405; s. 3, ch. 79-288.

229.57 Student assessment testing programs.—

(1) STATEWIDE TESTING.—The primary purpose of the statewide testing program is to provide information needed for state-level decisions. The program shall be designed to:

(a) Assist in the identification of educational needs at the state, district, and school levels.

(b) Assess how well districts and schools are meeting state goals and minimum performance standards.

(c) Provide information to aid in the development of policy issues and concerns.

(d) Provide a basis for comparisons among districts and between districts and the state and the nation, when appropriate.

(e) Produce data which can be used to aid in the identification of exceptional educational programs or processes.

(2) THE STATEWIDE ASSESSMENT PROGRAM.—The commissioner is directed to implement a program of statewide assessment testing which shall provide for the improvement of the operation and management of the public schools. The statewide program shall be timed, as far as possible, so as not to conflict with ongoing district assessment programs. As part of the program the commissioner shall:

(a) Establish, with the approval of the state board, minimum performance standards related to the goals for education contained in the state's plan, including, but not limited to, basic skills in reading, writing, and mathematics. The minimum performance standards shall be approved by April 1 in each year they are established, for a period of no less than 3, or more than 5, years.

(b) Develop and administer in the public schools a uniform, statewide program of assessment to determine, periodically, educational status and progress and the degree of achievement of approved minimum performance standards. The uniform statewide program shall consist of testing in grades 3, 5, 8, and 11 and may include the testing of additional grades and skill areas as specified by the commissioner.

(c) Develop and administer, as needed in the public schools, a uniform, statewide program of assessment of special programs as defined in s. 236.081(1)(c).

(d) Monitor the results of the assessment program and, at any time the composite student performance of a school or basic program is found to be below the established minimum standards, notify the district superintendent, the school principal, and the school advisory committee or other existing parent group of this situation within 30 days of its determination. The commissioner shall further provide technical assistance to the district in the identification of the causes of this deficiency and shall recommend courses of action for its correction.

(e) Provide technical assistance to the school districts, when requested, in the development of student performance standards in addition to the established minimum statewide standards.

(3) DISTRICT ASSESSMENT PROGRAMS.—Each district shall periodically assess student performance and achievement in each school. Such assessment programs shall be based upon local goals and objectives which are compatible with the state's plan for education and which supplement the minimum performance standards approved by the State Board of Education. Data from district assessment programs shall be provided to the commissioner when such data are required in order to evaluate specific instructional programs or processes or when the data are needed for other research or evaluation projects. Each district may provide acceptable, compatible district assessment data to substitute for any assessment data needed at the state level when the commissioner certifies that such data are acceptable for the purposes of this section.

History.—ss. 1-4, ch. 71-197; s. 1, ch. 74-205; s. 6, ch. 76-223.

229.575 Reporting procedures.—

(1) COMMISSIONER'S REPORT.—The commissioner shall annually report the status of the state system of public education. Such reports shall contain:

(a) Information about how well district instructional programs enable students to meet the minimum performance standards.

(b) Results of educational program evaluations.

(c) Information about the needs of education.

(d) Areas of immediate and long-range concern to state and district education decision makers.

(e) Recommendations for action.

(f) Information on policy decisions.

(g) Any other information and analyses which explain or clarify the status of the state system of public education.

(h) The comparisons required by s. 229.57.

The commissioner's annual report shall be presented to the Legislature prior to the convening of each regular session and shall be made available to the general public and the citizens of Florida through all appropriate means.

(2) DISTRICT REPORT.—Each district shall annually report on the status of education in the district. Such reports shall contain:

(a) Information about how well school instructional programs enable students to meet the minimum performance standards.

(b) Results of program evaluations.

(c) Information about the needs of education in the district.

(d) Information on district policy decisions.

(e) Any other information and analyses which explain or clarify the status of education in the district.

The district annual report shall be made available to the general public and the citizens of the district, to each school in the district, and to appropriate local news media.

(3) SCHOOL REPORT.—Each school shall report annually on its status of education. Such reports shall be based upon information for the prior school year and shall contain:

(a) Information on how well the school is meeting its goals and objectives.
(b) Interpretation and analysis of student progress, including information on how well students are achieving the minimum performance standards.
(c) Fiscal information, including the school budget.
(d) Information on the needs of the school and its students.
(e) Summaries of teacher, student, parent, and community attitudes toward the school.
(f) Any other information and analyses which explain or clarify the status of education.

The principal, with the assistance of teachers, students, and the school advisory committee, where existing, shall prepare the report which shall be published by November 1 each school year beginning with the 1977-1978 school year. The report shall be reproduced and distributed at the least possible cost and may be issued in a series or as part of existing school publications. The report shall be distributed to the parent or guardian of each student in the school and made available to all other interested citizens upon request.
History.—s. 7, ch. 76-223.

229.58 District and school advisory committees.—
(1) ESTABLISHMENT.—The district school board may establish an advisory committee broadly representative of the community served by the school for each school in the district and composed of teachers, students, parents, and other citizens. If the school board does not establish advisory committees for each school, it shall establish a district advisory committee broadly representative of the district and composed of teachers, students, parents, and other citizens. The district school board may establish, in addition to the committees authorized at each school, a district advisory committee which may be comprised of representatives of each school committee or such other members as the district board shall prescribe. Recognized schoolwide support groups which meet all criteria established by law or rule may function as district and school advisory committees.
(2) DUTIES.—Each advisory committee shall perform such functions as are prescribed by regulations of the district school board; however, no advisory committee shall have any of the powers and duties now reserved by law to the district school board. Each school advisory committee, however, shall assist in the preparation of the annual report required by s. 229.575 and shall provide such assistance as the principal may request in preparing the school's annual budget and plan as required by s. 229.555(1).
History.—s. 8, ch. 76-223; s. 1, ch. 78-416.

229.59 Educational improvement projects.—
(1) Pursuant to rules adopted by the State Board of Education, each district school board, or each principal through the district school board, may submit to the commissioner for approval a proposal for implementing an educational improvement project. Such proposals shall be developed with the assistance of district and school advisory committees and may address any or all of the following areas: School management improvement, district and school advisory committee improvement, school volunteers, and any other educational area which would be improved through a closer working relationship between school and community. Priority shall be given to proposals which provide for the inclusion of existing resources, such as district educational training funds, in the implementation of the educational improvement project.
(2) For each project approved, the commissioner shall authorize distribution of a grant, in an amount not less than $500 and not more than $5,000, from funds available to the Department of Education for educational improvements projects. Promising innovations resulting from the implementation of such projects shall be included in the commissioner's annual report.
History.—s. 2, ch. 78-416.

PART III

DEPARTMENT OF EDUCATION

229.75 Department under direction of state board.—The Department of Education shall act as an administrative and supervisory agency under the direction of the State Board of Education. The state board and its staff shall comprise the department.
History.—s. 318, ch. 19355, 1939; CGL 1940 Supp. 892(58); s. 22, ch. 29764, 1955; s. 13, ch. 65-239; ss. 15, 35, ch. 69-106.
Note.—Former s. 229.18.

229.76 Functions of department.—The department shall be located in the offices of the Commissioner of Education, shall operate under the direc-

tion and control of the state board and shall assist it in providing professional leadership and guidance, and in carrying out the policies, procedures, and duties authorized by law or by the board or found necessary by it to attain the purposes and objectives of the School Code.

History.—s. 319, ch. 19355, 1939; CGL 1940 Supp. 892(59); s. 13, ch. 65-239; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300.
Note.—Former s. 229.19.

229.771 Removal from office.—The department shall remove from office for cause any person appointed by the state board under the provisions of the School Code or any subordinate school officer. Cause for such removal shall be incompetency, immorality, misconduct in office, gross insubordination, or willful neglect of duty. Notice and hearing shall be provided pursuant to chapter 120.

History.—ss. 308, 317, ch. 19355, 1939; CGL 1940 Supp. 892(48), (57); s. 13, ch. 65-239; ss. 15, 35, ch. 69-106; s. 56, ch. 71-355; s. 13, ch. 78-95.
Note.—Former s. 229.08; s. 229.17; s. 229.061(15); s. 229.521(15). This section is a composite of former ss. 229.061(15) and 229.521(15) and of a portion of s. 3, Art. XII of the Constitution of 1885 which was converted to statutory law by s. 10, Art. XII of the Constitution as revised in 1968.

229.78 Maintenance of department.—Appropriations and other funds available for the maintenance of the department shall be expended as provided by law.

History.—s. 321, ch. 19355, 1939; CGL 1940 Supp. 892(61); s. 13, ch. 65-239; ss. 15, 35, ch. 69-106.
Note.—Former s. 229.21.

229.781 Records; preservation; destruction.—

(1) After complying with the provisions of s. 267.10, the Department of Education is authorized to photograph, microphotograph, or reproduce on film or prints, documents, records, data, and information of a permanent character which in its discretion it may select, and the Department of Education is authorized to destroy any of the said documents after they have been photographed and after audit of the department has been completed for the period embracing the dates of said instruments. Photographs or microphotographs in the form of film or prints made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

(2) After complying with the provisions of s. 267.10, the Department of Education is authorized, in its discretion, to destroy general correspondence which is over 3 years old; records of bills, accounts, vouchers and requisitions which are over 5 years old and copies of which have been filed with the Comptroller; and other records, papers and documents over 3 years old which do not serve as part of an agreement or understanding nor have value as permanent records.

History.—ss. 1-3, ch. 29745, 1955; s. 13, ch. 65-239; ss. 15, 35, ch. 69-106; s. 14, ch. 72-221.
Note.—Former s. 229.201; s. 229.531.

229.79 Special services of the department; pooling of purchases by school boards.—The Department of Education shall render such special services as will be of benefit to the schools of the state. As one phase of these services it shall assist school boards in securing school buses, contractual needs, equipment, and supplies at as reasonable prices as possible by providing a plan under which school boards may voluntarily pool their bids for such purchases. The Department of Education shall prepare bid forms and specifications, obtain quotations of prices and make such information available to school boards in order to facilitate this service. School boards from time to time, as prescribed by the state board, shall furnish the Department of Education with information concerning the prices paid for such items and the Department of Education shall furnish to school boards periodic information concerning the lowest prices at which school buses, equipment, and school supplies are available based upon comparable specifications.

History.—s. 323, ch. 19355, 1939; CGL 1940 Supp. 892(63); s. 4, ch. 23726, 1947; s. 23, ch. 29764, 1955; s. 2, ch. 61-288; s. 13, ch. 65-239; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 15, ch. 72-221.
Note.—Former s. 229.23.

229.80 Apportionment of state school funds.—The department shall apportion all state school funds to the credit of the district school funds of the respective districts in accordance with the provisions of law and of rules and regulations of the state board.

History.—s. 317, ch. 19355, 1939; CGL 1940 Supp. 892(57); s. 13, ch. 65-239; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 16, ch. 72-221.
Note.—Former s. 229.17; s. 229.521(4).

229.801 Development of flexible staff operations for public schools.—The Department of Education, in cooperation with selected school boards, shall develop and operate model projects of flexible staff organization in selected elementary and secondary schools based on differentiated levels of responsibility and compensation for services performed. Each project shall be designed, conducted, and evaluated in a manner which will provide definitive information which shall be furnished to each school board in the state.

History.—s. 6, ch. 68-13; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300.
Note.—Former s. 229.521(30).

229.8025 Pilot program for extended school year.—

(1) The State Department of Education is authorized and directed to develop a detailed plan for the implementation of an extended school year of 200 days of instruction, divided into 4 quarters of 50 days of instruction each, to allow a condensation of the 13 school years, kindergarten through grade 12, into 12 school years without a reduction in total instructional time, said condensation to be phased in over a period not to exceed 5 years. This plan is to be developed in conjunction and cooperation with the college of education of a state university, or universities, and with a local school district, or districts, located in the area served by said state university, or universities, each to be selected by the department. Said plan for implementation shall be prepared so as to

provide for a pilot program in selected elementary or secondary schools of the local district, or districts, commencing with the 1973-1974 school year.

(2) The extended school year implementation plan shall include, but not be limited to:

(a) An investigation and study of extended school year plans in other school districts of the state and nation, with emphasis on those plans providing 200 days of instruction.

(b) A complete curriculum study to determine and make any revisions necessitated by an extended school year of 200 days of instruction divided into 4 quarters and by a reduction in the 13 years of public school, kindergarten through grade 12, to 12 years.

(c) An analysis of funding needs and a plan for measuring the fiscal impact, both long and short term, of the extended school year.

(d) A plan to assess the impact of the extended school year upon student attitudes and achievement to the extent necessary to supplement the requirements of s. 229.57, the Educational Accountability Act of 1971.

History.—ss. 1-3, ch. 72-284; s. 10, ch. 77-320.

229.805 Educational television.—

(1) STATE POLICY.—It is hereby declared to be the public policy of the state to provide through educational television and radio the powers of teaching, raising living and educational standards of the citizens and residents of the state, and protecting and promoting public interest in educational television and radio in accordance with existing state and federal laws.

(2) ESTABLISHMENT AND UTILIZATION OF NETWORK.—The Department of Education is authorized and empowered to establish a television network connecting such communities or such stations as it may designate. For this purpose it may lease facilities in the name of the state from communications' common carriers and use such transmission channels as may be necessary; provided, however, that should the department decide, upon investigation, that it could more economically construct and maintain such transmission channels, it is authorized and empowered to design, construct, operate and maintain the same, including a television microwave network. Said network shall be utilized primarily for the instruction of students at existing and future public and private educational institutions and of the general public, or so many thereof as may prove practical. The origination and transmission of all programs over such networks shall be as directed under policies approved by the state board. The department may cooperate with and assist all local and state educational agencies in making surveys pertaining to the use and economics of educational television in the fields of primary, elementary, secondary, or college level education and in the field of adult education, and may assist all public agencies in the planning of programs calculated to further the education of the citizens of the state.

(3) POWERS OF DEPARTMENT OF EDUCATION.—

(a) The Department of Education is authorized to encourage:

1. The activation of unused reserve educational television channels;

2. The extension of educational television network facilities;

3. The coordination of Florida's educational television with that of other states and with the Federal Government; and

4. The further development of educational television within the state.

[1](b) The department shall provide through educational television and other electronic media a means of extending educational services to all the state system of public education except the state university system as defined in s. 239.01 and to recommend to the state board rules and regulations necessary to provide such services. The state board shall appoint from a list of two or more names nominated by the commissioner for each position an educational television advisory council consisting of seven members to assist the department in providing such educational television services. Members of the advisory council shall be paid per diem and traveling expenses as provided by law.

(c) The department is authorized to provide equipment, funds, and other services to extend and update both existing and proposed educational television and radio systems of tax supported and nonprofit, corporation-owned facilities. Funds appropriated to the department for educational television and funds appropriated to the department for educational radio may be used by the department for either educational television or educational radio, or both.

(4) PROPERTY, REAL AND PERSONAL.—All property, real and personal, owned by the Florida Educational Television Commission forthwith becomes the property of the State Board of Education and shall be retained by it or assigned to appropriate state or county agencies.

(5) PROHIBITED USE, PENALTY.—

(a) None of the facilities, plant, or personnel of any educational television system which is supported in whole or in part by state funds shall be used directly or indirectly for the promotion, advertisement, or advancement of any political candidate for any municipal, county, legislative, congressional, or state office. However, fair, open, and free discussion between political candidates for municipal, county, legislative, congressional, or state office may be permitted in order to help materially reduce the excessive cost of campaigns and to insure that the citizens of Florida shall be fully informed about such issues and candidates in such campaigns. The above provisions shall apply to the advocacy for, or opposition to, any specific program, existing or proposed, of governmental action which shall include, but shall not be limited to, constitutional amendments, tax referenda, and bond issues. The provisions of this paragraph shall be in accordance with reasonable rules and regulations prescribed by the State Board of Education or the Board of Regents, whichever has authority in the premises.

(b) Violation of any prohibition contained in this section shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) DUTY OF DEPARTMENT OF EDUCATION.

—The Department of Education shall be responsible for identifying the needs of the state system of public education as they relate to the development and production of materials used in instruction. When such identified needs are deemed to be best satisfied by the production of new materials, the department shall be empowered to commission or contract for the production of such materials. The State Board of Education shall adopt and prescribe rules and regulations for the proper enforcement and carrying out of these provisions.

History.—ss. 1-6, 8, ch. 67-569; ss. 15, 35, ch. 69-106; s. 1, ch. 70-191; s. 131, ch. 71-136; s. 1, ch. 71-291; s. 1, ch. 72-255; s. 4, ch. 78-323.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this paragraph prior to that date.

Note.—Former s. 229.131; s. 229.521(29).

229.8051 Public broadcasting program system.—

(1) There is hereby created a public broadcasting program system for the state. This program system shall be administered by the Department of Education pursuant to policies adopted by the State Board of Education and complement and share resources with the instructional programming service of the department of education and educational UHF, VHF, ITFS and FM stations in the state. This program system shall include, but shall not be limited to:

(a) Complete broadcast service to all areas of the state by educational broadcasting stations.

(b) Maintenance of quality broadcast capability for educational stations which are part of the program system.

(c) Interconnection of all educational stations which are part of the program system for simultaneous broadcast, and of such stations with all universities and other institutions as necessary for sharing of resources and delivery of programming.

(d) Establishment and maintenance of a capability for statewide program distribution with facilities and staff, provided such facilities and staff complement and strengthen existing educational television and radio stations and except that no systems or services will be created that unduly duplicate those provided by existing educational stations.

(e) Provision of both statewide programming funds and station programming support for educational television and educational radio to meet statewide priorities. For purposes of this subsection, the Department of Education shall consider, but is not bound by, recommendations by the educational television advisory council established by s. 229.805(3)(b). However:

1. The advisory council shall allow for full participation of all duly authorized representatives of educational UHF and VHF licensees at all of its meetings, and shall report with its recommendations on priorities to the State Department of Education the concurring or dissenting view of two-thirds of the duly authorized representatives of educational UHF and VHF licensees.

2. The advisory council shall allow for full participation of all duly authorized representatives of educational FM licensees at all of its meetings, and shall report with its recommendations on priorities to the State Department of Education the concurring or dissenting view of two-thirds of the duly authorized representatives of educational FM licensees.

Priorities for station programming need not be the same as priorities for programming to be used statewide. Station programming may include, but shall not be limited to, citizens' participation programs, music and fine arts programs, coverage of public hearings and governmental meetings, equal air time for political candidates, and other public interest programming.

(2) The Department of Education is assigned responsibility for implementing the provisions of this section pursuant to part III, chapter 287, and is authorized to employ personnel, acquire equipment and facilities, and perform all duties necessary for carrying out the purposes and objectives of this section.

History.—ss. 1, 2, ch. 73-293; ss. 10, 11, ch. 73-338.

229.8055 Environmental education.—

(1) This section shall be known and may be cited as the "Florida Environmental Education Act of 1973."

(2) It is the purpose of this act to stimulate among students, teachers, and administrators a new awareness of man's relationship to his environments, an increased comprehension of his environments, and an increased ability to utilize the tools of society to solve environmental problems. To achieve this purpose the Department of Education shall foster the development and dissemination of educational activities and materials which will assist Florida students, teachers, and administrators in the perception, appreciation, and understanding of environmental principles and problems, and in the identification and evaluation of possible alternative solutions to these problems and assessment of their benefits and risks.

(3) There is hereby created an environmental education program for the state educational system. To administer this program, there is hereby created an Office of Environmental Education in the Office of the Deputy Commissioner for Education Management. Responsibility for the administration of the environmental education program shall rest with the Department of Education, and the administration of the program shall be pursuant to rules and regulations adopted by the State Board of Education. In developing the environmental education program, the office shall have the power and duties of:

(a) Coordinating the efforts of the various disciplines within the educational system and coordinating the activities of the various divisions of the Department of Education that are concerned with environmental education.

(b) Assembling, developing, and distributing instructional materials for use in environmental education, with special concern being given to the urban environment.

(c) Developing programs for inservice and preservice teacher training in environmental education.

(d) Coordinating and assisting the efforts of private organizations and governmental agencies that are concerned with environmental education.

(e) Integrating environmental education into the general curriculum of all public school grades.

(f) Developing an estimate of manpower needs in government, science, and industry relative to environmental protection. The estimate shall be revised annually and distributed to the senior high schools, community colleges, and colleges and universities within the state. The office shall review the adequacy of existing educational and training programs to respond to the estimated manpower needs and annually report to the commissioner and the Legislature regarding the adequacy of such programs. The State Employment and Training Council is authorized and directed to provide such technical assistance as is necessary for the development and revision of the manpower needs estimate and for the review of educational and training programs as described herein.

(4) Pursuant to policies and regulations to be adopted by the Commissioner of Education, each district school board, and each school principal through the district school board, may submit to the commissioner a proposed program designed to effectuate an exemplary environmental education project in the district or school. The proposal shall include a statement of the nature of the environmental education project proposed, the number of teachers and students to be involved, an estimate of the cost, a plan for evaluation of the project, the number of years for which the project is to be funded, a plan for integration of the project into the general curricular and financial program of the district at the end of the funded term of years, and such other information as the commissioner shall by regulation require.

(a) Upon request of a district school board or any school principal, the Bureau of Environmental Education shall provide such technical assistance as is necessary to develop and submit a proposed program for environmental education. The bureau may use its own staff or such other consultants as may be necessary to accomplish this purpose.

(b) The commissioner shall review and approve, disapprove, or resubmit for modification all proposed environmental education programs submitted. For those programs approved, the commissioner shall authorize distribution of funds equal to the cost of the program from funds appropriated to the Department of Education for environmental education purposes.

[1](5)(a) The commissioner shall appoint an Environmental Education Advisory Council consisting of 20 members to include persons from the public and private sector, with due regard to their interest, knowledge, and experience in academic, scientific, medical, legal, resource conservation and management, urban and regional planning, population dynamics, and information media activities as they relate to society and its effect upon our environment. Each member shall be appointed for a period of 1 year. Members shall be eligible for reappointment. The membership may change from time to time as deemed appropriate by the commissioner.

(b) As soon as practicable, following appointment of the initial members of the advisory council, the commissioner shall call an organizational meeting of the council. From among its members the council shall elect a chairman who shall preside over meetings of the council and perform any other duties directed by the council or required by its duly adopted policies or operating procedures. The council shall also perform the following duties and responsibilities:

1. Provide a channel for inventorying, reviewing, motivating, and supporting environmental education.

2. Formulate and recommend statewide policies in environmental education.

(c) Members of the advisory council shall be entitled to receive per diem and expenses for travel as provided in s. 112.061 while carrying out official business of the council.

(d) Per diem and travel expenses as provided in paragraph (c) shall be paid from the funds provided to the Office of Environmental Education.

History.—ss. 1-3, ch. 70-241; s. 1, ch. 70-439; s. 1, ch. 73-338; s. 4, ch. 75-302; s. 1, ch. 77-174; s. 10, ch. 77-320; s. 4, ch. 78-323; s. 7, ch. 79-261.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subsection prior to that date.

229.806 Advertising and promoting teaching in Florida.—The Department of Education is authorized to expend at its discretion any of the current expense funds heretofore and hereafter appropriated for the purpose of advertising and promoting the advantages of teaching in the state. The department is also authorized to assist any of the districts in recruiting qualified teaching personnel in any manner it deems appropriate.

History.—ss. 1, 2, ch. 65-554; ss. 2, 3, ch. 67-371; ss. 15, 35, ch. 69-106.
Note.—Former s. 229.522.

229.807 Conferences of public school personnel.—As a means of stimulating the professional improvement of personnel in service, the Department of Education may call conferences of personnel of the public schools on matters relating solely to education, which conferences, if held on a school day within the period of time covered by a contract, shall be attended with pay by all who may be designated in the call of the Department of Education; provided, that the call of the Department of Education may indicate that attendance is optional, and that in any case of those absent from their usual duties during the time of the conference, only those actually in attendance at the conference shall be entitled to pay for time covered by the conference.

History.—s. 513, ch. 19355, 1939; CGL 1940 Supp. 892(57),(117); ss. 13, 54, ch. 65-239; ss. 15, 35, ch. 69-106.
Note.—Former s. 231.13; s. 229.521(26).

229.808 Annual nonpublic school survey.—

(1) The Department of Education shall organize, maintain, and annually update a data base of educational institutions within the state coming within the provisions of this section. There shall be included in the data base of each institution the name, address, and telephone number of the institution; the type of institution; the names of administrative officers; the enrollment by grade or special group (e.g. vocational education and exceptional child education); the number of graduates; the number of instructional and administrative personnel; the number of days the school is in session; and such data as may be needed to meet the provisions of ss. 228.092 and 232.021.

(2) For the purpose of organizing, maintaining, and updating this data base, each nonpublic school shall annually execute and file a data base survey

form on a date designated by the Department of Education. For the purpose of this section, a "nonpublic school" is defined as an individual, association, copartnership, or corporation, or department, division, or section of such organization, which designates itself as an educational center which includes kindergarten or a higher grade or as an elementary, secondary, business, technical, or trade school below college level or any organization which provides instructional services which meet the intent of s. 232.02 or which gives preemployment or supplementary training in technology or in fields of trade or industry or which offers academic, literary, or vocational training below college level, or any combination of the above, including an institution which performs the functions of the above schools through correspondence or extension, except those licensed under the provisions of chapter 246.

(3) The data inquiries to be included and answered in such survey shall be limited to matters set forth in subsection (1). The department shall furnish annually to each nonpublic school sufficient copies of this form.

(4) To ensure completeness and accuracy of the data base, each existing nonpublic educational institution falling within the provisions of this section shall notify the Department of Education of any change in the name of the institution, the address, or the chief administrative officer. Each new institution shall notify the department of its establishment.

(5) Annually, the department shall make accessible to the public data on nonpublic education in this state. Such data shall include that collected pursuant to subsection (1) and from other sources.

(6) The failure of any institution to submit the annual data base survey form as required by this section shall be judged a misdemeanor and, upon conviction, proper authorities of such institution shall be subject to a fine not exceeding $500. Submission of data for a nonexistent school or an institution providing no instruction or training, the purpose of which is to defraud the public, is unlawful, and, upon conviction, the person or persons responsible therefor shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) It is the intent of the Legislature not to regulate, control, approve, or accredit nonpublic educational institutions, but to create a data base where current information may be obtained relative to the educational institutions in this state coming within the provisions of this section as a service to the public, to governmental agencies, and to other interested parties. It is not the intent of the Legislature to regulate, control, or monitor, expressly or implicitly, churches, their ministries, or religious instruction, freedoms, or rites. It is the intent of the Legislature that the annual submission of the data base survey by a school shall not be used by that school to imply approval or accreditation by the Department of Education.

History.—ss. 1-4, ch. 63-549; s. 13, ch. 65-239; ss. 15, 35, ch. 69-106; s. 18, ch. 72-221; s. 49, ch. 79-164; s. 1, ch. 79-177.

Note.—Former s. 229.091; s. 229.101.

229.814 Secondary Level Examination Program.—

(1) The State Board of Education shall adopt rules which prescribe performance standards and provide for comprehensive examinations to be administered to candidates for high school equivalency diplomas and for individual examinations in the subject areas required for high school graduation. These rules shall include, but not be limited to, provisions for fees, frequency of examinations, and procedures for retaking an examination upon unsatisfactory performance.

(2) The Department of Education is authorized to award high school equivalency diplomas to candidates who meet the performance standards prescribed by the state board.

(3) Each district school board shall offer and administer the high school equivalency diploma examinations and the subject area examinations to all candidates pursuant to rules of the state board.

(4) Any candidate who is awarded an equivalency diploma shall be exempted from the compulsory school attendance requirements of s. 232.01.

(5) Each district school board shall develop, in cooperation with the area community college board of trustees, a plan for the provision of advanced instruction for those students who attain satisfactory performance on the high school equivalency examination or the subject area examinations or who demonstrate through other means a readiness to engage in postsecondary level academic work. The plan shall include provisions for the equitable distribution of generated funds to cover personnel, maintenance, and other costs of offering the advanced instruction. Priority shall be given to programs of advanced instruction offered in high school facilities.

(6) All high school equivalency diplomas issued under the provisions of this section shall have equal status with other high school diplomas for all state purposes, including admission to any institution in the State University System or to any public community college.

History.—s. 1, ch. 75-130; s. 9, ch. 76-223; s. 7, ch. 78-416.

229.821 Surety bond or insurance to indemnify students on closing of school; expiration and renewal.—

(1) INTENT.—The intent of this section is to protect students of private vocational schools, trade schools, business schools, or other types of training schools or institutes in the event that individual schools or institutes discontinue operations for any reason. The specific protection is the provision of indemnification to any student suffering loss because of inability to complete a course or program of study due to the closing of any such school or institute.

(2) REQUIREMENT OF SURETY BOND OR INSURANCE.—Private vocational schools, trade schools, business schools, or other types of training schools or institutes shall provide the Department of Education with evidence of surety, conditioned to provide indemnification to any student suffering loss of prepaid tuition and fees due to the closing of any such school or institute. A surety may consist of

a bond or insurance, the amount of which shall be determined according to rules promulgated by the State Board of Education.

(3) EXPIRATION AND RENEWAL.—The surety bond or insurance policy shall expire on June 30 each year, and proof of renewal shall be submitted to the Department of Education prior to the date of expiration.

(4) FAILURE TO SUBMIT EVIDENCE OF SURETY.—Failure to submit evidence of surety shall invalidate any license to operate a private vocational school, trade school, business school, or other type of private training school or institute. If any such school or institute, having failed to submit evidence of surety, attempts to operate or continue to operate in violation of this section, the state attorney in the county in which the school or institute is located shall apply for and obtain an injunction from the county court, and this injunction shall order the school or institute in question to suspend operations until evidence of surety has been submitted to the Department of Education as provided by this section. For the purpose of this subsection, "operate" shall include, but not be limited to, advertising for prospective students, and the introduction in court of any publication containing an advertisement soliciting students shall be deemed to establish prima facie the operation of the school or institute for which students are solicited.

History.—s. 1, ch. 74-355.

229.832 Creation of a system of diagnostic and learning resource centers.—The Department of Education is directed to establish regional diagnostic and learning resource centers for exceptional students, to assist in the provision of medical, physiological, psychological, and educational testing and other services designed to evaluate and diagnose exceptionalities, to make referrals for necessary instruction and service, and to facilitate the provision of instruction and services to exceptional students.

(1) ESTABLISHMENT AND OPERATION.—The Department of Education shall cooperate with the Department of Health and Rehabilitative Services in establishing regional centers and identifying service areas. All centers shall be operated by the Department of Education, either directly or through grants.

(2) DUTIES AND RESPONSIBILITIES.—Within its identified service area, each regional center shall:

(a) Provide assistance to parents, teachers, and other school personnel and community organizations in locating and identifying exceptional children and in planning educational programs for such children.

(b) Assist in the provision of services for exceptional children, using to the maximum, but not supplanting, the existing facilities and services of each district.

(c) Provide orientation meetings at least annually for teachers, principals, supervisors, and community agencies to familiarize them with center facilities and services for exceptional children.

(d) Plan, coordinate, and assist in the implementation of inservice training programs, consistent with each district's program of staff development, for the development and updating of attitudes, skills, and instructional practices and procedures necessary to the education of exceptional children.

(e) Assist districts in the identification, selection, acquisition, use, and evaluation of media and materials appropriate to the implementation of instructional programs based on individual educational plans for exceptional children.

(f) Provide for the dissemination and diffusion of significant information and promising practices derived from educational research, demonstration, and other projects.

History.—s. 30, ch. 74-227; s. 1, ch. 75-69; s. 3, ch. 78-416.

229.834 Services to other than public school students.—Diagnostic and resource centers are authorized to provide testing and evaluation services to nonpublic school pupils or other children who are not enrolled in a public school. The Department of Education shall establish a uniform schedule of fees to be charged by the centers for their services to children not currently enrolled in public schools. All fees collected by the individual centers for such services shall be accounted for in accordance with Department of Education regulations. The fees collected by each center shall be used for the provision of testing and evaluation services.

History.—s. 32, ch. 74-227.

229.841 Adoption of metric system.—The Department of Education shall, by December 1978, develop a plan and adopt necessary rules by which the metric system can be adopted by 1980 as a system of measurement and measurement language in all phases of public school education in Florida. Upon the adoption of the plan by the department, local district school boards may proceed with the implementation of the plan.

History.—s. 1, ch. 77-427.

229.85 Primary Education Council.—

(1) A Primary Education Council of 15 members is created for the purpose of overseeing the kindergarten through grade 3 program in the state's public schools.

(a) The Governor shall appoint 11 members of the council as follows:

1. Four members shall be primary grade classroom teachers.
2. One member shall be an elementary school principal.
3. One member shall be a district supervisor, director, or consultant of elementary education.
4. One member shall be a college or university teacher educator specializing in an area related to kindergarten through grade 3 education.
5. One member shall be the director of a teacher education center.
6. One member shall be the parent of a child enrolled in a public school.
7. One member shall be a member of the school board of a public school district.
8. One member shall be a superintendent of a public school district.

(b) The President of the Senate shall appoint one member of the Senate to serve on the council.

(c) The Speaker of the House of Representatives

shall appoint one member of the house to serve on the council.

(d) The Commissioner of Education shall appoint a representative of the Department of Education to serve on the council.

(e) The Secretary of the Department of Health and Rehabilitative Services shall appoint one member of the Department of Health and Rehabilitative Services to serve on the council.

The term of appointment for each member shall be for 3 years.

(2) For administrative purposes, the council shall be assigned to the Department of Education and shall be financed through appropriations from the General Revenue Fund.

(3) Members of the council shall be entitled to receive per diem and expenses for travel as provided for by law while carrying out official business of the council.

(4) As soon as practicable following appointment of members, the Governor shall call an organizational meeting of the council. From among its members, the council shall elect a chairman who shall preside over meetings of the council and perform any other duties directed by the council or required by its duly adopted policies or operating procedures.

(5) Council duties and responsibilities shall include:

(a) Adoption of criteria for the approval of school district instructional program plans for kindergarten through grade 3.

(b) Review and approval of each district's instructional program plan for kindergarten through grade 3.

(c) Preparation of an annual report for submission to the appropriate education committees of the Senate and House of Representatives and the commissioner, which report shall provide a summary of the status of primary education in each district and the state's public schools, including recommendations to the commissioner and the legislative committees for appropriate action when deficiencies are detected.

(d) Organizing and conducting no less than two statewide conferences on early childhood and primary grade instruction by March 31, 1980.

(e) Reporting to the Legislature on council activities and district progress in implementing instructional programs for kindergarten through grade 3 by March 1 of each year.

The guidelines and criteria as required herein shall not be considered rules as defined in s. 120.52(14) and shall not be subject to the provisions of s. 120.54(4) and s. 120.56.

(6) The Primary Education Council shall be repealed effective July 1, 1982.

History.—s. 2, ch. 79-288.

CHAPTER 230

DISTRICT SCHOOL SYSTEM

230.01 District unit.—Each county shall constitute a school district and shall be known as the school district of ..... County, Florida. Each district shall constitute a unit for the control, organization, and administration of schools. The responsibility for the actual operation and administration of all schools needed within the districts in conformity with regulations and minimum standards prescribed by the state, and also the responsibility for the provision of any desirable and practicable opportunities authorized by law beyond those required by the state, are delegated by law to the school officials of the respective districts.

History.—s. 401, ch. 19355, 1939; CGL 1940 Supp. 892(64); s. 27, ch. 29764, 1955; s. 14, ch. 65-239; s. 1, ch. 69-300; s. 2, ch. 70-401.

230.02 Scope of district system.—A district school system shall include all public schools, classes, and courses of instruction and all services and activities directly related to education in that district which are under the direction of the district school officials.

History.—s. 402, ch. 19355, 1939; CGL 1940 Supp. 892(65); s. 1, ch. 69-300.

230.03 Control, operation, administration, and supervision.—The district school system shall be controlled, operated, administered, and supervised as follows:

(1) DISTRICT SYSTEM.—The district school system shall be considered as a part of the state system of public education. All actions of district school officials shall be consistent and in harmony with state laws and with rules and minimum standards of the state board. District school officials, however, shall have the authority to provide additional educational opportunities, as desired, which are authorized, but not required, by law or by the district school board.

(2) SCHOOL BOARD.—In accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power for educational purposes except as otherwise provided by the State Constitution or law. For purposes of this sec-

tion, "educational purposes" means any activity or power exercised in the establishment and maintenance of courses, classes, institutions, and services adequate to meet the educational needs of all citizens of the district.

(3) SUPERINTENDENT.—Responsibility for the administration of the schools and for the supervision of instruction in the district shall be vested in the superintendent as the secretary and executive officer of the school board, as provided by law.

(4) PRINCIPAL OR HEAD OF SCHOOL.—Responsibility for the administration of any school or schools at a given school center and for the supervision of instruction therein shall be delegated to the principal or head of the school or schools as hereinafter set forth and in accordance with rules established by the school board.

History.—s. 403, ch. 19355, 1939; CGL 1940 Supp. 892(66); s. 28, ch. 29764, 1955; s. 1, ch. 57-249; s. 1, ch. 69-300; s. 3, ch. 71-164; s. 58, ch. 71-355; s. 25, ch. 72-221; s. 1, ch. 78-86.

230.04 Membership of school board.—The school board in each district shall be composed of not less than five members. Each member of the school board shall be a qualified elector of the district in which he serves, and shall be a resident of the school board member residence area from which he is elected as hereinafter prescribed, unless otherwise provided by law.

History.—s. 404, ch. 19355, 1939; CGL 1940 Supp. 892(67); s. 5, ch. 23726, 1947; s. 1, ch. 69-172.

230.05 Term of office.—School board members shall be elected at the general election in November for terms of 4 years.

History.—s. 405, ch. 19355, 1939; CGL 1940 Supp. 892(68); s. 29, ch. 29764, 1955; s. 1, ch. 69-300.

230.061 School board member residence areas.—

(1) For the purpose of nominating and electing school board members, each district shall be divided into at least five district school board member residence areas, which shall be numbered one to five, inclusive, and which shall, as nearly as practicable, be equal in population.

(a) For those school districts, which have seven school board members, the district may be divided into five district school board member residence areas, with two school board members elected at large, or the district may be divided into seven district school board member residence areas. In the latter case, the residence areas shall be numbered one to seven inclusive and shall be equal in population as nearly as practicable.

(b) For those school districts which have seven school board members, the number of district school board member residence areas shall be determined by resolution passed by a majority vote of the district school board. No district school board shall be required to change the boundaries of the district school board member residence areas in accordance with the provisions of this act prior to July 1, 1981.

(2) The school board of any district may make any change which it deems necessary in the boundaries of any school board member residence area of the district at any meeting of the school board; provided that such changes shall be made only in odd-numbered years and provided further, that no change which would affect the residence qualifications of any incumbent member shall disqualify such incumbent member during the term for which he is elected.

(3) Such changes in boundaries shall be shown by resolutions spread upon the minutes of the school board, and shall be recorded in the office of the clerk of the circuit court, and shall be published at least once in a newspaper published in the district within 30 days after the adoption of the resolution, or, if there be no newspaper published in the district, shall be posted at the county courthouse door for 4 weeks thereafter. A certified copy of this resolution shall be transmitted to the Department of State.

History.—s. 3, ch. 57-249; s. 1, ch. 59-232; ss. 10, 35, ch. 69-106; s. 1, ch. 69-300; ss. 1, 2, ch. 77-276.

230.08 Nomination in primary elections.—Each political party holding a primary election during any election year shall nominate one nominee for membership on the school board from each school board member residence area from which a member is to be elected. The nomination from each school board member residence area shall be by vote of the qualified electors of the entire district.

History.—s. 408, ch. 19355, 1939; CGL 1940 Supp. 892(71); s. 7, ch. 23726, 1947; s. 32, ch. 29764, 1955; s. 1, ch. 69-300.

230.10 Election of board by districtwide vote.—The election of members of the school board shall be by vote of the qualified electors of the entire district. Each candidate who qualifies to have his name placed on the ballot of the general election shall be listed according to the school board member residence area in which he resides. Each qualified elector of the district shall be entitled to vote for one candidate from each school board member residence area. The candidate from each school board member residence area who receives the highest number of votes in the general election shall be elected to the school board.

History.—s. 410, ch. 19355, 1939; CGL 1940 Supp. 892(73); s. 9, ch. 23726, 1947; s. 1, ch. 69-300.

230.11 School board members to represent entire district.—The school board of each district shall represent the entire district. Each member of the school board shall serve as the representative of the entire district, rather than as the representative of a school board member residence area.

History.—s. 411, ch. 19355, 1939; CGL 1940 Supp. 892(74); s. 2, ch. 69-402.

230.12 Board members shall qualify.—Before entering upon the duties of office after being elected, or, if appointed, within 10 days after receiving notice of appointment, each member of the school board shall take the prescribed oath of office.

History.—s. 412, ch. 19355, 1939; CGL 1940 Supp. 892(75); s. 1, ch. 69-300.

230.15 Organization of board.—On the third Tuesday after the first Monday in November of each year, the school board shall organize by electing a chairman. It may elect a vice-chairman, and the superintendent shall act ex officio as the secretary. If a vacancy should occur in the chairmanship, the school board shall proceed to elect a chairman at the next ensuing regular or special meeting. At the or-

ganization meeting, the superintendent shall act as chairman until the organization is completed. The chairman and secretary shall then make and sign a copy of the proceedings of organization, including the schedule for regular meetings and the names and addresses of all district school officers, and annex their affidavits that the same is a true and correct copy of the original, and the secretary shall file the document within 2 weeks with the Department of Education.

History.—s. 415, ch. 19355, 1939; CGL 1940 Supp. 892(78); s. 26, ch. 29754, 1955; s. 19, ch. 65-239; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 73-95.

230.16 Regular and special meetings.—The school board shall hold not less than one regular meeting each month for the transaction of business according to a schedule arranged by the school board and shall convene in special sessions when called by the superintendent or by the superintendent on request of the chairman of the school board or on request of a majority of the members of the school board; provided, that actions taken at special meetings shall have the same force and effect as if taken at a regular meeting; and, provided further, that in the event the superintendent should fail to call a special meeting when requested to do so, as prescribed herein, such a meeting may be called by the chairman of the school board or by a majority of the members of the school board by giving 2 days' written notice of the time and purpose of the meeting to all members and to the superintendent, in which event the minutes of the meeting shall set forth the facts regarding the procedure in calling the meeting and the reason therefor and shall be signed either by the chairman or by a majority of the members of the school board.

History.—s. 416, ch. 19355, 1939; CGL 1940 Supp. 892(79); s. 3, ch. 69-402.

230.17 Place of meetings.—

(1) Except as provided in subsection (2), all regular and special meetings of the school board shall be held in the office of the superintendent or in a room convenient to that office and regularly designated as the school board meeting room.

(2) Upon the giving of due public notice, regular or special meetings of the board may be held at any appropriate public place in the county.

(3) For purpose of this section, due public notice shall consist of publication in a newspaper of general circulation in the county or in each county where there is no newspaper of general circulation in the county an announcement over at least one radio station whose signal is generally received in the county, a reasonable number of times daily during the 48 hours immediately preceding the date of such meeting, or by posting a notice at the courthouse door if no newspaper is published in the county, at least 2 days prior to the meeting.

History.—s. 417, ch. 19355, 1939; CGL 1940 Supp. 892(80); s. 1, ch. 69-85; s. 1, ch. 69-300; s. 1, ch. 73-164; s. 1, ch. 77-35.

[1]230.173 Removal of persons interfering with meetings.—The presiding officer of any district school board may order the removal, from a public meeting held by the school board, of any person interfering with the expeditious or orderly process of such meeting, provided such officer has first issued a warning that continued interference with the orderly processes of the meeting will result in removal. Any law enforcement authority or a sergeant-at-arms designated by the officer shall remove any person ordered removed pursuant to this section.

History.—s. 6, ch. 79-213; ss. 13, 16, ch. 79-385.

[1]Note.—Section 16, ch. 79-385, provides that, if ch. 231 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-385 shall also be repealed on the same date as is therein provided.

230.18 Majority a quorum.—A majority shall constitute a quorum for any meeting of the school board. No business may be transacted at any meeting unless a quorum is present, except that a minority of the school board may adjourn the meeting from time to time until a quorum is present.

History.—s. 418, ch. 19355, 1939; CGL 1940 Supp. 892(81); s. 1, ch. 69-300.

230.19 Vacancies; how filled.—The office of any school board member shall be vacant when he removes his residence from the school board member residence area from which he was elected. All vacancies on the school board shall be filled by appointment by the governor.

History.—s. 419, ch. 19355, 1939; CGL 1940 Supp. 892(82); s. 1, ch. 69-300.

230.201 Compensation of members of school board.—In addition to the salary provided in s. 145.041, each member of a school board shall be allowed, from the district school fund, reimbursement of traveling expenses as authorized in s. 112.061; provided, however, that any travel outside of the district shall also be governed by the rules and regulations of the state board.

History.—s. 25, ch. 29754 and s. 37, ch. 29764, 1955; s. 4, ch. 57-249; s. 9, ch. 63-400; s. 1, ch. 69-300.

Note.—Former s. 242.02.

230.21 School board to constitute a corporation.—The governing body of each school district shall be a school board. Each school board is constituted a body corporate by the name of "The School Board of ..... County, Florida." In all suits against school boards, service of process shall be had on the chairman of the school board or, if he cannot be found, on the superintendent as executive officer of the school board or, in the absence of the chairman and the superintendent, on another member of the school board.

History.—s. 421, ch. 19355, 1939; CGL 1940 Supp. 892(84); s. 1, ch. 69-300; s. 3, ch. 70-401.

cf.—Ch. 48 Service of process.

230.22 General powers of school board.—The school board, after considering recommendations submitted by the superintendent, shall exercise the following general powers:

(1) DETERMINE POLICIES AND PROGRAMS.—The school board shall determine and adopt such policies and programs as are deemed necessary by it for the efficient operation and general improvement of the district school system.

(2) ADOPT RULES AND REGULATIONS.—The school board shall adopt such rules and regulations to supplement those prescribed by the state board as in its opinion will contribute to the more orderly and efficient operation of the district school system.

(3) PRESCRIBE MINIMUM STANDARDS.—The school board shall adopt such minimum standards as are considered desirable by it for improving the district school system.

(4) CONTRACT, SUE, AND BE SUED.—The school board shall constitute the contracting agent for the district school system. It may, when acting as a body, make contracts, also sue and be sued in the name of the school board; provided, that in any suit, a change in personnel of the school board shall not abate the suit, which shall proceed as if such change had not taken place.

(5) PERFORM DUTIES AND EXERCISE RESPONSIBILITY.—The school board may perform those duties and exercise those responsibilities which are assigned to it by law or by regulations of the state board and, in addition thereto, those which it may find to be necessary for the improvement of the district school system in carrying out the purposes and objectives of the School Code.

History.—s. 422, ch. 19355, 1939; CGL 1940 Supp. 892(85); s. 21, ch. 65-239; s. 1, ch. 69-300; s. 26, ch. 72-221; s. 33, ch. 73-338; s. 6, ch. 74-100; s. 11, ch. 76-223.

230.222 School board not to prohibit playing of "Dixie."—The school board shall not take action to prohibit school bands from playing the song commonly known as "Dixie," nor shall it take action to prohibit the playing of "Dixie" at school functions by nonschool bands.

History.—s. 1, ch. 69-117; s. 1, ch. 69-300.

230.23 Powers and duties of school board.—The school board, acting as a board, shall exercise all powers and perform all duties listed below:

(1) REQUIRE MINUTES AND RECORDS TO BE KEPT.—Require the superintendent, as secretary, to keep such minutes and records as are necessary to set forth clearly all actions and proceedings of the school board.

(a) *Minutes, recording.*—The typed minutes of each meeting shall be reviewed, corrected if necessary, and approved at the next regular meeting; provided, that this action may be taken at an intervening special meeting if the board desires. The minutes shall be signed by the chairman and superintendent after approval, and shall be kept as a public record in a permanent, bound book in the superintendent's office.

(b) *Minutes, contents.*—The minutes shall show the vote of each member present on all matters on which the board takes action. It shall be the duty of each member to see to it that both the matter and his vote thereon are properly recorded in the minutes. Unless otherwise shown by the minutes, it shall be presumed that the vote of each member present supported any action taken by the board in either the exercise of, violation of or neglect of the powers and duties imposed upon the board by law or legal regulation, whether such action is recorded in the minutes or is otherwise established. It shall also be presumed that the policies, appointments, programs and expenditures not recorded in the minutes but made and actually in effect in the district school system were made and put into effect at the direction of the school board, unless it can be shown that they were done without the actual or constructive knowledge of the members of the board.

(2) CONTROL PROPERTY.—Subject to regulations of the state board, retain possession of all property to which title is now held by the school board and to obtain possession of and accept and hold under proper title as a body corporate by the name of "The School Board of ..... County, Florida," all property which may at any time be acquired by the school board for educational purposes in the district; manage and dispose of such property to the best interests of education; contract, sue, receive, purchase, acquire by the institution of condemnation proceedings if necessary, lease, sell, hold, transmit, and convey the title to real and personal property, all contracts to be based on resolutions previously adopted and spread upon the minutes of the school board; receive, hold in trust, and administer for the purpose designated, money, real and personal property, or other things of value granted, conveyed, devised, or bequeathed for the benefit of the schools of the district or of any one of them.

(3) ADOPT SCHOOL PROGRAM.—Authorize the assembling of all data and the making of school surveys essential to the development of a school program for the entire district and to adopt such a program as the basis for operating the schools—one phase of the program to be a longtime program and another phase to constitute the annual program.

(4) ESTABLISHMENT, ORGANIZATION, AND OPERATION OF SCHOOLS.—Adopt and provide for the execution of plans for the establishment, organization, and operation of the schools of the district, as follows:

(a) *Schools and attendance areas.*—After considering recommendations of the superintendent, to authorize schools to be located and maintained in those communities in the district where they are needed to accommodate, as far as practicable and without unnecessary expense, all the youths who should be entitled to the facilities of such schools, and to approve the area from which children are to attend each such school.

(b) *Elimination of school centers and consolidation of schools.*—Provide for the elimination of school centers within the district and for the consolidation of schools whenever the needs of pupils can better and more economically be served at other school centers than those which they have been attending.

(c) *Adequate educational facilities for all children without tuition.*—See that adequate educational facilities are provided through the uniform system of schools for all children of school age in the district, these facilities to be provided with due regard to the needs of the children on the one hand and to economy on the other.

(d) *Cooperate with boards of adjoining districts in maintaining schools.*—Approve plans for cooperating with school boards of adjoining districts in this state or in adjoining states for establishing school attendance areas composed of territory lying within the districts and for the joint maintenance of district-line schools or other schools which are to serve those attendance areas. The conditions of such cooperation shall be as follows:

1. Establishment.—The establishment of a school to serve attendance areas lying in more than

one district and the plans for maintaining the school and providing educational services to pupils shall be effected by annual resolutions spread upon the minutes of each school board concerned, which resolutions shall set out the territorial limits of the areas from which children are to attend the school and the plan to be followed in maintaining and operating the school.

2. Control.—Control of the school or schools involved shall be vested in the school board of the district in which the school or schools are located unless otherwise agreed by the school boards.

3. Settlement of disagreements.—In the event an agreement cannot be reached relating to such attendance areas or to the school or schools therein, the matter may be referred jointly by the cooperating school boards or by either school board to the Department of Education for decision under regulations of the state board, and its decision shall be binding on both school boards.

(e) *Classification and standardization of schools.*—Adopt plans and regulations for determining those school centers at which work is to be restricted to the elementary grades, school centers at which work is to be offered only in the high school grades, and school centers at which work is to be offered in any or all grades, and in accordance with such plans and regulations to determine the grade or grades in which work is to be offered at each school center; approve standards and regulations for classifying and standardizing the various schools of the district on such basis as to furnish incentive for the improvement of all schools.

(f) *Opening and closing of schools; fixing uniform date for.*—Fix, insofar as possible, a uniform date each year for the opening of all schools under its control, on which date, unless otherwise authorized by the school board, all schools shall open, in order that the keeping of records, the making of reports, the payment of salaries, and the supervision of instruction may be facilitated; provided, that all schools shall open on a date after Labor Day unless an earlier date is set by the school board and shall close before the last day of June of any year; fix the closing date for all schools in the district, these dates to be so determined as to assure, as far as practicable, uniform terms for all schools in the district; adopt regulations for the closing of schools during an emergency and to provide for the payment of salaries to the members of the instructional staff on such occasions. However, notwithstanding any of the foregoing, any school board may in its discretion operate any or all of the district schools on an extended term basis subject to approval of the Department of Education. However, notwithstanding any of the foregoing, any school board may, in its discretion, operate any of the district schools on a quarterly basis; provided that:

1. All educational requirements required by law are complied with.

2. Any school board so instituting a 12-month school program shall have full authority in the assignment of pupils to equalize the number of pupils attending the schools during any student attendance period in order to utilize school facilities to the maximum extent on a year-round basis, and shall also have full authority to enter into contracts with principals, teachers, and other school personnel for employment on a 12-month basis at the same rate of monthly compensation.

3. Such school board, when classroom facilities and teacher availability permit, may allow the parents or guardian of any child the choice of such child attending all or any particular three out of the four quarters during the year or if a quinmester plan is operational, all or any four out of five quinmesters.

4. Any school board planning a 12-month school program shall notify the Department of Education of such plans on or before January 1 preceding the school year in which the plan is to become operative.

(g) *Observance of school holidays and vacation periods.*—Approve and designate the school holidays to be observed during the year, except for emergencies; provided, that the number of such school holidays shall not exceed a total of 1 day for each 30 days of the term; approve the manner of observance of such holidays by the schools of the district; and approve and designate the school vacation periods. These holidays and vacation periods shall, insofar as practicable, be uniform for all schools of the district.

(h) *Vocational classes and schools.*—Provide for the establishment and maintenance of vocational schools, departments, or classes, giving instruction in vocational education as defined by regulations of the state board, and use any moneys raised by public taxation in the same manner as moneys for other school purposes are used for the maintenance and support of public schools or classes.

(i) *School boards authorized to establish public evening schools.*—The school boards in the state may establish and maintain, in the respective districts, public evening schools, elementary or high, as a branch of the public school system of the district; and such evening schools, when so maintained, shall be available to all residents of Florida, native or foreign born, who, for any satisfactory cause, have been unable to attend any day public school of the district; and all evening schools so maintained shall be under the direction and control of the school board and the superintendent and shall be subject to the same laws, rules and regulations prescribed for the conduct of day schools in the district in which such evening schools are maintained; and the expense thereof shall be paid out of the district school fund.

(j) *Cooperate with other agencies in joint projects.*—Adopt plans for cooperating with school boards of other districts in this state or in adjoining states or with other governmental agencies or with nonprofit corporations as provided in this act for such joint projects or activities as may be authorized by regulations of the state board. The conditions of such cooperation shall be as follows:

1. Establishment.—The project or activity shall be initiated by resolutions spread upon the minutes of each school board concerned.

2. Control.—The control and ownership of any physical property and the control and administration of any project or activity engaged in under the provisions of this section shall be vested in the school board of the district of location unless otherwise agreed by the school boards or unless the project or

activity is undertaken as authorized in subparagraph 3.

3. Other agencies.—The state board may, by regulation, authorize one or more school boards to engage in a contractual relationship with governmental agencies or with nonprofit corporations which have been formed and incorporated for the purpose of providing a cooperative educational service to the districts.

4. Settlement of disagreements.—In the event an agreement cannot be reached relating to any phase of the project or activity, the matter may be referred jointly by the cooperating school boards, or by any individual school board of the cooperating districts, to the Department of Education for decision under regulations of the state board, and its decision shall be binding on all school boards of the cooperating districts.

(k) *Planning time for teachers.*—The board may adopt plans and regulations which will make provisions for teachers to have time for lunch and some planning time when they will not be directly responsible for the children; provided that some adult supervision will be furnished for the students during said periods.

(l) *Comprehensive program of staff development.*—The board shall develop a comprehensive program of staff development. Such program shall include all services provided under the direction of the board and shall make adequate provision for the proper funding of such program.

(m) *Exceptional students.*—Provide for an appropriate program of special instruction, facilities, and services for exceptional students as prescribed by the state board as acceptable, including provisions that:

1. The school board provide the necessary professional services for diagnosis and evaluation of exceptional students;

2. The school board provide the special instruction, classes and services, either within the district school system, in cooperation with other district school systems, or through contractual arrangements with approved nonpublic schools or community facilities which meet standards established by the state board.

3. The school board submit annually to the department its proposed procedures for the provision of special instruction and services for exceptional students.

4. No student shall be given special instruction or services as an exceptional student until after he has been properly evaluated, classified, and placed in the manner prescribed by rules of the state board. The parent or guardian of an exceptional student evaluated, placed, or denied placement in a program of special education shall be notified of each such evaluation, placement, or denial. Such notice shall contain a statement informing the parent or guardian that he is entitled to a due process hearing on the identification, evaluation, placement, or lack thereof. Such hearings shall be exempt from the provisions of ss. 120.57 and 286.011 to the extent that the state board adopts rules establishing other procedures. The hearing shall be conducted by a hearing officer who shall not be an officer or employee of the school board involved in the education or care of the child or have a personal or professional interest which would conflict with the objectivity of the hearing. The parent shall have the right to request that the hearing officer be from the Division of Administrative Hearings, Department of Administration. The decision of the hearing officer shall be final, except that any party aggrieved by the finding and decision rendered by the hearing officer shall have the right to request an impartial review of the hearing by the Commissioner of Education. The review by the commissioner shall examine the entire hearing record, ensure that the procedures at the hearing were consistent with the requirements of due process, seek additional evidence if necessary, make an independent decision upon completion of the review, and give a copy of written findings and decision to the parties. Any aggrieved party shall have the right to file a petition for judicial review in the appropriate court of jurisdiction.

5. In providing for the education of exceptional students, the superintendent, principals, and teachers shall utilize the regular school facilities and adapt them to the needs of exceptional students whenever this is possible. No student shall be segregated and taught apart from normal students until a careful study of the student's case has been made and evidence obtained which indicates that segregation would be for the student's benefit or is necessary because of difficulties involved in teaching the student in a regular class.

6. The principal of the school in which the student is taught shall keep a written record of the case history of each exceptional student showing the reason for the student's withdrawal from the regular class in the public school and his enrollment in or withdrawal from a special class for exceptional students. This record shall be available for inspection by school officials at any time.

7. The district school board shall establish a maximum amount which can be paid by a district school board for an individual exceptional student contract with a nonpublic school, based on the maximum full-time equivalent earned by the student.

(n) *Alternative education programs for students in residential care facilities.*—Provide educational programs according to rules of the state board to students who reside in residential care facilities operated by the Department of Health and Rehabilitative Services, to include:

1. An appropriate program of instruction and special education services by the district school board of the county in which the residential care facility is located. The district school board shall make provision for each student to participate in basic, vocational, and exceptional student programs as appropriate. Each program shall be conducted according to applicable statutes providing for the operation of public schools and rules of the state board. Special programs for exceptional students shall be governed by the school board under the provisions of paragraph (m).

2. Cooperative planning by the district school board and the Department of Health and Rehabilitative Services for the facilities to house these programs.

a. All facilities and furnishings within Depart-

ment of Health and Rehabilitative Services residential care facilities used for education programs for school age students during the 1978-1979 fiscal year shall be made available to the district school board for housing programs of instruction and special education services. The district school board shall not be charged any rent, maintenance, utilities, or overhead on such facilities. Maintenance, repairs, and remodeling of existing facilities shall be provided by the Department of Health and Rehabilitative Services.

b. If additional facilities are required, the district school board and the Department of Health and Rehabilitative Services shall agree on the appropriate site based on the instructional needs of the students. When the most appropriate site for instruction is on district school board property, a special capital outlay request shall be made by the commissioner in accordance with s. 235.41. When the most appropriate site is on state property, state capital outlay funds shall be requested by the Department of Health and Rehabilitative Services as provided by s. 216.043 and shall be submitted as specified by s. 216.023. Any instructional facility to be built on state property shall have educational specifications jointly developed by the school district and the Department of Health and Rehabilitative Services and approved by the Department of Education. The size of space and occupant design capacity criteria as provided by state board rules shall be used for remodeling or new construction whether facilities are provided on state property or district school board property.

c. The planning of such additional facilities shall incorporate current Department of Health and Rehabilitative Services deinstitutionalization plans.

3. Full and complete authority of each such school board in the matter of the assignment and placement of such students in educational programs. The parent or guardian of exceptional students shall have the due process rights provided for in subparagraph 4. of paragraph (m).

4. A written agreement between the district school board and the Department of Health and Rehabilitative Services outlining the respective duties and responsibilities of each party.

(o) *Early childhood and basic skills development.*—Provide for an individualized diagnostic approach to instruction in the primary grades, kindergarten, and grades one through three which shall permit every child to achieve that level of mastery of the basic skills, including, but not limited to, reading, writing, language arts, arithmetic, measurement, and problem solving, which his physical, mental, and emotional capacities permit.

(p) *Teacher aides.*—Appoint teacher aides to assist members of the instructional staff in the primary grades, kindergarten, and grades one through three, to the extent feasible as determined by the school board.

(5) PERSONNEL.—Designate positions to be filled, prescribe qualifications for those positions, and provide for the appointment, compensation, promotion, suspension, and dismissal of employees as follows, subject to the requirements of chapter 231:

(a) *Positions and qualifications.*—Act upon recommendations submitted by the superintendent for positions to be filled and for minimum qualifications for personnel for the various positions.

(b) *Appointment of noninstructional personnel.*—Act on the written recommendations submitted by the superintendent of persons to act as administrative, supervisory, technical, attendance or health assistants, office assistants, school food service personnel, bus drivers, and all other noninstructional personnel and appoint persons to fill such positions. The term "Act on the written recommendations" shall be interpreted to mean that the school board must consider the recommendations or nominations of the superintendent submitted as prescribed by law and may not reject such recommendations or nominations except for good cause, and when such rejection is made a second and if necessary a third recommendation or nomination shall be requested and if made within a reasonable time as prescribed by the school board shall be considered or acted upon as prescribed by law; provided, that if the superintendent shall fail to submit his recommendations as prescribed by law or within a reasonable time as prescribed by the school board, the board shall have the right to nominate or to appoint on its own motion.

(c) *Appointment of instructional staff.*—Act not later than 6 weeks before the close of the post school conference during any year on the nominations by the superintendent of supervisors or principals; act not later than 4 weeks before the close of the post school conference during any year on the nominations by the superintendent of all other members of the instructional staff. The school board may reject for good cause any supervisor, principal, other member of the instructional staff, or other employee nominated. In case the third nomination by the superintendent for any position be rejected for good cause, the said school board shall then proceed on its own motion to fill such positions.

(d) *Compensation and salary schedules.*—Adopt a salary schedule or salary schedules to be used as a basis for paying members of the instructional staff and all other school employees, such schedules to be arranged, insofar as practicable, so as to furnish incentive for improvement in training and for continued and efficient service; fix and authorize the compensation of members of the instructional staff and other school employees on the basis of such schedules.

(e) *Contracts and terms of service.*—Provide written contracts for all regular members of the instructional staff. All contracts with members of the instructional staff shall be in accordance with the salary schedule adopted by the school board and shall be in writing for definite amounts and for definite terms of service and shall specify the number of monthly payments to be made. All such contracts shall be executed in duplicate and a true signed copy retained by the board in the office of the superintendent. The school board is prohibited from paying any salary to any member of the instructional staff, except when this provision has been observed.

(f) *Transfer and promotion.*—Act on recommendations of the superintendent regarding transfer and promotion of any employee.

(g) *Suspension and dismissal and return to annu-*

al contract status.—Suspend, dismiss, or return to annual contract members of the instructional staff and other school employees; provided, that no administrative assistant, supervisor, principal, teacher, or other member of the instructional staff may be discharged, removed or returned to annual contract except as provided in chapter 231.

(h) *Awards and incentives.*—May provide for recognition of employees who have contributed outstanding and meritorious service in their fields and adopt and implement a program of meritorious service awards to employees who propose procedures or ideas which are adopted and which will result in eliminating or reducing school board expenditures or improving school board operations. The school board is authorized to expend funds for such recognition and awards. No award granted under the provisions of this paragraph shall exceed $2,000 or 10 percent of the first year's gross savings, whichever is greater.

(6) CHILD WELFARE.—Provide for the proper accounting for all children of school age, for the attendance and control of pupils at school, for proper attention to health, safety, and other matters relating to the welfare of children in the following fields, as prescribed in chapter 232.

(a) *Admission, classification, promotion, and graduation of pupils.*—Adopt rules and regulations for admitting, classifying, promoting, and graduating pupils to or from the various schools of the district, including discretionary power to separate the sexes in the various schools of the district.

(b) *Enforcement of attendance laws.*—Provide for the enforcement of all laws and regulations relating to the attendance of pupils at school and for employing such assistants to the superintendent as may be needed to enforce these laws effectively.

(c) *Control of pupils.*—Adopt rules and regulations for the control, discipline, suspension, and expulsion of pupils and decide all cases recommended for expulsion. Suspension hearings are exempted from the provisions of chapter 120. Expulsion hearings shall be governed by the provisions of subsection 120.57(2). The school board shall not have the authority to prohibit the use of corporal punishment as provided in this act.

(d) *Code of student conduct.*—Make available to all teachers, school personnel, students, and parents or guardians, at the beginning of the 1977-1978 school year and every school year thereafter, a code of student conduct developed in consultation with teachers, school personnel, students, and parents or guardians. The code shall be based on the rules governing student conduct and discipline adopted by the school board and may be made available at the school level in the student handbook or similar publication. The code shall include, but not be limited to:

1. Specific grounds for disciplinary action.

2. Procedures to be followed for acts requiring discipline, including corporal punishment.

3. An explanation of the responsibilities and rights of students with regard to attendance, respect for persons and property, knowledge and observation of rules of conduct, the right to learn, free speech and student publications, assembly, privacy, and participation in school programs and activities.

(7) COURSES OF STUDY AND OTHER INSTRUCTIONAL AIDS.—Provide adequate instructional aids for all children as follows and in accordance with the requirements of chapter 233.

(a) *Courses of study; adoption.*—Adopt courses of study for use in the schools of the district; provided, that such courses shall comprise materials needed to supplement minimum courses of study prescribed by the state board for all schools.

(b) *Textbooks.*—Provide for proper requisitioning, distribution, accounting, storage, care, and use of all textbooks and other books furnished by the state and furnish such other textbooks and library books as may be needed.

(c) *Other instructional aids.*—Provide such other teaching accessories and aids as are needed to carry out the program.

(d) *School library media services; establishment and maintenance.*—Establish and maintain school library media centers, or school library media centers open to the public, and, in addition thereto, such traveling or circulating libraries as may be needed for the proper operation of the district school system. Establish and maintain a program of school library media services for all public school students which shall be designed to insure effective use of available resources and to avoid unnecessary duplication and shall include, but not be limited to, basic skills development, instructional design, media collection development, media program management, media production, staff development, and consultation and information services.

(8) TRANSPORTATION OF PUPILS.—After considering recommendations of the superintendent to make provision for the transportation of pupils to the public schools or school activities they are required or expected to attend; authorize transportation routes arranged efficiently and economically; provide the necessary transportation facilities, and, when authorized under regulations of the state board and if more economical to do so, provide limited subsistence in lieu thereof; and adopt the necessary rules and regulations to insure safety, economy, and efficiency in the operation of all buses, as prescribed in chapter 234.

(9) SCHOOL PLANT.—Approve plans for locating, planning, constructing, sanitating, insuring, maintaining, protecting, and condemning school property as prescribed in chapter 235, and as follows:

(a) *School building program.*—Approve and adopt a districtwide school building program, indicating the centers at which school work is to be offered on the various levels, the type, size, and location of schools to be established, and the steps to be taken to carry out the program. This program shall be a part of the longtime program for the district and, insofar as practicable, shall be based on the recommendations of a survey made or approved under the direction of the Department of Education.

[1](b) *Sites, buildings, and equipment.*—

1. Select and purchase school sites, playgrounds, and recreational areas located at centers at which schools are to be constructed, of adequate size to meet the needs of pupils to be accommodated;

2. Approve the proposed purchase of any site,

playground, or recreational area for which district funds are to be used;

3. Expand existing sites;

4. Rent buildings when necessary;

5. Enter into leases or lease-purchases, as may be approved under regulations of the State Board of Education, with the Department of General Services for the rental of necessary grounds and buildings for school purposes or of buildings to be erected for school purposes, the terms of said leases or lease-purchases not to exceed 30 years at a stipulated rental, to be paid from current or other legally available funds, and make all other contracts or agreements necessary or convenient in carrying out such purpose. The school board shall also enter into leases or lease-purchase arrangements with private individuals or corporations for the rental of necessary grounds and buildings for school purposes or of buildings to be erected for school purposes. Notwithstanding any other statutes, if the rental is to be paid from funds received from ad valorem taxation and the agreement is for a period greater than 12 months, an approving referendum must be held. The provisions of such contracts, including building plans, shall be subject to approval by the Department of Education, and no such contract shall be entered into without said approval. The State Board of Education is authorized to promulgate such rules as it deems necessary to implement the provisions hereof.

6. Provide for the proper supervision of construction;

7. Make or contract for additions, alterations, and repairs on buildings and other school properties;

8. Insure that all plans and specifications for buildings provide adequately for the safety and well-being of pupils, as well as for economy of construction by having such plans and specifications submitted to the Department of Education for approval; and

9. Provide furniture, books, apparatus, and other equipment necessary for the proper conduct of the work of the schools.

(c) *Maintenance and upkeep of school plant.*—Provide adequately for the proper maintenance and upkeep of school plants, so that children may attend school without sanitary or physical hazards, and provide for the necessary heat, lights, water, power, and other supplies and utilities necessary for the operation of the schools.

(d) *Insurance of school property.*—

1. Carry insurance on every school building in all school plants including contents, boilers and machinery, except buildings of three classrooms or less which are of frame construction and located in a tenth class public protection zone as defined by the Florida Inspection and Rating Bureau; and on all school buses and other property under the control of the school board or title to which is vested in the school board, except as exceptions may be authorized under regulations of the state board.

2. In consideration of the premium at which each policy shall be written, it shall be a part of the policy contract between the company and the named insured that the company shall not be entitled to the benefit of the defense of governmental immunity for the insured by reason of exercising a governmental function on any suit brought against the insured. Immunity of the school board against liability damages is waived to the extent of liability insurance carried by the school board. Provided, however, no attempt shall be made in the trial of any action against a school board to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of the plaintiff, and if a verdict rendered by the jury exceeds the limit of the applicable insurance, the court shall reduce the amount of said judgment or award to a sum equal to the applicable limit set forth in the policy.

(e) *Condemnation of buildings.*—Condemn and prohibit the use for public school purposes of any building which can be shown for sanitary or other reasons to be no longer suitable for such use, and when any building is condemned by any state or other government agency as authorized in chapter 235, to see that it is no longer used for school purposes.

(10) FINANCE.—Take steps to assure children adequate educational facilities through the financial procedure authorized in chapters 236 and 237 and as prescribed below:

(a) *Provide for all schools to operate at least 180 days.*—Provide for the operation of all public schools, both elementary and secondary, as free schools for a term of at least 180 days or the equivalent on an hourly basis as specified by regulations of the State Board of Education; determine district school funds necessary in addition to state funds to operate all schools for such minimum term; arrange for the levying of district school taxes necessary to provide the amount needed from district sources.

(b) *Annual budget.*—Cause to be prepared, adopt, and have submitted to the Department of Education as required by law and by regulations of the state board, the annual school budget, such budget to be so prepared and executed as to promote the improvement of the district school system.

(c) *Tax levies.*—Adopt and spread on its minutes a resolution fixing the district school tax levy, provided for under s. 9, Art. VII of the Constitution, necessary to carry on the school program adopted for the district for the next ensuing fiscal year as required by law, and fixing the district bond interest and sinking fund tax levy necessary for districts against which bonds are outstanding; adopt and spread on its minutes a resolution suggesting the tax levy provided for in s. 9, Art. VII of the Constitution, found necessary to carry on the school program adopted for the district for the next ensuing fiscal year.

(d) *School funds.*—Require that an accurate account is kept of all funds which should be transmitted to the school board for school purposes at various periods during the year from all sources and, if any funds are not transmitted promptly, to take the necessary steps to have such funds made available.

(e) *Borrow money.*—Borrow money, as prescribed in ss. 237.141-237.171, when necessary in anticipation of funds reasonably to be expected during the year as shown by the budget.

(f) *Financial records and accounts.*—Provide for

keeping of accurate records of all financial transactions, including records of school and student activity funds, and school lunch programs, and have these records kept under the various classifications commonly used in school financial accounting; authorize and compensate such trained assistants to the superintendent as may be needed to maintain adequate records.

(g) *Approval and payment of accounts.*—Approve and pay monthly all accounts; keep all payments within the amounts specified in the budget, as required by law; make available all records for proper audit by state officials; have prepared required periodic statements showing receipts, balances, and expenditures to date and require a copy of each such statement to be filed with the Department of Education as provided by regulations of the state board.

(h) *Bonds of employees.*—Fix and prescribe the bonds, and pay the premium on all such bonds, of all school employees who are responsible for school funds in order to provide reasonable safeguards for all such funds or property.

(i) *Contracts for materials, supplies, and services.*—Contract for materials, supplies, and services needed for the district school system. No contract for supplying these needs shall be made with any member of the school board, with the superintendent, or with any business organization in which any school board member or the superintendent has any financial interest whatsoever.

(j) *Purchasing regulations to be secured from Department of General Services.*—Secure purchasing regulations and amendments and changes thereto from the Division of Purchasing of the Department of General Services and prior to any purchase have reported to it by its staff, and give consideration to the lowest price available to it under such regulations, provided a regulation applicable to the item or items being purchased has been adopted by the Division of Purchasing. The Division of Purchasing should meet with educational administrators to expand the inventory of standard items for common usage in all schools and higher education institutions.

(k) *Investment policies.*—Adopt policies pertaining to the investment of school funds not needed for immediate expenditures, after considering the recommendations of the superintendent. The adopted policies shall make provisions for investing or placing on deposit all such funds in order to earn the maximum possible yield under the circumstances from such investments or deposits. The method of determining the maximum yield on investments or deposits shall include, but not necessarily be limited to, bids from qualified depositories, yields from certificates of deposit, yields from time deposits, yields from securities guaranteed by the Government of the United States, or other forms of investments authorized by law.

(11) RECORDS AND REPORTS.—Provide for the keeping of all necessary records and the making of all needed or required reports, as follows:

(a) *Forms, blanks, and reports.*—Require all employees to keep accurately all records and to make promptly in the proper form all reports required by law or by regulations of the state board.

(b) *Reports to the department.*—Require that the superintendent prepare all reports to the Department of Education that may be required by law or regulations of the state board; see that all such reports are promptly transmitted to the department; to withhold the further payment of salary to the superintendent or employee when notified by the department that he has failed to file any report within the time or in the manner prescribed; and to continue to withhold the salary until the school board is notified by the department that said report has been received and accepted; provided, that when any report has not been received by the date due and after due notice has been given to the school board of that fact, the department, if it deems necessary, may require the report to be prepared by a member of its staff, and the school board shall pay all expenses connected therewith. Any member of the school board who shall be responsible for the violation of this provision shall be subject to suspension and removal.

(c) *Reports to parents.*—At regular intervals reports shall be made by principals or teachers in public schools to parents or those having parental authority over the children enrolled and in attendance upon their schools, apprising them of the progress being made by the pupils in their studies and giving other needful information.

(12) COOPERATION WITH OTHER AGENCIES.—

(a) Cooperate with federal, state, county, and municipal agencies in all matters relating to education and child welfare.

(b) Cooperate with the Department of Education in identifying each child in the school district who is a migratory child as defined in Pub. L. No. 95-561 and cooperate with the department in providing such other information as the department deems necessary.

(13) ENFORCEMENT OF LAW AND RULES AND REGULATIONS.—Require that all laws and rules and regulations of the state board or of the school board are properly enforced.

(14) COOPERATE WITH SUPERINTENDENT.—Cooperate with the superintendent at all times to the end that the district school system may constantly be improved.

(15) SCHOOL LUNCH PROGRAM.—Assume such responsibilities and exercise such powers and perform such duties as may be assigned to it by law or as may be required by regulations of the state board or as in the opinion of the school board are necessary to assure school lunch services, consistent with needs of pupils; effective and efficient operation of the program; and the proper articulation of the school lunch program with other phases of education in the district.

(16) PUBLIC INFORMATION PROGRAM.—Adopt procedures whereby the general public can be adequately informed of the educational programs, needs, and objectives of public education within the district.

History.—s. 423, ch. 19355, 1939; CGL 1940 Supp. 892(86); s. 1, ch. 26775, 1951; s. 1, ch. 29644, ss. 1-6, ch. 29746, s. 2, ch. 29754, s. 38, ch. 29764, 1955; s. 8, ch. 31380, 1956; s. 1, ch. 57-370; ss. 5, 6, ch. 57-249; s. 12, ch. 57-252; s. 24, ch.

57-1; s. 1, ch. 59-138; s. 1, ch. 59-339; s. 3, ch. 61-288; ss. 2-6, ch. 63-376; ss. 23, 26, 27, ch. 65-239; s. 1, ch. 65-56; s. 1, ch. 65-424; ss. 3, 4, ch. 67-438; s. 1, ch. 67-413; ss. 1-3, ch. 68-13; ss. 5, 6, ch. 68-24; s. 1, ch. 69-13; ss. 15, 19, 22, 35, ch. 69-106; s. 1, ch. 69-125; ss. 28, 30, ch. 69-216; s. 1, ch. 69-300; s. 1, ch. 69-374; s. 4, ch. 69-402; s. 1, ch. 70-189; s. 1, ch. 70-194; s. 1, ch. 70-399; s. 1, ch. 70-439; s. 4, ch. 71-164; s. 2, ch. 71-192; s. 2, ch. 71-193; s. 1, ch. 71-272; s. 59, ch. 71-355; s. 57, ch. 71-377; ss. 27-35, ch. 72-221; ss. 7, 8, ch. 73-338; s. 26, ch. 73-345; ss. 17, 18, ch. 74-227; s. 10, ch. 74-356; ss. 4, 26, ch. 75-284; s. 2, ch. 76-236; s. 1, ch. 78-94; s. 6, ch. 78-405; s. 15, ch. 78-423; s. 1, ch. 79-150; s. 1, ch. 79-151; s. 1, ch. 79-184; s. 1, ch. 79-256; ss. 1, 16, ch. 79-385.

[1]**Note.**—Section 16, ch. 79-385, provides that, if ch. 231 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-385 shall also be repealed on the same date as is therein provided.

cf.—s. 233.063 Instruction in operation of motor vehicles.
s. 233.064 Americanism vs. Communism; required high school course.
s. 237.041 Form of annual budget required.
s. 322.21 Driver's license fees.

230.2311 Legislative intent; early childhood and basic skills development programs; objectives; provisions.—

[1](1) The Legislature recognizes that the early years of a pupil's education are crucial to his future and that mastery of the basic skills of communication and computation is essential to the future educational and personal success of an individual. The first priority of the public schools of Florida shall be to assure that all Floridians, to the extent their individual physical, mental, and emotional capacities permit, shall achieve mastery of the basic skills. The term "basic skills," for the purposes of this section, means reading, writing, and arithmetic, and mastery of these skills shall be developed through basic programs in the following areas of learning: language arts, measurement, problem solving, art, music, physical education, science, and social studies. Early childhood and basic skills development programs shall be made available by the school districts to all students, especially those enrolled in kindergarten and grades 1 through 3, and shall provide effective, meaningful, and relevant educational experiences designed to give students at least the minimum skills necessary to function and survive in today's society.

(2) In implementing the intent of this section, each school district shall develop a program for early childhood and basic skills development. The early childhood and basic skills program shall be developed cooperatively by school administrators, teachers, parents, and other community groups or individuals having an interest in the programs or having expertise in the field of early childhood education or basic skills development.

(3) Each district's early childhood and basic skills development program shall assure that each student is enrolled in a program designed to meet his individual needs and that he achieves that level of mastery of the basic skills which his capacities permit. As a part of such program, each school district shall provide, or make provision for, special instruction in the basic skills areas for adults who have not mastered the basic skills or functional literacy requirements prescribed by s. 232.246.

(4) The early childhood and basic skills development program shall include, but not be limited to:

(a) An increase in the number of adults assisting in the primary classroom, kindergarten, and grades 1 through 3, through use of teacher aides, parent volunteers, foster grandparents, paraprofessionals, or other similar personnel.

(b) Emphasis on instruction in basic skills, including direct individual and small group instruction in reading and computation skills.

(c) Use of personnel as described in paragraph (a) during instruction in computational skills and in reading skills.

(d) Fulfillment of the goals for education in Florida as adopted by the State Board of Education. However, early childhood and basic skills development programs shall be the first priority of Florida public schools.

(e) Emphasis on an individualized diagnostic approach to instruction.

(f) Use of prescriptive techniques designed to meet individual pupil needs, with special attention given to those pupils not performing up to the minimum reading standards approved by the State Board of Education.

(g) Emphasis on the basic skills development of each child, with attention given to the emotional and social development of each child.

(h) Defined measurable program objectives.

(i) Assessment of educational needs.

(j) Collection of pertinent demographic data and information about early childhood programs, such as children's centers; day care, preschool, and child care programs in either the public or private sector; and the way in which such programs may be integrated or coordinated with the district program.

(k) Allocation and coordination of all district resources with the objectives of the program.

(l) Staff development and inservice training, including a requirement that all teachers in the primary grades, kindergarten, and grades 1 through 3 have access to training in the use of aides, volunteers, and paraprofessionals in the classroom; in the recognition of language arts and computational needs; and in the application of prescriptive techniques in meeting such needs.

(m) Evaluation of the programs by the school board, school administrators, and teachers, and by parents and other appropriate lay groups such as school advisory committees established pursuant to s. 229.58.

(n) Use of parents in the classroom and for home visitations and parent education in order to strengthen the role of the family and the home in the education process and to develop a cooperative relationship between the family, the home, and the school.

The early childhood and basic skills development programs shall be implemented by the 1976-1977 school year.

(5) Each district school board, in consultation with the teacher education centers established in ss. 231.600-231.610 and in cooperation with the Department of Education, shall develop inservice training programs designed to enable teachers:

(a) To recognize language arts and computational needs, especially reading needs.

(b) To apply prescriptive techniques in meeting such needs.

(c) To use aides, volunteers, and paraprofessionals effectively in the classroom.

(6) Each district school board, in cooperation with the Department of Education, shall develop

training programs for teacher aides and other personnel who serve in the early childhood and basic skills development program.

(7) As part of the early childhood and basic skills development program, each district school board shall provide for the periodic evaluation of all appropriate pupils in grades 1 through 3 in order to identify each pupil's instructional needs, especially how well they meet the minimum reading standards approved by the state board pursuant to ss. 229.565 and 229.57. Such evaluations shall be one of the major criteria used to determine the most appropriate prescriptive program for each pupil's instructional needs.

History.—ss. 1, 2, 4, ch. 74-238; s. 2, ch. 75-284; s. 13, ch. 76-223; s. 1, ch. 79-74; s. 3, ch. 79-213; s. 4, ch. 79-288; ss. 2, 16, ch. 79-385.

[1]**Note.**—Section 16, ch. 79-385, provides that, if ch. 231 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-385 shall also be repealed on the same date as is therein provided.

230.2312 Florida Primary Education Program.—

(1) LEGISLATIVE INTENT; PURPOSE.—

(a) It is the finding of the Legislature that a comprehensive prescriptive program of primary education, kindergarten through grade 3, is needed in order to improve the results of public education in this state in all grades in years to come. The Legislature therefore declares this intent to require the Department of Education and each district school board to implement such a program for kindergarten through grade 3. It is the intent of the Legislature that the program shall be a comprehensive improvement of public education in kindergarten through grade 3 and shall provide appropriate education opportunities for students in the critical early years that more fully meet the unique needs, talents, interests, and abilities of each student. It is further the intent of the Legislature that the program shall include an appropriate level of educational services so that the probability of success in future educational experiences will be improved. No part of this act is intended to require or imply a requirement affecting the individual district's decisions to group, mix, or otherwise assemble students for the purpose of instruction.

(b) The objectives of the Florida Primary Education Program shall include assurance that each student shall have an individualized program to permit the development to his maximum potential and that all students who have completed the third grade of the public educational system shall have achieved a level of competence in the basic skills, as required by s. 229.565, sufficient for increased success in their educational experiences throughout life. The program shall be designed to build upon the early childhood and basic skills development program required by s. 230.2311, with emphasis upon expanding the services for kindergarten through grade 3 students so that existing and potential learning problems are identified and individual needs are met prior to the intermediate grades, thereby developing the basic framework for continued progress of the student, commensurate with his ability, with a reduced risk of failure and less remediation in intermediate and secondary years. The program, or an approved alternative, which shall provide for an increase in the number of teachers and other instructional personnel in the primary classroom, kindergarten, and grades 1 through 3, shall be the kindergarten through grade 3 basic program within the Florida Education Finance Program as defined in chapter 236.

(2) DEFINITIONS.—For purposes of this section:

(a) "Program" means the Florida Primary Education Program.

(b) "Preventative strategies" means the use of those instructional strategies which shall serve a student with identified or potential learning problems which are considered correctable. Such strategies shall be provided as deemed most appropriate for correcting the identified or potential learning problems.

(c) "Developmental strategies" means the use of those instructional strategies which shall serve a student appearing to be developing emotionally, mentally, socially, and educationally at his expected potentiality. Instructional strategies shall be directed toward assuring the continuation of expected development.

(d) "Enrichment strategies" means the use of those instructional strategies which shall serve a promising learner, defined as one who can emotionally, socially, mentally, and educationally accept exceptional challenges and who has demonstrated proclivities toward creativity and would most likely benefit from additional query or investigative activities.

(e) "Primary specialist" means a person designated as such by the principal of each school who possesses the competencies provided for in subsection (6).

(f) "Expectancy age formula" means a formula to predict potential academic performance.

(3) IMPLEMENTATION.—The implementation of the Florida Primary Education Program shall be the responsibility of the Commissioner of Education, with penalties for discrepancies and deficiencies to be applied as required by s. 229.565(3). Each district school board shall provide a program, with assistance from the Department of Education, which shall include at least the following:

(a) A screening program such that all public school students in kindergarten through grade 3 shall be screened prior to the end of the eighth week of their initial public school experience in Florida. Educational screening shall be performed with the classroom teacher acting as the primary screening agent, with final decisions for assessment to be made by the principal after considering the recommendations of the teacher and any school-based or itinerant resource persons who are involved. With the assistance of the primary specialist, the classroom teacher's observation of the student's academic and behavioral performance shall be given primary consideration for initial recommendations for implementation of the developmental strategies or referral for further assessment in the Florida Primary Education Program or referral for exceptional student education evaluation. Consideration shall also be given to the use of a screening instrument or instruments which shall provide objective data regarding prereading readiness, precomputational

skills, auditory discrimination, visual perception, auditory perception, kinesthetic skills, motor skills, or any other data deemed necessary at the classroom level for making sound recommendations. A listing of suggested screening, identification, and assessment instruments, along with descriptions, interpretations, suggested techniques and uses, and other information deemed necessary for the classroom teacher and resource persons in educational screening, shall be developed by the Department of Education with the assistance of selected district school-based personnel and shall be updated annually, or as needed, and disseminated for use by teachers, resource persons, and other appropriate personnel.

(b) Procedures whereby, after initial screening by the classroom teacher, assisted by the primary specialist, each student shall receive the individual developmental strategies or be referred for exceptional student education evaluations as prescribed by state board rules or recommended for further assessment for receiving preventative or enrichment instructional strategies of the program.

(c) Procedures whereby each student shall be provided further assessment in the program if such assessment is recommended by the classroom teacher and primary specialist, if approved by the principal. Performance on screening instruments shall be considered as a part of the criteria for recommendation for further assessment. In recommending for further assessment a student who has been screened, the following criteria shall be considered: teacher observation of behavioral and emotional adjustment to school environment and observation of the student's performance of assigned tasks, and relative scores on standardized or other tests, with particular attention to scores in the upper or lower quartile, based on an expectancy age formula. A student shall be recommended for exceptional student education evaluation if the child is performing 1½ grades or more above or below grade placement if applicable or has scored in the upper or lower decile on standardized or other tests, and if teacher observation of assigned task performance and teacher observation, according to a standardized checklist of behavioral characteristics, indicate that direct referral for exceptional student evaluation is in the best interest of the student.

(d) Procedures whereby identification and assignment of the preventative or enrichment instructional strategies to a student shall be of a flexible nature, based on results obtained in assessment beyond initial screening and involving a school staffing committee appointed by the principal, including at least the classroom teacher and a primary specialist. Areas to be considered by the school staffing committee shall include: rate of mental development; achievement in basic skills as defined by s. 230.2311; information processing ability; visual motor perception; and behavioral and social adjustment. Direct referral by the school staffing committee of the student for exceptional student education evaluation may be recommended.

(e) Procedures for identification and assignment of the preventative instructional strategies to a student which shall include, but not be limited to the following: below grade level performance if applicable; scoring in lowest quartile on suggested identification and assessment tests, based upon an expectancy age formula; and teacher observation of classroom performance on assigned tasks and observation of social and behavioral adjustment. An instructional plan for any student demonstrating a need for the preventative instructional strategies shall be prepared stating the nature of the identified correctable learning problem or potential problem, the educational specific strategies that will be utilized for correction of such problem, and the length of time projected before redesigning the program of the student. The school staffing committee, when appropriate, shall recommend to the principal an assignment change for the student from the preventative instructional strategies or shall recommend the child for exceptional student education evaluation, with a report substantiating such a recommendation to become a part of the student's records.

(f) Procedures for assignment of the enrichment instructional strategies to the student shall include, but not be limited to: grade level performance; scoring in the top quartile on suggested identification and assignment tests, based upon an expectancy age formula; and teacher observation of performance on assigned tasks and observation of social and behavioral adjustment. Activities and instructional strategies shall provide stimulation for accelerated learning, and necessary follow-up evaluation shall be provided by the teacher and resource personnel to assure that each student assigned to the enrichment instructional strategies is challenged appropriately. If the student does not respond to enrichment and accelerated activities as anticipated, the school staffing committee, when appropriate, shall recommend to the principal the reassignment of the student from the enrichment instructional strategies assignment to another program or shall recommend the student for exceptional student education evaluation, with a report substantiating such a recommendation to become a part of the student's records.

(4) HEALTH SCREENING.—Health screening services and related referrals and follow-up shall be provided by the Department of Health and Rehabilitative Services pursuant to s. 402.32. For the purpose of implementing s. 402.32 and the Florida Primary Education Program, the Secretary of Health and Rehabilitative Services and the Commissioner of Education shall cooperatively develop written procedures for screening services, referral, and follow-up to be made available to school districts and each child-serving agency under the direct or indirect jurisdiction of the Department of Health and Rehabilitative Services whereby responsibilities of each public school, each such agency, and the district school boards shall be delineated. Such procedures shall include, but not be limited to:

(a) Use of a standard student information records system by all public schools for each student's cumulative record to be maintained by the school district. Such system shall include basic health data resulting from services of the Department of Health and Rehabilitative Services, including screening services and results, referral, and follow-up, as well as educational decisions made as a result of such screening, referral, and follow-up.

(b) Collection and reporting of the information required in paragraph (a) on a school-level aggregate basis for use by school personnel and on a school district aggregate basis, on a school district-by-district basis, and on a statewide basis which will point out duplication of services provided by any agency under the direct or indirect jurisdiction of the Department of Health and Rehabilitative Services and services that need to be performed.

(c) Such district and aggregate data shall be incorporated in a report to the appropriate education and health and rehabilitative services committees of the House of Representatives and the Senate to be prepared by the Commissioner of Education or his designee by February 1981, and annually thereafter. The Secretary of Health and Rehabilitative Services shall prepare a companion report which shall specify remedies taken or to be taken to correct duplication of services or the establishment of needed services and shall provide any information deemed appropriate for improving the delivery of required services.

(5) DISMISSAL CRITERIA.—Third grade students may be eligible for promotion from the Florida Primary Education Program to grade 4 upon satisfactory attainment of the minimum student performance standards required by s. 229.565. At the end of grade 3, there shall be three alternatives provided for each student:

(a) The student has met the minimum performance standards and shall enter the fourth grade;

(b) The student shall continue in an extension of the program experience for no more than 1 year in order to have an additional opportunity to meet the minimum performance standards of grade 3 at which time he shall progress according to the district's student progression plan; or

(c) The student shall be referred to exceptional student education if it appears that he requires the services of exceptional student education.

(6) STAFF.—

(a) Staff development programs shall be implemented by each district school board designed to enable the kindergarten through grade 3 instructional staff to be aware, to understand, and to meet the individual needs of students. Inservice training plans shall be a part of the master inservice plan required by s. 236.0811 and training shall include, but not be limited to, teachers, administrators, support personnel, aides, and volunteers, as needed. Each district school board may permit participation in inservice training programs by nonpublic school teachers where space is available. The content of the staff development and inservice programs for instructional staff shall include, but not be limited to, improving competencies in the following areas:

1. Early childhood test administration and interpretation.

2. Knowledge of kindergarten through grade 3 curriculum and development and sequential learning patterns.

3. Ability to teach the basic skills.

4. Ability to adapt, design, and implement a kindergarten through grade 3 diagnostic-prescriptive curriculum to meet the needs of the individual learner.

5. Ability to apply learning theory to individualized teaching programs.

6. Ability to design and implement a material-learner match consistent with each individual child's strengths or weaknesses.

7. Ability to provide diagnostic and clinical teaching.

8. Ability to maintain records and conduct ongoing reevaluations regarding progress, classroom instruction, and placement of each child.

9. Ability to develop and implement each child's program based on available data.

10. Ability to suggest educational strategies, materials, and techniques for each child to parents and other support personnel working with each child.

11. Ability to use observation techniques in screening, identification, ongoing reevaluation, and planning for each child.

(b) A role definition and set of required competencies for the primary specialist who shall be a teacher and who shall not, under any circumstances, be used in an administrative or quasi-administrative role, shall include at least the following:

1. The competencies addressed in paragraph (a), plus a minimum of 3 years' successful teaching or other appropriate school-level experience.

2. Ability to assist in the coordination of all services and program elements in the Florida Primary Education Program, including screening and identification processes, ongoing evaluation, assignment of children in appropriate programs, and services of other personnel in a team approach.

3. Ability to provide supportive academic services to teachers, students, parents, and community agency personnel.

4. Ability to assist in individualized, personalized plans of instruction for each pupil.

5. Ability to assist in the preparation of reports and assume the responsibility of current and efficient records and procedures for transfer of records when needed.

6. Ability to assist in coordination of the school staffing committee.

7. Ability to suggest ways to facilitate parental involvement and parent education.

8. Ability to coordinate inservice activities at the school level for kindergarten through grade 3 teachers, volunteers, parents, aides, administrators, and other appropriate personnel.

9. Ability to support and assist the classroom teacher in implementing teaching strategies, identifying appropriate activities, organizing and managing the classroom, selecting materials, and identifying specific needs of children.

(c) Preservice teacher education programs shall be developed to meet the requirements of the Florida Primary Education Program as a condition for program approval for the teacher training institutions, s. 231.17, and other criteria as required by state board rules.

(7) FUNDING.—

(a) Each district shall have the Florida Primary Education Program or an approved alternative fully operative by the beginning of the school year 1981-1982. First priorities in 1979-1980 shall be given to staff development of kindergarten through grade 3

personnel, with emphasis on screening and preventative instructional strategies and reduction of class size.

(b) The Florida Primary Education Program or an approved alternative shall be the basic program for kindergarten through grade 3 pursuant to s. 236.081, and the cost factor shall be computed so as to enable school districts to adequately implement the program. Beginning with the 1979-1980 biennium and for each year thereafter, s. 236.081(1)(c) notwithstanding, the cost factor for the K-3 basic program shall be provided for in the appropriations act. The cost factor shall be sufficient to generate the amount of dollars appropriated for the K-3 basic program, which is in addition to the amount generated by multiplying the cost factor of 1.234 by the number of full-time equivalent students in the K-3 program times the base student allocation as specified in the appropriations act.

(c) Staff development for the Florida Primary Education Program or an approved alternative shall be provided from that amount allocated per full-time equivalent student pursuant to s. 236.081(3).

(d) In meeting the expenditure requirements set forth in s. 237.34, each district shall, within resources available, provide primary specialists so that no district shall provide less than one specialist and no individual school shall have less than the equivalent of one-half specialist, and no more than one full-time specialist shall be required for any individual school, unless an alternative method of providing these services is approved by the Primary Education Council according to law and guidelines established.

(e) Up to $5 per kindergarten through grade 3 full-time equivalent unweighted student may be used in the calculation of meeting the expenditure requirement of s. 237.34 for funds expended by the district for activities which are planned to directly increase the involvement of the parent or guardian in his child's learning process and which enable the parent or guardian to improve the child's motivation and desire for success in learning or otherwise assist the child in achieving school-related academic success.

(8) REPORTING.—The commissioner shall annually provide the Primary Education Council and the appropriate education committees of the House of Representatives and the Senate a district-by-district accounting of the extent to which expenditure requirements have been met as required by s. 237.34 and shall include in the report the remedies taken or to be taken for any expenditure deficiencies noted and to be corrected as required by said section and s. 229.565. The personnel of each school district shall cooperate fully with legislative staff and the council as they make inquiries and observations and collect data that may be necessary for determining the extent to which the program is being implemented as prescribed by law, assist in implementation of legislative intent, and transmit annually to the Legislature recommendations for legislative changes that may be needed for achieving the intent of this act.

(9) PRIMARY EDUCATION PROGRAM PLANS.—

(a) Each district, by March 1, 1980, shall submit to the Primary Education Council a plan for implementation of the Florida Primary Education Program in the manner and format prescribed by the council which will assure the educational outcomes and objectives specified in subsection (1).

(b) Any district which elects to do so may develop an alternative to the primary education model which will assure the educational outcomes and objectives specified in subsection (1). The alternative plan shall be developed in the manner and format prescribed by the council and submitted by March 1, 1980.

(c) Any district not obtaining approval of the required primary education program plan or alternative program plan by June 30, 1980, may be denied revenues that would be generated by that portion of the Florida Education Finance Program K-3 cost factors in excess of 1.234 for the 1980-1981 fiscal year or any part of the year deemed appropriate by the council. A district may apply to the council for approval to update or amend an approved plan for a school year provided that such application is made 60 days prior to the beginning of the next fiscal year or at such earlier date as may be required by the council.

(d) Upon recommendation of the council, the commissioner shall provide the necessary technical assistance to any district that requests such services or if the council recommends such assistance for planning and implementing an adequate primary education program.

History.—ss. 1, 2, ch. 79-288.

230.2313 Student services programs.—

(1) This act shall be known and may be cited as the "Student Services Act."

(2) It is the intent of the Legislature to articulate the functions served by each of the components of a program of student services. It is further the intent of the Legislature that each school district develop a plan for providing student services to all public school students in the district. This plan shall be designed to insure effective use of available resources and avoid unnecessary duplication.

(3) A "student services program" is defined as a coordinated effort which shall include, but not be limited to:

(a) Guidance services, which shall include, but not be limited to, the availability of individual and group counseling to all students; orientation programs for new students at each level of education and for transferring students; consultation with parents, faculty, and out-of-school agencies concerning student problems and needs; utilization of student records and files; supervision of standardized testing and interpretation of results; the following up of early school dropouts and graduates; a school-initiated system of parental involvement; an organized system of informational resources on which to base educational and vocational decision-making; and educational and job placement.

(b) Psychological services, which shall include, but not be limited to, evaluation of students with learning or adjustment problems; evaluation of students in exceptional-child education programs; consultation and counseling with parents, students, and school personnel; a system for the early identifica-

tion of learning potential and factors which affect the child's educational performance; a system of liaison and referrals, with resources available outside of the school; and written policies which assure ethical procedures in psychological activities.

(c) Visiting teacher and school social work services, which shall include, but not be limited to, providing casework to assist in the prevention and remediation of problems of attendance, behavior, adjustment, and learning and serving as liaison between the home and school by making home visits and referring students and parents to appropriate school and community agencies for assistance.

(d) Occupational and placement services, which shall include, but not be limited to, the dissemination of career education information, placement services and follow-up studies, and instruction in employability skills. The occupational and placement specialist shall serve as liaison between employers and the school.

(4) Each school district shall develop a plan which insures that individual student services are coordinated in a manner utilizing such techniques as differentiated staffing as to make maximum use of the contribution of each service.

(5) The State Board of Education is authorized to adopt regulations to carry out the intent of this legislation. Regulations shall include, but need not be limited to:

(a) A description of the present student services program at all educational levels for which the school board is responsible, including ratio of students to personnel.

(b) Identification of alternative student services personnel who do not meet traditional graduate school requirements and who may be used by the school board in providing the recommended guidance services, including, but not limited to, paraprofessionals, teachers, parents, and representatives of business and industry.

History.—ss. 1-5, ch. 75-244; s. 14, ch. 76-223.

230.2315 Educational alternative programs.—

(1) LEGISLATIVE INTENT.—The Legislature finds and declares that the maintenance of a healthy learning environment is essential to the educational process and the general welfare of the school population. The Legislature further finds that traditional school programs which do not meet certain students' individual needs and interests may encourage these students to become disruptive or disinterested in school. Therefore, it is the intent of this act that educational alternative programs be established throughout the state which programs will assist students in preparing for their roles in the community; reduce the incidence of disruptive behavior and truancy in the public schools; reduce the number of students referred to special services or agencies; and, generally, offer alternatives to conventional education which will meet the needs and interests of those students now poorly served by the public school system. It is further the intent of the Legislature that such alternatives be positive rather than punitive and emphasize each student's abilities in order to ensure the full realization of the potential of such student.

(2) DEFINITIONS.—Educational alternative programs are programs designated to meet the needs of students who are disruptive or unsuccessful in a normal school environment. Such programs shall be in one or more of the following forms:

(a) Learning centers which specialize in subject areas such as occupational skills, communication, and the performing arts and which students may attend on either a full-time or part-time basis.

(b) Crisis intervention centers and in-school suspension programs which provide a temporary intervention program for students who experience difficulty in the normal classroom environment because of behavioral problems and for whom teachers are unable to provide an appropriate educational program.

(c) Any other alternative to suspension or expulsion approved by the district school board.

(3) ADMINISTRATION.—Each district school board may establish one or more educational alternative programs. The programs shall be coordinated with social service, law enforcement, prosecutorial, and juvenile justice agencies in the school district. These agencies are authorized to exchange information contained in student records, criminal justice records, and juvenile justice records. School districts and other agencies receiving such information shall use the information only for official purposes connected with the certification of students for admission to and for the administration of the educational alternative programs, and such agencies shall maintain the confidentiality of such information unless otherwise provided by law or regulation.

(4) ELIGIBILITY OF STUDENTS.—Pursuant to rules adopted by the State Board of Education, a student may be eligible for an educational alternative program if the student is disruptive, unsuccessful, or disinterested in the regular school environment as determined by grades, achievement test scores, referrals for suspension or other disciplinary action, and rate of absences.

(5) REVIEW OF PLACEMENT.—The parents or guardians of a student shall be entitled to an administrative review of any action by school district personnel relating to placement of the student in an alternative program, pursuant to the provisions of chapter 120. The placement of any student in an alternative program shall be reevaluated by the district upon completion by the student of a court-adjudicated detention or punishment.

History.—s. 1, ch. 78-415.

230.232 Pupil assignment; powers and duties of school boards.—

(1) The school boards of the several districts are hereby authorized and directed to provide for the enrollment in a public school in the district of each child residing in such district who is qualified under the laws of this state for admission to a public school and who applies for enrollment in or admission to a public school in such district. The authority of each such board in the matter of the enrollment of pupils in the public schools shall be full and complete. No pupil shall be enrolled in or admitted to attend any public school in which such child may not be enrolled pursuant to the rules, regulations, and decisions of such board.

(2) In the exercise of authority conferred by subsection (1) upon the school boards, each such board shall provide for the enrollment of pupils in the respective public schools located within such district so as to provide for the orderly and efficient administration of such public schools, the effective instruction of the pupils therein enrolled, and the health, safety, education and general welfare of such pupils. In the exercise of such authority the board shall prescribe school attendance areas and school bus transportation routes and may adopt such reasonable rules and regulations as in the opinion of the board shall best accomplish such purposes. The school boards shall prescribe appropriate rules and regulations to implement the provisions of this subsection and other applicable laws of this state and to that end may use all means legitimate, necessary and proper to promote the health, safety, good order, education, and welfare of the public schools and the pupils enrolling therein or seeking to enroll therein. In the accomplishment of these objectives the rules and regulations to be prescribed by the board may include, but be not limited to, provisions for the conduct of such uniform tests as may be deemed necessary or advisable in classifying the pupils according to intellectual ability and scholastic proficiency to the end that there will be established in each school within the district an environment of equality among pupils of like qualifications and academic attainments. In the preparation and conduct of such tests and in classifying the pupils for assignment to the schools which they will attend, the board shall take into account such sociological, psychological and like intangible social scientific factors as will prevent, as nearly as practicable, any condition of socio-economic class consciousness among the pupils attending any given school in order that each pupil may be afforded an opportunity for a normal adjustment to his environment and receive the highest standard of instruction within his ability to understand and assimilate. In designating the school to which pupils may be assigned there shall be taken into consideration the request or consent of the parent or guardian or the person standing in loco parentis to the pupil, the available facilities and teaching capacity of the several schools within the district, the effect of the admission of new students upon established academic programs, the effect of admission of new pupils on the academic progress of the other pupils enrolled in a particular school, the suitability of established curriculum to the students enrolled or to be enrolled in a given school, the adequacy of a pupil's academic preparation for admission to a particular school, the scholastic aptitude, intelligence, mental energy or ability of the pupil applying for admission and the psychological, moral, ethical, and cultural background and qualifications of the pupil applying for admission as compared with other pupils previously assigned to the school in which admission is sought. It is the intention of the legislature to hereby delegate to the district school boards all necessary and proper administrative authority to prescribe such rules and regulations and to make such decisions and determinations as may be requisite for such purposes.

(3) The parent or guardian of any child, or the person standing in loco parentis to any child who shall apply to the appropriate public school official for the enrollment of any such child in any public school within the district in which such child resides, and whose application for such enrollment shall be denied may, pursuant to rules and regulations established by the school board, apply to such board for enrollment in such school and shall be entitled to a prompt and fair determination by such board in accordance with chapter 120. The majority of such board shall be a quorum for the purpose of holding any hearing and passing upon such application, and the decision of the majority of the members present at any hearing shall be the decision of the board. If the board shall find that such child is entitled to be enrolled in such school or if the board shall find that the enrollment of such child in such school will be for the best interest of such child and will not interfere with the proper administration of the school or with the proper instruction of the pupils there enrolled and will not endanger the health or safety of the pupils there enrolled, the board shall direct that such child be enrolled in and admitted to such school. If the board finds that the child is not entitled to be enrolled in such school or that his enrollment in such school would not be for the best interest of the child or that his enrollment would seriously interfere with the proper administration of such school or with the proper instruction of the pupils there enrolled or that the child's admission to such school would endanger the health or safety of the children there enrolled, the board shall deny the petition for enrollment and direct the enrollment of the child in such other school in the district as shall be determined by the board to be best adapted or qualified to serve the best interests of the child and of the public school system.

(4) The school boards of the public schools of Florida are authorized and empowered to conduct surveys within their respective districts to determine the attitudes and feelings of the citizens of their respective communities with the subsequent purpose of formulating plans to maintain, preserve and improve the public school system of Florida.

(5) The school boards are authorized and empowered to create and appoint citizens committees and study groups from their districts to assist in the aforementioned surveys and plans.

(6) The school boards shall be authorized to employ special counsel to assist the school board's attorney in representing the board in any litigation involving rules and regulations and rulings and decisions of the board under the provisions of this section.

(7) The provisions of this law are severable, and if any section or provision of this law shall be held to be in violation of the Constitutions of Florida or of the United States, such decision shall not affect the validity or enforceability of the remainder of this law.

History.—ss. 1-6, ch. 31380, 1956; (2) s. 1, (7) n. s. 2, ch. 59-428; s. 8, ch. 63-512; s. 1, ch. 65-532; s. 1, ch. 69-300; s. 8, ch. 78-95.

[1]230.234 Legal services for employees; reimbursement for judgments in civil actions.—The school boards of the several districts are authorized to provide legal services for officers and employees of

said boards who are charged with civil or criminal actions arising out of and in the course of the performance of assigned duties and responsibilities. The school board shall provide for reimbursement of reasonable expenses for legal services for officers and employees of said boards who are charged with civil or criminal actions arising out of and in the course of the performance of assigned duties and responsibilities upon successful defense by the employee or officer. However, in any case in which the officer or employee pleads guilty or nolo contendere or is found guilty of any such action, the officer or employee shall reimburse the board for any legal services which the board may have supplied pursuant to this section. A school board may also reimburse an officer or employee of the school board for any judgment which may be entered against him in a civil action arising out of and in the course of the performance of his assigned duties and responsibilities. Each expenditure by a school board for legal defense of an officer or employee, or for reimbursement pursuant to this section, shall be made at a public meeting with notice pursuant to s. 120.53(1)(d). The providing of such legal services or reimbursement under the conditions described above is declared to be a district school purpose for which district school funds may be expended.

History.—s. 1, ch. 65-42; s. 1, ch. 69-300; s. 36, ch. 72-221; s. 7, ch. 76-236; s. 10, ch. 79-139; ss. 11, 16, ch. 79-385.

[1]**Note.**—Section 16, ch. 79-385, provides that, if ch. 231 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-385 shall also be repealed on the same date as is therein provided.

230.24 Superintendent; election and term of office.—The superintendent shall be elected for a term of 4 years or until the election or appointment and qualification of his successor.

History.—s. 424, ch. 19355, 1939; CGL 1940 Supp. 892(87); s. 1, ch. 69-300.

230.2405 Accreditation of school unaffected by educational qualifications of superintendent.—

(1) No accreditation association shall use a standard which prescribes the educational qualifications of an elective district superintendent of schools who holds an earned bachelor's degree from an accredited institution of higher learning and which denies to the schools of the district membership in or accreditation by the association based solely on the lack of educational qualifications of the superintendent as prescribed by the association.

(2) The use of any standard by an accreditation association which denies accreditation or membership to the schools of a district based solely on the lack of educational qualifications, as prescribed by the association, of an elective district superintendent of schools who holds an earned bachelor's degree from an accredited institution of higher learning shall constitute a cause of action sufficient to support a remedy of injunctive relief in the courts of this state upon showing by the school board of the district that there exists no other grounds, reasons, or standards upon which the schools should be denied accreditation or membership in such association.

History.—ss. 1, 2, ch. 70-173.

230.241 Superintendent; procedures for making office appointive.—

(1) Pursuant to the provisions of s. 5, Art. IX of the State Constitution, the superintendent shall be appointed by the school board in a school district wherein the proposition is affirmed by a majority of the qualified electors voting in the same election making the office of superintendent appointive.

(2) To submit the proposition to the electors, the school board by formal resolution shall request an election, which shall be at a general election or a statewide primary or special election. The board of county commissioners, upon such timely request from the school board, shall cause to be placed on the ballot at such election the proposition to make the office of superintendent appointive.

(3) Any district adopting the appointive method for its superintendent may after 4 years return to its former status and reject the provisions of this section by following the same procedure outlined in subsection (2) hereof for adopting the provisions thereof.

History.—s. 1, ch. 69-160; s. 1, ch. 69-300; s. 37, ch. 72-221.

230.26 Oath of superintendent.—Before entering upon the duties of his office, the superintendent shall take the oath of office prescribed by the constitution of the state.

History.—s. 426, ch. 19355, 1939; CGL 1940 Supp. 892(89); s. 1, ch. 69-300.

230.28 Vacancy in office of superintendent.—The office of superintendent in any district shall be vacant when the superintendent removes his residence from the district.

History.—s. 428, ch. 19355, 1939; CGL 1940 Supp. 892(91); s. 40, ch. 29764, 1955; s. 1, ch. 69-300.

230.29 Office of superintendent; where located; how maintained.—The superintendent may locate his office anywhere in the school district. Adequate office space and facilities shall be provided by the board of county commissioners. However, in the event such is not provided by the commissioners, the school board may provide such space and facilities as are needed.

History.—s. 429, ch. 19355, 1939; CGL 1940 Supp. 892(92); s. 1, ch. 69-300; s. 38, ch. 72-221; s. 1, ch. 74-45.

230.30 Superintendent to devote full time to office.—The position of superintendent in each district shall be considered a full-time position.

History.—s. 430, ch. 19355, 1939; CGL 1940 Supp. 892(93); s. 11, ch. 23726, 1947; s. 41, ch. 29764, 1955; s. 1, ch. 69-300.

230.31 Secretary and executive officer of the school board.—The superintendent shall be the secretary and executive officer of the school board; provided, that when the superintendent of any district is required to be absent on account of performing services in the volunteer forces of the United States or in the National Guard of the State or in the regular Army or Navy of the United States, when the said superintendent shall be called into active training or service of the United States under an Act of Congress or pursuant to a proclamation by the President of the United States, he shall then be entitled to a leave of absence for not to exceed the re-

maining portion of the term for which he was elected.

History.—s. 431, ch. 19355, 1939; CGL 1940 Supp. 892(94); s. 2, ch. 20970, 1941; s. 1, ch. 69-300.

230.32 General powers of superintendents.—The superintendent shall have the authority, and when necessary for the more efficient and adequate operation of the district school system, the superintendent shall exercise the following powers:

(1) GENERAL OVERSIGHT.—Exercise general oversight over the district school system in order to determine problems and needs, and recommend improvements.

(2) ADVISE, COUNSEL, AND RECOMMEND TO SCHOOL BOARD.—Advise and counsel with the school board on all educational matters and recommend to the school board for action such matters as should be acted upon.

(3) RECOMMEND POLICIES.—Recommend to the school board for adoption such policies pertaining to the district school system as he may consider necessary for its more efficient operation.

(4) RECOMMEND AND EXECUTE RULES AND REGULATIONS.—Prepare and organize by subjects and submit to the school board for adoption such rules and regulations to supplement those adopted by the state board as, in his opinion, will contribute to the efficient operation of any aspect of education in the district. When rules and regulations have been adopted, the superintendent shall see that they are executed.

(5) RECOMMEND AND EXECUTE MINIMUM STANDARDS.—From time to time to prepare, organize by subjects, and submit to the school board for adoption such minimum standards relating to the operation of any phase of the district school system as are needed to supplement those adopted by the state board and as will contribute to the efficient operation of any aspect of education in the district; to see that minimum standards adopted by the school board are observed.

(6) PERFORM DUTIES AND EXERCISE RESPONSIBILITIES.—Perform such duties and exercise such responsibilities as are assigned to him by law and by regulations of the state board.

History.—s. 432, ch. 19355, 1939; CGL 1940 Supp. 892(95); s. 1, ch. 69-300.

230.321 Superintendents employed under Art. IX, State Constitution.—

(1) In every district authorized to employ a superintendent of schools under Art. IX of the State Constitution, he shall be the executive officer of the school board and shall not be subject to the provisions of law, either general or special, relating to tenure of employment or continuing contracts of other school personnel. His duties relating to the district school system shall be as provided by law and rules and regulations of the State Board of Education.

(2) The school board of each of said districts shall enter into contracts of employment with the superintendent of schools and shall adopt rules and regulations relating to his appointment.

(3) The school board of each such district shall pay to the superintendent of schools a reasonable annual salary. In determining the amount of compensation to be paid, the board shall take into account such factors as:

(a) The population of the district;

(b) The rate and character of population growth;

(c) The size and composition of the student body to be served;

(d) The geographic extent of the district;

(e) The number and character of the schools to be supervised; and

(f) The educational qualifications, professional experience, and age of the candidate for the position of superintendent.

History.—ss. 1, 2, ch. 57-308; s. 29, ch. 65-239; s. 1, ch. 67-341; ss. 10, 21, ch. 69-216; portions of (2) formerly s. 6A, Art. VIII of the Constitution of 1885 as amended; converted to statutory law by s. 10, Art. XII of the Constitution as revised in 1968; s. 1, ch. 69-300; s. 1, ch. 70-190.

230.33 Duties and responsibilities of superintendent.—The superintendent shall exercise all powers and perform all duties listed below and elsewhere in the law; provided, that in so doing he shall advise and counsel with the school board. The recommendations, nominations, proposals and reports required by law and regulation to be made to the school board by the superintendent shall be either recorded in the minutes or shall be made in writing, noted in the minutes and filed in the public records of the board. It shall be presumed that, in the absence of the record required in this paragraph, the recommendations, nominations and proposals required of the superintendent were not contrary to the action taken by the school board in such matters.

(1) ASSIST IN ORGANIZATION OF BOARD.—Preside at the organization meeting of the school board and transmit to the Department of Education, within 2 weeks following such meeting, a certified copy of the proceedings of organization, including the schedule of regular meetings, and the names and addresses of district school officials.

(2) REGULAR AND SPECIAL MEETINGS OF THE BOARD.—Attend all regular meetings of the school board, call special meetings when emergencies arise, and advise, but not vote, on questions under consideration.

(3) RECORDS FOR THE BOARD.—Keep minutes of all official actions and proceedings of the school board and keep such other records, including records of property held or disposed of by the school board, as may be necessary to provide complete information regarding the district school system.

(4) SCHOOL PROPERTY.—Act for the school board as custodian of school property.

(a) *Recommend purchase and plans for control.*—Recommend to the school board plans for contracting, receiving, purchasing, acquiring by the institution of condemnation proceedings if necessary, leasing, selling, holding, transmitting, and conveying title to real and personal property.

(b) *Property held in trust.*—Recommend to the school board plans for holding in trust and administering property, real and personal, money, or other things of value, granted, conveyed, devised, or bequeathed for the benefit of the schools of the district or of any one of them.

(5) SCHOOL PROGRAM; PREPARE LONGTIME AND ANNUAL PLANS FOR.—Supervise the assembling of data and sponsor studies and surveys essential to the development of a planned school pro-

gram for the entire district and prepare and recommend such a program to the school board as the basis for operating the district school system.

(6) ESTABLISHMENT, ORGANIZATION, AND OPERATION OF SCHOOLS, CLASSES, AND SERVICES.—Recommend the establishment, organization, and operation of such schools, classes, and services as are needed to provide adequate educational opportunities for all children in the district, including:

(a) *Schools and attendance areas.*—Recommend the location of schools needed to accommodate the pupils of the district and the area from which children should attend each school.

(b) *Recommend adequate facilities for all children.*—Recommend plans and procedures necessary to provide adequate educational facilities for all children of the district.

(c) *Elimination of school centers and consolidation of schools.*—Determine when the needs of pupils can better be served by eliminating school centers and by consolidating schools; recommend to the school board plans for the elimination of such school centers as should be eliminated and for the consolidation of such schools as should be consolidated.

(d) *Cooperation with other districts in maintaining schools.*—Recommend plans and procedures for cooperating with school boards of adjoining districts, in this state or in bordering states, in establishing school attendance areas composed of territory lying within the districts and for the joint maintenance of district line or other schools which should serve such attendance areas, and carry out such plans and administer such schools for which his district is to be responsible under any agreement which is effected.

(e) *Classification and standardization of schools.*—Recommend plans and regulations for determining those school centers at which work should be restricted to the elementary grades, school centers at which work should be offered only in the high school grades, and school centers at which work should be offered in any or in all grades; recommend the grade or grades in which work should be offered at each school center; recommend bases for classifying and standardizing the various schools of the district in order to provide proper incentive for the improvement of all schools.

(f) *Opening and closing dates of schools.*—Recommend and arrange for a uniform date each year for the opening of all schools in the district, unless other dates shall be found necessary and desirable; recommend and arrange the closing dates for all schools in the district, these dates to be so determined as to assure, as far as practicable, uniform terms for all schools in the district. Recommend regulations for the closing of any or all schools during an emergency and when emergencies arise to close any or all schools in the district and immediately notify the school board of the action taken and the reason therefor.

(g) *School holidays and vacation periods.*—Recommend school holidays to be observed and the manner of such observance by the schools and see that such holidays as are approved by the school board are properly observed; also recommend school vacation periods.

(h) *Vocational classes and schools.*—Recommend plans for the establishment and maintenance of vocational schools, departments, or classes, giving instruction in vocational education as defined in regulations of the state board, and administer and supervise instruction in such schools, departments, or classes as are established by the school board.

(i) *Cooperation with other districts in special projects or activities.*—Recommend plans and procedures for cooperating with other district school boards or with other agencies, in this state or in bordering states, in special projects or activities which can be more economically or advantageously provided by such cooperation.

(j) *School lunches.*—Recommend plans for the establishment, maintenance, and operation of a school lunch program consistent with state laws and regulations of the state board, and to administer and supervise such services.

(k) *Exceptional education.*—Recommend plans for the provision of special education classes, instruction, facilities, equipment and related services for exceptional children.

(7) PERSONNEL.—Be responsible, as required herein, for directing the work of the personnel, subject to the requirements of chapter 231 and in addition he shall have the following duties:

(a) *Positions and qualifications.*—Recommend to the school board duties and responsibilities which need to be performed and positions which need to be filled to make possible the development of an adequate school program in the district and recommend minimum qualifications of personnel for these various positions.

(b) *Assistants and noninstructional personnel.*—Recommend in writing to the school board persons to act as administrative, supervisory, technical, attendance or health assistants, office assistants, school food service personnel, bus drivers, and all other noninstructional personnel.

(c) *Supervisors and principals of district schools.*—Submit in writing to the school board his nominations of persons to be appointed or reappointed as supervisors and principals. All nominations for reappointment of supervisors and principals shall be submitted to the school board at least 8 weeks before the close of the post-school conference period.

(d) *Other members of the instructional staff of district schools.*—Confer with the principals and submit in writing to the school board his nominations of all other persons to be appointed or reappointed as members of the instructional staff of the district school system. All nominations for reappointment of such members of the instructional staff shall be submitted in writing to the school board at least 6 weeks before the close of the post-school conference period.

(e) *Compensation and salary schedules.*—Prepare and recommend to the school board for adoption a salary schedule or salary schedules to be used as the basis for paying members of the instructional staff and other school employees, arranging such schedules, insofar as practicable, so as to furnish incentive for improvement in training and for continued and efficient service.

(f) *Contracts and terms of service.*—Recommend

to the school board terms for contracting with employees and prepare such contracts as are approved. Contracts with the members of the instructional staff are to be prepared, recommended, and executed as hereinbefore prescribed. Authority is given to make appointments to approved positions and to approve compensation therefor at the rate provided in the currently established salary schedule, pending action by the local board at its next regular or special meeting.

(g) *Transfer and promotions.*—Recommend employees for transfer and transfer any employee during any emergency and report the transfer to the school board at its next regular meeting.

(h) *Suspension and dismissal.*—Suspend members of the instructional staff and other school employees during emergencies for a period extending to and including the day of the next regular or special meeting of the school board and notify the school board immediately of such suspension. When authorized to do so, serve notice on the suspended member of the instructional staff of charges made against him and of the date of hearing. Recommend employees for dismissal under the terms prescribed herein.

(i) *Direct work of employees and supervise instruction.*—Direct or arrange for the proper direction and improvement, under regulations of the school board, of the work of all members of the instructional staff and other employees of the district school system; supervise or arrange under regulations of the school board for the supervision of instruction in the district and take such steps as are necessary to bring about continuous improvement.

(8) CHILD WELFARE.—Recommend plans to the school board for the proper accounting for all children of school age, for the attendance and control of pupils at school, for the proper attention to health, safety, and other matters which will best promote the welfare of children in the following fields, as prescribed in chapter 232:

(a) *Admission, classification, promotion and graduation of pupils.*—Recommend rules and regulations for admitting, classifying, promoting, and graduating pupils to or from the various schools of the district.

(b) *Enforcement of attendance laws.*—Recommend plans and procedures for the enforcement of all laws and regulations relating to the attendance of pupils at school and for the employment of such qualified assistants as may be needed by him to enforce effectively those laws.

(c) *Control of pupils.*—Propose rules and regulations for the control, discipline, suspension, and expulsion of pupils and review and modify recommendations for suspension and expulsion of pupils and transmit to the school board for action recommendations for expulsion of pupils. When the superintendent makes a recommendation for expulsion to the school board, he shall give written notice to the pupil and his parent or guardian of the recommendation, setting forth the charges against the pupil and advising the pupil and his parent or guardian of his right to due process as prescribed by subsection 120.57(2). When school board action on a recommendation for the expulsion of a pupil is pending, the superintendent may extend the suspension assigned by the principal beyond 10 school days if such suspension period expires before the next regular or special meeting of the school board.

(9) COURSES OF STUDY AND OTHER INSTRUCTIONAL AIDS.—Recommend such plans for improving, providing, distributing, accounting for, and caring for textbooks and other instructional aids as will result in general improvement of the district school system, as prescribed in chapter 233 and including the following:

(a) *Courses of study.*—Prepare and recommend for adoption, after consultation with teachers and principals and after considering any suggestions which may have been submitted by patrons of the schools, courses of study for use in the schools of the district needed to supplement those prescribed by the state board.

(b) *Textbooks.*—Require that all textbooks and library books furnished by the state and needed in the district are properly requisitioned, distributed, accounted for, stored, cared for, and used; and recommend such additional textbooks or library books as may be needed.

(c) *Other instructional aids.*—Recommend plans for providing and facilitate the provision and proper use of such other teaching accessories and aids as are needed.

(d) *School library media services; establishment and maintenance.*—Recommend plans for establishing and maintaining school library media centers, or school library media centers open to the public, and, in addition thereto, such circulating or traveling libraries as are needed for the proper operation of the district school system. Recommend plans for the establishment and maintenance of a program of school library media services for all public school students. The school library media services program shall be designed to insure effective use of available resources and to avoid unnecessary duplication and shall include, but not be limited to, basic skills development, instructional design, media collection development, media program management, media production, staff development, and consultation and information services.

(10) TRANSPORTATION OF PUPILS.—Ascertain which pupils should be transported to school or to school activities, determine the most effective arrangement of transportation routes to accommodate these pupils; recommend such routing to the school board; recommend plans and procedures for providing facilities for the economical and safe transportation of pupils; recommend such rules and regulations as may be necessary and see that all rules and regulations relating to the transportation of pupils approved by the school board, as well as regulations of the state board, are properly carried into effect, as prescribed in chapter 234.

(11) SCHOOL PLANT.—Recommend plans, and execute such plans as are approved regarding all phases of the school plant program, as prescribed in chapter 235, and including the following:

(a) *School building program.*—Recommend plans and procedures for having a survey made under the direction of the department, or by some agency approved by the department, as a basis for devel-

oping a districtwide school building program as a phase of the long-time program for the district; recommend such program when sufficient evidence is available, specifying the centers at which school work should be offered on the various levels, the type, size, and location of schools to be established, and the steps to be taken to carry out the program.

(b) *Sites, buildings, and equipment.*—Recommend the purchasing of school sites, playgrounds, and recreational areas located at centers at which schools are to be constructed and of adequate size to meet the need of pupils to be accommodated; or of additions to existing sites when needed; recommend the rental of buildings when necessary; recommend the erection of buildings; recommend additions, alterations, and repairs to buildings and other school properties; insure that all plans and specifications for buildings provide adequately for the safety of pupils as well as for economy of construction by submitting such plans and specifications to the Department of Education for approval; recommend the purchasing of furniture, books, apparatus, and other equipment necessary for the proper conduct of the work of the schools.

(c) *Maintenance and upkeep of the school plant.*—Propose plans for assuring proper maintenance and upkeep of the school plant and for the provision of the utilities and supplies for the operation of the schools; and when the plans are approved by the school board, take such steps as are necessary to see that buildings are kept in proper sanitary and physical condition and that heat, lights, water and power and other supplies and utilities are adequate.

(d) *Insurance of school property.*—Propose plans and procedures for insuring economically every plant and its contents, boilers and machinery as well as school buses and other property, under the control of the school board and see that the proper records are kept of such insurance.

(e) *Condemnation of buildings.*—Inspect periodically all school buildings and surroundings to determine whether there are any unsanitary conditions or whether there are physical hazards which are likely to jeopardize the health or life of the pupils or instructional staff; request competent assistance from the state or other authorized agency, if necessary, to determine whether buildings found to be defective should be condemned and to recommend to the school board condemnation of buildings which should be abandoned.

(12) FINANCE.—Recommend measures to the school board to assure adequate educational facilities throughout the district, in accordance with the financial procedure authorized in chapters 236 and 237, and as prescribed below:

(a) *Plan for operating all schools for minimum term.*—Determine and recommend district funds necessary in addition to state funds to provide for at least a 180-day term for all schools, and recommend plans for insuring the operation of all schools for the term authorized by the school board.

(b) *Annual budget.*—Prepare the annual school budget to be submitted to the school board for adoption according to law; submit this budget, when adopted by the school board, to the Department of Education on or before the date required by regulations of the state board.

(c) *Tax levies.*—Recommend to the school board, on the basis of the needs shown by the budget, the amount of district school tax levy necessary to provide the district school funds needed for the maintenance of the public schools of such district for at least 180 days; recommend to the school board the tax levy required on the basis of the needs shown in the budget for the district bond interest and sinking fund of each district; and recommend to the school board to be included on the ballot at each district millage election the school district tax levies necessary to carry on the school program for a term of at least 180 days.

(d) *School funds.*—Keep an accurate account of all funds which should be transmitted to the school board for school purposes at various periods during the year and see, insofar as possible, that these funds are transmitted promptly; report promptly to the school board any delinquencies or delays that occur in making available any funds that should be made available for school purposes.

(e) *Borrowing money.*—Recommend when necessary the borrowing of money as prescribed by law.

(f) *Financial records and accounting.*—Keep or have kept accurate records of all financial transactions.

(g) *Payrolls and accounts.*—Prepare, at least monthly, payrolls and statements of accounts due to be paid by the school board; certify these statements as correct and complete and recommend them to the school board for payment; prepare periodic reports as required by regulations of the state board, showing receipts, balances, and disbursements to date, a copy of such periodic reports to be filed with the Department of Education.

(h) *Bonds for employees.*—Recommend the bonds of all school employees who should be bonded in order to provide reasonable safeguards for all school funds or property.

(i) *Contracts.*—After study of the feasibility of contractual services with industry, recommend to the school board the desirable terms, conditions, and specifications for contracts for supplies, materials, or services to be rendered and see that materials, supplies, or services are provided according to contract.

(j) *Investment policies.*—The superintendent shall, after careful examination, recommend policies to the school board which will provide for the investment or deposit of school funds not needed for immediate expenditures which shall earn the maximum possible yield under the circumstances on such investments or deposits. The superintendent shall cause to be invested at all times all school moneys not immediately needed for expenditures pursuant to the policies of the school board.

(k) *Millage elections.*—Recommend plans and procedures for holding and supervising all school district millage elections.

(l) *Budgets and expenditures.*—Prepare, after consulting with the principals of the various schools, tentative annual budgets for the expenditure of district funds for the benefit of public school pupils of the district.

(m) *Bonds.*—Recommend the amounts of bonds to be issued in the district and assist in the preparation of the necessary papers for an election to determine whether the proposed bond issue will be approved by the electors; if such bond issue be approved by the electors, recommend plans for the sale of bonds and for the proper expenditure of the funds derived therefrom.

(13) RECORDS AND REPORTS.—Recommend such records as should be kept in addition to those prescribed by regulations of the state board or by the department; prepare forms for keeping such records as are approved by the school board; see that such records are properly kept, and make all reports that are needed or required, as follows:

(a) *Forms, blanks, and reports.*—Require that all employees keep accurately all records and make promptly in proper form all reports required by the school code or by regulations of the state board; recommend the keeping of such additional records and the making of such additional reports as may be deemed necessary to provide data essential for the operation of the school system, and prepare such forms and blanks as may be required and see that these records and reports are properly prepared.

(b) *Reports to the department.*—Prepare for the approval of the school board all reports that may be required by law or regulations of the state board to be made to the department and transmit promptly all such reports, when approved, to the department, as required by law. If any such reports are not transmitted at the time and in the manner prescribed by law or by state board regulations, the salary of the superintendent shall be withheld until such report has been properly submitted. Unless otherwise provided by regulations of the state board, the annual report on attendance and personnel shall be due on or before July 1, and the annual school budget and the report on finance shall be due on the date prescribed by the state board.

(c) *Failure to make reports; penalty.*—Any superintendent who knowingly signs and transmits to any state official a false or incorrect report shall forfeit his right to any salary for the period of 1 year from that date.

(14) COOPERATION WITH OTHER AGENCIES.—

(a) Recommend plans for cooperating with and on the basis of approved plans to cooperate with federal, state, county, and municipal agencies in the enforcement of laws and regulations pertaining to all matters relating to education and child welfare.

(b) Recommend plans for identifying and reporting to the Department of Education the name of each child in the school district who qualifies according to the definition of a migratory child, based on Pub. L. No. 95-561, and for reporting such other information as may be prescribed by the department.

(15) ENFORCEMENT OF LAWS AND REGULATIONS.—Require that all laws and regulations of the state board, as well as supplementary regulations of the school board, are properly observed; report to the school board any violation which he does not succeed in having corrected.

(16) COOPERATE WITH SCHOOL BOARD.—Cooperate with the school board in every manner practicable to the end that the district school system may continuously be improved.

(17) VISITATION OF SCHOOLS.—Visit the schools; observe the management and instruction; give suggestions for improvement; and advise with supervisors, principals, teachers, patrons, and other citizens with the view of promoting interest in education and improving the school conditions of the district.

(18) CONFERENCES, INSTITUTES, AND STUDY COURSES.—Call and conduct institutes and conferences with employees of the school board, school patrons, and other interested citizens; organize and direct study and extension courses for employees, advising them as to their professional studies; assist patrons and people generally in acquiring knowledge of the aims, services, and needs of the schools.

(19) PROFESSIONAL AND GENERAL IMPROVEMENT.—Attend such conferences for superintendents as may be called or scheduled by the Department of Education and avail himself of means of professional and general improvement so that he may function most efficiently.

(20) RECOMMEND REVOKING CERTIFICATES.—Recommend in writing to the Department of Education the revoking of any certificate for good cause, including a full statement of the reason for his recommendation.

(21) MAKE RECORDS AVAILABLE TO SUCCESSOR.—Leave with the school board and make available to his successor upon retiring from office a complete inventory of school equipment and other property, together with all official records and such other records as may be needed in supervising instruction and in administering the district school system.

(22) RECOMMEND PROCEDURES FOR INFORMING GENERAL PUBLIC.—Recommend to the school board procedures whereby the general public can be adequately informed of the educational programs, needs, and objectives of public education within the district.

(23) OTHER DUTIES AND RESPONSIBILITIES.—Perform such other duties as may be assigned to him by law or by regulations of the state board.

History.—s. 433, ch. 19355, 1939; CGL 1940 Supp. 892(96); s. 3, ch. 29754, s. 42, ch. 29764, 1955; s. 5, ch. 59-371; s. 4, ch. 61-288; s. 7, ch. 63-376; s. 30, ch. 65-239; s. 1, ch. 67-238; ss. 5, 6, ch. 67-438; ss. 4, 5, ch. 68-13; s. 7, ch. 68-24; ss. 15, 19, 35, ch. 69-106; s. 1, ch. 69-300; s. 2, ch. 70-194; ss. 2, 3, ch. 70-399; ss. 5-8, ch. 71-164; s. 60, ch. 71-355; s. 58, ch. 71-377; ss. 40-46, ch. 72-221; s. 10, ch. 74-356; s. 12, ch. 76-223; s. 3, ch. 76-236; s. 16, ch. 78-423; s. 2, ch. 79-256.

cf.—s. 228.111 School officers to turn over money and property to successors.

230.331 Reproduction and destruction of district school records.—

(1) The purpose of this section is to reduce the present space required by the district school systems for the storage of their records and to permit the superintendent to administer the affairs of the district school system more efficiently.

(2) After complying with the provisions of s. 267.10, the superintendent is authorized to photograph, microphotograph, or reproduce on film or prints, documents, records, data, and information of a permanent character which in his discretion he may select, and the superintendent is authorized to destroy any of the said documents after they have

been photographed and after audit of his office has been completed for the period embracing the dates of said instruments. Photographs or microphotographs in the form of film or prints made in compliance with the provisions of this section shall have the same force and effect as the originals thereof would have, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs.

(3) After complying with the provisions of s. 267.10, the superintendent is authorized, in his discretion, to destroy general correspondence which is over 3 years old and other records, papers and documents over 3 years old which do not serve as part of an agreement or understanding nor have value as permanent records.

History.—ss. 1-3, ch. 57-378; s. 1, ch. 69-300; s. 47, ch. 72-221.

230.35 Schools under control of school board and superintendent.—All public schools conducted within the district shall be under the direction and control of the school board with the superintendent as executive officer.

History.—s. 435, ch. 19355, 1939; CGL 1940 Supp. 892(98); s. 43, ch. 29764, 1955; s. 1, ch. 69-300; s. 49, ch. 72-221.

230.39 Procedure for conducting school district millage elections.—The manner and method for conducting the school district millage elections shall be as prescribed in chapter 236; provided, that the school board shall publish once each week for 4 successive weeks, beginning not more than 45 days nor less than 30 days prior to the date set for the election, in some newspaper published in the county and with general circulation throughout the county, a notice of the election. One notice of the election shall be sufficient. In case there shall be no newspaper published in the county, the notice of election shall be posted at least 30 days prior to the election.

History.—s. 439, ch. 19355, 1939; CGL 1940 Supp. 892(102); s. 3, ch. 20970, 1941; s. 1, ch. 69-300; s. 1, ch. 71-297; s. 63, ch. 71-355.

230.59 Educational communications systems.—

(1) For the purposes of this act, "educational communications systems" shall include those wired or radio systems used to carry messages related to instruction, administration, or general information between buildings or campuses or the general public to implement the purposes of the school system.

(2) School boards singly or in combination may lease, establish, or acquire educational communications systems or services to implement the goals and objectives of the state system of public education.

(3) The operation of all educational communications systems shall be under policies adopted by the operating school board.

History.—s. 1, ch. 63-221; s. 1, ch. 69-300; s. 50, ch. 72-221.

230.63 When area vocational-technical centers may be organized.—

(1) SCHOOL BOARD MAY ESTABLISH OR ACQUIRE AREA VOCATIONAL-TECHNICAL CENTERS.—Any school board, after first obtaining the approval of the Department of Education may, as a part of the district school system under the provisions of s. 228.061, organize, establish and operate an area vocational-technical center, or acquire and operate a vocational-technical school previously established.

(2) SCHOOL BOARDS OF CONTIGUOUS DISTRICTS MAY ESTABLISH OR ACQUIRE AREA VOCATIONAL-TECHNICAL CENTERS.—The school boards of any two or more contiguous districts may, upon first obtaining the approval of the department, enter into an agreement to organize, establish and operate, or acquire and operate, an area vocational-technical center under this section.

History.—s. 1, ch. 63-475; s. 43, ch. 65-239; s. 3, ch. 65-323; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 75, ch. 73-333.

230.631 Area vocational center; minimum criteria for establishment.—No area vocational center shall be established in the state without meeting the requirements of the state plan for vocational education adopted by the Department of Education and the criteria based on current requirements and such additional criteria as may be prescribed by said department for area vocational facilities; provided, however, such criteria shall not require more than 150 full-time students, or the equivalent thereof, for the establishment of a new vocational-technical training center.

History.—s. 1, ch. 65-468; ss. 15, 35, ch. 69-106; s. 54, ch. 72-221.

230.64 Area vocational-technical center part of district school system; minimum standards.—

(1) AREA VOCATIONAL-TECHNICAL CENTER PART OF DISTRICT SCHOOL SYSTEM DIRECTED BY A DIRECTOR.—An area vocational-technical center established or acquired under provisions of law, shall comprise a part of the district school system of the state and shall mean an educational institution offering terminal courses of a technical and vocational nature, and courses for out-of-school youth and adults, shall be subject to the general school laws of the state insofar as such laws are applicable, shall be under the control of the school board of the district in which it is located and shall be directed by a director, who shall be responsible through the superintendent to the school board of the district in which the center is located.

(2) STATE BOARD SHALL PRESCRIBE MINIMUM STANDARDS.—The state board shall prescribe minimum standards which must be met before an area vocational-technical center is organized, acquired or operated, and which will assure that the purposes of the center are attained.

History.—s. 1, ch. 63-475; s. 44, ch. 65-239; s. 1, ch. 69-300; s. 55, ch. 72-221.

230.645 Waiver of postsecondary student fees.—Any dependent child of a special risk member as defined in s. 121.021(15) shall be entitled to a full waiver of postsecondary student fees at any area vocational-technical school or any other public vocational-technical postsecondary school if the special risk member was killed in the line of duty. This waiver shall apply until the child's 25th birthday. To qualify for this waiver, the child shall be required to meet regular admission requirements.

History.—s. 1, ch. 78-338.

230.65 State and district financial support of area vocational-technical centers.—Each area vocational-technical center approved by the Department of Education shall participate in the minimum foundation program funds for the public schools. The amounts of money to be allocated for this purpose from the minimum foundation program fund shall be according to the formula established by law.

History.—s. 1, ch. 63-475; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300.

230.651 Allocation of vocational education construction funds.—The State Board of Education is directed to designate any public school district, or cooperating combinations of districts, operating a vocational education program, having at least eight vocational education units, and having at least one high school with a department exclusively or principally used for providing vocational education in no less than five different occupational fields, as an area vocational education school center. If required by federal regulations, the school board shall make the designations to a particular high school within each district. The board of education shall give priority to the vocational capital outlay needs at the secondary level in all further allocations of federal funds.

History.—s. 2, ch. 71-289; s. 142, ch. 72-221.
Note.—Former s. 236.076.

230.655 Education programs in correctional facilities.—The Department of Education shall require that each vocational-technical center withdraw all requests for course approval from the Veteran's Administration for education programs offered in correctional facilities which are provided through state funding at no cost to the inmate.

History.—s. 1, ch. 79-182.

230.66 Industry services training program.—(1) There shall be established under the Department of Education a supplemental program to provide training to meet the employment needs of industry and the needs of the citizens of Florida for employment in jobs created by new, expanding, and diversified industry in the state. These needs shall be identified by the Division of Economic Development of the Department of Commerce, other state and local agencies, and business interests in the state.

[1](2)(a) To assist the department in carrying out the provisions of this act, there is created the Industry Services Advisory Council which shall consist of 11 members. The council shall consist of the Director of the Division of Economic Development of the Department of Commerce, who shall serve as chairman, the Director of the Division of Labor, the Director of the Division of Employment Security, and the Director of the Division of Employment and Training of the Department of Labor and Employment Security, and seven members appointed by the State Board of Education pursuant to s. 20.15(10) from two or more names nominated for each position by the Commissioner of Education. Each appointive member shall be appointed for a term of 4 years, except that in case of a vacancy the appointment shall be for the unexpired term. Any of the appointive members of the council may be removed for cause. The Director of the Division of Vocational Education, or his designee, shall serve as executive secretary.

(b) The Industry Services Advisory Council shall have such duties as may be prescribed by regulations of the State Board of Education.

(3) The programs of vocational education under this act shall be supplementary to those offered by vocational-technical schools, community colleges and other public school programs and shall be operated on a statewide basis to assist any area to become more competitive in industrial and economic development; provided, no program may be made available to any area except as prescribed under regulations of the state board. The program prescribed in this act shall be concerned only with training for skilled and semiskilled operations requiring learning time of 1 year or less and each such training program shall terminate when training needs have been met.

(4) The Department of Education shall administer the programs and shall provide for technical and engineering services, curriculum development, instructional services, information and research, general program administration, central warehousing and transportation of equipment and supplies and overall program direction and shall provide an adequate staff to carry out an effective training program for industry.

(5) Training programs under the provisions of this act may be carried out on the basis of agreements between the district school board or the community college board of trustees, or both such boards, and the department. Under such agreements, the district school board or the community college board of trustees, or both such boards, may make available the facilities of vocational-technical programs, community colleges, or temporary rented facilities and shall pay all instructional salaries in accordance with the salary schedule established by the state agency in agreement with the district school board or the community college board of trustees, or both such boards, without consideration of the duly adopted salary schedule of the district school board or community college board of trustees for regular instructional personnel, except that service of teachers employed in such training programs as temporary employees shall not be counted as years of service toward a continuing contract. All expenses incurred by a district school board or community college board of trustees under such agreement in providing the services prescribed by this act shall be reimbursed by the state from funds appropriated for this purpose.

(6) In the event a district school board or community college board of trustees refuses or is unable to provide the training program, the department may enter into a cooperative agreement with any state agency or institution, county agency or institution, municipality or municipal agency, or any institution, public or private, which is willing to operate the training program.

(7) Persons employed in the programs shall be exempt from the requirements for certification as set forth in ss. 231.14 and 231.16, except as may be prescribed by regulations of the state board.

(8) Under the provisions of this act, the Depart-

ment of Education is authorized to procure equipment as necessary to carry out adequate training programs. Control of such equipment shall be vested in the State Department of Education. Such equipment shall be maintained in a warehouse reserve and shall become available for use in any area of the state where a training program creates a need. Such equipment shall be returned to the warehouse reserve when no longer needed in a training program. Title to all equipment purchased under provisions of this act shall be vested in the Department of Education.

(9) The Department of Education, after consulting with the Industry Services Advisory Council, shall recommend to the state board of education any and all regulations necessary to implement and carry out the provisions of this act.

(10) To assist in carrying out the provisions of this act, the Department of Education is hereby authorized to accept grants of money, materials, services, or property of any kind from a federal agency, private agency, corporation or individual upon such terms and conditions as such federal agency, private agency, corporation or individual may impose.

History.—ss. 1-11, ch. 67-604; ss. 15, 17, 35, ch. 69-106; s. 1, ch. 69-300; s. 70, ch. 72-221; s. 1, ch. 73-283; s. 1, ch. 78-20; s. 4, ch. 78-323; s. 11, ch. 79-7; s. 50, ch. 79-164; ss. 7, 8, ch. 79-261.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subsection prior to that date. Section 8, ch. 79-261, provides that, if this subsection is repealed in accordance with the intent expressed in the Sundown Act, it is the intent of the Legislature that said subsection as amended by chapter 79-261 shall also be repealed on the same date as is therein provided.

230.67 Job placement and follow-up services.—

(1) The basic purpose of education is to prepare students to become productive, employable, and self-supporting members of society, and the problem of transition from school to work is of critical importance. Despite this fact, the public school system does not now provide job placement services or adequate employment counseling for students leaving the public school, either as graduates or as dropouts. Lack of such services is a significant factor in the high rate of youth unemployment which is consistently more than three times as high as the unemployment rate for all ages.

(2) On or before September 1, 1974, each district school board shall establish and maintain job placement and follow-up services for students graduating or leaving the public school system, including area vocational-technical centers. Follow-up studies may be conducted which will include:

(a) All students graduating or leaving the public school system, including area vocational-technical centers; or

(b) A statistically valid random sample of all students graduating or leaving the public school system, including area vocational-technical centers, which random sample shall be stratified to reflect the appropriate vocational programs of such student.

(3) The State Board of Education shall develop and prescribe alternative methods by which school boards are to provide placement and follow-up services. When possible, this responsibility shall be given to guidance counselors and occupational and placement specialists.

(4) It shall be the further responsibility of the job placement personnel to make written recommendations to the district school board concerning areas of curriculum deficiency having an adverse effect on the employability of job candidates.

History.—ss. 1-4, ch. 73-235; s. 1, ch. 76-90.

CHAPTER 231

PERSONNEL OF SCHOOL SYSTEM

[1]231.02 Qualifications of personnel.—To be eligible for appointment in any position in any district school system a person shall be of good moral character and shall, when required by law, hold a certificate or license issued under regulations of the State Board of Education or the Department of Health and Rehabilitative Services.

History.—s. 502, ch. 19355, 1939; CGL 1940 Supp. 892(108); s. 14, ch. 23726, 1947; ss. 19, 35, ch. 69-106; s. 1, ch. 69-300; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 79-12.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.03 Minimum ages of instructional personnel.—No person may be employed in any instructional capacity in the public schools of Florida who has not attained the age of 18 years unless he has received a 4-year degree from an accredited institution of higher learning. No person shall be employed as principal of a school with 3 or more teachers or as a supervisor of instruction who has not had 2 or more years of experience as a teacher and attained the age of 23 years.

History.—s. 503, ch. 19355, 1939; CGL 1940 Supp. 892(109); s. 8, ch. 63-376; reenacted s. 45, ch. 65-239; s. 3, ch. 76-168; s. 9, ch. 77-121; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.031 Maximum age of instructional personnel.—No person shall be employed in any instructional capacity in the public schools of Florida after the close of the school year following the date on which he attains 70 years of age; provided, however, that this provision shall not apply to employment limited to substitute and part-time teaching.

History.—s. 1, ch. 65-144; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.06 Assault or battery of instructional or noninstructional personnel; penalties.—Whenever any parent or other person not subject to the discipline of the school commits an assault or battery upon any person employed in an instructional or noninstructional capacity on school property, the offense for which the person is charged shall be classified as follows:

(1) In the case of an assault, a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) In the case of a battery, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 506, ch. 19355, 1939; CGL 1940 Supp. 8115(2); s. 48, ch. 65-239; s. 132, ch. 71-136; s. 74, ch. 72-221; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 79-338.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.07 Insulting instructional personnel; disturbing school functions.—Any person not subject to the rules and regulations of a school who creates a disturbance on the property or grounds of any

school, who commits any act that interrupts the orderly conduct of a school or any activity thereof shall be guilty of a misdemeanor of the second degree, punishable as provided by law. This section shall not apply to any pupil in or subject to the discipline of a school.

History.—s. 507, ch. 19355, 1939; CGL 1940 Supp. 8115(3); s. 1, ch. 21989, 1943; s. 49, ch. 65-239; s. 133, ch. 71-136; s. 75, ch. 72-221; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 2, ch. 79-163.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.085 Duties of principals.—District school boards shall employ, through written contract, public school principals who shall supervise the operation and management of the schools and property as the board shall determine necessary. The principal shall:

(1) Assume administrative responsibility and instructional leadership, under the supervision of the superintendent and in accordance with rules and regulations of the school board, for the planning, management, operation, and evaluation of the educational program of the school to which he is assigned.

(2) Submit recommendations to the superintendent regarding the appointment, assignment, promotion, transfer, and dismissal of all personnel assigned to the school.

(3) Assume administrative responsibility for all records and reports required regarding pupils, for the transfer of pupils within the school, and for the promotion of pupils.

(4) Have the authority to administer corporal punishment in accordance with the rules and regulations of the school board and to suspend students from school or from a school bus as provided for in s. 232.26.

(5) Perform such other duties as may be assigned by the superintendent pursuant to the rules and regulations of the school board and the State Board of Education.

History.—s. 1, ch. 74-315; s. 3, ch. 76-168; s 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

231.086 Management Training Act.—

(1) TITLE.—This section shall be known and may be cited as the "Management Training Act of 1979."

(2) INTENT.—The Legislature recognizes that the school principal is of primary importance in achieving and maintaining instructional excellence in a school. The Legislature further recognizes that although the role of the principal has been modified to increase managerial discretion, many principals have not been trained as school managers. It is the legislative intent that school principals shall be prepared to make the necessary managerial and budget decisions required for effective school-based management.

(3) COMPETENCIES FOR SCHOOL-BASED MANAGERS.—Each district school board shall review and evaluate the present system of selecting, appointing, and reappointing school principals and other school-based managers and shall, in consultation with members of the profession, establish rules for the selection, appointment, and reappointment of such persons. Such rules shall include that school-based managers be trained in competencies, identified by the Commissioner of Education, necessary to effectively implement school-based management as required by s. 229.555.

(4) MANAGEMENT TRAINING PROGRAMS.—

(a) Pursuant to rules to be adopted by the commissioner, each school board may submit to the commissioner a proposed program designed to train district administrators and school-based managers, including principals, assistant principals, and school site administrators, and persons who are potential candidates for employment in such administrative positions, in the competencies necessary for effective school-based management. Such proposed program shall include a statement of the number of individuals to be included in the program and an itemized statement of the estimated total cost of the program which shall be paid by the Department of Education. Priority shall be given to school principals.

(b) Upon the request of any school board, the Department of Education shall provide such technical assistance to the school board as is necessary to develop and submit a proposed program of training for school-based management. The department may use its own staff or such consultants as may be necessary to accomplish this purpose.

(c) The commissioner shall review and approve, disapprove, or resubmit to the school board for modification all proposed programs submitted. For those programs approved, the commissioner shall authorize distribution of funds.

(d) The commissioner shall, no later than November 1 of each even-numbered year, transmit to members of the State Board of Education, the President of the Senate, the Speaker of the House of Representatives, and the chairmen of the Senate and House committees on public school education an appraisal of the funded programs as to effectiveness, efficiency, and utilization of resources, including a statement of the overall program for the coming biennium, the recommended level of funding for the program for that biennium, and any other recommendations deemed by the commissioner to be appropriate.

(5) SALARY SUPPLEMENT.—Each school board is authorized to provide a salary supplement to principals who have successfully completed the management training program provided for in this section.

History.—s. 1, ch. 79-311; s. 4, ch. 79-385.

[1]231.09 Duties of instructional personnel.—Members of the instructional staff of the public schools, subject to the rules and regulations of the state board and of the school board, shall perform the following functions:

(1) TEACHING.—

(a) Teach efficiently and faithfully, using the books and materials required, following the prescribed courses of study, and employing approved methods of instruction, the following: The essentials of the United States Constitution, flag education, including proper flag display and flag salute, the elements of civil government, the elementary princi-

ples of agriculture, a positive attitude toward the dignity of work, the dignity and value of all legitimate occupational pursuits, the true effects of all alcoholic and intoxicating liquors and beverages and narcotics upon the human body and mind, the adverse health effects and implications of cigarette smoking, kindness to animals, the history of the state, conservation of natural resources, and such additional materials, subjects, courses, or fields in such grades as may be prescribed by law or by regulations of the state board and the school board in fulfilling the requirements of law.

(b) State and district school officials shall furnish and put into execution a system and method of teaching the true effects of alcohol and narcotics on the human body and mind and the adverse health effects and implications of cigarette smoking; provide the necessary textbooks, literature, equipment, and directions; see that such subjects are efficiently taught by means of pictures, charts, oral instruction, lectures and other approved methods; and require such reports as are deemed necessary to show the work which is being covered and the results being accomplished.

(c) Any child whose parent shall present to the school principal a signed statement that the teaching of disease and its symptoms, development and treatment and the viewing of pictures or motion pictures of such subjects conflicts with the religious teachings of their church shall be exempt from such instruction, and no child so exempt shall be penalized by reason of such exemption.

(2) EXAMPLE FOR PUPILS.—Labor faithfully and earnestly for the advancement of the pupils in their studies, deportment and morals, and embrace every opportunity to inculcate, by precept and example, the principles of truth, honesty and patriotism and the practice of every Christian virtue.

(3) TREATMENT OF PUPILS.—Treat pupils under their care kindly, considerately, and humanely, administering discipline in accordance with regulations of the state board and the school board; provided, that in no case shall cruel or inhuman punishment be administered to any child attending the public schools.

(4) OBJECTIVE FOR PUPILS.—Require the pupils to observe personal cleanliness, neatness, order, promptness, and gentility of manners, avoid vulgarity and profanity, and cultivate in them habits of industry and economy, a regard for the rights and feelings of others, and their own responsibilities and duties as citizens.

(5) CONFERENCES.—Attend such conferences relating to education as may be required by law, by the Department of Education, or by the superintendent.

(6) COOPERATION.—Cooperate with the state, district, and local school officials in the enforcement of school laws and of state and district board regulations.

(7) RECORDS AND REPORTS.—Keep such records and prepare and submit such reports as may be required by law, by regulations of the state board, or of the employing school board. No member shall be entitled to receive any salary unless all such records and reports have been made.

(8) RULES AND REGULATIONS.—Conform all rules and regulations that may be prescribed by the state board and by the school board.

(9) PROTECT PROPERTY.—See that the school building, and all things pertaining thereto, are not unnecessarily defaced or injured.

(10) FIRE AND EMERGENCY DRILLS.—Give instructions in and hold under the direction of the school principal, such fire and emergency drills as may be prescribed by law, by regulations of the state board and of the school board, and as otherwise may be deemed necessary.

(11) CUSTODY OF PROPERTY.—Deliver, on closing or suspending school, all keys, records and reports, and account for all other school property to the principal of the school or to the superintendent, as may be prescribed by regulations of the state board and of the school board.

(12) CONTRACTS.—Fulfill the terms of any written contract, unless released from the contract by the school board.

History.—s. 509, ch. 19355, 1939; CGL 1940 Supp. 892(113); s. 1, ch. 28055, 1953; s. 1, ch. 61-459; s. 50, ch. 65-239; s. 1, ch. 65-429; ss. 51, 52, ch. 65-239; s. 2, ch. 68-18; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; ss. 76, 77, ch. 72-221; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.10 Florida Council on Teacher Education.—

(1) There is created the Florida Council on Teacher Education, to consist of 23 members appointed by the State Board of Education, pursuant to s. 20.15(10). Prior to making nominations to the state board, the commissioner shall consult with the teaching and other professional associations in the state.

(a) Five members shall be designated from institutions of higher learning in the state which offer programs for the preparation of teachers:

1. Three members representing the institutions of higher learning shall be from the colleges of education of public institutions.

2. One member representing the institutions of higher learning shall be from the colleges of education of private institutions.

3. One member representing the institutions of higher learning shall be from the colleges of arts and sciences of public institutions.

(b) One member shall be a representative of the public community colleges.

(c) One member shall be a high school principal.

(d) One member shall be an elementary school principal.

(e) Seven members shall be teachers, two of whom shall be high school teachers, two of whom shall be middle school or junior high school teachers, two of whom shall be elementary school teachers, and one of whom shall be a vocational-technical education teacher.

(f) Two members shall be directors of inservice staff development in school districts.

(g) Two members shall be county superintendents.

(h) Two members shall be lay persons and members of the district school boards.

(i) Two members shall be lay persons who are parents of children attending the public school sys-

...e not employed in the educational ...te or any district therein.

...rs shall serve for 3-year overlapping ... shall be entitled to reimbursement for ...ses of attending meetings of the council. Reimbursement for such expenses shall be made by the State Treasurer from funds appropriated for the State Department of Education, on warrants drawn by the State Comptroller upon requisitions approved by the Department of Education.

(3) The council, by majority vote of all its members, shall elect its own chairman from among its members and adopt bylaws for its own governance.

(4) If a member is absent from any four regularly scheduled meetings in any calendar year his office as a member of the council shall be deemed vacant.

(5) The council shall report to the Commissioner of Education and shall have the following duties:

(a) Make recommendations for desirable standards relating to programs and policies for the development, certification, improvement, and maintenance of competencies of educational personnel;

(b) Aid in planning and conducting an annual review of manpower studies regarding teaching personnel and report findings to the Commissioner of Education;

(c) Make recommendations for objective, independently verifiable standards of measurement and evaluation of teaching competence; and

(d) Make recommendations to the Commissioner of Education for alternative ways to demonstrate qualifications for certification which insure fairness and flexibility while protecting against incompetence.

(6) The council shall invite the public, the teaching profession, and interested professional groups and associations to appear before it and submit proposals for council action and to assist it in accomplishing its duties.

(7) The council shall present its recommendations to the Commissioner of Education on or before January 1 of each year.

History.—s. 510, ch. 19355, 1939; CGL 1940 Supp. 892(114); s. 15, ch. 23726, 1947; s. 48, ch. 29764, 1955; s. 1, ch. 59-357; s. 1, ch. 65-520; s. 3, ch. 67-387; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; ss. 1-6, ch. 72-161; s. 3, ch. 76-168; s. 1, ch. 76-230; s. 1, ch. 77-457; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.14 Certificate required.—No person shall be employed to serve in an instructional capacity as a regular or part-time teacher in the public schools of the state who does not hold a valid certificate to teach in Florida, granted or recognized pursuant to law under regulations of the state board; nor shall any school board employ, contract with, or pay any person a salary for instructional services who does not hold such a valid certificate, except for employment pursuant to s. 231.15 and under emergency conditions as provided in s. 236.0711. Previous residence in Florida shall not be required as a prerequisite for any person holding a valid Florida certificate to serve in an instructional capacity in schools of the state.

History.—s. 514, ch. 19355, 1939; CGL 1940 Supp. 892(118); s. 17, ch. 23726, 1947; s. 4, ch. 67-387; s. 1, ch. 68-1; s. 1, ch. 69-300; s. 79, ch. 72-221; s. 76, ch. 73-333; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.141 Teacher aides.—School boards are encouraged to appoint teacher aides to members of the instructional staff in the primary grades, kindergarten, and grades one through three, in order to increase the number of personnel assisting in the classroom and to aid members of the instructional staff in such grades in carrying out their instructional and professional duties and responsibilities. The school board may appoint teacher aides to assist members of the instructional staff in other grades. A teacher aide shall not be required to hold a teaching certificate, but shall be required to attend the training program developed pursuant to subsection 230.2311(6). A teacher aide, while rendering services under the supervision of a certificated teacher, shall be accorded the same protection of laws as that accorded the certified teacher. Paid teacher aides employed by a school board shall be entitled to the same rights accorded noninstructional employees of the board.

History.—s. 18, ch. 69-402; s. 5, ch. 75-284; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 228.041 Teacher aide defined.

[1]231.15 Positions for which certificates required.—The State Board of Education shall have authority to classify school services and to prescribe regulations in accordance with which certificates shall be issued by the Department of Education to school employees who meet the standards prescribed by such regulations for their class of service. Each person employed or occupying a position as school supervisor, helping teacher, principal, teacher, school librarian or other position in which the employee serves in an instructional capacity in any public school of any district of this state shall hold the certificate required by law and by regulations of the state board in fulfilling the requirements of the law for the type of service rendered. However, the state board shall adopt regulations authorizing school boards to employ selected noncertificated personnel to provide instructional services in the individual's field of speciality or to assist instructional staff members as teacher aides. Each person employed as a school nurse shall hold a license to practice nursing in the state, and each person employed as a school physician shall hold a license to practice medicine in the state.

History.—s. 515, ch. 19355, 1939; CGL 1940 Supp. 892(119); s. 9, ch. 57-249; s. 9, ch. 63-376; s. 55, ch. 65-239; s. 4, ch. 67-387; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 80, ch. 72-221; s. 6, ch. 75-284; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.17 Certificates granted on application to those meeting prescribed requirements.—

(1) The Department of Education shall issue a certificate covering the appropriate subject or field to any person possessing the qualifications for such a certificate as prescribed herein and by rules of the state board, who pays the required fee, makes application in writing on the form prescribed by the department, submits satisfactory evidence that he possesses said qualifications, and meets the other re-

quirements of law. Each applicant for certification shall meet the following requirements:

(a) File a written statement under oath that he subscribes to and will uphold the principles incorporated in the Constitutions of the United States and of the State of Florida;

(b) Be at least 18 years of age or have received a bachelor's degree from an accredited institution of higher learning;

(c) Meet such academic and professional requirements based on credentials certified to by standard teacher-training institutions of higher learning, including any institutions of higher learning in this state which are accredited by an accrediting association which is a member of the Council on Postsecondary Accreditation, as may be prescribed by the state board;

(d) Be competent and capable of performing the duties, functions, and responsibilities of a teacher; and

(e) Be of good moral character.

[2](2)(a) Beginning July 1, 1980, each certificate issued shall be valid for a period not to exceed 5 years, and each applicant for initial certification shall demonstrate, on a comprehensive written examination and through such other procedures as may be specified by the state board, mastery of those minimum essential generic and specialization competencies and other criteria as shall be adopted into rules by the state board, including, but not limited to, the following:

1. The ability to write in a logical and understandable style with appropriate grammar and sentence structure;

2. The ability to comprehend and interpret a message after listening;

3. The ability to read, comprehend, and interpret orally and in writing, professional and other written material;

4. The ability to comprehend and work with fundamental mathematical concepts; and

5. The ability to comprehend patterns of physical, social, and academic development in students and to counsel students concerning their needs in these areas.

(b) The commissioner may, with the approval of the state board, assign to a university in the state system the responsibility for printing, administering, scoring, and providing appropriate analysis of the written tests required.

[2](3) Beginning July 1, 1981, no individual shall be issued a regular certificate until he has completed 3 school years of satisfactory teaching pursuant to law and such other criteria as the state board shall require by rule, or a year-long internship approved by the state board. The department, in conjunction with teacher education centers and colleges of education, shall provide for model satisfactory teaching and internship programs to be implemented in selected districts. The models shall be evaluated by the department, and the specifications for such programs shall be selected for implementation in all districts by July 1, 1981.

(4) The state board shall have authority to prescribe rules under which certificates may be issued to noncitizens who may be needed to teach or who may be assigned to teach in the state on an exchan basis; provided, that the filing of a written oath t uphold the principles of the Constitutions of the United States and of the State of Florida referred to above shall not apply to individuals assigned to teach on an exchange basis.

(5) No certificate shall be issued to a citizen of a nation controlled by forces which are antagonistic to democratic forms of government, except to an individual classified as a refugee from another country or as a resident alien from Cuba, who has been legally admitted to the United States through the immigration and naturalization service.

(6)(a) The Department of Education is authorized to deny an applicant a certificate if it possesses evidence satisfactory to it that the applicant has committed an act or acts or that a situation exists for which the department would be authorized to revoke a teaching certificate.

(b) The decision of the Department of Education is subject to review by the State Board of Education upon the filing of a written request from the applicant within 20 days from receipt of the notice of denial.

(7) New rules adopted by the state board in regard to certification at any time shall not become effective to the exclusion of prior rules for a period of 1 year.

History.—s. 517, ch. 19355, 1939; CGL 1940 Supp. 892(121); s. 2, ch. 21989, 1943; s. 19, ch. 23726, 1947; s. 1, ch. 26894, 1951; s. 5, ch. 29754, 1955; s. 10, ch. 57-249; s. 6, ch. 59-371; s. 10, ch. 63-376; s. 2, ch. 65-144; s. 59, ch. 65-239; s. 5, ch. 67-387; ss. 15, 35, ch. 69-106; s. 18, ch. 69-353; s. 1, ch. 70-36; s. 1, ch. 71-177; s. 3, ch. 76-168; s. 1, ch. 77-116; s. 10, ch. 77-121; s. 1, ch. 77-129; s. 1, ch. 77-457; s. 3, ch. 78-423; ss. 110, 119, ch. 79-222.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—Section 119, ch. 79-222, provides that, if chapter 231 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that s. 110 of ch. 79-222 shall also be repealed on the same date as is therein provided.

[1]**231.24 Extension of certificates.**—Effective July 1, 1979, all certificates issued under the provisions of the Florida Statutes, shall be extendible for successive periods not to exceed 5 years under rules of the state board prescribing such additional training, experience, and competencies, as may be deemed necessary for said extension; provided, that any training or experience claimed shall be either college course credit or inservice training, provided that at least one-half of any college course credit or inservice training claimed by instructional personnel shall be in the field or fields in which said individual is assigned or certified or will seek assignment or certification and further provided that any remaining college course credit or inservice training shall be in either administration, guidance, exceptional education, or basic skills education. However, when any person holding a valid Florida teacher's certificate is called into or volunteers for actual wartime service or required peacetime military service training, his certificate shall be extended for a period of time equal to the time he spends in military service, provided such person makes proper application and presents substantiating evidence to the De-

ication regarding such military ser-

19355, 1939; CGL 1940 Supp. 892(128); s. 1, ch. 20909, 1951; s. 7, ch. 59-371; ss. 15, 35, ch. 69-106; s. 3, ch. 76-168; s. 4, ch. 78-423.
pealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective 982, except for the possible effect of laws affecting this section prior at date.

[1]231.28 Suspension or revocation of certificates.—The Department of Education shall have authority to suspend the teaching certificate of any person for a period of time not to exceed 3 years, thereby denying him the right to teach for that period of time, after which the holder may return to teaching as provided in subsection (4); to revoke the teaching certificate of any person, thereby denying him the right to teach for a period of time not to exceed 10 years, with reinstatement subject to provisions of subsection (4); or to revoke permanently the teaching certificate of any person, provided:

(1) It can be shown that such person obtained the teaching certificate by fraudulent means, or has proved to be incompetent to teach or to perform his duties as an employee of the public school system, or to teach in or to operate a private school, or has been guilty of gross immorality or an act involving moral turpitude, or has had his certificate revoked in another state, or has been convicted of a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation, or upon investigation has been found guilty of personal conduct which seriously reduces his effectiveness as an employee of the school board, or has otherwise violated the provisions of law, the penalty for which is the revocation of the teaching certificate, or has refused to comply with the regulations of the State Board of Education or the school board in the district in which he is employed.

(2) The plea of guilty in any court, or the decision of guilty by any court, or the forfeiture by the teaching certificate holder of a bond in any court of law, or the written acknowledgment, duly witnessed of offenses listed in subsection (1), to the superintendent or his duly appointed representative or to the school board shall be prima facie proof of grounds for revocation of the certificate as listed in subsection (1) in the absence of proof by the certificate holder that his plea of guilty, forfeiture of bond, or admission of guilt were caused by threats, coercion, or fraudulent means. Should additional evidence be needed, the department may appoint a state professional education organization or a special agency or individual to conduct an investigation to determine the facts in the case.

(3) The revocation by the Department of Education of a teaching certificate of any person shall automatically revoke any and all Florida teaching certificates held by that person.

(4)(a) The teaching certificate which has been suspended under this section is automatically reinstated at the end of the suspension period, provided such certificate did not expire during the period of suspension. If the certificate expired during the period of suspension, the holder of the former certificate may secure a new certificate by making application and by meeting the certification requirements of the state board current at the time of the application for the new certificate.

(b) The person whose teaching certificate has been revoked, as provided in this section, may apply for a new certificate at the expiration of that period of ineligibility as fixed by the State Board of Education by making application and by meeting the certification requirements of the state board current at the time of the application for the new certificate.

(c) The superintendent shall report to the department the name of any person who has been dismissed or severed from employment because of conduct involving any immoral, unnatural, or lascivious act.

History.—s. 528, ch. 19355, 1939; CGL 1940 Supp. 892(132); s. 6, ch. 29754, 1955; (1) s. 2, ch. 59-339; s. 1, ch. 63-225; s. 1, ch. 63-248; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 71-199; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 13, ch. 78-95.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.29 Record of personnel.—

(1) The Department of Education shall maintain a complete statement of the academic preparation, professional training and teaching experience of each person to whom a certificate is issued. The applicant, or the superintendent, shall furnish the information making up such records on forms furnished by the department.

(2) For the purpose of improving the quality of instructional, administrative and supervisory services in the public schools of the state, the superintendent shall establish procedures for assessing the performance of duties and responsibilities of all instructional, administrative and supervisory personnel employed in his district. A complete statement of the criteria and procedure to be used shall be furnished the department and shall include but not be limited to the following provisions:

(a) Assessment for each individual shall be made at least once a year.

(b) A written record of each assessment shall be made and maintained in the district.

(c) The principal or the person directly responsible for the supervision of the individual shall make the assessment of the individual to the superintendent and the school board for the purpose of reviewing continuing contract.

(d) Prior to preparing the written report of assessment, each individual shall be informed of the criteria and the procedure to be used.

(e) The written report of assessment for each individual shall be shown to him and discussed by the person responsible for preparing the report.

(3) The assessment file of each individual shall be open to inspection only by the school board, the superintendent, the principal, the individual himself and such other persons as the teacher or the superintendent may authorize in writing.

History.—s. 529, ch. 19355, 1939; CGL 1940 Supp. 892(133); s. 1, ch. 61-286; s. 18, ch. 65-420; s. 1, ch. 67-369; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 85, ch. 72-221; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.30 Fees; disposition.—

(1) Each applicant shall pay the following fees:

(a) For a certificate, a fee of $12 except as provided herein;

(b) For a reissued temporary certificate, a part-time certificate, or a substitute certificate, a fee of $10;

(c) For extension of a regular certificate, $5; and

(d) For a duplicate certificate or a name change, $2.

The fee shall be retained whether the certificate is granted or not, except that incomplete applications including fees and overpayments may be returned. An applicant for a duplicate certificate shall present evidence establishing his identity as the holder of the original certificate.

(2) The proceeds from the collection of certification fees shall be remitted by the Department of Education to the State Treasurer and shall be kept by him in a separate fund to be known as the "Educational Certification and Service Trust Fund" and disbursed for the payment of expenses incurred in the printing of forms and bulletins and the issuing of certificates, upon vouchers approved by the department.

History.—s. 530, ch. 19355, 1939; CGL 1940 Supp. 892(134); s. 7, ch. 22858, 1945; s. 17, ch. 26869, s. 5, ch. 26894, 1951; s. 1, ch. 57-330; s. 2, ch. 61-119; s. 61, ch. 65-239; s. 4, ch. 67-440; ss. 15, 35, ch. 69-106; s. 8, ch. 72-333; s. 5, ch. 75-302; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-423.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.3505 Employment of directors of vocational education in district schools and community colleges.—Each school district which earns, through instruction units in vocational education, a special teacher services unit, and each community college with a department designated by the state board as an area vocational school and which earns, through instruction units in occupational education, an administrative and special instruction services unit, shall employ an individual who is certified by the Department of Education as director of vocational education to administer a districtwide or community college program in vocational education. The position shall be on the staff of the superintendent of schools or community college president and shall be at a level requiring involvement in the planning and implementation of vocational programs. Pursuant to regulations promulgated by the state board, two or more school districts, two or more community college districts, or combinations thereof may jointly hire a single director.

History.—s. 1, ch. 70-192; s. 1, ch. 72-99; s. 88, ch. 72-221; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.351 Annual contracts under certain conditions.—Any teacher who is otherwise entitled to receive a continuing contract under s. 231.36, may in the alternative be retained on an annual basis if the school board of the particular district upon the recommendation of the superintendent shall by majority vote find that such teacher does not meet the desired standards. Among the criteria to be considered shall be educational qualifications, efficiency, capability, character and capacity to meet the educational requirements of the community. A recommendation to grant such annual contract shall be made by the superintendent and shall be submitted on or before April 1 of the school year, giving good and sufficient reasons for such recommendation. Such annual contract shall be automatically renewed by the school board at least 4 weeks prior to the close of each successive school year unless the superintendent or such teacher shall, not later than 3 months prior to the close of the school year, request the school board to reconsider the annual contract. The school board may reconsider any annual contract on its own motion and shall take whatever action that it deems necessary and proper as authorized by this or any other section.

History.—s. 1, ch. 63-316; s. 179, ch. 65-239; s. 1, ch. 69-300; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.36 Contracts with instructional staff.—

(1) Each person employed as a member of the instructional staff in any district school system or as supervisor or principal shall be properly certificated and shall be entitled to and shall receive a written contract as specified in chapter 230. A supervisor or principal may receive a written contract for an initial period not to exceed 3 years, subject to annual review and renewal. After the first 3 years, the contract may be renewed for a period not to exceed 3 years and shall contain provisions for dismissal only for just cause, in addition to such other provisions as are prescribed by the school board. Periods of service as a supervisor or principal prior to July 1, 1974, or such service in another district or state, may be recognized by the school board to satisfy the requirements of the initial written contract referred to herein.

(2) Any person so employed on the basis of a written offer of a specific position by a duly authorized agent of the school board for a stated term of service at a specified salary and who accepted such offer by telegram or letter or by signing the regular contract form who shall violate the terms of such contract or agreement by leaving his position without first being released from his contract or agreement by the school board of the district in which he is employed, shall be ineligible for employment in the school system of the state or any district therein for the period of 1 year from the date of such violation. The school board shall take official action on such violation and furnish a copy of the proceedings to the certification section of the State Department of Education, whereupon the certificate of the violator shall be considered as invalid for the period of 1 year from the date of violation.

(3)(a) The school board of each district shall provide continuing contracts as prescribed herein. Each member of the instructional staff, excluding supervisors and principals, in each district school system, except in districts operating under local, special or general tenure laws with stated population application, who:

1. Holds a regular certificate based at least on graduation from a standard 4-year college, or as otherwise provided by law;

2. Has completed 3 years of service in the same district of the state during a period not in excess of 5 successive years, such service being continuous except for leave duly authorized and granted;

3. Has been reappointed for the fourth year; and
4. Has been recommended by the superintendent for such continuing contract based on successful performance of duties and demonstration of professional competence

shall be entitled to and shall be issued a continuing contract in such form as may be prescribed by regulations of the state board.

(b) The continuing contract shall be effective at the beginning of the school fiscal year following the completion of all requirements or, starting on July 1, 1968, at the beginning of the school fiscal year in which all requirements are completed on or before September 1.

(c) The period of service provided herein may be extended to 4 years when prescribed by the school board and agreed to in writing by the employee at the time of reappointment or as provided by s. 231.351.

(d) A school board may issue a continuing contract to a new member of the instructional staff provided such individual has previously held a continuing contract in the same or another district within this state.

(e) Each person to whom a continuing contract has been issued as provided herein shall be entitled to continue in his position or in a similar position in the district at the salary schedule authorized by the school board without the necessity for annual nomination or reappointment until such time as the position is discontinued, the person resigns, or his contractual status is changed as prescribed below.

(f) Continuing contract status earned by any member of the instructional staff prior to assuming a position as supervisor or principal shall be retained in the position in which it was attained. Upon release from a position as supervisor or principal, the employee shall be entitled to reassignment to the same or a similar position in which continuing contract status was attained, at the classification level and salary range that would have been earned had the position been held continuously.

(g) Any person who has previously earned continuing contract status as a supervisor or principal in the school district shall be continued in that status until such time as the position is discontinued, the person resigns, or his contractual status is changed by mutual agreement or as prescribed below.

(h) School boards are authorized to enter into continuing contracts with principals and supervisors who were employed as principals or supervisors on or before July 1, 1974, and who otherwise meet the requirements of paragraph (a). However, this authorization shall expire July 1, 1977. If a district school board elects not to exercise the authority in this paragraph, no showing of just cause shall be required.

(4) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any principal, who is under continuing contract, may be dismissed or may be returned to annual contract status for another 3 years in the discretion of the school board, when a recommendation to that effect is submitted in writing to the school board on or before April 1 of any school year, giving good and sufficient reasons therefor, by the superintendent, or by the principal if his contract is not under consideration, or by a majority of the school board. The employee whose contract is under consideration shall be duly notified in writing by the party or parties preferring the charges at least 5 days prior to the filing of the written recommendation with the school board, and such notice shall include a copy of the charges and the recommendation to the school board. The school board shall proceed to take appropriate action. Any decision adverse to the employee shall be made by a majority vote of the full membership of the school board. Any such decision adverse to the employee may be appealed by him in writing to the Department of Education, through the Commissioner of Education, for review; provided such appeal is filed within 30 days after the decision of the school board, and provided further that the decision of the department shall be final as to sufficiency or insufficiency for discontinuation of the continuing contract status.

(5) Should the school board have to choose from among its personnel who are on continuing contracts as to which should be retained, among the criteria to be considered shall be educational qualifications, efficiency, compatibility, character, and capacity to meet the educational needs of the community. Whenever a school board is required to or does consolidate its school program at any given school center by bringing together pupils theretofore assigned to separated schools, the school board may determine on the basis of the foregoing criteria from its own personnel, and any other certificated teachers, which teachers shall be employed for service at this school center, and any teacher no longer needed may be dismissed. The decision of the board shall not be controlled by any previous contractual relationship. In the evaluation of these factors the decision of the school board shall be final.

(6) Any member of the district administrative or supervisory staff and any member of the instructional staff, including any principal, may be suspended or dismissed at any time during the school year; provided that the charges against him must be based on immorality, misconduct in office, incompetency, gross insubordination, willful neglect of duty, drunkenness, or conviction of any crime involving moral turpitude. Whenever such charges are made against any such employee of the school board, the school board may suspend such person without pay, but if charges are not sustained he shall be immediately reinstated, and his back salary shall be paid. In cases of suspension by the school board or by the superintendent, the school board shall determine upon the evidence submitted whether the charges have been sustained and, if said charges are sustained, either to dismiss said employee or fix the terms under which said employee may be reinstated. If such charges are sustained by a majority vote of the full membership of the school board and such employee is discharged, his contract of employment shall be thereby canceled. If the employee is under continuing contract, any such decision adverse to him may be appealed by him in writing to the Department of Education, through the Commissioner, for review; provided

such appeal is filed within 30 days after the decision of the school board, and provided further that the decision of the department shall be final as to sufficiency of the grounds for dismissal.

(7) The school board of any given district may, at its own discretion:

(a) Grant to a person who has served as superintendent in that district, at the completion of his service as superintendent, a continuing contract as a classroom teacher. Service as superintendent shall be construed as continuous teaching service in the public schools of this state.

(b) Grant to a classroom teacher holding a continuing contract status who has served as school board member in that district, at the completion of his service as school board member, a continuing contract as classroom teacher. Service as school board member shall be construed as continuous teaching service in the public schools of this state.

(8) Notwithstanding any other provision of law, any member who has retired may interrupt retirement and be reemployed in any public school. Any member so reemployed by the same district from which he retired may be employed on the same contractual basis that existed immediately prior to retirement; however, he shall not be eligible to renew membership in the teacher retirement system.

(9) Any teacher who is employed in a cooperative education program in this state may be immediately placed on continuing contract with the school board wherein the cooperative education program is produced if, at the time of employment, such person is on a continuing contract in a district which is participating in support of the particular cooperative education program in which the person is employed; provided that if at the time of reappointment of personnel, during the first 3 years, said person is not recommended for continued employment in the cooperative education program, he shall automatically revert to continuing contract status in the district of immediate prior employment; and provided further, that in meeting the requirements for a continuing contract prescribed herein prior successive years of service rendered in any district participating in the support of the particular cooperative education program may be counted as years of probationary service for a continuing contract with the school board wherein the cooperative education program is produced.

History.—s. 536, ch. 19355, 1939; CGL 1940 Supp. 892(140); s. 21, ch. 23726, 1947; s. 2, ch. 25363, 1949; s. 1, ch. 29890, 1955; s. 1, ch. 31391, 1956; s. 8, ch. 59-371; s. 1, ch. 59-252; s. 1, ch. 59-359; s. 1, ch. 59-421; s. 3, ch. 61-263; s. 12, ch. 63-376; s. 63, ch. 65-239; s. 2, ch. 65-424; s. 2, ch. 67-184; s. 6, ch. 67-387; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 72-21; s. 2, ch. 72-215; s. 38, ch. 73-338; ss. 3, 4, ch. 74-351; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 8, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.361 Vocational teachers; status.—

(1) Vocational teachers and other teachers who qualify for certificates on the basis of nonacademic preparation shall be entitled to all the contractual rights and privileges now granted to other instructional personnel holding equivalent certificates.

(2) A holder of a certificate based on nonacademic preparation which entitled him to employment to teach classes in vocational or adult education shall not be assigned to teach in a regular academic field of the kindergarten through grade 12 school program.

History.—s. 1, ch. 29625, 1955; s. 3, ch. 67-181; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 5, ch. 78-423.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.39 Provisions for leave of absence.—Any member of the instructional and administrative staff may secure leave of absence during the year when it is necessary to be absent from duty as prescribed by law and, under certain conditions, may receive compensation during such period of absence. Any such leave of absence shall be classified as sick leave, illness-in-line-of-duty leave, professional leave, or personal leave. Subject to the provisions in the sections which follow, school boards shall prescribe regulations governing the granting of leaves of absence during the year. School boards shall also have authority to prescribe regulations to provide for more extended leaves of absence as follows:

(1) EXTENDED PROFESSIONAL LEAVE.—Extended leave for professional development may be granted for a period not to exceed 1 year to any member of the instructional and administrative staff who has served satisfactorily and successfully in the schools of the district; provided, that partial compensation may be authorized only when the person has served in the district for at least 3 years or when the leave is granted for additional study in accordance with policies of the school board relating to a program of staff development.

(2) MILITARY LEAVE.—Military leave shall be granted without pay, except as provided by s. 115.07, to employees of a school board who are required to serve in the Armed Forces of the United States or this state in fulfillment of obligations incurred under selective service laws or because of membership in reserves of the Armed Forces or National Guard, and may be granted at the discretion of the school board without pay to an employee volunteering for military duty. Employees granted such leave for military service shall, upon completion of the tour of duty, be returned to employment without prejudice, provided application for reemployment is filed within 6 months following the date of discharge or release from active military duty; and provided further that the school board shall have a reasonable time, not to exceed 6 months, to reassign the employee to duty in the school system. Military leave shall not be counted as years of service toward a continuing contract or for allocation of minimum foundation funds.

(3) MATERNITY LEAVE.—Any member of the instructional staff employed on a full-time basis in the public schools of the state shall be granted maternity leave without pay for a period not to exceed 1 year. Such leave shall commence on a date determined by the instructional staff member in consultation with her doctor following notification of the superintendent in writing. The instructional staff member may return to duty upon certification by a physician that she is physically capable of performing the duties of teaching.

History.—s. 539, ch. 19355, 1939; s. 5, ch. 20970, 1941; CGL 892(143); s. 14, ch. 63-376; s. 3, ch. 65-424; s. 7, ch. 67-387; s. 1, ch. 69-300; s. 1, ch. 73-253; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.40 Sick leave.—

(1) ELIGIBILITY.—Any member of the instructional staff or any other employee of a district school system employed on a full-time basis in the public schools of the state who is unable to perform his duty in the school because of illness, or because of illness or death of father, mother, brother, sister, husband, wife, child, other close relative, or member of his own household and consequently has to be absent from his work shall be granted leave of absence for sickness by the superintendent or by someone designated in writing by him to do so.

(2) PROVISIONS GOVERNING SICK LEAVE.—The following provisions shall govern sick leave for instructional staff:

(a) *Extent of leave.—*

1. Each member of the instructional staff employed on a full-time basis shall be entitled to 4 days of sick leave as of the first day of employment of each contract year, and shall thereafter earn 1 day of sick leave for each month of employment, which shall be credited to the member at the end of that month and which shall not be used prior to the time it is earned and credited to the member. However, the member shall be entitled to earn no more than 1 day of sick leave times the number of months of employment during the year of employment. Such leave shall be taken only when necessary because of sickness as herein prescribed. Such sick leave shall be cumulative from year to year. There shall be no limit on the number of days of sick leave a member of the instructional staff may accrue, except that at least one-half of this cumulative leave must be established within the district granting such leave.

2. A school board may establish policies and prescribe standards to permit a member of the instructional staff to be absent 4 days each school year for personal reasons. However, such absences for personal reasons shall be charged only to accrued sick leave, and leave for personal reasons shall be noncumulative.

[2]3. A school board may establish policies to provide terminal pay for accumulated sick leave to a member of the instructional staff at normal retirement or to his beneficiary if service is terminated by death. However, such terminal pay shall not exceed an amount determined as follows:

a. During the first 3 years of service, the daily rate of pay multiplied by 35 percent times the number of days of accumulated sick leave.

b. During the next 3 years of service, the daily rate of pay multiplied by 40 percent times the number of days of accumulated sick leave.

c. During the next 3 years of service, the daily rate of pay multiplied by 45 percent times the number of days of accumulated sick leave.

d. During and after the 10th year of service, the daily rate of pay multiplied by 50 percent times the number of days of accumulated sick leave.

"Normal retirement," as used in this subsection, shall mean retirement under plan A, B, C, D, or E of the Teachers' Retirement System or any other plan established by the Legislature with either full or reduced benefits as provided by law or mandatory retirement due to the attainment of the age of 70 years. "Normal retirement" shall not be interpreted to include disability retirement.

(b) *Claim must be filed.*—Any member of the instructional staff who finds it necessary to be absent from his duties because of illness, as defined in this section, shall notify the principal of his school if possible before the opening of school on the day on which he must be absent, or during that day except for emergency reasons recognized by the school board as valid. Any member of the instructional staff shall, before claiming and receiving compensation for the time absent from his or her duties while absent because of sick leave as prescribed in this section, make and file by the end of the school month following his return from such absence with the superintendent of the district in which he is so employed a written certificate which shall set forth the day or days absent, that such absence was necessary, and that he is entitled or not entitled to receive pay for such absence in accordance with the provisions of this section; provided, however, that the school board of any district may prescribe regulations under which the superintendent may require a certificate of illness from a licensed physician or from the county health officer.

(c) *Compensation.*—Any full-time employee having unused sick leave credit shall receive full-time compensation for the time justifiably absent on sick leave; provided that no compensation may be allowed beyond that which may be provided in subsection (3).

(3) SICK LEAVE POOL.—Notwithstanding any other provision of this section, a school board, based upon the maintenance of reliable and accurate records by the district school system showing the amount of sick leave which has been accumulated and is unused by employees in accordance with this section, may, by rule, establish a plan allowing participating full-time employees of a district school system to pool sick leave accrued and allowing any sick leave thus pooled to be disbursed to any participating employee who is in need of sick leave in excess of that amount he has personally accrued. Such rules shall include, but not be limited to, the following provisions:

(a) Participation in the sick leave pool shall at all times be voluntary on the part of employees.

(b) Any full-time employee shall be eligible for participation in the sick leave pool after 1 year of employment with the district school system; provided that such employee has accrued a minimum amount of unused sick leave, which minimum shall be established by rule.

(c) Any sick leave pooled pursuant to this section shall be removed from the personally accumulated sick leave balance of the employee donating such leave.

(d) Participating employees shall make equal contributions to the sick leave pool. There shall be established a maximum amount of sick leave which may be contributed by an employee to the pool. After the initial contribution which an employee makes upon electing to participate, no further contribu-

tions shall be required except as may be necessary to replenish the pool. Any such further contribution shall be equally required of all employees participating in the pool.

(e) Any sick leave time drawn from the pool by a participating employee must be used for said employee's personal illness, accident, or injury.

(f) A participating employee shall not be eligible to use sick leave from the pool until all of his sick leave has been depleted. There shall be established a maximum number of days for which an employee may draw sick leave from the sick leave pool.

(g) A participating employee who uses sick leave from the pool shall not be required to recontribute such sick leave to the pool, except as otherwise provided in this section.

(h) A participating employee who chooses to no longer participate in the sick leave pool shall not be eligible to withdraw any sick leave already contributed to the pool.

(i) Alleged abuse of the use of the sick leave pool shall be investigated and, on a finding of wrongdoing, the employee shall repay all of the sick leave credits drawn from the sick leave pool and be subject to such other disciplinary action as determined by the school board to be appropriate. Rules adopted for the administration of this program shall provide for the investigation of the use of sick leave utilized by the participating employee in the sick leave pool.

History.—s. 540, ch. 19355, 1939; CGL 1940 Supp. 892(144); s. 22, ch. 23726, 1947; s. 1, ch. 29624, 1955; s. 1, ch. 57-79; s. 1, ch. 61-61; s. 1, ch. 65-31; s. 1, ch. 65-201; s. 4, ch. 65-424; s. 4, ch. 67-181; s. 1, ch. 69-300; s. 1, ch. 70-197; s. 1, ch. 74-81; s. 1, ch. 76-44; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 79-109; ss. 15, 16, ch. 79-385.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—Section 16, ch. 79-385, provides that, if chapter 231 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-385 shall also be repealed on the same date as is therein provided.

[1]**231.41 Illness-in-line-of-duty leave.**—Any member of the instructional staff shall be entitled to illness-in-line-of-duty leave when he has to be absent from his duties because of a personal injury received in the discharge of duty or because of illness from any contagious or infectious disease contracted in school work. The following requirements shall be observed:

(1) DURATION OF LEAVE AND COMPENSATION.—Leave of any such member of the instructional staff shall be authorized for a total of not to exceed 10 school days during any school year for illness contracted, or injury incurred, from such causes as prescribed above. However, in the case of sickness or injury occurring under such circumstances as in the opinion of the school board warrants it, additional emergency sick leave may be granted out of local funds, for such term and under such conditions as the school board shall deem proper. The school board shall be authorized, when it deems it desirable to do so, to carry insurance to safeguard the school board against excessive payments during any year.

(2) CLAIMS.—Any member of the instructional staff who has any claim for compensation while absent because of illness contracted or injury incurred as prescribed herein shall file a claim in the manner prescribed in s. 231.40(2)(b), by the end of each month during which such absence has occurred. The school board of the district in which such person is employed shall approve such claims and authorize the payment thereof; provided that the school board shall satisfy itself that the claim correctly states the facts and that such claim is entitled to payment in accordance with the provisions of this section.

History.—s. 541, ch. 19355, 1939; CGL 1940 Supp. 892(145); s. 1, ch. 69-300; s. 1, ch. 70-126; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 2, ch. 79-109.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.42 Professional leave.**—Any member of the instructional or professional administrative staff who finds it necessary to be absent from his duties for professional reasons or is assigned by the superintendent under regulations of the school board to be absent for professional reasons or any superintendent may apply for professional leave during such absence. Such leave may be granted under regulations of the school board. The school board shall also prescribe by regulations, subject to any regulations of the state board, conditions under which compensation is to be allowed and the extent of compensation for such leave; provided, that any leave granted under this section for members of the instructional or professional administrative staff must be approved by the superintendent.

History.—s. 542, ch. 19355, 1939; CGL 1940 Supp. 892(146); s. 23, ch. 23726, 1947; s. 1, ch. 69-300; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.43 Personal leave.**—The school board of each district shall adopt regulations prescribing conditions under which members of the instructional staff shall be granted leave of absence for personal reasons. Any such leave of absence shall be approved by the superintendent, subject to regulations of the school board. Except as provided by s. 231.40(2)(a)2., any member of the instructional staff who is absent for personal reasons shall not be entitled to pay while absent.

History.—s. 543, ch. 19355, 1939; CGL 1940 Supp. 892(147); s. 1, ch. 69-300; s. 2, ch. 74-81; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 3, ch. 79-109.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.44 Absence without leave.**—Any member of the instructional staff of any district who is willfully absent from duty without leave shall forfeit compensation for the time of such absence, and his contract shall be subject to cancellation by the school board.

History.—s. 544, ch. 19355, 1939; CGL 1940 Supp. 892(148); re-enacted by s. 6, ch. 61-288; s. 1, ch. 69-300; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.45 Principal and superintendent to keep records of absences.**—The principal of each school shall see that a record is kept of the days present for duty and the days absent from duty for each teacher in his school and see that both the days present and absent for each teacher are reported to the superintendent at least once each month on the forms prescribed for that purpose. This report shall include the exact dates and the reasons for each absence.

The superintendent of each district in the state shall keep full and complete records of all absences of instructional personnel provided for in ss. 231.39-231.47, 231.48, 238.171, with the exact day when each such absence occurred and the nature of the cause of such absence and advise with the school board as to the disposition to be made of claims arising for payment of such benefits as are provided in said sections.

History.—s. 545, ch. 19355, 1939; CGL 1940 Supp. 892(149); s. 2, ch. 61-459; s. 1, ch. 69-300; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.46 Forms to be provided.**—The school boards of the respective districts shall provide and furnish all forms necessary for compliance with the provisions of this section and the state board shall prescribe the necessary wording to insure uniformity throughout the state.

History.—s. 546, ch. 19355, 1939; CGL 1940 Supp. 892(150); s. 1, ch. 69-300; s. 89, ch. 72-221; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.47 Substitute teachers.**—The school board shall adopt regulations prescribing the compensation of, and the procedure for employment of, substitute teachers as prescribed by regulations of the state board.

History.—s. 547, ch. 19355, 1939; CGL 1940 Supp. 892(151); s. 11, ch. 57-249; s. 3, ch. 61-459; s. 1, ch. 69-300; s. 90, ch. 72-221; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.471 Part-time teachers for special subjects.**—

(1) District school boards may use their discretion in hiring certified personnel to teach a specified number of periods, which may be less than a full school day, in specialized subjects, including but not limited to foreign languages, higher mathematics, art, and music.

(2) Assigned additional school duties, salaries and benefits shall be given in direct ratio to the number of periods taught.

History.—ss. 1, 2, ch. 70-209; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.48 Absences of other personnel.**—

(1) The school board shall make regulations governing absences of any personnel not covered by the School Code.

(2) A school board may establish policies to provide terminal pay to a member of the noninstructional staff at normal retirement or to his beneficiary if service is terminated by death; provided, that such terminal pay shall not exceed an amount determined by the daily rate of pay of the member of the noninstructional staff at the time of retirement or death multiplied by one-half the total number of accumulated sick leave days credited to the member of the noninstructional staff at the time of retirement or death. "Normal retirement," as used in this subsection, shall mean retirement with either full or reduced benefits as provided by law or mandatory retirement due to the attainment of the age of 70 years, but shall not mean disability retirement.

History.—s. 548, ch. 19355, 1939; CGL 1940 Supp. 892(152); s. 1, ch. 57-744; s. 1, ch. 59-338; s. 67, ch. 65-239; s. 1, ch. 67-315; s. 1, ch. 69-300; s. 3, ch. 74-81; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.49 Provisions relating to Workers' Compensation Law.**—Nothing contained in this chapter shall supersede any of the provisions of the Workers' Compensation Law; provided, however, that where amounts payable under the provisions of the school code, for injuries, accidents, or other disabilities which would entitle an employee to compensation under the provisions of the Workers' Compensation Law exceed the amounts payable under the compensation law, payments shall be made, as provided in the school code, for the difference between the amount paid under the Workers' Compensation Law and the amount due under the provisions of the school code.

History.—s. 549, ch. 19355, 1939; CGL 1940 Supp. 892(153); s. 3, ch. 76-168; s. 1, ch. 77-457; s. 64, ch. 79-40.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.54 Short title.**—Sections 231.54, 231.55, 231.57-231.59 shall be known as the "Professional Teaching Practices Act."

History.—s. 1, ch. 63-363; s. 68, ch. 65-239; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.55 Legislative intent; declaration.**—It is the intent and purpose of the Legislature that the practice of teaching in the public school system and its related services including administering and supervisory services, shall be designated as professional services. Teaching is hereby declared to be a profession in Florida, with all the similar rights, responsibilities and privileges accorded other legally recognized professions.

History.—s. 1, ch. 63-363; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.57 Professional Practices Council.**—

(1)(a) A Professional Practices Council is created consisting of 19 members appointed by the State Board of Education pursuant to s. 20.15(10). A member, in order to be qualified for appointment:

1. Must be certified to teach in the state.
2. Must be a citizen of the United States.
3. Must be a resident of the state.
4. Must have practiced his profession in Florida for at least 5 years immediately preceding his appointment.

[2](b) The council shall be composed of:

1. Seven elementary school classroom teachers, at least one of whom shall be a middle school teacher and at least one of whom shall be a representative of a nonpublic school;
2. Seven secondary school classroom teachers;
3. One elementary school principal;
4. One middle or junior high school principal;

5. One secondary school principal;
6. One supervisor; and
7. One superintendent.

(2) The members of the council shall be suggested by the teaching and other professional associations in the state, and the names of two or more persons for each place on the council shall be nominated by the Commissioner of Education to the state board.

(3) Initial appointments shall be: Six for 1 year, six for 2 years, and seven for 3 years. Thereafter, terms shall be for 3 years. A member may be reappointed to the council only one term.

(4) The Department of Education is given the initial responsibility of developing, through the teaching profession, criteria of professional practices in areas including, but not limited to:

(a) Ethical and professional performance.

(b) Preparation for and continuance in professional services.

(c) Transfer and assignment of teaching personnel.

(5)(a) The members of this profession shall develop and recommend to the department codes of ethics and professional performance.

(b) Upon the adoption of such professional standards as may be required, those who practice in this profession shall be obligated to abide by these standards.

(6)(a)1. The department shall have the authority to establish procedures for developing codes or standards of professional ethics, performance, and practices as described herein and to adopt such codes, standards, rules and regulations to effectuate the purposes of this section.

2. In construing the provision of any code of ethics there shall be a presumption that within any school system the policies, conditions and practices permit the exercise of professional judgment and skills and that a climate of professional service exists, unless the contrary has been specifically found by the department.

(b) An apparent violation of any of the codes and standards so adopted shall be deemed to be just cause for the bringing of a charge of unprofessional practice, such charge to be heard by the department; provided, however, that the department shall hear no cases based upon violations of professional sanctions imposed by any organization of practitioners in the state.

(c) The department shall have the power to recommend action to a school board in cases of violation of the standards of professional practice for all teachers, which shall represent the generally accepted standards within the teaching profession with respect to competent performance and ethical practice toward other members of the profession, parents, students and the community.

(d) No person shall be considered to be unethical under the provisions of any code of ethics adopted pursuant to this act based solely upon a violation of any professional sanctions imposed by any organization of practitioners in the state.

(7)(a) The department in administering this section may, after a public hearing:

1. Make recommendations to a school board that a member of the profession be warned or reprimanded;

2. Make any recommendations to the State Board of Education or to local or school boards which will promote an improvement of the teaching profession.

(b) In analyzing charges of breach of ethical or professional practices, the department may request assistance through any of the investigative processes of any existing professional organization.

(8) The department shall have the authority to subpoena witnesses and place them under oath.

History.—s. 2, ch. 63-363; s. 7, ch. 67-438; s. 1, ch. 67-440; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 60, ch. 71-377; s. 70, ch. 72-221; s. 3, ch. 76-168; s. 2, ch. 76-230; s. 1, ch. 77-457; s. 4, ch. 78-323; s. 9, ch. 78-423; ss. 16, 17, ch. 79-385.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, and by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to those dates.

[2]**Note.**—Section 16, ch. 79-385, provides that, if chapter 231 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-385 shall also be repealed on the same date as is therein provided.

[1]**231.58 Removal from council.**—The State Board of Education may remove any member from the council for misconduct or malfeasance in office, incapacity, or neglect of duty.

History.—s. 3, ch. 63-363; ss. 15, 35, ch. 69-106; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.59 Council; financial affairs; location.**—The council shall be financed by the members of the teaching profession in the amount necessary to carry out the purposes of this act. The offices of the council shall be located in space provided by the Division of Building Construction and Property Management of the Department of General Services.

History.—s. 4, ch. 63-363; s. 2, ch. 67-440; ss. 15, 22, 35, ch. 69-106; s. 2, ch. 75-70; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.600 Short title.**—Sections 231.600-231.610 shall be known and may be cited as the "Teacher Education Center Act of 1973."

History.—s. 41, ch. 73-338; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.601 Purposes, intent, and policy.**—

(1) The purposes of this act are to declare a new state policy for the education of teachers and to provide support for the developmental and operational activities required to implement the new policy.

(2) The most important influence the school can contribute to the learning of any student is the attitudes, skills, knowledge and understanding of the teacher. If any change is desired in the nature or quality of the educational programs of the schools it will come about only if teachers play a major role in the change. Teachers can best assist with improving education when they directly and personally participate in identifying needed changes and in designing, developing, implementing, and evaluating solutions to meet the identified needs. Historically, the responsibility for operating programs for preservice teacher education has been assigned to colleges and universities, and responsibility for operating programs for in-service teacher education has been as-

signed to district school boards.

(3) The education of teachers is inherently a career-long process. It is commonly accepted that teacher education is best carried out through the collaborative efforts of the colleges and universities, the schools, and the community. Because of their nature, the most appropriate laboratories for teacher education are the schools and the community.

(4) Effective July 1, 1973, the responsibility for operating programs for preservice and in-service teacher education is assigned jointly to the colleges and universities, to the district school boards, and to the teaching profession, with the colleges and universities having the primary responsibility for operating preservice programs, the school districts having primary responsibility for operating in-service programs, and the teaching profession having the responsibility for providing information to make each institution's program meaningful and relevant. In order to facilitate collaboration between colleges and universities and school districts, ensure appropriate involvement and participation of teachers, and establish procedures for joint utilization of resources available for preservice and in-service teachers, the State Board of Education shall issue regulations providing for the establishment of teacher education centers in school districts. There shall be no limitation on the number of centers which may be established in each district. Among the purposes of the teacher education centers shall be:

(a) To augment present college and university teacher education programs;

(b) To augment present school district in-service teacher education programs; and

(c) To provide time and opportunity for preservice and in-service teachers to interact with faculty and staff of the colleges and universities and school districts in their common search for the most beneficial educational experiences for students.

(5) It is the intent of the Legislature that this act be liberally construed so as to effectuate its purposes as far as legally and practically possible.

History.—s. 42, ch. 73-338; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.602 Definitions.—As used in this act:

(1) "Center" means the headquarters location and the preservice and inservice teacher training activities carried out in a school district in a teacher education center as approved by regulations of the State Board of Education.

(2) "Teacher education" means all experiences or activities carried out to assist individuals in attaining and maintaining skills, knowledge, and attitudes which enable them to perform in the professional role of teacher.

(3) "Commissioner" means the Commissioner of Education.

(4) "Department" means the Department of Education.

(5) "District" means school district.

(6) "School board" means the governing body of each school district.

(7) "Superintendent" means superintendent of a district school system.

(8) "Teacher" means all professional personnel working toward an educational career or already in education, including school administrators, supervisors, counselors, librarians, and others.

(9) "Community" means the residents, organizations, and agencies of the same geographic area served by the local school district.

(10) "Clinical preservice" means those aspects of teacher preparation which are more appropriately conducted in the field-based setting than in the campus setting.

History.—s. 43, ch. 73-338; s. 19, ch. 74-227; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]231.603 Establishing teacher education centers.—

(1) To effectuate the purposes of this act, the State Board of Education shall adopt and plan regulations providing for the establishment of teacher education centers. Each teacher education center shall be planned, financed and staffed jointly by one or more school districts and by one or more colleges or universities. Community colleges may participate in appropriate phases of teacher education center activities.

(2) The program of each teacher education center shall include, but not be limited to, the following:

(a) To assess inservice training needs as perceived by classroom teachers, school district personnel, university personnel, and other concerned agencies.

(b) To develop programs based on those identified inservice needs.

(c) To provide human and material resources for inservice training by whichever agents are best prepared to deliver them.

(d) To assess needs and provide the resources and experiences for clinical preservice teacher training, thus relating theoretical and practical study.

(e) To facilitate the entry or reentry of educational personnel into the teaching profession.

(f) To facilitate training processes which are based on assessment of needs, the development of experiences to meet those needs, and evaluation of the extent to which the needs were met.

(g) To facilitate internal and external evaluation which would include, but not be limited to, data gathering, process evaluation, product evaluation, and validation of teaching competency.

(3) Programs offered through teacher education centers shall be approved by the Department of Education in accordance with appropriate standards and procedures for approval of preservice and inservice programs for teacher education and to achieve the purposes of this act.

(4) A teacher education center may initiate, in keeping with the standards established by the Department of Education, any program determined to satisfy a need demonstrated within the school district.

History.—s. 44, ch. 73-338; s. 20, ch. 74-227; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior

to that date.

[1]**231.604 State council.**—The Governor shall, within 30 days following the effective date of this act, appoint a State Council for Teacher Education Centers.

(1) MEMBERSHIP.—The council shall be composed of 14 members as follows:

(a) Seven members shall be classroom teachers.

(b) Two members shall be college or university teacher educators.

(c) One member shall be a district school superintendent.

(d) One member shall be a district school board member.

(e) Two members shall be representatives of the State Department of Education.

(f) One member shall be a school principal.

(2) TERMS OF APPOINTMENT.—The terms of appointment for each council member shall be 3 years and until his successor is appointed and qualified, except in the case of an appointment to fill a vacancy, in which case the appointment shall be for the unexpired term. However, the initial appointments shall be as follows: Four members for 1-year terms; five members for 2-year terms; and five members for 3-year terms. No member shall be appointed for more than two terms, and no member shall serve as chairman for more than 2 years.

(3) PAYMENT OF EXPENSES.—Members of the council shall be entitled to receive per diem and expenses for travel as provided in s. 112.061 [F. S. 1973] while carrying out official business of the council.

(4) DUTIES AND RESPONSIBILITIES.—As soon as practicable following appointment of the council, the commissioner of education shall call an organizational meeting of the council. From among its members, the council shall elect a chairman who shall preside over meetings of the council and perform any other duties directed by the council or required by its duly adopted policies or operating procedures. The council shall also perform the following duties and responsibilities:

(a) Recommend to the Department of Education the most feasible locations for the teacher education centers from proposals submitted by school districts and universities as provided in s. 231.603(1).

(b) Recommend guidelines for expenditure of funds for teacher education centers.

(c) Evaluate the progress of teacher education centers, including specific programs as provided in s. 231.608.

(d) Perform such other duties as may be required to achieve the purposes of this act.

History.—s. 45, ch. 73-338; s. 21, ch. 74-227; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.605 Facilities.**—The headquarters of each teacher education center shall be located in a suitable facility owned or leased by the district school board. The central operation of the teacher education center shall not occupy space which is also regularly used for normal classroom instruction of students.

History.—s. 46, ch. 73-338; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.606 Administration of local teacher education centers.**—

(1) CENTER COUNCIL.—The local school board shall appoint the members of the council at the teacher education center.

(a) *Membership.*—The local school board, superintendent, classroom teachers, universities, community agencies, and other interested groups shall recommend the membership of a council at each center of not less than nine members, broadly representative of all groups, except that classroom teachers certificated to teach in kindergarten or grades 1-12 who work 50 percent or more of their time at the school level, other than those persons in administrative or supervisory positions, shall constitute a majority.

(b) *Duties and responsibilities.*—The center council shall perform the following duties and responsibilities:

1. Recommend policy and procedures for the teacher education center.

2. Develop goals and objectives for the center within the policies as determined by the local school board.

3. Recommend the employment of an appropriate teacher education center staff.

4. Make recommendations on an appropriate budget.

(2) SCHOOL DISTRICTS.—The school board of each district in which a teacher education center is approved by the Department of Education shall perform the following duties and responsibilities:

(a) Appoint the members of the teacher education center council.

(b) Adopt policy and procedures for the teacher education center.

(c) Adopt a budget for the teacher education center.

(d) Appoint the director and staff of the teacher education center.

History.—s. 47, ch. 73-338; s. 22, ch. 74-227; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.607 Multidistrict centers.**—In multidistrict centers, council members shall be determined as provided in s. 231.606. However, a proportionate number of members shall come from each district according to the total number of teachers in each district.

History.—s. 48, ch. 73-338; s. 3, ch. 76-168; s. 67, ch. 77-104; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.608 Evaluation.**—Each teacher education center shall submit an annual report to the State Council for Teacher Education Centers. This report shall be based on the measurable objectives of the center proposal and shall include, but not be limited to, the following:

(1) A description and evaluation of programs

conducted under the supervision of the center.

(2) The number of participants in center program activities.

(3) A description and evaluation of methods of center operations.

(4) A statement of center expenditures.

History.—s. 49, ch. 73-338; s. 23, ch. 74-227; s. 3, ch. 76-168; s. 10, ch. 77-320; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.609 Funding.**—Teacher education centers shall be funded jointly by participating school districts and colleges and universities, the Department of Education, federal or private grants and donations, fees, and funds from any other appropriate source. The primary funding responsibility shall be as follows:

(1) SCHOOL DISTRICTS.—The duties and responsibilities of the school board of each district in which a teacher education center is approved by the Department of Education shall be:

(a) To provide appropriate and adequate facilities for the operation of the center.

(b) To employ a director and appropriate staff for the center.

(c) To budget for center activities all appropriate funds for in-service teacher education programs for the district.

[2](2) UNIVERSITIES.—The duties and responsibilities of the universities shall be to adopt, or cause to be adopted, policies and procedures necessary to accomplish the following:

(a) Full-time equivalency faculty and nonfaculty positions equal to the student credit hours, undergraduate or graduate, earned by individuals participating in activities of teacher education centers established pursuant to this act shall be allocated to the activities of the centers where generated.

(b) All appropriate faculty professional activities and services, in addition to student contact hours teaching performed in school districts to effectuate the purposes and intent of this act, shall be recognized on the same basis as all other activities or services recognized for faculty rewards, including salary and promotions, and for allocating faculty time for research, counseling, and all other nonteaching services.

(c) The pro rata amount of nonfaculty support and other resources appropriated for the State University System is allocated for the activities of the approved teacher education centers where generated.

(3) COLLEGES AND UNIVERSITIES.—Each college and university, public or private, participating in an approved teacher education center shall allocate for the approved college or university activities carried out in the teacher education center full-time equivalency faculty time and other appropriate resources equal to the allocation for the same type of activities carried out in on-campus programs.

(4) DEPARTMENT OF EDUCATION.—The department shall not approve any teacher education center unless it is assured that essential teacher training materials, supplies, and equipment required for the preservice and in-service teacher education programs and activities to be undertaken by the center are available, or will be available at the appropriate locations in the school district. Beginning with the fiscal year 1974-1975 the commissioner shall include in the legislative budget of the Department of Education a request, with detailed justification, for the amount of funds necessary to allocate to each authorized teacher education center the appropriate amount for the purchase of the essential teacher training materials, supplies, and equipment for evaluation purposes to be carried out during that fiscal year. Funds appropriated to the Department of Education pursuant to this act shall be used by school districts exclusively for the purchase of teacher training materials, supplies, and equipment and for evaluation purposes as required pursuant to s. 231.608. However, nothing in this section shall be construed to authorize or appropriate any additional funds other than the start-up funds set forth in s. 231.610, it being contemplated that ongoing funding shall come from funds already being expended on teacher education.

History.—s. 50, ch. 73-338; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 111, 119, ch. 79-222.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]Note.—Section 119, ch. 79-222, provides that, if chapter 231 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that s. 111, ch. 79-222, shall also be repealed on the same date as is therein provided.

[1]**231.610 Noncredit activities.**—

(1) All noncredit student contact hours of instruction by faculty of the State University System in teacher education center activities conducted in school districts shall be computed for state appropriation purposes at the same rate as those for upper division credit courses. College or university faculty shall not be eligible for honoraria for consultant or any other services performed in programs or activities of approved teacher education centers.

(2) An amount shall be appropriated to the Department of Education for the purchase of services from independent colleges or universities and other agencies or individuals appropriate to the program of an approved teacher education center.

(3) From the amount appropriated annually by the appropriations act to the general office of the Board of Regents, the board shall allocate an amount in the manner indicated therein to colleges of education in the State University System for the support of noncredit activities carried out in teacher education centers approved by the Department of Education which meet the criteria adopted specifically for this purpose by the State Board of Education pursuant to ss. 231.601(4) and 231.603. Funds referred to in this section shall not be spent for any activity other than the direct support of noncredit activities carried out under the direction of an approved teacher education center.

History.—s. 52, ch. 73-338; s. 24, ch. 74-227; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]**231.611 Procedures in determining approval of centers.**—It is the intent of the legislature that the planning, development, and implementation of teacher education centers shall be carried out in an orderly, systematic manner. Statewide implementa-

tion should be accomplished prior to June 30, 1979. The Department of Education is authorized to approve up to 10 centers during the 1974-1975 fiscal year. The following procedure shall be used in determining which centers shall be approved:

(1) The Department of Education shall provide each school district and each university full information about teacher education centers and a copy of all requirements for establishing and operating centers.

(2) Each district and university wishing to jointly establish a center in 1974-1975 shall submit a brief proposal to the Department of Education.

(3) The State Council on Teacher Education Centers shall review all proposals and recommend to the Department of Education the 10 locations which in the opinion of the council will best meet the expectations of the Teacher Education Center Act. Consideration shall be given to geographic location so as to have some center development in the several regions of the state.

(4) The department shall notify all school districts of the locations selected and request those selected to develop a detailed plan of operation for approval by the Department of Education in accordance with this act and regulations of the State Board of Education.

(5) The Department of Education is authorized to use up to $20,000 per teacher education center from the educational research and development program to assist with startup and other developmental costs, when such development is consistent with the mission of the research and development program.

History.—s. 25, ch. 74-227; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1,1982, except for the possible effect of laws affecting this section prior to that date.

CHAPTER 232

COMPULSORY SCHOOL ATTENDANCE; CHILD WELFARE

[1]232.01 Regular school attendance required between ages of 7 and 16; permitted at age of 6; exceptions.—

(1)(a) All children who have attained the age of 7 years or who will have attained the age of 7 years by February 1 of any school year or who are older than 7 years of age but who have not attained the age of 16 years, except as hereinafter provided, are required to attend school regularly during the entire school term.

(b) A child who attains the age of 16 years during the school year shall not be required to attend school beyond the date upon which he attains that age.

(c)1. This section shall not apply to students who become or have become married, unmarried students who are pregnant, and students who have already had a child outside of wedlock.

2. Students who become or have become married, unmarried students who are pregnant and students who have previously had a child outside of wedlock shall not be prohibited from attending school. These students shall be entitled to the same educational instruction or its equivalent as other students, but may be assigned to a special class or program better suited to their special needs.

(d) Any child who has attained the age of 6 years on or before January 1 of the school year of any school having annual promotions shall be admitted to the first grade at any time during the school year.

(e) Any child who has attained the age of 5 years and 11 months on or before the opening day of any semester of a school having semiannual promotions shall be admitted at any time during the semester.

(f) Consistent with regulations adopted by the state board, exceptional children who will have attained the age of 3 years on or before January 1 of the school year may be eligible for admission to public special education programs and for related services under rules and regulations prescribed by the school board. However, exceptional children who are deaf, blind, severely physically handicapped or trainable mentally retarded below age 5 may be eligible for a home instruction program or, if enrolled in other preschool or day care programs, may be eligible for supplemental instruction.

(g) Any child who will attain the age of 6 years subsequent to January 1 and during the school fiscal year of any school having annual promotions shall be admitted at the beginning of that school year or at any time during the first month of the school year to the first grade, provided the child has demonstrated a readiness to enter the first grade in accordance with uniform criteria as established by the State Board of Education.

(h) Any child who will attain the age of 5 years and 6 months on or before the opening day of any semester of a school having semiannual promotions may be admitted at the beginning, or at any time

during the first 2 weeks, of the said semester, provided the child has demonstrated a readiness to enter the first grade in accordance with uniform criteria as established by the State Board of Education.

(2) The school boards may develop policies under which pupils may be transferred to the first grade from another state, provided their parents or guardians are legal residents of that state.

History.—s. 601, ch. 19355, 1939; CGL 1940 Supp. 892(172); s. 24, ch. 23726, 1947; s. 1, ch. 59-419; ss. 1, 2, ch. 59-412; s. 7, ch. 61-288; s. 69, ch. 65-239; s. 1, ch. 67-3; s. 8, ch. 67-387; s. 8, ch. 68-24; s. 1, ch. 69-300; ss. 1, 2, ch. 71-21; s. 3, ch. 71-193; s. 1, ch. 73-261; s. 1, ch. 73-265; s. 27, ch. 73-345; s. 3, ch. 74-238; ss. 8, 12, ch. 79-288.

[1]**Note.**—Chapter 79-288 amended s. 232.01, effective July 1, 1980, to read:

232.01 Regular school attendance required between ages of 6 and 16; permitted at age of 5; exceptions.—

(1)(a) All children who have attained the age of 6 years or who will have attained the age of 6 years by February 1 of any school year or who are older than 6 years of age but who have not attained the age of 16 years, except as hereinafter provided, are required to attend school regularly during the entire school term.

(b)1. Beginning with the 1982-1983 school year, no child shall be admitted or promoted to the first grade in any school until he has satisfactorily completed kindergarten in a public school or a nonpublic school from which the district school board accepts transfer of academic credit or he otherwise meets the criteria for admission or transfer in a manner similar to that applicable to other grades.

2. Notwithstanding the provisions of paragraphs (d) and (e), any district school board may, at the beginning of any fiscal year prior to July 1, 1982, require that each child satisfactorily complete kindergarten in a public school or in a nonpublic school from which the district school board accepts transfer of academic credit, as a condition of admission or promotion to the first grade. Any school board which elects to institute this requirement prior to July 1, 1982, shall amend its pupil progression plan to reflect such requirement in the manner prescribed by s. 120.54.

(c) A child who attains the age of 16 years during the school year shall not be required to attend school beyond the date upon which he attains that age.

(d)1. This section shall not apply to students who become or have become married, unmarried students who are pregnant, and students who have already had a child outside of wedlock.

2. Students who become or have become married, unmarried students who are pregnant, and students who have previously had a child outside of wedlock shall not be prohibited from attending school. These students shall be entitled to the same educational instruction or its equivalent as other students, but may be assigned to a special class or program better suited to their special needs.

(e) Any child who has attained the age of 6 years on or before September 1 of the school year shall be admitted to the first grade at any time during the school year. However, any child who has completed kindergarten and will attain the age of 6 years on or before January 1 shall be admitted to the first grade at any time during the school year.

(f) Consistent with rules adopted by the state board, exceptional children who will have attained the age of 3 years on or before January 1 of the school year may be eligible for admission to public special education programs and for related services under rules adopted by the school board. However, exceptional children who are deaf, blind, severely physically handicapped, or trainable mentally retarded below age 5 may be eligible for a home instruction program or, if enrolled in other preschool or day care programs, may be eligible for supplemental instruction.

(g) Any child who will attain the age of 6 years subsequent to September 1 and during the school fiscal year shall be admitted at the beginning of that school year or at any time during the first month of the school year to the first grade, provided the child has demonstrated a readiness to enter the first grade in accordance with rules adopted by the State Board of Education.

(2) The school boards may adopt rules under which pupils not meeting the entrance age may be transferred from another state if their parents or guardians have been legal residents of that state.

232.02 Regular school attendance.—Regular attendance is the actual attendance of a pupil during the school day as defined by law and regulations of the state board. Regular attendance within the intent of s. 232.01 may be achieved by attendance at:

(1) A public school supported by public funds;

(2) A parochial or denominational school;

(3) A private school supported in whole or in part by tuition charges or by endowments or gifts; and

(4) At home with a private tutor who meets all requirements prescribed by law and regulations of the state board for private tutors.

History.—s. 602, ch. 19355, 1939; CGL 1940 Supp. 892(173); s. 9, ch. 59-371; s. 92, ch. 72-221.

232.021 Attendance records and reports required.—All officials, teachers, and other employees in public, parochial, denominational, and private schools, including private tutors, shall keep all records and shall prepare and submit promptly all reports that may be required by law and by regulations of state and district boards. Such records shall include a register of enrollment and attendance and all such persons named above shall make such reports therefrom as may be required by the state board. The enrollment register shall show the absence or attendance of each child enrolled for each school day of the year in a manner prescribed by the state board. The register shall be open for the inspection by the superintendent or attendance assistant of the district in which the school is located. Violation of the provisions of this section shall be a misdemeanor of the second degree, punishable as provided by law.

History.—s. 614, ch. 19355, 1939; CGL 1940 Supp. 892(185); s. 75, ch. 65-239; s. 1, ch. 69-300; s. 134, ch. 71-136; s. 96, ch. 72-221.
Note.—Former s. 232.14.

232.022 Attendance defined.—The attendance of all public school pupils shall be checked each school day in the manner prescribed by regulations of the state board and recorded in the teacher's register or by some approved system of recording attendance. Pupils may be counted in attendance only if they are actually present at school or are away from school on a school day and are engaged in an educational activity which constitutes a part of the school-approved instructional program for the pupil.

History.—s. 1, ch. 29802, 1955; s. 97, ch. 72-221.
Note.—Former s. 232.141.

232.0225 Absence for religious instruction.—

(1) A student with the notarized written consent of his parents or guardian, or a student who has attained the age of majority, upon application of the student, may be excused from attendance in school in grades 9 through 12 for a period of not more than one class period, but not to exceed 1 hour, during each school day to participate in religious instruction at his place of worship or at any other suitable place away from school property designated by the religious group, church, or denomination. Such religious instruction shall not be the responsibility of the local school board, nor shall such instruction be conducted on school property. District school board permission shall not be granted unless the following conditions are met:

(a) The religious institution maintains weekly attendance records and makes them available to the public school each student attends.

(b) Transportation to and from religious instruction is the complete responsibility of the religious institution or parent of the student.

(c) Each school board specifies in advance its own requirements on liability involving students on released time and the religious institution or parents meet those requirements.

(2) The principal shall reserve the right to refuse a student's request for released time if, according to the provisions of the district's pupil progression plan:

(a) The student is not enrolled in sufficient courses to allow for the student's promotion or graduation and thus the released time would not be equivalent to an optional period.

(b) The student's grades are insufficient to allow

for the student's promotion or graduation.

(3) Nothing in this section shall be construed to require district school boards to permit religious instruction programs, nor to deny them the right to terminate an individual student's permission to attend a religious institution for nonattendance.

History.—s. 1, ch. 78-306.

232.023 Falsification of attendance records; penalty.—The presentation of reasonable and satisfactory proof that any teacher, principal, or other school personnel or school officer has falsified or caused to be falsified attendance records for which he is responsible shall be sufficient grounds for the revocation of his teaching certificate by the Department of Education or for dismissal or removal from office.

History.—s. 2, ch. 29802, 1955; s. 66, ch. 71-355; s. 61, ch. 71-377; s. 98, ch. 72-221; s. 13, ch. 78-95.

Note.—Former s. 232.142.

[1]232.03 Evidence of date of birth required.—Before admitting a child to kindergarten or the first grade, the principal shall require evidence that the child has attained the age at which he should be admitted in accordance with the provisions of s. 232.04 or s. 232.01. The superintendent or attendance assistant may require evidence of the age of any child whom he believes to be within the limits of compulsory attendance as provided for by law. If the first prescribed evidence is not available, the next evidence obtainable in the order set forth below shall be accepted:

(1) A duly attested transcript of the child's birth record filed according to law with a public officer charged with the duty of recording births; or

(2) A duly attested transcript of a certificate of baptism showing the date of birth and place of baptism of the child, accompanied by an affidavit sworn to by the parent; or

(3) An insurance policy on the child's life which has been in force for at least 2 years; or

(4) A bona fide contemporary Bible record of the child's birth accompanied by an affidavit sworn to by the parent; or

(5) A passport or certificate of arrival in the United States showing the age of the child; or

(6) A transcript of record of age shown in the child's school record of at least 4 years prior to application, stating date of birth; or

(7) If none of these evidences can be produced, an affidavit of age sworn to by the parent, accompanied by a certificate of age signed by a public health officer or by a public school physician, or, if neither of these shall be available in the county, by a licensed practicing physician designated by the school board, which certificate shall state that the health officer or physician has examined the child and believes that the age as stated in the affidavit is substantially correct.

History.—s. 603, ch. 19355, 1939; CGL 1940 Supp. 892(174); s. 51, ch. 29764, 1955; s. 1, ch. 69-300; s. 1, ch. 70-72; s. 93, ch. 72-221; s. 9, ch. 79-288.

[1]Note.—Chapter 79-288 amended s. 232.03, effective July 1, 1980, to read:

232.03 Evidence of date of birth required.—Before admitting a child to kindergarten, the principal shall require evidence that the child has attained the age at which he should be admitted in accordance with the provisions of s. 232.04 or s. 232.01. The superintendent may require evidence of the age of any child whom he believes to be within the limits of compulsory attendance as provided for by law. If the first prescribed evidence is not available, the next evidence obtainable in the order set forth below shall be accepted:

(1) A duly attested transcript of the child's birth record filed according to law with a public officer charged with the duty of recording births; or

(2) A duly attested transcript of a certificate of baptism showing the date of birth and place of baptism of the child, accompanied by an affidavit sworn to by the parent; or

(3) An insurance policy on the child's life which has been in force for at least 2 years; or

(4) A bona fide contemporary Bible record of the child's birth accompanied by an affidavit sworn to by the parent; or

(5) A passport or certificate of arrival in the United States showing the age of the child; or

(6) A transcript of record of age shown in the child's school record of at least 4 years prior to application, stating date of birth; or

(7) If none of these evidences can be produced, an affidavit of age sworn to by the parent, accompanied by a certificate of age signed by a public health officer or by a public school physician, or, if neither of these shall be available in the county, by a licensed practicing physician designated by the school board, which certificate shall state that the health officer or physician has examined the child and believes that the age as stated in the affidavit is substantially correct.

[1]232.031 Evidence of health certificate required.—Before admitting a child to kindergarten or the first grade, unless the child attended a public kindergarten in a district within this state, the principal shall require evidence that the child is free from a contagious or communicable disease as prescribed herein:

(1) The school board of each district shall require each pupil who is otherwise entitled to admission to kindergarten or the first grade to present a statement from the county health officer or from a licensed practicing physician certifying that such pupil has no contagious or communicable disease which would warrant such pupil's exclusion from the public schools.

(2) The school board shall have authority to adopt such rules and regulations as may be necessary to carry out the provisions of this section including the extension of the foregoing to all elementary and secondary schools; provided, however, any child shall be exempt from a medical or physical examination upon written request of the parent or guardian of such child stating objections to such examination on religious grounds.

History.—s. 1, ch. 65-440; s. 1, ch. 69-300; s. 1, ch. 70-73.

[1]Note.—Repealed effective July 1, 1980.

232.032 Immunization against communicable diseases; school attendance requirements; exemptions.—

(1) The Department of Health and Rehabilitative Services, after consultation with the Department of Education, shall promulgate rules and regulations governing the immunization of children against, or the testing for, preventable communicable diseases. Immunizations shall be required for poliomyelitis, smallpox, diphtheria, rubeola, rubella, pertussis, and tetanus, and may be required for other communicable diseases as determined by the Department of Health and Rehabilitative Services. The manner and frequency of administration of the immunization or testing shall conform to recognized standards of medical practice. The Department of Health and Rehabilitative Services shall supervise and secure the enforcement of the required immunization.

[1](2) The school board of each district and the governing authority of each private school shall require each pupil who is otherwise entitled to admittance to kindergarten or first grade, whichever is applicable, or any other initial entrance into a Florida public or private school, to present a certification of immunization for the prevention of those communicable diseases for which immunization is required by the De-

partment of Health and Rehabilitative Services.

(3) The provisions of this section shall not apply if:

(a) The parent or guardian of the child objects in writing that the administration of immunizing agents conflicts with his religious tenets or practices, or

(b) A competent medical authority certifies in writing that the child should be exempt from the required immunization for medical reasons, or

(c) The Department of Health and Rehabilitative Services determines that according to recognized standards of medical practice any required immunization is unnecessary or hazardous.

History.—ss. 1-3, ch. 71-283; s. 39, ch. 77-147; s. 10, ch. 79-288.

[1]**Note**—Chapter 79-288 amended subsection (2), effective July 1, 1980, to read:

(2) The school board of each district and the governing authority of each nonpublic school shall require each child who is entitled to admittance to kindergarten, or any other initial entrance into a Florida public or nonpublic school, to present a certification of immunization for the prevention of those communicable diseases for which immunization is required by the Department of Health and Rehabilitative Services.

232.034 Medical exemption for transporting pupils.—Upon receipt of a statement by a physician authorized to practice medicine under chapter 458 or chapter 459 which certifies that the health of a pupil is such that prolonged transportation to a school other than the nearest school to which he lives would result in an illness or the worsening of an existing illness, the school board shall have the authority to assign such pupil to the nearest appropriate school to which he lives.

History.—s. 1, ch. 72-362.

[1]**232.04 In kindergartens.**—Children who will have attained the age of 5 years on or before January 1 of the school year shall be eligible for admission to public kindergartens during that school year under rules and regulations prescribed by the school board. If any school in which a kindergarten department is organized has midyear admissions, a child who has attained the age of 4 years and 11 months at the beginning of the second semester may be enrolled in such kindergarten at that time.

History.—s. 604, ch. 19355, 1939; CGL 1940 Supp. 892(175); s. 52, ch. 29764, 1955; s. 12, ch. 57-249; s. 70, ch. 65-239; s. 1, ch. 69-300; s. 11, ch. 79-288.

[1]**Note.**—Chapter 79-288 amended s. 232.04, effective July 1, 1980, to read:

232.04 In kindergartens.—Children who will have attained the age of 5 years on or before the date prescribed in this section during the school year shall be eligible for admission to public kindergartens during that school year under rules prescribed by the school board. For the school year 1980, the child must have attained the age of 5 on or before December 1, 1980. For the school year 1981, the child must have attained the age of 5 on or before November 1, 1981. For the school year 1982, the child must have attained the age of 5 on or before October 1, 1982. For the school year 1983 and thereafter, the child must have attained the age of 5 on or before September 1 of the school year. Any child who will attain the age of 5 years subsequent to the date prescribed in this section but prior to January 1 of the school year shall be admitted to kindergarten at the beginning of that school year or at any time during the first month of the school year, provided the child has demonstrated a readiness to enter kindergarten in accordance with criteria as established by the district school board.

232.05 In nursery schools.—Children who will have attained the age of 4 years on or before January 1 of the school year may be eligible for admission to public nursery schools during that year under rules and regulations of the school board; provided, that if any school in which a nursery school department is organized has midyear admissions, then and in that event a child who is 3 years and 9 months of age at the beginning of the second semester may be enrolled in such nursery school at that time.

History.—s. 605, ch. 19355, 1939; CGL 1940 Supp. 892(176); s. 7, ch. 29754, 1955; s. 13, ch. 57-249; s. 71, ch. 65-239; s. 1, ch. 69-300.

232.06 Certificates of exemptions authorized in certain cases.—Children within the compulsory attendance age limits who hold valid certificates of exemption which have been issued by the superintendent shall be exempt from attending school. A certificate of exemption shall cease to be valid at the end of the school year in which it is issued. Children entitled to such certificates and the conditions upon which they may be issued are as follows:

(1) PHYSICAL AND MENTAL DISABILITY.—Any child whose physical, mental, or emotional condition is such as to prevent his successful participation in regular or special education programs for exceptional children; provided, that before issuing a certificate of exemption for physical, mental, or emotional disability, the superintendent shall require the submission of a statement from the county health officer, if a licensed physician, in counties having such an officer, and in other counties from a licensed practicing physician or qualified psychological examiner designated by the district certifying that the child is physically or mentally incapacitated for school attendance; provided, further, that if appropriate programs are not available within the school system, arrangements shall be made with adjoining districts or other appropriate agencies, residential schools, or approved nonpublic schools providing appropriate programs and services as determined by the Department of Education under regulations prescribed by the state board. Any child so exempt from educational provisions shall immediately be reported to the department.

[1](2) DISTANCE EXEMPTION.—Children from 6 years of age to 10 years of age, inclusive, unless deaf, blind, or seriously crippled, who, because of distance and lack of public transportation, would be compelled to walk more than 3 miles by the nearest traveled route to the school or to the nearest publicly maintained school bus route to attend a public school, and children 11 years of age or older, unless deaf, blind, or seriously crippled, who, because of distance and lack of public transportation, would be compelled to walk more than 4 miles by the nearest traveled route to the nearest school or the nearest publicly maintained school bus route to attend a public school.

(3) EMPLOYMENT EXEMPTION.—Children who have reached 14 years of age who hold employment certificates and are employed under provisions of the Child Labor Law.

(4) JUDICIAL EXEMPTIONS.—Upon the recommendation of a circuit judge and the agreement of the superintendent, any child within the compulsory attendance age limit may be granted a certificate of exemption.

History.—s. 606, ch. 19355, 1939; CGL 1940 Supp. 892(177); s. 1, ch. 57-229; s. 9, ch. 68-24; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 21, ch. 73-334; s. 13, ch. 79-288.

[1]**Note.**—Repealed effective July 1, 1980.

232.07 Employment certificates and special employment certificates authorized for certain children.—

(1) ISSUANCE OF CERTIFICATES.—Upon application of the child in person and presentation of an employer's statement, the superintendent of each school district, or an attendance assistant or principal of a school authorized by the superintendent in writing, may issue on his own initiative or on the recommendation of the principal the following certificates:

(a) *Special certificates of employment.*—Special certificates of employment may be issued to children 12 years of age or older and under 16 years of age for employment during vacation or out-of-school hours.

(b) *Employment certificates for school exempt children.*—Employment certificates may be issued to children 12 years old or older and under 16 years of age who are exempt from school attendance under the provisions of ss. 232.01, 232.06, and 450.161 when, in the opinion of the person issuing such certificate, such action is in the best interest of the child.

(c) *Employment certificates for hardship cases.*—Employment certificates may be issued to children 14 or 15 years of age when all the following conditions have been satisfactorily met:

1. The child, accompanied by his parent, shall appear and make application in person.

2. The parent shall file a written statement upon a form prescribed by the state board showing that the employment of the child is necessary for the support and maintenance of the family and that the child has a satisfactory position, and shall give such additional facts in regard to the income, expenditures, and financial situation of the family as shall be needed in substantiating such statement.

3. A statement signed by the principal or teacher in charge of the school last attended by the child and certifying that the child has completed the eighth grade of the public schools, or its equivalent, shall be submitted. Such statement shall give the age and date of birth of the child as shown on the records of the schools and the name and address of the parent. If such a statement cannot be obtained, the child may be examined by the superintendent to determine whether he meets the required educational standards. A record of each such examination shall be kept in the files of the superintendent.

4. A certificate signed by a physician designated by the school board shall be submitted stating that such physician has personally examined the child and that, in his opinion, the child is of good physical development for his age, is of sound health, and is physically qualified to perform the work for which he is to be employed. Such physical examination and such expression of opinion shall be based upon forms and standards prescribed jointly by the Department of Health and Rehabilitative Services and the State Board of Education. In a district in which the school board has not designated a physician for that purpose, such an examination may be made and certified to only by a licensed practicing physician authorized by the school board to make the examinations and issue such certificate. The superintendent shall, after considering the statement of the parents and such facts as he may obtain from his own subsequent investigation, determine whether the employment of the child is necessary for the support and maintenance of the family. If he determines this matter in the affirmative and finds that the child meets the other qualifications prescribed herein, he shall forthwith issue an employment certificate, or, if he shall determine this matter in the negative, he shall file in his office an order setting forth his reasons for refusing to issue such certificate. The superintendent shall cancel an employment certificate issued in hardship cases when:

a. He has been notified by return of employment certificate that the job has terminated;

b. He has ascertained that such employment is no longer regular or in an amount sufficient to justify absence from school, as determined under regulations prescribed by the state board; or

c. It is unnecessary for the maintenance and support of the family.

(2) STATEMENT OF EMPLOYER.—No certificate shall be issued under this section until the person into whose service the child is to enter shall state in writing, upon forms prescribed by the state board, that the employer desires to employ the child and explains the nature of the occupation for which the child is to be employed. A parent may be considered as the employer.

(3) HEALTH CERTIFICATES.—The Department of Education is authorized:

(a) To waive the health certificate requirement when the department determines that such certificates are not relevant to the performance of the employment being sought; or

(b) To require additional health certificates as it deems necessary for the protection of the child.

(4) EVIDENCE OF AGE.—Evidence of the age of the child shall be obtained as prescribed in s. 232.03 or by presentation of a valid Florida driver's license.

(5) FORMS.—Special certificates of employment shall differ in form and color from employment certificates. All certificates shall be issued in triplicate upon a form prescribed by the state board, one copy to be mailed to the employer, one copy to be sent within 1 week thereafter to the Division of Labor of the Department of Labor and Employment Security, and one copy to be filed in the office of the superintendent. The copy of the employment certificate furnished to the employer shall be returned by the employer to the superintendent within 10 days after he ceases to employ the child regularly, and the certificate shall then cease to be valid. However, the employer may, if he desires, retain the copy of the certificate for his records and notify the superintendent by written notice delivered to the superintendent that he is no longer employing the child regularly.

History.—s. 607, ch. 19355, 1939; CGL 1940 Supp. 892(178); s. 53, ch. 29764, 1955; s. 8, ch. 61-288; ss. 15, 17, 19, 35, ch. 69-106; s. 1, ch. 69-300; s. 65, ch. 71-355; s. 1, ch. 73-283; s. 1, ch. 75-195; s. 40, ch. 77-147; s. 1, ch. 77-174; s. 12, ch. 79-7.

232.08 Age certificates authorized for children who have reached 16 years of age.—The superintendent, or an attendance assistant or principal of a school authorized by the superintendent in writing to do so, shall, upon application and submission of evidence as prescribed in s. 232.03, issue age certificates for employment purposes upon a form prescribed by the state board, which certificates shall be different in form and color from employment certificates and special employment certifi-

cates and shall be issued to children who are 16 years of age or older.

History.—s. 608, ch. 19355, 1939; CGL 1940 Supp. 892(179); s. 1, ch. 69-300; s. 3, ch. 75-195.

232.09 Parents responsible for attendance of children.—Each parent of a child within the compulsory attendance age shall be responsible for such child's school attendance as required by law. The absence of a child from school shall be prima facie evidence of a violation of this section; provided, that no parent of a child shall be held responsible for such child's nonattendance at school under any of the following conditions:

(1) WITH PERMISSION.—The absence was with permission of the head of the school; or

(2) WITHOUT KNOWLEDGE OR UNABLE TO CONTROL.—The absence was without the parent's knowledge, consent, or connivance; or that he or she has made a bona fide and diligent effort to control and keep the child in school and that he or she is unable to do so; in which cases the child shall be dealt with as a dependent child; or

(3) FINANCIAL INABILITY.—That he or she was unable financially to provide necessary clothes for the child, which inability was reported in writing to the superintendent prior to the opening of school or immediately after the beginning of such inability; provided, that the validity of any claim for exemption under this subsection shall be determined by the superintendent subject to appeal to the school board; or

(4) SICKNESS, INJURY, OR OTHER INSURMOUNTABLE CONDITION.—That attendance was impracticable or inadvisable on account of sickness or injury, attested to by a written statement of a licensed practicing physician, or was impracticable because of some other stated insurmountable condition as defined by regulations of the state board; or

[1](5) DISTANCE EXEMPTION.—That attendance was impossible because of the distance of the home of the child from the nearest school and the lack of transportation at public expense, as set forth in s. 232.06.

History.—s. 609, ch. 19355, 1939; CGL 1940 Supp. 892(180); s. 1, ch. 69-300; s. 94, ch. 72-221; s. 25, ch. 75-48; s. 13, ch. 79-288.

[1]Note.—Repealed effective July 1, 1980.

232.10 Absence must be explained.—Whenever a child of compulsory school attendance age is absent without the permission of the person in charge of the school, the parent of the child shall, as soon as practicable after learning of the absence, report and explain the cause of such absence to the teacher or principal of the school. If the parent of the child knows of the absence, failure to make such report and explanation shall be prima facie evidence of the child's being absent with the consent or connivance of the parent.

History.—s. 610, ch. 19355, 1939; CGL 1940 Supp. 892(181).

232.13 Exceptional children; reports to superintendents.—The Department of Health and Rehabilitative Services shall direct its field workers to review their case records on or before March 31 of each year and to report to the superintendent of each district the names and other pertinent information for all exceptional children in the district whose conditions, in their opinion, require special educational services.

History.—s. 2, ch. 20910, 1941; s. 25, ch. 23726, 1947; s. 74, ch. 65-239; s. 10, ch. 68-24; ss. 19, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 73-114; s. 2, ch. 79-12.

Note.—Former s. 232.38.

232.16 Superintendent responsible for enforcement.—The superintendent shall be responsible for the enforcement of the provisions of this chapter. In a district in which no attendance assistant is employed, the superintendent shall have those duties and responsibilities and exercise those powers assigned by law to attendance assistants.

History.—s. 616, ch. 19355, 1939; CGL 1940 Supp. 892(187); s. 1, ch. 69-300; s. 99, ch. 72-221.

232.17 Attendance assistants; qualifications; compensation; duties.—Provisions for the employment, qualifications, compensation, and duties of attendance assistants shall be as follows:

(1) EMPLOYMENT AND QUALIFICATIONS OF ATTENDANCE ASSISTANTS.—The school board, upon the recommendation of the superintendent, may employ and fix the compensation, including reimbursement for travel, of a sufficient number of qualified attendance assistants to guarantee regular attendance at school of all children of the district within compulsory school age requirements who are not herein exempted from attendance.

(2) DUTIES AND RESPONSIBILITIES OF ATTENDANCE ASSISTANTS.—The duties and responsibilities of the attendance assistant shall be exercised under the direction of the superintendent and shall be as follows:

(a) *Maintain records.*—Pupil accounting records, unless maintained by others assigned by the superintendent, shall be kept by attendance assistants. These records shall be on forms approved pursuant to regulations of the state board.

(b) *Investigate nonenrollment and unexcused absences.*—In accordance with procedure established by the state board, attendance assistants shall investigate cases of nonenrollment and unexcused absences from school of all children within the compulsory school age.

(c) *Give written notice.*—Under the direction of the superintendent the attendance assistant shall give written notice, either in person or by registered mail, to the parent when no valid reason is found for a child's nonenrollment or absence from school, requiring enrollment or attendance within 3 days from the date of notice. If such notice and requirement should be ignored the attendance assistant shall report the case to the superintendent, and that official as hereinafter provided shall take such steps as are necessary to bring criminal prosecution against the parent, guardian, or other person having control.

(d) *Return child to parent.*—The attendance assistant shall visit the home or place of residence of a child and any other place in which he is likely to find any child who is required to attend school when such child is absent from school during school hours, and, when such child shall have been found, shall return him to his parent or to the principal or teacher in charge of the school, or to the private tutor from whom absent.

(e) *Visit home.*—The attendance assistant shall visit promptly the home of each child of school age

in his attendance district not in attendance upon the school, and of any child who should attend the Florida State School for the Deaf and the Blind, and who is reported as not enrolled in that school or as absent without excuse. If no valid reason is found for such nonenrollment or absence from such school or schools he shall give written notice to the parent, requiring the child's enrollment or attendance as prescribed above. He shall secure the written approval of the president of the Florida State School for the Deaf and the Blind before he directs or requests the parents of any child to take or send such child to that school. Ten days' notice must be given in the case of a child who is ordered sent to that school. On refusal or failure of the parent to meet such requirement, the attendance assistant shall report the same to the superintendent, and that official shall proceed to take such action as is prescribed in s. 232.19(2).

(f) *Report to the Division of Labor.*—The attendance assistant shall report to the Division of Labor of the Department of Labor and Employment Security or to any person acting in similar capacity who may be designated by law to receive such notices, all violations of the Child Labor Law that may come to his knowledge.

(g) *Right to inspect.*—The attendance assistant shall have the same right of access to, and inspection of, establishments where minors may be employed or detained as is given by law to the Division of Labor only for the purpose of ascertaining:

1. Whether children of compulsory school age holding employment certificates for work in that establishment are actually employed there and are actually working there regularly;
2. Whether children of compulsory school age without employment certificates are employed in the establishment;
3. Whether the nature of the work being done by the child is substantially the same as that described by the employer in the statement required to be made by him in s. 232.07(3).

The attendance assistant shall, if he finds unsatisfactory working conditions or violations of the Child Labor Law, report his findings to the Division of Labor or its agents. The superintendent may, on recommendations based on such inspection by the attendance assistant, cancel the employment certificate of any child employed or supposed to be employed in that establishment.

(h) *Record of visits.*—The attendance assistant shall keep an accurate record of all children returned to schools or homes, of all cases prosecuted, and of all other service performed. A written report of all such activities shall be made monthly to the school board and shall be filed in the office of the superintendent.

History.—s. 617, ch. 19355, 1939; CGL 1940 Supp. 892(188); s. 10, ch. 26484, 1951; s. 54, ch. 29764, 1955; ss. 17, 35, ch. 69-106; s. 1, ch. 69-300; s. 100, ch. 72-221; s. 1, ch. 73-283; s. 13, ch. 79-7.
cf.—Ch. 450, Part I Child labor.

232.19 Court procedure and penalties.—The court procedure and penalties for the enforcement of the provisions of this chapter, relating to compulsory school attendance, shall be as follows:

(1) COURT JURISDICTION.—The circuit court shall have original and exclusive jurisdiction of all proceedings against, or prosecutions of, children under the provisions of this chapter. Proceedings against, or prosecutions of, parents or employers as provided by this section shall be in the court of each county having jurisdiction of misdemeanors wherein trial by jury is afforded the defendant.

(2) NONENROLLMENT AND NONATTENDANCE CASES.—In each case of nonenrollment or of nonattendance upon the part of a child who is required to attend some school, when no valid reason for such nonenrollment or nonattendance is found, the superintendent shall institute a criminal prosecution against the child's parent.

(3) HABITUAL TRUANCY CASES.—In case a child becomes an habitual truant, the attendance assistant shall file with the Circuit Court a complaint alleging the facts, and the child shall be dealt with as a dependent child according to the provisions of chapter 39.

(4) ATTENDANCE REGISTER AS EVIDENCE.—The register of attendance of pupils at a public, parochial, denominational, or private school, or of pupils taught by a private tutor, kept in compliance with rules and regulations of the state board, shall be prima facie evidence of the facts which it is required to show. A certified copy of any rule or regulation and a statement of the date of its adoption and promulgation by the state board shall be admissible as prima facie evidence of the provisions of such rule or regulation and of the date of its adoption or promulgation.

(5) PROCEEDINGS AND PROSECUTIONS; WHO MAY BEGIN.—Proceedings or prosecutions under the provisions of this chapter may be begun by the superintendent, by an attendance assistant, by the probation officer of the county, by the executive officer of any court of competent jurisdiction, or by an officer of any court of competent jurisdiction, or by a duly authorized agent of the Department of Education.

(6) PENALTIES.—Penalties for refusing or failing to comply with the provisions of this chapter shall be as follows:

(a) *The parent.*—The parent who refuses or fails to have a child under his control to attend school regularly shall be guilty of a misdemeanor of the second degree, punishable as provided by law. The continued or habitual absence of a child without the consent of the principal or teacher in charge of the school he attends or should attend, or of the tutor who instructs or should instruct him, shall be prima facie evidence of a violation of this chapter.

(b) *The principal or teacher.*—The principal or teacher in charge of a school, public, parochial, denominational, or private, or the private tutor, who willfully violates any provisions of this chapter may, upon satisfactory proof of such violation, have his certificate revoked by the Department of Education.

(c) *The employer.*—The employer who fails to notify the superintendent when he ceases to employ a child to whom an employment certificate has been issued, or who employs a child under 16 years of age

without receiving an employment certificate as provided for in s. 232.07, shall be guilty of a misdemeanor of the second degree, punishable as provided by law.

History.—s. 619, ch. 19355, 1939; CGL 1940 Supp. 892(190), 8115(8), (9); s. 56, ch. 29764, 1955; s. 1, ch. 61-101; s. 77, ch. 65-239; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 135, ch. 71-136; s. 101, ch. 72-221; s. 29, ch. 72-404; s. 21, ch. 73-334; s. 26, ch. 75-48.

232.23 Procedures for maintenance and transfer of pupil records.—

(1) Each principal shall maintain a permanent cumulative record for each pupil enrolled in a public school. Such record shall be maintained in the form, and contain all data, prescribed by rules of the State Board of Education. The cumulative record shall be open to inspection only as provided in s. 228.093 or upon order of a court of competent jurisdiction.

(2) The procedure for transferring and maintaining records of pupils who transfer from school to school shall be prescribed by regulations of the state board.

History.—s. 623, ch. 19355, 1939; CGL 1940 Supp. 892(194); s. 79, ch. 65-239; s. 12, ch. 73-338; s. 3, ch. 77-60.

232.245 Pupil progression.—

(1) By July 1, 1977, each district school board shall establish a comprehensive program for pupil progression which shall be based upon an evaluation of each pupil's performance, including how well he masters the minimum performance standards approved by the state board.

(2) The district program for pupil progression shall be based upon local goals and objectives which are compatible with the state's plan for education and which supplement the minimum performance standards approved by the State Board of Education. Particular emphasis, however, shall be placed upon the pupil's mastery of the basic skills, especially reading, before he is promoted from the 3rd, 5th, 8th, and 11th grades. Other pertinent factors considered by the teacher before recommending that a pupil progress from one grade to another shall be prescribed by the district school board in its rules.

History.—s. 15, ch. 76-223; s. 1, ch. 77-174; s. 4, ch. 78-424.
cf.—s. 232.2481 Graduation and promotion requirements for publicly operated schools.

232.246 General requirements for high school graduation.—

(1) Beginning with the 1978-1979 school year, each district school board shall establish standards for graduation from its schools which shall include as a minimum:

(a) Mastery of the minimum performance standards in reading, writing, and mathematics for the 11th grade, established pursuant to ss. 229.565 and 229.57, determined in the manner prescribed after a public hearing and consideration by the state board;

(b) Demonstrated ability to successfully apply basic skills to everyday life situations as measured by a functional literacy examination developed and administered in a manner prescribed after a public hearing and consideration by the state board; and

(c) Completion of a minimum number of academic credits, and all other applicable requirements prescribed by the district school board pursuant to s. 232.245.

(2) The standards required in subsection (1), and any subsequent modifications thereto, shall be printed in the Florida Administrative Code even though said standards are not defined as rules.

(3) The state board shall, after a public hearing and consideration, make provision for appropriate modification of testing instruments and procedures for students with identified handicaps or disabilities in order to ensure that the results of the testing represent the student's achievement, rather than reflecting the student's impaired sensory, manual, speaking, or psychological process skills, except when such skills are the factors the test purports to measure.

(4) A student who meets all requirements prescribed in subsection (1) shall be awarded a standard diploma in a form prescribed by the state board; provided that a school board may, in lieu of the standard diploma, award differentiated diplomas to those exceeding the prescribed minimums. A student who completes the minimum number of credits and other requirements prescribed by paragraph (1)(c), but who is unable to meet the standards of paragraph (1)(a) or paragraph (1)(b), shall be awarded a certificate of completion in a form prescribed by the state board. However, any student who is otherwise entitled to a certificate of completion may, in the alternative, elect to remain in the secondary school on either a full-time or a part-time basis for up to 1 additional year and receive special instruction designed to remedy his identified deficiencies. This special instruction shall be funded from the district's state compensatory education funds.

(5) The public hearing and consideration required in paragraphs (a) and (b) of subsection (1) and in subsection (3) shall not be construed to amend or nullify the requirements of security relating to the contents of examinations or assessment instruments and related materials or data as prescribed in s. 232.248.

History.—s. 1, ch. 78-424; s. 2, ch. 79-20; s. 2, ch. 79-74; s. 4, ch. 79-213.
cf.—s. 232.2481 Graduation and promotion requirements for publicly operated schools.

232.247 Special high school graduation requirements for certain exceptional students.—A student who has been properly classified, in accordance with rules established by the state board, as "educable mentally retarded," "trainable mentally retarded," "deaf," "specific learning disabled," or "emotionally handicapped" shall not be required to meet all requirements of s. 232.246 and shall, upon meeting all applicable requirements prescribed by the school board pursuant to s. 232.245, be awarded a special diploma in a form prescribed by the state board; provided, however, that such special graduation requirements prescribed by the school board shall include minimum graduation requirements as prescribed by the state board. Nothing provided in this section, however, shall be construed to limit or restrict the right of an exceptional student solely to a special diploma. Any such student shall, upon proper request, be afforded the opportunity to fully meet all requirements of s. 232.246 through the standard procedures established therein and thereby qualify for a standard diploma upon graduation.

History.—s. 2, ch. 78-424.
cf.—s. 232.2481 Graduation and promotion requirements for publicly operated schools.

232.248 Confidentiality of assessment instruments.—All examination and assessment instruments, including developmental materials and work papers directly related thereto, which are prepared, prescribed, or administered pursuant to ss. 229.57, 232.245, 232.246, and 232.247 shall be exempt from the provisions of s. 119.07 and from ss. 229.781 and 230.331. Provisions governing access, maintenance, and destruction of such instruments and related materials shall be prescribed by rules of the state board.

History.—s. 3, ch. 78-424.

cf.—s. 232.2481 Graduation and promotion requirements for publicly operated schools.

232.2481 Graduation and promotion requirements for publicly operated schools.—

(1) Each state or local public agency, including the Department of Health and Rehabilitative Services, the Board of Regents, boards of trustees of community colleges, the Department of Corrections, and the Board of Trustees of the Florida School for the Deaf and the Blind, which agency is authorized to operate educational programs for students at any level of grades kindergarten through 12 shall be subject to all applicable requirements of ss. 232.245, 232.246, 232.247, and 232.248. Within the content of these cited statutes each such state or local public agency shall be considered a "district school board."

(2) The Commissioner of Education shall establish procedures to extend the state-administered assessment program to school programs operated by such state or local public agencies in the same manner and to the same extent as such program is administered in each district school system.

History.—s. 7, ch. 79-213.

232.25 Pupils subject to control of school.— Subject to law and rules and regulations of the state board and of the school board, each pupil enrolled in a school shall, during the time he is being transported to or from school at public expense, during the time he is attending school, and during the time he is on the school premises, be under the control and direction of the principal or teacher in charge of the school, and under the immediate control and direction of the teacher or other member of the instructional staff or of the bus driver to whom such responsibility may be assigned by the principal. However, the state board or the district school board may, by rules and regulations, subject each pupil to the control and direction of the principal or teacher in charge of the school during the time he is otherwise en route to or from school or is presumed by law to be attending school.

History.—s. 625, ch. 19355, 1939; CGL 1940 Supp. 892(196); s. 1, ch. 69-300; s. 1, ch. 71-255.

232.26 Authority of principal.—

(1)(a) Subject to law and to the rules of the state board and the district school board, the principal in charge of the school or his designated representative shall develop policies by which he may delegate to any teacher or other member of the instructional staff or to any bus driver transporting students of the school such responsibility for the control and direction of students as he may consider desirable.

(b) The principal or his designated representative may suspend a student only in accordance with the rules of the district school board, and each suspension shall be reported in writing within 24 hours, with the reasons therefor, to the student's parent or guardian and to the superintendent. A good faith effort shall be made by the principal to employ parental assistance or other alternative measures prior to suspension, except in the case of emergency or disruptive conditions which require immediate suspension. No student who is required by law to attend school shall be suspended for unexcused absence or truancy. The principal or his designated representative may suspend any student transported to or from school at the public expense from the privilege of riding on a school bus, giving notice in writing to the student's parent or guardian and to the superintendent within 24 hours. School personnel shall not be held legally responsible for suspensions of students made in good faith.

(c) The principal or his designated representative may recommend to the superintendent the expulsion of any student who has committed a serious breach of conduct, including, but not limited to, willful disobedience, open defiance of authority of a member of his staff, violence against persons or property, or any other act which substantially disrupts the orderly conduct of the school. Any recommendation of expulsion shall include a detailed report by the principal or his designated representative on the alternative measures taken prior to the recommendation of expulsion.

(d) The principal or his designated representative shall include an analysis of suspensions and expulsions in the annual report of school progress.

(2) Any pupil enrolled as a student who is formally charged with a felony by a proper prosecuting attorney for the unlawful possession or sale of any substance controlled under chapter 893 shall, following an administrative hearing upon notice to the parents or parent or guardian of said pupil provided by the principal of the school pursuant to rules promulgated by the State Board of Education, if such suspension is recommended, be suspended from all classes of instruction until the determination of his guilt by a court of competent jurisdiction. If adjudicated guilty of a felony, the pupil shall be automatically expelled. Any pupil subject to discipline or expulsion for unlawful possession or use of any substance controlled under chapter 893 may be entitled to a waiver of the discipline or expulsion if he divulges information leading to the arrest and conviction of the person who supplied such controlled substance to him, or if he voluntarily discloses his unlawful possession of such controlled substance prior to his arrest. Any information divulged which leads to such arrest and conviction shall not be admissible in evidence in a subsequent criminal trial against the pupil divulging such information.

(3) Any pupil subject to discipline or expulsion for unlawful possession or use of any substance controlled under chapter 893 may receive a waiver of the discipline or expulsion if the pupil commits himself, or is referred by the court in lieu of sentence, to a state-licensed drug abuse program and successfully completes the program.

History.—s. 626, ch. 19355, 1939; CGL 1940 Supp. 892(197); s. 15, ch. 63-376; s. 1, ch. 69-300; s. 1, ch. 72-381; s. 1, ch. 73-162; s. 16, ch. 73-331; s. 77, ch. 73-333; s. 4, ch. 76-236; s. 68, ch. 77-104.

232.27 Authority of teacher.—Subject to law and to the rules of the district school board, each teacher or other member of the staff of any school shall have such authority for the control and discipline of students as may be assigned to him by the principal or his designated representative and shall keep good order in the classroom and in other places in which he is assigned to be in charge of students. If a teacher feels that corporal punishment is necessary, at least the following procedures shall be followed:

(1) The use of corporal punishment shall be approved in principle by the principal before it is used, but approval is not necessary for each specific instance in which it is used. The principal shall prepare guidelines for administering such punishment which identify the types of punishable offenses, the conditions under which the punishment shall be administered, and the specific personnel on the school staff authorized to administer the punishment.

(2) A teacher or principal may administer corporal punishment only in the presence of another adult who is informed beforehand, and in the student's presence, of the reason for the punishment.

(3) A teacher or principal who has administered punishment shall, upon request, provide the pupil's parent or guardian with a written explanation of the reason for the punishment and the name of the other adult who was present.

History.—s. 627, ch. 19355, 1939; CGL 1940 Supp. 892(198); s. 5, ch. 76-236; s. 1, ch. 77-174; s. 1, ch. 79-282.

232.275 Liability of teacher or principal.—Except in the case of excessive force or cruel and unusual punishment, a teacher or other member of the instructional staff, a principal or his designated representative, or a bus driver shall not be civilly or criminally liable for any action carried out in conformity with the state board and district school board rules regarding the control, discipline, suspension, and expulsion of students.

History.—s. 6, ch. 76-236.

232.28 Authority of school bus drivers.—

(1) The principal shall delegate to the school bus driver such authority as may be necessary for the control of pupils being transported to and from school, or school functions, at public expense.

(2) Any pupil who persists in disorderly conduct on a school bus shall be reported to the principal by the driver of the bus and may be suspended by the principal of the school he attends from being transported to and from school, and school functions, at public expense.

(3) The school bus driver shall preserve order and good behavior on the part of all pupils being transported but he shall not suspend the transportation of or give physical punishment to any pupil, or put any pupil off the bus at other than the regular stop for that pupil, except by order of the parent or the principal in charge of the school the pupil attends; provided, that should an emergency develop due to the conduct of pupils on the bus, the bus driver may take such steps as are reasonably necessary to protect the pupils on his bus.

History.—s. 628, ch. 19355, 1939; CGL 1940 Supp. 892(199); s. 80, ch. 65-239.

232.36 Sanitation of schools; state regulations.—The State Board of Education and the Department of Health and Rehabilitative Services shall jointly adopt and promulgate all needful rules and regulations having to do with sanitation of school buildings, grounds, shops, cafeterias, toilets, school buses, laboratories, rest rooms, first aid rooms, and all rooms or places in which pupils congregate in pursuit of the school duties or activities and the school board shall see that such rules and regulations are enforced. Additional rules and regulations not in conflict with state rules and regulations may be adopted by the school board and enforced through the superintendent.

History.—s. 636, ch. 19355, 1939; CGL 1940 Supp. 892(207); s. 82, ch. 65-239; ss. 19, 35, ch. 69-106; s. 1, ch. 69-300; s. 41, ch. 77-147.

232.39 Secret societies prohibited in public schools.—

(1) It is unlawful for any person, group, or organization to organize or establish a fraternity, sorority, or other secret society in the state whose membership shall be comprised in whole or in part of pupils enrolled in any public school, whether elementary or secondary, or to go upon any public school premises for the purpose of soliciting any pupils to join such an organization.

(2) A secret society shall be interpreted to be a fraternity, sorority, or other organization whose active membership is comprised wholly or partly of pupils enrolled in the public schools of the state and which perpetuates itself wholly or partly by taking in additional members from the pupils enrolled in public schools on the basis of the decision of its membership rather than on the right of any pupil who is qualified by the rules of the school to be a member of and take part in any class or group exercise designated and classified according to sex, subjects included in the course of study, or program of school activities fostered and promoted by the school board and superintendent or by principals of the schools.

(3) This section shall not be construed to prevent the establishment of an organization fostered and promoted by the school authorities, or which is first approved and accepted by the school authorities, and whose membership is selected on the basis of good character, good scholarship, leadership ability and achievement. Full information regarding the charter, principles, purposes, and conduct of any such accepted organization shall always be available to all students and instructional personnel of any school where same may be organized.

(4) This section shall not be construed to relate to any junior organization or society sponsored by the Knights of Pythias, Oddfellows, Moose, Woodmen of the World, Knights of Columbus, Elks, Masons, B'nai B'rith, Young Men's and Young Women's Hebrew Associations, Young Men's and Young Women's Christian Associations, Kiwanis, Rotary, Optimist, Civitan, Exchange Clubs, Florida Federation of Garden Clubs, and Florida Federation of Women's Clubs.

History.—s. 1, ch. 21777, 1943; s. 1, ch. 24072, 1947; s. 1, ch. 26987, 1951; s. 1, ch. 28287, 1953; s. 1, ch. 63-63; s. 1, ch. 65-180; s. 1, ch. 68-10; s. 1, ch. 69-300; s. 104, ch. 72-221.

Note.—Former s. 242.46.

232.40 Pupils prohibited from belonging to secret societies.—It shall be unlawful for any pupil enrolled in any public school whether elementary or secondary of this state to be a member of, to join or to become a member of or to pledge himself to become a member of any secret fraternity, sorority or group wholly or partly formed from the membership of pupils attending such public schools or to take part in the organization or formation of any such fraternity, sorority or secret society; provided that this shall not be construed to prevent any pupil from belonging to any organization fostered and promoted by the school authorities; or which is first approved and accepted by the school authorities and whose membership is selected on the basis of good character, good scholarship, leadership ability and achievement.

History.—s. 2, ch. 21777, 1943; s. 2, ch. 24072, 1947.
Note.—Former s. 242.47.

232.41 School boards may prescribe regulations.—The school board of each district shall have full power and authority to enforce the provisions for carrying out the provisions of this law and to prescribe and enforce such rules and regulations as are necessary for carrying out the provisions of this law. School boards are hereby required to enforce the provisions of this law by suspending or, if necessary, expelling any pupil in any elementary or secondary school who refuses or neglects to observe these provisions.

History.—s. 3, ch. 21777, 1943; s. 1, ch. 69-300.
Note.—Former s. 242.48.

232.43 Insuring school students engaged in athletic activities against injury.—Any district school board, school athletic association, or school of the state may formulate, conduct, and purchase a plan or method of insuring, or may self-insure, school students against injury sustained by reason of such students engaging and participating in the athletic activities conducted or sponsored by such district school board, association, or school in which such students are enrolled. A district school board, school athletic association, or school of the state may add a surcharge to the fee charged for admission to athletic events as a means of producing revenue to purchase such insurance or to provide self-insurance. Any district school board may pay for all or part of such plan or method of insurance or self-insurance from available school board funds.

History.—s. 1, ch. 20727, 1941; s. 3, ch. 59-339; s. 1, ch. 76-86; s. 1, ch. 79-94.
Note.—Former s. 242.45.

232.44 Audit of records of nonprofit corporations and associations handling interscholastic activities.—

(1) The Auditor General shall, at least every 6 months, audit the books and records of any nonprofit association or corporation which operates for the purpose of supervising and controlling interscholastic activities of the public high schools in the state and whose membership is composed of duly certified representatives of public high schools in the state, and whose rules and regulations are established by members thereof.

(2) Any such nonprofit association or corporation shall keep adequate and complete records of all moneys received by it, including the source and amount, and all moneys spent by it, including salaries, fees, expenses, travel allowances, and all other items of expense. All records of any such organization shall be open for inspection by the Auditor General or his employees.

History.—ss. 1, 2, ch. 59-474; s. 8, ch. 69-82.

232.45 Eye-protective devices required in certain vocational and chemical laboratory courses.—

(1) Eye-protective devices shall be worn by students, teachers and visitors in courses including, but not limited to, vocational or industrial arts shops or laboratories and chemistry, physics or chemical-physical laboratories, at any time at which the individual is engaged in or observing an activity or the use of hazardous substances likely to cause injury to the eyes. Activity or the use of hazardous substances likely to cause injury to the eye includes:

(a) Working with hot molten metals;

(b) Milling, sawing, turning, shaping, cutting, grinding, or stamping of any solid material using power equipment;

(c) Heat treatment; tempering or kiln firing of any metal or other materials;

(d) Gas or electric arc welding;

(e) Working with caustic or explosive materials;

(f) Working with hot liquids or solids, including chemicals which are flammable, caustic, toxic or irritating.

(2) The school boards of the several districts may furnish plano safety glasses or devices for students and teachers, and shall furnish such equipment for all visitors to such classrooms or laboratories, or may purchase such plano safety glasses or devices in large quantities and sell them at cost to students and teachers, but shall not purchase, furnish or dispense prescription glasses or lenses.

(3) To implement and carry out the purpose of this section the school boards of the several districts are hereby given authority to promulgate rules and regulations to accomplish the purpose of the law.

History.—ss. 1-4, ch. 65-526; s. 1, ch. 67-126; s. 5, ch. 67-181; s. 1, ch. 69-300; s. 57, ch. 69-353.

CHAPTER 233

COURSES OF STUDY AND INSTRUCTIONAL AIDS

233.055 Remedial reading education plan.—

(1) SHORT TITLE.—This section shall be known and may be cited as "The Florida Remedial Reading Education Act of 1971."

(2) COMMISSIONER'S PLANNING BUDGET.—The Commissioner of Education shall develop and transmit at least 30 days prior to the 1972 regular session of the Legislature, to members of the State Board of Education, the President of the Senate, the Speaker of the House of Representatives, and the chairmen of the Senate and House committees on education a detailed plan for implementing a remedial reading program. The plan shall include provisions for maximum participation by the school districts and the Department of Health and Rehabilitative Services in the development of remedial reading programs. The plan shall be in detail for the 1972-1973 fiscal year, and the funds for projects for 1972-1973 shall be included in the legislative budget of the state board submitted to the Governor as chief budget officer of the state for the 1972-1973 fiscal year.

(3) REMEDIAL READING PROGRAM.—

(a) In the event that funds for projects are included in the 1972-1973 budgets, the State Board of Education shall adopt policies and regulations by which each school board and the Department of Health and Rehabilitative Services may apply to the Department of Education for funds to be used in a remedial reading program. The application shall contain a comprehensive plan for the use of such funds, which shall:

1. Include pretesting and post-testing of reading level and ability;

2. Describe what programs, teaching methods, or techniques will be used, such as programmed tutoring, individualized instruction, or any other method of demonstrated success;

3. Provide for control groups at each level to ena-

ble a measurement of the effectiveness of the remedial programs; and

4. Demonstrate that the school board has fully utilized all other sources of revenue and the assistance of all volunteer aid offered by individuals and public and private organizations and has effectively coordinated same.

(b) Priority funding will be given to those programs which:

1. Offer the greatest likelihood of remedying the difference between current reading level and chronological age average attainment;

2. Serve the largest number of pupils; and

3. Utilize to the maximum other sources of funds.

(4) TECHNICAL ASSISTANCE PROVIDED.—Upon the request of any school board, the department shall provide such technical assistance to the school board as is necessary to develop and submit a plan for a remedial reading program. The department may use its own staff or such consultants as may be necessary to accomplish this purpose.

(5) COMMISSIONER'S REPORT.—The Commissioner of Education shall transmit to members of the State Board of Education, the President of the Senate, the Speaker of the House of Representatives, and the chairmen of the House and Senate committees on public school education an appraisal of the funded programs as to effectiveness, efficiency, and utilization of resources. This appraisal shall include an evaluation of current reading ability in the public schools and the change made in status during the past year.

History.—ss. 1-5, ch. 71-273; s. 42, ch. 77-147.

233.056 Instructional programs for visually handicapped and hearing-impaired students.—

(1) The Division of Public Schools of the Department of Education is authorized to establish a coordinating unit and instructional materials center for visually handicapped and hearing-impaired children and youth to provide staff and resources for the coordination, cataloging, standardizing, producing, procuring, storing, and distributing of braille, large print, tangible apparatus, captioned films and video tapes, and other specialized educational materials needed by these students and other exceptional students. The coordinating unit shall have as its major purpose the improvement of instructional programs for visually handicapped and hearing-impaired students and may, as a second priority, extend appropriate services to other exceptional students, consistent with provisions and criteria established, to the extent that resources are available.

(2) The unit shall be operated either directly by the Division of Public Schools or through a contractual agreement with a local education agency, under rules adopted by the State Board of Education.

History.—ss. 1, 2, ch. 72-319; s. 1, ch. 77-36; s. 6, ch. 78-416.

233.057 Reading programs.—

(1) LEGISLATIVE INTENT.—The Legislature recognizes that reading is one of the communication skills which facilitates learning in all areas of the curriculum. It further recognizes the need for coordination of reading programs in public schools. In order to make this possible, the Legislature intends to authorize the employment of reading resource specialists.

(2) READING RESOURCE SPECIALISTS.—A person is eligible to serve as a reading resource specialist if:

(a) He has met the specialization requirement for certification in reading as provided by rule of the State Board of Education;

(b) He has had a minimum of 3 years' teaching experience; and

(c) In the judgment of the district school board, he possesses the qualifications and necessary experience to serve in such capacity.

Nothing herein shall prevent the appointment of such persons to serve in a dual capacity.

(3) DUTIES AND RESPONSIBILITIES.—The duties and responsibilities of reading resource specialists shall include, but not be limited to:

(a) Contributing the expertise needed to prepare the school's total reading program.

(b) Working with the school's curriculum person in planning and implementing the basic skills remediation program as determined by the Florida State Assessment Accountability Act of 1976.

(c) Providing individual diagnostic testing to enable better prescriptive approaches for classroom instruction.

(d) Assisting the school staff in organizing and managing reading skills as an integral part of all subject areas.

(e) Providing inservice training for school staff in the area of reading.

(f) Participating in a team teaching effort with classroom teachers.

(g) Interpreting the reading program for both parents and the community.

History.—ss. 34-37, ch. 73-338; s. 3, ch. 77-320; s. 14, ch. 79-288.

233.061 Required instruction.—Members of the instructional staff of the public schools, subject to the rules and regulations of the state board and of the school board, shall teach efficiently and faithfully, using the books and materials required, following the prescribed courses of study, and employing approved methods of instruction the following: The essentials of the United States Constitution, flag education, including proper flag display and flag salute, the elements of civil government, the elementary principles of agriculture, the true effects of all alcoholic and intoxicating liquors and beverages and narcotics upon the human body and mind, kindness to animals, the history of the state, conservation of natural resources, and such additional materials, subjects, courses, or fields in such grades as may be prescribed by law or by regulations of the state board and the school board in fulfilling the requirements of law; provided, that state and district school officials shall furnish and put into execution a system and method of teaching the true effects of alcohol and narcotics on the human body and mind, provide the necessary textbooks, literature, equipment, and directions, see that such subjects are efficiently taught by means of pictures, charts, oral instruction, and lectures and other approved methods, and require such reports as are deemed necessary to show the work which is being covered and the results be-

ing accomplished, and provided further, that any child whose parent shall present to the school principal a signed statement that the teaching of disease, its symptoms, development, and treatment, and the viewing of pictures or motion pictures of such subjects conflict with the religious teachings of their church, shall be exempt from such instruction, and no child so exempt shall be penalized by reason of such exemption.

History.—s. 85, ch. 65-239; s. 1, ch. 69-300.

233.0615 Law education program.—

(1) There is hereby created a law education program, which program shall be administered by the Commissioner of Education in cooperation with The Florida Bar and other appropriate organizations and agencies pursuant to rules adopted by the State Board of Education. Such program may be implemented and conducted in any public school pursuant to a proposal developed and approved pursuant to subsection (2).

(2) Each district school board, or each principal through the district school board, may submit to the commissioner for approval a proposal for implementing and conducting the law education program. Priority shall be given to proposals for implementing and conducting the program in the elementary grades. Each proposal shall be developed with the assistance of the district advisory committees, school advisory committees, and those agencies and organizations which are concerned with law education or with the criminal and juvenile justice systems of the state and shall include:

(a) Provisions for instruction in the rights and duties of citizens under the law and under the State and Federal Constitutions, with particular emphasis on the consequences to the individual and society of disobedience of the law;

(b) Provisions for in-service training programs in law education for teachers, administrators, and other personnel;

(c) Provisions for enlisting the involvement of governmental agencies and private organizations in order to ensure the use of all available resources in the implementation of the program;

(d) Information concerning the number of teachers and students to be involved, the estimated cost of the project, and the number of years for which it is to be funded;

(e) Provisions for evaluation of the program, and for its integration into the general curricula and financial program of the school district at the end of the funded term of years; and

(f) Such other information and provisions as shall be required by the commissioner.

(3) For those programs approved, the commissioner shall authorize distribution of funds from funds available to the Department of Education for law education programs.

History.—s. 12, ch. 78-416.

233.062 Permitting courses in Bible study and religion.—The school board may install in the public schools in the district a secular program of education including but not limited to an objective study of the Bible and of religion.

History.—s. 1, ch. 63-532; s. 22, ch. 65-239; s. 1, ch. 69-300.
Note.—Former s. 230.221.

233.063 Instruction in operation of motor vehicles.—

(1) Beginning with the 1975-1976 school year, a course of study and instruction in the safe and lawful operation of a motor vehicle shall be made available by the district school board to students in the secondary schools in the state. For purpose of this section, the term "motor vehicle" shall have the same meaning as in paragraph 320.01(1)(a), excluding motorcycles. The course shall not be made a part of, or a substitute for, any of the minimum requirements for graduation.

(2) In order to make such a course available to any secondary school student, the district school board may use any one of the following procedures or any combination thereof:

(a) The board may utilize instructional personnel employed by the board.

(b) The board may contract with a commercial driving school licensed under the provisions of chapter 488.

(c) The board may contract with an instructor certified under the provisions of chapter 488.

(3)(a) School districts shall earn funds on full-time equivalent students at the appropriate basic program cost factor regardless of the method by which such courses are offered.

(b) For the purpose of financing the Driver Education Program in the secondary schools, there shall be levied an additional 50 cents per year to the driver's license fee required by s. 322.21. The additional fee shall be promptly remitted to the Department of Highway Safety and Motor Vehicles, and the department shall transmit the fee to the State Treasurer to be deposited in the General Revenue Fund.

(c) All moneys appropriated annually for driver education shall be allocated by the Department of Education to the districts solely for the purpose of financing a program of instruction in safe driving of motor vehicles through the public secondary schools throughout the state. However, the Department of Education may utilize 15 percent of the appropriated funds for the construction of driver education facilities in school districts.

(d) All moneys appropriated for driver education shall be administered under the direction of the Department of Education and shall be made available to the respective school boards upon certification to the State Comptroller by the department, based upon facts reported to it by the superintendents of the respective districts. The distribution of the funds to the respective school boards shall be in a uniform manner, reimbursing them for the expense of their driver education program to the extent that the appropriation will permit, based on the principles defined in chapter 236 so that opportunity for driver education shall be on an equal basis in all the districts.

(4) The district school board shall prescribe standards for the course required by this act and for instructional personnel directly employed by the board. Any certified instructor or licensed commer-

cial driving school shall be deemed sufficiently qualified and shall not be required to meet any standards in lieu of or in addition to those prescribed under chapter 488.

History.—ss. 1-8, ch. 29738, 1955; s. 1, ch. 57-276; s. 1, ch. 59-239; s. 1, ch. 61-79; s. 2, ch. 61-119; s. 24, ch. 65-239; ss. 15, 24, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 73-305; s. 1, ch. 74-339; s. 30, ch. 75-284.

Note.—Former s. 230.23(4)(k).

233.064 Americanism vs. Communism; required high school course.—

(1) The Legislature of the state hereby finds it to be a fact that

(a) The political ideology commonly known and referred to as Communism is in conflict with and contrary to the principles of Constitutional Government of the United States as epitomized in its National Constitution,

(b) The successful exploitation and manipulation of youth and student groups throughout the world today are a major challenge which the free world forces must meet and defeat, and

(c) The best method of meeting this challenge is to have the youth of the state and nation thoroughly and completely informed as to the evils, dangers and fallacies of Communism by giving them a thorough understanding of the entire communist movement, including its history, doctrines, objectives and techniques.

(2) The public high schools shall each teach a complete course of not less than 30 hours, to all students enrolled in said public high schools entitled "Americanism versus Communism."

(3) The course shall provide adequate instruction in the history, doctrines, objectives and techniques of Communism and shall be for the primary purpose of instilling in the minds of the students a greater appreciation of democratic processes, freedom under law, and the will to preserve that freedom.

(4) The course shall be one of orientation in comparative governments and shall emphasize the free-enterprise-competitive economy of the United States as the one which produces higher wages, higher standards of living, greater personal freedom and liberty than any other system of economics on earth.

(5) The course shall lay particular emphasis upon the dangers of Communism, the ways to fight Communism, the evils of Communism, the fallacies of Communism, and the false doctrines of Communism.

(6) The state textbook council and the Department of Education shall take such action as may be necessary and appropriate to prescribe suitable textbook and instructional material as provided by state law, using as one of their guides the official reports of the House committee on Un-American Activities and the Senate Internal Security Subcommittee of the United States Congress.

(7) No teacher or textual material assigned to this course shall present Communism as preferable to the system of constitutional government and the free-enterprise-competitive economy indigenous to the United States.

History.—ss. 1-7, 9, ch. 61-77; s. 25, ch. 65-239; ss. 15, 35, ch. 69-106.

Note.—Former s. 230.23 (4) (l).

233.0641 Free enterprise and consumer education program.—

(1) This section may be known and cited as the "Free Enterprise and Consumer Education Act."

(2) The public schools shall each conduct a free enterprise and consumer education program in which each student shall participate.

(3) Acknowledging that the free enterprise or competitive economic system exists as the prevailing economic system in the United States, the program shall provide detailed instruction in the day-to-day consumer activities of our society, which instruction may include, but not be limited to, advertising, appliances, banking, budgeting, credit, governmental agencies, guarantees and warranties, home and apartment rental and ownership, insurance, law, medicine, motor vehicles, professional services, savings, securities, and taxes. The program shall provide a full explanation of the factors governing the free enterprise system and the forces influencing production, distribution, and consumption of goods and services. It shall provide an orientation in other economic systems.

(4) In developing the consumer education program, the Department of Education shall give special emphasis to:

(a) Coordinating the efforts of the various disciplines within the educational system and the activities of the divisions of the Department of Education which are concerned with consumer education.

(b) Assembling, developing, and distributing instructional materials for use in consumer education.

(c) Developing programs for inservice and preservice teacher training in consumer education.

(d) Coordinating and assisting the efforts of private organizations and other governmental agencies which are concerned with consumer education.

(5) The Commissioner of Education shall, at least 30 days prior to the 1975 session of the Legislature, transmit to members of the State Board of Education, the President of the Senate, the Speaker of the House of Representatives, and the chairmen of the Senate and House Committees on Education a statement of the overall free enterprise and consumer program, together with a recommended method of evaluating student understanding of the program. Each year thereafter the commissioner shall transmit to the above-named persons an appraisal of the overall consumer education program as to the effectiveness as shown by performance-based tests, efficiency, and utilization of resources, including therewith a statement of the overall consumer education program for the coming fiscal year and any other recommendations deemed by the commissioner to be appropriate.

History.—ss. 1, 2, ch. 74-173; s. 1, ch. 75-282.

233.0645 Voting instruction; use of county voting machines.—In order to orient students to the electoral process and to encourage participation in future public elections by students upon their attaining the age of majority, the school board of any district is authorized to provide a program of student instruction in the use of voting machines. The board

of county commissioners of any county is authorized to make its voting machines available to the school board for use in such instruction and in student and school elections.

History.—s. 11, ch. 78-416.

233.065 Patriotic programs, rules and regulations.—The school board of any district is hereby authorized to adopt rules and regulations pertaining to and requiring to be used in all of the schools of the district any program of a patriotic nature to encourage greater respect for the Government of the United States, its national anthem and flag, subject always to other existing pertinent laws of the United States or of the state; provided, that when the national anthem is played, students and all civilians shall always stand at attention, men removing the headdress; and provided, further, that the pledge of allegiance to the flag, "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all," be rendered by standing with the right hand over the heart. However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress, as provided by s. 7 of United States Public Law No. 623, approved June 22, 1942, as amended by United States Public Law No. 829, approved December 22, 1942.

History.—s. 1, ch. 22015, 1943; s. 47, ch. 29764, 1955; s. 34, ch. 65-239; s. 1, ch. 69-300.

Note.—Former s. 230.45.

233.066 Counseling services for elementary and secondary school pupils.—

(1) The Department of Education shall develop guidelines for plans to provide adequate counseling services to students in the several school districts. Such guidelines shall provide alternative methods of providing counseling services outside traditional graduate school certification requirements. Such guidelines shall be sent to the districts not later than September 30, 1970.

(2) Each school district shall submit a plan for providing the required level of counseling services under regulations to be adopted by the Board of Education. Plans shall provide appropriate phasing-in of new counseling services to meet the respective required student-counselor ratios for elementary and secondary students. The Department of Education shall review plans submitted by the district and may disapprove unsatisfactory plans. If the department disapproves any such plan, it shall set forth its reasons and also the conditions which must be met in order to secure approval.

History.—ss. 1, 2, ch. 70-174; s. 1, ch. 70-439.

233.067 Comprehensive health education.—

(1) SHORT TITLE.—This section shall be known and may be cited as the "Comprehensive Health Education Act of 1973."

(2) PURPOSE.—The purpose of this section is to foster the development and dissemination of educational activities and materials which will assist Florida students, teachers, and administrators in the perception, appreciation, and understanding of health principles and problems.

(3) DEFINITIONS.—As used in this section, the term "comprehensive health education" shall include, but not be limited to, such concerns as mental and emotional health, venereal diseases and other communicable diseases, drug abuse (including alcohol and tobacco), environmental health, safety and emergency care, nutrition and food management, personal health and hygiene, dental health, hereditary diseases, developmental disabilities, growth and development, and consumer health and careers.

(4) ADMINISTRATION OF THE COMPREHENSIVE HEALTH EDUCATION PROGRAM.—

(a) There is created a comprehensive health education program for children and youths in kindergarten and grades 1 through 12. Responsibility for the administration of this section shall rest with the Department of Education, in cooperation with, and with the advice of, the Department of Health and Rehabilitative Services, and the administration of the program shall be pursuant to rules and regulations adopted by the State Board of Education. In administering this section, the department shall take into consideration the advice of the school health medical advisory committee to the department, the state university and community college systems, school food service personnel, and any official and voluntary health agencies as may be deemed appropriate. The department is authorized to reimburse the members of the committee for travel and per diem expense, as provided by law, when performing advisory services requested by the department.

(b) The comprehensive health education program shall include the following:

1. Implementation of inservice education programs for teachers, administrators, and other persons. Inservice teacher education materials and student materials which are based upon individual performance and designed for use with a minimum of supervision shall be developed and made available to all school districts.

2. Instruction in nutrition education as a specific area of health education instruction. Nutrition education shall include, but not be limited to, sound nutritional practices, wise food selection, analysis of advertising claims about food, proper food preparation, and food storage procedures. The purpose of such nutrition education programs shall be to educate students in the overall area of nutrition education and significantly reduce health problems associated with poor or improper nutrition practices.

3. Reorientation and utilization of existing regional drug education resource centers for use as health education resource centers to assist the Department of Education in coordinating health education activities in the regions.

4. Design and development of programs for the selection and training of health education instructors from existing teaching staff and the orientation to teaching roles for persons employed in appropriate health fields and community volunteers.

5. Development of training programs to allow the use of school food service personnel as resource persons.

(5) PROGRAM DEVELOPMENT.—Pursuant to policies and regulations to be adopted by the Com-

missioner of Education, each district school board, and each school principal through the district school board, may submit to the commissioner a proposed program designed to effectuate an exemplary comprehensive health education project in the district or school. The proposal shall include a statement of the nature of the comprehensive health education program proposed, a provision for a sequential program of instruction in comprehensive health education including nutrition education at the four progressional levels k-3, 4-6, 7-9, and 10-12, the number of teachers and students to be involved, a provision stating how the involvement of governmental agencies and private organizations will be enlisted in order to ensure the use of all available resources in the implementation of the program, an estimate of the cost, a plan for evaluation of the project, the number of years for which the project is to be funded, a plan for integration of the project into the general curricular and financial program of the district at the end of the funded term of years, and such other information as the commissioner shall by regulation require.

(6) TECHNICAL ASSISTANCE.—Upon request of a district school board or any school principal, the department shall provide such technical assistance as is necessary to develop and submit a proposed program for comprehensive health education.

(7) PROGRAM REVIEW; FUNDING.—The commissioner shall review and approve, disapprove, or resubmit for modification all proposed comprehensive health education programs submitted. For those programs approved, the commissioner shall authorize distribution of funds equal to the cost of the program from funds appropriated to the Department of Education for comprehensive health education purposes.

(8) PROGRAM EVALUATION AND MONITORING.—The department shall monitor and evaluate the programs or projects funded under subsection (7) and evaluate the overall comprehensive health education program. Such evaluations shall include, but not be limited to, components for determining program or project effectiveness, efficiency, and use of resources. A report on the overall evaluation as well as recommendations for funding and any other recommendations deemed to be appropriate for inclusion by the commissioner shall be submitted no later than March 1 of each year to the President of the Senate and the Speaker of the House of Representatives.

(9) NONPUBLIC PERSONNEL PERMITTED TO PARTICIPATE.—Teachers or school administrators employed by a nonpublic school may participate as students in inservice teacher education institutes or curriculum development programs conducted pursuant to this section, provided such participants assume the pro rata share of the cost or charges for tuition.

(10) STUDENT EXEMPTION.—Any child whose parent presents to the school principal a signed statement that the teaching of disease and its symptoms, development and treatment and the use of instructional aids and materials of such subjects, conflicts with his religious beliefs shall be exempt from such instruction. No child so exempt shall be penalized by reason of such exemption.

(11) SEX EDUCATION NOT REQUIRED.—This section shall not be construed to require the teaching of sex education as a specific area of instruction or as part of health education instruction required by the State Board of Education.

(12) USE OF FUNDS.—In implementing this section, every effort shall be made to combine funds appropriated for this purpose with funds available from all other sources, federal, state, local, or private, in order to achieve maximum benefits for improving health education.

History.—ss. 1-10, ch. 70-202; s. 1, ch. 70-439; s. 17, ch. 73-338; s. 10, ch. 77-320; s. 1, ch. 78-432.

233.0671 Courses of study in care of nursing home patients.—

(1) It is the intent of the Legislature that educational institutions in Florida shall develop and provide adequate courses of study in the health professions to enable practitioners to become skilled in the care and treatment of nursing home patients.

(2) To accomplish this purpose, the Department of Education, in cooperation with the Department of Health and Rehabilitative Services, is directed to develop educational programs in health occupations that are adequate and appropriate for the various services to be performed in the care and treatment of nursing home patients and to assure that such programs are available to provide an adequate supply of trained personnel for nursing homes in all areas of the state.

(3) The universities and the boards of trustees of community colleges are authorized to enter into contracts with nursing home facilities rated "A" under the provisions of subsection 400.23(3), for the purpose of providing practical education for students in health service careers related to nursing home care.

History.—s. 11, ch. 76-201; s. 112, ch. 79-222.

233.068 Job-related vocational instruction.—

(1) The Department of Education shall develop and implement regulations providing for practical courses of direct job-related instruction in each school district throughout the state. Said regulations shall be effective not later than September 1, 1971, and shall place primary responsibility for the development of such instructional courses for students under 19 years of age with the district school boards, and consulting responsibility with the Division of Vocational Education. The provisions of this section are not intended to contradict or supersede existing agreements between school boards, area centers, and community colleges regarding responsibility for development of such courses for such students, or to authorize duplication of courses now in existence which meet the requirements of this section.

(2) Each district's program must provide, as a minimum, courses in at least five vocational education areas. Such instruction shall be available to all persons in the district regardless of previous academic attainment. Further, such instruction shall be available throughout the year, so that students are not required to wait for the beginning of a new academic period prior to starting their training. Each district school board and local welfare board shall cooperate to locate, identify, and attempt to recruit

all unemployed or underemployed persons into such courses.

(3) Certification shall be granted instructors for such courses upon a showing by the district board or community college that suitable instructors with the usual academic background are not available. Before such certification is granted, account shall be taken of the ability of the proposed instructor to relate to and communicate with the persons to whom the instruction is to be given. No instructor shall be paid less than any other member of the instructional personnel who has equivalent qualifications in accordance with certification rules adopted by the State Board of Education and who is providing similar services. Salary supplements shall be allowed upon a showing that such supplements are necessary to obtain suitable instructional personnel.

(4) Practical courses of direct job-related instruction shall be eligible for vocational education instruction units. It is intended that the minimum support from the district or community college for vocational education be at least in the amount of state or federal funds that the vocational education programs earn and that the district or community college so indicate the expenditure of earned funds in an identifiable manner, in accordance with regulations prescribed by the State Board of Education.

(5) Pursuant to regulations adopted by the Board of Education one or more school districts or one or more community college districts may jointly implement the requirements of this section.

History.—ss. 1-5, ch. 70-211; s. 1, ch. 70-439; s. 70, ch. 72-221; s. 6, ch. 78-423.

233.0681 Occupational specialists; training, etc.—

(1) Occupational specialists may be used in place of counselors. Such persons shall be chosen on the basis of maturity, experience, and the ability to relate to young people. Further, such persons may be used, under supervision by a certified counselor, to handle various specialized assignments, either individually or as part of a counseling team. Such specialized assignments may include the identification and intensive counseling of potential or actual dropouts and their parents, as well as the counseling of students, teachers, and administrators concerning available job and career opportunities. Certification shall be granted to occupational specialists in accordance with rules adopted by the State Board of Education. No full-time occupational specialist shall be paid less than any other member of the instructional personnel who has equivalent qualifications in accordance with certification rules adopted by the State Board of Education and who is providing similar services. Salary supplements shall be allowed upon a showing that such supplements are necessary in order to obtain suitable personnel.

(2) Pursuant to policies and regulations to be adopted by the Board of Education:

(a) Each school board may submit to the Department of Education a proposed program designed to identify and train occupational specialists, including therewith a statement of the number of individuals to be included in the program, an itemized statement of the estimated total cost of the program, and a copy of a school board resolution indicating its intention to provide at least 25 percent of the total cost of the program if approved by the department;

(b) Plans for providing occupational specialists may include, but are not limited to:

1. An internship program established by one or more district school boards in cooperation with an academic institution; and

2. A plan developed by one or more districts in cooperation with a college of education or the State Department of Education for identifying, recruiting, and training occupational specialists.

(c) Upon the request of any school board, the department shall provide such technical assistance to the school board as is necessary to develop and submit a proposed program. The department may use its own staff or such consultants as may be necessary to accomplish this purpose; and

(d) The department shall review and approve, disapprove, or resubmit to the school board for modification all proposed programs submitted. For those programs approved, the department shall authorize distribution of funds in an amount not to exceed 75 percent of the total cost of the proposed program.

History.—ss. 1, 2, ch. 70-317; s. 1, ch. 70-439; s. 1, ch. 71-221; s. 10, ch. 77-320; s. 7, ch. 78-423.

233.0682 State board regulations.—The State Board of Education shall adopt regulations setting forth minimum requirements for a comprehensive vocational education program, and shall adopt procedures for determining the extent to which such minimum requirements are being met. Such requirements shall include examination of the employment performance of program participants as well as standards of educational output, with particular emphasis on job placement and satisfactory performance in employment.

History.—s. 1, ch. 70-175.

233.069 Vocational improvement fund; use beginning in 1971-1972.—

(1) The fund established under this section shall be known and may be cited as "The Vocational Improvement Fund."

(2) Beginning with the 1971-1972 school year, priority projects in the use of funds appropriated under this section shall be the development of vocational education programs for the disadvantaged, introductory vocational curricula for junior high and middle schools, training and inservice projects for improving vocational counseling, the career associate program, the development of information systems, and job placement services for graduates of vocational education programs, training, in-service and recruiting projects for vocational teachers and support personnel and projects, such as local education authorities, designed to restructure vocational education and insure greater community involvement.

(3) The Board of Education shall establish rules and regulations under which project applications shall be submitted and funds awarded. District school boards shall be eligible to apply for such funds, and priority shall be given to projects in which all community resources, such as community colleges, universities, private industry and labor organizations, civic groups and chambers of commerce are involved, not only in the planning, but also in the

recruiting of students and the actual conduct of the courses, as well as job placement for graduates. Further, the rules and regulations shall be so drafted as to encourage projects having maximum cooperation between school boards and other local agencies operating parallel or overlapping programs.

(4) Each year, the Department of Education shall submit as a part of its legislative budget request a listing of projects which are eligible for vocational improvement fund money with an estimated amount of funds needed to support these projects.

History.—ss. 1, 2, ch. 70-252; s. 1, ch. 70-439; s. 70, ch. 72-221; s. 10, ch. 77-320.

[1]233.07 State instructional materials councils; appointment; term; compensation.—

(1) Each school year, not later than April 15, the State Board of Education shall, upon nomination by the Commissioner of Education pursuant to s. 20.15(10), appoint state instructional materials councils composed of persons actively engaged in teaching or in the supervision of teaching in the public elementary or secondary schools and representing the major fields and levels in which instructional materials are used in the public schools of the state and, in addition, lay citizens not professionally connected with education. There shall be councils for the recommendation of instructional materials for the elementary and secondary grades as may be necessary and recommended by the Commissioner of Education.

(a) There shall be nine members on each council: Four shall be classroom teachers, two shall be lay persons, one shall be a school board member, and two shall be supervisors of teachers.

(b) The commissioner shall recommend annually the areas in which instructional materials shall be submitted for adoption. One of the factors upon which he shall base his decision shall be the desires of the districts.

(2)(a) Effective June 30, 1974, all current appointments are terminated and no current appointee shall be reappointed except pursuant to the conditions prescribed in this section. Any current appointee who has served for a period of time equal to 2 or more years as of that date shall not be eligible for reappointment, and no member shall serve more than two consecutive terms on any council. Initial appointments shall be for staggered terms with one-third of the membership of each council being appointed for 1 year, one-third for 2 years, and one-third for 3 years. Thereafter, all appointments shall be for 3 years. All vacancies shall be filled in the manner of the original appointment for only the time remaining in the unexpired term. At no time shall a school district have more than one representative on a council, it being the intent of the Legislature to involve representatives from the maximum number of school districts in the process of instructional materials selection. The Commissioner of Education and a member of the Department of Education whom he shall designate shall be additional and ex officio members of each council.

(b) The names and mailing addresses of the members of the state instructional materials councils shall be made public when appointments are made.

(c) Each lay member of the councils shall receive compensation at the rate of $50 per day for each day of actual service. The district school board shall be reimbursed for the actual cost of substitute teachers for each workday that a member of its instructional staff is absent from his assigned duties for the purpose of rendering service to the state instructional materials council. In addition, council members shall be reimbursed for traveling expenses, and per diem shall be paid to nonlay council members as provided in s. 112.061 for actual service in meetings of councils called by the Department of Education. Payment of such compensation and travel expenses shall be made by the State Treasurer from the appropriation for the administration of the instructional materials program, on warrants to be drawn by the State Comptroller upon requisition approved by the commissioner.

(3) It is the intent of the Legislature that all other references in the law to the state instructional materials council shall apply to each council created by this section.

(4) For purposes of this chapter, "instructional materials" are defined as items that by design serve as a major tool for assisting in the instruction of a subject, course, or activity. These items may be available in bound, unbound, kit, or package form and may consist of hard or softbacked textbooks, consumables, learning laboratories, slides, films and filmstrips, recordings, manipulatives, and other commonly accepted instructional tools.

History.—s. 707, ch. 19355, 1939; CGL 1940 Supp. 892(219); s. 1, ch. 28210, 1953; s. 7, ch. 59-282; ss. 1, 3, ch. 61-322; s. 19, ch. 63-400; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 74-337; s. 4, ch. 78-323.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]233.08 Affidavit of members of state instructional materials council.—Before transacting any business, each member of a district or state council shall make an affidavit, to be filed with the Commissioner of Education, that:

(1) He will faithfully discharge the duties imposed upon him as a member or as a secretary of the council.

(2) He has no interest, and while a member of the council he will assume no interest, in any publishing or manufacturing organization which produces or sells instructional materials.

(3) He is in no way connected, and while a member of the council he will assume no connection, with the distribution of such instructional materials.

(4) He is not pecuniarily interested, and while a member of the council he will assume no pecuniary interest, directly or indirectly, in the business or profits of any person engaged in manufacturing, publishing, or selling instructional materials designed for use in the public schools.

(5) He will not accept any emolument or promise of future reward of any kind from any publisher or manufacturer of instructional materials or his agent or anyone interested in, or intending to bias his judgment in any way in, the selection of any materials to be adopted.

History.—s. 708, ch. 19355, 1939; CGL 1940 Supp. 892(220); s. 8, ch. 59-282; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 2, ch. 74-337; s. 4, ch. 78-323.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the

possible effect of laws affecting this section prior to that date.

[1]**233.09 Duties of each state instructional materials council.**—The duties of each state instructional materials council shall be:

(1) PLACE AND TIME OF MEETING.—To meet at the call of the Commissioner of Education, at a place in the state designated by him, and to remain there in session for a period of time, not to exceed 20 days, for the purpose of evaluating and recommending instructional materials for adoption by the state. All meetings of state instructional materials councils shall be announced publicly through the news media of the state at least 2 weeks prior to the date of convening. The announcement of the meeting shall include the agenda of the meeting. All meetings of the councils shall be open to the public.

(2) ORGANIZATION.—To elect a chairman and vice chairman for each adoption. An employee of the Department of Education shall serve as secretary to the council and keep an accurate record of its proceedings. All records of district recommendations, council motions and votes, and summaries of council debate shall be incorporated into a publishable document and shall be available for public inspection and duplication.

(3) RULES AND REGULATIONS.—To adopt rules and regulations for evaluating instructional materials submitted by publishers and manufacturers in each adoption. Included in these rules and regulations shall be the following minimum standards:

(a) Provisions which afford each publisher or manufacturer or his representative an opportunity to present to members of the state instructional materials councils the merits of each instructional material submitted in each adoption;

(b) Forms on which a district superintendent or his designee shall submit the results of the district instructional materials council's recommendations; and

(c) Guidelines for district instructional materials councils, professional associations, and individuals for evaluating instructional materials for state adoption; however, the following minimum standards shall apply:

1. No district instructional materials council shall consist of fewer than six persons. Two shall be lay persons and three shall be teachers, it being the intent of the Legislature that councils of six or more persons include at least one-third lay persons and one-half teachers as a part of their total membership.

2. No district instructional materials council shall deny any publisher or manufacturer or his representative time to present his product equal to that time given any other publisher or manufacturer or his representative.

3. Evaluations by district instructional materials councils, professional associations, and individuals shall be submitted in such form and manner as shall be prescribed by the state council. Each instructional material shall be ranked numerically as to its choice in relation to all other materials of the same type evaluated, and no two textbooks in the same subject area may receive the same numerical rating.

4. District instructional materials councils, professional associations, and individuals who evaluate instructional materials and submit their findings and recommendations to the state council shall do so in accordance with the guidelines provided in subsection (4).

(4) EVALUATION OF INSTRUCTIONAL MATERIALS.—To evaluate carefully all instructional materials submitted, to ascertain which instructional materials, if any, submitted for consideration best implement the curricular objectives of the schools of the state. The councils shall file with the Commissioner of Education a written statement of the criteria and procedures used in the evaluation of instructional materials, and certified copies of such statements shall be made available to the public upon request. The state instructional materials councils shall be prohibited from conducting their assigned duties until such written statements are on file with the Commissioner of Education.

(a) When recommending instructional materials for use in the schools, each council shall include only instructional materials which, in its determination, accurately portray the cultural and racial diversity of our society, including men and women in professional, vocational, and executive roles, and the role and contributions of the entrepreneur and labor in the total development of Florida and the United States.

(b) When recommending instructional materials for use in the schools, each council shall include only materials which accurately portray, whenever appropriate, man's place in ecological systems, including the necessity for the protection of our environment and conservation of our natural resources and the effects on the human system of the use of tobacco, alcohol, controlled substances, and other dangerous substances.

(c) When recommending instructional materials for use in the schools, each council shall require such materials as it deems necessary and proper to encourage thrift, fire prevention, and humane treatment of people and animals.

(d) When recommending instructional materials for use in the schools, each council shall require, when appropriate to the comprehension of pupils, that textbooks for social science, history, or civics classes contain the Declaration of Independence and the Constitution of the United States. No instructional materials shall be recommended by any council for use in the schools which, in its determination, contain any matter reflecting unfairly upon persons because of their race, color, creed, national origin, ancestry, sex, or occupation.

(e) All instructional materials recommended by each council for use in the schools shall be, to the satisfaction of each council, accurate, objective, and current and suited to the needs and comprehension of pupils at their respective grade levels.

(f) When recommending instructional materials for use in the schools, each council shall have the recommendations of all districts which submit evaluations on more than half the materials submitted for adoption in that particular subject area aggregated and presented to the members to aid them in the selection process; however, such aggregation shall be

weighted in accordance with the full-time equivalent student percentage of each district. No instructional materials shall be evaluated or recommended for adoption unless each of the district councils shall have been loaned the specified number of samples.

(g) In addition to relying on statements of publishers or manufacturers of instructional material, any council may conduct, or cause to be conducted, an independent investigation as to the compliance of submitted materials with the requirements of this section.

(h) In the event that, after good faith acquisition of instructional materials by a district school board the instructional materials are found to be not in accordance with the requirements of this subsection, and the school board is unable to acquire other instructional materials which meet the requirements of this subsection in time for them to be used as intended, the school board may use the acquired materials, but only for that academic year.

(5) REPORT OF COUNCIL.—After a thorough study of all data submitted on each instructional material, and after each member of the appropriate council has carefully evaluated each instructional material to present a written report to the Department of Education. Such report shall be made public. The report shall include:

(a) A description of the procedures used in determining the instructional materials to be recommended to the Department of Education.

(b) Recommendations of instructional materials for each grade and subject field in the curriculum of public elementary and secondary schools in the state in which adoptions are to be made. If deemed advisable, the council may include such other information, expression of opinion, or recommendation as would be helpful to the department. If there is a difference of opinion among the members of the council as to the merits of any instructional materials, any member may file an expression of his individual opinion.

History.—s. 709, ch. 19355, 1939; CGL 1940 Supp. 892(221); s. 9, ch. 59-282; s. 2, ch. 61-322; s. 6, ch. 67-181; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 6, ch. 69-402; s. 1, ch. 72-51; s. 3, ch. 74-337; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]233.10 Findings of council and voting to be public.—The findings of the councils, including the evaluation of instructional materials, shall be in sessions open to the public. All decisions leading to determinations of the councils shall be by roll call vote, and at no time will a secret ballot be permitted.

History.—s. 710, ch. 19355, 1939; CGL 1940 Supp. 892(222), 8115(11); s. 10, ch. 59-282; ss. 15, 35, ch. 69-106; s. 136, ch. 71-136; s. 2, ch. 72-51; s. 4, ch. 74-337; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]233.11 Contact with publishers, manufacturers, or their representatives prohibited.—It is unlawful for any member of the state instructional materials council to discuss matters relating to instructional materials with any agent of a publisher or manufacturer of instructional materials, either directly or indirectly, except during the period when the council shall have been called into session for the purpose of evaluating instructional material submitted for adoption. Such discussions shall be limited to official meetings of the council and in accordance with rules and regulations adopted by the council for that purpose.

History.—s. 711, ch. 19355, 1939; CGL 1940 Supp. 892(223), 8115(12); s. 2, ch. 28210, 1953; s. 11, ch. 59-282; ss. 15, 35, ch. 69-106; s. 5, ch. 74-337; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

233.115 Prohibited acts.—

(1) No publisher or manufacturer of instructional material, or any of his representatives, shall offer to give any emolument, money, or other valuable thing, or any inducement, to any school official or member of a district-or state-level council to directly or indirectly introduce, recommend, vote for, or otherwise influence the adoption or purchase of any instructional materials.

(2) No school official or member of a district or state instructional materials council shall accept any emolument, money, or other valuable thing, or any inducement, to directly or indirectly introduce, recommend, vote for, or otherwise influence the adoption or purchase of any instructional material.

(3) Any publisher or manufacturer of instructional materials or his representative or any school official or district or state instructional materials council member, who violates any of the provisions of this section is guilty of a misdemeanor of the second degree. Any representative of a publisher or manufacturer who violates any of the provisions of this section, in addition to any other penalty, shall be banned from practicing business in the state for a period of 1 calendar year. Any school official or district or state instructional materials council member who violates any of the provisions of this section, in addition to any other penalty, shall be removed from his official position.

(4) Nothing in this section shall be construed to prevent any publisher, manufacturer, or agent from supplying, for purposes of examination, necessary sample copies of instructional materials to any school official or council member.

(5) Nothing in this section shall be construed to prevent a school official or council member from receiving sample copies of instructional materials.

(6) Nothing contained in this section shall be construed to prohibit or restrict a school official from receiving royalties or other compensation, other than compensation paid as commission to the school official for negotiating sales to district boards, from the publisher or manufacturer of instructional materials written, designed, or prepared by such school official, and adopted by the state board or purchased by any district board. No school official shall be allowed to receive royalties on any materials not on the state-adopted list purchased for use by his district school board.

History.—s. 6, ch. 74-337; s. 1, ch. 77-174.

233.14 Bids or proposals; advertisement and its contents; sample books; where deposited.—

(1)(a) Beginning on or before May 15 of any year in which an instructional materials adoption is to be initiated, the Department of Education shall advertise in a newspaper published in Tallahassee, once each week for a period of 4 weeks preceding the date on which the bids shall be received, that at a certain designated time, not later than June 15, sealed bids

or proposals to be deposited with the Department of State will be received from publishers or manufacturers for the furnishing of instructional materials proposed to be adopted as listed in the advertisement beginning April 1 following the adoption.

(b) The advertisement shall state that each bidder shall furnish specimen copies of all instructional materials submitted, at a time designated by the Department of Education, which specimen copies shall be identical with the copies approved and accepted by the members of the State Instructional Materials Council, as prescribed hereafter in this section, and with the copies furnished to the Department of Education and superintendents, as provided in s. 233.18.

(c) The advertisement shall state that a contract covering the adoption of the instructional materials shall be for a definite term.

(d) The advertisement shall fix the time within which the required contract must be executed and shall state that the department reserves the right to reject any or all bids or proposals.

(e) The advertisement shall give information as to how specifications which have been adopted by the Department of Education in regard to paper, binding, cover boards, and mechanical makeup can be secured.

(2) The bids or proposals submitted shall be for furnishing the designated materials in accordance with specifications of the department. The proposal or bid shall state the lowest wholesale price at which the materials will be furnished, at the time the adoption period provided in the contract begins, delivered f.o.b. to the Florida depository of the publisher, manufacturer, or bidder.

(3) Specimen copies of all printed instructional materials upon which bids or proposals are based shall be delivered by the bidder to each member of the State Instructional Materials Council. Written descriptions or representative samples of each other instructional material upon which a bid or proposal is based shall be delivered for use by all members of the council.

History.—s. 714, ch. 19355, 1939; CGL 1940 Supp. 892(226); s. 12, ch. 59-282; s. 8, ch. 67-438; ss. 10, 15, 35, ch. 69-106; s. 7, ch. 74-337; s. 18, ch. 75-284; s. 2, ch. 77-358.

233.15 Deposit by publisher must accompany bid.—The Department of Education shall require each publisher who submits a bid or proposal for furnishing any book or books under the provisions of this chapter to deposit with the department such sum of money or certified check as may be determined by the department, the amount to be not less than $500 and not more than $2,500, according to the number of books or series of books covered by the proposal, which deposit shall be forfeited to the state for the benefit of the appropriation for the purchase of textbooks if the bidder making the deposit shall fail or refuse to execute such contract and bond within 30 days from date of acceptance in case his bid or proposal is accepted. The Commissioner of Education shall, upon determining that the deposit is correct and proper, transmit the deposits to the State Treasurer who shall deposit such funds for credit to the Textbook Bid Trust Fund and issue his official receipt covering the same.

History.—s. 715, ch. 19355, 1939; CGL 1940 Supp. 892(227); s. 1, ch. 63-55; ss. 15, 35, ch. 69-106; s. 21, ch. 73-338.

233.16 Powers and duties of Department of Education in selecting and adopting instructional materials.—The powers and duties of the Department of Education in selecting and adopting instructional materials shall be:

(1) SELECTION AND ADOPTION OF INSTRUCTIONAL MATERIALS.—The Department of Education shall notify all publishers or manufacturers of instructional materials who have submitted bids that 1 week prior to the adoption meeting of each state instructional materials council, at a designated time and place, it will open bids and proposals which have been submitted and deposited with the Department of State. At the time and place designated, the bids or proposals shall be opened, read, and tabulated in the presence of the bidders or their representatives. No one may revise his bid after the bids have been filed. When all bids or proposals have been carefully considered, the department shall, from the list of suitable, usable, and desirable instructional materials reported by the state instructional materials council, select and adopt instructional materials for each grade and subject field in the curriculum of public elementary and secondary schools in the state in which adoptions are made and in the subject areas designated in the advertisement, which adoption shall continue for the period specified in the advertisement, to begin on the ensuing April 1. Such adoption shall not prevent the extension of a contract as provided in subsection (2). The department shall always reserve to itself the right to reject any and all bids or proposals if it is of the opinion that any or all bids, for any reason, should be rejected. The department may ask for new sealed bids from publishers or manufacturers whose instructional materials were recommended by the state instructional materials council as suitable, usable, and desirable; specify the dates for filing such bids and the date on which they shall be opened; and proceed in all matters regarding the opening of bids and the awarding of contracts as required by the terms and provisions of this chapter. In all cases, bids or proposals shall be accompanied by a cash deposit or certified check of from $500 to $2,500, as the department may direct. The department, in adopting instructional materials, shall give due consideration both to the prices bid for furnishing books and to the report and recommendations of the state instructional materials council. When the department shall have finished with the report of the state instructional materials council, the report shall be filed and preserved in the office of the Department of Education and shall be available at all times for public inspection.

(2) CONTRACT WITH PUBLISHERS OR MANUFACTURERS; BOND.—As soon as practicable after the department shall have made the adoption of any instructional materials and all bidders that have secured the adoption of any instructional materials have been notified of the same by registered letter, the Department of Legal Affairs shall prepare a contract in accordance with the provisions of the

School Code with every bidder awarded the adoption of any instructional materials. Said contracts shall be executed by the Governor and Secretary of State under the seal of the state, one copy to be kept by the contractor, one copy to be filed in the Department of State, and one copy to be filed in the Department of Education. A contract may, on the recommendation of the state instructional materials council and with the approval of the Department of Education, be extended for a period not to exceed 2 years, and the terms of any such contract shall remain the same as those set forth in the original contract. Any publisher or manufacturer to whom any contract shall be let under the provisions of this chapter shall be required to give bond in such amount as the department shall deem advisable, payable to the state, conditioned for the faithful, honest, and exact performance of the contract. The bond shall further provide for the payment of reasonable attorney's fees in case of recovery in any suit upon the same. The surety on the bond shall be a guaranty or surety company authorized by the laws of the state to do business in the state; however, the bond shall not be exhausted by a single recovery but may be sued upon from time to time until the full amount thereof shall be recovered, and the department may at any time, after giving 30 days' notice, require additional security or additional bond. The form of any bond or bonds or contract or contracts under the provisions of this chapter shall be prepared and approved by the Department of Legal Affairs.

(3) REGULATIONS GOVERNING THE CONTRACT.—The Department of Education may, from time to time, make any necessary regulations, not contrary to the provisions of this chapter, to secure the prompt and faithful performance of all contracts, and it is expressly provided that, should any contractor fail or refuse to furnish instructional materials as provided in this chapter or otherwise break his contract, the department may sue on the bond hereinbefore required in the name of the state, in the courts of the state having jurisdiction, and recover damages on the bond given by the contractor for failure to furnish instructional materials, the sum recovered to inure to the state general revenue fund.

(4) RETURN OF DEPOSITS.—

(a) The successful bidder shall be notified by registered mail of the award of contract and such bidder shall, within 30 days of such award, execute the proper contract and post the required bond. When such bond and contract have been executed, the department shall notify the State Comptroller and request that a warrant be issued against the textbook bid trust fund payable to the successful bidder in the amount deposited under the provisions of s. 233.15. The State Comptroller shall issue and forward such warrant to the department for distribution to the bidder.

(b) At the same time or prior thereto, the department shall inform the State Comptroller of the names of the unsuccessful bidders. Upon receipt of such notice, the State Comptroller shall issue warrants against the textbook bid trust fund payable to the unsuccessful bidders in the amounts deposited under the provisions of s. 233.15 and forward such warrants to the department for distribution to the unsuccessful bidders.

(c) One copy of each contract and an original of each bid, whether accepted or rejected, shall be preserved in the office of the Department of Education for at least 5 years beyond the termination of the contract.

(5) DEPOSITS FORFEITED.—Should any successful bidder fail or refuse to execute contract and bond within 30 days after the awarding of the contract, the cash deposit shall be forfeited to the state and be placed by the State Treasurer in the General Revenue Fund.

(6) FORFEITURE OF CONTRACT AND BOND.—In case of the failure of any publisher to furnish a book or books as provided in the contract, his bond shall stand forfeited, and the department shall make another contract on such terms as it may find desirable, after giving due consideration to the recommendations of the Commissioner of Education.

History.—s. 716, ch. 19355, 1939; CGL 1940 Supp. 892(228); s. 13, ch. 59-282; s. 1, ch. 63-55; s. 1, ch. 65-47; ss. 10, 11, 15, 35, ch. 69-106; s. 8, ch. 69-402; ss. 22, 23, ch. 73-338; s. 8, ch. 74-337; s. 1, ch. 77-174; s. 2, ch. 77-358; s. 99, ch. 79-400.
cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

233.165 Standards for selection.—

(1) In the selection of textbooks, library books, and other reading material used in the public school system, the standards used to determine the propriety of the material shall include:

(a) The age of the children who normally could be expected to have access to the material.

(b) The educational purpose to be served by the material.

(c) The degree to which the material would be supplemented and explained by mature classroom instruction as part of a normal classroom instructional program.

(2) No books or other material containing hardcore pornography or otherwise prohibited by s. 847.012 shall be used in the public school system of the State of Florida.

History.—s. 7, ch. 75-284.

233.17 Term of adoption for instructional materials.—

(1) The term of adoption of any instructional materials shall be for a 6-year period beginning on April 1 following the adoption, unless the contract is extended as prescribed in s. 233.16(2).

(2) Any contract placing an instructional material on adoption for 4 or more years shall provide that a publisher may, at the end of the third year during the term of the contract, upon giving 60 days' notification, increase such contract price to the publisher's then-current lowest wholesale price at which the materials are then being offered to any state or school district in the United States, except that such increase shall not exceed 10 percent of the original price. Such price increase shall remain in effect for the remaining term of the contract, unless the contract price is increased as permitted above.

History.—s. 717, ch. 19355, 1939; CGL 1940 Supp. 892(229); s. 14, ch. 59-282; s. 2, ch. 65-47; s. 9, ch. 74-337; s. 1, ch. 77-358.

233.18 Copies of bids, contracts, and books retained.—Specimen copies of all textbooks, which have been made the bases of contracts under the provisions of this chapter, clearly marked and identified as such, shall be deposited by their publishers with the Department of Education and each superintendent, which specimens shall be preserved and kept open for inspection by the public. All contracts and bonds executed under the provisions of this chapter shall be signed in triplicate. One copy of each contract and an original of each bid, whether accepted or rejected, shall be preserved in the office of the Department of Education for at least 5 years beyond the termination of the contract.

History.—s. 718, ch. 19355, 1939; CGL 1940 Supp. 892(230); ss. 15, 35, ch. 69-106; s. 1, ch. 69-300.

233.22 Requisition of instructional materials from publisher's depository.—The superintendent shall requisition adopted instructional materials from the depository of the publisher with whom a contract has been made. The superintendent shall verify that such requisition is complete and accurate and order the depository to forward to him the adopted instructional materials shown by the requisition. The depository shall prepare an invoice of the materials shipped, including shipping charges, and mail it to the superintendent to whom the shipment is being made. The superintendent shall pay the depository within 60 days after receipt of the requisitioned materials from the appropriation for the purchase of adopted instructional materials.

History.—s. 722, ch. 19355, 1939; CGL 1940 Supp. 892(234); ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 10, ch. 74-337; s. 20, ch. 75-284.

233.25 Duties, responsibilities, and requirements of publishers and manufacturers of instructional materials.—Publishers and manufacturers of instructional materials, or their representatives, shall:

(1) Comply with all provisions of this section.

(2) Loan copies of such printed materials in quantities to be determined by the Department of Education to those districts participating in preadoption evaluations or in lieu thereof, in the case of other instructional materials, descriptions and representative selections therefrom.

(3) Submit, at a time designated in s. 233.14, the following information:

(a) Detailed specifications of the physical characteristics of such material. The publisher or manufacturer shall comply with such specifications if the material is adopted and purchased in completed form.

(b) Written proof of the use of the learner-verification and revision process during prepublication development and postpublication revision of the materials in question. For purposes of this section "learner verification" is defined as the empirical process of data gathering and analysis by which a publisher of curriculum material has improved the instructional effectiveness of that product before it reaches the market and then continues to gather data from learners in order to improve the quality and reliability of that material during its full market life. Failing such proof, if the publisher wishes to submit material for adoption, he must satisfy the state instructional materials selection council that he will systematically gather and utilize learner-verification data to revise the materials in question to better meet the needs of learners throughout the state. Such text revision should be interpreted as including specific revision of the materials themselves, revision of the teachers' materials, and revision of the teachers' skill through retraining, it being the intent of the legislature that learner-verification and revision data shall include data gathered directly from learners; may include the results of criterion-referenced and group-normed tests, direct learner comments, or information gathered from written questionnaires from individual or small group interviews; and not preclude the use of secondary data gathered from teachers, supervisors, parents, and all appropriate participants and observers of the teaching-learning process.

(4) Make available for purchase by any district board any diagnostic, criterion-referenced, or other tests that they may develop.

(5) Furnish the instructional materials offered by them at a price in the state which, including all costs of transportation to their depositories, shall not exceed the lowest price at which they offer said instructional materials for adoption or sale to any state or school district in the United States.

(6) Reduce automatically the price of said instructional materials to any governing board to the extent that reductions are made elsewhere in the United States.

(7) Provide any instructional materials free of charge in the state to the same extent as that received by any state or school district in the United States.

(8) Guarantee that all copies of any instructional materials sold in Florida shall be at least equal in quality to the copies of such instructional materials that are sold elsewhere in the United States and shall be kept revised, free from all errors, and up-to-date as may be required by the state board.

(9) Agree that any supplementary material developed at the district or state level does not violate the author's or publisher's copyright, provided such material is developed in accordance with the doctrine of fair use.

(10) Not in any way, directly or indirectly, become associated or connected with any combination in restraint of trade in instructional materials or enter into any understanding, agreement, or combination to control prices or restrict competition in the sale of instructional materials for use in the state.

(11) Maintain, or contract with, a depository in the state and maintain there an inventory sufficient to receive and fill orders for instructional materials.

(12) Grant, without prior written request, for any copyright held by the publisher or its agencies automatic permission to the Department of Education or its agencies for the reproduction of textbooks and supplementary materials in Braille or large print or in the form of sound recordings, for use by visually handicapped students.

(13) Upon the willful failure of the publisher or manufacturer to comply with the requirements of this section, be liable to the state board in the amount of three times the total sum which the pub-

lisher or manufacturer was paid in excess of the price required under subsections (5) and (6) and in the amount of three times the total value of the instructional materials and services which the district board is entitled to receive free of charge under subsection (7).

History.—s. 725, ch. 19355, 1939; CGL 1940 Supp. 892(237), 8115(13); s. 15, ch. 59-282; ss. 15, 35, ch. 69-106; s. 10, ch. 69-402; s. 137, ch. 71-136; s. 11, ch. 74-337; s. 1, ch. 77-91; s. 1, ch. 77-174, s. 3, ch. 77-358.

233.255 Production and dissemination of educational materials and products by department.—

(1) It is the intent of the Legislature that when educational materials and products are developed by or under the direction of the Department of Education, through research and development or other efforts, including those subject to copyright, patent, or trademark, they shall be made available for use by teachers, students, administrators, and other appropriate persons in the state system of education at the earliest practicable date and in the most economical and efficient manner possible.

(2) To accomplish this objective the department is authorized to publish, produce, or have produced educational materials and products and to make them readily available for appropriate use in the state system of education. The department is authorized to charge an amount adequate to cover the essential cost of producing and disseminating such materials and products in the state system of education and is authorized to sell copies for educational use to nonpublic schools in the state and to the public.

(3) All proceeds from the sale of such educational materials and products shall be remitted to the Treasurer and shall be kept in a separate fund to be known as the "Educational Media and Technology Trust Fund" and, when properly budgeted as approved by the Legislature and the Executive Office of the Governor, used to pay the cost of producing and disseminating educational materials and products to carry out the intent of this act.

(4) In cases in which the materials or products are of such nature, or the circumstances are such, that it is not practicable or feasible for the department to produce or have produced materials and products so developed, it is authorized, after review and approval by the Department of State, to license, lease, assign, sell, or otherwise give written consent to any person, firm or corporation for the manufacture or use thereof, on a royalty basis, or for such other consideration as the department shall deem proper and in the best interest of the state; the department is authorized and directed to protect same against improper or unlawful use or infringement and to enforce the collection of any sums due for the manufacture or use thereof by any other party.

(5) Nothing herein stated shall be construed to allow the Department of Education to enter into the business of producing or publishing textbooks, or the contents therein, for general use in classrooms.

History.—s. 24, ch. 73-338; s. 5, ch. 79-65; s. 105, ch. 79-190.

233.30 School board cooperative libraries.— Each school board may, at its discretion, make contracts or agreements with county or community groups or organizations for a cooperative program or programs of library establishment, maintenance, and use, and all such contracts or agreements with county or community groups or organizations shall provide that such cooperative school and county or school and community libraries shall be established on public school property and shall continue under the supervision and control of such school board; and such part of the costs therefor as may, by contract or agreement, be properly chargeable to such school board shall be defrayed out of available district general school funds or, under limitations prescribed by law, other funds which may be or may become available for such purposes.

History.—s. 730, ch. 19355, 1939; CGL 1940 Supp. 892(242); s. 1, ch. 69-300.

233.33 Announcement of adoption of instructional materials.—The Department of Education, as soon as practicable after it has adopted instructional materials and completed all contracts and approved bonds for the faithful performance of contracts for furnishing or supplying instructional materials for use in the public schools of the state, shall issue a statement announcing such fact to the people of the state.

History.—s. 733, ch. 19355, 1939; CGL 1940 Supp. 892(245); ss. 15, 35, ch. 69-106; s. 11, ch. 69-402; s. 12, ch. 74-337.

233.34 Use of instructional materials allocation; instructional and instructional-related materials, library, and reference books.—

(1) On or before July 1 each year, the commissioner shall certify to the superintendent of each district the estimated allocation of state funds for instructional materials, computed pursuant to the provisions of chapter 236 for the ensuing fiscal year.

(2) Each school district shall use the annual allocation for the purchase of instructional materials included on the state-adopted list. However, up to 50 percent of the annual allocation may be used for the purchase of instructional materials, including library and reference books, not included on the state-adopted list and for the repair and renovation of textbooks and library books.

(3) Each district school board shall adopt policies, and each superintendent shall implement procedures, that will assure the maximum use by the students of the materials herein authorized.

(4) District school boards are authorized to issue purchase orders subsequent to May 1 in an aggregate amount not to exceed 90 percent of the current year's allocation, for the purpose of expediting the delivery of instructional materials which are to be paid for from the ensuing year's allocation.

(5) In any year in which the total allocation for a district has not been expended or obligated prior to June 30, the district shall carry forward such unobligated amount and shall add this amount to the next year's allocation.

History.—s. 734, ch. 19355, 1939; CGL 1940 Supp. 892(246); s. 17, ch. 59-282; s. 5, ch. 65-420; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 71-62; s. 1, ch. 73-337; ss. 39, 40, ch. 73-338; s. 13, ch. 74-337; s. 2, ch. 78-405.

233.37 Schools to continue to use instructional materials until unserviceable.—When a change of instructional materials has been made for any subject, each superintendent shall designate which schools of his district shall use the old instructional materials which he has on hand or in the

schools of his district, and all such instructional materials shall continue to be used until they are in such physical condition as to make them unsuitable for further use or until the content is obsolete. The superintendent shall not requisition copies of newly adopted instructional materials for those pupils for whom copies of old instructional materials are available. Under rules and regulations of the state board, the district school board may dispose of the instructional materials of the old adoption when they have become unserviceable, upon such terms and conditions as shall yield their fair salvage value.

History.—s. 737, ch. 19355, 1939; CGL 1940 Supp. 892(249); s. 4, ch. 61-459; s. 1, ch. 63-55; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 14, ch. 74-337.

233.38 Exchange of textbooks.—To effectuate economical and expeditious distribution of textbooks to the several districts of the state for use in the public schools, the Department of Education is directed to arrange for exchange of books among the several districts in accordance with their respective needs, and to that end, the superintendents in the several districts shall, upon direction from the department, crate and ship such books as shall be designated to such districts in the state as the department may determine, and the department may, when it deems advisable, direct surplus books in any district to be shipped to some central point to be designated by it to be held or distributed as the need therefor shall arise.

History.—s. 738, ch. 19355, 1939; CGL 1940 Supp. 892(250); ss. 15, 35, ch. 69-106; s. 1, ch. 69-300.

233.39 Renovation and repair of textbooks.—The Board of Education shall prescribe rules and regulations under which the Department of Education shall, whenever requested to do so by any superintendent, make necessary arrangements for the renovation and repair of books which could thereby be put into serviceable condition. All proper expense in connection with such renovation and repair is declared to be a proper charge against the appropriation for the purchase of instructional materials by the school district. The state board, in order to assist district school boards in obtaining the most economical services, shall formulate and prescribe such rules and regulations for the letting of contracts for the renovation and repair of books used in the public schools of the state as in its judgment may be practicable and economically feasible. The Department of Education shall enter into such contracts upon the basis of competitive bids from responsible firms who must, prior to contract award, have on hand in their plants the equipment necessary to perform the work of rebinding specified by the department. For the purpose of rebinding, textbooks shall be classified by the department as to size, and such classification shall be the basis for bids from rebinding firms. Bids from rebinding firms shall be on the basis of minimum quantities of 100 books in each classification. No such contract shall be entered for the renovation and repair of books used in the public schools of this state when the cost of renovation and repair exceeds the original acquisition cost of such books or the cost of replacing such books, whichever is the lesser. However, nothing herein contained shall be construed to prohibit the inmates of the state prison from repairing and renovating any public school textbooks or library books. Any suit of any nature instituted under the provisions of this section shall be brought in the name of the state, and any amount recovered by reason of such suit shall be deposited in the General Revenue Fund.

History.—s. 739, ch. 19355, 1939; CGL 1940 Supp. 892(251); s. 1, ch. 26900, 1951; s. 18, ch. 59-282; s. 1, ch. 63-55; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 16, ch. 74-337; s. 1, ch. 77-174.

233.43 Duties of superintendent relating to instructional materials.—The duties and responsibilities of each superintendent for the requisition, purchase, receipt, storage, distribution, use, conservation, records, and reports of, and management practices and property accountability concerning, instructional materials shall be prescribed by policies of the district school board, and such policies shall also provide for an evaluation of any instructional materials to be requisitioned that have not been used previously in the schools of the district.

History.—s. 743, ch. 19355, 1939; CGL 1940 Supp. 892(255); ss. 19, 20, ch. 59-282; ss. 91, 92, ch. 65-239; ss. 15, 19, 35, ch. 69-106; s. 1, ch. 69-300; s. 17, ch. 74-337; s. 1, ch. 77-174.

233.44 When instructional materials may be dropped from the records.—Instructional materials which have been sold, exchanged, lost, destroyed, or damaged and for which proper charges have been assessed and collected, and instructional materials which have been destroyed by fire or storm damage or by order of a competent health officer or the superintendent, shall be dropped from the record of instructional materials for which, as provided by law, school boards are held responsible.

History.—s. 744, ch. 19355, 1939; CGL 1940 Supp. 892(256); ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; ss. 18, 22, ch. 74-337.

233.45 Penalty for school officers dealing in textbooks.—No superintendent, school board member, or any person officially connected with the government of or direction of public schools, or teacher thereof, shall receive during the months actually engaged in performing duties under his contract any private fee, gratuity, donation, or compensation, in any manner whatsoever, for promoting the sale or exchange of any schoolbook, map, or chart in any public school, or be an agent for the sale, or the publisher of any school textbook or reference work, or be directly or indirectly pecuniarily interested in the introduction of any such textbook, and any such agency or interest shall disqualify any person so acting or interested from holding any school office whatsoever, and the person so offending shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; provided, that this section not be construed as preventing the adoption of any book written in whole or in part by a Florida author.

History.—s. 745, ch. 19355, 1939; CGL 1940 Supp. 8115(14); s. 93, ch. 65-239; s. 1, ch. 69-300; s. 138, ch. 71-136.

233.46 Duties of principals.—The duties and responsibilities of principals for textbook management and care shall include:

(1) MONEY COLLECTED FOR LOST OR DAMAGED BOOKS.—It shall be the duty and responsibility of each principal to collect from each pupil or his parent the purchase price of any instructional

material the pupil has lost, destroyed, or unnecessarily damaged and to report and transmit such amounts so collected to the superintendent. If such material so lost, destroyed, or damaged has been in school use for more than 1 year, a sum ranging between 50 and 75 percent of the purchase price of the book shall be collected. Such sum shall be determined by the physical condition of the book.

(2) SALE OF INSTRUCTIONAL MATERIALS.—The principal, when requested by the parent of a pupil in the school where he is employed, shall sell to such parent any instructional materials used in the school. All such sales shall be made under regulations prescribed by the school board.

(3) DISPOSITION OF FUNDS.—All money collected from the sale, exchange, loss, or damage of instructional materials shall be transmitted to the superintendent to be deposited in the district school fund and added to the district appropriation for instructional materials.

(4) CONSERVATION AND CARE.—Principals shall ascertain by inspection, and insure through every available agency, that all books issued to the school by the superintendent, either in the hands of pupils or in storage, are cared for properly.

(5) ACCOUNTING FOR TEXTBOOKS.—Principals shall see that all books are fully and properly accounted for on forms prescribed by the state board, and on forms which are supplied through the office of the superintendent.

(6) RECORDS AND REPORTS.—Principals shall prepare and transmit such textbook records and reports as may be required by the Department of Education and such supplementary records and reports as the superintendent may direct.

History.—s. 746, ch. 19355, 1939; CGL 1940 Supp. 892(257); s. 1, ch. 26922, 1951; s. 3, ch. 63-55; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 19, ch. 74-337; s. 1, ch. 77-174.

233.47 Responsibility of pupils, parents, or guardians for instructional materials.—

(1) All instructional materials heretofore or hereafter purchased under the provisions of this chapter shall be the property of the district. When distributed to the pupils, such materials shall be merely loaned to the pupils of the school while pursuing the courses of study therein and are to be returned at the direction of the principal or teacher in charge. Each parent, guardian, or other person having charge of a pupil to whom or for whom materials have been issued, as provided herein, shall be held liable for any loss or destruction of, or unnecessary damage to, such materials or for failure of such pupil to return such materials when directed by the principal or teacher in charge, and shall be required to pay for such loss, destruction, or unnecessary damage as provided by law.

(2) Nothing in this chapter shall be construed to prohibit parents, guardians, or other persons from purchasing from the district school board instructional materials adopted by the state under the provisions of the School Code.

History.—s. 747, ch. 19355, 1939; CGL 1940 Supp. 892(258); s. 20, ch. 74-337.

233.48 Department of Education administrative expense.—The Commissioner of Education shall include in the department's annual legislative budget a request for funds in an amount sufficient to provide the necessary expense for:

(1) The instructional materials councils.

(2) Operating expense of the surplus instructional materials exchange.

(3) Instructional materials for use by partially sighted pupils.

(4) Other specific and necessary state expense of the instructional materials program.

History.—s. 748, ch. 19355, 1939; CGL 1940 Supp. 892(259); s. 4, ch. 63-55; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 21, ch. 74-337; s. 19, ch. 75-284.

233.49 Textbooks; children with impaired vision.—The Department of Education is authorized to purchase and arrange for distribution among district school systems previously adopted textbooks which are prepared in various media for the use of partially sighted children enrolled in the public schools of Florida.

History.—s. 1, ch. 63-373; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300.

CHAPTER 234

TRANSPORTATION OF SCHOOL CHILDREN

234.01 Purpose.—School boards, after considering recommendations of the superintendent, shall provide transportation for each pupil who should attend a public school when, and only when, transportation is necessary to provide adequate educational facilities and opportunities which otherwise would not be available and to transport pupils whose homes are more than a reasonable walking distance, as defined by regulations of the state board, from the nearest appropriate school. No state funds shall be paid for the transportation of pupils whose homes are within 2 miles from the nearest appropriate school. In each case in which transportation of pupils in the opinion of the school board is impracticable, the school board is authorized to take steps for making available educational facilities as are authorized by law and as, in the opinion of the school board, are practical.

History.—s. 801, ch. 19355, 1939; CGL 1940 Supp. 892(260); s. 8, ch. 29754, 1955; s. 94, ch. 65-239; s. 1, ch. 69-300; s. 11, ch. 71-164; s. 106, ch. 72-221.

234.02 Safety and health of pupils.—Maximum regard for safety and adequate protection of health shall be primary requirements which shall be observed by school boards in routing buses, appointing drivers, and providing and operating equipment, in accordance with all requirements of law and regulations of the state board.

(1) Each school board shall designate and adopt a specific plan for adequate examination, maintenance, and repair of transportation equipment. Examination of the mechanical condition of each school bus shall be made by a capable mechanic at least once each month that the bus is in operation.

(2) The superintendent shall notify the school board of any school bus which does not meet all requirements of law and regulations of the state board, and the school board shall, if such school bus is in an unsafe condition, withdraw it from use as a school bus until the bus meets said requirements. The Department of Education may inspect or have inspected any school bus to determine whether the bus meets requirements of law and regulations of the state board. The department may, after due notice to a school board that any school bus does not meet certain requirements of law and regulations of the state board, rule that such bus shall be withdrawn from use as a school bus, this ruling to be effective forthwith or upon a date to be specified therein, whereupon the school board shall withdraw same from use as a school bus until the bus meets requirements of law and regulations of the state board and until the department has officially revoked its said ruling. Notwithstanding any other provisions of this chapter, general purpose urban transit systems are declared qualified to transport children to and from school.

(3) The routing and scheduling of school buses shall be planned in such a manner as to eliminate, whenever reasonably possible, the necessity for children to stand while a school bus is in motion. When circumstances of an emergency nature temporarily necessitate transporting children while standing in school buses, such buses shall proceed at such a reduced rate of speed as shall maximize safety of the students, taking into account existing traffic conditions. Each school board is responsible for prompt relief of the emergency condition by providing additional equipment, bus rerouting, bus rescheduling, or other appropriate remedial action. Under no circumstances shall children be permitted to stand in a number exceeding one child per handhold, excluding the rear two handholds.

History.—s. 802, ch. 19355, 1939; CGL 1940 Supp. 892(261); s. 1, ch. 69-300; s. 106, ch. 72-221; s. 1, ch. 74-132; s. 15, ch. 75-284; s. 1, ch. 77-174.

234.03 Tort liability; liability insurance.—

(1) Each district school board shall be liable for tort claims arising out of any incident or occurrence involving a school bus or other motor vehicle owned, maintained, operated, or used by such school board to transport persons, to the same extent and in the same manner as the state or any of its agencies or subdivisions is liable for tort claims under s. 768.28, except that the total liability to persons being transported for all claims or judgments of such persons arising out of the same incident or occurrence shall not exceed an amount equal to $5,000 multiplied by the rated seating capacity of the bus or other vehicle, as determined by rules of the State Board of Education, or $100,000, whichever is greater. The provisions of s. 768.28 shall apply to all claims or actions brought against school boards, as authorized in this subsection.

(2) Each school board may secure and keep in force a medical payments plan or medical payments insurance on school buses and other vehicles. If a medical payments plan or insurance is provided, it shall be carried in a sum of no less than $500 per person.

(3) Expenses, costs, or premiums to protect against liability for torts as provided in this section may be paid from any available funds of the school board.

(4) If vehicles used in transportation are not owned by the school board, such school board is authorized to require owners of such vehicles to show

evidence of adequate insurance during the time that such vehicles are in the services of the school board.

(5) This section does not apply to causes of action accruing before October 1, 1978.

History.—s. 803, ch. 19355, 1939; CGL 1940 Supp. 892(262), 8115(15); s. 60, ch. 29764, 1955; s. 4, ch. 59-339; s. 9, ch. 61-288; s. 16, ch. 63-376; s. 1, ch. 69-300; s. 139, ch. 71-136; s. 106, ch. 72-221; ss. 1, 2, ch. 78-192.

234.041 School buses; unlawful to simulate color or use secondhand buses without effecting certain changes.—

(1) It shall be unlawful for any person, except a governmental unit or agency operating as provided by law, to use on the public highways of the state any bus of an orange or yellow color known as school bus chrome, or any color purporting to resemble the color of a school bus, when said vehicle has ceased to be so used, or is used for the transportation of passengers other than school pupils, unless and until said bus has been changed from said colors to some other color by repainting and unless and until all signs and insignia which mark or designate it as a school bus have been removed therefrom. However, in school districts contracting for buses from an outside source or in school districts operating specially designed or equipped buses for the transporting of the handicapped, those buses may be used on a temporary or irregular basis to transport persons other than students within the county with the express consent of the school board.

(2) Any person violating any provision hereof shall be deemed guilty of a misdemeanor.

History.—ss. 1-3, ch. 57-280; s. 5, ch. 61-459; s. 96, ch. 65-239; s. 106, ch. 72-106; s. 13, ch. 75-284; s. 2, ch. 78-104.

234.051 School buses.—School buses shall be defined and meet specifications as follows:

(1) DEFINITION.—For the purpose of the school code, a "school bus" is defined as a motor vehicle regularly used for the transportation of pupils of the public schools to and from school or to and from school activities, and owned, operated, rented, or leased by any school board, excepting:

(a) Motor vehicles of the type commonly called pleasure cars and carrying eight pupils or less; and

(b) Motor vehicles subject to, and meeting all requirements of, the Public Service Commission and operated by carriers operating under the jurisdiction of the Public Service Commission, but not used exclusively for the transportation of public school pupils.

(2) SPECIFICATIONS.—Each school bus with a total seating space of more than 10 lineal feet which is rented, leased, purchased, or contracted for purchase, and each school bus with a total seating space of more than 10 lineal feet shall meet the specifications as prescribed by regulations of the state board.

(3) STANDARDS FOR LEASED VEHICLES.—A motor vehicle owned and operated by a county or municipal transit authority which is leased by the school board of the local school district for transportation of public school students shall meet such standards as shall be established by the State Board of Education for the purpose of implementing this act. A school bus authorized by a school board to carry passengers other than school pupils shall have the words "School Bus" and any other signs and insignia which mark or designate it as a school bus covered, removed, or otherwise concealed while said passengers are being transported.

History.—s. 808, ch. 19355, 1939; CGL 1940 Supp. 892(267); s. 10, ch. 29754, 1955; s. 1, ch. 65-52; s. 98, ch. 65-239; s. 1, ch. 69-300; s. 106, ch. 72-221; s. 16, ch. 75-284.

Note.—Former s. 234.08.

234.061 Designation of routes and nontransportation zones.—Each school board, after considering recommendations from the superintendent, shall designate, by map or otherwise, nontransportation zones which shall be composed of all areas in the district from which it is unnecessary or impracticable to furnish transportation. Nontransportation zones shall be designated annually prior to the opening of school and the designation of bus routes for the succeeding school year. Each school board, after considering recommendations from the superintendent, shall specifically designate the route to be traveled regularly by each school bus, and each route shall meet the requirements prescribed by regulations of the state board.

History.—s. 106, ch. 72-221.

234.071 Survey required.—Each school board shall arrange, at intervals of not more than 10 years or as provided by regulations of the state board, for a survey of school transportation routes. The report based on the survey shall show the location of all schools, the location of transported pupils, the bus routes, and such other information as may be required by regulations of the state board. The school board may request assistance of the Department of Education in carrying out the survey or may utilize such other agency as may be approved under regulations of the state board. The survey report shall be filed with the superintendent, and a copy of such survey report with supporting maps shall be filed with the Department of Education within 60 days thereafter. Within 90 days following the filing of the survey report with the department, the superintendent shall provide the department with a plan for putting the recommendations of the survey into effect. This plan may include justifiable alternatives to those recommendations contained in the survey report.

History.—s. 106, ch. 72-221.

234.091 General qualifications.—Each school bus driver shall be of good moral character, of good vision and hearing, able-bodied, free from communicable disease, mentally alert, and sufficiently strong physically to handle the bus with ease and to make emergency repairs, and he shall possess such other qualifications as are prescribed by the state board, and he shall hold a valid chauffeur's license issued by the Department of Highway Safety and Motor Vehicles.

History.—s. 814, ch. 19355, 1939; CGL 1940 Supp. 892(273); s. 3, ch. 21989, 1943; s. 64, ch. 29764, 1955; s. 106, ch. 72-221.

Note.—Former s. 234.14.

234.101 Specific requirements.—The State Board of Education shall adopt requirements which school bus drivers must meet prior to employment by district school boards.

History.—s. 106, ch. 72-221.

234.111 School buses to stop at crossings.—Each school bus shall be brought to a full stop before crossing any railroad track and before entering or crossing any arterial highway or dangerous thoroughfare, and the bus shall not proceed until the driver has clearly observed that it is safe to proceed.

History.—s. 852, ch. 19355, 1939; CGL 1940 Supp. 892(284); s. 106, ch. 72-221.

Note.—Former s. 234.25.

234.112 School bus stops.—Each district school board shall establish school bus stops as necessary at the most reasonably safe locations available. Where unusual traffic hazards exist at school bus stops on roads maintained by the state outside of municipalities, the Department of Transportation, in concurrence and cooperation with and upon request of the district school board, shall place signs at such bus stops warning motorists of the location of the stops.

History.—s. 1, ch. 77-74.

234.211 Use of school buses for public purposes.—

(1) Each school district may enter into agreements with the governing body of a county or municipality in the school district or any state agency or agencies established or identified to assist the mentally or physically handicapped or pursuant to Pub. L. No. 89-73, as amended, for the use of the school buses of the school district by departments, boards, commissions, or officers of such county or municipality or of the state for county, municipal, or state purposes, including transportation of the mentally or physically handicapped, or the elderly under Pub. L. No. 89-73. Each such agreement shall provide for reimbursement of the school district, in full or in part, for the proportionate share of fixed and operating costs incurred by the school district attributable to the use of such buses pursuant to such agreement.

(2) The governing body or state agency or agencies established or identified pursuant to Pub. L. No. 89-73 shall indemnify and hold harmless the school district from any and all liability of the school district by virtue of the use of such buses pursuant to an agreement authorized by this section. Corporations not for profit, established or identified pursuant to Pub. L. No. 89-73, as amended, and providing transportation services for the elderly or the handicapped without compensation, shall provide liability insurance coverage in the amounts of:

(a) $100,000 liability per single-party suit;

(b) $300,000 liability per joint-party suit;

(c) $50,000 liability per property damage suit; and

(d) $100 deductible collision, upset loss, or damage to each vehicle.

(3) When such buses are used for nonschool purposes other than the transportation of the elderly or the mentally or physically handicapped, the flashing red lights shall not be used and the "school bus" inscription on the front and rear of such buses shall be covered or concealed.

History.—s. 1, ch. 78-104.

CHAPTER 235

EDUCATIONAL FACILITIES

235.001 Short title.—This act shall be known and cited as the "Educational Facilities Construction Act" or the "Murray H. Dubbin Act."

History.—s. 1, ch. 74-374.

235.002 Intent.—The intent of the Legislature is:

(1) To guarantee to each student in the Florida public education system the availability of an educational environment appropriate to his educational needs which is substantially equal to that available to any similar student, notwithstanding geographic differences and varying local economic factors.

(2) To utilize, as far as practicable, innovative designs, construction techniques, and financing mechanisms in building educational facilities for the purpose of reducing costs, creating a more satisfactory educational environment, and reducing the amount of time necessary for design and construction to fill unmet needs.

(3) To provide a systematic mechanism whereby educational facilities construction plans can meet the current and projected needs of the public education system population as quickly as possible by building uniform, sound educational environments and to provide a sound base for planning for educational facilities needs.

(4) To provide a systematic plan for educational construction whereby sites may be acquired, educational requirements formulated, and architectural plans and specifications developed so as to proceed immediately with the construction of educational facilities when funds are made available.

History.—s. 1, ch. 74-374; s. 3, ch. 77-458.

235.01 Purpose.—The purpose of this chapter is to authorize state and local officials to cooperate in establishing and maintaining educational plants that will meet public educational needs throughout the state in promoting the health, comfort, and the moral and intellectual development of students.

History.—s. 901, ch. 19355, 1939; CGL 1940 Supp. 892(285); s. 1, ch. 69-300; s. 3, ch. 77-458.

235.011 Definitions.—Notwithstanding the provisions of s. 228.041, the following terms shall be defined as follows for the purpose of this chapter:

(1) "Improved educational environment" means the improvements to existing educational facilities, such as altering, remodeling, improving, renovating, or repairing, which are necessary to attain the uniform student station standards.

(2) "Relocatable facility" means an educational

facility which has been designed to incorporate the following elements:

(a) Portability;
(b) Reconstructibility;
(c) Demountability;
(d) Durability of components;
(e) Simplicity of components;
(f) Flexibility of interior spatial relationships;
(g) Adaptability to solar energy systems;
(h) Minimum foundation work;
(i) Interfaceability with existing, conventional construction; and
(j) Maximum recoverability of components when the facility is relocated.

(3) "Satisfactory educational facility" means a facility which has been recommended for continued use by an educational plant survey or which has been classified as satisfactory in the state inventory of educational facilities.

(4) "Educational facilities" means the buildings and equipment that are built, installed, or established to serve educational purposes and which may lawfully be used.

(5) "Educational plant" comprises all the physical features incident to, or necessary to accommodate, students and teachers and the activities of the educational program of each plant.

(6) "Educational plant survey" means a systematic study of present educational plants and the determination of future needs to provide an appropriate educational program for each student, conducted by or approved by the department.

(7) "Unhoused students" means the actual or projected students in excess of the existing student stations.

(8) "Projected plant need" means the sum of the following estimated factors:

(a) Construction costs;
(b) Legal and administrative costs;
(c) Architectural fees;
(d) Costs of correcting deficiencies which produce unsafe, unhealthy, or unsanitary environments; air conditioning; remodeling; and renovations;
(e) Cost of new furniture and equipment for new construction;
(f) Cost of site improvement; and
(g) Cost of site acquisition.

(9) "Board," unless otherwise specified, means a district school board, a community college board of trustees, or the Board of Trustees for the Florida School for the Deaf and the Blind. The term "board" does not include the State Board of Education.

(10) "Capital project" means sums of money appropriated to the Public Education Capital Outlay and Debt Service Trust Fund for the state system of public education.

(11) "Housing index" is the relationship between the number of students to be housed and the number of student stations required to adequately house such students.

(12) A "student station" is the appropriate area and environment necessary for a student to engage in educational learning activities appropriate to his needs and shall include, but not be limited to, classroom, teaching, vocational and occupational laboratory, library, and cafeteria space, as determined by rules of the State Board of Education.

History.—s. 1, ch. 77-458.

235.012 Office of Educational Facilities Construction.—There is authorized and established an Office of Educational Facilities Construction, which shall be a part of the staff organization of the Commissioner of Education. For purposes of this chapter, the term "office" shall mean the "Office of Educational Facilities Construction." The office shall recommend, and the State Board of Education shall adopt, rules for the administration of programs and activities as hereinafter provided. Support for the programs and activities of the office shall be included in the legislative budget request of the Commissioner of Education.

History.—s. 2, ch. 74-374; s. 3, ch. 77-458.

235.013 Interdepartmental cooperation.—It is the intent of the Legislature that the office draw upon the expertise and staff of all appropriate departments and agencies of the state in fulfilling its functions.

History.—s. 3, ch. 74-374; s. 2, ch. 75-70; s. 3, ch. 77-458.

235.014 Functions of the office.—The functions of the office shall include, but not be limited to, the following:

(1) To require of boards the development and submission of long-range plans for educational facilities.

(2) To require boards to submit plans for necessary improvements to existing plants.

(3) To establish standards for all nonformula-generated space, including public broadcasting stations.

(4) To authorize and request, when there is a clear and present danger to life and safety, county and municipal governments, in cooperation with boards, to construct and maintain sidewalks or bicycle trails within a 2-mile radius of each educational facility within the jurisdiction of the local government.

(5) To evaluate each board's annual plan for educational facilities and the priority identification of specific needs for inclusion in the integrated comprehensive budget request.

(6) To require of the boards the submission of other educational plant inventories data and data or information relevant to construction and capital improvements.

(7) To require of each board, all agencies of the state, and other appropriate agencies complete and accurate financial data as to the amounts of funds from all sources that are available for construction and capital improvements.

(8) To administer the Public Education Capital Outlay and Debt Service Trust Fund.

(9) To recommend to the State Board of Education rules defining approved capital expenditures which shall be paid by the state.

(10) To approve or disapprove, for reasons shown, the purchase of, or the leasing of, sites for educational purposes by the boards and plans and

specifications for new educational facilities construction or the improvement of existing structures on sites as submitted.

(11) To present a report to the State Board of Education on the needs for construction and capital improvements and a suggested level of funding for each fiscal year.

(12) To develop the techniques to be used in the bidding and construction of projects.

(13) To recommend to the State Board of Education rules relating to the construction of educational facilities and improvements to existing structures and sites.

(14) To require analyses of locally available materials in relation to economy, ready availability, and speed of construction.

(15) To determine the roles of the different state and local government agencies, including planning commissions, in the planning, design, and construction of educational facilities and improvements, to insure inclusion of services and programs for community centers that can appropriately be provided on a single site for the purpose of meeting current and future needs of the community to be served.

(16) To develop, review, update, and revise a mandatory, uniform building code for facilities construction and capital improvement by boards; and to promulgate appropriate rules for the implementation of the code adopted by the State Board of Education.

(17) To insure as far as practicable that there be as much participation as possible by local personnel in determining programs and activities. Local initiative should be encouraged and utilized in order that the needs of local communities be met, as far as practicable, when constructing new educational facilities or making additions or improvements to existing facilities in the community.

(18) To perform any other functions that may be involved in educational facilities construction and capital improvement which shall insure that the intent of the Legislature is implemented.

History.—s. 4, ch. 74-374; s. 4, ch. 77-458.

235.015 Associate commissioner for educational facilities construction.—The office shall be administered by an associate commissioner who shall be directly responsible to the commissioner. The associate commissioner shall be appointed by, and serve at the pleasure of, the commissioner.

History.—s. 5, ch. 74-374; s. 4, ch. 77-458.

235.016 Duties and responsibilities of the associate commissioner.—The duties and responsibilities of the associate commissioner shall include, but not be limited to, the following:

(1) To recommend rules for the operation of the programs and activities of the office for consideration by the State Board of Education.

(2) To recommend for employment staff sufficient to carry out all the functions and responsibilities of the office as herein provided.

(3) To organize the staff in the most efficient way to carry out the duties, responsibilities, programs, and functions of the office effectively and to insure that the intent of the legislature is implemented.

(4) To submit to the commissioner an annual report on the projected needs of educational facilities construction and capital improvements for each fiscal year and to recommend a suggested level of funding to be presented by the commissioner to the State Board of Education.

(5) To review all requests for construction and capital improvement funds and to make recommendations to the commissioner concerning approval and funding.

(6) To perform such other functions as may be required by the commissioner, state board rules, or law.

History.—s. 6, ch. 74-374; s. 4, ch. 77-458.

235.018 Delegation of review and approval authority.—The Office of Educational Facilities Construction may delegate its review, approval, and inspection process as required in subsection 235.26(5) to a board if:

(1) The board has satisfactorily demonstrated that it is competent to inspect and approve plans for educational facilities.

(2) Such plans and facilities conform with the Uniform Building Code for Public Education Facilities, as required in s. 235.26.

(3) The plans and specifications for an educational facility have been prepared by, and reflect the seal of, a Florida-registered architect or a Florida-registered professional engineer and such architect or engineer certifies that the documents comply with the provisions of this chapter and all applicable rules of the State Board of Education.

History.—s. 8, ch. 75-292; s. 4, ch. 77-458; s. 100, ch. 79-400.

235.02 Use of buildings and grounds.—The board, including the Board of Regents, may permit the use of educational facilities and grounds for any legal assembly or for community use centers or may permit the same to be used as voting places in any primary, regular, or special election. The board shall adopt rules necessary to protect educational facilities and grounds when used for such purposes.

History.—s. 902, ch. 19355, 1939; CGL 1940 Supp. 892(286); s. 105, ch. 65-239; s. 1, ch. 69-300; s. 5, ch. 77-458.

235.04 Disposal of property.—

(1) REAL PROPERTY.—Subject to rules of the state board, the board may dispose of any land or real property which is by resolution of such board determined to be unnecessary for educational purposes. The board shall take diligent measures to dispose of educational property only in the best interests of the public.

(2) TANGIBLE PERSONAL PROPERTY.—Tangible personal property which has been properly classified as surplus by the board shall be disposed of in accordance with the procedure established by chapter 274. However, the provisions of chapter 274 shall not be applicable to a motor vehicle used in driver education to which title is obtained for a token amount from an automobile dealer or manufacturer. In such cases, the disposal of the vehicle shall be as prescribed in the contractual agreement between the automotive agency or manufacturer and the board.

History.—s. 904, ch. 19355, 1939; CGL 1940 Supp. 892(288); s. 1, ch. 29797, 1955; s. 14, ch. 57-249; s. 6, ch. 65-424; s. 1, ch. 69-300; s. 1, ch. 70-443; s. 9, ch. 73-338; s. 5, ch. 77-458.

235.05 Right of eminent domain.—

(1) There is conferred upon the school board in each of the several districts in the state the authority and right to take private property for any public school purpose or use when, in the opinion of the school board, such property is needed in the operation of any or all of the public schools within the district, including property needed for any school purpose or use in any school district or districts within the county. The absolute fee simple title to all property so taken and acquired shall vest in the school board of such district, unless the school board seeks to appropriate a particular right or estate in such property.

(2) The board of trustees may exercise the right of eminent domain as provided in s. 230.754(2)(f).

History.—s. 905, ch. 19355, 1939; CGL 1940 Supp. 892(289); s. 1, ch. 69-300; s. 5, ch. 77-458.

235.055 Construction of facilities on leased property; conditions.—

(1) Boards, including the Board of Regents, are authorized, when such action is approved by the Department of Education, to construct educational facilities on land which is owned by a federal, state, county, or municipal governmental agency, after the board has acquired from the owner of the land a long-term lease for the use of this land for a period of not less than 40 years or the life expectancy of the permanent facilities constructed thereon, whichever is longer.

(2) A board is authorized, when such action is approved by the office, to enter into a short-term lease for the use of land owned by the entities enumerated in subsection (1), on which temporary or relocatable facilities are to be utilized.

(3) Pursuant to state board rules, a board is authorized to enter into a short-term lease for the use of land and buildings on which capital improvements may be made.

History.—s. 1, ch. 67-92; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 5, ch. 77-458; s. 101, ch. 79-400.

235.06 Safety and sanitation standards and inspection of property.—The State Board of Education is empowered and directed to adopt rules prescribing standards for the safety and health of occupants of educational plants as a part of the State Uniform Building Code for Public Educational Facilities Construction as provided in s. 235.26. These standards shall be used by all public agencies when inspecting public educational facilities. In accordance with such standards, each board shall prescribe policies and procedures establishing a comprehensive program of safety and sanitation for the protection of occupants of public educational facilities. Such policies shall contain procedures for periodic inspections as prescribed herein and for withdrawal of any educational plant, or portion thereof, from use until unsafe or unsanitary conditions are corrected or removed.

(1) PERIODIC INSPECTION OF PROPERTY BY THE BOARD.—Each board shall provide for periodic inspection of each educational plant at least once during each fiscal year to determine compliance with standards of sanitation and safety prescribed in the rules of the state board. Such inspection shall be conducted by qualified employees of the board or, in the alternative and upon approval of the board, by architects or engineers licensed to practice in Florida or by appropriate state or local public agencies. A copy of each inspection report shall be forwarded to the Department of Education. A copy of the fire safety inspection report only shall be forwarded to the State Fire Marshal. If major deficiencies are noted in any inspection, the board shall either take action to promptly correct such deficiencies or withdraw the educational plant from use until such time as the deficiencies are corrected.

(2) INSPECTION OF EDUCATIONAL PROPERTY BY OTHER PUBLIC AGENCIES.—A safety or sanitation inspection of any educational plant may be made at any time by the Department of Education or any other state or local agency authorized or required to conduct such inspections by either general or special law. Such inspections shall be conducted by staff members of the agency or by local personnel certified and authorized by the agency to perform inspections. Each agency conducting inspections shall use the standards adopted by the State Board of Education in lieu of, and to the exclusion of, any other inspection standards prescribed either by statute or administrative rule. If deficiencies are noted in any inspection, the agency shall notify the board and, upon its failure to take corrective action within a reasonable time, may request the commissioner to:

(a) Order that appropriate action be taken to correct all deficiencies in accordance with a schedule determined jointly by the inspecting authority and the board; in the development of such schedule, consideration shall be given to the seriousness of the deficiencies and the ability of the board to obtain the necessary funds; or

(b) After 30 calendar days' notice to the board, order all or a portion of the educational plant withdrawn from use until the deficiencies are corrected.

History.—s. 906, ch. 19355, 1939; CGL 1940 Supp. 892(290); s. 1, ch. 67-270; ss. 13, 15, 19, 35, ch. 69-106; s. 1, ch. 69-300; s. 5, ch. 70-399; s. 107, ch. 72-221; s. 7, ch. 74-374; s. 5, ch. 77-458.

235.065 Maintenance and operation of educational plants.—The State Board of Education shall adopt rules prescribing standards for the proper maintenance and operation of educational plants and shall adopt procedures for evaluating the extent to which these standards are being met. The prescribed standards shall serve as a guide for the boards for proper maintenance.

History.—s. 6, ch. 77-458.

235.09 Obscenity on educational buildings or vehicles.—Whoever willfully cuts, paints, pastes, marks, or defaces by writing or in any other manner any educational building, furniture, apparatus, appliance, outbuilding, ground, fence, tree, post, vehicle, or other educational property with an obscene word, image, or device shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This section shall not apply to any student in, and subject to the discipline of, the school or community college.

History.—s. 909, ch. 19355, 1939; CGL 1940 Supp. 8115(18); s. 66, ch. 29764, 1955; s. 107, ch. 65-239; s. 140, ch. 71-136; s. 7, ch. 77-458.

235.14 Emergency drills.—The Department of Education shall formulate and prescribe rules and instructions for emergency drills for all the public education facilities of the state, and each administrator or teacher in charge of such facility shall be provided with a copy of such rules and instructions; and each such person shall see that emergency drills are held at least once each calendar quarter and that all personnel and students are properly instructed regarding such rules and instructions.

History.—s. 914, ch. 19355, 1939; CGL 1940 Supp. 892(296); s. 110, ch. 65-239; ss. 15, 35, ch. 69-106; s. 8, ch. 77-458.

235.149 Survey for instructional space when needed.—Whenever any board, including the Board of Regents, in the state has insufficient instructional space to meet existing needs, such board shall conduct an in-house survey to determine whether space suitable for instructional use is available in any public or private facility which may be leased or otherwise acquired to meet the instructional needs of the board. Each board which conducts a survey shall prepare a report evaluating the adequacy of any such available space with respect to sanitation, safety, and any other factors which have a bearing on its suitability for use as instructional space, and shall include in the report the estimated cost of using the available space to meet the instructional needs of the board. The board shall submit a copy of the report to the Department of Education.

History.—s. 5, ch. 77-458.

235.15 Educational plant survey required.—At least every 5 years, each board, including the Board of Regents, shall arrange for a survey to aid in formulating plans for housing the educational program and student population of the district or campus. Each survey shall be conducted by the Department of Education or an agency approved by the commissioner. Surveys conducted by agencies other than the Department of Education shall be reviewed and approved by the commissioner. The survey report shall include at least an inventory of existing educational plants; recommendations for existing educational plants; recommendations for new educational plants, including the general location of each; and such other information as may be required by the rules of the State Board of Education. An official copy of each survey report shall be filed by the board with the office. This report may be amended, if conditions warrant, at the request of the board or commissioner.

History.—s. 915, ch. 19355, 1939; CGL 1940 Supp. 892(297); s. 111, ch. 65-239; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 2, ch. 71-272; s. 8, ch. 77-458.

235.155 Exception to recommendations in educational plant survey.—An exception to the recommendations in the educational plant survey may be allowed if a board, including the Board of Regents, deems that it will be advantageous to the welfare of the educational system or that it will make possible a substantial saving of funds. A board requesting such an exception shall present a full statement, in writing, setting forth all the facts in the case to the State Board of Education through the Commissioner of Education, who shall make a recommendation on the request. The state board shall determine whether any exception to the recommendations of the educational plant survey shall be approved.

History.—s. 9, ch. 77-458.

235.16 Educational plant construction program based on survey.—Each board, including the Board of Regents, after a survey has been made as provided in this chapter, shall, within 6 months after the completion of the survey, adopt and submit to the office a proposed program for educational facilities. This program shall, insofar as practicable, be based upon the findings and recommendations of the survey report and shall be submitted in the form prescribed by the State Board of Education. The program may be amended by resolutions adopted by the board, provided copies of the resolutions with supporting evidence are submitted to the office. The office shall study the proposed program, or amendments thereto, of each board and shall submit it, together with its findings and recommendations, to the State Board of Education for approval.

History.—s. 916, ch. 19355, 1939; CGL 1940 Supp. 892(298); s. 112, ch. 65-239; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 8, ch. 77-458.

235.18 Annual capital outlay budget.—Each board, including the Board of Regents, shall, each year, adopt a capital outlay budget for the ensuing year in order that the capital outlay needs of the board for the entire year may be well understood and, insofar as possible, provisions be made for same. This capital outlay budget shall be a part of the annual budget and shall be based upon, and be in harmony with, the educational facilities construction program previously approved by the State Board of Education. This budget shall designate the capital outlay needs for the year. No funds shall be expended on any such need not included in the budget, as amended. If approved by the Department of Education, the budget, as amended, shall be executed as provided by law supplemented by rules of the State Board of Education.

History.—s. 918, ch. 19355, 1939; CGL 1940 Supp. 892(300); s. 67, ch. 29764, 1955; s. 113, ch. 65-239; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 109, ch. 72-221; s. 10, ch. 77-458.

235.19 Site planning and selection.—

(1) Before acquiring property for sites, each board, including the Board of Regents, shall determine the location of proposed educational centers or campuses for the board. In making this determination, the board shall consider existing and anticipated site needs and the most economical and practicable locations of sites. The board shall coordinate with the long-range or comprehensive plans of local, regional, and state governmental agencies to assure the compatibility of such plans with site planning.

(2) The planning and selection of a new site or improvements to an existing site shall include:

(a) An investigation of the present and projected uses of property adjacent to the proposed site, to assure that such uses are not incompatible with the operation of the proposed educational facility;

(b) An investigation of present and projected vehicular traffic and road capabilities in the vicinity of each proposed site, to assure the adequacy of safety and traffic control devices for the protection of students; and

(c) Such other studies as may be required by the board.

In preparing recommendations regarding proposed sites, the board may secure the services of the Department of Education or such other assistance as may be found desirable to aid in making a proper selection.

(3) Each new site selected shall be adequate in size to meet the educational needs of the students to be served. The State Board of Education shall prescribe by rule standard sizes for new sites according to categories of students to be housed and other appropriate factors as may be determined by the state board.

(4) Sites recommended for purchase, or purchased, in accordance with the provisions of chapter 230 shall meet standards prescribed in this chapter and such supplementary standards as may be prescribed by the state board to promote the educational interests of the students. Each site shall be well drained and reasonably free from mud, and the soil shall be adaptable to landscaping and suitable for outdoor educational purposes. Insofar as practicable, the site shall not be located within any path of flight approach of any airport or adjoin a right-of-way of any railroad or through highway and shall not be adjacent to any factory or other property from which noise, odors, or other disturbances would be likely to interfere with the educational program.

(5) It shall be the responsibility of the board to secure the cooperation of appropriate municipal, county, regional, and state governmental agencies, in order that all necessary traffic control and safety devices are installed and operating upon, or in the vicinity of, any proposed site prior to the first day of classes or to satisfy itself that every reasonable effort has been made in sufficient time to secure the installation and operation of such necessary devices prior to the first day of classes. It shall also be the responsibility of the board to review annually traffic control and safety device needs and to secure all necessary changes indicated by such review.

(6) School boards, with the assistance of superintendents, school principals, teachers, bus drivers, parents, pupils, the Department of Transportation, and local agencies and officials responsible for traffic safety, shall, on an annual basis, conduct surveys and report on those hazards on or near public sidewalks, streets, and highways which endanger the life or threaten the health or safety of pupils who walk or are transported regularly between their homes and the school in which they are enrolled. The reports shall be promptly submitted in writing to the entity responsible for correction of the hazard, including the mayor or manager of the city, the Board of County Commissioners, or the Department of Transportation. According to the location of the hazard reported, and until such hazards are corrected, the entity responsible for correction of the hazard shall take, or cause to be taken, such precautions as are practicable to safeguard pupils; however, the school board shall be responsible for providing safety precautions until the entity responsible for correcting the hazard arrives on the scene. Upon receipt of information from the school board concerning sidewalk, street, or highway hazards which threaten the safety of pupils, the Board of County Commissioners, the municipal official having proper authority, or the Department of Transportation shall investigate, or cause to be investigated, the place or situation reported and, with reasonable diligence and promptness, shall take such steps as are practicable to correct the hazard reported or shall report to the school board that it is impracticable to make corrections necessary to overcome the reported hazards.

History.—s. 919, ch. 19355, 1939; CGL 1940 Supp. 892(301); s. 68, ch. 29764, 1955; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 4, ch. 73-338; s. 10, ch. 77-458; s. 102, ch. 79-400.

235.193 Coordination of planning with local governing bodies.—

(1) It is hereby declared to be the policy of this state to require the coordination of planning between the school boards and local governing bodies to ensure that plans for the construction and opening of public educational facilities are coordinated in time and place with plans for residential development and concurrent with other necessary services.

(2) A school board, upon the request of a local governing body within its district, shall submit in writing to the local governing body an official statement clearly showing the capability, or lack thereof, of the existing public school facilities in an area being considered for development, redevelopment, or additional development to absorb additional students without overcrowding such facilities.

(3) If there are no public school facilities in existence in the area of proposed development, the school board is required to provide the local governing body with the projected delivery date of such facilities in that area.

(4) The local governing body is empowered to reject development plans when public school facilities made necessary by the proposed development are not available in the area which is proposed for development or are not planned to be constructed in such area concurrently with the development.

History.—s. 11, ch. 77-458.

235.195 Cooperative development and use of facilities by two or more boards.—

(1) Two or more boards, including district school boards, community college boards of trustees, the Board of Trustees for the Florida School for the Deaf and the Blind, and the Board of Regents, desiring to cooperatively establish a common educational facility to accommodate students shall:

(a) Adopt and submit to the commissioner a joint resolution of the participating boards indicating their commitment to the utilization of the requested facility.

(b) Request the commissioner to have an educational plant survey conducted by the office to determine the need.

(c) Designate the exact location of the educational plant and which board is to assume responsibility for the operation, maintenance, and control of the proposed plant.

(2) The commissioner shall cause the requested educational plant survey to be conducted within 90 days after receiving the joint resolution and substantiating data and shall evaluate the findings of the

survey in terms of the benefits to be obtained, the programs to be offered, and the estimated cost of the proposed plant. The commissioner shall then present his evaluation of the request to the State Board of Education and, if his evaluation is in favor of the project, shall request the approval of the state board for the project. Upon approval of the project by the state board, the commissioner shall include each approved project in the annual comprehensive budget for educational facilities, including an estimated cost for completing each project not to exceed 50 percent of the cost of the project after the participating boards have made the necessary commitment to finance the remaining one-half. Public Education Capital Outlay and Debt Service Trust Funds may not be expended on any project unless specifically authorized by the Legislature in the General Appropriations Act; however, the participating boards shall, through cooperative efforts, provide the site for such facility.

(3) The use of modular and relocatable facilities shall be considered, where appropriate, in all facilities established pursuant to this section.

(4) The State Board of Education shall adopt rules necessary to carry out the intent of this section.

History.—s. 5, ch. 76-280; s. 12, ch. 77-458; s. 1, ch. 78-428.

235.211 Educational facilities design and construction techniques.—

(1) RELOCATABLE FACILITIES REQUIRED.—Upon the request of a board, the state board shall provide relocatable educational facilities for use at centers where there is an immediate need for student stations or where there is reason to believe the student population will not remain stable in the near future years. The state board shall make recommendations to the boards for the use of relocatables under the circumstances described herein.

(a) The office is empowered and directed to provide systems-based, modular, relocatable facilities and to purchase, or contract for the purchase of, such modular relocatable facilities. The ownership of such facilities shall rest with the state board, and they shall be loaned to boards for use as instructional facilities on a student-station-need basis. Requests for use of these facilities shall be based on the relative numbers of students in excess of capacity. Any amount of the funds earmarked in the general appropriation act for relocatable facilities and not committed for that purpose by March 1 of the fiscal year shall revert to the Public Education Capital Outlay and Debt Service Trust Fund.

(b) In choosing the facility which best meets the needs of the boards, the following factors shall be considered:

1. Portability;
2. Reconstructibility;
3. Demountability;
4. Durability of components;
5. Life span of the total system;
6. Simplicity, standardization, and ease of replacement of components;
7. Flexibility of interior spatial relationships;
8. Flexibility of external configurations;
9. Adaptability to solar energy systems;
10. Minimum foundation work;
11. Interfaceability with existing, conventional construction; and
12. Maximum recoverability of components when the facility is relocated.

(c) As student populations stabilize, and as the need for these facilities for instructional purposes decreases for whatever reason, the office is authorized to sell, lease, or otherwise dispose of the facilities to the boards, other state agencies, or others, to the best possible advantage of the state. Funds accruing from the sale or lease of these facilities shall become part of the Public Education Capital Outlay and Debt Service Trust Fund.

(d) The office may require that relocatable facilities be provided at educational centers where there is reason to believe that student population is unstable or is projected to decline in future years.

(2) COMMUNITY EDUCATIONAL FACILITIES.—

(a) Each school district, community college, or state university may submit a request to the commissioner for funds from the trust fund to construct community educational facilities. Such request shall contain the following provisions:

1. A detailed statement of the facilities to be constructed. Such statement shall include an analysis of the relationship of educational and community use of the facility.
2. The estimated number of students and community residents who are to utilize the facility.
3. The estimated cost of the facility.
4. A resolution or other appropriate indication of intent to participate in the funding and utilization of the facility from a noneducational governmental agency, including community, public, and educational broadcasting stations. Such indication shall include a commitment by such governmental agency to provide at least one-half of the cost of the facility. Public Education Capital Outlay and Debt Service Trust Funds may not be expended on any project unless specifically authorized by the Legislature in the General Appropriations Act.

(b) As provided by s. 235.41, the commissioner, through the office, shall review such request for allocation and, upon determining compliance with the requirement of paragraph (a) and such other provisions as deemed appropriate, provide the State Board of Education with recommendations for the joint funding of capital outlay projects involving both educational and noneducational governmental agencies from the trust fund.

(3) PROTOTYPE DESIGN CRITERIA TO BE PROVIDED.—The state board shall provide prototype design criteria for the development of educational facilities for the purpose of providing school boards, boards of trustees, and the Board of Regents with the means of constructing sound educational facilities more rapidly.

(a) The office is empowered and directed to develop prototype educational criteria, performance specifications, and design relationships for the several program-grade groups which shall be provided to each school board or board of trustees or the Board of Regents by the office. These prototype design criteria shall be developed and distributed to the appro-

priate board within 6 months of the effective date of this act.

(b) Program-grade groups are facilities delineated by the programs or grades which they are designed to house. Prototype design criteria shall be developed for the following program-grade groups:

1. Elementary schools and kindergartens;
2. Middle or junior high schools;
3. Senior high schools;
4. Vocational-technical facilities;
5. Community colleges; and
6. Universities.

(c) The design criteria shall include, but not be limited to, the following items for each program-grade group:

1. Minimum and maximum square footage requirements for different functions and areas and the procedures for determining the gross square footage for each educational facility to be funded in whole or in part by the state;

2. Minimum performance criteria for all systems, including mechanical, electrical, heating, cooling, ventilating, plumbing, and structural systems, which for the Board of Regents shall be prescribed by the Department of General Services;

3. Energy-efficiency and energy-conservation requirements, which for the Board of Regents shall be prescribed by the Department of General Services;

4. Spatial relationships of the different functions of the plant and facility and traffic flow and patterns; and

5. Prototype design and criteria relating specifically to:

a. Instructional areas.

b. Core areas, which include administrative suites, guidance and counseling facilities, record storage areas, first aid facilities, faculty areas, media centers, libraries, and food and student centers.

c. Special instructional areas, such as exceptional education facilities, language and science laboratories, and physical education facilities.

d. Ancillary facilities.

e. Community service areas for initial design and instructional spaces that can be converted to community service areas should the student population decline.

(d) The office shall annually review, revise, update, and improve the state board-approved design criteria, based upon the latest educational, technological, and construction developments so that the prototypes shall be representative of the most advanced procedures available. The office shall annually provide each school board or board of trustees or the Board of Regents with a copy of the updated prototype design criteria for each program-grade group.

(4) LEASING AUTHORIZED.—The office may require or approve the utilization of rented or leased facilities. Facilities may also be acquired by lease-purchase agreement, and any capital outlay funds available are hereby authorized to be expended for such purposes.

(5) CONSTRUCTION TECHNIQUES AND FINANCING MECHANISMS.—Pursuant to state board rules, the office shall require boards to employ procedures for the design and construction of new facilities, or major additions to existing facilities, that will include, but not be limited to, the latest developments in construction, in order to insure that educational facilities are constructed rapidly and economically. The following concepts may be included in the requirements of the office:

(a) *Systems building process.*—An approach to construction that combines the organization and programming, planning, design, financing, manufacturing, construction, and evaluation of buildings under single or highly coordinated management into an efficient total process. A total building system is an interdependent group of building subsystems forming a unified whole. The systems building process requires the standardization and multiple reuse of building subsystems for maximum compatibility and interfaceability of different structures and facilities.

(b) *Fast-track construction scheduling.*—A method which involves the bidding and awarding of certain building subsystems after approval of preliminary design, and before final document completion. Fast-track construction reduces construction time by permitting early subsystems manufacture and erection; it can improve cost and price control and eliminate extensive design development time by planners and designers.

(c) *Construction management.*—A process whereby a single or highly coordinated authority is responsible for all scheduling and coordination in both design and construction phases and is generally responsible for the successful, timely, and economical completion of the construction project.

(d) *Turnkey bidding.*—A method whereby the contractor agrees to complete construction to the user's specifications and requirements at a previously agreed cost.

(e) *Design and build bidding.*—A procedure which requires that an architect, contractor, or engineer bid the entire design and construction of a project and which requires that the owner hire a single source for the project completion and be responsible for the development of performance specifications and technical criteria.

(f) The use of modular, prefabricated, and standardized components.

Notwithstanding anything above, a board shall be authorized to utilize its own procedures, designs, construction techniques, and materials upon a showing to the office that such proposal will result in equivalent educational facilities without an increase in cost or a delay in construction.

History.—s. 8, ch. 73-345; s. 8, ch. 74-374; s. 9, ch. 75-292; s. 13, ch. 77-458; s. 2, ch. 78-428.

235.212 New construction; window placement; solar energy systems.—In the design and construction of new permanent educational facilities, a district school board shall consider the placement of adequate windows sufficient to utilize the natural Florida climate for both light and ventilation in case of power shortages. A district school

board shall also install solar energy systems in the public schools whenever feasible.

History.—s. 1, ch. 78-277.

235.221 High priority facilities construction; use by school districts; conditions and procedures.—

(1) A district school board may request funds to meet urgent construction needs.

(2) Those districts in need of such facilities shall:

(a) Have the facilities recommended in an up-to-date educational plant survey.

(b) Present evidence that existing cash will not provide the resources necessary to construct these facilities.

(c) Adopt an official resolution requesting funding from the trust fund in an amount which shall not exceed 7 times the most recent annual allocation of the school board under provisions s. 9(a)(2), Art. XII of the State Constitution, as amended, and s. 235.435 and which, when added to the district's current fixed capital outlay funds available, will provide sufficient funds with which to fund the above needs.

(d) Officially waive 80 percent of any future annual allocations from the trust fund until such time that the total amount of the advancement is repaid. However, the office shall calculate each school board's remodeling needs pursuant to s. 235.435, and shall annually waive repayment of the advance funding in an amount equal to that board's remodeling and safety-to-life-correction needs, not to exceed 20 percent of the board's projected annual allocation.

(3) Each board desiring to participate in securing approval for funding as described herein shall submit the required evidence and resolutions to the Office of Educational Facilities Construction.

(4) The State Board of Education shall either approve or disapprove each recommended project within 30 days after receipt of the recommendations from the office. Upon approval by the State Board of Education, the boards having approved projects shall be officially notified of such approval and, upon receipt of such notification, shall be authorized to enter into contract as soon as possible thereafter for the approved facilities.

History.—s. 7, ch. 76-280; s. 69, ch. 77-104; s. 14, ch. 77-458.

235.26 State Uniform Building Code for Public Educational Facilities Construction.—The office is directed to recommend to the state board for approval rules prescribing a mandatory, uniform, statewide building code for the construction of public educational facilities. The office shall recommend and the state board shall adopt, as part of the State Uniform Building Code for public school construction, flood plain management criteria in compliance with the rules and regulations at 24 C.F.R., Parts 1909-1925, established by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. ss. 4001-4128. Wherever the words "Uniform Building Code" appear, they shall mean the "State Uniform Building Code for Public Educational Facilities Construction." It shall not be the intent of the Uniform Building Code to inhibit the use of new materials or innovative techniques; nor shall it specify or prohibit materials by brand names. The code shall be flexible enough to cover all phases of construction which will afford reasonable protection for public safety, health, and general welfare. The office may secure the service of other state agencies or such other assistance as it may find desirable in the revision of the code.

(1) UNIFORM BUILDING CODE.—All educational facilities constructed by a board shall incorporate the State Uniform Building Code for Public Educational Facilities Construction and shall be exempt from all state, county, district, municipal, or local building codes, interpretations, building permits and assessments of fees for building permits, and ordinances. Any inspection by local or state government shall be based on the Uniform Building Code as prescribed by the office. Each board shall provide for periodic inspection of the proposed educational plant during each phase of construction to determine compliance with the Uniform Building Code. The Uniform Building Code shall incorporate as part of its minimum standards the applicable provisions of the State Minimum Building Codes.

(2) CONFORMITY TO UNIFORM BUILDING CODE STANDARDS REQUIRED FOR APPROVAL.—A board shall not approve any plans for the construction, erection, renovation, repair, or demolition of any educational facility unless these plans conform to the requirements of the Uniform Building Code. It shall also be the responsibility of the office to develop, as a part of the Uniform Building Code, standards relating to:

(a) Prefabricated or factory-built facilities which are designed to be portable, relocatable, demountable, or reconstructible; are used primarily as classrooms; and do not fall under the provisions of ss. 320.821-320.832.

(b) The sanitation of educational plants and the health of occupants of educational plants.

(c) The safety of occupants of educational plants as provided in s. 235.06.

(d) The physically handicapped.

(e) An energy performance index which shall be a number describing the energy requirements at the building boundary of a facility, per square foot of floor space, under defined internal and external ambient conditions over an annual cycle. As experience develops on the energy performance achieved by the facility, the energy performance index will serve as a measure of building performance with respect to energy consumption and as a guide for the revision of the energy performance index used in the design of future facilities. The energy performance index will consider the energy efficiency of the facility so as to minimize the consumption of energy used in the operation and maintenance of the facility. The office may adopt standards for the energy performance index or portions thereof already established by the Department of General Services under ss. 255.251-255.256.

(f) The performance of life-cycle cost analyses on alternative architectural and engineering designs to evaluate their energy efficiencies.

1. The life-cycle cost analysis shall be the sum of:

a. The reasonably expected fuel costs, over the life of the building, that are required to maintain illumination, water heating, temperature, humidity,

ventilation, and all other energy-consuming equipment in a facility; and

b. The reasonable costs of probable maintenance, including labor and materials, and operation of the building.

2. For computation of the life-cycle costs, the office shall develop standards that shall include, but not be limited to:

a. The orientation and integration of the facility with respect to its physical site.

b. The amount and type of glass employed in the facility and the directions of exposure.

c. The effect of insulation incorporated into the facility design and the effect on solar utilization of the properties of external surfaces.

d. The variable occupancy and operating conditions of the facility and subportions of the facility.

e. An energy consumption analysis of the major equipment of the facility's heating, ventilating, and cooling system, lighting system, and hot water system and all other major energy-consuming equipment and systems as appropriate.

3. Such standards shall be based on the best currently available methods of analysis, including such methods as those of the National Bureau of Standards, the Department of Housing and Urban Development, and other federal agencies and professional societies and materials developed by the Department of General Services and the office. Provisions shall be made for an annual updating of standards as required.

(3) ENFORCEMENT BY BOARD.—It is the responsibility of each board to insure that all plans and educational plants meet the standards of the Uniform Building Code and to provide for the enforcement of this code in the areas of their jurisdiction. Each board shall provide for the proper supervision and inspection of the work. Each board is authorized to employ a chief building official or inspector and such other inspectors and personnel as may be necessary to administer and enforce the provisions of this code. Boards may also utilize local building department inspectors who are certified as provided herein to enforce this code. Inspectors shall show evidence of certification by the office as having met the requirements of the office for Uniform Building Code inspectors. Plans or facilities that fail to meet the standards of the Uniform Building Code shall not be approved.

(4) ENFORCEMENT BY OFFICE OF EDUCATIONAL FACILITIES CONSTRUCTION.—As a further means of insuring that all educational facilities hereafter constructed or materially altered or added to conform to the Uniform Building Code standards, each board which undertakes the construction, erection, alteration, renovation, repair, purchasing, or leasing of any educational plant, the cost of which exceeds $50,000, shall see that the approval of the office is obtained as herein provided. No public educational funds may legally be expended for the construction, erection, alteration, renovation, repair, purchasing, or leasing of any educational facility unless the provisions of this section are observed and until the board has received a written statement from the office, within the time limits as provided in this section, that approval has been granted.

(5) OFFICE APPROVAL.—

(a) Before the contract has been let for the construction, the board shall require the superintendent or president to submit to the office, in accordance with state board rules, two copies each of:

1. Educational specifications.
2. Phase I documents, to include schematic drawings and proposals.
3. Phase II documents, to include:

a. Preliminary drawings and proposals; and
b. Preliminary specifications.

4. Phase III documents, to include:

a. Completed contractual documents;
b. Energy efficiency studies; and
c. Life-cycle cost analyses.

The board shall not proceed with any proposed construction until the written approval of the office is received. The office shall, in writing, approve, disapprove, make recommendations, or otherwise act on the educational specifications and phase documents submitted by a board within 30 calendar days of the official receipt of each set of phase documents by the office. If the board does not receive written notice within the time prescribed above, then it shall proceed as if written approval had been received. The State Board of Education is empowered and directed to adopt rules providing for exceptions to the steps required for approval for state board-approved prototype design criteria, reuse of previously approved district plans, and other plans and proposed minor renovations or construction projects which do not necessarily require detailed documentation and intense review by the office. Approval of phase III documents shall be effective for a 3-year period after the date of such approval.

(b) In reviewing plans for approval, the office shall take into consideration:

1. The desirability and need for the new facility.
2. The educational planning.
3. The functional and architectural planning.
4. The location on the site.
5. Plans for future expansion.
6. The type of construction.
7. Sanitary provisions.
8. Conformity to Uniform Building Code standards.
9. The structural design and strength of materials proposed to be used.
10. The mechanical design of any heating, air conditioning, plumbing, or ventilating system.
11. The electrical design of educational plants.
12. The energy efficiency and conservation of the design.
13. Life-cycle cost considerations.
14. The construction of special facilities for physically handicapped persons.

(6) STATE BOARD OF APPEALS.—The State Board of Education shall be the final board of appeals for all questions, disputes, or interpretations involving the Uniform Building Code, and any board shall prepare in writing its reasons for objecting to decisions made by Uniform Building Code inspectors or the office.

(7) ANNUAL REVIEW AND UPDATE; DISSEMINATION.—The office is authorized to annual-

ly review, update, and revise the Uniform Building Code. The office shall publish and make available to each board at no cost copies of the code and each amendment and revision thereto. The office shall make additional copies available to all interested persons at a price sufficient to recover costs.

(8) FALLOUT SHELTERS.—

(a) After the effective date of this act, the school board may require the architect concerned in the initial design, stages of design, and construction of new educational facilities to apply for technical advice and counsel on fallout shelter slanting and cost-reduction techniques available without cost through the Department of Community Affairs.

(b) When the school board concerned determines the application of fallout shelter slanting and cost-reduction techniques to be feasible and economical for the inclusion of a fallout shelter in the proposed educational facility, the design and construction of such educational facility may include fallout protection which meets the minimum standards for such protection as prescribed by the Department of Community Affairs.

(c) School authorities of the state and its political subdivisions are authorized to modify existing educational structures to incorporate fallout shelters, and the Department of Community Affairs shall make available to such authorities the same professional services as set forth in paragraph (a). Such authorities are further authorized to participate in such federal assistance programs as may be available to assist local authorities in providing fallout protection in educational facilities.

(9) LEGAL EFFECT OF CODE.—The State Uniform Building Code for Public Educational Facilities Construction shall have the force and effect of law and shall supersede any other code adopted by a board or any other building code or ordinance for the construction of educational facilities, whether at the local, county, or state level, and whether adopted by rule or legislative enactment. All special acts or general laws of local application are hereby repealed to the extent that they conflict with this section.

(10) LOCAL LEGISLATION PROHIBITED.—After July 1, 1974, pursuant to s. 11(a)(21), Art. III of the State Constitution, there shall not be enacted any special act or general law of local application which proposes to amend, alter, or contravene any provisions of the State Building Code adopted under the authority of this section.

History.—s. 926, ch. 19355, 1939; CGL 1940 Supp. 892(312); s. 12, ch. 29754, 1955; s. 10, ch. 59-371; s. 117, ch. 65-239; s. 1, ch. 67-106; ss. 15, 18, 19, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 70-196; s. 6, ch. 70-399; s. 9, ch. 74-374; s. 1, ch. 77-280; s. 15, ch. 77-458; s. 1, ch. 78-290; s. 1, ch. 79-71; s. 103, ch. 79-400.

Note.—Chapter 74-374, which created subsection (9), was passed by the requisite three-fifths vote in both houses. See s. 11(a)(21), Art. III, State Const.

cf.—s. 288.33 School buildings; financing construction.

235.30 Supervision and inspection.—Before the construction or alteration of, or addition to, any building is started, the board shall provide for the proper supervision and necessary inspection of the work.

History.—s. 930, ch. 19355, 1939; CGL 1940 Supp. 892(316); s. 1, 69-300; s. 16, ch. 77-458.

235.31 Advertising and awarding contracts; day labor projects; prequalification of contractor.—

(1) As soon as practicable after any bond issue has been voted upon and authorized or funds have been made available for the construction, repair, alteration, or otherwise for the improvement of any educational facility, and after plans for the work have been approved by the office, the board, after advertising the same in the manner prescribed by law, shall award the contract for such building or improvements to the lowest responsible bidder. However, the board may, within its discretion, reject all bids received, if it deems the same expedient, and may readvertise, calling for new bids. For constructing, renovating, and remodeling, or otherwise improving educational facilities at a cost not exceeding $50,000, the board may arrange for the work to be done on a day-labor basis.

(2)(a) As an option to the provisions prescribed above, boards may elect to come under the rules prescribed by the State Board of Education for the prequalification of bidders of educational facilities construction.

(b) As another option, boards may negotiate with contractors in accordance with the provisions of this subsection only for construction associated with the extensive repair, alteration, remodeling, renovation, or improvement of any existing educational plant, but not for the expansion of the facility.

(c) If any board elects either or both of the above options, it shall publish for at least 30 days a notice of the board's intent to elect said option in a local newspaper having general circulation throughout its district, after which a public hearing shall be held.

(d) The board shall adopt rules to implement the state board rules with regard to the prequalification of bidders. The board shall submit a copy of the rules and procedures adopted to the office, and these shall be approved by it.

(e) The board shall not adopt, nor shall the office approve, any procedure or requirement for the prequalification or certification of contractors which may operate to restrict responsible competition or to prevent the submission of a bid by, or prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the district wherein the work is to be performed. Such rules shall operate only to limit competition to parties able to promptly perform the conditions of the contract and to respond in damages in case of default.

(3)(a) The board may negotiate a contract with a contractor for services, as provided in subsection (2), at compensation which the board determines is fair, competitive, and reasonable. In making such determination, the board shall conduct a detailed analysis of the cost of the services required, in addition to considering their scope and complexity. For all lump-sum or negotiated contracts estimated to cost over $50,000, the board shall require the contractor receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any contract under which such a certificate is required shall contain a provision that the original contract price and any additions thereto

shall be adjusted to exclude any significant sums when the board determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within 1 year following the end of the contract.

(b) Should the board be unable to negotiate a satisfactory contract with the contractor first considered to be qualified at a price the board determines to be fair, competitive, and reasonable, negotiations with that contractor shall be formally terminated. The board shall then undertake negotiations with another qualified contractor. Failing accord with the next qualified contractor, the board shall terminate negotiations. The board shall then undertake negotiations with another qualified contractor until their original list is exhausted or a selection is made.

(c) Should the board be unable to negotiate a satisfactory contract with any of the originally selected contractors, it may select additional contractors and continue negotiations in accordance with this subsection until an agreement is reached.

(4) Any person or firm desiring to bid or negotiate for the performance of any contract which the board proposes to let must first be certified by the board as qualified pursuant to law and rules of the State Board of Education. The board shall be required to act upon the application for qualification within 30 days after the same is presented. Upon receipt of such application, the superintendent or president acting on behalf of said board shall cause the same to be examined and the statements therein to be verified and, after obtaining whatever technical assistance is needed, shall determine whether the applicant shall be recommended for certification to the board. If the applicant is found to possess the prescribed qualifications, the superintendent or president shall recommend to the board that a certificate of qualification be issued. The board, acting on the recommendation of the superintendent or president, may issue a certificate of qualification valid for such period of time as it shall prescribe, but not to exceed 1 year; however, the board may revoke such certificate of qualification for cause.

(5) The board shall require all applicants to furnish the superintendent or president a statement under oath, on such forms as the board may prescribe, setting forth detailed information with respect to the applicant's competence, past performance record, experience, financial resources, and capability, in conformity with state board rules, together with such other information as the board may deem necessary. The state board rules may require that said application be accompanied by a current financial statement prepared by a public accountant certified in the state and in accordance with standard reporting requirements prescribed by the said board. Financial information as may be required by such rules shall remain confidential and shall not be disclosed to anyone except members of the board and its staff who may elect to adopt such rules as hereinafter provided.

(6) The certificate of qualification shall contain a statement fixing the actual amount of work, in terms of estimated cost, which the applicant will be permitted to have on contract with the board and not completed at any one time and may contain a statement limiting such applicant to the submission of bids, or to negotiation, upon a certain class of work. Subject to the foregoing restrictions, the certificate of qualification shall authorize the holder to bid on all work on which bids are taken, or negotiate on all work on which contracts are negotiated, by the board during the period of time therein specified.

(7) Any applicant for a certificate of qualification aggrieved by the action of the board may, within 10 days after receiving notification of such action, request in writing a reconsideration by the board of the application and submit additional evidence of qualification. The board shall thereupon reconsider the application and may adhere to, modify, or reverse its original action. The board shall act upon any request for reconsideration within 30 days after the filing thereof, and shall immediately notify the applicant of the action taken.

(8) No contractor shall be qualified to bid or negotiate when an investigation by an agent or designee of the board discloses that such contractor is delinquent on a previously awarded contract by said board, and, in such case, the certificate of qualification may be suspended or revoked by the board. The board may suspend, for a specified period of time, or revoke for good cause any certificate of qualification. Any person or firm found delinquent on a contract or whose certificate is revoked or suspended shall be given the same benefit of appeal and reconsideration as provided in the case of an applicant refused an original certificate.

(9) All general laws, population acts, special acts, or local acts authorizing the exercise of power in conflict with the provisions of this section are hereby repealed.

History.—s. 931, ch. 19355, 1939; CGL 1940 Supp. 892(317); ss. 1, 2, ch. 57-396; ss. 1, 2, ch. 63-500; s. 119, ch. 65-239; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 10, ch. 74-374; s. 14, ch. 75-292; s. 16, ch. 77-458; s. 104, ch. 79-400.

235.32 Substance of contract; contractors to give bond; penalties.—Upon accepting a satisfactory bid, the board shall enter into a contract with the party or parties whose bid has been accepted, and such contract shall contain the drawings and specifications of the work to be done or the material to be furnished; the time limit in which the construction is to be completed; the time and method by which payments are to be made upon said contract; and the penalty to be paid by the contractor for any failure to comply with the terms of said contract. The contractor shall furnish the board with a performance bond, issued by a surety company licensed to do business in Florida, for 100 percent of the contract price. The contractor shall also furnish a payment bond in accordance with s. 255.05, as a guaranty against the involvement of the board in actions to obtain payment for materials, supplies, or labor used directly or indirectly by contractors or subcontractors. Notwithstanding any other provision of this section, if 25 percent or more of the costs of any construction project is paid out of a trust fund established pursuant to 31 U.S.C. s. 1243(a)(1), laborers and mechanics employed by contractors or subcontractors on such construction will be paid wages not less than those prevailing on similar construction projects in the locality, as determined by the Secretary of Labor in

accordance with the Davis-Bacon Act, as amended. Any and all persons, firms, or corporations who shall construct any part of any educational plant, or addition thereto, on the basis of any unapproved plans or in violation of any plans approved in accordance with the provisions of this chapter and rules of the State Board of Education relating to building standards or specifications shall be subject to forfeiture of bond and unpaid compensation in an amount sufficient to reimburse the board for any costs which will need to be incurred in making any changes necessary to assure that all requirements are met and shall also be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for each separate violation.

History.—s. 932, ch. 19355, 1939; CGL 1940 Supp. 892(318); s. 4, ch. 21989, 1943; s. 13, ch. 29754, 1955; s. 120, ch. 65-239; s. 1, ch. 69-300; s. 141, ch. 71-136; s. 11, ch. 74-374; s. 17, ch. 77-458; s. 2, ch. 79-14.

235.321 Changes in construction requirements after award of contract.—

(1) After the award of a construction contract no changes may be made other than those which result from conditions which were not foreseen at the time of the award of contract. When any one change increases or decreases the scope of the original contract, the proposal to change shall be supported by accurate cost data establishing the fair and current market value of the labor, materials, equipment, and incidentals required to accomplish the change, plus or minus a reasonable margin to represent the contractor's profit and overhead. Cost data shall be in sufficient detail to enable any qualified architect or engineer to confirm the accuracy of such proposal. Before the board shall act on the proposal to change the contract, the accuracy of the supporting cost data shall be certified to the board by the architect or engineer in charge of the work, who shall also certify that the prices quoted are both fair and reasonable and in proper ratio to the cost of the original work contracted for under benefit of competitive bidding.

(2) A record copy of all change orders shall be filed with the office by the board as may be prescribed by rules of the State Board of Education.

(3) The board may, at its option and by written policy duly adopted and entered in its official minutes, authorize the superintendent or president or other designated individual to approve change orders in the name of the board for preestablished amounts. Approvals shall be for the purpose of expediting the work in progress and shall be reported to the board and entered in its official minutes.

History.—s. 14, ch. 29754, 1955; ss. 15, 35, ch. 69-106; s. 110, ch. 72-221; s. 17, ch. 77-458.

235.33 Payments.—

(1) The final payment shall not be made until the building has been inspected by the architect or other person designated by the school board for that purpose and until he has issued a written certificate that the building has been constructed in accordance with the approved plans and specifications and approved change orders and until the school board, acting on these recommendations, has accepted the building. After acceptance by the school board, a duplicate copy of this written certificate, duly certified as having been accepted by the local board, shall be filed with the Department of Education.

(2) Boards shall have full authority and responsibility for all decisions regarding educational plant construction contracts and payments.

History.—s. 933, ch. 19355, 1939; CGL 1940 Supp. 892(319); s. 1, ch. 28207, 1953; s. 15, ch. 29754, 1955; s. 6, ch. 59-339; s. 121, ch. 65-239; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; ss. 2, 3, ch. 76-4; s. 18, ch. 77-458.

235.34 Expenditures authorized.—

(1) School boards, boards of trustees, the Board of Regents, boards of county commissioners, municipal boards, and other agencies and boards of the state shall expend funds, separately or collectively, by contract or agreement, for the placement, paving, or maintaining of any road, byway, or sidewalk adjacent to or running through the property of any educational plant for the maintenance or improvement of the property of any educational plant or of any facility on such property. Expenditures may also be made for sanitary and utility improvements and for the installation, operation, and maintenance of traffic control and safety devices upon, or in the vicinity of, any existing or proposed educational plant. The boards of county commissioners, municipal boards, and other agencies and boards of the state may plant or maintain trees, flowers, shrubbery, and beautifying plants upon the grounds of any educational plant, upon approval of the superintendent or president or designee. Payment by a board for any improvement set forth in this section shall be authorized in any amounts agreed to by the board. Any payments so authorized to be made shall not be mandatory unless the specific improvement and costs have been agreed to prior to the improvement's being made.

(2) The provisions of any law, municipal ordinance, or county ordinance to the contrary notwithstanding, the provisions of this section shall regulate the levying of assessments for special benefits on school or community college districts and the directing of the payment thereof. Any municipal ordinance or county ordinance making provision to the contrary is void and shall be of no effect.

History.—ss. 1, 2, ch. 28266, 1953; s. 1, ch. 69-300; s. 111, ch. 72-221; s. 5, ch. 73-338; s. 1, ch. 75-258; s. 19, ch. 77-458.

cf.—s. 153.05 Water system improvements and sanitary sewers; special assessments.

s. 196.31 Taxes against state properties.

235.40 Radio and television facilities.—

(1) The school boards or boards of trustees may acquire, by purchase, permanent easement, or gift, suitable lands and other facilities, either within or without the boundaries of the district, for use in providing educational radio or television transmitting sites and may erect such buildings, antennas, transmission equipment, towers, or other structures as are necessary to accomplish the purposes of this section.

(2) Fixed capital outlay budget requests for public broadcasting stations and instructional television and radio facilities shall be submitted to the Executive Office of the Governor and the Commissioner of Education in the form prescribed by s. 216.043 and shall be submitted as specified in s. 216.023. The commissioner may include any recommendations

for these purposes in the legislative budget request for fixed capital outlay.

History.—s. 3, ch. 63-221; s. 1, ch. 69-300; s. 20, ch. 77-458; s. 3, ch. 78-428; s. 106, ch. 79-190.

235.41 Legislative budget request; educational facilities assessment.—

(1) The State Board of Education, through the office, shall develop a uniform, comparable system for determining total fixed capital outlay needs, inventorying existing facilities, and conducting utilization studies, and for any other procedure deemed appropriate in arriving at the amounts required to fund net unmet needs as reflected in the integrated comprehensive budget request required by this section.

(2) The commissioner, through the office, shall submit to the Legislature an integrated, comprehensive budget request for educational facilities construction and fixed capital outlay needs for the public schools, the community colleges, the institutions in the State University System, the Florida School for the Deaf and the Blind, and the state system of public education. The request shall include information necessary to develop the budget request by the commissioner required in subsection (3).

(3) The commissioner, through the office, shall submit an integrated, comprehensive budget request to the Executive Office of the Governor and to the Legislature no later than 90 days prior to the legislative session each fiscal year. Notwithstanding the provisions of s. 216.043, the integrated, comprehensive budget request shall include:

(a) Actual capital outlay fund balances brought forward from the preceding fiscal year, listed separately as encumbered and unencumbered.

(b) Estimated encumbrances to be made in the current fiscal year from actual capital outlay fund balances brought forward from the preceding fiscal year as unencumbered.

(c) Estimated capital outlay appropriations to be made from the current fiscal year revenues, listed separately to indicate those appropriations that will be encumbered throughout the fiscal year and those that will remain unencumbered at the end of the fiscal year.

(d) Estimated capital outlay funds to be disbursed in the current fiscal year from:

1. Fund balances brought forward from the preceding fiscal year.

2. Appropriations to be made from the current fiscal year revenues.

(e) Estimated undisbursed capital outlay funds remaining at the end of the current fiscal year from:

1. Fund balances brought forward from the preceding fiscal year, listed separately as encumbered and unencumbered.

2. Appropriations to be made from the current fiscal year revenues, listed separately as encumbered and unencumbered.

(f) A 5-year assessment of fixed capital outlay needs for education.

(g) A list of fixed capital outlay needs, and a request for fixed capital outlay funds, for the ensuing fiscal year for the state system of public education, reflecting the actual ability of the various boards to encumber and disburse the funds requested.

(h) Recommendations for the priority of expenditure of funds in the state system of public education, with reasons for the recommended priorities.

(i) Other recommendations which relate to the effectiveness of the educational facilities construction program.

(4) The office shall recommend, and the state board shall adopt, rules to implement the provisions of this section.

History.—s. 12, ch. 74-374; s. 6, ch. 75-292; s. 2, ch. 76-280; s. 21, ch. 77-458; s. 107, ch. 79-190.

235.42 Educational plants construction funds; Public Education Capital Outlay and Debt Service Trust Fund; allocation of funds.—

(1) It is the intent of the Legislature that effective July 1, 1977, and each fiscal year thereafter, the plan for capital projects for the state system of public education shall be for the ensuing 5 years and shall be referred to as the 5-year capital projects program. To implement this 5-year program, there is created a continuing annual appropriation to the Public Education Capital Outlay and Debt Service Trust Fund of all receipts and revenues from the Gross Receipts Tax as authorized in s. 9(a)(2), Art. XII of the State Constitution, and the proceeds from all bonds issued pursuant to that authority, as authorized by the Legislature.

(2) The Commissioner of Education shall, in administering the 5-year capital projects program, determine the annual and aggregate resources of the Public Education Capital Outlay and Debt Service Trust Fund and shall recommend to the state board approval of the 5-year capital projects program. The state board shall annually authorize the capital projects plan for each participating board; however, total approved encumbrances and disbursements of the 5-year capital projects program in each fiscal year shall not exceed an amount that would prevent the state board from meeting the encumbrances and disbursement requirements for that year for approved capital projects. In addition, the commissioner shall have, and shall exercise, the authority to inform each participating board of the time certain when approved capital projects may be, in whole or in part, subjected to contractual obligations, and until such notification is received from the commissioner the participating board shall not incur obligations for capital projects to be funded from the Public Education Capital Outlay and Debt Service Trust Fund. The State Board of Education shall adopt rules to implement the 5-year capital projects program.

(3) To provide for maximum use of funds available and to expedite the construction of authorized plants, the office, with the approval of the State Board of Education, is empowered and directed to transfer appropriations and moneys among and within the authorized capital projects, within the meaning, and as required by, paragraph 9(a)(2), Art. XII of the State Constitution, as amended, appropriated from the Public Education Capital Outlay and Debt Service Trust Fund. This transfer authority shall include appropriations authorized in prior years and certified forward by the Executive Office of the Governor pursuant to s. 216.301.

(4) The commissioner, through the office, shall administer the Public Education Capital Outlay and

Debt Service Trust Fund. The commissioner shall provide for the timely distribution of moneys necessary to meet the disbursement requirements of the boards to plan or construct facilities which have been approved by the State Board of Education. Records shall be maintained by the office to identify legislative appropriations, State Board of Education allocations, encumbrance authorizations, disbursements, advances, transfers, investments, sinking funds, and revenue receipts by source. The Department of Education shall pay the administrative costs of the Public Education Capital Outlay and Debt Service Trust Fund from the funds which comprise the trust fund.

(5)(a) The Public Education Capital Outlay and Debt Service Trust Fund shall be comprised of the following sources, which are hereby appropriated to the trust fund:

1. Proceeds, premiums, and accrued interest from the sale of public education bonds and that portion of the revenues in excess of the debt service and reserve requirements which accrues from the gross receipts tax as provided by s. 9(a)(2), Art. XII of the State Constitution, interest on investments, and federal interest subsidies.

2. All student building fees and capital improvement fees collected, or to be collected, by the Board of Regents, except that portion that may be required for debt service and reserve requirements.

3. That portion of federal revenue sharing funds appropriated for educational facilities construction.

4. Any other funds for educational facilities construction, including all federal grants and donations.

5. All capital outlay funds previously appropriated and certified forward pursuant to s. 216.301.

(b) There is hereby appropriated from the trust fund all certifications forward to this fund and all previous allocations by the Board of Regents from student building and capital improvement fees.

However, any funds required by law to be segregated or maintained in separate accounts shall be segregated or maintained in such manner that the relationship between program and revenue source is retained. Nothing in this subsection shall be construed so as to limit the use by the Public Education Capital Outlay and Debt Service Trust Fund of the resources of funds so segregated or maintained.

(6) Upon the request of each board, the office shall distribute to the board an amount sufficient to cover capital outlay disbursements anticipated from encumbrance authorizations for the following month. Encumbrance of these capital outlay funds shall be made pursuant to the most recent survey conducted under rules prescribed by the State Board of Education, to determine the capital outlay requirements of each board.

(7) The office may authorize each board to enter into contracts for a period exceeding 1 year, within amounts appropriated and budgeted for fixed capital outlay needs; but any contract so made shall be executory only for the value of the services to be rendered, or agreed to be paid for, in succeeding fiscal years. This subsection shall be incorporated verbatim in all executory contracts of a board.

(8) No board shall, during any fiscal year, expend any money, incur any liability, or enter into any contract which, by its terms, involves expenditure of money in excess of the amounts appropriated and budgeted or in excess of the cash that will be available to meet the disbursement requirements. Prior to entering into an executory, or any other, contract, the boards shall obtain certification from the office that moneys will be available to meet the disbursement requirements. Any contract, verbal or written, made in violation of this subsection shall be null and void, and no payment shall be made thereon.

(9) The State Board of Administration is authorized to invest the trust funds of any state-supported retirement system, and any other state funds available for loans to the trust fund at a rate of interest that is no less favorable than would have been received had such moneys been invested in accordance with authorized practices.

(10) Boards authorized to participate in the trust fund are district school boards, the community college boards of trustees, the Trustees of the Florida School for the Deaf and the Blind, the Board of Regents, and other units of the state system of public education.

(11) Authorized boards needing more capital outlay funds than are currently available may make application to the office for approval to participate in advance funding from the trust fund. The board's application shall include the following information:

(a) Proof that the educational plant or fixed capital outlay need has been authorized by law.

(b) Certification that:

1. The educational plant or fixed capital outlay need is intended to be financed from the sale of bonds pursuant to subsection 9(a)(2) or 9(d), Art. XII of the State Constitution, or from currently authorized appropriations; and

2. Sufficient allocations have been made but that insufficient funds are currently available to award a contract.

(c) A schedule of the cash disbursements necessary and a schedule of the repayment of advances and any interest, where applicable, to the trust fund.

(12) When borrowed funds as authorized in subsection (9) above are commingled with working capital trust funds and advanced to a board, that board shall be charged a rate of interest on the total amount advanced sufficient to discharge a proportionate amount of the debt service of the borrowed funds.

(13) The office, after determining that the request for advanced funding is eligible, shall recommend the board's request to the State Board of Education for approval. When approved by the State Board of Education, the office shall certify this action to the requesting board. Upon receipt of this certification and an encumbrance authorization from the office, the board is authorized to enter into contracts. The board shall certify to the office that insufficient funds are available to the board to pay progress payments to contractors when such payments are due within the next 30 days and request a disbursement from the trust fund. The office, after determining that the request is reasonable, shall request the State Comptroller to issue a warrant payable to the requesting board, and such warrant shall

be promptly transmitted. The office is empowered to provide for the release of funds to authorized boards so as to assure that the funds are expended in the most effective and efficient manner practicable. The intent of the Legislature is to assure that facilities to provide needed adequate student stations for all students be constructed as rapidly as possible. Except as provided in s. 235.221, agencies that have received cash disbursements from the trust fund shall repay the total amount of such advancements plus accrued interest, if any, from the proceeds of the next authorized sale of bonds or revenue certificates in which that agency participates or from any cash receipts deposited in the trust fund that have been allocated to that agency.

(14) A board may also make application for funding from the trust fund for projects financed pursuant to the provisions of ss. 235.195, 235.211(2), and 235.221.

(15) The office shall recommend, and the state board shall adopt, rules to implement the provisions of this section.

History.—s. 13, ch. 74-374; s. 7, ch. 75-292; s. 3, ch. 76-280; s. 1, ch. 77-174; s. 21, ch. 77-458; s. 108, ch. 79-190.

235.4235 Financing of approved capital projects.—

(1) As moneys become available, pursuant to s. 9(a)(2), Art. XII of the State Constitution, as amended, the State Board of Education, through the office, may allocate moneys among capital projects in such amounts as the state board in its discretion shall deem appropriate. However, no allocation to any one group of capital projects shall exceed the total amount appropriated in the general appropriations act.

(2) The capital projects are to be financed in accordance with s. 9(a)(2), Art. XII of the State Constitution, as amended, or from other legally available state funds or grants, donations, or matching funds, or by a combination of such funds.

(3) The sum designated annually by the Legislature is the maximum sum to be expended from funds accruing under s. 9(a)(2), Art. XII of the State Constitution, as amended. However, funds appropriated from this source and remaining unexpended from previously authorized capital projects, along with grants, donations, and matching funds from other sources, may be added to such maximum sums for any item or category, when so approved by the State Board of Education.

History.—s. 8, ch. 76-280; s. 1, ch. 77-174; s. 22, ch. 77-458; s. 105, ch. 79-400.

235.43 Organization of certain functions of the Department of Education.—

(1) The commissioner shall have the discretion to internally organize those functions of the Department of Education which relate to the construction of educational facilities as he sees fit in order to achieve maximum efficiency. However, pursuant to such organization the commissioner shall transfer:

(a) The following functions and programs of the Division of Elementary and Secondary Education of the Department of Education from the division to the office:

1. Architectural facilities planning;
2. Educational facilities planning;
3. Facilities development and evaluation;
4. School surveys; and
5. School plant management.

(b) The following functions and programs of the Division of Vocational, Technical, and Adult Education of the Department of Education from the division to the office:

1. Vocational-technical facilities planning and development; and
2. Vocational-technical facilities construction.

(c) The functions and programs of the Commissioner of Education relating to capital outlay and debt service from the commissioner to the office.

(2) All statutory powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds which are part of the above functions and programs of the divisions are hereby transferred to the office. The transfer of segregated funds shall be made in such manner that the relation between program and revenue source as provided by law is retained.

History.—s. 14, ch. 74-374.

235.435 Funds for comprehensive educational plant construction and debt service.—The annual allocation from the Public Education Capital Outlay and Debt Service Trust Fund to each board, including the Board of Regents, for comprehensive construction and debt service shall be determined as follows:

(1) Pursuant to rules of the state board, the commissioner shall determine annually the projected educational plant and annual debt service needs for each board. In determining the needs of the state system of public education, the office shall recommend, and the commissioner shall use, equitably uniform standards for all types of like space, regardless of the level of education. These standards shall also establish a uniform utilization rate of 85 percent of all postsecondary classrooms, based on 45 hours per week Monday through Friday. The commissioner shall include at least the following elements:

(a) Projected student membership for the next 5-year period.

(b) Projected number of unhoused students.

(c) Costs of correcting the deficiencies which produce unsafe, unhealthy, or unsanitary environments; air conditioning; remodeling; and renovations.

(d) Current construction cost data as determined by the state board. Information for determining construction cost data shall be prescribed by the office and shall be taken from an item analysis of educational plant expenditures as reported in the board's annual financial report to the commissioner.

(e) Five-year projected cost of amortizing the annual payment of the ad valorem bonded indebtedness of the district.

(f) Cost of site acquisition and improvement.

(g) Amount of additional resources available pursuant to the provisions of s. 9(a)(2) and (d), Art. XII of the State Constitution as amended in 1974.

(h) Amount of funds from other sources available and earmarked for capital outlay purposes. However, funds available and earmarked for capital outlay purposes from the current tax levied on nonexempt property by the district school board for operating

expenses shall not be considered in determining the unmet need until the school board encumbers or expends such funds.

(i) District housing index.

(j) Square footage requirements for program groups.

(k) Special instructional facilities needed to improve the program at an educational center, but not necessarily to increase the student stations of the center.

(l) Amount of funds derived from voted ad valorem taxes in excess of 10 mills which were expended for construction projects which would have been funded by the state under provisions of this section during the 5 years immediately prior to the beginning of each fiscal year, except that those funds utilized for payment on bonded indebtedness shall not be included in the calculations required by this subsection.

[1](m) Relocatables shall be included in the inventory of educational facilities for boards, including the Board of Regents, but shall be rated at one-half of actual student capacity for purposes of the inventory and future needs determination as provided under this section and s. 235.15. Relocatables acquired or constructed and in use prior to 1975 shall be rated at zero student capacity. Application of this paragraph in the determination of available student capacity shall occur at the next regularly scheduled educational plant survey as required under s. 235.15, but no later than October 1, 1984.

(2) The commissioner shall determine annually the amount allocated to each board from the funds appropriated for the purpose of implementing this section as follows:

(a) Determine the costs of the projected educational plant needs, the 5-year projected debt service needs, and the expenditures of ad valorem taxes in excess of 10 mills, for each district, as determined in subsection (1).

(b) Determine the projected additional resources available under the provisions of s. 9(d), Art. XII of the State Constitution as amended in 1972 and the projected amount available to each board from other fund sources allocated for educational plants.

(c) From the costs of the projected educational plant and 5-year projected debt service needs for each board subtract the projected additional resources available and add the expenditure of ad valorem taxes in excess of 10 mills, as determined in paragraph (a). The result shall represent the estimated cost of unfunded educational plant and debt service needs for each board.

(d) The funds appropriated annually for the purpose of implementing this section shall be allocated to the respective boards in proportion to their percentage of the state total of unfunded educational plant and debt service needs as determined above for the fiscal year immediately preceding the fiscal year for which the funds are appropriated.

(3) Funds accruing to a board from the provisions of this section shall be expended on needed projects as shown by a survey or surveys under rules of the state board. Funds allocated to each board in fiscal years prior to 1977-1978 may be spent on projects as defined in this subsection. The priority of expenditure by boards shall be as follows:

(a) Classrooms, special instructional facilities, and remodeling necessary to provide needed student stations at either a new or existing center, as determined by the board, based on student population projections and the educational plant survey; sites or additions to sites and site improvement, incident to new construction or to make a site addition usable; restoration and correction as required by s. 235.06 of deficiencies which produce an unsafe, unhealthy, or unsanitary environment for occupants of educational facilities, except that, based upon the need as determined by the commissioner in the formula calculations, up to one-tenth of a board's annual allocation shall be expended on restoration and correction of such deficiencies. Pursuant to rules of the state board, the office shall determine what percentage of a board's total capital outlay need is generated by needed remodeling of existing facilities. The office is directed to develop a facility depreciation formula for adoption by the state board. In addition, a board may repay the principal on loans for capital projects as provided in s. 237.161.

(b) Special instructional and auxiliary facilities needed to improve the program at an educational plant, but not necessary to increase the student stations; remodeling of existing buildings which would substantially improve the utility of the space; replacing, remodeling, or adding to the existing heating, cooling, lighting, and sanitary facilities at an educational plant. Any facilities described above shall qualify as first priority when constructed as a part of a new educational center or as an addition to an existing educational center, if more than one-half of the facility to be constructed is designated as first priority. When an existing educational plant is determined to be unsuitable pursuant to the survey conducted under s. 235.15, the board may, by resolution, designate the plant as an historic education facility and may use funds generated for renovation and repair pursuant to paragraph (a) to restore the facility for use by the board. The board shall agree to pay all renovation costs in excess of funds generated through the State Board of Education depreciation formula applied to that facility. The board shall further agree that the plant shall continue to house students.

(c) Energy projects, including studies of the energy efficiency of existing facilities and renovations designed to increase the energy efficiency of existing facilities.

(d) Library books and equipment.

(e) All other formula-generated projects.

(f) All nonformula-generated projects; however, any funds earmarked for a board for nonformula-generated items shall be deducted from that board's entitlement for formula-generated items calculated pursuant to this section.

(g) Debt service for district bonds serviced by voted ad valorem taxes.

(4) Each board that is allocated funds under this section shall submit to the commissioner a projection of its schedule of eligible capital outlay disbursements for specified periods, as prescribed by rules of the state board. Upon approval by the commissioner, the comptroller shall disburse the funds. Prior to the

distribution of the initial funds pursuant to this section the commissioner shall determine the board's needs pursuant to paragraphs (2)(a), (b), and (c) and update the state facilities inventory subsequent to the effective date of this act.

(5) Funds accruing to a board from the provisions of this section shall only be expended on construction projects that utilize state board-approved design criteria as provided by law or that utilize plans previously approved by the department and used by the district which conform to the standards of the Uniform Building Code for Public Educational Facilities Construction and have not been substantially or materially altered since approval was granted by the department.

(6) In the event that a change, correction, or recomputation of data during any year results in a reduction or increase of the calculated amount previously allocated to a board, the allocation to that board shall be adjusted correspondingly. If such recomputation results in an increase or decrease of the calculated amount, such additional or reduced amounts shall be added to or reduced from the boards' future appropriations. However, no change, correction, or recomputation of data shall be made subsequent to 2 years following the initial annual allocation.

History.—s. 7, ch. 73-345; s. 28, ch. 74-227; s. 16, ch. 74-374; s. 12, ch. 75-292; s. 4, ch. 76-280; s. 1, ch. 77-174; s. 4, ch. 77-320; s. 24, ch. 77-458; s. 4, ch. 78-428; s. 51, ch. 79-164; ss. 14, 16, ch. 79-385.

[1]**Note.**—Section 16 of ch. 79-385, provides that, if chapter 231 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by chapter 77-457, or as subsequently amended, it is the intent of the Legislature that chapter 79-385 shall also be repealed on the same date as is therein provided.

Note.—Former s. 236.084.

CHAPTER 236

FINANCE AND TAXATION; SCHOOLS

236.012 Intent.—The intent of the Legislature is:

(1) To guarantee to each student in the Florida public educational system the availability of programs and services appropriate to his educational needs which are substantially equal to those available to any similar student notwithstanding geographic differences and varying local economic factors.

(2) To increase the authority and responsibility of districts for deciding matters of instructional organization and method and to encourage district initiative in seeking more effective and efficient means of achieving the goals of the various programs.

(3) To assume a greater share of the responsibility for state funding of educational plant construction by providing a systematic plan whereby each district will be able to meet the increasing needs for satisfactory educational plant construction for all students; to maximize the availability of satisfactory student stations to meet the current and projected needs of the districts; and to remove the necessity of involuntary multiple daily sessions.

(4) To encourage innovations in educational facilities design, construction techniques, and financing mechanisms for the purpose of reducing costs and creating a more satisfactory environment for learning, and to direct the department to continue the study of developments in the building industry, including the latest developments in construction methods and materials, in design, and in concepts such as turnkey bidding, prefabricated construction, modular relocatable units, and standardized components.

(5) To facilitate a more thorough analysis of the state's financial support of public education and to provide a more accurate basis for educational management.

History.—s. 2, ch. 73-345; s. 23, ch. 77-458.

236.013 Definitions.—Notwithstanding the provisions of s. 228.041, the following terms shall be defined as follows for the purpose of this act:

(1) "Bonded indebtedness" is the total outstanding bonds issued by the individual districts which are to be amortized by ad valorem tax levy.

(2) A "full-time equivalent student" in each program of the district is defined in terms of full-time students and part-time students as follows:

(a) A "full-time student" is one student on the membership roll of one school program or a combination of school programs listed under the cost fac-

tors in s. 236.081(1)(c) for:

1. Five school days or the equivalent, in a standard school, comprising not less than 25 net hours for students in or at the grade level of 4 through 12 and adult, or not less than 20 net hours for students in or at the grade level of kindergarten through grade 3, or

2. Five school days or the equivalent, in a double-session school or a school utilizing an experimental school calendar approved by the Department of Education, comprising not less than the equivalent of 22½ net hours in grades 4 through 12 or not less than 17½ net hours in kindergarten through grade 3.

(b) A "part-time student" is a student on the active membership roll of a school program or combination of school programs listed in s. 236.081(1)(c) who is less than a full-time student.

(c) A "full-time equivalent student" is:

1. A full-time student in any one of the programs listed under the cost factors in s. 236.081(1)(c); or

2. A combination of full-time or part-time students in any one of the programs listed under the cost factors in s. 236.081(1)(c) which is the equivalent of one full-time student based on the following calculations:

a. A full-time student, except postsecondary and adult students and senior high school students enrolled in adult education when such courses are required for high school graduation, in a combination of programs listed under the cost factors in s. 236.081(1)(c) shall be a fraction of a full-time equivalent membership in each special program equal to the number of net hours per week for which he is a member, divided by 25; the difference between that fraction or sum of fractions and twenty-five twenty-fifths of the week for each full-time student shall be presumed to be the balance of the student's time not spent in said special education programs and shall be recorded as time in the appropriate basic program.

b. A student in the basic half-day kindergarten program of not less than 12½ net hours shall earn one-half of a full-time equivalent membership.

c. A half-day kindergarten student in a combination of programs listed under the cost factors in s. 236.081(1)(c) shall be a fraction of a full-time equivalent membership in each special program equal to the number of net hours or major portion thereof per week for which he is a member divided by 25; the difference between that fraction and twelve and one-half twenty-fifths of the week for each full-time student in membership in a half-day kindergarten program shall be presumed to be the balance of the student's time not spent in said special education programs and shall be recorded as time in the appropriate basic program.

d. A part-time student, except postsecondary and adult, shall be a fraction of a full-time equivalent membership in each basic and special program equal to the number of net hours or major fraction thereof per week for which he is a member divided by 25.

e. All postsecondary and adult students and senior high school students enrolled in adult education when such courses are required for high school graduation shall be a portion of a full-time equivalent membership in each special program equal to the net hours or major fraction thereof per fiscal year for which he is a member, divided by 900.

3. A student who lacks three credits or less for graduation and who is in membership for only that portion of the school day or of the school year necessary to earn such credits, pursuant to s. 228.041(13), shall be considered a full-time equivalent student. A student shall attend class at least three periods a day during the semester the student is in membership. The difference between actual membership and computed membership of such student shall be reported in the basic program of grades 10, 11, and 12.

4. A student in membership in a program scheduled for more or less than 180 school days shall be a fraction of a full-time equivalent membership equal to the number of days more or less in proportion thereto times the applicable computations set forth in subparagraphs 1. and 2.; however, for the purposes of this subparagraph, membership in programs scheduled for more than 180 days shall be limited to:

a. Special programs for exceptional students;

b. Special vocational-technical programs;

c. Special adult general education programs;

d. Alternative education programs provided for students in Department of Health and Rehabilitative Services residential care facilities;

e. The Florida Primary Education Program or an approved alternative as provided in s. 230.2312, for those students who were receiving the preventative instructional strategies for all of the last 45 days of the 180-day term and in need of such additional instruction;

f. Basic programs of educational alternatives; and

g. Other basic programs offered for promotion or credit instruction as defined by rules of the state board.

5. The department shall determine and implement an equitable method of equivalent funding for experimental schools and for schools operating under emergency conditions, which have been approved by the department under the provisions of s. 228.041(13) to operate for less than the minimum school day.

(3) For the purpose of calculating the "current operation program," a student is in membership until he withdraws or until the close of the sixth consecutive school day of his absence, whichever comes first.

(4) A "utilization factor" is the ratio between the total number of student stations and the rated number of students that can be housed in that facility.

(5) The "Florida Education Finance Program" includes all programs and costs as provided in s. 236.081.

[1](6) "Basic programs" include, but shall not be limited to, language arts, mathematics, art, music, physical education, science, and social studies.

History.—s. 3, ch. 73-345; s. 1, ch. 74-227; s. 15, ch. 74-374; s. 3, ch. 76-259; s. 27, ch. 77-458; s. 2, ch. 79-184; s. 2, ch. 79-213; s. 5, ch. 79-288; ss. 3, 16, ch. 79-385.

[1]**Note.**—Section 16, ch. 79-385, provides that if ch. 231 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-385 shall also be repealed on the same date as is therein

provided.

236.014 Special laws and general laws of local application prohibited.—

(1) Pursuant to s. 11(a)(21) of Art. III of the State Constitution, the Legislature hereby prohibits special laws and general laws of local application pertaining to:

(a) The assessment or collection of taxes for school purposes insofar as it may affect the distribution of state funds, including the determination of millages therefor, the extension of time therefor, relief of tax officers from due performance of their duties, and relief of their sureties from liability.

(b) The Florida Education Finance Program as enacted in 1973 or as subsequently amended.

(2) The department shall determine whether any district has received additional funds subsequent to June 30, 1973, as a result of any special law or general law of local application described in subsection (1) and shall deduct an amount equal to any such additional funds from allocations to that district.

History.—s. 8, ch. 75-284.

Note.—Chapter 75-284 passed each house by the requisite three-fifths vote. See s. 11(a)(21), Art. III, State Const.

236.02 Minimum requirements of the Florida Education Finance Program.—Each district which participates in the state appropriations for the Florida Education Finance Program shall provide evidence of its effort to maintain an adequate school program throughout the district and shall meet at least the following requirements:

(1) ACCOUNTS AND REPORTS.—Maintain adequate and accurate records including a system of internal accounts for individual schools, and file with the Department of Education in correct and proper form on or before the date due as fixed by law or regulation, each annual or periodic report which is required by regulations of the state board.

(2) MINIMUM TERM.—Operate all schools for a term of at least 180 actual teaching days or the equivalent on an hourly basis as specified by rules of the State Board of Education each school year; however, the state board may prescribe procedures for altering, and, upon written application, may alter, this requirement during a national or local emergency as it may apply to an individual school or schools in any district or districts if, in the opinion of the board, it is not feasible to make up lost days, and the apportionment may, at the discretion of the State Board of Education and in the event the board determines that the reduction of school days is caused by the existence of a bona fide emergency, be reduced for said district or districts in proportion to the decrease in the length of term in any such school or schools. Under no circumstances shall a strike, as defined in s. 447.203(6), by employees of the school district be considered an emergency.

(3) EMPLOYMENT POLICIES FOR INSTRUCTIONAL PERSONNEL.—Notify in writing all instructional personnel concerning reemployment by the times prescribed by law; provide written continuing contracts for all personnel entitled to such contracts as prescribed by law; provide each other member of the instructional staff, at least 1 month before schools begin, or before assuming his position if he is not employed until after that date, with a written contract providing for the payment of a definite salary as prescribed by law; require 12 calendar months of service for such principals and other special instructional personnel as prescribed by regulations of the state board, and 10 months to include not less than 196 days of service, excluding Sundays and other holidays, for all other members of the instructional staff, any such service on a 12-month basis to include reasonable allowance for vacation or further study as prescribed by the school board in accordance with regulations of the state board; and pay all instructional personnel according to a schedule adopted by the school board to include:

(a) All personnel shall be paid in accordance with payroll period schedules adopted by the school board and included in the official salary schedule.

(b) No salary payment shall be paid to any employee in advance of service being rendered.

District school boards may authorize by policy a maximum of six paid legal holidays which shall apply to the 196 days of service.

(4) SALARY SCHEDULES.—Expend funds for salaries in accordance with a salary schedule or schedules adopted by the school board in accordance with the provisions of law and regulations of the state board.

(5) BUDGETS.—Observe fully at all times all requirements of law and regulations of the state board relating to the preparation, adoption and execution of budgets for the district school system.

(6) MINIMUM FINANCIAL EFFORT REQUIRED.—Make the minimum financial effort required for the support of the Florida Education Finance Program as prescribed in the current year's General Appropriations Act.

(7) DISTRICT EDUCATIONAL PLANNING.—Maintain a system of planning and evaluation as required by ss. 229.55 through 229.58.

History.—s. 1002, ch. 19355, 1939; CGL Supp. 892(321); s. 27, ch. 23726, 1947; s. 3, ch. 25363, 1949; s. 10, ch. 26484, 1951; s. 27, ch. 29754, 1955; s. 1, ch. 57-297; s. 7, ch. 59-339; s. 4, ch. 61-263; s. 1, ch. 63-401; s. 2, ch. 63-463; s. 126, ch. 65-239; s. 1, ch. 67-296; s. 1, ch. 67-330; s. 3, ch. 68-18; ss. 15, 35, ch. 69-106; s. 1, ch. 69-206; s. 1, ch. 69-300; ss. 118, 119, ch. 72-221; ss. 13, 14, ch. 73-345; s. 2, ch. 74-227; s. 27, ch. 75-284; s. 1, ch. 75-306; s. 16, ch. 76-223; s. 1, ch. 76-259; s. 1, ch. 77-80.

236.022 Projected study of alternative methods of school finance.—

(1) The Department of Education, the Executive Office of the Governor, and the Department of Revenue are authorized and directed, in cooperation with the Legislature and the State Board of Education, jointly to investigate and study alternative methods of public school finance. The departments shall conduct such studies with the goal of full implementation of such an alternative method on or before July 1, 1980, and shall consider the intent of the Legislature as stated above. The Department of Education shall make annual reports to the Legislature of its findings and may submit such proposed legislation and constitutional amendments as it deems necessary and proper.

(2) The Department of Education is authorized to seek and obtain the full and complete cooperation of any state agency in the course of its study. All such agencies are directed to cooperate to the fullest reasonable extent.

(3) The Department of Education is authorized to

seek and obtain complete cooperation and assistance of the United States Commissioner of Education under Pub. L. No. 93-380, Section 842, Part D, Title VIII of the Education Amendments of 1974 (45 CFR Part 156—Assistance to States for state equalization plans) in planning, designing, and carrying out studies of alternative methods of public school finance.

History.—ss. 23-25, ch. 75-284; s. 109, ch. 79-190.

236.023 Cost of delivering equivalent educational services; Cost-of-Education Index.—

(1) The Department of Education, in cooperation with expert researchers in the field of public school finance and other fields of research as needed, shall conduct a study making a thorough analysis of each of the following:

(a) The relationship between the cost of living in each school district as measured by the Florida Price Level Index, and the cost of living for the professional and support personnel in each district.

(b) The variations in real wages necessary for each school district to attract and retain professional and support public school personnel of equal quality.

(c) The variations in nonsalary expenditure per pupil necessary for each school district to provide equivalent quantity and quality of educational materials and services.

(d) The variations in the cost of delivering equivalent educational services per pupil in each district resulting from differences in pupil population density and scale of operation.

(e) The variations in each school district in the cost among the educational program categories identified in the Florida Education Finance Program and the relationship between:

1. The cost of living for school district personnel.
2. The cost of nonsalary expenditures.
3. The cost per pupil resulting from pupil population density and operational scale.
4. The diversity of the ethnic and language background of the pupils of the district.

(2) Using the information derived from the analysis conducted pursuant to subsection (1), the department shall develop a Cost-of-Education Index for use in the Florida Education Finance Program. Such index, if used, shall guarantee, to a greater degree than the Florida Price Level Index, to each student in Florida's public schools the availability of programs and services appropriate to his education needs which are substantially equal to those available to any similar student.

(3) The department shall submit a written progress report to the Legislature at the end of each 6 months of the study. The Cost-of-Education Index shall be submitted to the Legislature on or before April 1, 1981.

History.—s. 1, ch. 79-373.

236.0711 Employment and compensation of instructional personnel during specific emergencies.—In the event of an epidemic, strike, mass walkout, substantial numbers of teacher resignations or other urgent condition a school board upon recommendation of the superintendent may find and declare that an emergency exists because there is not a sufficient number of certified teachers to continue the normal operation of the schools within the district. In said event the school board may upon recommendation of the superintendent employ, contract with and compensate for instructional services rendered any person who shall be deemed qualified by regulations of the school board. In such event a state certificate to teach shall not be required for such employment, contract or compensation.

History.—s. 2, ch. 68-1; s. 1, ch. 69-300; s. 22, ch. 73-345.

236.081 Funds for operation of schools.—The annual allocation from the Florida Education Finance Program to each district for operation of schools shall be determined as follows:

(1) COMPUTATION OF THE BASIC AMOUNT TO BE INCLUDED FOR OPERATION.—The following procedure shall be followed in determining the annual allocation to each district for operation:

(a) *Determination of full-time equivalent membership.*—During each of several school weeks during the fiscal year, a program membership survey of each school shall be made by each district by aggregating the full-time equivalent student membership of each program by school and by district. The department shall establish the number and interval of membership calculations, except that for basic and special programs such calculations shall not exceed nine for any fiscal year. The district's full-time equivalent membership shall be computed and currently maintained in accordance with regulations of the state board.

(b) *Determination of base student allocation.*—The base student allocation shall be determined annually by the Legislature and shall be that amount prescribed in the current year's General Appropriations Act.

(c) *Determination of programs.*—Cost factors based on desired relative cost differences between the following programs are hereby established for the fiscal years 1979-1980 and 1980-1981. However, the application of cost factors in part-time programs for exceptional students shall be limited to a maximum of twelve twenty-fifths of a student membership in a given program during a week. The criteria for qualification for the special programs, including maximum case loads for part-time programs, shall be determined by regulations of the state board. However, the district may apply to the department for an exemption to the maximums set above, and the department may grant such exemptions when district size or program dispersal would place an undue burden on the district. Cost factors for special programs for exceptional students shall be used to fund programs, approved by the department, as provided by law for exceptional students under the minimum age for enrollment in kindergarten.

		1979-80 Cost Factor	1980-81 Cost Factor
1.	Basic programs.—		
a.	Kindergarten and grades 1, 2, and 3	1.234	1.234
b.	Grades 4, 5, 6, 7, 8, and 9	1.00	1.00
c.	Grades 10, 11, and 12	1.09	1.08
d.	Educational alternatives	2.00	2.00
2.	Special programs for exceptional students.—		

a.	Educable mentally retarded	2.18	2.12
b.	Trainable mentally retarded	2.85	2.78
c.	Physically handicapped	3.51	3.52
d.	Physical and occupational therapy part-time	6.01	6.02
e.	Speech and hearing therapy part-time	8.26	7.39
f.	Deaf	3.81	3.71
g.	Visually handicapped part-time	10.77	11.15
h.	Visually handicapped	3.54	3.56
i.	Emotionally disturbed part-time	6.23	5.59
j.	Emotionally disturbed	3.41	3.26
k.	Specific learning disability part-time	5.81	4.96
l.	Specific learning disability	2.32	2.32
m.	Gifted part-time	2.71	2.56
n.	Hospital and homebound part-time	14.84	14.76
o.	Profoundly handicapped	6.50	6.50
3.	Special adult general education programs.—		
a.	Adult basic education and adult high school	1.15	1.08
4.	Special vocational-technical programs; job preparatory.—		
a.	Agriculture	2.48	2.26
b.	Office	1.87	1.78
c.	Distributive	1.65	1.61
d.	Diversified	1.48	1.34
e.	Health	2.28	2.23
f.	Public service	2.68	3.12
g.	Home economics	1.83	1.65
h.	Technical, trade, and industrial	2.28	2.10
i.	Exploratory	1.47	1.49

The State Board of Education may approve up to three cost categories for each special vocational-technical job preparatory program. However, the sum of the weighted full-time equivalent students for the levels of cost for a program may not exceed the product of the statutory cost factor multiplied by unweighted full-time equivalent students for a program.

5.	Special vocational-technical; adult supplemental.—		
a.	Agriculture	1.98	1.81
b.	Office	1.50	1.42
c.	Distributive	1.32	1.29
d.	Health	1.82	1.78
e.	Public service	2.14	2.50
f.	Home economics	1.46	1.32
g.	Technical, trade, and industrial	1.82	1.68

(d) *Allocation of full-time equivalents.*—The department is authorized and directed to review all district programs in the areas of educational alternatives, exceptional student programs, special vocational-technical programs, and special adult general education programs. First priority in the assignment of full-time equivalent student membership shall be based on the request of the districts as submitted and approved by the department. Any unassigned full-time equivalent membership shall be allocated to those districts submitting supplemental requests, with priority to those districts with the lowest incidence of programs to students identified to be in need of such special programs.

1. The assigned weighted full-time equivalent student membership in special programs for exceptional students, educational alternative programs, part-time programs, special vocational-technical programs, and special adult general education programs, including adult basic education and adult high school, in any school fiscal year shall not exceed the maximum prescribed in the current year's General Appropriations Act for such programs. The Department of Education is directed to review the method of projecting enrollment and determining incidence in all special programs for exceptional students, special vocational-technical programs, and special adult general education programs and to report, at least 60 days prior to each regular session of the Legislature, a 3-year projected enrollment of full-time equivalent students in these programs.

2. In administering the maximums, the department shall review each district's program and needs with each scheduled student membership survey and may reassign the authorized weighted membership within the maximums provided. In any district in which, after the final assignment, the actual full-time equivalent membership multiplied by the appropriate cost factors exceeds the assigned maximum, such excess full-time equivalent student membership shall be computed at a cost factor of 1.00.

3. With respect to special programs for the visually handicapped part-time (sub-subparagraph (c)2.g.), upon request of a school board in any district or multi-district area in which there are five or more students receiving an appropriate program, the Department of Education may assign three unweighted full-time equivalent students for the special program until such time as more than three full-time equivalent students are generated.

4. When a student has been properly classified as an exceptional student pursuant to s. 230.23(4)(m) and is eligible for a full-time special program for exceptional students identified in subparagraph (1)(c)2. and, as a condition of such student's individualized educational plan, is assigned to a basic program on a part-time basis with required special services, aids, or equipment, the basic program cost factor for such student shall be doubled for the purpose of generating weighted full-time equivalent mem-

bership for time served in the program.

(e) *Determination of the basic amount for current operation.*—The basic amount for current operation to be included in the Florida Education Finance Program for each district shall be the product of the following:

1. The full-time equivalent student membership in each program, multiplied by

2. The cost factor for each program, adjusted for the maximum as provided by paragraph (c), multiplied by

3. The base student allocation.

(f) *Determination of sparsity supplement.*—

1. Annually, in an amount to be determined by the Legislature through the General Appropriations Act, there shall be added to the basic amount for current operation of qualified districts a sparsity supplement which shall be computed as follows:

$$\text{Sparsity Factor} = \frac{1101.8918}{2700 + \begin{matrix}\text{district}\\ \text{sparsity}\\ \text{index}\end{matrix}} - 0.1101$$

except that districts with a sparsity index of 1,000 or less shall be computed as having a sparsity index of 1,000 and districts having a sparsity index of 7,308 and above shall be computed as having a sparsity factor of zero.

2. The district sparsity index shall be computed by dividing the total number of full-time equivalent students in all programs in the district by the number of senior high school centers in the district, not in excess of three, which centers are approved as permanent centers by a survey made by the Department of Education.

(2) DETERMINATION OF DISTRICT COST DIFFERENTIALS.—The commissioner shall annually compute for each district the current year's district cost differential. The district cost differential shall be calculated by adding each district's price level index as published in the Florida Price Level Index, prepared by the Executive Office of the Governor, for the most recent 3 years and dividing the resulting sum by 3. The result for each district shall be multiplied by 0.008 and to the resulting product shall be added 0.200; the sum thus obtained shall be the cost differential for that district for that year.

(3) INSERVICE EDUCATIONAL PERSONNEL TRAINING EXPENDITURE.—Of the amount computed in subsections (1) and (3), $5 per full-time equivalent student shall be expended for educational training programs as determined by the district school board as provided in s. 236.0811. If a district has an approved teacher education center, at least $3 of the $5 shall be expended as provided in ss. 231.600-231.610. Funds as provided herein may be expended only for the direct support of inservice training activities as prescribed below:

(a) Salaries and benefits of:

1. Personnel directly administering the approved inservice training program.

2. School board employees while such personnel are conducting an approved inservice training program.

3. Substitutes for personnel released to participate in an approved inservice training program or an inservice council activity.

(b) Other direct operating expenses, excluding capital outlay, required for administering the approved inservice training program, including, but not limited to, the following:

1. Inservice training materials for approved inservice training activities.

2. Data processing for approved inservice training activities.

3. Telephone for the approved inservice training program.

4. Office supplies for the personnel administering the approved inservice training program.

5. Duplicating and printing for approved inservice training activities.

6. Fees and travel and per diem expenses for consultants used in conducting approved inservice training activities.

7. Travel and per diem expenses for school district personnel attending approved inservice conferences, workshops, or visitations to schools.

8. Rental of facilities not owned by the school board for use in conducting an approved inservice training program.

(c) Compensation may be awarded under this subsection to employees engaged in inservice training activities which are outside of, or in addition to, regular hours of duty assignments or a regular day of a contract period for which regular compensation is provided. No moneys shall be authorized under this subsection for additional salaries and benefits constituting dual compensation to employees participating in inservice activities if such activities are within regular hours of duty assignments or within a regular day of a contract period for which regular compensation is provided.

(d) Funds may be expended to pay tuition or registration fees for college courses provided the course is identified in the district's approved master plan and the employee does not receive college credit.

(4) COMPUTATION OF DISTRICT REQUIRED LOCAL EFFORT.—The amount that each district shall provide annually toward the cost of the Florida Education Finance Program shall be calculated as follows:

(a) Estimated and final calculations:

1. The Department of Revenue on or before July 10 shall certify to the Commissioner of Education its most recent estimate of the nonexempt assessed valuation of each school district for the current calendar year based on the latest available data obtained from the local property appraisers. The commissioner, upon receipt of the data, shall calculate each district's required local effort by computing 95 percent of the district's nonexempt assessed valuation and multiplying this product by the millage rate prescribed in that year's General Appropriations Act.

2. The Department of Revenue shall, upon receipt of the official final tax roll from each of the property appraisers, certify to the commissioner the total assessed valuation of nonexempt property in each school district, subject to the provisions of paragraph (b). Upon receipt of the data, the commissioner shall recalculate each district's required local ef-

fort by computing 95 percent of the assessed valuation of nonexempt property included in the final tax roll and multiplying this product by the millage rate prescribed in that year's General Appropriations Act. This revised calculation shall be the official required local effort for that district in that fiscal year. For the purpose of this subparagraph, the official final tax roll shall be the tax roll on which the tax bills are computed and mailed to the taxpayers.

(b) In those instances in which:

1. There is litigation either attacking the authority of the property appraiser to include certain property on the tax assessment roll as taxable property or contesting the assessed value of certain property on the tax assessment roll; and

2. The assessed value of the property in contest involves more than 10 percent of the total nonexempt assessment roll,

the assessed value of the property in contest shall be excluded from the nonexempt assessed valuation for school purposes for purposes of computing the district-required local effort.

(c) Following final adjudication of any litigation on the basis of which an adjustment in nonexempt valuation was made pursuant to paragraph (b), the department shall recompute the required local effort for each district for each year affected by such adjustments, utilizing nonexempt valuations approved by the court, and shall adjust subsequent allocations to such districts accordingly.

(5) CATEGORICAL PROGRAMS.—The Legislature hereby provides for the establishment of selected categorical programs to assist in the development and maintenance of activities giving indirect support to the programs previously funded. These categorical appropriations may be funded as general and transitional categorical programs. It is the intent of the Legislature that no transitional categorical program shall be funded for more than 4 fiscal years from the date of original authorization or from July 1, 1973, whichever is later. Such programs are as follows:

(a) *General.*—

1. Comprehensive school construction and debt service as provided by law.
2. Community schools as provided by law.
3. School lunch programs as provided by law.
4. Instructional material funds as provided by law.
5. Student transportation as provided by law.
6. Student development services as provided by law.
7. Diagnostic and learning resource centers as provided by law.
8. Comprehensive health education as provided by law.

(b) *Transitional.*—

1. Bilingual program as provided by law.

(6) TOTAL ALLOCATION OF STATE FUNDS TO EACH DISTRICT FOR CURRENT OPERATION.—The total annual state allocation to each district for current operation shall be distributed periodically in the manner prescribed by regulations of the state board and shall be calculated as follows:

(a) The basic amount for current operation, as determined in subsection (1), multiplied by the district cost differential factor as determined in subsection (2), plus the amount for the decline in full-time equivalent students as determined in subsection (7), less the required local effort as determined in subsection (4). If the funds appropriated for the purpose of funding the total amount for current operation as provided in this paragraph are not sufficient to pay the state's requirement in full, the department shall prorate the available state funds to each district in the following manner:

1. Determine the percentage of proration by dividing the sum of the total amount for current operation, as provided in this paragraph for all districts collectively, and the total district required local effort into the sum of the state funds available for current operation and the total district required local effort.

2. Multiply the percentage so determined by the sum of the total amount for current operation as provided in this paragraph and the required local effort for each individual district.

3. From the product of such multiplication, subtract the required local effort of each district, and the remainder shall be the amount of state funds allocated to the district for current operation.

The Department of Education is authorized to increase the base student allocation to the school districts if available funds exceed allocated amounts.

(b) The amount thus obtained shall be the net annual allocation to each school district. However, if it is determined that any school district received an underallocation or overallocation for any prior year because of an arithmetical error, assessment roll change, full-time equivalent student membership error, or any allocation error revealed in an audit report, the allocation to that district shall be appropriately adjusted. No amount appropriated to fund the Florida Education Finance Program for fiscal year 1975-1976 shall be expended for any other prior year adjustment.

(c) The amount thus obtained shall represent the net annual state allocation to each district; however, notwithstanding any of the provisions herein, each district shall be guaranteed a minimum level of funding in the amount and manner prescribed below:

1. The department shall determine the value per full-time equivalent student for the prior fiscal year for each district as follows: Divide the total number of full-time equivalent students included in the prior year Education Finance Program into the sum of:

a. The prior year's state allocation for: Current operation, as provided in paragraphs (6)(a) and (b), less student transportation, as provided in subsection 236.083(7); and

b. The calculated yield of the actual nonvoted millage levied by the district during the prior fiscal year on 95 percent of the prior calendar-year nonexempt assessed valuation of the district for school purposes.

2. The amount determined in subparagraph 1. shall be multiplied by the number of full-time equivalent students included in the final estimated com-

putation of the current Education Finance Program.

3. The amount determined in subparagraph 2. shall be the minimum level of funding for each district for the current fiscal year. Such amount shall include the following:

a. The state allocation for current operation, as provided in paragraph (a), exclusive of all categorical programs; and

b. The calculated yield of the maximum nonvoted millage as prescribed in s. 236.25 during the current fiscal year on 95 percent of the current calendar-year nonexempt assessed valuation of the district for school purposes.

4. In any district in which the amount determined in subparagraph 2. does not equal or exceed the sum of the sources specified in subparagraph 3., the state share of this total shall be increased in an amount sufficient to assure that each district receives the amount determined in subparagraph 2.

(7) DECLINE IN FULL-TIME EQUIVALENT STUDENTS.—The full-time equivalent student membership in each program multiplied by the cost factor for each program, adjusted for the maximum, shall be compared to this calculation for the prior year. In those districts where there is a decline in weighted full-time equivalent students, the decline is to be multiplied by the base student allocation and then multiplied by a factor of 0.5.

History.—s. 4, ch. 73-345; s. 1, ch. 74-14; s. 3, ch. 74-227; ss. 9, 10, ch. 75-284; s. 2, ch. 76-259; s. 1, ch. 77-174; s. 1, ch. 77-329; s. 2, ch. 77-392; s. 1, ch. 77-430; s. 1, ch. 78-405; s. 4, ch. 78-416; ss. 10, 14, ch. 78-423; s. 2, ch. 78-432; s. 52, ch. 79-164; s. 110, ch. 79-190; s. 1, ch. 79-213; s. 113, ch. 79-222.

236.0811 Educational training.—

(1) Each school board shall develop and maintain an educational training program. Funds appropriated to school districts for the purposes of this section shall be used exclusively for educational training programs meeting criteria established by the Department of Education. When a district has an approved teacher education center, the inservice programs shall be conducted in accordance with the provisions of the Teacher Education Center Act of 1973 (ss. 231.600-231.610), as amended.

(2) Pursuant to rules of the State Board of Education, each district shall develop and submit to the commissioner for approval a 5-year master plan for inservice educational training. The plan shall be based on an assessment of the district's inservice educational training needs conducted by a committee which shall include parents, classroom teachers, and other educational personnel. The plan shall be updated annually by July 1 and shall include inservice activities for all district employees, from all fund sources.

History.—s. 26, ch. 74-227; s. 11, ch. 75-284; s. 11, ch. 78-423; s. 114, ch. 79-222.

236.0815 Inclusion of certain students within basic program.—A student who has completed the credit requirements for graduation prescribed by the school board pursuant to s. 232.246, but has not mastered the basic skills or functional literacy requirements therein, and is being provided special instruction designed to remedy his identified deficiencies, shall not be reported in membership in the basic program of grades 10, 11, and 12 as provided by s. 236.081 beyond his senior year. The additional educational services provided these students shall be funded from the district's receipts of state compensatory education funds.

History.—s. 3, ch. 79-74; s. 5, ch. 79-213.

236.082 Preliminary distribution.—For the 1973-1974 fiscal year and each year thereafter, the procedure for determining the monthly dollar distribution to each district prior to the first membership survey shall be based on one-twelfth of the amount the department may reasonably expect the district to receive during that fiscal year. Such payments are to be advances and shall not affect the district's entitlement for the fiscal year.

History.—s. 5, ch. 73-345.

236.083 Funds for student transportation.—The annual allocation to each district for transportation to the public schools of students in kindergarten through grade 12 and exceptional students shall be determined as follows:

(1) Subject to the regulations of the state board, each district shall determine the membership of students who are transported:

(a) By reason of living 2 miles or more from school;

(b) By reason of being physically handicapped, regardless of distance to school; and

(c) By reason of being vocational and exceptional students transported from one school center to another.

(2) Subject to the regulation of the state board, each district shall determine and report one-half of the round-trip route mileage required to transport students to and from school and one-half of the round-trip mileage on routes between school centers required to transport exceptional students and vocational students to and from centers where appropriate programs are provided. One-half of the round-trip route mileage shall be computed by adding:

(a) The loaded miles of each school bus route as designated in accordance with s. 234.061 and served by a bus as defined by regulations of the state board, except that miles traveled for a side route to pick up students living within 1½ miles of the main trunk route and miles traveled to transport students to evening schools and enrichment programs shall not be added; and

(b) Fifty percent of the miles of the bus route traveled without students.

(3) A density index for each district shall be computed by the department annually by dividing the membership of transported students as determined in subsection (1) by the bus route mileage as determined in subsection (2).

(4) The allocation for each district for a 180-day school term shall be calculated in accordance with the following formula:

$$\text{Allowable per student cost} = \frac{239.92}{\text{the density index of the district}} + 30.95$$

except that the districts with a density index of 1.70 students per route mile or less will be computed as having a density index of 1.70, and districts with a density of 4.70 or more students per route mile will be counted as having a density index of 4.70. This formula shall be recomputed annually by the Department of Education on the basis of the latest available data and submitted annually to the Legislature prior to the convening of the regular annual session. The allocation to each district for transportation shall be determined by multiplying the allowable cost per student by the membership of all students who are transported as determined in subsection (1).

(5) If a district operates schools more or less than 180 days, the allocation per student for transportation to such schools shall be calculated by multiplying the quotient of the days the schools operate divided by 180 days times the allocation per student determined in subsection (4). The allocation for each district for transportation of students in membership more or less than 180 days shall be determined by multiplying the allowable cost per student determined in this subsection by the membership of such students who are transported.

(6) When authorized by rules of the state board, an allocation of 15 cents per mile shall be allowed for miles traveled by passenger cars with students providing for transportation of isolated students.

(7) The total allocation to each district for transportation of students shall be the sum of the amounts determined in subsections (4), (5), (6), and (10). If the funds appropriated for the purpose of implementing this section are not sufficient to pay the requirements in full, the Department of Education shall prorate the available funds on a percentage basis.

(8) No district shall use funds to purchase transportation equipment and supplies at prices which exceed those determined by the department to be the lowest which can be obtained, as prescribed in s. 229.79.

(9) Pursuant to rules adopted by the State Board of Education, a district school board may submit to the Commissioner of Education a proposed plan to use school buses on a pilot-project basis for the conveyance of the elderly or the physically or mentally handicapped. A pilot project shall be developed in the following manner:

(a) The superintendent of any school district wishing to participate shall prepare an itemized statement of the estimated total cost of the pilot project and a copy of the resolution of the school board indicating its intention to provide at least one-fourth of the total cost of the project, either directly or through the use of federal funds or other public or private resources. The school board may impose fares for the transportation services provided through the pilot project. Any school district proposing to establish a pilot project shall plan cooperatively with other institutions, agencies, and organizations in the district which provide or are in need of transportation services for the elderly or the physically or mentally handicapped.

(b) The commissioner shall review and approve, disapprove, or resubmit to the school board for modification each proposed plan. For the 1978-1979 fiscal year, the commissioner shall approve pilot projects in up to five school districts and shall authorize distribution of funds in an amount not to exceed three-fourths of the total cost of the proposed pilot projects.

(10) Funds allocated or apportioned for the payment of student transportation services may be used to pay local general purpose transportation systems for transportation of students to and from school. Subject to the rules of the State Board of Education, each school district shall determine and report the number of assigned students using general purpose transportation to transport students to school for the first time on any school day and the one-way miles on routes between school centers required to transport exceptional students and vocational students to centers where appropriate programs are provided. The allocation to each district for such transportation shall be determined by multiplying the allowable cost per student by the membership of students who are transported by general purpose transportation. The allowable cost per student shall be equal to the round-trip fare charged by the general purpose transportation system or the allowable cost per student riding a school bus, whichever is less.

History.—s. 6, ch. 73-345; s. 4, ch. 74-227; ss. 12, 14, ch. 75-284; s. 3, ch. 78-104; s. 1, ch. 78-128.

236.0841 Student enrichment and remedial programs.—Each school district may provide any amount from current operation funds of the Florida Education Finance Program for salaries of personnel who are employed, pursuant to regulations of the state board, to provide supplementary enrichment and remedial activities. The enrichment and remedial activities, when offered, shall be provided students during periods of time supplemental to or beyond the required 180 days of instruction.

History.—s. 27, ch. 74-227.

236.088 Basic skills and functional literacy compensatory supplement.—

(1) SHORT TITLE.—This section shall be known and may be cited as the "Florida Compensatory Education Act of 1977."

(2) PURPOSE AND INTENT.—The purpose of this section is to provide supplemental funds to each school district to be used for the sole purpose of providing direct remedial instruction to those students enrolled in the K-12 program who have need of special educational assistance in order that their level of educational attainment may be raised to that appropriate for their age. It is the intent of the Legislature that each school district shall utilize the instructional programs which in the professional opinion of the teacher will be most effective and that the effectiveness of this program shall be evaluated in terms of the increase in student achievement in the basic skills of reading, mathematics, and writing as measured by pretest and post-test of each student receiving special educational assistance from the funds provided by this section.

(3) ALLOCATION OF FUNDS.—The funds appropriated annually for this section shall be allocated proportionately to each school district on the basis of the number of students in grades 3, 5, 8, and 11 whose scores on the statewide student assessment

tests are at the 25th percentile or below.

(4) DISTRIBUTION OF FUNDS.—

(a) To be eligible to receive funds under this section, a school district shall describe in writing its compensatory education program. The description shall include all special remedial and compensatory instruction to be provided by the district from all fund sources. The district description shall include a description of the program to be conducted at each separate school or location in the district and shall include the estimated number of students to participate in the program; the estimated number of teachers, volunteers, and others to be utilized in the program; and the estimated budget for each such program.

(b) The programs provided by funds received under this section shall meet the following criteria:

1. Each participating student shall be determined by the school district on the basis of the district's assessment tests to need special educational assistance in order that the student's level of educational attainment in basic skills may be raised to that appropriate for children of the student's age.

2. The program is based on performance objectives related to educational achievement in the basic skills and provides supplementary services designed to meet the special educational needs of each participating student.

3. The program is evaluated in a manner consistent with the performance objectives and includes a pretest and post-test for each participating student.

4. The state and local funds expended in the program shall be accounted for separately from all other funds expended by the district. Expenditures shall be reported as a categorical program in the manner prescribed by the State Board of Education.

5. The program shall be conducted in a manner which shall permit the exclusion of instructional staff members employed through the use of funds in this program from the comparability requirements of Title I of the Elementary and Secondary Education Act.

6. The program shall be approved by the Commissioner of Education within 60 days of receipt of the program description, and the department shall forward funds to the district.

7. Each application by a district for a grant under the state compensatory education program shall contain an assurance that the use of the grant funds will not result in a decrease in the use for educationally deprived children of state, local, or federal funds which, in the absence of funds under the compensatory education program, have been made available for the education of such children. No project under the state compensatory education program shall be approved unless the state funds for the compensatory education program will not be used to supplant other state, local, or federal funds being used for the education of such students.

(5) ADMINISTRATION.—

(a) The Division of Public Schools shall be utilized as needed to provide technical assistance to districts and to carry out the department's responsibilities for reviewing, monitoring, and evaluating the programs conducted under this section.

(b) The State Board of Education shall adopt rules which in its opinion are necessary to assure that the programs in each school district are carried out in a manner consistent with the purpose and intent of this section. The Commissioner of Education shall prepare, on or before January 10 of each year, a report which shall show the number of students participating in programs under this section, the extent to which student achievement increased, the programs which appear to be most successful, and an analysis of the expenditure of funds by district. Said report shall be transmitted to the State Board of Education and the presiding officers of the Legislature.

(c) Beginning with the 1978-1979 school year, the Commissioner shall evaluate the cost effectiveness of the district compensatory education programs. Of the district programs which have been in operation for 2 or more years, state funding shall be terminated for the five programs which are determined to be the least cost effective each year.

History.—s. 1, ch. 77-392.

236.089 Allocations for student development services.—The Department of Education shall allocate an amount as prescribed annually by the Legislature to each district in the same ratio as the full-time equivalent student membership in the program categories established in s. 236.081(1)(c), exclusive of special adult general education programs of the state for the prior year, for student development services. These services may include any or all of the following: career education, elementary guidance counselors, occupational specialists, and placement specialists.

History.—s. 2, ch. 77-430.

236.122 Allocation for instructional materials.—The department is authorized to allocate and distribute to each district an amount as prescribed annually by the Legislature for instructional materials for student membership in basic and special programs in grades K-12, which will provide for growth and maintenance needs. For purposes of this section, unweighted full-time equivalent students enrolled in the laboratory schools in the state university system are to be included as school district students and reported as such to the department. The annual allocation shall be determined as follows:

(1) The growth allocation for each school district shall be calculated as follows:

(a) Subtract from that district's projected full-time equivalent membership of students in basic and special programs in grades K-12 used in determining the initial allocation of the Florida Education Finance Program, the prior year's full-time equivalent membership of students in basic and special programs in grades K-12 for that district.

(b) Multiply any such increase in full-time equivalent student membership by the allocation for a set of instructional materials, as determined by the department, or as provided for in the General Appropriations Act.

(c) The amount thus determined shall be that district's initial allocation for growth for the school year. However, the department shall recompute and adjust the initial allocation based on actual full-time equivalent student membership data for that year.

(2) The maintenance of the instructional materials allocation for each school district shall be calculated by multiplying each district's prior year full-time equivalent membership of students in basic and special programs in grades K-12 by the allocation for maintenance of a set of instructional materials as provided for in the General Appropriations Act. The amount thus determined shall be that district's initial allocation for maintenance for the school year; however, the department shall recompute and adjust the initial allocation based on such actual full-time equivalent student membership data for that year.

(3) In the event the funds appropriated are not sufficient for the purpose of implementing this section in full, the department shall prorate the funds available for instructional materials after first funding in full each district's growth allocation.

History.—s. 15, ch. 74-227; s. 17, ch. 75-284; s. 3, ch. 78-405.

236.13 Expenditure of funds by school board.—All state funds apportioned to the credit of any district shall constitute a part of the district school fund of that district and shall be budgeted and expended under authority of the school board of that district subject to the provisions of law and regulations of the state board.

History.—s. 1013, ch. 19355, 1939; CGL 1940 Supp. 892(332); s. 34, ch. 23726, 1947; s. 4, ch. 28068, 1953; s. 141, ch. 65-239; s. 1, ch. 69-300; s. 144, ch. 72-221; s. 24, ch. 73-345.

236.24 Sources of district school fund.—

(1) The district school fund shall consist of funds derived from the district school tax levy; state appropriations; appropriations by county commissioners; local, state, and federal school food service funds; any and all other sources for school purposes; national forest trust funds and other federal sources; and gifts and other sources.

(2) The school board shall have the power at all times to invest district school funds in bonds of the United States Government or any instruments of indebtedness fully and unconditionally guaranteed as to interest and principal by the United States Government, in the bonds of the same district, and in State Board of Education bonds of any district.

History.—s. 1024, ch. 19355, 1939; CGL 1940 Supp. 892(343); s. 2, ch. 61-119; s. 12, ch. 61-288; s. 150, ch. 65-239; (1)(b) formerly s. 9, Art. XII of the Constitution of 1885, as amended; converted to statutory law by s. 10, Art. XII of the Constitution as revised in 1968; s. 1, ch. 69-300; s. 145, ch. 72-221; s. 2, ch. 73-137.

236.25 District school tax.—

(1) Each school board desiring to participate in the state allocation of funds for current operation as prescribed by s. 236.081(6) shall levy no more than 8 mills of tax on the nonexempt assessed valuation for school purposes of the district, except that for fiscal year 1979-1980 the levy shall be no more than 6.75 mills, exclusive of millage voted under the provisions of ss. 9(b) and 12 of Art. VII of the State Constitution.

(2) These taxes shall be certified, assessed, and collected as prescribed in s. 237.091 and shall be expended as provided by law.

(3) All levies and collections of ad valorem taxes made for the support of public schools prior to the effective date of this section are hereby approved, ratified and confirmed.

(4) Nothing in chapter 75-284, Laws of Florida, shall in any way be construed to increase the maximum school millage levies as provided for in subsection (1).

History.—s. 1025, ch. 19355, 1939; CGL 1940 Supp. 892(344); s. 28, ch. 69-216; s. 1, ch. 69-300; s. 4, ch. 70-401; ss. 3, 4, ch. 71-263; s. 5, ch. 72-333; s. 8, ch. 74-227; s. 34, ch. 75-284; s. 1, ch. 79-332.

236.29 Apportionment and use of district school fund.—The district school fund shall be apportioned, expended and disbursed in the district solely for the support of the public schools of the district as prescribed by law; provided, however, that the district school fund shall also be used to pay the principal and interest on bonds legally issued and payable from said fund, together with other proper items of debt service against such fund, including any necessary refunding expense as prescribed by regulations of the State Board of Education. The school board shall, before the maturity of such bonds or other indebtedness and before interest due dates, deposit with the paying agent or make available, as designated in the resolution authorizing the issuance of the bonds or other legal evidences of indebtedness, sufficient funds with which to pay all principal and interest when due; provided, that when such funds have been so deposited with the paying agent or made available, all interest on the indebtedness represented by the maturing bonds, coupons or other evidences of indebtedness shall cease as of their maturity dates; and provided, further, that if any such bonds, coupons or other evidences of indebtedness are not presented for payment within 6 months after the date on which they mature, the funds shall be returned to the school board and shall be placed by said board in the district school fund and the school board shall pay said bonds, coupons or other evidences of indebtedness from said fund when presented for payment. Any holder of bonds, coupons or other indebtedness claiming interest after maturity on account of the fact that funds were not deposited with the paying agent or made available to pay such bonds, coupons or other indebtedness at maturity, shall be required to produce evidence in the form of a letter from the paying agent or the school board of the district, respectively, acknowledging that the bonds, coupons and other evidences of indebtedness upon which interest is claimed were presented for payment, that no funds were available for the payment thereof, that such bonds, coupons and other evidences of indebtedness were presented for payment at least annually thereafter and that no funds were available to pay such indebtedness. The paying agent or the school board of the district, whichever has the duty of holding the funds, shall, upon request of the holder of defaulted bonds, coupons or other evidences of indebtedness, furnish to such holder the letter required herein. When such evidence is presented the district school fund shall be liable for the payment of principal and interest on the bonds, coupons or other evidences of indebtedness from maturity until paid at the rate prescribed on the face thereof. If at any time any bonds, coupons or other evidences of indebtedness are reduced to judgment, the district school fund shall be responsible for past due interest only at the rate prescribed by the bonds or other evidences of indebtedness and any rate of in-

terest in excess of that amount shall be illegal and invalid. Such judgments shall bear interest at the rate of 5 percent per annum until paid. When any proposal for refunding the indebtedness against said district school fund has been prepared and approved by the Department of Education, as required by law, and when the holders of at least 80 percent of the outstanding indebtedness against said fund have agreed in writing to the refunding plan, the school board shall be authorized to pay, out of the district school fund, from and after that date, on the original and refunding bonds or other evidences of indebtedness only the rate of interest which has been agreed upon for the refunding bonds or other evidences of indebtedness and no owner or holder of a bond, coupon or other evidence of indebtedness shall be entitled to a higher rate of interest after that date; provided, that such owner or holder shall be given the option by the school board of receiving payment in cash for all principal and interest due on the bonds and coupons or other evidence of indebtedness he holds at the same rate at which the remaining indebtedness has been refunded.

History.—s. 1029, ch. 19355, 1939; CGL 1940 Supp. 892(348); s. 6, ch. 22839, 1945; s. 151, ch. 65-239; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 149, ch. 72-221.

236.31 District millage elections.—The school board, pursuant to resolution adopted at a regular meeting, shall direct the county commissioners to call an election at which the electors within the school districts may approve an ad valorem tax millage as authorized in s. 9, Art. VII of the State Constitution. Such election may be held at any time, except that not more than one such election shall be held during any 12-month period. Any millage so authorized shall be levied for a period not in excess of 2 years or until changed by another millage election, whichever is the earlier. In the event any such election is invalidated by a court of competent jurisdiction, such invalidated election shall be considered not to have been held.

History.—s. 1031, ch. 19355, 1939; CGL 1940 Supp. 892(350); s. 153, ch. 65-239; s. 1, ch. 65-427; s. 1, ch. 69-241; s. 1, ch. 71-263.

236.32 Procedure for holding and conducting school district millage elections.—The procedure for holding and conducting school district millage elections shall be:

(1) HOLDING ELECTIONS.—All school district millage elections shall be held and conducted in the manner prescribed by law for holding general elections, except as provided in this chapter. The school board shall appoint inspectors and clerks for said election, whose duties shall be the same as those of similar officers in general elections, except as herein stated.

(2) FORM OF BALLOT.—The school board, at its option, may determine whether to use paper ballots or automatic voting machines for said election. On the ballot, the school board may propose a single millage or two millages, with one for operating expenses and another for a local capital improvement reserve fund. When two millage figures are proposed, each millage shall be voted on separately. The school board shall provide substantially the following form of ballot for voting the levy in the school district:

SPECIAL SCHOOL DISTRICT MILLAGE ELECTION FOR THE DISTRICT OF ..... COUNTY, FLORIDA, HELD ....., 19 .....

(a) In districts where paper ballots are used the following instructions shall be included:

INSTRUCTIONS TO VOTERS: The proposed levy for the school term as proposed by the school board is ..... mills for operating expenses and ..... mills for the local capital improvement reserve fund. Each millage will be voted on and determined separately. Indicate your choice by making an "X" in the proper space below. If some other millage for operating expenses is desired, indicate by writing in the millage. On the proposed levy for local capital improvement reserve fund, vote "for" or "against."

1. Proposed levy of ..... mills for operating expenses.

☐ FOR proposed levy of ..... mills for operating expenses.

☐ AGAINST proposed levy of ..... mills for operating expenses.

2. Proposed levy of ..... mills for local capital improvement reserve fund.

☐ FOR proposed levy of ..... mills for local capital improvement reserve fund.

☐ AGAINST proposed levy for local capital improvement reserve fund.

(b) In districts where automatic voting machines are used the following instructions shall be included:

INSTRUCTIONS TO VOTERS: The proposed levy for the school term as proposed by the school board is ..... mills for operating expenses and ..... mills for the local capital improvement reserve fund.

Each millage will be voted on and determined separately. If you favor the proposed millage for operating expenses, so indicate by depressing the "for" lever directly over (under) the proposed millage. If you favor a different millage for operating expenses, so indicate by writing in the millage you favor. You may select only one millage for operating expenses. On the proposed millage for the local capital improvement reserve fund, indicate your choice by depressing the "for" lever or the "against" lever over (under) the proposed millage.

(3) QUALIFICATIONS OF ELECTORS.—All qualified electors of any school district in the state whose voting registrations are in that district, shall be entitled to vote in the election to set the school tax district millage levy.

(4) CANVASS OF RETURNS.—The school board shall canvass the returns of the election as made to it by the inspectors and clerks of the election and shall declare the results at the next regular meeting of said board or at a special meeting called for that purpose.

(5) RESULTS OF ELECTION.—When the school board proposes one tax levy for operating expenses and another for the local capital improvement reserve fund, the results shall be considered separately:

(a) The tax levy for operating expenses receiving the majority of all votes for such tax levies cast by the qualified electors, or, in case no one levy receives

a majority, that levy for which, together with the votes cast for higher levies, a majority of the votes are cast, shall become the levy for operating expenses for the district.

(b) The tax levy for the local capital improvement reserve fund shall be levied only in case a majority of the electors participating in the election vote in favor of the proposed special millage.

(6) EXPENSES OF ELECTION.—The cost of the publication of the notice of the election and all expenses of the election in the school district shall be included in the budget and paid by the school board.

History.—s. 1032, ch. 19355, 1939; CGL 1940 Supp. 892(351); s. 7, ch. 22858, 1945; s. 78, ch. 29764, 1955; s. 14, ch. 61-288; s. 2, ch. 65-60; ss. 154, 155, ch. 65-239; s. 2, ch. 65-427; s. 1, ch. 69-300; s. 5, ch. 70-401; s. 2, ch. 71-263; s. 71, ch. 71-355.

236.35 Source and use of district capital improvement fund.—The district capital improvement fund shall consist of funds derived from the sale of school district bonds authorized in s. 17, Art. XII of the State Constitution of 1885 as amended, together with any other funds directed to be placed therein by regulations of the State Board of Education, and other similar funds which are to be used for capital outlay purposes within the district.

History.—s. 1035, ch. 19355, 1939; CGL 1940 Supp. 892(354); s. 18, ch. 29754, 1955; s. 16, ch. 57-249; s. 157, ch. 65-239; s. 30, ch. 69-216; s. 1, ch. 69-300; s. 153, ch. 72-221.

236.36 Proposals for issuing bonds.—Whenever the residents of a school district in this state shall desire the issuance of bonds by such school district for the purpose of acquiring, building, enlarging, furnishing, or otherwise improving buildings or school grounds, or for any other exclusive use of the public schools within such school district, they shall present to the school board a petition signed by not less than 25 percent of the duly qualified electors residing within the school district, setting forth in general terms the amount of the bonds desired to be issued, the purpose thereof, and that the proceeds derived from the sale of such bonds shall be used for the purposes set forth in the petition. The requirement for such petition may be dispensed with and the proposition of issuing bonds for the purposes as herein outlined may be initiated by the school board of the said district; however, nothing contained in this section shall repeal any of the provisions of ss. 100.201-100.221, 100.241, 100.261-100.341, and 100.351.

History.—s. 1036, ch. 19355, 1939; CGL 1940 Supp. 892(355); s. 80, ch. 29764, 1955; s. 16, ch. 69-402; s. 64, ch. 77-175.

236.37 Procedure of school boards with reference to proposals for issuing bonds.—It shall be the duty of the school boards of the several districts of Florida to plan the school financial program of the district so that, insofar as practicable, needed capital outlay expenditures can be made without the necessity of issuing bonds. Whenever the school board of any district proposes an issue of bonds or has received any petition proposing the issuance of bonds, as provided in s. 236.36, the said board shall forthwith proceed as follows:

(1) The school board, after considering recommendations submitted by the superintendent, shall determine whether in its opinion the projects for which bonds are proposed to be issued are essential for the school program of the district.

(2) If the proposed projects are deemed essential by the school board or if the proposed projects are rejected in whole or in part, the school board shall, if practicable, prepare a plan for carrying out the projects, or at least part of the projects, with current funds which have been or can be set aside for that purpose.

(3) If the school board determines that any portion of the projects cannot be carried out so that all costs can be met from the proceeds of a special district millage voted for that purpose or from district current funds which are not needed for salaries of teachers or other necessary expenses of operating the schools or from such funds which can reasonably be expected to be available by the time the projects are completed, or cannot be completed on the basis of a loan against district current funds, approved in accordance with s. 237.27, the school board shall then determine the amount of bonds necessary to be issued to complete the projects as proposed for the district and shall adopt and transmit to the Department of Education a resolution setting forth the proposals with reference to the projects and the proposed plan for financing the projects, said resolution to be in such form and contain such information as may be prescribed by the State Board of Education. If the department shall determine that the issuance of bonds as proposed is unnecessary or is unnecessary in the amount and according to the plan proposed, and shall notify the school board accordingly, the school board shall then amend its resolution to conform to the recommendation of the department, and no further action shall be taken for a period of at least 1 year on the proposal for a bond issue unless, within 30 days thereafter, a petition signed by at least 35 percent of the qualified electors within the district is received by the school board requesting that an election be called to vote bonds for the purposes set forth and in an amount which shall not exceed the amount of bonds proposed by the school board. If such a petition is received by the school board, as provided herein, or if the resolution proposing a bond issue has been approved by the department, the school board shall then proceed at its next ensuing meeting to adopt a resolution authorizing that an election be held for the purpose of determining whether bonds shall be issued as proposed.

History.—s. 1037, ch. 19355, 1939; CGL 1940 Supp. 892(356); s. 5, ch. 21989, 1943; s. 81, ch. 29764, 1955; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 71-161; s. 72, ch. 71-355.

236.38 Publication of resolution.—It shall be the duty of the school board, when the resolution proposing a bond issue has been approved by the Department of Education or when such a proposal has been rejected by the Department of Education and a new petition signed by 35 percent of the qualified electors of the district has been presented, and when the resolution authorizing an election has been adopted as set forth above, to cause such resolution to be published once each week for 4 successive weeks in some newspaper published in the district. This resolution may also include a notice of election as prescribed in s. 236.39.

History.—s. 1038, ch. 19355, 1939; CGL 1940 Supp. 892(357); s. 6, ch. 21989, 1943; s. 82, ch. 29764, 1955; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300.

236.39 Notice of election; qualifications of electors.—The said school board shall also at the meeting, at which is passed the resolution provided for in s. 236.37 order that an election shall be held in said school district to determine whether or not there shall be issued by said district the bonds provided for in said resolution, in which election only the duly qualified electors thereof who are freeholders shall vote, and prior to the time of holding said election the said school board shall cause to be published once each week for 4 successive weeks in a newspaper published in the district a notice of the holding of said election which shall specify the time and place or places of the holding thereof. The resolution, prescribed in s. 236.37, may be incorporated in and published as a part of the notice prescribed in this section.

History.—s. 1039, ch. 19355, 1939; CGL 1940 Supp. 892(358); s. 83, ch. 29764, 1955; s. 12, ch. 59-371; s. 1, ch. 69-300.

236.40 Conduct of election; form of ballot; appointment of inspectors; canvassing returns.—The election, provided for in s. 236.39, shall be held at the place or several places in said district where the last general election was held throughout said district, unless the school board shall otherwise order; and the school board shall appoint inspectors for the election and cause to be prepared and furnished to said inspectors the ballots to be used at said election; the form of ballots for such election shall be: "For bonds" or "Against bonds." The inspectors shall make returns to the said school board immediately after the said election, and the said school board shall hold a special meeting as soon thereafter as practicable for the purpose of canvassing said election returns and shall determine and certify to the result thereof.

History.—s. 1040, ch. 19355, 1939; CGL 1940 Supp. 892(359); s. 7, ch. 22858, 1945; s. 1, ch. 69-300.

236.41 Result of election held.—If it shall appear by the result of said election that a majority of the votes cast shall be "For bonds," the school board shall be authorized and required to issue the bonds authorized by said election for the purposes specified in the resolution as published, not to exceed the amount therein named; but, if the majority of the votes cast shall have been "Against bonds," no bonds shall be issued.

History.—s. 1041, ch. 19355, 1939; CGL 1940 Supp. 892(360); s. 1, ch. 69-300.

236.42 If election adverse, no second election within 6 months.—If the result of the said election shall be adverse to the issuance of said bonds, no election shall be held for such purpose within 6 months thereafter; except, however, in the event such election shall result or shall have resulted in an equal number of votes being cast for the issuance of said bonds as shall be cast adverse to issuance of bonds, the school board may call and order another or second election within said district to have determined the question of whether the bonds specified in the original petition and resolution shall be issued by said district, after giving notice as provided for by s. 236.39, and it shall not be necessary to have presented to said school board further petitions to order said second election.

History.—s. 1042, ch. 19355, 1939; CGL 1940 Supp. 892(361); s. 1, ch. 69-300; s. 154, ch. 72-221.

236.43 Receiving bids and sale of bonds.—

(1) In case the issuance of bonds shall be authorized at said election, or in case any bonds outstanding against the district are being refunded, the school board shall cause notice to be given by publication in some newspaper published in the district that said board will receive bids for the purchase of the bonds at the office of the superintendent of said district. The notice shall be published twice and the first publication shall be given not less than 30 days prior to the date set for receiving the bids. Said notice shall specify the amount of the bonds offered for sale and shall state whether the bids shall be sealed bids or whether the bonds are to be sold at auction, shall give the schedule of maturities of the proposed bonds and such other pertinent information as may be prescribed by regulations of the state board. Bidders may be invited to name the rate of interest which the bonds are to bear or the school board may name rates of interest and invite bids thereon. In addition to publication of notice of the proposed sale as set forth above, the school board shall also notify in writing at least three recognized bond dealers in the state and shall also at the same time notify the Department of Education concerning the proposed sale, enclosing a copy of the advertisement.

(2) All bonds and refunding bonds issued as provided by law shall be sold to the highest and best bidder at such public sale unless sold at a better price or yield basis within 30 days after failure to receive an acceptable bid at a duly advertised public sale; provided, that at no time shall bonds or refunding bonds be sold or exchanged at less than par value except as specifically authorized by the department; and provided, further, that the school board shall have the right to reject all bids and cause a new notice to be given in like manner inviting other bids for such bonds, or to sell all or any part of such bonds to the state board at a price and yield basis which shall not be less advantageous to the school board than that represented by the highest and best bid received. In the marketing of said bonds the school board shall be entitled to have such assistance as can be rendered by the Governor, the State Treasurer, the Commissioner of Education, or any other public state officer or agency. In determining the highest and best bidder for bonds offered for sale, the net interest cost to the school board as shown in standard bond tables shall govern; provided, that the determination of the school board as to the highest and best bidder shall be final.

History.—s. 1043, ch. 19355, 1939; CGL 1940 Supp. 892(362); s. 7, ch. 21989, 1943; s. 5, ch. 22839, 1945; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300.

236.44 Bidders to give security.—The school board may require of all bidders for said bonds that they give security by bond or by a deposit to said school board that the bidder shall comply with the terms of the bid, and any bidder whose bid shall be

accepted shall be liable to the school board for all damages on account of the nonperformance of the terms of such bid or to a forfeiture of the deposit required by said school board.

History.—s. 1044, ch. 19355, 1939; CGL 1940 Supp. 892(363); s. 1, ch. 69-300.

236.45 Form and denomination of bonds.—The school board may prescribe the denomination of the bonds to be issued and such bonds may be issued with or without interest coupons in the discretion of the board. The form of the bonds to be issued may be prescribed by the state board on the recommendation of the Department of Legal Affairs. The schedule of maturities of the proposed bonds shall be so arranged that the total payments required each year, including the payments on other bonds outstanding against the district, shall be as nearly equal as practicable. The schedule shall provide that all bonds are to be retired within a period of 20 years from the date of issuance unless a longer period is required and has been specifically approved by the Department of Education. All bonds issued hereunder which bear interest in excess of 2.99 percent shall be callable on terms prescribed by the school board beginning not later than 10 years from the date of issuance.

History.—s. 1045, ch. 19355, 1939; CGL 1940 Supp. 892(364); s. 8, ch. 21989, 1943; ss. 11, 15, 35, ch. 69-106; s. 1, ch. 69-300.

236.46 Investment of fiduciary funds in bonds; security for deposit of public funds.—School district bonds authorized and issued under the provisions of this chapter shall be lawful investments for fiduciary and trust funds including all funds in the control of trustees, assignees, administrators, and executors, and may be accepted as security for all deposits of public funds.

History.—s. 1046, ch. 19355, 1939; CGL 1940 Supp. 892(365).

236.47 Records to be kept and reports to be made.—The school board shall maintain a complete record of all bonds issued under the provisions of this chapter, which record shall show upon what authority the bonds are issued, the amount for which issued, the persons to whom issued, the date of issuance, the purpose or purposes for which issued, the rate of interest to be paid, and the time and place of payment of each installment of principal and interest. This record shall be so arranged as to show the amount of principal and interest to be paid each year and shall also show the annual or semiannual payments which are made and the bonds which are canceled. In addition the superintendent shall file with the Department of Education in accordance with regulations of the state board reports giving such information as may be required regarding any bonds which may be issued as provided herein.

History.—s. 1047, ch. 19355, 1939; CGL 1940 Supp. 892(366); s. 9, ch. 21989, 1943; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300.

236.48 Bonds may be validated; validity of bonds.—When an issue of bonds for any school district shall be authorized in the manner provided under the terms of this chapter, such bonds shall, in the discretion of the school board, be subject to validation in the manner provided for in chapter 75. In lieu of validation as set forth in that chapter, the school board may, in its discretion, submit to the Department of Legal Affairs all information relating to the issuance of bonds as provided in said chapter 75, and an approving opinion of the Department of Legal Affairs shall be sufficient evidence that the bonds are valid. Bonds reciting that they are issued pursuant to the terms of this chapter shall, in any action or proceeding involving their validity, be conclusively deemed to be fully authorized thereby, to have been issued, sold, executed, and delivered in conformity therewith, and with all other provisions of law applicable thereto, and shall be incontestable, anything herein or in other statutes to the contrary notwithstanding, unless such action or proceeding is begun before or within 30 days after the date upon which the bonds are sold, paid for and delivered.

History.—s. 1048, ch. 19355, 1939; CGL 1940 Supp. 892(367); s. 10, ch. 21989, 1943; ss. 11, 15, 35, ch. 69-106; s. 1, ch. 69-300.

236.49 Proceeds; how expended.—The proceeds derived from the sale of said bonds shall be held by the school board and shall be expended by the board for the purpose for which said bonds were authorized for said school district, and shall be held and expended in the manner following:

(1) The school board shall deposit, or cause to be deposited, the proceeds arising from the sale of each issue of bonds in a separate bond construction fund account in the school depository.

(2) All or any part of the fund derived from the proceeds of any such bond issue that in the judgment of the school board is not immediately needed may be placed on time deposit in the school depository or invested in securities issued by or guaranteed by the United States Government, or in the following securities of the district maturing not later than the time when the funds are reasonably expected to be needed:

(a) In instruments of indebtedness of the United States Government or in any bonds or obligations which shall then be fully and unconditionally guaranteed as to principal by the United States Government, at the then current market price of such bonds or other obligations; provided, that any such bond or other obligation purchased under the authority hereof shall be surrenderable at par and accrued interest not later than 1 year next after the date of the purchase of the same.

(b) In any bonds issued by the district; provided, such bonds are not in default and can be obtained at a price which will result in a net saving to the taxpayers of the district.

(c) In any obligations of the school board approved by the state board or Department of Education in accordance with the provisions of s. 237.161.

(d) In any bonds issued by the State Board of Education.

History.—s. 1049, ch. 19355, 1939; CGL 892(368); s. 1, ch. 21823, 1943; s. 19, ch. 29754, 1955; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 155, ch. 72-221.

236.50 Disposition of surplus of bond issue.—Should there remain any of the proceeds of the sale of school district bonds after the purpose and object for which the said bonds were issued shall have been carried out and performed by the school board, the

surplus then shall be held by the school board and expended for the exclusive use of the public schools within the school district as said school board may deem reasonable and proper.

History.—s. 1050, ch. 19355, 1939; CGL 1940 Supp. 892(369); s. 20, ch. 29754, 1955; s. 17, ch. 57-249; s. 1, ch. 69-300; s. 156, ch. 72-221.

236.51 Additional bond issues.—After the issuance by any school district of bonds in the manner authorized in this chapter, the qualified electors of such school district may thereafter, from time to time, in the manner herein provided for, authorize one or more additional bond issues as they may determine upon.

History.—s. 1051, ch. 19355, 1939; CGL 1940 Supp. 892(370).

236.52 Source and use of district interest and sinking fund.—The district interest and sinking fund of any school district shall comprise the proceeds of the tax levied for the purpose of paying the principal and interest of bonds outstanding against the district as provided in this chapter and in addition such funds as may accrue to the credit of the district interest and sinking fund from interest on deposits, investments or other sources. The district interest and sinking fund in each district shall be used to pay the principal and interest on bonds legally issued against the district and other proper items of debt service against such district, including any necessary refunding expense as prescribed by regulations of the State Board of Education. The school board shall, before the maturity of bonds and before interest due dates, deposit with the paying agent or make available, as designated in the resolution authorizing the issuance of bonds, sufficient money of the district interest and sinking fund with which to pay all principal and interest when due; provided, that when such money has been so deposited with the paying agent or made available, all interest on the indebtedness represented by the maturing bonds or coupons shall cease as of their maturity dates; and provided, further, that if any such bonds or coupons are not presented for payment within 6 months after the date on which they mature, the money shall be returned to the school board and shall be held by said board as a reserve fund in the account of the district interest and sinking fund until the bonds and coupons are presented for payment. Any holder of bonds or coupons claiming interest after maturity shall be required to produce evidence in the form of a letter from the paying agent or the school board of the district, respectively, acknowledging that the bonds or coupons upon which interest is claimed were presented for payment upon maturity, that no funds were available for the payment thereof, that such bonds or coupons were presented for payment at least annually thereafter and that no funds were available to pay such bonds or coupons. The paying agent or the school board of the district, whichever has the duty of holding the money shall, upon request of the holder of defaulted bonds or coupons, furnish to such holder the letter required herein. When such evidence is presented, the district interest and sinking fund shall be liable for the payment of principal and interest on the bonds and coupons from maturity until paid at the rate prescribed on the face of the bonds. If at any time any bonds or coupons are reduced to judgment, the district interest and sinking fund shall be responsible for past due interest only at the rate prescribed by the bonds and any rate of interest in excess of that amount shall be illegal and invalid. Such judgments shall bear interest at the rate of 5 percent per annum until paid. When any proposal for refunding the indebtedness against any district has been prepared and approved by the Department of Education, as required by law, and when the holders of at least 80 percent of the outstanding indebtedness represented by the bond issue have agreed in writing to the refunding plan, the school board shall be authorized to pay, from and after that date on the original and refunding bonds from the district interest and sinking fund, only the rate of interest which has been agreed upon for the refunding bonds and no owner or holder of a bond or coupon shall be entitled to a higher rate of interest after that date; provided, that such owner or holder shall be given the option by the school board of receiving payment in cash for all principal and interest due on the bonds and coupons he holds at the same rate at which the remaining bonds and coupons have been refunded.

History.—s. 1052, ch. 19355, 1939; CGL 1940 Supp. 892(371); s. 7, ch. 22839, 1945; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300.

236.55 Interest and sinking funds may be invested in certain bonds, warrants and notes.—The school board shall have the power at all times to invest the interest and sinking funds collected for the retirement of any bonds of any school district in bonds issued by the United States Government or any bonds fully and unconditionally guaranteed as to interest and principal by the United States Government, in the bonds of another school district of the same county, in loans of the school board or of any district in the county incurred under the provisions of s. 237.27, or in any district general school fund bonds, warrants or notes of said district as authorized by the state board or Department of Education. Said bonds, warrants or notes shall be of such date and maturity that they will mature on or before the date of maturity of the district's bonds with whose sinking fund they have been purchased. Such bonds, warrants or notes shall be purchased at par or less, except when purchase of any such bonds or warrants at a price above par is specifically approved on the basis of an application therefor submitted to the Department of Education. The school board shall have authority at any time to use the interest and sinking fund of any district for purchasing for the purpose of canceling and retiring bonds outstanding against the interest and sinking fund of said district at any price which will result in a net saving to the taxpayers of the district; provided, always, that the school board shall have the right to keep the interest and sinking fund on deposit earning the rate of interest agreed upon until such time as within its judgment it may be able to invest it in bonds, warrants or notes to better advantage as herein provided for.

History.—s. 1055, ch. 19355, 1939; CGL 1940 Supp. 892(374); s. 11, ch. 21989, 1943; s. 85, ch. 29764, 1955; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300.

236.56 Disposition of balance in interest and sinking fund.—If all principal and interest outstanding against any school district shall have been paid, and there shall still remain a balance in the interest and sinking fund to the credit of that district, the board shall, by resolution, authorize this balance to be transferred to the credit of the district school fund.

History.—s. 1056, ch. 19355, 1939; CGL 1940 Supp. 892(375); s. 158, ch. 72-221.

236.601 Board of Administration to act as fiscal agent in issuance and sale of motor vehicle anticipation certificates.—

(1) In aid of the provisions of s. 18, Art. XII of the State Constitution of 1885 as adopted by s. 9(d) of Art. XII, 1968 Revised Constitution and the additional provisions of s. 9(d), the State Board of Administration may upon request of the State Board of Education, act as fiscal agent for the State Board of Education in the issuance and sale of any or all bonds or motor vehicle tax anticipation certificates, including any refunding of bonds, certificates or interest coupons thereon which may be issued pursuant to the above cited provisions of the state constitution and upon request of the State Board of Education the State Board of Administration may take over the management, control, bond trusteeship, administration, custody and payment of any or all debt service or other funds or assets now or hereafter available for any bonds or certificates issued for the purpose of obtaining funds for the use of any school board or to pay, fund or refund any bonds or certificates theretofore issued for such purpose. The State Board of Education may from time to time provide by its duly adopted resolution or resolutions the duties said fiscal agent shall perform as authorized by this section and such duties may be changed, modified or repealed by subsequent resolution or resolutions as the State Board of Education may deem appropriate, provided, however, that such changes shall only affect the duties of the State Board of Administration as fiscal agent and shall in nowise affect or modify the paramount constitutional authority of the State Board of Education nor affect, modify or impair the contract rights of persons holding or owning said obligations so authorized to be issued.

(2) No such bonds or motor vehicle tax anticipation certificates shall ever be issued by the State Board of Administration until after the adoption of a resolution requesting the issuance thereof by the State Board of Education for and on behalf of the district for which such obligations are to be issued.

(3) All such bonds or certificates issued pursuant to this act shall be issued in the name of the State Board of Education but shall be issued for and on behalf of the school board requesting the issuance thereof and shall be issued pursuant to any rules or regulations adopted by the State Board of Education which are not in conflict with the provisions of s. 18 of Art. XII of the State Constitution of 1885 as adopted by s. 9(d) of Art. XII, 1968 Revised Constitution, and the additional provisions of s. 9(d).

(4) The proceeds of any sale of original bonds or original certificates shall be deposited in the State Treasury to the credit of the particular construction account for which said original bonds or original certificates were issued and shall be under the direct control and supervision of the State Board of Education and withdrawals from said construction accounts shall be made only upon warrants signed by the State Comptroller, countersigned by the Governor of the state, and drawn upon the State Treasurer. Such warrants shall be issued by the Comptroller only when the vouchers requesting such warrants are accompanied by the certificates of the State Board of Education to the effect that such withdrawals are proper expenditures for the cost of the particular construction account against which the requested warrant is to be drawn.

(5) The State Board of Administration shall annually determine the amounts necessary to meet the debt service requirements of all bonds or certificates administered by it pursuant to this section and shall certify to the State Board of Education said amounts needed. The State Board of Education, upon being satisfied that said amounts are correct, shall pay said amounts direct to the State Board of Administration for application by said State Board of Administration as provided under the terms of the resolutions authorizing the issuance of said bonds or certificates and as provided in s. 18 of Art. XII of the State Constitution of 1885 as adopted by s. 9(d) of Art. XII, 1968 Revised Constitution, and the additional provisions of s. 9(d).

(6) The expenses of the State Board of Administration incident to the issuance and sale of any bonds or certificates issued under the provisions of the constitution and under the provisions of this section shall be paid from the proceeds of the sale of the bonds or certificates or from the funds distributable to each county under the provisions of s. 18(a) of Art. XII of the Constitution of 1885 as adopted by s. 9(d) of Art. XII, 1968 Revised Constitution. All other expenses of the State Board of Administration for services rendered specifically for, or which are properly chargeable to the account of any bonds or certificates issued for and on behalf of any school board under the above cited provisions of the state constitution shall be paid from the funds distributable to each county under the provisions of s. 18(a) of Art. XII of the State Constitution of 1885 as adopted by s. 9(d) of Art. XII, 1968 Revised Constitution; but general expenses of the State Board of Administration for services rendered all the districts alike shall be prorated among them and paid from the funds distributable to each district on the same basis as such funds are distributable under the provisions of s. 18(a) of Art. XII of the State Constitution of 1885 as adopted by s. 9(d) of Art. XII, 1968 Revised Constitution.

(7) The provisions of this section contemplate that it will aid the State Board of Education and better serve the purposes contemplated by s. 18 of Art. XII of the State Constitution of 1885 as adopted by s. 9(d) of Art. XII, 1968 Revised Constitution, and the additional provisions of s. 9(d) and not be inconsistent therewith.

History.—ss. 1-8, ch. 28065, 1953; s. 31, ch. 69-216; s. 1, ch. 69-300.

236.602 Bonds payable from motor vehicle license tax funds; instruction units computed.—

(1) For the purpose of administering the provisions of s. 9(d), Art. XII of the State Constitution as

amended in 1972, the number of current instruction units in districts shall be computed annually by the department by multiplying the number of full-time equivalent students in each district by the cost factors in s. 236.081(1)(c) and dividing by 23, except that all basic program cost factors shall be one, and the special program cost factors for hospital and homebound I and for community service shall be zero. Full-time equivalent membership for students residing in Department of Health and Rehabilitative Services residential care facilities shall not be included in this computation. Any portion of the fund not expended during any fiscal year may be carried forward in ensuing budgets and shall be temporarily invested as prescribed by law or regulations of the state board.

(2) Whenever the State Board of Education shall issue bonds or certificates for and on behalf of any school board of any district, or whenever any school board of any district shall issue bonds or certificates repayable from motor vehicle license tax funds, the aggregate number of instruction units in such district in any future school fiscal year, as authorized under the amendment contained in s. 18, Art. XII of the State Constitution of 1885 as amended and adopted by reference in s. 9(d), Art. XII of the Constitution of 1968, to the full extent necessary to pay all principal of and interest on, and reserves for, bonds or certificates issued for and on behalf of such district or by such school board in any school fiscal year, as the same shall become due and payable, shall be not less than the aggregate number of instruction units in such district for the school fiscal year preceding the school fiscal year in which such bonds or certificates are issued, computed in accordance with the statutes in force in the school fiscal year preceding the school fiscal year in which such bonds or certificates are issued.

(3) The provisions of this section are not intended to, and shall not, be applicable to, or confer any rights on, any district to payments from said motor vehicle license taxes except to the full extent necessary to pay all principal of and interest on, and reserves for, bonds or certificates so issued by such school board and by said State Board of Education for and on behalf of such districts, in each future school fiscal year as the same shall mature and become due; and except for such purpose, all payments of the amounts of said motor vehicle license taxes distributable under the provisions of s. 18, Art. XII of the State Constitution of 1885 as amended and adopted by reference in s. 9(d), Art. XII of the Constitution of 1968 shall continue to be made and distributed to such districts in the manner provided by said amendment and the general laws of Florida in force and effect at the time of such distributions.

History.—ss. 1, 2, ch. 29626, 1955; s. 31, ch. 69-216; s. 1, ch. 69-300; s. 1, ch. 69-321; s. 10, ch. 73-345; s. 3, ch. 79-184.

236.68 Interest rates.—All bonds issued by the State Board of Education pursuant to the provisions of subsection (a) of s. 9 of Art. XII of the State Constitution, as amended, may bear interest at such rate or rates as may be determined by the State Board of Education. However, the maximum rate of interest shall not exceed 7½ percent per annum.

History.—s. 1, ch. 69-1738; s. 166, ch. 72-221.

CHAPTER 237

FINANCIAL ACCOUNTS AND EXPENDITURES

237.01 Uniform records and accounts.—The financial records and accounts of each school board shall be maintained under the direction of the superintendent and under regulations prescribed by the state board for the uniform system of financial records and accounts for the schools of the state. The superintendent shall recommend to the school board such clerical and professional assistants as are necessary for the proper keeping of the uniform system of financial records and accounts, and it shall be the duty of the school board to make adequate appropriation for such assistance.

History.—s. 1059, ch. 19355, 1939; CGL 1940 Supp. 892(378); s. 14, ch. 67-387; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 167, ch. 72-221.

237.02 Expenditures.—Expenditures shall be limited to the amount budgeted under the classification of accounts provided for each fund and to the total amount of the budget after the same have been amended as prescribed by law and regulations of the state board. The school board shall endeavor to obtain maximum value for all expenditures.

(1) PURCHASES.—

(a) Each district school board shall develop and adopt policies establishing the plan to be followed in making purchases as may be prescribed by the state board.

(b) In districts in which the county purchasing agent is authorized by law to make purchases for the benefit of other governmental agencies within the county, the school board shall have the option to purchase from the current county contracts at the unit price stated therein if such purchase is to the economic advantage of the school board, subject to conformation of the items of purchase to the standards and specifications prescribed by the district.

(c) The State Board of Education shall adopt regulations authorizing school districts to establish petty cash funds within the public school system.

(2) ALTERNATIVE PROCEDURES FOR PURCHASING.—The State Board of Education may, by regulation, provide for alternative procedures for bidding or purchasing in cases in which the character of the item requested renders competitive bidding impractical.

(3) EXPENDITURES FROM DISTRICT AND OTHER FUNDS.—Expenditures from district and all other funds available for the public school program of any district shall be authorized by law and must be in accordance with procedures prescribed by the school board.

(4) INTERNAL FUNDS.—

(a) The school board shall be responsible for the administration and control of all local school funds derived by any public school from all activities or sources, and shall prescribe the principles and procedures to be followed in administering these funds consistent with regulations adopted by the State Board of Education.

(b) The State Board of Education shall adopt regulations governing the procedures for the recording of the receipts, expenditures, deposits, and disbursements of internal funds.

History.—s. 1060, ch. 19355, 1939; CGL 1940 Supp. 892(379); s. 21, ch. 29754, 1955; s. 18, ch. 57-249; s. 16, ch. 61-288; s. 7, ch. 61-459; s. 18, ch. 63-376; s. 1, ch. 67-237; s. 2, ch. 67-138; s. 15, ch. 67-387; ss. 15, 22, 35, ch. 69-106; s. 1, ch. 69-300; s. 167, ch. 72-221; s. 1, ch. 73-137.

237.031 Budget system established.—There shall be established in each school district a budget system as prescribed by law and state board regulations.

History.—s. 1063, ch. 19355, 1939; CGL 1940 Supp. 892(382); s. 167, ch. 65-239; s. 1, ch. 69-300; s. 167, ch. 72-221.
Note.—Former s. 237.05.

237.041 Form of annual budget required.—An annual budget is required to be prepared and adopted by the school board of each district and submitted to the Department of Education for examination each year on or before the date provided in regulations of the state board. Such annual budget shall be prepared in accordance with regulations prescribed by the state board. The annual budget submitted by each school board shall be consistent with, and contribute to, the implementation of a planned long-range school program for the district.

History.—s. 1064, ch. 19355, 1939; CGL 1940 Supp. 892(383); ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 167, ch. 72-221.
Note.—Former s. 237.06.

237.051 Estimate of property appraiser.—On or before the 1st Monday in July the property appraiser of each county shall certify to the superintendent his estimate of the total valuation reasonably to be expected by him to be assessed on the current year's tax roll for nonexempt property, for

homestead property, and for tax delinquent property on which certificates are held by the state, in each school district, separately, and in the entire county. If, after the certification of his estimates, and before equalization of the tax roll, it shall appear to the property appraiser that said estimates, or any of them, were in error by 10 percent or more, he shall immediately certify his revised estimate to the superintendent, and such revised estimate shall be substituted for the original estimate at any time before the budget becomes official. Immediately upon the equalization of the tax roll as provided by law, the county property appraiser shall certify to the school board the actual assessed valuation of the property in the county as prescribed above.

History.—s. 1066, ch. 19355, 1939; CGL 1940 Supp. 892(385); s. 87, ch. 29764, 1955; s. 1, ch. 61-328; s. 1, ch. 69-300; s. 167, ch. 72-221; s. 1, ch. 77-102.
Note.—Former s. 237.08.

237.061 Budget and parts thereof must balance.—If, when a tentative budget has been prepared in accordance with regulations of the state board, the proposed expenditures, plus transfers, and balances exceed the estimated income, transfers, and balances, the proposed tax levy shall be increased, if that is possible without exceeding the maximum millage authorized by the voters and the millage which may be authorized by the board pursuant to law. If such increase is not possible, the appropriations, transfers, or reserves shall be reduced so that the budget and each of the parts thereof will balance.

History.—s. 167, ch. 72-221.

237.071 School board to adopt tentative budget.—

(1) On or before the date prescribed in regulations of the state board, the school board of each district shall receive and examine the tentative budget submitted by the superintendent, and shall require such changes to be made, in keeping with the purposes of the School Code, as may be to the best interest of the school program in the district.

(2) The school board shall determine, within prescribed limits, the reserves to be allotted for contingencies, and the cash balance to be carried forward at the end of the year. If the school board shall require any changes to be made in receipts, in the reserves for contingencies, or in the cash balance to be carried forward at the end of the year, it shall also require necessary changes to be made in the appropriations for expenditures so that the budget, as changed, will not contain appropriations for expenditures and reserves in excess of, or less than, estimated receipts and balances.

(3) The proposed budget shall include an amount for local required effort for current operation, in accordance with the requirements of s. 236.081(5).

(4) The board shall adopt a tentative budget.

History.—s. 1069, ch. 19355, 1939; CGL 1940 Supp. 892(388); ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 167, ch. 72-221; s. 10, ch. 74-227.
Note.—Former s. 237.11.

237.081 Public hearings; budgets to be submitted to Department of Education.—

(1) The school board of any district proposing a tax levy for current operating purposes no greater than the minimum tax levy required to participate in the Florida Education Finance Program shall cause a summary of its tentative budget, including the proposed millage levies as provided for by law, to be advertised one time in a newspaper of general circulation published in the district, or to be posted at the courthouse door if there be no such newspaper. The advertisement shall state that the school board will meet on a day fixed in the advertisement, not earlier than 1 week and not later than 2 weeks from the date of the advertising, for the purpose of a public hearing concerning the tentatively adopted budget. The school board shall meet upon the date fixed in the advertisement for the public hearing and from day to day thereafter, if it deems necessary, for the purpose of continuing the public hearings and making whatever revisions in the budget it may deem necessary. The school board shall then adopt the budget for the district for the current fiscal year, and shall require the superintendent to transmit forthwith two copies of the adopted budget to the Department of Education for approval as prescribed by law and regulations of the state board.

(2) Any school board proposing to establish a tax levy for operating purposes in excess of the millage required of the district to participate in the Florida Education Finance Program shall, in addition to the requirements in subsection (1), place an additional advertisement in the same newspaper which shall be one-quarter page in size and printed in at least 18-point type size. The advertisement shall contain the millage required to be levied by the school board, the millage proposed by the board, and the date, time, and place of the meeting and shall state that a public hearing will be held on the issue. The advertisement required in this subsection may appear simultaneously with the one required in subsection (1), and the public hearings required in subsection (1) and this subsection may be held concurrently. However, separate motions shall be made and separate votes recorded on the establishment of the millage and on the adoption of the proposed budget. The provisions of this section shall govern the procedures of the school board in establishing the millage rates and the method of adopting the budget, the provisions of s. 200.065 or chapter 120 to the contrary notwithstanding.

History.—s. 1070, ch. 19355, 1939; CGL 1940 Supp. 892(389); s. 8, ch. 22839, 1945; s. 16, ch. 67-387; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 167, ch. 72-221; s. 21, ch. 75-284.
Note.—Former s. 237.12.

237.091 Levying of taxes.—

(1) After the budget has been approved as official by the Department of Education, and upon receipt of the certificate of the property appraiser giving the assessed valuation of the county and of each of the special tax school districts, the school board shall determine by resolution the amounts necessary to be raised for current operating purposes and for each district bond interest and sinking fund and the millage necessary to be levied for each such fund, including the voted millage. A certified copy of said resolution shall thereupon be filed with the county property appraiser, and the school board shall also order the property appraiser to assess the several millages certified by said school board against the appropriate taxable property in the school district.

(2) The property appraiser shall then assess the

taxes as ordered by the school board. Tax millages so assessed shall be clearly designated and separately identified as to source on the tax bill for other county taxes.

(3) The collector shall collect said taxes and pay over the same promptly as collected to the district school depository or depositories to be used as provided by law; provided, that all taxes authorized herein shall be assessed and collected on railroad, street railroad, sleeping car, parlor car, and telegraph company property in the manner now provided by law.

(4) The school board shall determine the millages to be levied by dividing the applicable assessed valuation, as finally certified by the property appraiser after equalization, into the amount budgeted to be received from taxes before 5 percent is deducted, using the nearest fraction of a mill or decimal equivalency ordinarily used in the district. If the assessed valuations are not equalized until after the budget becomes official and it is thereupon determined that the legal millage will not be sufficient to produce the amount estimated from taxes, the budget will be valid, notwithstanding the deficiency of taxes. The millage shall conform to the millage authorized by law.

History.—s. 1076, ch. 19355, 1939; CGL 1940 Supp. 892(395); s. 169, ch. 65-239; s. 1, ch. 67-226; s. 1, ch. 69-300; s. 1, ch. 70-401; s. 167, ch. 72-221; s. 1, ch. 77-102.

Note.—Former s. 237.18.

237.101 Implementation of the official budget.—The official budget shall give the appropriations and reserves therein the force and effect of fixed appropriations and reserves, and the same shall not be altered, amended, or exceeded except as authorized. However, if the actual receipts during any year is less than budgeted receipts, and any obligations are thereby incurred which cannot be met before the close of the year, such obligations shall be paid and accounted for in the ensuing fiscal year in the manner prescribed by regulations of the state board and shall be payable out of the first funds available for that purpose. In the event any suit is brought wherein the relief sought would require any change or alteration in any part of the official budget or, if brought before the budget becomes official, would require a change in the rate or expenditure of the preceding year, the Department of Education shall be made a party to said suit. If said suit is instituted without the department being named a party thereto, the same shall abate, and the court, on its own motion or on motion of any interested party, shall enter an order staying the cause until such time as the department is made a party thereto. If the department is not made a party thereto within a reasonable period, the suit shall be dismissed, either on the court's own motion or on motion of any interested party.

History.—s. 167, ch. 72-221; s. 80, ch. 73-333.

237.111 Expenditures between July 1 and date budget becomes official.—During the period from July 1 to the date the budget becomes official, school boards are authorized to approve ordinary expenditures, including salary payments, which are necessary for the approved school program.

History.—s. 1079, ch. 19355, 1939; CGL 1940 Supp. 892(398); s. 172, ch. 65-239; ss. 15, 35, ch. 69-106; s. 167, ch. 72-221.

Note.—Former s. 237.21.

237.121 Penalty.—

(1) Any member of a school board or any superintendent who shall violate the provisions of this chapter shall be guilty of malfeasance and misfeasance in office, and shall be subject to removal from office by the Governor; and any contract or attempted contract entered into by any school officer or subordinate school officer, not within the purview or in violation of the provisions of this chapter shall be void, and no such contract or attempted contract shall be enforceable in any court.

(2) Each member of any school board voting to incur an indebtedness against the district school funds in excess of the expenditure allowed by law, or in excess of any appropriation as adopted in the original official budget or amendments thereto, or to approve or pay any illegal charge against the said funds, and any chairman of a school board or superintendent who shall sign a warrant for payment of any such claim or bill of indebtedness against any of the said funds shall be personally liable for the amount, and shall be guilty of malfeasance in office and subject to removal by the Governor. It shall be the duty of the Auditor General or other state official charged by law with the responsibility for auditing school accounts, upon discovering any such illegal expenditure or expenditures in excess of the appropriations in the budget as officially amended, to certify such fact to the Department of Banking and Finance, which thereupon shall verify such fact and it shall be the duty of the said Department of Banking and Finance to advise the Department of Legal Affairs thereof, and it shall be the duty of the said Department of Legal Affairs to cause to be instituted and prosecuted, either through its office or through any state attorney, proceedings at law or in equity against such member or members of a school board or superintendent; provided, that if either of the said officers do not institute proceedings within 90 days after the audit has been certified to them by the Department of Banking and Finance then any taxpayer may institute suit in his own name in behalf of the district.

History.—s. 1081, ch. 19355, 1939; CGL 1940 Supp. 892(400), 8115(20); s. 10, ch. 20970, 1941; s. 14, ch. 21989, 1943; s. 174, ch. 65-239; s. 8, ch. 69-82; ss. 11, 12, 35, ch. 69-106; s. 1, ch. 69-300; s. 167, ch. 72-221.

Note.—Former s. 237.23.

237.131 Certain provisions to be directory.—No irregularities of form or manner in the preparation or adoption of any budget under the provisions of this chapter shall invalidate either the budget adopted or the taxes levied therefor. However, the budget and the taxes levied must conform substantially to the principles and provisions of law and regulations of the state board.

History.—s. 1082, ch. 19355, 1939; CGL 1940 Supp. 892(401); s. 167, ch. 72-221.

Note.—Former s. 237.24.

237.141 Purposes of and procedures in incurring school indebtedness.—Indebtedness for school purposes may be incurred only as follows:

(1) School districts may issue bonds creating a long-term indebtedness as prescribed by law.

(2) Notes may be issued for money borrowed in anticipation of the receipt of current school funds, included in the budget from the state, county, or districts, as authorized under s. 237.151.

(3) Indebtedness may be incurred for certain purposes as authorized under s. 237.161.

(4) Bonds or revenue certificates issued on behalf of the district by the State Board of Education as authorized by s. 18, Art. XII of the State Constitution of 1885 as adopted by s. 9(d) of Art. XII, 1968 Revised Constitution, and the additional provisions of s. 9(d).

History.—s. 1083, ch. 19355, 1939; CGL 1940 Supp. 892(402); s. 92, ch. 29764, 1955; s. 31, ch. 69-216; s. 1, ch. 69-300; s. 167, ch. 72-221.

Note.—Former s. 237.25.

237.151 Current loans authorized under certain conditions.—At any time the current school funds on hand are insufficient to pay obligations created by the school board of any district, in accordance with the official budget of the district, the school board is authorized to negotiate a current loan to pay these obligations, providing for the repayment of that loan from the proceeds of revenues reasonably to be anticipated during the fiscal year in which the loan is made as prescribed below; provided, that the school board shall, whenever possible, so arrange its expenditures as to make the incurring of current loans unnecessary; provided further, that when it is deemed necessary, for the benefit of the schools of the district, for a current loan to be negotiated, the school board shall arrange for a loan only in the amount actually needed and for the repayment of the loan at the earliest date practicable.

(1) CURRENT LOANS AGAINST DISTRICT FUND; AND DISTRICT INTEREST AND SINKING FUNDS.—The school boards of the several districts in the state are hereby authorized and empowered to borrow money, to be retired from the district tax receipts anticipated in the operating budget, and the debt service budget, at a rate of interest not to exceed the rate authorized in s. 236.68, for the purpose of paying all outstanding obligations and for the further purpose of paying any and all lawful expenses incurred in operating the schools of said district; provided, however, that it shall be unlawful for any school board to borrow any sum of money in any 1 year in excess of 80 percent of the amount as estimated by them in the official budget for the current fiscal year for the district to be available from the district tax. The said sum so borrowed shall be paid in full before the school board shall be authorized to borrow money in any succeeding year.

(2) OUTSTANDING INDEBTEDNESS NOT AFFECTED.—Nothing in subsection (1) shall be construed to invalidate any outstanding debt of any district as now existing and now due, or to become due, or as requiring any school board to pay the same in full before being permitted to borrow 80 percent on the estimate for the next ensuing year.

(3) EVENTUALITY OF TAX LITIGATION; FINANCING OF OUTSTANDING BONDS.—In the event that the county tax roll is subjected to litigation and the tax collector is prevented from collecting taxes on that roll, the following shall apply:

(a) The restriction of 80 percent in subsection (1) of this section shall not apply if the collection of taxes is delayed beyond May 1.

(b) The school boards of the several districts of the state are authorized and empowered to borrow money, to be repaid from the district school fund for operating purposes and the district interest and sinking fund, at a rate not to exceed 6 percent per annum, for the purposes of paying any and all lawful operating expense and required debt service necessary for the outstanding bond issues of such districts at the times that the funds are needed to prevent the bonds or interest payments from being in default. However, the amount of money so borrowed shall be limited to the amount of the district school fund and district interest and sinking fund tax receipts included in the official school budget for that year or the amount necessary to be borrowed to meet such obligations, whichever amount is the lesser. Any funds borrowed pursuant to the authority of this subsection shall, insofar as possible, be repaid during the fiscal year in which the loan was made. However, any such loan unpaid at the end of the fiscal year shall be repaid from the first available revenue in the next succeeding year.

History.—s. 1084, ch. 19355, 1939; CGL 1940 Supp. 892(403); s. 11, ch. 20970, 1941; s. 93, ch. 29764, 1955; s. 1, ch. 63-15; ss. 175-178, ch. 65-239; s. 18, ch. 67-387; s. 1, ch. 69-300; s. 167, ch. 72-221; s. 11. ch. 74-227.

Note.—Former s. 237.26.

237.161 Obligations for a period of 1 year.—The school board of any district is authorized only under the following conditions to create obligations by way of anticipation of budgeted revenues accruing on a current basis without pledging the credit of the district or requiring future levy of taxes for certain purposes for a period of 1 year; provided, however, that such obligations may be extended from year to year with the consent of the lender for a period not to exceed 4 years:

(1) PURPOSES.—The purposes for which such obligations may be incurred within the intent of this section shall include only the purchase of school buses for transportation of pupils, the purchase of land for school sites and the erection, alteration or addition to school plants, the purchase of school plant equipment and the adjustment of insurance on school property on a 5-year plan, as provided by regulations of the state board.

(2) OBLIGATIONS MAY NOT EXCEED ONE-FOURTH OF DISTRICT AD VALOREM TAX REVENUE FOR OPERATIONS FOR THE PRECEDING YEAR.—No obligation of the nature prescribed herein may be incurred by any school board when such proposed obligations exceed one-fourth of the revenue received during the preceding year for the district school fund for operating expense of the district.

(3) SCHOOL BOARD TO SUBMIT PROPOSAL.—When the school board of any district proposes to incur obligations of the nature authorized in this section, the school board shall adopt and spread upon its minutes a resolution giving the nature of the obligations to be incurred, stating the plan of payment and providing that such funds will be budgeted during the period of the loan, from the current revenue to retire the obligations maturing during the year. This plan of payment shall not extend over a period longer than 1 year. The school board shall

then cause a copy of the resolution to be prepared and sent to the Department of Education for approval.

(4) DEPARTMENT OF EDUCATION MAY APPROVE OR REJECT PROPOSAL.—The Department of Education may approve the proposal for incurring obligations authorized under subsection (1) of this section, only when in its opinion the proposal is reasonable and just and the expenditure needed and when district finances will in its opinion permit the retirement when due of this indebtedness as proposed; provided that the department shall not approve more than two such applications for any district during any 1 year. When in its opinion there is any doubt regarding the merit or justification of the proposal or regarding the ability of the school board to retire the obligations proposed, the department shall reject the proposal and the school board shall not incur the obligation as proposed.

(5) INTEREST-BEARING NOTES AUTHORIZED.—The school board of any district for which the department has authorized the incurring of the obligations as provided in this section, shall issue interest-bearing notes for the obligations. The notes shall provide the terms of payment and shall not bear interest in excess of the rate authorized in s. 236.68. No additional obligations of a similar nature may be incurred against the funds of any school district when notes authorized under this subsection are still outstanding and unpaid when such proposed obligations together with the unpaid notes outstanding exceed one-fourth of the revenue of the preceding year, as defined in subsection (2) of this section.

History.—s. 1085, ch. 19355, 1939; CGL 1940 Supp. 892(405); s. 12, ch. 20970, 1941; s. 7, ch. 22858, 1945; s. 94, ch. 29764, 1955; s. 1, ch. 29865, 1955; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 20, ch. 69-353; s. 167, ch. 72-221; s. 12, ch. 74-227.
Note.—Former s. 237.27.

237.171 Provisions for retirement of existing indebtedness which is unfunded or in default.—In any district in which there is any indebtedness outstanding against the district school fund which has not yet been funded, or at any time any such indebtedness is in default as to principal or interest, the school board shall proceed as follows:

(1) PLAN FOR RETIRING INDEBTEDNESS TO BE PROPOSED.—The school board shall prepare and propose a plan for retiring any unfunded indebtedness or any such indebtedness which is in default so that no creditor having a valid claim will be given a preferred status. This plan shall be so prepared as to show the funds needed for operating the schools on the most economical basis practicable, the amount of any other obligations which must be met each year, the total funds available each year for the entire school program, and the funds that can reasonably be spared for retirement of indebtedness without needlessly handicapping the school program and which can be budgeted each year for the retirement of such indebtedness.

(2) PROPOSAL TO BE SUBMITTED TO DEPARTMENT OF EDUCATION.—The proposal for funding and retiring all such indebtedness, when approved by the school board, shall be submitted to the Department of Education for consideration. The school board shall not attempt to retire any such indebtedness until this procedure has been followed and until it has had the benefit of the recommendations of the department. Upon receiving the proposal, the department shall determine the minimum funds which are, in its opinion, necessary for the operation of the school program in the district; shall determine what funds remain for retirement of indebtedness each year; shall determine whether the proposed plan is in accordance with these facts, and, if it is not, shall propose modifications in the plan in accordance with the facts. The recommendations of the department shall then be submitted to the school board for consideration.

(3) WHEN PLAN TO BE EFFECTIVE.—The plan for retiring indebtedness, herein prescribed, shall become effective when the school board and the department jointly agree upon the amount of funds necessary for operating the schools and the amount which can be budgeted each year for retiring indebtedness. When this plan has been agreed upon, it shall become the duty of the school board to see that the amount approved for retiring indebtedness is incorporated in the budget each year, and the department shall see that this amount has been incorporated before the budget is approved, or, if such an amount can not reasonably be incorporated in the budget, as shown by evidence submitted by the school board, determine the respects in which the plan should be modified, and to see that the budget includes the amount for retiring indebtedness which can reasonably be included.

(4) FUNDING OUTSTANDING INDEBTEDNESS.—

(a) The school board of each district in the state having an outstanding indebtedness legally incurred and constituting an obligation or obligations payable from the district school fund is authorized to issue and sell interest-bearing coupon warrants in a sum or sums not to exceed the total amount of such indebtedness. Such coupon warrants shall bear interest at a rate not to exceed 6 percent per annum, shall be payable either annually or semiannually, and shall be in such form and denomination as the school board issuing the same shall prescribe. None of such warrants shall be issued to run for a longer period of time than 10 years from the date of issue. Such warrants shall be numbered consecutively, beginning with number one, and each warrant shall have attached thereto interest coupons, each coupon bearing the number of its warrant and representing or calling for an annual or semiannual, as the case may be, payment of interest on its warrant.

(b) Each such warrant shall be signed by the chairman and attested by the secretary of the school board issuing the same, and shall have the seal of said school board affixed thereto, and the interest coupons attached thereto shall be signed by, or bear the printed or lithographed facsimile signature of said chairman and secretary. Each warrant and interest coupon shall be dated and shall bear the due date. Such warrants and interest coupons shall be issued upon, and payable from, the fund designated on the face thereof. The fund so designated shall be the district school fund. All funds derived from the sale of interest-bearing coupon warrants, as herein provided, shall be used for the purpose of retiring the indebtedness for payment of which said warrants were issued, and for no other purpose, and any funds

remaining from the sale of such warrants shall be applied to retiring the interest-bearing coupon warrants from which such funds were derived.

(5) FUNDING OR REFUNDING OTHER TYPES OF INDEBTEDNESS.—Any proposed plan for refunding any type of outstanding and legally incurred school indebtedness, not covered by this section, shall be submitted to the Department of Education for approval under regulations of the state board. No such indebtedness may be refunded and no plan for refunding such indebtedness may be approved, unless the plan provides for retiring the indebtedness in reasonably equal annual installments over the period of years covered, unless other obligations to be retired during any of these years make adjustments necessary. No indebtedness of any type may be refunded on a sinking fund basis. The school board shall provide that all refunding warrants, notes or bonds shall be callable, upon proper notice, beginning not more than 10 years following the date of refunding. If any indebtedness outstanding against the county or district current school funds cannot be retired over a period of 10 years as prescribed in this section, or cannot be funded or refunded by issuing interest-bearing coupon warrants, the Department of Education is authorized to cooperate with the school officials of the district in developing a practicable plan for refunding such indebtedness and, when such a plan has been developed, may approve an agreement with the district school officials for refunding such indebtedness to be retired over a period of time which shall not exceed a maximum of 20 years; and, if necessary, for refunding the indebtedness by issuing interest-bearing notes. Any funding or refunding obligations issued, as prescribed herein, are not and shall not be deemed to be additional bonds within the meaning of the Constitution and Laws of Florida, and it shall not be necessary for such obligations to be submitted to, or approved by, a vote of the people of the district. In preparing and carrying out such a plan for funding or refunding the school indebtedness, the school board and superintendent shall follow the procedures prescribed in this section, supplemented by regulations of the state board, except for the modifications which are herein authorized.

History.—s. 1086, ch. 19355, 1939; CGL 1940 Supp. 892(405); s. 13, ch. 20970, 1941; s. 7, ch. 24337, 1947; s. 95, ch. 29764, 1955; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 167, ch. 72-221.

Note.—Former ss. 237.33, 237.28.

237.181 School funds to be paid to treasurer or into depository.—Every tax collector, or other person having moneys which by law go to any district school fund shall at least once each month pay the same over to the depository or depositories designated by the school board for such purpose, and shall provide the school board with a duplicate of the deposit slip. Every officer having moneys which by law go to any state school fund, shall pay the same to the State Treasurer, and the Treasurer shall see that these moneys are deposited to the credit of the proper state school fund.

History.—s. 1088, ch. 19355, 1939; CGL 1940 Supp. 892(407); s. 1, ch. 69-300; s. 167, ch. 72-221.

Note.—Former s. 237.30.

237.191 Bonds required.—Each official and school board employee who is responsible in any manner for handling or expending school funds or property shall be adequately bonded at all times in the amounts and in a manner prescribed by regulations of the state board. The school board shall pay the premiums on all required bonds. All bonds under this section shall be filed with the Department of State. All bonds required of school employees shall be approved by the superintendent under regulations of the school board and shall be filed with the school board. Bonds of school officials or school employees shall not be required to be approved by the county commissioners.

History.—s. 167, ch. 72-221.

cf.—s. 113.04 Fidelity bond premiums.

237.201 School contractors.—Contractors paid from school funds shall give bond for the faithful performance of their contracts in such amount and for such purposes as prescribed by law or by regulations of the school board or of the state board relating to the type of contract involved. It shall be the duty of the school board to require from every contractor a bond adequate to protect the school and school funds involved.

History.—s. 167, ch. 72-221.

cf.—s. 113.04 Fidelity bond premiums.

237.211 School depositories; payments into and withdrawals from depositories.—

(1) SCHOOL FUNDS TO BE PAID INTO DEPOSITORIES; TRIPLICATE RECEIPTS TO BE ISSUED.—The tax collector, the clerk of the circuit court, the superintendent, and all other persons having, receiving, or collecting any money payable to the school district shall promptly pay the same to the bank or banks selected by the school board to receive funds for that purpose. No bank shall be so selected unless it is qualified as an approved depository as provided by law. Each bank receiving any school money as provided herein shall make a receipt for same in triplicate of which one copy shall be carefully preserved and kept by the bank, one copy shall be given to the person from whom money was received, and one copy shall be given to the school board.

[1](2) FUNDS ON DEPOSIT WITH EACH DEPOSITORY; OVERDRAWING ACCOUNTS PROHIBITED.—The school board shall require an accurate and complete set of accounts to be maintained in the books and records for each fund on deposit in each district school depository. Each such account shall show the amount subject to withdrawal, amount deposited, amount expended, and balance thereof. In compliance with the provisions of this subsection, a school board may maintain a separate checking account for each such fund or may utilize a single checking account for the deposit and withdrawal of moneys from all funds and segregate the various funds on the books and records only. No check or warrant shall be drawn in excess of the balance to the credit of the appropriate fund.

(3) HOW FUNDS DRAWN FROM DEPOSITORIES.—All money drawn from any district school depository holding same as prescribed herein shall be upon a check or warrant drawn on authority of

the school board as prescribed by law. Each check or warrant shall be signed by the chairman or, in his absence, the vice chairman of the school board and countersigned by the superintendent, with corporate seal of the school board affixed. However, as a matter of convenience, the corporate seal of the school board may be printed upon the warrant and a proper record of such warrant shall be maintained. The school board may by resolution, a copy of which must be delivered to the depository, provide for internal funds to be withdrawn from any district depository by a check duly signed by at least two bonded school employees designated by the board to be responsible for administering such funds. However, the superintendent of schools, after having been by resolution specifically so authorized, may transfer funds from one county depository to another or within a county depository for investment purposes by written instructions signed by the superintendent or his designee.

(4) FORM OF WARRANTS; DIRECT DEPOSIT OF FUNDS.—The school board is authorized to establish the form or forms of warrants, which are to be signed by the chairman or, in his absence, the vice chairman of the school board and countersigned by the superintendent, for payment or disbursement of moneys out of the school depository and to change the form thereof from time to time as the school board deems appropriate. If authorized in writing by the payee, such school board warrants may provide for the direct deposit of funds to the account of the payee in any financial institution which is designated in writing by the payee and which has lawful authority to accept such deposits. The written authorization of the payee shall be filed with the school board. Direct deposit of funds may be by any electronic or other medium approved by the school board for such purpose. The State Board of Education shall adopt rules prescribing minimum security measures that must be implemented by any school board prior to establishing the system authorized in this subsection.

History.—s. 1090, ch. 19355, 1939; CGL 1940 Supp. 892(409); s. 24, ch. 29754, 1955; s. 8, ch. 59-23; s. 20, ch. 63-376; s. 1, ch. 69-300; s. 1, ch. 71-163; s. 167, ch. 72-221; s. 1, ch. 78-33; ss. 5, 16, ch. 79-385.

[1]**Note.**—Section 16, ch. 79-385, provides that, "If chapter 231 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by chapter 77-457, Laws of Florida, or as subsequently amended, it is the intent of the Legislature that chapter 79-385, Laws of Florida, shall also be repealed on the same date as is therein provided."

Note.—Former s. 237.32.

cf.—s. 136.01 et seq. County depositories.

237.34 Cost accounting and reporting.—

(1) COST ACCOUNTING.—Each district shall account for expenditures of all state, local, and federal funds on a school-by-school and a district-aggregate basis in accordance with the manual developed by the department or as provided by law. The method used by each district when recording and reporting cost data by program shall be reviewed and approved by the department in accordance with regulations prescribed by the state board. All districts, in cooperation with the department, shall plan mutually compatible programs for the refinement of cost data and the improvement of the accounting and reporting system.

(2) COST REPORTING.—

(a) Each district shall report on a district-aggregate basis expenditures for inservice training pursuant to subsection 236.081(4), and for categorical programs as provided in subsection 236.081(6).

(b) Each district shall report on a school-by-school and on an aggregate district basis expenditures for each program set forth in paragraph 236.081(1)(c).

(c) The commissioner shall present to the Legislature, 90 days prior to the opening of the regular session each year, a district-by-district report of the expenditures reported pursuant to paragraphs (a) and (b). The report shall include total expenditures, a detailed analysis showing expenditures for each program, and such other data as may be useful for management of the educational system. The commissioner shall also compute cost factors for each district reflecting actual expenditures relative to the base student allocation for each of the programs as provided in paragraph 236.081(1)(c).

(3) PROGRAM EXPENDITURE REQUIREMENTS.—

(a) For each program and broad program category established in paragraph 236.081(1)(c), each district shall expend at least 80 percent of the funds generated by each of the programs listed herein on the aggregate total school costs for such programs; except that, in kindergarten and grades 1, 2, and 3, 90 percent of the funds generated must be spent on the aggregate total school costs for such programs:

1. Kindergarten and grades 1, 2, and 3.
2. Grades 4, 5, 6, 7, 8, and 9.
3. Grades 10, 11, and 12.
4. Educational alternatives.
5. Special programs for exceptional students, on an aggregate program basis.
6. Special vocational-technical programs, on an aggregate program basis.
7. Special adult general education programs, on an aggregate program basis.

(b) Funds for inservice training established in s. 236.081(3) and for categorical programs established in s. 236.001(5) shall be expended for the costs of the identified programs in accordance with the rules of the state board; however, in addition to the $5 per full-time equivalent student required for inservice training pursuant to s. 236.081(3), the following may be expended for inservice training and used in meeting the expenditure requirements of this section, notwithstanding any requirements set forth in ss. 231.600-231.610 relating to the administration of and expenditure of funds for teacher education center activities:

1. Up to $6 per kindergarten through grade 3 full-time equivalent unweighted student for fiscal year 1979-1980.
2. Up to $4 per kindergarten through grade 3 full-time equivalent unweighted student for fiscal year 1980-1981.
3. Up to $2 per kindergarten through grade 3 full-time equivalent unweighted student for fiscal year 1981-1982.

(c) In the event a district fails to meet any of the expenditure requirements as set forth herein, the commissioner shall notify the superintendent of the district involved and shall require that the school board make provision for correcting the deficiency in the subsequent year's operating budget. The com-

missioner shall not approve the district budget until he has determined that the provisions have been made to correct the deficiency.

History.—s. 11, ch. 73-345; s. 13, ch. 74-227; s. 22, ch. 75-284; s. 17, ch. 76-223; s. 5, ch. 78-405; s. 6, ch. 79-288.

CHAPTER 238

RETIREMENT SYSTEM FOR SCHOOL TEACHERS

238.01 Definitions.—The following words and phrases as used in this chapter shall have the following meanings unless a different meaning is plainly required by the context:

(1) "Retirement system" shall mean the Teachers' Retirement System of Florida provided for in s. 238.02.

(2) "Division" shall mean the Division of Retirement of the Department of Administration.

(3) "Medical board" shall mean the board of physicians provided for in s. 238.04.

(4) "Teacher" shall mean any member of the teaching or professional staff and any certificated employee of any public free school, of any district school system and vocational school, any member of the teaching or professional staff of the Florida School for the Deaf and Blind, child training schools of the Department of Health and Rehabilitative Services, the Department of Corrections, and any tax-supported institution of higher learning of the state, and any member and any certified employee of the Department of Education, any certified employee of the retirement system, any full-time employee of any nonprofit professional association or corporation of teachers functioning in Florida on a statewide basis, which seeks to protect and improve public school opportunities for children and advance the professional and welfare status of its members, any person now serving as superintendent, or who was serving as county superintendent of public instruction on July 1, 1939, and any hereafter duly elected or appointed superintendent, who holds a valid Florida teachers' certificate. In all cases of doubt the division shall determine whether any person is a teacher as defined herein.

(5) "Member" shall mean any person included in the membership of the retirement system as provided in s. 238.05.

(6) "Employer" shall mean the state, the school boards of all the districts of the state employing teachers or community college boards of trustees, subject to the provisions of this chapter, other agency of and within the state by which the teacher is paid, or any nonprofit professional association or corporation of teachers as referred to in subsection (4).

(7) "Service" shall mean service as a teacher as described in subsection (4) rendered while a member of the retirement system.

(8) "Prior service" shall mean service as a teacher rendered prior to the date of establishment of the retirement system and for which credit is allowable under s. 238.06.

(9) "Membership service" shall mean service as a teacher as described in s. 238.06.

(10) "Creditable service" shall mean prior service plus membership service for which credit is allowable under s. 238.06.

(11) "Beneficiary" shall mean any person in receipt of a retirement allowance, or other benefit as provided by this chapter.

(12) "Regular interest" shall mean interest at such rate as may be set from time to time by the division.

(13) "Accumulated contributions" shall mean the sum of all the amounts deducted from the salary of a member and credited to his individual account in the Annuity Savings Trust Fund provided in s. 238.09(1), together with regular interest on such accounts.

(14) "Earnable compensation" shall mean the full compensation payable to a teacher working the full working time for his position. In respect to plans A, B, C and D only, in cases where compensation includes maintenance, the division shall fix the value of that part of the compensation not paid in money; provided that all members shall from July 1, 1955, make contributions to the retirement system on the basis of "earnable compensation" as defined herein and all persons who are members on July 1,

1955 may, upon application, have their "earnable compensation" for the time during which they have been members prior to that date determined on the basis of "earnable compensation" as defined in this law, upon paying to the retirement system on or before the date of retirement, a sum equal to the additional contribution with accumulated regular interest thereon they would have made if "earnable compensation" had been defined at the time they became members, as it is now defined.

(15) "Average final compensation," with respect to plans A, B, C and D of s. 238.07, means the average annual earnable compensation of a member for the 10 years of his service as a teacher during which he received his highest salary; and with respect to plan E of s. 238.07, "average final compensation" means the average annual earnable compensation of a member for 10 years during the last 15 years prior to retirement during which he contributed and in which his annual earnable compensation was highest or the average of his annual earnable compensation since July 1, 1945, if greater. For a teacher who is a member of the Legislature, "average final compensation" shall mean the greater of the average annual earnable compensation for 10 years during the last 15 years prior to the beginning of his legislative service during which he contributed and in which his earnable compensation was highest or the average annual earnable compensation for 10 years during the last 15 years prior to retirement during which he contributed and in which his annual earnable compensation was highest or the average of his annual earnable compensation since July 1, 1945, if greater.

(16) "Annuity" shall mean annual payments for life derived as provided in this chapter from the accumulated contributions of a member. All annuities shall be paid in equal monthly installments.

(17) "Pension" shall mean annual payments for life derived as provided in this chapter, from money provided by the state and shall mean, when used in conjunction with plan E, the excess of the retirement allowance as provided by plan E over the annuity as defined above. All pensions shall be paid in equal monthly installments.

(18) "Retirement allowance" shall mean annual payments for life and shall be the sum of the annuity plus the pension except that when used in conjunction with plan E of s. 238.07, retirement allowance shall mean the total retirement allowance payable under plan E.

(19) "Actuarial equivalent" shall mean a benefit of equal value when computed at regular interest upon the basis of the mortality tables adopted by the division.

(20) The masculine pronoun whenever used shall include the feminine.

History.—s. 1, ch. 19014, 1939; CGL 1940 Supp. 892(156); s. 1, ch. 20749, 1941; s. 1, ch. 22062, 1943; s. 1, ch. 22693, 1945; s. 1, ch. 23864, 1947; s. 1, ch. 25398, 1949; s. 1, ch. 29942, 1955; s. 1, ch. 61-362; s. 1, ch. 61-301; s. 1, ch. 63-554; s. 1, ch. 67-140; ss. 15, 19, 31, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 70-198; ss. 1, 2, ch. 70-441; s. 63, ch. 71-377; s. 70, ch. 72-221; s. 1, ch. 73-326; s. 2, ch. 77-120; s. 43, ch. 77-147; s. 8, ch. 79-3.

238.02 Name and date of establishment.—A retirement system is established and placed under the management of the Division of Retirement for the purpose of providing retirement allowances and other benefits for teachers of the state. The retirement system shall begin operations on July 1, 1939. It has such powers and privileges of a corporation as may be necessary to carry out effectively the provisions of this chapter and shall be known as the "Teachers' Retirement System of the State," and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held in trust for the purpose for which received.

History.—s. 2, ch. 19014, 1939; CGL 1940 Supp. 892(157); ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

238.021 Teachers' Retirement System; plans.—The Teachers' Retirement System shall be deemed to be divided into five plans to be designated plans A, B, C, D, and E and ss. 238.01 to 238.181, inclusive, shall control with respect to plans A through E and membership therein, except as provided for under s. 238.31.

History.—s. 4, ch. 61-301; s. 2, ch. 63-554.

238.03 Administration.—

(1) The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of this chapter are vested in the Division of Retirement of the Department of Administration. Subject to the limitation of this chapter, the division shall, from time to time, establish rules and regulations for the administration and transaction of the business of the retirement system and shall perform such other functions as are required for the execution of this chapter.

(2) The division shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds created by this chapter and for checking the experience of the retirement system.

(3) The Department of Legal Affairs shall be the legal adviser of the division.

(4) The division shall employ such agents, servants and employees as in its judgment may be necessary to carry out the terms and provisions of this chapter and shall provide for their compensation. Among the employees of the division shall be an actuary who shall be the technical adviser of the division on matters regarding the operation of the funds created by the provisions of this chapter and who shall perform such other duties as are required in connection therewith.

(5) In the year 1943 and at least once in each 5-year period thereafter, the actuary shall make an actuarial investigation of the mortality, service and salary experience of the members and beneficiaries as defined in this chapter, and shall make a valuation of the various funds created by the chapter, and having regard to such investigation and valuation, the division shall adopt such mortality and service tables as shall be deemed necessary, and shall certify the rates of contribution payable under the provisions of this chapter.

(6) The actuary shall make an annual valuation of the assets and liabilities of the funds of the retirement system on the basis of the tables adopted by the division in accordance with the requirements of this section, and shall prepare an annual statement of

the amounts to be contributed by the state in accordance with s. 238.09.

(7) The division shall publish annually the valuation, as certified by the actuary, of the assets and liabilities of the various funds created by this chapter, a statement as to the receipts and disbursements of the funds, and a statement as to the accumulated cash and securities of the funds.

(8) The division shall keep a record of all of its proceedings and such record shall be open to inspection by the public.

(9) The division is authorized to photograph and reduce to microfilm as a permanent record, its ledger sheets showing the salary and contributions of members of the retirement system, also the records of deceased members of the system and thereupon to destroy the documents from which such films are photographed.

History.—s. 3, ch. 19014, 1939; CGL 1940 Supp. 892(158); s. 1, ch. 28109, 1953; s. 2, ch. 29942, 1955; s. 19, ch. 63-400; s. 1, ch. 69-184; ss. 11, 31, 35, ch. 69-106; s. 64, ch. 71-377; s. 1, ch. 73-326.

238.04 Medical board.—

(1) The Division of Retirement shall employ a medical board of three physicians, not eligible to participate in the retirement system.

(2) The medical board shall arrange for, and shall pass upon, all medical examinations required under the provisions of this chapter, shall investigate all essential health or medical statements, and certificates by or in behalf of a member in connection with his application for disability retirement, and shall report in writing to the division its conclusions and recommendations upon all the matters referred to it, and perform such other duties as may be required of it by the division.

History.—s. 4, ch. 19014, 1939; CGL 1940 Supp. 892(159); ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

238.05 Membership.—

(1) The membership of the retirement system shall consist of the following:

(a) All persons who were teachers at any time during the school years 1936-1937 through 1938-1939 shall become members as of July 1, 1939, unless, prior to December 1, 1939, any such teacher shall file with the board of trustees on a form prescribed by such board a notice of his election not to be covered in the membership of the retirement system and a duly executed waiver of all present and prospective benefits which would otherwise inure to him on account of his participation in the retirement system; provided, that all persons who were not eligible for membership in the retirement system at the time the system became effective and who are now eligible to membership by reason of the redefinition of the word "teacher," and by reason of having served in any of the capacities included in the redefinition of the term during any of the school year 1936-1937 through 1942-1943 shall become members as of July 1, 1943, unless prior to December 1, 1943, any such person shall file with the board of trustees a notice of his election not to be covered in the membership of the retirement system as prescribed above; provided, that all persons who become eligible for membership in the retirement system by reason of the redefinition in s. 238.01, of the word "teacher," and who served in any of the capacities included in the redefinition of the term during any of the school years 1936-1937 through 1944-1945, shall become members as of July 1, 1945, unless prior to December 1, 1945, any such person shall file with the board of trustees a notice of his election not to be covered in the membership of the retirement system as prescribed above; provided also that all persons who become eligible for membership in the retirement system by reason of the redefinition in subsection (4) of s. 238.01, of the word "teacher" and who served in any of the capacities included in the redefinition of the term during any of the school years 1936-1937 through 1946-1947 shall become members as of July 1, 1947, unless prior to December 1, 1947, any such person shall file with the board of trustees a notice of his election not to be kept in the membership of the retirement system as prescribed above; provided, however, that any person who has heretofore filed a nonelection waiver blank shall not be required to make another such election; provided, further, that any person who heretofore has elected not to become a member shall until July 1, 1949, have the option of becoming a member.

(b) All persons who became or who become teachers on or after July 1, 1939, except as provided in paragraph (a) and subsection (5) hereof, shall become members of the retirement system by virtue of their appointment as teachers. However, employees who are not members of the teaching or professional staff shall only become members of the retirement system by filing a notice with the division of their election to become members.

(2) A teacher whose membership in the retirement system is contingent on his own election and who has elected not to become a member, may thereafter apply for and be admitted to membership and receive credit for prior service; provided no such teacher shall receive credit for service prior to such election unless he is admitted to membership as of a date before May 1, 1959. Credit for service rendered prior to July 1, 1939, shall be for continuous employment only except that one period of absence of not more than 5 years will be allowed in computing such prior service credit, provided, however, that a teacher admitted to membership prior to January 1, 1955, shall receive credit for all prior service and if he has retired, his retirement allowance shall be increased effective July 1, 1961. A teacher admitted to membership under this provision must pay into the Annuity Savings Trust Fund prior to his retirement contributions plus regular interest thereon based upon all salary received as a teacher prior to and after July 1, 1939.

(3) Except as otherwise provided in s. 238.07 (9) membership of any person in the retirement system shall cease if he shall be continuously unemployed as a teacher for a period of more than 5 consecutive years; or upon the withdrawal by a member of his accumulated contributions as provided in s. 238.07(13), or upon retirement; or upon death; provided that the adjustments prescribed below are to be made for persons who enter military, naval or other armed services of the nation during a period of war, or national emergency, and for persons who are granted leaves of absence. Any member of the retirement system who within 1 year before the time of

entering the military, naval or other armed services of the nation was a teacher, as defined in s. 238.01, or was engaged in other public educational work within the state, and member of the Teachers' Retirement System at the time of induction, or who has been or is granted leave of absence, shall be permitted to elect to continue his membership in the Teachers' Retirement System and membership service shall be allowed for the period covered by service in the Armed Forces of the nation or by leave of absence under the following conditions:

(a) A person who has been granted leave of absence shall file with the division before his next contribution is due an application to continue his membership during the period covered by his leave of absence, and if such application is filed, shall make his contribution to the retirement system on the basis of his last previous annual salary as a teacher, and shall, prior to retirement, pay in full to the system such contributions with accumulated regular interest and such contributions with interest may be paid at one time or in monthly, quarterly, semiannual or annual payments in his discretion.

(b) A person who enters or who has entered the armed services of the nation may either continue his membership according to the plan outlined under paragraph (a) above or, in lieu thereof, may file with the division at any time following the close of his military service an application that his membership be continued and that membership service be allowed for not more than 5 years of his period of service in the Armed Forces of the nation during any period of war or national emergency; provided that any such person shall, prior to retirement, pay in full his contributions with accumulated regular interest to the retirement system for the period for which he is entitled to membership service on the basis of his last previous annual salary as a teacher, such contributions with interest to be paid to the division at one time or in monthly, quarterly, semiannual or annual payments in his discretion.

(c) Any person who served in the Armed Forces of the United States in World War I, or who served as a registered nurse or nurse's aide in service connected with the Armed Forces of the United States during the period of World War I, who is now a member of the Teachers' Retirement System and who, at or before the time of entering the Armed Forces or the service of the care and nursing of members of the Armed Forces of the United States, was a teacher as defined in s. 238.01, shall be entitled to prior service and out-of-state prior service credit in the Teachers' Retirement System for his period of such service.

(4) The division may in its discretion deny the right to become members to any class of teachers who are serving on a temporary or any other than a per annum basis, and it may also in its discretion make optional with members in any such class their individual entrance into membership.

(5) Any person may, at his option, choose not to become a member of the Teachers' Retirement System when:

(a) This person is qualified for retirement under the Judicial Retirement System, but subsequently accepts a position within the meaning of this chapter.

(b) An election is made to the division not to become a member within 60 days of appointment to a teaching position as defined in this chapter or within 60 days from the date this law becomes effective.

(c) Any election hereunder will not affect any rights accrued in the retirement system to which the person belongs.

History.—s. 5, ch. 19014, 1939; CGL 1940 Supp. 892(160); s. 2, ch. 20749, 1941; s. 1, ch. 21971, 1943; s. 2, ch. 22062, 1943; s. 2, ch. 22693, 1945; s. 2, ch. 23864, 1947; s. 7, ch. 24337, 1947; s. 11, ch. 25035, 1949; s. 2, ch. 25398, 1949; s. 1, ch. 28196, 1953; s. 3, ch. 29942, 1955; s. 1, ch. 57-357; s. 1, ch. 61-303; s. 1, ch. 61-458; s. 1, ch. 69-108; ss. 31, 35, ch. 69-106.

238.06 Membership application, creditable service and time for making contributions.—

(1) Under such rules and regulations as the Division of Retirement shall adopt, each teacher upon becoming a member shall file with the division an application showing date of birth and such other necessary information as the division may require for the proper operation of the retirement system. Until such application is filed no teacher nor his beneficiary shall be eligible to receive any benefits under this chapter. If a member has been a teacher in Florida, he shall itemize on such application all service as a teacher rendered prior to the date of establishment of the retirement system, including service in a similar capacity in other states rendered by him prior to July 1, 1939, for which he claims credit. Persons not eligible to membership in the retirement system as of July 1, 1939, and now eligible to membership shall file with the division an application and shall meet with all other requirements prescribed above. All such persons shall be entitled to prior service credit for the years prior to July 1, 1939, as prescribed in subsection (4) of this section. Any person made eligible to membership in the retirement system by provisions of this law may elect:

(a) To make no contributions for the school years between 1939-1940 and 1952-1953, inclusive, and if he so elects, shall be entitled to no membership credit for those years except as otherwise provided in this chapter.

(b) To make contributions with accumulated regular interest to the retirement system on or before the time of retirement of such member for such years after July 1, 1939, as he served as a teacher, at the prescribed rate on the basis of his salary for those years, and if such contributions are made, he shall be entitled to membership service credit for such years.

(2) With respect to plans A, B, C, or D as set forth in s. 238.07, any member of the retirement system may elect to contribute to the retirement system an amount which shall be equivalent to the difference between the amount such member has contributed and the amount he would have contributed had the provisions of s. 238.01(14) been in effect July 1, 1939, and such election must be made and the amount paid into the retirement system on or before the time of the retirement of such member.

(3) The division shall fix and determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in no case shall it allow any credit for a period of ab-

sence without pay of more than a month's duration nor shall it allow credit for more than 1 year of service for all service in any school year.

(4) Subject to the above restriction and to such other rules and regulations as the division shall adopt, the division shall verify, as soon as practicable after the filing of the application, the statement of service therein claimed and shall issue to each person who becomes a member or any person with prior teaching service in the state who becomes a member of the retirement system, a prior service certificate certifying the length of service with which he is credited on the basis of his statement of service. Such prior service credit shall include credit for service rendered prior to date of establishment as a teacher within the state or in a similar capacity outside the state but not more that 10 years of credit for service outside the state shall be included. Credit for prior service outside the state may be claimed only by a person employed as a teacher in the state prior to July 1, 1939; provided that any person who became a member of the system after July 1, 1939, but prior to July 1, 1955, and remained a member for 10 years shall be entitled to receive out-of-state prior service credit for a period not exceeding 10 years; provided that any person with out-of-state service who became a member of the system after July 1, 1939, but prior to July 1, 1955, and remained a member for 10 years shall be entitled to receive membership service credit for a period of not exceeding 10 years, including credit for the period covered by service in the Armed Forces of the nation during World War II; provided such member was a public school teacher within one year before entering the armed services; and provided he resumed teaching, if such member shall, prior to retirement, make contribution to the retirement system with accumulated regular interest thereon in an amount equal to the contribution he would have made if such service had been rendered in the state subsequent to July 1, 1939; provided that no member who receives, or who is entitled to receive, a pension or annuity from any other state or county or municipality or other taxing district shall receive out-of-state prior service credit or membership service credit as set forth above; provided, however, that the change in this subsection shall not affect the rights of persons who have retired when this amendment to the law takes effect; provided, however, that any person who becomes a member of the system on or after July 1, 1955 and who has moved from another state to Florida, and becoming employed in a category covered by the Teachers' Retirement System, must teach in the state for 5 years before being entitled to receive any out-of-state service credit. After having been employed within the state for a period of 5 years, a teacher may establish and receive credit for 1 year of out-of-state service for each additional year of service credit within the state, with a maximum of 10 years out-of-state credit allowed. In order to establish and receive this out-of-state credit, a teacher, who became a member of the system on or after July 1, 1955, but prior to October 1, 1963, must pay into the retirement system prior to retirement total contributions equal to 8 percent (plus accumulated regular interest thereon), of such out-of-state compensation as the teacher received during those years of out-of-state service for which the teacher receives out-of-state credit, provided, however, that contributions on out-of-state salary received prior to July 1, 1939, will not be required of any member in this category retiring on or after July 1, 1969. In order to establish and receive this out-of-state credit, a teacher who becomes a member of the retirement system on or after October 1, 1963, must pay into the retirement system prior to retirement, total contributions which are in addition to the regular membership contributions and which, when accumulated with regular interest thereon, are equal to the actuarial equivalent at the time of retirement of the monthly benefit which becomes payable at retirement on account of out-of-state credit. In the event that such accumulated additional contributions at time of retirement are less than the actuarial equivalent at time of retirement of the monthly benefit attributable to out-of-state credit, the monthly benefit attributable to out-of-state credit shall be reduced by an amount equal to the product of:

(a) The monthly benefit attributable to out-of-state credit, and

(b) The ratio that such deficiency bears to the actuarial equivalent of the monthly benefit attributable to the out-of-state credit.

If such accumulated additional contributions are in excess of the actuarial equivalent at time of retirement of the monthly benefit attributable to out-of-state credit, such excess shall be paid in a lump sum to the member at time of retirement. No person may receive retirement benefits for less than 10 years of service credit earned in Florida.

(5) Any person who is a member of the Teachers' Retirement System, and who has been employed as an employee of any county in Florida or any county board of public instruction of Florida or the state or the United States Department of Agriculture at Welaka, Florida, shall upon payment of accumulated contributions for the years subsequent to July 1, 1939, receive credit for both prior and membership service for all years in which such person was employed by any county in Florida or any county board of public instruction of Florida or the state or the United Stated Department of Agriculture at Welaka, Florida, toward retirement in the Teachers' Retirement System; provided, such contributions shall be paid on or before the date of the retirement of such member.

(6) So long as membership continues, a prior service certificate shall be final and conclusive for retirement purposes as to such prior service credit, unless modified by the division upon application made by the member within 1 year after the date of issuance or modification of a prior service certificate or upon the discovery by the division of error or fraud.

(7) When membership ceases such certificate shall become void; should the teacher again become a member, such teacher shall enter the system as a teacher not entitled to prior service credit, except as provided in s. 238.07(12)(c); and provided further that if the teacher should so become a member following the first occurrence of cessation of member-

ship, such certificate shall be valid until the membership next ceases.

(8) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership services rendered by him since he last became a member, and also, if he has a prior service certificate which is in full force and effect, the service certified on his prior service certificate.

(9) A public school librarian with credit for less than 10 years of public school service in Florida may be permitted to work after age 70 with the approval of his employer and shall be permitted to earn retirement credit for such service in the Teachers' Retirement System.

(10) Subject to the provisions of subsection (4), out-of-state service credit shall be allowed for:

(a) Service rendered as a teacher in American overseas dependent schools conducted by the Armed Forces of the United States for children of citizens of the United States residing in areas outside the continental United States, and

(b) Service rendered as a teacher in federally assisted binational schools serving as demonstration centers for methods and practices employed in the United States, as provided in 22 U.S.C. s. 1448.

(11) A member of the retirement system created by this chapter who has been eligible or becomes eligible to receive workers' compensation payments for an injury or illness occurring during his employment while a member of any state retirement system shall be subject to the following provisions:

(a) If the member receives no salary payments for the period of time he receives workers' compensation payments, upon his return to active employment he shall receive full retirement credit for the period for which workers' compensation payments were received. No employee or employer contributions shall be required in order for the member to receive retirement credit for such period. Such credit shall be based on the member's rate of monthly compensation immediately prior to his receiving workers' compensation payments.

(b) If the member receives partial salary for the period of time he receives workers' compensation payments, the required employee contributions shall be deducted from his partial salary each pay period, and, upon his return to active employment, he shall receive full retirement credit for the period for which workers' compensation payments were received. Such credit shall be based on the member's rate of monthly compensation immediately prior to his receiving workers' compensation payments.

(c) If the member is retained in full-pay status in lieu of receiving workers' compensation payments, the required employee contributions shall be deducted from his salary each pay period, and he shall receive retirement credit for such period in the same manner he would have received credit had he not been injured or incapacitated.

History.—s. 6, ch. 19014, 1939; CGL 1940 Supp. 892(161); s. 3, ch. 20749, 1941; s. 3, ch. 22062, 1943; s. 3, ch. 22693, 1945; s. 3, ch. 23864, 1947; s. 7, ch. 24337, 1947; s. 3, ch. 25398, 1949; s. 2, ch. 28196, 1953; ss. 4, 5, ch. 29942, 1955; s. 1, ch. 29913, 1955; s. 1, ch. 59-481; s. 3, ch. 63-554; ss. 31, 35, ch. 69-106; s. 1, ch. 69-109; s. 1, ch. 71-260; s. 5, ch. 72-347; s. 1, ch. 73-326; s. 65, ch. 79-40.

238.07 Regular benefits; survivor benefits.—

(1) Any member who attains 70 years of age shall be retired forthwith; provided, however, that with the approval of his employer he may remain in service until the end of the school year following the date on which he attains 70 years of age. If any member retires under the provisions of this subsection, who before his death fails to select one of the optional benefits set forth in s. 238.08, his executors or administrators shall receive the excess of his accumulated contributions at retirement over the total of all annuity payments made to the member.

(2) The provisions for the retirement of a member are as follows:

(a) To retire at the age of 60 upon the basis of a standard of service of 35 years (this provision shall be known and referred to throughout this chapter as plan A); or

(b) To retire at the age of 55 upon the basis of a standard of service of 35 years (this provision shall be known and referred to throughout this chapter as plan B); or

(c) To retire at the age of 55 upon the basis of a standard of service of 30 years (this provision shall be known and referred to throughout this chapter as plan C); or

(d) To retire after 25 years of service upon the basis of a standard of service of 25 years provided the member has reached age 50; provided, further, however, that a member electing to retire under this provision shall not be eligible to receive the benefits allowed by (8) and (11)(f) (this provision shall be known and referred to throughout this chapter as plan D); or

(e) To retire:

1. At normal retirement age which shall be age 60 for those persons whose membership date, or last renewal thereof, occurred prior to July 1, 1963, and age 62 for those persons whose membership date, or last renewal thereof, occurred on or after July 1, 1963; or

2. Prior to normal retirement age but at or subsequent to age 55, provided that upon such date the member has completed 10 years of creditable service, which shall be the early retirement age; or

3. Subsequent to normal retirement age, which shall be the delayed retirement age; (this provision shall be known and referred to throughout this chapter as plan E).

The manner and time of selecting a plan of retirement are set out elsewhere in this chapter.

(3) Any member who, prior to July 1, 1955, elected to retire under one of plans A, B, C, or D may elect, prior to retirement, to retire under plan E in accordance with the terms hereof. Any person who became a member on or after July 1, 1955, shall retire under plan E, except as provided for under s. 238.31. With respect to plans A, B, C, or D, any member shall have the right at any time to change to a plan of retirement requiring a lower rate of contribution. The Division of Retirement shall also notify the member of the rate of contribution such member must make from and after selecting such plan of retirement. Any member in service may retire upon

reaching the age of retirement formerly selected by him, upon his written application to the division setting forth at which time, not more than 90 days subsequent to the execution and filing of such application, it is his desire to retire notwithstanding that during such period of notification he may have separated from service. Upon receipt of such application for retirement the division shall retire such member not more than 90 days thereafter. Before such member may retire he must file with the division his written selection of one of the optional benefits provided in s. 238.08.

(4) Upon service retirement under plans A and B a member shall receive a retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(b) A pension, in addition to this annuity, of one one-hundred-fortieth of his average final compensation, multiplied by the number of his years of membership service since he last became a member; and

(c) If the member has a prior service certificate in full force and effect, an additional pension of one-seventieth of his average final compensation, multiplied by the number of years of service certified on his prior service certificate.

(5) Upon service retirement under plan C a member shall receive a service retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(b) A pension, in addition to his annuity of one one-hundred-twentieth of his average final compensation, multiplied by the number of years of membership service since he last became a member; and

(c) If the member has a prior service certificate in full force and effect, an additional pension of one-sixtieth of his average final compensation, multiplied by the number of years of service certified on his prior service certificate.

(6) Upon service retirement under plan D, a member shall receive a service retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(b) A pension, in addition to his annuity, of one one-hundredth of his average final compensation multiplied by the number of his years of membership service since he last became a member; and

(c) If the member has a prior service certificate in full force and effect, an additional pension of one-fiftieth of his average final compensation multiplied by the number of years of service certified on his prior service certificate.

(7) Upon service retirement under plan E, a member shall receive a service retirement allowance which shall be determined as follows:

(a) At normal retirement age: Two percent of his average final compensation multiplied by the number of years of creditable service.

(b) At early retirement age: Two percent of his average final compensation multiplied by the number of years of creditable service and adjusted for actuarial equivalents based on completed months by which early retirement precedes normal retirement.

(c) At delayed retirement age: Two percent of his average final compensation multiplied by the number of years of creditable service.

(8) Any member who has heretofore, or who hereafter, retires after 30 years of creditable service shall receive a retirement allowance of not less than $100 per month, provided, however that with respect to plans A, B, or C, any person with less than 30 but with 10 or more years of service shall be entitled to a service retirement allowance which shall be computed on the basis of an average final compensation of $2400 per year and shall receive a retirement allowance which shall be the equivalent of one-sixtieth of said average final compensation multiplied by the number of years of his creditable service; provided that in no event shall such a member receive a retirement allowance greater than $100 per month.

(9) Any member who has taught, or who teaches in the public free schools of Florida for not less than an aggregate of 10 years and withdraws or has withdrawn from the system, may elect to leave his accumulated contributions in the system or to repay his withdrawn accumulations to the system, and upon reaching retirement age, he shall receive a retirement allowance based on the number of years of service which he taught in the public schools of Florida before retirement, provided, that a person who has lost his membership and later returns to service shall be allowed the privilege of having credit restored for previous service if he returns to full-time teaching service and renders 3 additional years of continuous service.

(10) Any member in service, who has 10 or more years of creditable service, may upon the application of his employer or upon his own application, be retired by the division not less than 30 nor more than 90 days next following the date of filing such application, on a disability retirement allowance; provided that the medical board after a medical examination of such member shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired.

(11) Upon retirement on account of disability, a member shall be paid his service retirement allowance if he is eligible for a service retirement allowance; otherwise, he shall receive a retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement; and

(b) If he is making contributions for retirement under plan A or B, he shall receive a pension which, together with his annuity shall provide a total retirement allowance equal to one-seventieth of his average final compensation multiplied by the number of years of service creditable to him at retirement, if such retirement allowance exceeds 25 percent of his average final compensation; or if such retirement allowance does not exceed 25 percent of his average final compensation, a pension shall be payable which, together with his annuity, shall provide a

total retirement allowance of 25 percent of his average final compensation; provided, however that no retirement allowance shall exceed one-seventieth of his average final compensation, multiplied by the number of years of total service which would be credited to the member were his service continued to the minimum age for service retirement.

(c) If he is making contributions for retirement under plan C, he shall receive a pension which, together with his annuity, shall provide a total retirement allowance equal to one-sixtieth of his average final compensation multiplied by the number of years of service creditable to him at retirement, if such retirement allowance exceeds 25 percent of his average final compensation; or if such retirement allowance does not exceed 25 percent of his average final compensation, a pension shall be payable which, together with his annuity, shall provide a total retirement allowance of 25 percent of his average final compensation; provided, however that no retirement allowance shall exceed one-sixtieth of his average final compensation multiplied by the number of years of total service which would be credited to the member were his service continued to the minimum age for service retirement.

(d) If he is making contributions for retirement under plan D, he shall receive a pension, which together with his annuity shall provide a total retirement allowance equal to one-fiftieth of his average final compensation multiplied by the number of years of service creditable to him at retirement, if such retirement allowance exceeds 25 percent of his average final compensation; or if such retirement allowance does not exceed 25 percent of his average final compensation, a pension shall be payable which, together with his annuity, shall provide a total retirement allowance of 25 percent of his average final compensation, provided, however that no retirement allowance shall exceed one-fiftieth of his average final compensation multiplied by the number of years of total service which would be creditable to the member were his service continued to the minimum age of service retirement; provided, however that when a member has taught the standard number of years required for retirement under any of the several retirement plans provided by this section and elected by such member, and such member shall retire on account of disability prior to attainment of the minimum required age under the plan elected, then such member so retired shall receive the same benefits as if he had retired on service retirement under the plan elected.

(e) If he is making contributions for retirement under plan E, he shall receive a retirement allowance which shall consist of 100 percent of the retirement allowance to which he would be entitled if his date of disability retirement were his otherwise normal retirement date; provided, however that the retirement allowance payable upon disability retirement shall not be less than the 25 percent of average final compensation nor, if disability retirement occurs prior to the date on which the member is first eligible for service retirement, shall it be greater than the service retirement allowance to which the member would be entitled if he continued in active service to such date at the same rate of compensation effective on the date of disability retirement.

(f) With respect to plans A, B or C, the average final compensation under this subsection shall be computed on the actual average final compensation, or upon the basis of an average final compensation of $2400 per year, whichever is the greater.

(g) Notwithstanding the minimum disability retirement allowance set out in paragraphs (a) through (f) of this subsection any member who retired prior to July 1, 1957 on account of disability, shall, on and after July 1, 1957, receive as a minimum disability retirement allowance $75 per month, or an annual sum equal to 40 multiplied by the number of years of his creditable service whichever is the greater, and any person who retires on and after July 1, 1957, shall, from the date of his retirement, receive as a minimum disability retirement allowance $75 per month, or an annual sum equal to 40 multiplied by the number of years of creditable service, whichever is the greater.

(12)(a) Once each year during the first 5 years following the retirement of a member on a disability retirement allowance, and once in every 3-year period thereafter, the division may require any disability beneficiary who has not yet attained his minimum service retirement age to undergo a medical examination by the medical board or a physician or physicians designated by the medical board, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon. Should a disability beneficiary, who has not yet attained his minimum service retirement age, refuse to submit to any such medical examination, his retirement allowance shall be discontinued until his withdrawal of such refusal, and should such refusal continue for 1 year, all his rights in and to his pension shall be forfeited.

(b) Should the medical board report and certify to the division that such disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his disability retirement allowance and his average final compensation, and should the division concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity later be changed, the amount of his pension may be further modified; provided that the pension so modified shall not exceed the amount of the pension allowable under subsection (11), at the time of retirement, nor an amount which, when added to the amount earnable by the beneficiary, together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired shall not become a member of the retirement system at that time.

(c) Should a disability beneficiary under his minimum service retirement age be at any time in service at a salary equal to or greater than his average final compensation upon the basis of which he was retired, his disability retirement allowance shall cease and he shall again become a member of the retirement system and shall contribute thereafter at

the same rate at which he paid prior to disability. Any prior service certificate, on the basis of which his allowance was computed at the time of his disability retirement, shall be restored to full force and effect; and, in addition, upon his subsequent retirement he shall be credited with all his membership service on the basis of which his allowance was computed at the time of his disability retirement.

(13) Should a member cease to be a teacher except by death or by retirement under the provisions of this chapter, he shall be paid the amount of his accumulated contributions. Should a member die before retirement, the amount of his accumulated contributions shall be paid to such person, if any, as he shall have nominated by written designation duly executed and filed with the division; otherwise, to his executors or administrators.

(14) Any member who retires on or after July 1, 1954, who at the time of his retirement has not served as a teacher in Florida for 10 years shall not be eligible to receive and shall not be paid any service retirement allowance.

(15) Any member of the Teachers' Retirement System who has heretofore, or who hereafter, retires and who has passed his 65th birthday and whose retirement allowance is less than $150 shall have his retirement allowance redetermined and shall be entitled to a service retirement allowance which shall be computed on the basis of an average final compensation of $2400 per year and shall receive a retirement allowance which shall be the equivalent of one-sixtieth of said average final compensation multiplied by the number of years of his creditable service; provided, that in no event shall such redetermination entitle the member to receive a retirement allowance greater than $150.

(15A)(a) Any member of the Teachers' Retirement System who has heretofore, or who hereafter, retires with no less than 10 years of creditable service and who has passed his 65th birthday, may, upon application to the division, have his retirement allowance redetermined and thereupon shall be entitled to a monthly service retirement allowance which shall be equal to $4 multiplied by the number of years of his creditable service which shall be payable monthly during his retirement; provided, that the amount of retirement allowance as determined hereunder, shall be reduced by an amount equal to:

1. Any social security benefits received by the member, and

2. Any social security benefits that the member is eligible to receive by reason of his own right or through his spouse.

(b) No payment shall be made to a member of the Teachers' Retirement System under this act, until the division has determined the social security status of such member.

(c) Eligibility of a member of the Teachers' Retirement System shall be determined under the social security laws and regulations, provided however, that a member shall be considered eligible if he or his spouse has reached 65 years of age and would draw social security if he or his spouse were not engaged in activity that results in his or his spouse receiving income that would make him or her ineligible to receive social security benefits. A member of the Teachers' Retirement System shall be deemed to be eligible for social security benefits if he has this eligibility in his own right or through his spouse.

(d) The division shall review, at least annually, the social security status of all members of the Teachers' Retirement System receiving payment under this act and shall increase or decrease payments to such members as shall be necessary to carry out the intent of this act.

(e) No member of the Teachers' Retirement System shall have his retirement allowance reduced or any of his rights impaired by reason of this act.

(f) This subsection shall take effect on January 1, 1962.

(15B) Any person who was a member of the Teachers' Retirement System prior to December 1, 1970, and who has collected a disability retirement allowance from the Teachers' Retirement System and has returned to active teaching service, shall be deemed to have been on health leave of absence each year between the date of his disability retirement and his return to service and may elect to receive service credit for each year upon payment of the required contributions plus regular interest. However, upon his retirement after June 27, 1971, his monthly retirement allowance shall be reduced by an amount calculated to recover within 10 years the total disability benefits paid to the member by the Teachers' Retirement System while he was retired on disability.

(16)(a) Definitions under survivor benefits are:

1. A dependent is a child, widow, widower or parent of the deceased member who was receiving not less than one-half of his support from the deceased member at the time of the death of such member.

2. A child is a natural or legally adopted child of a member, who:

a. Is under 18 years of age, or

b. Is over 18 years of age but not over 22 years of age and is enrolled as a student in an accredited educational institution, or

c. Is 18 years of age or older and is physically or mentally incapable of self-support, when such mental and physical incapacity occurred prior to such child obtaining the age of 18 years. Such person shall cease to be regarded as a child upon the termination of such physical or mental disability. The determination as to such physical or mental incapability shall be vested in the division.

No person shall be considered a child who has married or, except as provided in subparagraph 2.b. or as to a child who is physically or mentally incapable of self-support as hereinbefore set forth, has become 18 years of age.

3. A parent is a natural parent of a member and includes a lawful spouse of a natural parent.

4. A beneficiary is a person who is entitled to benefits under this subsection by reason of his relation to a deceased member during the lifetime of such member.

(b) In addition to all other benefits to which a member shall, subject to the conditions set out below, be entitled, the beneficiary of such member shall, upon the death of such member, receive the following benefits:

Minimum period of paid service of member in Florida as regular full-time teacher	Beneficiaries of deceased member	Benefits
1. One calendar day	Widow or widower who has care of dependent child or children of deceased member.	$190.00 per month for one child. $250.00 per month if more than one child, maximum benefits $250.00 per month.
2. One calendar day	One or more dependent children if there is no surviving widow or widower.	$190.00 per month per child; maximum benefits $250.00 per month if more than one child.
3. One calendar day	Dependent parents 65 years or older.	For each parent, $100.00 per month for life.
4. One calendar day	Designated beneficiary and, if no designated beneficiary, then the executor or administrator of deceased member.	$500.00 lump sum death benefits payable only once.
5. One calendar day	Dependent widow or widower 50 years of age and less than 65 years of age.	$150.00 per month for life.
6. Ten years	Widow or widower 65 years of age or older.	$175.00 per month for life.
7. Retired member	Designated beneficiary and if no designated beneficiary, then the executor or administrator of deceased retired member.	$500.00 lump sum death benefits payable only once.

Beginning on July 1, 1971, the lump sum death benefit, provided in item 7 above for the retired teacher, shall apply to all present and future retirees of the systems.

(c) The payment of survivor benefits shall begin as of the month immediately following the death of the member except where the beneficiary has not reached the age required to receive benefits under paragraph (b) hereof, in which event the payment of survivor benefits shall begin as of the month immediately following the month in which the beneficiary reaches the required age. Provided that if death occurs during the first 3 years of employment, the payment of survivor benefits shall be reduced by the amount of monthly benefits the member's survivors are entitled to receive under federal social security as either a survivor of the member or as a covered worker under federal social security.

(d) Limitations on rights of beneficiary are:

1. The person named as beneficiary in paragraph (b) shall, in no event, be entitled to receive the benefits set out in such paragraph unless the death of the member under whom such beneficiary claims occurs within the period of time after the member has served in Florida as follows:

Minimum number of years of service in Florida	Period after serving in Florida in which death of member occurs
Three to five	Two years
Six to nine	Five years
Ten or more	Ten years

2. Upon the death of a member, the division shall make a determination of the beneficiary or beneficiaries of the deceased member and shall pay survivor benefits to such beneficiary or beneficiaries beginning 1 month immediately following the death of the member except where the beneficiary has not reached the age required to receive benefits under paragraph (b) hereof, in which event the payment of survivor benefits shall begin as of the month immediately following the month in which the beneficiary reaches the required age. When required by the division, the beneficiary or beneficiaries shall file an application for survivor benefits upon forms prescribed by the division.

3. The beneficiaries of a member to receive survivor benefits are fixed by this subsection, and a member may not buy or otherwise change such benefits. He may, however, designate the beneficiary to receive the $500 death benefits. If a member fails to make this designation, the $500 death benefits shall be paid to his executor or administrator.

4. The beneficiary or beneficiaries of a member whose death occurs while he is in service or while he is receiving a disability allowance under subsection (11), shall receive survivor benefits under this subsection determined by the years of service in Florida of the deceased member as set out in paragraph (b) of this subsection. The requirement that the death of a member must occur within a certain period of time after service in Florida as set out in subparagraph 1. of paragraph (d) shall not apply to a member receiving a disability benefit at the time of his death.

(17) Any person who hereafter elects to receive retirement benefits under s. 112.05, shall not be entitled to the retirement benefits of this chapter except for the refund of his accumulated contributions as provided in subsection (13) of this section; likewise any person who elects to receive retirement benefits under this chapter shall thereby become ineligible to receive retirement benefits under s. 112.05.

History.—s. 7, ch. 19014, 1939; CGL 1940 Supp. 892(162); s. 4, ch. 22693, 1945; s. 4, ch. 23864, 1947; s. 11, ch. 25035, 1949; s. 4, ch. 25398, 1949; s. 1, ch. 28110, 1953; s. 3, ch. 28196, 1953; s. 6, ch. 29942, 1955; ss. 2, 4, 5, ch. 57-357; s. 2, ch. 61-301; ss. 1-6, ch. 61-333; ss. 2-5, ch. 61-458; ss. 4, 5, 7, 12, ch. 63-554; ss. 1, 2, ch. 65-552; s. 1, ch. 67-557; ss. 31, 35, ch. 69-106; s. 1, ch. 69-189; s. 1, ch. 70-125; s. 1, ch. 70-998; s. 1, ch. 71-198; s. 2, ch. 71-260; s. 1, ch. 71-347; s. 1, ch. 72-343; s. 1, ch. 73-326; s. 1, ch. 76-225.

238.071 Social security benefits; determination of retirement allowance.—Any member of the Teachers' Retirement System who has heretofore or who hereafter retires and has his retirement allowance redetermined under the provisions of s. 238.07(15A), shall not after July 1, 1969, have the amount of the redetermined retirement allowance reduced because of social security benefits received by the member or his spouse.

History.—s. 1, ch. 69-47.

238.072 Special service provisions for extension personnel.—All state and county cooperative extension personnel holding appointments by the United States Department of Agriculture for extension work in agriculture and home economics in this state who are joint representatives of the University of Florida and the United States Department of Agriculture, as provided in s. 121.051(7), who are members of the Teachers' Retirement System, chapter 238, and who are prohibited from transferring to and

participating in the Florida Retirement System, chapter 121, may retire with full benefits upon completion of 30 years of creditable service and shall be considered to have attained normal retirement age under this chapter, any law to the contrary notwithstanding. In order to comply with the provisions of s. 14 of Art. X of the State Constitution, any liability accruing to the Florida Retirement System Trust Fund as a result of the provisions of this section shall be paid on an annual basis from the General Revenue Fund.

History.—s. 1, ch. 79-169.

238.08 Optional benefits.—A member may elect to receive his benefits under the terms of this chapter according to the provisions of any one of the following options:

(1) Option one. He may elect to receive his benefits in a retirement allowance payable throughout his life, or

(2) Option two. He may elect to receive on retirement the actuarial equivalent (at that time) of his retirement allowance in a reduced retirement allowance payable throughout life, with the provisions that if he dies before he has received in payment of his annuity the amount of his accumulated contributions, as they were at the time of his retirement, the balance shall be paid to such person, if any, as he shall nominate by written designation duly acknowledged and filed with the division; otherwise, to his executors or administrators.

(3) Option three. He may elect at any time prior to receipt of his or her first monthly installment of retirement compensation, to receive a reduced retirement compensation with the provision that the surviving spouse shall continue to draw such reduced retirement compensation so long as he or she shall live. The amount of such reduced retirement compensation shall be the actuarial equivalent of the amount of such retirement otherwise payable.

(4) Option four. He may elect at any time prior to receipt of his or her first monthly installment of retirement compensation, to receive a reduced retirement compensation with the provision that the surviving spouse shall continue to draw one-half of such reduced retirement compensation so long as he or she shall live. The amount of such reduced retirement compensation shall be the actuarial equivalent of the amount of such retirement otherwise payable.

(5) If a member continues in service beyond the date he is first eligible for service retirement and does not, prior to his death, elect Options three or four, his spouse may, at the option of the spouse, receive either the accumulated contributions of the member at date of death or the reduced retirement compensation to which the beneficiary would have been entitled under Option three, calculated on the assumption that the member retired on his date of death and died immediately subsequent thereto provided that the spouse of any member who died between July 1, 1955 and June 30, 1957, both dates inclusive, is entitled to full benefits under this subsection and further provided that for all persons who become members of the system on or after July 1, 1963, the amount of such retirement allowance otherwise payable to the member at his date of death shall be determined on the basis of his normal retirement age as defined in s. 238.07.

(6) Notwithstanding any provision in this chapter to the contrary, the following provisions shall apply to any member of the retirement system who has accumulated at least 10 years of service and dies prior to retirement:

(a) If the deceased member's surviving spouse has previously received a refund of the member's accumulated contributions made to the retirement system, such spouse may pay to the Division of Retirement an amount equal to the sum of the amount of the deceased member's contributions previously refunded and regular interest compounded annually on the amount of such refunded contributions from the date of refund to the date of payment to the division, and by so doing be entitled to receive the monthly retirement benefit provided in paragraph (c).

(b) If the deceased member's surviving spouse has not received a refund of the deceased member's accumulated contributions, such spouse shall, upon application to the division within 30 days of the death of the member, receive the monthly retirement benefit provided in paragraph (c).

(c) The monthly benefit payable to the spouse described in paragraph (a) or (b) shall be the amount which would have been payable to the deceased member's spouse, assuming that the member retired on the date of his death and had selected the option in subsection (3), such benefit to be based on the ages of the spouse and member as of the date of death of the member. The benefit shall commence on the first day of the month following the payment of the aforesaid amount to the division, if paragraph (a) is applicable, or on the first day of the month following the receipt of the spouse's application by the division, if paragraph (b) is applicable.

(7) The surviving spouse or other dependent of any member whose employment is terminated by death shall, upon application to the director of the Division of Retirement of the Department of Administration, be permitted to pay the required contributions for any service performed by the member which could have been claimed by the member at the time of his death. Such service shall be added to the creditable service of the member and shall be used in the calculation of any benefits which may be payable to the surviving spouse or other surviving dependent.

History.—s. 8, ch. 19014, 1939; CGL 1940 Supp. 892(163); s. 7, ch. 22858, 1945; s. 4, ch. 28196, 1953; s. 7, ch. 29942, 1955; s. 3, ch. 57-357; s. 8, ch. 63-554; s. 3, ch. 65-552; ss. 31, 35, ch. 69-106; s. 1, ch. 69-110; s. 1, ch. 70-182; s. 4, ch. 72-334; s. 3, ch. 72-345; s. 1, ch. 73-326.

238.09 Method of financing.—All of the assets of the retirement system shall be credited, according to the purposes for which they are held, to one of four funds; namely, The Annuity Savings Trust Fund, the Pension Accumulation Trust Fund, the Expense Trust Fund and the Survivors' Benefit Trust Fund.

(1) The Annuity Savings Trust Fund shall be a fund in which shall be accumulated contributions made from the salaries of members under the provisions of (c) or (f). Contribution to, payments from, the Annuity Savings Trust Fund shall be made as follows:

(a) With respect to plan A, B, C or D, upon the basis of such tables as the Division of Retirement

shall adopt, and regular interest, the actuary of the retirement system shall determine for each member the proportion of earnable compensation which, when deducted from each payment of his prospective earnable annual compensation prior to his minimum service retirement age, and accumulated at regular interest until such age, shall be computed to provide at such age:

1. An annuity equal to one one-hundred-fortieth of his average final compensation multiplied by the number of his years of membership in the case of each member electing to retire under the provisions of plan A or B.

2. An annuity equal to one one-hundred-twentieth of his average final compensation multiplied by the number of his years of membership service in the case of each member electing to retire under the provisions of plan C.

3. An annuity equal to one one-hundredth of his average final compensation multiplied by the number of his years of membership service in the case of each member electing to retire under the provisions of plan D.

In the case of any member who has attained his minimum service retirement age prior to becoming a member, the proportion of salary applicable to such member, with respect to plan A, B, C or D, shall be the proportion computed for the age 1 year younger than his minimum service retirement age.

(b) A member under plan E shall make contribution to the fund of 6 percent of his earnable compensation.

(c) The Division of Retirement shall certify to each employer the proportion of the earnable compensation of each member who is compensated by the employer, and the employer shall cause to be deducted from the salary of each member on each and every payroll for each and every payroll period an amount equal to the proportion of the member's earnable compensation so computed. With respect to plan A, B, C or D, the employer shall not make any deduction for annuity purposes from the compensation of a member who has attained the age of 60 years, if such member elects not to contribute.

(d) In determining the amount earnable by a member in a payroll period, the division may consider the rate of compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deductions from compensation for any period less than a full payroll period if a teacher was not a member on the first day of the payroll period, and to facilitate the making of deductions, it may modify any deduction required of any member by such an amount as shall not exceed one-tenth of 1 percent of the annual salary from which said deduction is to be made.

(e) The deductions provided for herein shall be made, notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein, and shall receipt in full for his salary or compensation; and payment of salary or compensation, less said deductions, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided by this chapter.

(f) In addition to the deduction from salary, as hereinbefore required, any member may, with respect to plan A, B, C or D, subject to the approval of the division, redeposit in the Annuity Savings Trust Fund, by a single payment or by an increased rate of contribution an amount equal to the total amount which he previously withdrew therefrom, as provided in this chapter, or any part thereof; or any member may deposit in the Annuity Savings Trust Fund, by a single payment or by an increased rate of contribution, amounts for the purchase of an additional annuity, but such additional payments shall not exceed the amount computed to provide, with his prospective retirement allowance, a total retirement allowance of one-half of his prospective average final compensation at his minimum service retirement age. Such additional amounts so deposited shall become a part of his accumulated contributions, except that in the case of disability retirement they shall be treated as excess contributions returnable to the member in cash or as an annuity of equivalent actuarial value and shall not be considered in computing his pension.

(g) A member who elects to retire under plan E shall pay to the Annuity Savings Trust Fund prior to retirement or receive from the Annuity Savings Trust Fund, as the case may be, the difference between what his contributions, with accumulated interest, would have been under plan E and the actual contributions of the member with accumulated interest.

(h) The accumulated contributions of a member returned to him upon withdrawal, or paid as provided in this chapter to his designated beneficiary, or to his executors or administrators in the event of his death, shall be paid from the Annuity Savings Trust Fund.

(i) Upon the retirement of a member, his accumulated contributions shall be transferred from the Annuity Savings Trust Fund to the Pension Accumulation Trust Fund.

(2) Should a beneficiary, retired on account of disability, again become a member of the retirement system, his accumulated contributions as of the date of retirement not paid as an annuity, shall be transferred from the Pension Accumulation Trust Fund to the Annuity Savings Trust Fund and credited to his individual account in the Annuity Savings Trust Fund.

(3) The Pension Accumulation Trust Fund shall be the fund in which shall be accumulated all reserves for the payment of all annuities or benefits in lieu of annuities on retired members and all pensions and other benefits payable from contributions made by the members and by the employers, from which annuities, pensions and benefits in lieu thereof shall be paid. Contributions to, and payments from, the Pension Accumulation Trust Fund, other than as set forth in subsections (2) and (3) herein, shall be made as follows:

(a) On account of each member there shall be paid annually into the Pension Accumulation Trust

Fund, as provided for in s. 238.11, on account of the preceding year a certain percentage of his earnable compensation, to be known as the normal contribution, and an additional percentage of his earnable compensation, to be known as the accrued liability contribution. The rates percent of earnable compensation of such contributions shall be fixed on the basis of the liabilities of the retirement system, as shown by actuarial valuation.

(b) On the basis of regular interest and of such mortality and other tables as shall be adopted by the division, the actuary engaged by the division to make each valuation required by this chapter shall, during the period over which the accrued liability contribution is payable, determine, immediately after making such valuation, the uniform and constant percentage of the earnable compensation of the average new entrant, which, if contributed on the basis of his compensation throughout his entire period of service, would be sufficient to provide for the payment of any pension payable by the state on his account. The rate percent so determined shall be known as the normal contribution rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate percent of the earnable compensation of all members, obtained by deducting from the total liabilities of the Pension Accumulation Trust Fund the amount of the funds in hand to the credit of that fund and dividing the remainder by 1 percent of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the division and on the basis of regular interest. The normal rate of contribution shall be determined and certified to the division by the actuary after each valuation and shall continue in force until a new valuation and certification are made.

(c) Immediately succeeding the first valuation, the actuary engaged by the division shall compute the rate percent of the total earnable compensation of all members which is equivalent to 4 percent of the amount of the total liability for pensions on account of all members and beneficiaries and not dischargeable by the present assets of the Pension Accumulation Trust Fund and by the aforesaid normal contribution if made on account of such members during the remainder of their active service. The rate percent, originally so determined, shall be known as the accrued liability contribution rate.

(d) The total amount payable in each year into the Pension Accumulation Trust Fund shall be not less than the sum of the rates percent known as the normal contribution rate and the accrued liability contribution rate, of the total earnable compensation of all members during the preceding year; provided, however that the amount of each annual accrued liability contribution shall be at least 3 percent greater than the preceding annual accrued liability contribution; and provided that the aggregate payment into the Pension Accumulation Trust Fund shall be sufficient, when combined with the amount then held in the fund, to provide the benefits payable from the fund during the current year.

(e) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the Pension Accumulation Trust Fund shall equal the present value, as actuarially computed and approved by the division, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate, then in force of the prospective normal contributions to be received on account of persons who are at that time members.

(4) The Expense Trust Fund shall be the fund to which shall be credited all moneys contributed for the administrative expenses of the retirement system and from which shall be paid all expenses incurred in connection with the administration and operation of the retirement system. Contribution to the Expense Trust Fund shall be made by transfer from interest earnings on investments in the Annuity Savings Trust Fund. Such transfers shall be regulated by the Legislature pursuant to budgets filed in accordance with the provisions of chapter 216.

(5)(a) The survivors' benefit fund shall be the fund in which shall be accumulated all reserves for the payment of all survivor benefits provided for in s. 238.07(16), except refund of accumulated contributions. There shall be paid into this fund:

1. All contributions by members based on the rate of twenty-five-hundredths percent of their salary as set out in paragraph (b) of this subsection.

2. All contributions by the state to the Survivors' Benefit Trust Fund.

3. All transfers from other funds as required by this subsection.

(b) The division shall annually certify to each employer, at the time it makes the certification to the employer under paragraph (c) of subsection (1), the rate of twenty-five-hundredths percent to be applied by the employer to the salary of each member who is compensated by the employer, and the employer shall cause to be deducted from the salary of each member on each and every payroll for each and every payroll period an amount equal to twenty-five-hundredths percent of the member's salary paid by the employer and the employer shall remit monthly such deducted amounts to the division which shall place the same in the Survivors' Benefit Trust Fund of the Teachers' Retirement System of the state. The amount of contributions by a member to the Survivors' Benefit Trust Fund shall, in no event, be refundable to the member or his beneficiaries.

(c) Beginning July 1, 1959, there shall be paid annually into the Survivors' Benefit Trust Fund by the state on account of the preceding year a sum equal to the total amount paid into such fund by the members of the Teachers' Retirement System of the state.

(d) A member who makes contributions to the Survivors' Benefit Trust Fund shall not thereby obtain, prior to July 1, 1959, any vested interest or right to the benefits under s. 238.07(16), and these benefits may be altered, changed or repealed by the Legislature at its 1959 session, provided that the beneficiaries of members whose deaths occur prior to July 1, 1959 shall have a vested interest in the benefits accruing to such beneficiaries under s. 238.07(16), and these rights may not be altered, changed nor repealed by the legislature.

History.—s. 9, ch. 19014, 1939; CGL 1940 Supp. 892(164); s. 5, ch. 22693, 1945; s. 7, ch. 22858, 1945; s. 5, ch. 23864, 1947; s. 11, ch. 25035, 1949; s. 8, ch. 29942, 1955; s. 6, ch. 57-357; s. 1, ch. 59-330; s. 2, ch. 61-119; s. 3, ch. 61-301; s.

6, ch. 63-554; ss. 31, 35, ch. 69-106; s. 3, ch. 72-345; s. 1, ch. 73-326; s. 53, ch. 79-164.

238.10 Management of funds.—The Division of Retirement, annually, shall allow regular interest on the amount for the preceding year to the credit of each of the funds of the retirement system, and to the credit of the individual account therein, if any, with the exception of the expense fund, from the interest and dividends earned from investments.

History.—s. 10, ch. 19014, 1939; CGL 1940 Supp. 892(165); s. 4, ch. 20749, 1941; s. 15, ch. 21989, 1943; s. 1, ch. 26963, 1951; s. 9, ch. 29942, 1955; s. 6, ch. 61-458; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.
cf.—s. 340.21 Bonds eligible for investment.

238.11 Collection of contributions.—

(1) The collection of contributions shall be as follows:

(a) Each employer shall cause to be deducted from each and every payment of salary of a member, for each and every payroll period, the contribution payable by such member as provided in this chapter. Commencing July 1, 1967, each employer shall also budget and set aside an amount equal to such deductions, which shall be the employer contribution, except with respect to any nonprofit professional association or corporation of teachers for which the employer contribution shall be at least that amount specified in s. 238.09(3)(a); provided that such amount shall be set aside only if the state makes available to the employer, except for any nonprofit professional association or corporation, the additional funds necessary for such employer contributions.

(b) Each employer shall transmit monthly to the Division of Retirement a warrant for the total amount of such deductions. Each employer shall also transmit monthly to the division a warrant for such employer contribution set aside as provided for in paragraph (a) of this subsection. The division, after making records of all such warrants, shall transmit them to the Department of Banking and Finance for delivery to the Treasurer of the state who shall collect them.

(c) The state contribution shall be equal to the excess of the contributions specified under s. 238.09, over the amounts the state makes available for employer contributions under paragraphs (a) and (b) of this subsection.

(2) The collection of the state contribution shall be made as follows:

(a) The amounts required to be paid by the state into the Teachers' Retirement System in this chapter shall be provided therefor in the annual general appropriations act. However, in the event a sufficient amount is not included in the annual General Appropriations Act to meet the full amount needed to pay the retirement compensation provided for in this chapter, the additional amount needed for such retirement compensation is hereby appropriated from the General Revenue Fund as approved by the Department of Administration.

(b) The division shall certify one-fourth of the amount so ascertained for each year to the State Comptroller on or before the last day of July, October, January and April of each year. The Comptroller shall, on or before the first day of August, November, February and May of each year, draw his warrant or warrants, which shall be countersigned by the Governor, on the Treasurer of the state for the respective amounts due the several funds of the retirement system. On the receipt of the warrant or warrants of the Comptroller, the Treasurer shall immediately transfer to the several funds of the retirement system the amounts due.

(3) All collection of contributions of nonprofit professional association or corporation of teachers as referred to in s. 238.01(4) and (6), shall be made by such association or corporation in the following manner:

(a) On April 1 of each year the division shall certify to any such nonprofit professional association or corporation of teachers the amounts which will become due and payable during the ensuing fiscal year to each of the funds of the retirement system to which such contributions are payable as set forth in this law.

(b) The division shall certify one-fourth of the amount so ascertained for each year to the nonprofit professional association or corporation of teachers on or before the last day of July, October, January and April of each year. The nonprofit professional association or corporation of teachers shall on or before the first day of August, November, February and May of each year draw its check payable to the division for the respective amounts due the several funds of the retirement system. Upon receipt of the check the division shall immediately transfer to the several funds of the retirement system the amounts due, provided, however that the amounts due the several funds of the retirement system from any such association or corporation for creditable service accruing to any such member before July 1, 1947 shall be paid prior to the retirement of any such member.

History.—s. 11, ch. 19014, 1939; CGL 1940 Supp. 892(166); s. 6, ch. 23864, 1947; s. 10, ch. 29942, 1955; s. 9, ch. 63-554; ss. 12, 31, 35, ch. 69-106; s. 1, ch. 73-305; s. 1, ch. 73-326.

238.12 Duties of employers.—

(1) Each employer shall keep such records and, from time to time, shall furnish such information as the Division of Retirement may require in the discharge of its duties. Upon the employment of any teacher to whom this chapter may apply, he shall be informed by his employer of his duties and obligations in connection with the retirement system as a condition of his employment. Every teacher accepting employment shall be deemed to consent and agree to any deductions from his compensation required in this chapter and to all other provisions of this chapter.

(2) During September of each year, or at such other time as the division shall approve, each employer shall certify to the division the names of all teachers to whom this chapter applies.

(3) Each employer shall, on the first day of each calendar month, or at such less frequent intervals as the division may approve, notify the division of the employment of new teachers, removals, withdrawals and changes in salary of members that have occurred during the preceding month, or the period covered since the last notification.

History.—s. 12, ch. 19014, 1939; CGL 1940 Supp. 892(167); ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

238.13 Limitation on membership.—

(1) No other provision of law in any other statute which provides wholly or partly at the expense of the state for pensions or for retirement benefits for teachers of the said state, their widows, or other dependents, shall apply to members or beneficiaries of the retirement system established by this chapter, their widows or other dependents. No person who shall become a teacher, as defined herein, after July 1, 1939, shall be eligible to a pension under any statute heretofore enacted.

(2) No person who is fully covered by a compulsory civil service retirement plan shall be a member of the retirement system under this chapter; provided, however, that any person who is presently a member of the retirement system and is also fully covered by a compulsory civil service retirement plan may continue to be a member of the retirement system or at his option may withdraw from such retirement system and thereupon be entitled to receive all of his accumulation in the Annuity Savings Trust Fund together with the interest thereon.

History.—s. 13, ch. 19014, 1939; CGL 1940 Supp. 892(168); s. 7, ch. 61-458.

238.14 Protection against fraud.—Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud such system as a result of such act, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Should any change or error in records result in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, then on discovery of any such error the division shall correct such error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit, to which such member or beneficiary was correctly entitled, shall be paid.

History.—s. 14, ch. 19014, 1939; CGL 1940 Supp. 892(169), 8115(6); ss. 31, 35, ch. 69-106; s. 142, ch. 71-136.

238.15 Exemption of funds from taxation, execution and assignment.—The pensions, annuities or any other benefits accrued or accruing to any person under the provisions of this chapter and the accumulated contributions and cash securities in the funds created under this chapter are exempted from any state, county or municipal tax of the state, and shall not be subject to execution or attachment or to any legal process whatsoever, and shall be unassignable, except:

(1) That any teacher who has retired shall have the right and power to authorize in writing the Division of Retirement to deduct from his monthly retirement allowance money for the payment of the premiums on group insurance for hospital, medical and surgical benefits, under a plan or plans for such benefits approved in writing by the Insurance Commissioner and Treasurer of the state, and upon receipt of such request the division shall make the monthly payments as directed; and

(2) As may be otherwise specifically provided for in this chapter.

History.—s. 15, ch. 19014, 1939; CGL 1940 Supp. 892(170); s. 11, ch. 29942, 1955; ss. 13, 31, 35, ch. 69-106; s. 1, ch. 73-326.

238.16 Penalties.—Any person subject to the terms and provisions of this chapter, including the individual members of all boards, who shall violate any of the provisions of this chapter or any valid rule or regulation promulgated under authority of the chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and each day of such violation shall constitute a separate offense.

History.—s. 16, ch. 19014, 1939; CGL 1940 Supp. 8115(7); s. 143, ch. 71-136.

238.17 Employees of nonprofit professional association or corporation of teachers functioning on a statewide basis; intent.—It is the intent of this section to grant to employees of nonprofit professional association or corporation of teachers who are or become members of the Teachers' Retirement System all the rights, privileges and benefits therefrom as are or may be granted to all other members of the Teachers' Retirement System, provided, however, that for other than creditable service as a teacher as defined in s. 238.01(4) rendered to a state, county, municipality or other taxing district by any such employee, the state shall not make any contributions on account of such service.

History.—s. 7, ch. 23864, 1947.

238.171 Monthly allowance; when made.—

(1) Whenever any person has served as a teacher in the public schools of Florida or has served therein as superintendent, or both, for an aggregate period of 20 or more years, and such person is then incapacitated to do and perform any vocational work sufficient to earn a livelihood, such person shall thereafter, so long as the above conditions exist, during the remainder of his life, be entitled to a monthly allowance of $150. However, no person who has ever been eligible to become a member of the Teachers' Retirement System of the state shall be entitled to receive such allowance.

(2) Effective July 1, 1975, whenever any person has served as a teacher in the public schools of Florida, is 70 years of age or older, and is incapacitated to do and perform any vocational work sufficient to earn a livelihood, such person shall thereafter, during the remainder of his life, be entitled to a monthly allowance based on years of service as follows:

(a) An aggregate of 10 years but not more than 15 years, a monthly allowance of $75;

(b) More than 15 years and up to 20 years, a monthly allowance of $100.

No person who has ever been eligible to become a member of the Teachers' Retirement System of the state shall be entitled to receive such allowance. The monthly allowance authorized by this subsection shall begin on July 1, 1975.

(3)(a) On July 1, 1974, the director of the Division of Retirement shall adjust the monthly allowance provided for incapacitated teachers under this section by increasing said allowance by a percentage which shall be equal to the percentage change in the average cost-of-living index, as defined in chapter 121, over the period between April 1, 1967, and March 31, 1973. The percent of increase, as of July 1, 1974, shall be 25.4 percent, which is the average

cost-of-living increase percentage from April 1, 1967, through March 31, 1973.

(b) On July 1, 1975, and each July 1 thereafter, the director shall adjust the monthly allowance being paid on said date. The percentage of such adjustment shall be equal to the percentage change in the average cost-of-living index during the preceding 12-month period, April 1 through March 31, ignoring changes in the cost-of-living index which are greater than 3 percent during the preceding fiscal year.

History.—s. 550, ch. 19355, 1939; CGL 1940 Supp. 892(154); s. 1, ch. 22017, 1943; s. 1, ch. 22841, 1945; s. 1, ch. 25411, 1949; s. 1, ch. 29918, 1955; s. 1, ch. 63-540; s. 18, ch. 65-420; s. 1, ch. 65-485; s. 1, ch. 67-517; s. 1, ch. 69-300; s. 1, ch. 70-228; s. 91, ch. 72-221; s. 1, ch. 72-371; s. 2, ch. 74-303; s. 1, ch. 75-270; s. 1, ch. 77-174.
Note.—Former s. 231.50.

238.172 Proof required.—For any person to obtain the allowance as set forth in s. 238.171 the said person shall make such proof of the facts and conditions entitling him to the said allowance as shall reasonably be required by the state board, and when such proof has been submitted to the satisfaction of the state board, the State Treasurer shall pay to such person the monthly allowance herein provided for on warrants drawn by the Comptroller.

History.—s. 551, ch. 19355, 1939; CGL 1940 Supp. 892(155); s. 1, ch. 20914, 1941; s. 91, ch. 72-221.
Note.—Former s. 231.51.

238.173 Monthly allowance to widows of pensioners.—When any teacher, drawing pension under s. 238.171, shall die leaving surviving a widow to whom such pensioner has been married for a continuous period of at least 10 years immediately prior to his death, and from whom no dissolution of marriage is obtained, such widow, upon proof of marriage to and continuation of marriage for the minimum period with, and death of, her said husband, shall be granted a pension payable from the date of the death of her said husband, and at the same time and rate as other pensions paid under s. 238.171. The Comptroller is hereby authorized and directed to draw his warrants in payment of such pensions so long as such widow shall remain unmarried and continue to be a resident of the state; provided, however, that nothing herein contained shall be so construed as to allow such pension to be paid to any widow where such widow of a deceased pensioner under this section receives a like pension in her own right as a retired school teacher.

History.—s. 1, ch. 20914, 1941; s. 91, ch. 72-221; s. 1, ch. 73-300.
Note.—Former s. 231.52.

238.174 Appropriation for monthly allowance to incapacitated teachers.—There is appropriated out of any moneys in the State Treasury not otherwise appropriated, a sufficient sum of money to meet the requirements of s. 238.171.

History.—s. 3, ch. 14782, 1931; s. 91, ch. 72-221.
Note.—Former ss. 242.06, 231.53.

238.175 Members with prior service in federally operated state schools; eligibility for special credits.—

(1) Any member of the Teachers' Retirement System or the Florida Retirement System established respectively by this chapter and chapter 121 who taught in a public school in Florida which was taken over and operated by the United States Government pursuant to Pub. L. No. 81-874 or other Federal Law, may claim and receive credit in the retirement system in which he is participating for the time he taught in such schools, while they were operated by the United States Government under the following conditions, provided credit for such teaching time has not been granted in any other state or federal retirement system.

(a) If the member was a member of the Teachers' Retirement System prior to the time he began teaching in the public schools operated by the United States Government, he may claim and receive credit for such teaching time in the retirement system in which he is participating as prior service upon the payment of the amounts required to obtain credit for such prior service pursuant to the laws and rules governing the administration of his retirement system.

(b) If the member was not a member of the Teachers' Retirement System prior to the time he began teaching in the public schools operated by the United States Government, he may claim and receive retirement credit for such teaching time in the following manner:

1. A member of the Teachers' Retirement System may receive retirement credit for the time he taught in such federally operated schools as prior teaching service outside the state pursuant to the provisions of s. 238.06(4).

2. A member of the Florida Retirement System may receive retirement credit for the time he taught in such federally operated schools as past service pursuant to the provisions of, and following the payment of the amounts specified in, s. 121.081(1), notwithstanding any contrary provisions in said s. 121.021(18), or other provisions of law.

(2) The administrator of the retirement system shall make such rules and regulations as are necessary to carry out and implement the provisions of this section.

History.—s. 1, ch. 72-251.

238.181 Retired member may be substitute teacher; conditions.—

(1) Any member who has retired may be employed, on a substitute basis only, as a substitute teacher in any of the public free schools of this state, and such employment shall not affect the rights of such retired member under the retirement system, including, without limiting the general terms hereof, his right to receive his retirement allowance; provided that a school board may employ as a substitute teacher a member who has retired only if the school board is unable to employ for such substitute teaching position, a qualified teacher who has not retired.

(2) A retired teacher may be employed on a part-time basis and receive compensation for services rendered without reducing or in any way affecting his retirement or pension status but in no case shall the part-time employment exceed 500 hours in any single calendar year.

(3) Any member who hereafter retires and receives a retirement allowance under the provisions of this chapter shall have his retirement allowance

suspended during any period of reemployment in any capacity whatsoever by the state or any political subdivision, department, branch, or agency thereof, except as in this chapter specifically provided.

History.—s. 2, ch. 28110, 1953; s. 12, ch. 29942, 1955; s. 1, ch. 57-189; s. 1, ch. 69-300; s. 1, ch. 72-215.

238.31 Provision for modification of plan E.—Notwithstanding any provision contained herein to the contrary the provisions relating to retirement under s. 238.07(2)(e) shall be subject to amendment or modification by subsequent legislation and all other provisions of this chapter relating to the administration of plan E, or to the duties, rights, privileges, requirements and benefits of the members of plan E shall be subject to amendment, modification, deletion, or substitution by act of the 1965 Legislature of this state and all such legislation shall be applicable retroactively to July 1, 1963, with respect to all those persons who become members of plan E on or after July 1, 1963; provided, however, that such legislation shall not provide for a normal retirement age of members to exceed the age of 65 years, nor shall such legislation be applicable to any benefits which become payable to, or with respect to, such members prior to July 1, 1965.

History.—s. 11, ch. 63-554.

238.32 Service credit in disputed cases.—The Division of Retirement may in its discretion allow or deny a member service credit in disputed or doubtful cases for employment in Florida and out-of-state schools in order to serve the best interests of the state and the member, subject to the membership dates set forth in s. 238.06(4).

History.—s. 4, ch. 65-552; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

238.325 Statements of purpose and intent and other provisions required for qualification under the Internal Revenue Code of the United States.—Any other provisions in this chapter to the contrary notwithstanding, it is specifically provided that:

(1) The purpose of this chapter is to provide pension benefits for the exclusive benefit of the member employees or their beneficiaries.

(2) No part of the principal or income of the trust fund created hereunder shall be used or diverted for purposes other than for the exclusive benefit of the member employees or their beneficiaries and for the payment of administrative cost.

(3) Forfeitures, if any, shall not be applied to increase the benefits any member employee would otherwise receive under this chapter.

(4) Upon termination or partial termination, upon discontinuance of contributions, abandonment, or merger, or upon consolidation or amendment of this chapter, the rights of all affected employees to benefits accrued as of the date of any of the foregoing events, or the amounts credited to the account of any member employee, shall be and continue thereafter to be nonforfeitable except as otherwise provided by law.

(5) No benefit hereunder shall exceed the maximum amount allowable by law for qualified pension plans under existing or hereafter-enacted provisions of the Internal Revenue Code of the United States.

(6) The provisions of this section are declaratory of the legislative intent upon the original enactment of this chapter and are hereby deemed to have been in effect from such date.

History.—s. 1, ch. 78-108.

CHAPTER 240

POSTSECONDARY EDUCATION

PART I GENERAL PROVISIONS (ss. 240.105-240.135)

PART II STATE UNIVERSITY SYSTEM (ss. 240.2011-240.299)

PART III COMMUNITY COLLEGE SYSTEM (ss. 240.301-240.379)

PART IV SCHOLARSHIP AND FINANCIAL AID (ss. 240.401-240.465)

PART V SPECIFIC PROGRAMS AND INSTITUTIONS (ss. 240.501-240.531)

PART I

GENERAL PROVISIONS

240.105 Statement of purpose and mission.—

(1) The Legislature finds it in the public interest to provide a system of higher education which is of the highest possible quality; which enables students of all ages, backgrounds, and levels of income to participate in the search for knowledge and individual development; which stresses undergraduate teaching as its main priority; which offers selected professional, graduate, and research programs with emphasis on state and national needs; which fosters diversity of educational opportunity; which promotes service to the public; which makes effective and efficient use of human and physical resources; which functions cooperatively with other educational institutions and systems; and which promotes internal coordination and the wisest possible use of resources.

(2) The mission of the state system of postsecondary education is to develop human resources, to discover and disseminate knowledge, to extend knowledge and its application beyond the boundaries of its campuses, and to serve and stimulate society by developing in students heightened intellectual, cultural, and humane sensitivities; scientific, professional, and technological expertise; and a sense of purpose. Inherent in this broad mission are methods of instruction, research, extended training, and public service designed to educate people and improve the human condition. Basic to every purpose of the system is the search for truth.

History.—s. 2, ch. 79-222.

240.115 Articulation agreement; acceleration mechanisms.—

(1) Admission of Associate of Arts degree graduates from Florida community colleges and state universities and the use of acceleration mechanisms, including the College Level Examination Program (CLEP), shall be governed by the articulation agreement, as established by the Department of Education.

(2) The universities, community college boards of trustees, and district school boards are authorized to establish intrainstitutional and interinstitutional programs to maximize this articulation. Should the establishment of these programs necessitate the waiver of existing State Board of Education rules, reallocation of funds, or revision or modification of student fees, each college or university shall submit the proposed articulation program to the State Board of Education for review and approval. The State Board of Education is authorized to waive its rules and make appropriate reallocations, revisions, or modifications in accordance with the above.

(3) The levels of postsecondary education shall collaborate in further developing and providing articulated programs in which students can proceed toward their educational objectives as rapidly as their circumstances permit. Time-shortened educational programs, as well as the use of acceleration mechanisms, shall include, but not be limited to, credit by examination or demonstration of competency, advanced placement, early admissions, and dual enrollment.

(4) Each university in the State University System shall offer, upon request, to all students enrolled for the first time at that university, at the time of enrollment, and make available to all other students, not less than once annually, the College Level Examination Program (CLEP) examinations offered by the college entrance examination board or equivalent examinations in those general subject areas which are required or may be applied toward general education requirements for a baccalaureate degree at that university. A student satisfactorily completing such examinations shall receive full credit for the course the same as if it had been taken, completed, and passed.

History.—s. 65, ch. 79-222.

240.125 Postsecondary consortiums.—

(1) Community colleges and universities serving the same students in a geographic and service area may establish appropriate interinstitutional mechanisms to achieve cooperative planning and delivery of academic programs and related services, share a high-cost instructional facility and equipment, coordinate credit and noncredit outreach activities, have access to each other's library and media holdings and services, and provide cooperative campus activities and consultative relationships for the discussion and resolution of interinstitutional issues and problems which discourage student access or transfer.

(2) Public community colleges and universities may include independent colleges and universities within their service areas in mutual planning of a comprehensive, complementary, cost-effective array of undergraduate and beginning graduate programs of study to serve that geographic area.

History.—s. 66, ch. 79-222.

240.132 Participation by students or employees in disruptive activities at state institutions of higher learning; penalties.—

(1) Any person who shall accept the privilege extended by the laws of this state of attendance or employment at any state college, state community college, or state university shall, by so attending or working at such institution, be deemed to have given his consent to the policies of that institution, the Board of Regents of the Division of Universities of the Department of Education, and the laws of this state. Such policies shall include prohibition against disruptive activities at state institutions of higher learning.

(2) After it has been determined that a student or employee of a state institution of higher learning has participated in disruptive activities, the following penalties may be imposed against such person:

(a) Immediate termination of contract of such employee of the state institution of higher learning, and thereafter such person shall not be employed by any state public school, state college, state community college, or state university;

(b) Immediate expulsion of such student from the institution of higher learning for a minimum of 2 years.

History.—Ch. 69-279; ss. 15, 35, ch. 69-106; s. 70, ch. 72-221; s. 92, ch. 79-222.
Note.—Former s. 239.581.

240.133 Expulsion and discipline of students of the State University System and community colleges.—

(1) Each student in the State University System and each student in a community college is subject to federal and state law, respective county and municipal ordinances, and all rules and regulations of the Board of Regents or board of trustees of the community college.

(2) Violation of these published laws, ordinances, or rules and regulations may subject the violator to appropriate action by the university or community college authorities.

(3) Each president [1]of a university in the State University System and each president of a community college shall have authority, after notice to the student of the charges and after a hearing thereon, to expel, suspend, or otherwise discipline any student who is found to have violated any law, ordinance, or rule or regulation of the Board of Regents or of the board of trustees of the community college.

History.—ss. 1-3, ch. 69-366; ss. 2, 3, ch. 70-362; s. 70, ch. 72-221; ss. 17, 18, ch. 73-331; s. 8, ch. 78-95; s. 93, ch. 79-222; s. 1, ch. 79-319.
[1]**Note.**—The words "of a university" were inserted by the editors.
Note.—Former s. 239.582.

240.135 Funds provided by the United States.—The State Board of Education, through its chairman, may sign all vouchers for all moneys coming to the State University System from the United States, or any fund provided by the United States and which shall be paid by it to the state for the benefit of the institutions, and shall deposit the same with the Treasurer.

History.—s. 29, ch. 5384, 1905; RGS 609; CGL 765; s. 3, ch. 65-130; ss. 15, 35, ch. 69-106; s. 91, ch. 79-222.
Note.—Former s. 239.04.

PART II

STATE UNIVERSITY SYSTEM

240.2011 State University System defined.—The State University System shall consist of the following:

(1) The Board of Regents of the Division of Universities of the Department of Education, with a central office located in Leon County.

(2) The University of Florida, with a main campus located in Alachua County.

(3) The Florida State University, with a main campus located in Leon County.

(4) The Florida Agricultural and Mechanical University, with a main campus located in Leon County.

(5) The University of South Florida, with a main campus located in Hillsborough County.

(6) The Florida Atlantic University, with a main campus located in Palm Beach County.

(7) The University of West Florida, with a main campus located in Escambia County.

(8) The University of Central Florida, with a main campus located in Orange County.

(9) The University of North Florida, with a main campus located in Duval County.

(10) The Florida International University, with a main campus located in Dade County.

History.—s. 3, ch. 79-222.

240.203 Board of Education; responsibilities for higher education.—With respect to the State University System, the State Board of Education shall:

(1) Approve all rules adopted by the Board of Regents before they are filed with the Department of State; however, if any rule is not disapproved by the Board of Education within 30 days of its adoption by the Board of Regents, the rule shall immediately be filed with the Department of State.

(2) At all times exercise general supervision and control over the Board of Regents.

History.—s. 2, ch. 63-204; s. 1, ch. 65-96; s. 2, ch. 67-231; ss. 10, 35, ch. 69-106; s. 23, ch. 69-216; s. 65, ch. 71-377; s. 54, ch. 79-164; s. 89, ch. 79-222.
Note.—Former s. 240.031.

240.205 Board of Regents incorporated.—The Board of Regents is hereby created as a body corporate with all the powers of a body corporate for all the purposes created by, or that may exist under, the provisions of this chapter or laws amendatory hereof and shall:

(1) Have a corporate seal.

(2) Elect a corporate secretary.

(3) Have and employ a staff attorney and other authorized personnel.

(4) Have power to contract and be contracted with, to sue and be sued, and to plead and be impleaded in all courts of law and equity.

(5) Receive donations.

(6) Make purchases of real and personal property and contract for the sale and disposal of same, but the title to all real property, however acquired, shall be vested in the Board of Trustees of the Internal Improvement Trust Fund and shall be transferred and conveyed by it.

History.—s. 5, ch. 79-222.

240.207 Board of Regents; appointment of members; qualifications and terms of office of members, etc.—

(1) The Board of Regents shall consist of 10 citizens of this state selected from the state at large, representative of the geographical areas of the state, who shall have been residents and citizens thereof for a period of at least 10 years prior to their appointment, one of whom shall be a member registered as a full-time student in the State University System and who shall have been a resident of this state for at least 5 years prior to appointment in lieu of the 10 years required of other members, and who shall be appointed by the Governor, approved by three members of the Cabinet, and confirmed by the Senate; however, no appointee shall take office until after his appointment has been approved by three members of the Cabinet. The State Board of Education shall develop rules and procedures for review and approval of the appointees. Their terms of office shall be 9 years, except for the full-time student member, who shall serve for 1 year, and until their successors are appointed and qualified, except in case of an appointment to fill a vacancy, in which case the appointment shall be for the unexpired term, and except as in this section otherwise provided. No member shall be selected from any county to serve with any other member from the same county, with the exception of the student member, who shall be selected at large. The Governor shall fill all vacancies, subject to the above approval and confirmation, that may at any time occur therein.

(2) Members may be removed for cause at any

time upon the concurrence of a majority of the members of the State Board of Education.

History.—s. 2, ch. 63-204; ss. 15, 35, ch. 69-106; s. 71, ch. 77-104; s. 1, ch. 77-442; s. 10, ch. 78-416; s. 1, ch. 79-128; s. 6, ch. 79-222.
Note.—Former s. 240.011.

240.209 Board of Regents; powers and duties.—

(1) The Board of Regents is primarily responsible for adopting systemwide rules and policies; planning for the future needs of the State University System; planning the programmatic, financial, and physical development of the system; reviewing and evaluating the instructional, research, and service programs at the universities; coordinating program development among the universities; and monitoring the fiscal performance of the universities.

(2) The Board of Regents shall appoint a Chancellor to serve at its pleasure, who shall perform such duties as are assigned to him by the board. The board shall fix the compensation for the Chancellor and for all other professional, administrative, and clerical employees necessary to assist the board and the Chancellor in the performance of their duties. The Chancellor shall be the chief administrative officer of the board and shall be responsible for appointing all employees and staff members of the board who shall serve under his direction and control. The Chancellor shall be a person qualified by training and experience to understand the problems and needs of the state in the field of postsecondary education. Search committee activities for the selection of the Chancellor, up to the point of transmitting a list of nominees to the Board of Regents, shall be exempt from the provisions of s. 286.011 and chapter 119.

(3) The board shall:

(a) Appoint a search committee from representative groups, including students, for the purpose of making recommendations for the selection of a university president. The search committee shall provide to the Board of Regents not fewer than three names of those persons deemed most capable to serve. The activities of the search committee, up to the point of transmitting the list of nominees to the Board of Regents, shall be exempted from the provisions of s. 286.011 and chapter 119. The Board of Regents shall select and appoint a president of each university drawn from the list of three nominees submitted to the Board of Regents by the search committee. The Board of Regents shall determine the compensation and other conditions of employment for each president.

(b) Approve new degree programs for all state universities. In so doing, the board shall be mindful of the differentiated missions of the several universities. New colleges, schools, or functional equivalents of any program leading to a degree which is offered as a credential for a specific license granted under the Florida Statutes or the State Constitution shall not be established without the specific approval of the Legislature.

(c) Review the legislative budget requests, including fixed capital outlay requests, from each university and, subject to provisions of applicable law, present an aggregated budget for the State University System with recommendations for modifications to each university's budget request. The board shall provide to the individual universities fiscal policy guidelines, formats, and instructions for each budget request, developed in accordance with chapter 216 and s. 235.41.

(d) Establish and maintain a systemwide personnel classification and pay plan.

(e) Submit to the Legislature for approval all new fees and modifications of existing fees established by law, including, but not limited to, matriculation fees, Capital Improvement Trust Fund fees, student financial aid fees, building fees, out-of-state tuition fees, and other fees as may become necessary or desirable.

(f) Terminate programs at the state universities pursuant to findings of reviews and evaluations of instructional, research, and service programs at the universities.

(g) On or before October 1, 1979, and after consultation with the university presidents, adopt a systemwide master plan which specifies goals and objectives for the State University System and a master plan for each of the universities defining the particular contributions each university will make toward the achievement of these goals and objectives. In developing these plans, the board shall consider the role of individual public and independent institutions within the state. The systemwide master plan shall identify service areas for purposes of continuing education and extension programs, except that the service area of the comprehensive graduate research and service universities shall be statewide in scope. The university master plan shall identify degree programs to be offered at each university in accordance with the objectives provided herein and translate general systemwide guidelines into specific goals and objectives for the universities. Plans shall also include recommendations regarding the upper division concept. The systemwide master plan and university master plans shall provide projections for the State University System for a period of 5 years with modification biennially. The systemwide master plan and the university master plans shall be consistent with the defined mission of each university. The Board of Regents shall submit a report to the Speaker of the House of Representatives and the President of the Senate upon modification of the system plan or any university plan.

(h) Seek the cooperation and advice of the officers and trustees of both public and private institutions of higher education in the state in performing its duties and making its plans, studies, and recommendations.

(i) Contract with accredited independent institutions in Florida for the provision of those educational programs and facilities which will serve to meet the needs unfulfilled by the State University System.

(j) Coordinate and provide for educational television in the State University System.

(k) Adopt such rules as are necessary to carry out its duties and responsibilities.

(l) Establish and maintain an effective information system which will provide composite data about the university system and assure that special analyses and studies of the universities are conducted, as

necessary, for provision of accurate and cost-effective information about the universities and about the system as a whole.

(4) Any powers not specifically delegated to the universities by this act shall be retained by the Board of Regents unless further delegated by action of the board.

History.—s. 7, ch. 79-222.

240.2111 Meritorious service awards program.—The Board of Regents is authorized and empowered to provide for recognition of employees who have contributed outstanding and meritorious service in their fields and to adopt and implement a program of meritorious service awards to employees who propose procedures or ideas which are adopted and which will result in eliminating or reducing expenditures of the Board of Regents or improving operations of the Board of Regents. The Board of Regents is authorized to expend funds for such recognition and awards. No award granted under the provisions of this paragraph shall exceed $2,000 or 10 percent of the first year's gross savings, whichever is greater.

History.—s. 3, ch. 79-150.

240.213 Board authorized to secure liability insurance.—

(1) The Board of Regents is authorized to secure, or otherwise provide as a self-insurer, or by a combination thereof, comprehensive general liability insurance, including professional liability for health care and veterinary sciences, for:

(a) The board.

(b) The students and faculty of any university within the State University System.

(c) The officers, employees, or agents of the board.

(d) The professional practitioners practicing a profession within, or by virtue of employment by, any university in the State University System.

(e) Any of the universities in the State University System or subdivisions thereof.

The Board of Regents is authorized to delegate to the universities, as appropriate, the authority to secure any liability insurance for the above.

(2) In consideration of the premium at which such insurance may be written, it shall be a part of the insurance contract between the insurer and the Board of Regents that the insurer shall not be entitled to the benefit of the defense of governmental immunity of the Board of Regents in any suit brought against the insured. Immunity of the Board of Regents against any liability described in subsection (1) is waived to the extent of liability insurance carried by the Board of Regents and to the extent of funds available in a particular insurance trust fund for the satisfaction of any claim for which such trust fund was established.

(3) In the event the Board of Regents adopts a self-insurance program, the [1]Department of Administration is authorized pursuant to s. 215.32 to establish the necessary insurance trust funds in the State Treasury. Such trust funds shall be administered in accordance with rules established by the Board of Regents.

(4) There shall be no funds appropriated directly to any insurance trust fund. The Executive Office of the Governor, upon request of the Board of Regents, is authorized to transfer to any insurance trust fund any funds appropriated in the General Appropriation Act or other acts of the Legislature for the purposes of this section. The Board of Regents is further authorized to accept any payments, receipts, gifts, or donations made for the purposes of this section and deposit such funds in the appropriate insurance trust fund.

(5) The Board of Regents is authorized and empowered to make such rules as may be necessary to carry out the provisions of this section, including the delegation of authority, other than rulemaking authority, to appropriate levels of administration within the State University System.

History.—s. 2, ch. 63-204; s. 1, ch. 71-270; s. 1, ch. 77-309; s. 113, ch. 79-190; s. 8, ch. 79-222; s. 111, ch. 79-400.

[1]Note.—See s. 10, ch. 79-190, which transferred the powers, duties, and functions of the Department of Administration provided for in s. 215.32 to the Executive Office of the Governor.

Note.—Former s. 240.191.

240.215 Payment of costs of civil action against employees or members of the Board of Regents.—

(1) Whenever any civil action has been brought against any board member or employee for any act or omission arising out of and in the course of the performance of his duties and responsibilities, the Board of Regents may defray all costs of defending such action, including reasonable attorney's fees and expenses together with costs of appeal, and may save harmless and protect such person from any financial loss resulting from the lawful performance of his duties and responsibilities. Claims based on such actions or omissions may, in the discretion of the Board of Regents, be settled prior to or after the filing of suit thereon. The Board of Regents may arrange for and pay the premium for appropriate insurance to cover all such losses and expenses.

(2) There are appropriated out of any funds available in the university system, not subject to the obligation of contract, covenant, or trust, the amounts necessary to carry out the purposes of this section.

(3) Failure of the Board of Regents to do any act authorized by this section shall not constitute a cause of action against the Board of Regents, its members, officers, or employees.

History.—ss. 1-3, ch. 70-220; s. 9, ch. 79-222.

Note.—Former s. 240.221.

240.217 Board empowered to exercise right of eminent domain.—Whenever it becomes necessary for the welfare and convenience of any of its institutions or divisions to acquire private property for the use of said institutions, and the same cannot be acquired by agreement satisfactory to the Board of Regents and the parties interested in, or the owners of, said private property, the Board of Regents may exercise the right of eminent domain and proceed to condemn the property in the manner provided by chapter 73.

History.—s. 2, ch. 63-204; s. 10, ch. 79-222.

Note.—Former s. 240.161.

240.219 Department of Legal Affairs to represent board in condemnation proceedings.—Any suits or actions brought by the Board of Regents to condemn property, as provided in s. 240.161, shall be brought in the name of the Board of Regents, and the Department of Legal Affairs shall conduct the proceedings for, and act as the counsel of, the Board of Regents.

History.—s. 2, ch. 63-204; s. 18, ch. 65-130; ss. 11, 35, ch. 69-106; s. 10, ch. 79-222.
Note.—Former s. 240.171.

240.223 Board of Regents empowered to act as trustee.—

(1) Whenever appointed by any competent court of the state, or by any statute, or in any will, deed, or other instrument, or in any manner whatever as trustee of any funds or real or personal property in which any of the institutions or agencies under its management, control, or supervision, or their departments or branches or students, faculty members, officers, or employees, may be interested as beneficiaries, or otherwise, or for any educational purpose, the Board of Regents is hereby authorized to act as trustee with full legal capacity as trustee to administer such trust property, and the title thereto shall vest in said board as trustee. In all such cases, the Board of Regents shall have the power and capacity to do and perform all things as fully as any individual trustee or other competent trustee might do or perform, and with the same rights, privileges, and duties, including the power, capacity, and authority to convey, transfer, mortgage, or pledge such property held in trust and to contract and execute all other documents relating to said trust property which may be required for, or appropriate to, the administration of such trust or to accomplish the purposes of any such trust.

(2) Deeds, mortgages, leases, and other contracts of the Board of Regents relating to real property of any such trust or any interest therein may be executed by the Board of Regents, as trustee, in the same manner as is provided by the laws of the state for the execution of similar documents by other corporations or may be executed by the signatures of a majority of the members of the board; however, to be effective, any such deed, mortgage, or lease contract for more than 10 years of any trust property, executed hereafter by the Board of Regents, shall be approved by a resolution of the State Board of Education; and such approving resolution may be evidenced by the signature of either the chairman or the secretary of the State Board of Education to an endorsement on the instrument approved, reciting the date of such approval, and bearing the seal of the State Board of Education. Such signed and sealed endorsement shall be a part of the instrument and entitled to record without further proof.

(3) Any and all such appointments of, and acts by, the Board of Regents as trustee of any estate, fund, or property prior to May 18, 1949, are hereby validated, and said board's capacity and authority to act as trustee in all of such cases is ratified and confirmed; and all deeds, conveyances, lease contracts, and other contracts heretofore executed by the Board of Regents, either by the signatures of a majority of the members of the board or in the board's name by its chairman or chief executive officer, are hereby approved, ratified, confirmed, and validated.

(4) Nothing herein shall be construed to authorize the Board of Regents to contract a debt on behalf of, or in any way to obligate, the state; and the satisfaction of any debt or obligation incurred by the Board of Regents as trustee under the provisions of this section shall be exclusively from the trust property, mortgaged or encumbered; and nothing herein shall in any manner affect or relate to the provision of the Educational Institutions Law of 1935.

History.—s. 2, ch. 63-204; ss. 15, 35, ch. 69-106; s. 20, ch. 79-222.
Note.—Former s. 240.181.

240.225 Applicability of certain sections.—The Department of General Services shall by rule provide for delegation to the State University System of the functions and duties in ss. 216.044, 255.248, 255.249, 255.25, 255.28, 255.29, 273.04, 273.05, and 273.055; part I of chapter 287, except s. 287.055; and part II of chapter 287. No additional positions shall be authorized for the State University System to implement the provisions of this section.

History.—s. 13, ch. 79-222.

240.227 Universities; powers and duties.—Effective July 1, 1979, each university shall have the power and duty to:

(1) Develop and adopt rules governing the operation and administration of the university. Such rules shall be consistent with the mission of the university and statewide rules and policies and shall assist in the development of the university in a manner which will complement the missions and activities of the other universities for the overall purpose of achieving the highest quality of education for the citizens of the state. The president is the chief administrative officer of the university and is responsible for the operation and administration of the university.

(2) Prepare a legislative budget request to be transmitted to the Board of Regents and the Legislature and to be presented by the president to the Board of Regents. Such request shall be prepared in accordance with the fiscal policy guidelines, formats, and instructions for analysis as prescribed by the Board of Regents in accordance with chapter 216 and s. 235.41.

(3) Develop an operating budget.

(4) Conduct biennially a space utilization study to support the university budget request for capital outlay.

(5) Appoint, remove, and reassign vice presidents, academic deans, and other policy-level positions reporting directly to the president. The president shall appoint and be responsible for all other personnel.

(6) Provide for the compensation and other conditions of employment for university personnel who are exempt from chapter 110.

(7) Maintain all data and information pertaining to the operation of the university.

(8) Carry out periodic reviews of the operations of the university in order to determine whether the rules and policies of the university system are being followed and to determine how effectively and effi-

ciently the university is being administered.

(9) Govern admissions, subject to minimum standards adopted by the Board of Regents and as provided in s. 240.233.

(10) Permit permanent full-time employees who have been employed for at least 6 months in the State University System and who meet requirements set by the board to enroll for credit in on-campus instruction to a maximum of six credits per quarter without payment of the registration fee.

(11) Develop a program of continuing education within the university service area when there is a demonstrated and justified need. The university is authorized to cooperate with any public utility, any other governmental entity or private individual, or any type of profit or nonprofit legal entity in connection with the establishment and operation of such a continuing education program, including the acceptance of money and other things of value.

(12) Provide and coordinate credit and noncredit extension courses in all fields which the university considers necessary to improve and maintain the educational standards of the university service area.

(13) Make rules necessary for the establishment and maintenance of a personnel exchange program, by which persons employed within the university as instructional and research faculty and comparable administrative and professional staff may be exchanged with persons employed in like capacities by institutions of higher learning which are not under the jurisdiction of the university, by units of government either within or without this state, or by private industry. The salary and benefits of State University System and state personnel participating in the exchange program shall be continued during the period of time they participate in the exchange program, and such personnel shall be deemed to have no break in creditable or continuous state service or employment during the period of time in which they participate in the exchange program. The salary and benefits of persons participating in the personnel exchange program who are employed by institutions of higher learning which are not under the jurisdiction of the university, by units of government either within or without this state, or by private industry shall be paid by the originating employers of those participants. The duties and responsibilities of a person participating in the exchange program shall be the same as those of the person he replaces.

(14) Provide for recognition of employees who have contributed outstanding and meritorious service in their fields and adopt and implement a program of meritorious service awards to employees who propose procedures or ideas which are adopted and which will result in eliminating or reducing expenditures of the university or improving operations of the university. The university is authorized to expend funds for such recognition and awards. No award granted under the provisions of this subsection shall exceed $2,000 or 10 percent of the first year's gross savings, whichever is greater.

(15) Approve and execute contracts for goods, equipment, and services to be rendered to the university, provided such contracts are made pursuant to the provisions of chapter 287, as applicable, are for the implementation of approved programs of the university, and do not require expenditures in excess of $500,000.

(16) Approve and execute contracts for the delivery by the university of educational services, provided that no one contract requires an expenditure in excess of $25,000.

(17) Manage the property and financial resources of the university pursuant to s. 240.225.

(18) Establish the internal academic calendar of the university within general guidelines of the Board of Regents.

(19) Administer the university's program of intercollegiate athletics.

(20) Recommend to the Board of Regents the establishment and termination of degree programs within the approved role and scope of the university.

(21) Award degrees.

(22) Supervise all construction contracts.

(23) Administer the university classification and pay plan and any applicable collective bargaining contracts under the supervision of the Board of Regents.

(24) Recommend to the Board of Regents any fees applicable to the university and not otherwise prescribed by law.

(25) Enforce the collection of all delinquent accounts and otherwise settle delinquent accounts of under $1,000.

(26) Organize the university to efficiently and effectively achieve the goals of the university; however, any reorganization which increases the number of administrators or their level of compensation shall be reviewed and approved by the Board of Regents.

(27) Review periodically the operations of the university in order to determine whether the rules and policies of the Board of Regents and the universities are being followed and to determine how effectively and efficiently the university is being administered.

(28) Otherwise provide for the effective operation of the university in the achievement of the goals established for it in the master plan adopted by the Board of Regents.

History.—s. 16, ch. 79-222.

240.229 Universities; powers; patents, copyrights, and trademarks.—Any other law to the contrary notwithstanding, each university is authorized, in its own name, to:

(1) Perform all things necessary to secure letters of patent, copyrights, and trademarks on any work products and to enforce its rights therein.

(2) License, lease, assign, or otherwise give written consent to any person, firm, or corporation for the manufacture or use thereof, on a royalty basis or for such other consideration as the university shall deem proper.

(3) Take any action necessary, including legal action, to protect the same against improper or unlawful use or infringement.

(4) Enforce the collection of any sums due the university for the manufacture or use thereof by any other party.

(5) Sell any of the same and execute all instruments necessary to consummate any such sale.

(6) Do all other acts necessary and proper for the

execution of powers and duties herein conferred upon the university. Any proceeds therefrom shall be deposited and expended in accordance with s. 240.241. Any action taken by the university in securing or exploiting such trademarks, copyrights, or patents shall, within 30 days, be reported in writing by the president to the Department of State.

History.—s. 23, ch. 79-222.

240.231 Universities; payment of costs of civil action.—A university may defray all costs of defending any civil action brought against any officer or employee of the university for any act or omission arising out of and in the course of the performance of his duties and responsibilities, which costs may include reasonable attorney's fees and expenses together with costs of appeal, and may save harmless and protect such person from any financial loss resulting from the lawful performance of his duties and responsibilities. Claims based on such actions or omissions may be settled prior to or after the filing of suit thereon. The university may arrange for and pay the premium for appropriate insurance to cover all such losses and expenses. The university may use funds available to the university system, not subject to the obligation of contract, covenant, or trust, to carry out the purposes of this section in the amount necessary. Failure by the university to perform any act authorized by this paragraph shall not constitute a cause of action against the university or its members, officers, or employees.

History.—s. 17, ch. 79-222.

240.233 Universities; admissions of students.—The university shall govern admissions of students, subject to minimum standards adopted by the Board of Regents.

(1) Each university shall develop academic standards for admission to the university. These standards shall include the requirement that no person shall be admitted, enrolled, or matriculated who has not received a high school diploma or its equivalent, except as provided in s. 240.115(3).

(2) Nonresident students may be admitted to the university upon such terms as the university may establish.

(3) Consideration shall be given to the past actions of any person applying for admission as a student to any state university, either as a new applicant, an applicant for continuation of studies, or a transfer student, when such actions have been found to disrupt or interfere with the orderly conduct, processes, functions, or programs of any other university, college, or community college.

(4) In any application for admission by a student as a citizen of the state, the applicant, if 18 years of age, or, if a minor, his parents or guardian shall make and file with such application a written statement under oath that such applicant is a citizen and resident of the state and entitled, as such, to admission upon the terms and conditions prescribed for citizens and residents of the state.

(5) Rules of the Board of Regents, when approved by the State Board of Education, may require the use of scores on tests of college-level communication and computation skills provided in s. 229.551 as a condition of eligibility for consideration for admission to upper division instructional programs of students from community colleges, including those who have been awarded associate degrees, provided that such requirement extends to students enrolled in lower divisions in the State University System and to transfers from other colleges and universities and provided, further, that any cutoff scores required for eligibility for consideration relate to successful student performance in programs to which the scores apply and are filed with the Articulation Coordinating Committee.

History.—s. 18, ch. 79-222.

240.235 Fees.—

(1) The student activity and service fee shall be collected as a component part of the registration and tuition fees. The student activity and service fees shall be paid into a student activity and service fund at the university and shall be expended for lawful purposes to benefit the student body in general. This shall include, but not be limited to, student publications and grants to duly recognized student organizations, the membership of which is open to all students at the university without regard to race, sex, or religion. The fund shall not benefit activities for which an admission fee is charged to students, except for intercollegiate athletics. The allocation and expenditure of the fund shall be determined by the student government association of the university, except that the president of the university may veto any line item or portion thereof within the budget as determined by the student government association legislative body. The president of the university may reallocate the funds to the health service, intercollegiate athletics, or current bond obligations. Unexpended funds and undisbursed funds remaining at the end of a fiscal year shall be carried over and remain in the student activity and service fund and be available for allocation and expenditure during the next fiscal year.

(2) The university may permit the deferral of registration and tuition fees for those students receiving financial aid from federal or state assistance programs when such aid is delayed in being transmitted to the student through circumstances beyond the control of the student. Failure to make timely application for such aid shall be insufficient reason to receive such deferral.

(a) Veterans and other eligible students receiving benefits under chapter 32, chapter 34, or chapter 35, 38 U.S.C., shall be entitled to one deferment each academic year and an additional deferment each time there is a delay in the receipt of their benefits.

(b) The university is required to enforce the collection of or otherwise settle delinquent accounts.

(3) Any dependent child of a special risk member as defined in s. 121.021(15) shall be entitled to a full waiver of undergraduate fees if the special risk member was killed in the line of duty. This waiver shall apply until the child's 25th birthday. To qualify for this waiver, the child shall be required to meet regular admission requirements.

History.—s. 19, ch. 79-222.

240.237 Student records.—The university may prescribe the content and custody of records and reports which the university may maintain on its students. Such records shall be open to inspection only as provided in s. 228.093 or upon order of a court of competent jurisdiction.

History.—s. 15, ch. 73-338; s. 3, ch. 77-60; s. 26, ch. 79-222.
Note.—Former s. 239.77.

240.239 Associate of Arts degrees; issuance.—

(1) The purpose of this section is to require state universities to present Associate of Arts certificates upon request to qualified students.

(2) Students at state universities may request Associate of Arts certificates if they have successfully completed the minimum requirements for the degree of Associate of Arts (A.A.).

(3) Associate of Arts degrees shall not be granted unless a student has successfully completed a minimum of 60 academic semester hours or the equivalent, with not less than 36 of the semester hours in general education courses such as communications, mathematics, social sciences, humanities, and natural sciences.

History.—ss. 1-4, ch. 71-178; s. 28, ch. 79-222.
Note.—Former s. 241.478.

240.241 Divisions of sponsored research at state universities.—

(1) Each university, with the approval of the Department of Education, is authorized to create, as it deems advisable, divisions of sponsored research which will serve the function of administration and promotion of the programs of research, including sponsored training programs, of the university at which they are located.

(2) The university shall set such policies to regulate the activities of the divisions of sponsored research as it may consider necessary to effectuate the purposes of this act and to administer the research programs in a manner which assures efficiency and effectiveness, producing the maximum benefit for the educational programs and maximum service to the state.

(3) A division of sponsored research created under the provisions of this act shall be under the supervision of the president of that university, who is authorized to appoint a director; to employ full-time and part-time staff, research personnel, and professional services; to employ on a part-time basis personnel of the university; and to employ temporary employees whose salaries are paid entirely from the permanent sponsored research development fund or from that fund in combination [1]with other nonstate sources, with such positions being exempt from the requirements of the Florida Statutes relating to salaries, except that no such appointment shall be made for a total period of longer than 1 year.

(4) The president of the university where a division of sponsored research is created is authorized to negotiate, enter into, and execute research contracts; to solicit and accept research grants and donations; and to fix and collect fees, other payments, and donations that may accrue by reason thereof.

(5) A division of sponsored research shall be financed from the moneys of a university which are on deposit or received for use in the research or related programs of that particular university. Such moneys shall be deposited by the university in a permanent sponsored research development fund in a depository or depositories approved for the deposit of state funds and shall be accounted for and disbursed subject to regular audit by the Auditor General.

(6) The fund balance on hand in any existing research trust fund in the respective university, at the time a division of sponsored research is created, shall be transferred to a permanent sponsored research development fund established for the university, and thereafter the fund balance of said sponsored research development fund at the end of any fiscal period may be used during any succeeding period for the purposes and in the manner authorized by this act.

(7) Moneys deposited in the permanent sponsored research development fund of a university shall be disbursed in accordance with the terms of the contract, grant, or donation under which they are received. Moneys received for overhead or indirect costs and other moneys not required for the payment of direct costs shall be applied to the cost of operating the division of sponsored research. Any surplus moneys shall be used to support other research programs in any area of the university. Moneys allocated for the salaries of regular university employees shall be transferred to the appropriate fund of a university and shall be paid out by the Comptroller in the same manner as salaries for other university employees. Transportation and per diem expense allowances shall be the same as those provided by law for state employees in s. 112.061.

(8)(a) Each university shall submit to the Board of Regents a report of the activities of each division of sponsored research together with an estimated budget for the next biennium.

(b) Not less than 90 days prior to the convening of each regular session of the Legislature in which an appropriation shall be made, the Board of Regents shall submit to the chairman of the appropriations committee of each house of the Legislature a compiled report, together with a compiled estimated budget for the next biennium. A copy of such report and estimated budget shall be furnished to the State Board of Education and to the Governor, as the chief budget officer of the state.

(9) All purchases of a division of sponsored research shall be made in accordance with the policies and procedures of the university; however, in compliance with policies and procedures established by the university and concurred in by the Department of Education, whenever a director of sponsored research shall certify to the president that, in a particular instance, it is necessary for the efficient or expeditious prosecution of a research project, the purchase of material, supplies, equipment, or services for research purposes shall be exempt from the general purchasing requirement of the Florida Statutes.

(10) The university may authorize the construction, alteration, or remodeling of buildings when the funds used are derived entirely from the sponsored research development fund of a university or from that fund in combination [1]with other nonstate sources, provided that such construction, alteration,

or remodeling is for use exclusively in the area of research; it also may authorize the acquisition of real property when the cost is entirely from said funds. Title to all real property shall vest in the Board of Trustees of the Internal Improvement Trust Fund and shall only be transferred or conveyed by it.

(11) The sponsored research programs of the Institute of Food and Agricultural Sciences and the engineering and industrial experiment station shall continue to be centered at the University of Florida as heretofore provided by law.

(12) The operation of the divisions of sponsored research and the conduct of the sponsored research program are hereby expressly exempted from the provisions of any other laws or portions of laws in conflict herewith and are, subject to the requirements of subsection (9), exempted from the provisions of chapters 215, 216, and 283.

History.—ss. 1-12, ch. 63-534; s. 18, ch. 65-130; s. 1, ch. 67-90; ss. 2, 3, ch. 67-371; s. 8, ch. 69-82; ss. 15, 31, 35, ch. 69-106; s. 76, ch. 77-104; s. 5, ch. 77-320; s. 29, ch. 79-222.

[1]**Note.**—The word "with" was substituted for "and" by the editors.

Note.—Former s. 241.621.

240.243 Required number of classroom teaching hours for university faculty members.—

(1) As used in this section:

(a) "State funds" means those funds appropriated annually from the General Revenue Fund and Incidental Trust Fund for institutional and research functions and, in the case of a health center, those funds appropriated from the General Revenue Fund and Operations and Maintenance Trust Fund for the same purposes.

(b) "Classroom contact hour" means a regularly scheduled 1-hour period of classroom activity in a course of instruction which has been approved by the university.

(2) Each full-time equivalent teaching faculty member at a university who is paid wholly from state funds shall teach a minimum of 12 classroom contact hours per week at such university. However, any faculty member who is assigned by his departmental chairman or other appropriate university administrator professional responsibilities and duties in furtherance of the mission of the university shall teach a minimum number of classroom contact hours in proportion to 12 classroom hours per week as such especially assigned aforementioned duties and responsibilities bear to 12 classroom contact hours per week. Any full-time faculty member who is paid partly from state funds and partly from other funds or appropriations shall teach a minimum number of classroom contact hours in such proportion to 12 classroom contact hours per week as his salary paid from state funds bears to his total salary. In determining the appropriate hourly weighting of assigned duties other than classroom contact hours, the universities shall develop and apply a formula designed to equate the time required for nonclassroom duties with classroom contact hours. "Full-time equivalent teaching faculty member" shall be interpreted to mean all faculty personnel budgeted in the instruction and research portion of the budget, exclusive of those full-time equivalent positions assigned to research, public service, administrative duties, and academic advising. Full-time administrators, librarians, and counselors shall be exempt from the provisions of this section; and colleges of medicine and law and others which are required for purposes of accreditation to meet national standards prescribed by the American Medical Association, the American Bar Association, [1]or other professional associations shall be exempt from the provisions of this section to the extent that the requirements of this section differ from the requirements of accreditation.

History.—ss. 1, 2, ch. 71-365; s. 2, ch. 73-338; s. 30, ch. 79-222.

[1]**Note.**—The word "or" was substituted for "and" by the editors.

Note.—Former s. 241.73.

240.245 Evaluations of faculty members; report.—

(1) For the purpose of evaluating faculty members, each university shall adopt procedures for the assignment of duties and responsibilities to faculty members. These assigned duties or responsibilities shall be conveyed to each faculty member at the beginning of each academic term, in writing, by his departmental chairman or other appropriate university administrator making the assignment. In evaluating the competencies of a faculty member, primary assessment shall be in terms of his performance of the assigned duties and responsibilities, and such evaluation shall be given adequate consideration for the purpose of salary adjustments, promotions, reemployment, and tenure. A faculty member who is assigned full-time teaching duties as provided by law shall be rewarded with salary adjustments, promotions, reemployment, or tenure for meritorious teaching and other scholarly activities related thereto.

(2) Each university shall ensure that the following policies are implemented:

(a) Flexible criteria for rewarding faculty members, consistent with the university's educational goals and objectives, shall be established, which criteria shall include quality teaching as a major factor in determining salary adjustments, promotions, reemployment, or tenure.

(b) Measures shall be taken to increase the recognition, reinforcements, and rewards given quality teaching. Such measures might include grants for professional development, curriculum improvement, and instructional innovation, as well as awards of varying kinds for meritorious teaching.

(c) The means of identifying and evaluating quality teachers shall be determined in accordance with established guidelines of the university.

History.—s. 3, ch. 73-338; s. 31, ch. 79-222.

Note.—Former s. 241.731.

240.247 Salary discrimination based on sex; program to eradicate within certain faculty ranks.—Each university and the Board of Regents central office is directed to undertake a program to eradicate discrimination on the basis of sex in the granting of salaries for the faculty ranks of professor, associate professor, assistant professor, and instructor.

History.—s. 1, ch. 76-241; s. 1, ch. 77-174; s. 32, ch. 79-222.

Note.—Former s. 241.735.

240.253 Personnel records.—The university may prescribe the content and custody of limited access records which the university may maintain on its employees. Such records shall be limited to information reflecting evaluations of employee performance and shall be open to inspection only by the employee and by officials of the university who are responsible for supervision of the employee. Except as required for use by the president in the discharge of his official responsibilities, the custodian of limited access employee records may release information from such records only upon authorization, in writing, from the employee or upon order of a court of competent jurisdiction.

History.—s. 16, ch. 73-338; s. 27, ch. 79-222.
Note.—Former s. 239.78.

240.257 Florida Endowment Trust Fund for Eminent Scholars Act.—

(1) SHORT TITLE.—This section shall be known and may be cited as the "Florida Endowment Trust Fund for Eminent Scholars Act."

(2) LEGISLATIVE INTENT.—The Legislature recognizes that the State University System would be greatly strengthened by the addition of distinguished scholars. It further recognizes that private support as well as state support is preferred in helping to obtain distinguished scholars for the state universities and that private support will help strengthen the commitment of citizens and organizations in promoting excellence throughout all state universities. It is therefore the intent of the Legislature to establish a trust fund to provide the opportunity to each state university to receive and match challenge grants to create endowments for selected eminent scholars to occupy chairs within the university. The associated foundations that serve the universities shall have the responsibility for maintaining and investing their shares of the trust fund and shall solicit and receive gifts from private sources to provide for matching funds to the trust fund challenge grants for the establishment of endowments for chairs within universities.

(3) ESTABLISHMENT OF THE TRUST FUND.—There is established a Trust Fund for Eminent Scholars to be divided into challenge grants to be allocated to and administered by the associated foundation that serves each university. The Legislature shall designate funds to be transferred to the trust fund from the General Revenue Fund.

(4) ALLOCATION AND ADMINISTRATION OF THE TRUST FUND.—

(a) For the duration of the program, each university shall be eligible to match one-ninth of the funds provided. The amount appropriated to the trust shall be allocated by the Board of Regents to each university on the basis of one $400,000 challenge grant for each $600,000 raised from private sources. If a university chooses to pursue the use of the allocated challenge grant funds, such funds shall be matched on a 1½ to 1 basis. Matching funds shall come from contributions made after July 1, 1979, and pledged for the purposes of the act. To be eligible, such contributions must be in excess of the total average annual level of contributions made to the foundation in the 3 fiscal years prior to July 1, 1979. All funds collected by each foundation as matching funds for the challenge grant shall be added to the trust fund to provide for the establishment of an endowment for the specified university. Once the income from the endowment can be effectively utilized pursuant to subsection (5), the university shall proceed to implement plans for establishing an endowed chair. Any allocated funds which remain unmatched 4 years from the date of appropriation shall revert to the Board of Regents for reallocation. No funds accruing to the New College Foundation of the University of South Florida for its separate endowment program shall qualify for an endowed chair as provided for in this act.

(b) The foundation serving a university shall have the responsibility for the maintenance and investment of its share of the allocated trust fund and for the administration of the program at that university. The governing board of each foundation shall be responsible for soliciting and receiving gifts to be used as matching funds to be deposited and matched with the challenge grants for the establishment of the endowments for the specified university. Funds collected by the foundation as matching funds for the challenge grant shall be placed in the trust fund and credited to the endowment for the specified university. Once an endowment is established and operating, there may be further challenge grants to be matched for the establishment of more chairs. Each foundation shall include in its annual report to the Board of Regents information concerning collection and investment of matching gifts and donations and investment of the trust fund.

(5) ESTABLISHMENT OF CHAIRS.—When the sum of the challenge grant and matching funds reaches $1,000,000, the foundation and the president of the university may recommend to the Board of Regents, for its approval, the establishment of an endowed chair. The Board of Regents must then approve the recommendation, considering the existing programs of the State University System, in order for the chair to be established. The chair, which is then the property of the university, may be named in honor of a donor, benefactor, or honoree of the university, at the option of the foundation.

(6) SELECTION OF EMINENT SCHOLARS.—

(a) The president shall be responsible for the final approval of criteria to be used in the selection process.

(b) Presidents of the universities shall nominate individuals for consideration as candidates, or individuals may apply to the foundation for consideration as candidates. Candidates for the chairs may or may not be currently employed as faculty members of the granting institutions; however, a candidate not so employed must become employed as a faculty member by the granting institution upon acceptance of the chair.

(c) The president of the university shall establish a committee to process each application or nomination. The committee shall consist of at least the following: one member appointed by student government; two faculty members appointed by the president; and four members appointed by the foundation, one of whom shall be an alumnus of the university. The committee shall recommend to the president for his approval one or more eligible candidates.

The president shall select the candidate to be offered the chair. If a candidate is not selected by the president or if the approved candidate does not accept the chair, the selection process shall be repeated.

(d) The proceeds of the endowment may be used as salaries or a supplement for salaries and associated with the holder of the chair's scholarly work.

History.—s. 123, ch. 79-222.

240.261 Disciplinary rules.—

(1) Each university may adopt, by rule, a uniform code of appropriate penalties for violations of rules by students and employees, to be administered by the president of each university. Such penalties, unless otherwise provided by law, may include fines, the withholding of diplomas or transcripts pending compliance with rules or payment of fines, and the imposition of probation, suspension, or dismissal.

(2) The university shall adopt rules for the lawful discipline of any student, faculty member, or member of the administrative staff who intentionally acts to impair, interfere with, or obstruct the orderly conduct, processes, and functions of a state university. Said rules may apply to acts conducted on or off campus when relevant to such orderly conduct, processes, and functions.

History.—s. 25, ch. 79-222.

240.263 Regulation of traffic at universities; definitions.—

(1) In construing ss. 240.263-240.268:

(a) "Traffic," when used as a noun, means the use or occupancy of, and the movement in, on, or over, streets, ways, walks, roads, alleys, and parking areas by vehicles, pedestrians, or ridden or herded animals.

(b) "Adjacent municipality" means a municipality which is contiguous or adjacent to, or which contains within its boundaries all or part of the grounds of, a university; except that, if the grounds of a university are not within or contiguous to a municipality, "adjacent municipality" means the county seat of the county which contains within its boundaries all or part of the grounds of the university.

(c) "Grounds" includes all of the campus and grounds of the university, whether it be the campus proper or outlying or noncontiguous land of the university within the county.

(d) "Law enforcement officers" include municipal police, patrolmen, traffic officers, sheriffs, deputies, highway patrol officers, and county traffic officers assigned to duty on the grounds of the university, as well as campus police, traffic officers, guards, parking patrollers, and other noncommissioned personnel designated for traffic purposes by the university.

(e) "University traffic infraction" means a noncriminal violation of university parking and traffic rules which is not included under s. 318.14 or s. 318.17 or any municipal ordinance, which is not punishable by incarceration, and for which there is no right to trial by jury or to court-appointed counsel.

(f) "Traffic authority" means an individual or a group of individuals at each university, authorized and appointed by the president of the university to adjudicate university traffic infractions.

(2) A traffic rule shall be deemed promulgated when adopted by the individual institution.

History.—s. 1, ch. 29723, 1955; s. 18, ch. 65-130; s. 1, ch. 67-481; ss. 15, 35, ch. 69-106; s. 1, ch. 77-58; s. 33, ch. 79-222.
Note.—Former s. 239.53.

240.264 Rules of universities; municipal ordinances.—Each university shall adopt rules which govern traffic on the grounds of that university; which provide penalties for the infraction of such traffic rules; and which the university finds necessary, convenient, or advisable for the safety or welfare of the students, faculty members, or other persons. Copies of such rules shall be posted at the university on public bulletin boards where notices are customarily posted, filed with the city clerk or corresponding municipal or county officer, and made available to any person requesting same. When adopted, said rules shall be enforceable as herein provided. All ordinances of the adjacent municipality relating to traffic which are not in conflict or inconsistent with the traffic rules adopted by the individual university shall extend and be applicable to the grounds of the university. The provisions of chapter 316 shall extend and be applicable to the grounds of the university, and the rules adopted by the individual university shall not conflict with any section of that chapter.

History.—s. 2, ch. 29723, 1955; s. 18, ch. 65-130; ss. 15, 35, ch. 69-106; s. 2, ch. 77-58; s. 1, ch. 77-119; s. 34, ch. 79-222.
Note.—Former s. 239.54.

240.265 Violations; penalties.—Any person who violates any of those rules adopted by the individual institution shall be deemed to have committed a university traffic infraction and shall be fined or penalized as provided by the rules adopted by the institution. Any person who violates any traffic regulation enumerated in chapter 316 shall be charged, and the cause shall proceed, in accordance with chapters 316 and 318.

History.—s. 3, ch. 29723, 1955; s. 9, ch. 74-377; s. 3, ch. 76-31; s. 3, ch. 77-58; s. 35, ch. 79-222.
Note.—Former s. 239.55.

240.266 Payment of fines; jurisdiction and procedures of university traffic authority; campus violation fines.—

(1) A person charged with a university traffic infraction shall elect the option prescribed in paragraph (a) or the option prescribed in paragraph (b). If neither option is exercised within the prescribed time by the person charged with a university traffic infraction, an additional fine or penalty may be assessed, and shall be payable, in accordance with the rules of the university.

(a) The person charged may pay the applicable infraction fine, either by mail or in person, within the time period specified in the rules of the individual university. A schedule of infraction fines applicable to each university shall be adopted by the university.

(b) The person charged may elect to appear before the university traffic authority for administrative determination pursuant to procedures enumerated in the rules of such university.

(2) Each university is authorized to approve the

establishment of a university traffic authority to hear violations of traffic rules. In such cases as come before the authority, the university traffic authority shall determine whether the person is guilty or not guilty of the charge. In the case of a finding of guilt, the authority shall, in its discretion, impose an appropriate penalty pursuant to s. 240.265.

(3) This section shall provide the exclusive procedures for the adjudication of university traffic infractions.

History.—s. 4, ch. 29723, 1955; s. 18, ch. 65-130; s. 1, ch. 69-209; ss. 15, 35, ch. 69-106; s. 4, ch. 77-58; s. 1, ch. 77-119; s. 36, ch. 79-222; s. 106, ch. 79-400.
Note.—Former s. 239.56.

240.267 Use of traffic and parking moneys.—Moneys collected from parking assessments and infraction fines shall be deposited in appropriate funds and shall be used to defray the administrative and operating costs of the traffic and parking program at the institution, to provide for additional parking facilities on campus, or for student loan purposes.

History.—s. 5, ch. 29723, 1955; s. 5, ch. 77-58; s. 1, ch. 77-119; s. 37, ch. 79-222.
Note.—Former s. 239.57.

240.268 University police officers.—

(1) Each university is empowered and directed to provide for police officers for the university, and said police officers shall hereafter be known and designated as the "university police."

(2) The university police are hereby declared to be law enforcement officers of the state and conservators of the peace with the right to arrest, in accordance with the laws of this state, any person for violation of state law or applicable county or city ordinances when such violations occur on any property or facilities which are under the guidance, supervision, regulation, or control of the State University System, except that arrests may be made off campus when hot pursuit originates on campus. Said officers shall have full authority to bear arms in the performance of their duties and to execute search warrants within their territorial jurisdiction. University police, when requested by the sheriff or local police authority, may serve subpoenas or other legal process and may make arrests of persons against whom a warrant has been issued or any charge has been made of violation of federal or state laws or county or city ordinances.

(3) University police shall promptly deliver all persons arrested and charged with a felony to the sheriff of the county within which the university is located, and all persons arrested and charged with misdemeanors shall be delivered to the applicable authority as may be provided by law, but otherwise to the sheriff of the county in which the university is located.

(4) University police shall meet the minimum standards established by the Police Standards and Training Commission and chapter 943. Each police officer shall, before entering into the performance of his duties, take the oath of office as established by the university, and the university shall enter into a good and sufficient bond on each officer, payable to the Governor and his successors in office, in the penal sum of $5,000 with a surety company authorized to do business in this state as surety thereon, conditioned on the faithful performance of the duties of said university police officer. The university shall provide a uniform set of identification credentials for each university police officer.

(5) In performance of any of the powers, duties, and functions authorized by law or this section, university police shall have the same rights, protections, and immunities afforded other peace or law enforcement officers.

(6) The university, in concurrence with the Department of Law Enforcement, shall adopt rules, including, but not limited to, the appointment, employment, and removal of university police in accordance with the State Career System, and, further, establish in writing a policy manual, including, but not limited to, routine and emergency law enforcement situations. A policy manual shall be furnished to each university police officer.

History.—s. 6, ch. 29723, 1955; s. 1, ch. 63-22; s. 18, ch. 65-130; ss. 15, 35, ch. 69-106; s. 1, ch. 70-414; s. 1, ch. 70-439; s. 1, ch. 72-263; s. 1, ch. 77-174; s. 11, ch. 79-8; s. 38, ch. 79-222; s. 107, ch. 79-400.
Note.—Former s. 239.58.

240.271 State University System; funding.—

(1) Planned enrollments for each university as accepted or modified by the Legislature and program cost categories shall be the basis for the allocation of appropriated funds to the universities.

(2) In addition to enrollment-based appropriations, categorical programs shall be established in the State University System which are not directly related to student enrollment. Such programs shall be based upon the assigned missions of the institutions and shall include, but not be limited to, research and public service programs. Appropriations by the Legislature and allocations by the board shall be based upon full costs, as determined pursuant to subsection (1), and priorities established by the Legislature.

(3) The Legislature by line item in an appropriations act may identify programs of extraordinary quality for the utilization of state funds to be matched by nonstate and nonfederal sources.

(4) The Board of Regents shall establish a cost-estimating system consistent with the requirements of subsection (1) and shall report as part of its legislative budget request the actual expenditures for the fiscal year ending the previous June 30. The report shall include total expenditures from all sources and shall be in such detail as needed to support the legislative budget request.

(5) If the actual enrollment for any university is less than the planned enrollment by 0 to 5 percent for any fiscal year, and no more than 8 percent less for any biennium, the university shall receive full funding as allocated. If the actual enrollment is less than planned enrollment by more than 5 percent for any fiscal year or more than 8 percent for any biennium, the university's allocation for instruction shall be reduced proportionately to the difference between 5 percent and the actual percentage reduction in enrollment for any fiscal year, or the difference between 8 percent and the actual percentage reduction in enrollment for the biennium, whichever is larger. If actual enrollment exceeds target enrollment, there shall be no increased allocation, and an explanation of the excess shall be provided with the next year's enrollment plan.

(6) For the 1979-1981 biennium, any quality improvement funds appropriated by the Legislature for

the State University System and referenced to this section shall be allocated in the following manner:

(a) All disciplines shall be categorized as follows:

1. Category I-The laboratory sciences and technical disciplines.

2. Category II-The professional and education disciplines.

3. Category III-The fine arts and foreign language disciplines.

4. Category IV-All other disciplines.

5. Category V-Law.

(b) For allocation purposes, the Board of Regents shall divide any quality improvement funds among the different levels and categories in the following manner:

	Percentage
1. Lower level: category I	5
2. Lower level: category II	3
3. Lower level: category III	2
4. Lower level: category IV	9
5. Upper level: category I	11
6. Upper level: category II	23
7. Upper level: category III	4
8. Upper level: category IV	18
9. Beginning graduate: category I	2
10. Beginning graduate: category II	9
11. Beginning graduate: category III	0.5
12. Beginning graduate: category IV	2
13. Beginning graduate: category V	3
14. Advanced graduate: category I	2
15. Advanced graduate: category II	4
16. Advanced graduate: category III	0.5
17. Advanced graduate: category IV	2

(c) Each university shall receive funds for quality improvement in a lump sum allocation for each fiscal year of the biennium and shall expend these funds in accordance with cost data analysis and university priorities in conformance with the system-wide and university master plans.

(d) However, any increase in salary rate resulting from new positions shall not exceed 25 percent of each university's total allocation for quality improvement.

(7) The enrollment planning plus program cost data established by this section may be phased in as practicable during the 1979-1981 biennium but shall be used as the basis for preparing the legislative budget requests for succeeding bienniums.

History.—s. 39, ch. 79-222.

240.273 Property applied to the State University System; apportionment.—All funds, appropriations, and real property of every nature and description which may come to the state for higher education, or which may lawfully be applied to the promotion or advancement of higher education in this state, shall be held and allocated by the Department of Education in conjunction with the Board of Regents. Such funds shall be distributed as deemed appropriate in the judgment of said department and board for the support and maintenance of the State University System.

History.—s. 90, ch. 79-222.

240.277 Additional appropriation.—All moneys received by the institutions under the management of the State Board of Regents, other than from state and federal sources, are hereby appropriated to the use of the State Board of Regents, for the respective institutions collecting same, to be expended as the State Board of Regents may direct; however, said funds shall not be expended except in pursuance of detailed budgets filed with and approved by the Executive Office of the Governor and shall not be expended for the construction or reconstruction of buildings except as provided under s. 240.141.

History.—s. 5, ch. 28115, s. 1, ch. 28231, 1953; s. 1, ch. 57-400; s. 1, ch. 61-500; s. 4, ch. 65-123; ss. 2, 3, ch. 67-371; ss. 31, 35, ch. 69-106; s. 111, ch. 79-190; s. 11, ch. 79-222.

Note.—Former s. 240.091; s. 216.28; s. 240.082.

240.279 Working capital trust funds established.—

(1) The Board of Regents, with the approval of the Administration Commission, is hereby authorized to establish in the State Treasury a working capital trust fund for each of the individual institutions in the university system for the purpose of providing central financing and cost controls for certain general services necessary to the operation of all departments of the respective universities, including the auxiliary enterprises.

(2) All costs of work performed and services rendered in providing the said services shall be paid from the working capital trust fund. The departments and enterprises shall be billed periodically, at least once each month or as nearly so as is reasonably practical, for services rendered at actual cost, including reasonable overhead and depreciation charges, and payments by the departments and enterprises shall be deposited into the working capital trust fund to be available for financing other work and services as required.

History.—ss. 1-5, ch. 29800, 1955; s. 7, ch. 57-400; s. 1, ch. 59-254; s. 2, ch. 61-119; s. 18, ch. 65-130; s. 2, ch. 67-129; ss. 2, 3, ch. 67-371; ss. 31, 35, ch. 69-106; s. 114, ch. 79-190; s. 10, ch. 79-222.

Note.—Former s. 241.63.

240.281 Deposit of funds received by institutions and agencies in the State University System.—All funds received by any institution or agency in the State University System, from whatever source received and for whatever purpose, shall be deposited in the State Treasury subject to disbursement in such manner and for such purposes as the Legislature may by law provide. The following funds shall be exempt from the provisions of this section and, with the approval of the Board of Regents, may be deposited outside of the State Treasury:

(1) Student deposits.

(2) Scholarship funds from private sources.

(3) Student loan funds.

(4) Contractor's bid deposits.

(5) Vending machine collections.

(6) Alumni association funds.

(7) Funds received from private sources as gifts, grants, bequests, or donations.

(8) Such other funds as may be approved by the Board of Regents and the Executive Office of the Governor.

History.—s. 2, ch. 63-204; s. 1, ch. 67-129; ss. 2, 3, ch. 67-371; ss. 31, 35, ch. 69-106; s. 3, ch. 74-312; s. 112, ch. 79-190; s. 12, ch. 79-222.

Note.—Former s. 240.095.

240.283 Extra compensation for university employees.—Notwithstanding the provisions of s. 216.262(1)(d), the presidents of the several universities are authorized to approve additional compensation for university employees as provided by rules adopted by the Board of Regents; however, an annual report of such actions shall be made to the President of the Senate and the Speaker of the House of Representatives.

History.—s. 14, ch. 79-222.

240.285 Transfer of funds.—Notwithstanding the limitations of s. 216.292(2)(a), the State University System is authorized to transfer up to 15 percent from salaries to other personal services; however an annual report of such actions shall be made to the President of the Senate and the Speaker of the House of Representatives.

History.—s. 15, ch. 79-222.

240.287 Investment of university agency and activity funds; earnings used for scholarships.—Each university is authorized to invest available agency and activity funds and to use the earnings from such investments for student scholarships and loans. The university shall provide procedures for the administration of these scholarships and loans by rules.

History.—s. 22, ch. 79-222.

240.289 Credit card use in university system; authority.—The several universities in the State University System are authorized to enter into agreements and accept credit card payments as compensation for goods, services, tuition, and fees; however, no discount shall be given and no service charge assessed. Each university is further authorized to establish accounts in credit card banks for the deposit of credit card sales invoices.

History.—s. 1, ch. 74-312; s. 1, ch. 77-298; s. 95, ch. 79-222.
Note.—Former s. 239.665.

240.291 Delinquent accounts.—

(1) Each university is directed to exert every effort to collect all delinquent accounts.

(2) Each university is authorized to charge off or to settle such accounts as may prove uncollectible.

(3) The board is authorized to employ the service of a collection agency when deemed advisable in collecting delinquent accounts.

History.—s. 2, ch. 63-204; s. 2, ch. 77-309; s. 24, ch. 79-222; s. 110, ch. 79-400.
Note.—Former s. 240.103.

240.293 Contracts of institutions for supplies, etc., exempt from operation of county or municipal ordinance or charter.—

(1) The state universities are authorized to contract for supplies, utility services, and building construction without regulation or restriction by municipal or county charter or ordinance. Contractual arrangements shall be in the best interests of the state and shall give consideration to rates, adequacy of service, and the dependability of the contractor.

(2) Any municipal or county charter, ordinance, or regulation that serves to restrict or prohibit the intent of subsection (1) shall be inoperative.

History.—ss. 1, 2, ch. 61-507; s. 18, ch. 65-130; ss. 15, 35, ch. 69-106; s. 94, ch. 79-222.
Note.—Former s. 239.65.

240.295 State University System buildings; approval of construction.—

(1) No building facilities, except as hereinafter provided, shall be constructed or added to by the State University System without prior approval of the Legislature.

(2) This section shall not be construed to prohibit:

(a) Construction of any new buildings from nonstate sources such as federal grant funds, private gifts, grants, or lease arrangements;

(b) The replacement of any buildings destroyed by fire or other calamity;

(c) Construction of dormitories or other auxiliary accommodations financed as provided in s. 243.131; or

(d) Construction of new buildings to meet needs as determined by the university; however, the amount of state funds included in the total cost of the completed building shall not exceed $50,000.

History.—s. 2, ch. 63-204; s. 3, ch. 67-97; s. 11, ch. 75-302; s. 102, ch. 79-222.
Note.—Former s. 240.141.

240.297 Applicability of certain sections.—Unless otherwise specified, only the following sections of chapter 235 shall apply to a university: ss. 235.014, 235.02, 235.055, 235.065, 235.14, 235.149, 235.15, 235.155, 235.16, 235.18, 235.19, 235.195, 235.211(2) and (3), 235.34, 235.41, 235.42, 235.4235, and 235.435.

History.—s. 2, ch. 77-458; s. 103, ch. 79-222.
Note.—Former s. 240.0421.

240.299 Direct-support organizations; use of property; audit; status.—

(1) DEFINITIONS.—For the purposes of this section:

(a) "University direct-support organization" means an organization which is:

1. A Florida corporation not for profit incorporated under the provisions of chapter 617 and approved by the Department of State;

2. Organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university in Florida; and

3. An organization which the Board of Regents, after review, has certified to be operating in a manner consistent with the goals of the university and in the best interest of the state. Any organization which is denied certification by the Board of Regents shall not use the name of the university which it serves.

(b) "Personal services" includes full-time or part-time personnel as well as payroll processing.

(2) USE OF PROPERTY.—

(a) The Board of Regents is authorized to permit the use of property, facilities, and personal service at any state university by any university direct-support organization, subject to the provisions of this section.

(b) The Board of Regents is authorized to prescribe by rule any condition with which a university

direct-support organization must comply in order to use property, facilities, or personal services at any state university.

(c) The Board of Regents shall not permit the use of property, facilities, or personal services at any state university by any university direct-support organization which does not provide equal employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.

(3) ANNUAL AUDIT.—Each direct-support organization shall make provisions for an annual postaudit of its financial accounts to be conducted by an independent, certified public accountant in accordance with rules to be promulgated by the Board of Regents. The annual audit report shall be submitted to the Auditor General and the Board of Regents for review. The Board of Regents and the Auditor General shall have the authority to require and receive from the organization or from its independent auditor any detail or supplemental data relative to the operation of the organization. The identity of donors who desire to remain anonymous shall be protected and that anonymity shall be maintained in the auditor's report. All records of the organization other than the auditor's report and supplemental data requested by the Board of Regents and the Auditor General shall not be considered public records for the purposes of chapter 119.

History.—s. 10, ch. 75-302; s. 21, ch. 79-222.
Note.—Former s. 240.182.

PART III

COMMUNITY COLLEGE SYSTEM

240.301 Community College System defined.—State community colleges shall consist of all public educational institutions operated by community college district boards of trustees under statutory authority and rules of the State Board of Education and shall maintain the primary responsibility for lower-level undergraduate instruction. A community college may be authorized by the State Board of Education to operate a department designated as an area-vocational education school and authorized to operate adult high schools. These institutions may grant the associate in arts and associate in science degrees, certificates, awards, and diplomas. The total program offerings of the community colleges may include, but not be limited to, courses as components of programs leading to the above-mentioned degrees, certificates, awards, and diplomas; vocational and technical offerings leading directly to employment; compensatory, adult basic, elementary, and secondary education; other general or liberal arts courses sought by the citizens of the community for personal development; and other community services.

History.—s. 41, ch. 79-222.

240.303 "Community college" and "junior college" used interchangeably.—Whenever the term "community college" appears in the Florida Statutes in reference to a tax-supported institution, it shall be construed to mean a "junior college."

History.—s. 5, ch. 70-198; s. 56, ch. 72-221; s. 42, ch. 79-222.
Note.—Former s. 230.741.

240.305 State Community College Coordinating Board; establishment.—There is established a State Community College Coordinating Board of the Department of Education with the necessary powers to exercise responsibility for statewide leadership in overseeing and coordinating the individually governed public community colleges. Nothing contained herein shall change the existing division of responsibilities between state agencies and local boards of trustees, and there shall continue to be maximum local autonomy in the governance and operation of individual community colleges. The board shall be subject at all times to the overall supervision of the State Board of Education.

History.—s. 43, ch. 79-222.

240.307 State Community College Coordinating Board; appointment of members; qualifications.—

(1) The State Community College Coordinating Board shall be comprised of 11 members appointed by the Governor, approved by four members of the State Board of Education, and confirmed by the Senate in regular session. The Commissioner of Education may nominate two or more [1]persons for each position, prior to appointment by the Governor. The State Board of Education shall adopt rules and procedures for its review and approval of nominees. Members shall have been residents and citizens of Florida for at least 10 years prior to appointment.

(a) All members shall be deemed to be members-at-large charged with the responsibility of serving the entire state.

(b) The coordinating board shall consist of at least nine incumbent members of community college boards of trustees at all times. The terms of initial membership shall be as follows: two members shall be appointed for 1 year, two members shall be appointed for 2 years, two members shall be appointed for 3 years, and three members shall be appointed for 4 years.

(c) Members of the board shall be appointed from four community college district groups as follows:

1. Three members shall be appointed from Group One, which consists of Brevard Community College, Broward Community College, Florida Junior College at Jacksonville, Hillsborough Community College, Miami-Dade Community College, Pensacola Junior College, and St. Petersburg Junior College.

2. Two members shall be appointed from Group Two, which consists of Daytona Beach Community College, Indian River Community College, Palm Beach Junior College, Polk Community College, Santa Fe Community College, Seminole Community College, and Valencia Community College.

3. Two members shall be appointed from Group Three, which consists of Central Florida Community College, Edison Community College, Gulf Coast Community College, Lake City Community College, Manatee Junior College, Okaloosa-Walton Junior College, and Tallahassee Community College.

4. Two members shall be appointed from Group Four, which consists of Chipola Junior College, Florida Keys Community College, Lake-Sumter Community College, North Florida Junior College, Pasco-Hernando Community College, St. Johns River Community College, and South Florida Junior College.

(d) One member shall be selected from the state at large. The term of initial membership shall begin on January 1, 1980, and shall be 4 years. Upon expiration of the term of initial membership, terms of office shall be for 4 years.

(e) One member shall be the president of the Florida Junior College Student Government Association. The term of office shall be 1 year. Such member shall be exempt from the aforementioned residency requirement.

(2) Each member shall serve until expiration of his term and until his successor is appointed and qualified, except in the case of an appointment to fill a vacancy, in which case the appointment shall be for the unexpired term, and except as otherwise provided by this section. The Governor shall fill all vacancies that may at any time occur therein, subject to the above approval and confirmation.

(3) Members may be removed for cause at any time upon the concurrence of a majority of the members of the State Board of Education.

(4) The members of the State Community College Coordinating Board shall receive no compensation but shall be paid travel and per diem as provided in s. 112.061 while in the performance of their duties and in traveling to, from, or upon the same.

History.—s. 44, ch. 79-222.
[1]Note.—The word "persons" was substituted for "names" by the editors.

240.309 State Community College Coordinating Board; organization; meetings; fiscal year.—

(1) The State Community College Coordinating Board shall, within 60 days after its appointment, organize, adopt a seal, and adopt rules for administration and procedures not inconsistent herewith and may from time to time amend such rules. At its organizational meeting, the board shall elect from among its members a chairman and vice chairman, each to serve for 1 year, and annually thereafter shall elect such officers who shall serve for 1-year terms until their successors are elected. At its organizational meeting, the board shall fix a date and place for its regular meetings. Six members shall constitute a quorum, and no meeting shall be held with less than a quorum present. The board may appoint members to such committees as it from time to time shall establish. Members of said committees may include persons who are not members of the board.

(2) Special meetings of the board may be called as provided by the board in its rules. Regular meetings of the board shall normally be held at the board's offices, which shall be in Leon County, but, whenever the convenience of the public may be promoted, the board may hold meetings, hearings, and proceedings at any other place in the state designated by the board.

(3) The board shall meet not less than four times in every fiscal year.

(4) The fiscal year of the board shall conform to the fiscal year of the state.

History.—s. 45, ch. 79-222.

240.311 State Community College Coordinating Board; powers and duties.—

(1) The State Community College Coordinating Board shall be responsible for the establishing and developing of rules and policies which will ensure the operation and maintenance of a State Community College System, as defined in s. 228.041(1)(b), in a coordinated, efficient, and effective manner. Such rules and policies shall be submitted to the State Board of Education for approval or amendment. If any rule is not disapproved by the State Board of Education within 30 days of its receipt by the State Board of Education, the rule shall be filed immediately with the Department of State. If any rule is amended by the State Board of Education, adoption of such rule shall be delayed until a subsequent meeting. Such rules and policies shall:

(a) Provide for each community college to offer educational training and service programs designed to meet the needs of both students and the communities served; however, a community college shall not be required to offer an occupational or adult basic education program when such program is already operating in the district.

(b) Ensure that rules and procedures of community college boards relating to admission to, enrollment in, employment in, and programs, services, functions, and activities of each college provide equal access and equal opportunity for all persons.

(c) Recommend to the State Board of Education minimum standards for the operation of each community college as required in s. 240.325, which standards may include, but not be limited to, general qualifications of personnel, budgeting, accounting and financial procedures, educational programs, student admissions and services, and community services.

(d) Establish an effective information system which will provide composite data about the community colleges and assure that special analyses and studies about the colleges are conducted, as necessary, for provision of accurate and cost-effective information about the colleges and about the community college system as a whole.

(e) Encourage the colleges and the system as a whole to cooperate with other educational institutions and agencies and with all levels and agencies of government in the interest of effective utilization of all resources, programs, and services.

(f) Establish criteria for making recommendations relative to modifying district boundary lines and for making recommendations upon all proposals for the establishment of additional centers or campuses for community colleges.

(2) The Commissioner of Education shall appoint, [1]and may suspend or dismiss, with concurrence of the board, a chief administrative officer, who shall be the director of the Division of Community Colleges. The chief administrative officer shall be responsible for the coordination of the State Community College System under policies and rules prescribed by the board; shall advise the board on all educational problems; shall supervise the board's statewide studies and make recommendations for plans to meet the state's obligations in community college education; shall serve as executive officer and as secretary to the board; shall attend, but not vote at, all meetings of the board except when on authorized leave; shall be in charge of the offices of the board; and shall be responsible for the preparation of reports and the collection and dissemination of data and other public information relating to the State Community College System. The board may, by rule, delegate to the chief administrative officer any of the powers and duties vested in or imposed upon it by this part. Under the supervision of the board, the chief administrative officer shall administer the provisions of this part and the rules established hereunder and all other applicable laws of the state.

(3) The board shall be responsible for reviewing and administering the state program of support for the State Community College System and, subject to existing law, shall:

(a) Review and approve all budgets and recommended budget amendments in the State Community College System.

(b) Recommend to the Commissioner of Education all requests for appropriations for inclusion in the Commissioner of Education's budget presentation to the Governor, as chief budget officer of the state, in the manner provided in chapter 216.

(c) Provide for and coordinate implementation of the community college program fund in accordance with provisions of ss. 240.359 and 240.323 and in accordance with rules of the State Board of Education.

(4) The board is authorized to exercise any other powers, duties, and responsibilities necessary to carry out the purposes of this part, except that powers and duties granted to the several district boards of trustees by ss. 240.315, 240.317, 240.319, and 447.203 shall remain with the several district boards of trustees.

History.—s. 46, ch. 79-222.

[1]Note.—The words "and may" were inserted by the editors.

240.313 Community colleges; establishment and organization of boards of trustees.—

(1) Each community college district authorized by law and the Department of Education is an independent, separate, legal entity created for the operation of a community college.

(2) Each board of trustees shall be the successor board upon which shall devolve all real and personal property and assets and obligations of the school board in the district of location of the community college which have been held for or incurred on behalf of that college, as determined by the Department of Education.

(3) Community college boards of trustees shall be comprised of five members, when a community college district is confined to one school board district, and not more than nine members, when the district contains two or more school board districts, as provided by regulations of the state board.

(4) Initial membership of the community college boards of trustees shall be the members of the re-

spective community college advisory committees who hold office on July 1, 1968. As the terms of office which were in effect on July 1, 1968 expire, or as vacancies occur, successors shall be appointed by the Governor, approved by three members of the Cabinet and confirmed by the Senate; provided, however, that no appointee shall take office until after his appointment has been approved by three members of the Cabinet; provided further, that the State Board of Education shall develop rules and procedures for review and approval of the appointees. Prior to the time the Governor appoints any member of any community college board of trustees, the school board or boards in the community college district may submit to the Governor for his consideration the names of two or more persons for each office.

(5) Members of the board of trustees shall receive no salary but may receive reimbursement for expenses as provided in s. 112.061, including mileage to and from official board meetings.

(6) At its first regular meeting after July 1 of each year, each board of trustees shall organize by electing a chairman, whose duty as such is to preside at all meetings of the board, to call special meetings thereof, and to attest to actions of the board, and a vice chairman, whose duty as such is to act as chairman during the absence or disability of the elected chairman. It is the further duty of the chairman of each board of trustees to notify the Governor, in writing, whenever a board member fails to attend three consecutive regular board meetings in any one fiscal year, which absences may be grounds for removal.

(7) A community college president shall be the executive officer and corporate secretary of the board of trustees as well as the chief administrative officer of the community college, and all the components of the institution and all aspects of its operation are responsible to the board of trustees through the president. When a vacancy occurs in the office of community college president, the board of trustees will select and appoint a person to fill that office. Community college presidents so appointed shall serve until such time as they vacate their offices or are removed for good cause by the board of trustees.

(8) The board of trustees shall have the power to take action without a recommendation from the president and shall have the power to require the president to deliver to the board all data and information required by the board in the performance of its duties.

History.—s. 2, ch. 19159, 1939; s. 48, ch. 23726, 1947; s. 1, ch. 29637, 1955; s. 5, ch. 57-252; s. 36, ch. 65-239; s. 7, ch. 68-5; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; ss. 58, 70, ch. 72-221; s. 5, ch. 72-352; s. 1, ch. 77-332; s. 47, ch. 79-222.
Note.—Former s. 242.42; s. 230.47; s. 230.0102; s. 230.753.

240.315 Community college board of trustees; board to constitute a corporation.—Each community college board of trustees is constituted a body corporate by the name of "The District Board of Trustees of (name of community college), Florida." In all suits against boards, service of process shall be made on the chairman of the board [1]or, in the absence of the chairman, on another member of the board.

History.—s. 48, ch. 79-222.
[1]**Note.**—The word "or" was substituted for "and" by the editors.

240.317 Community colleges; legislative intent.—It is the legislative intent that community colleges, constituted as political subdivisions of the state, continue to be operated by district boards of trustees as provided in ss. 240.313(2) and 240.315 and that no department, bureau, division, agency, or subdivision of the state shall exercise any responsibility and authority to operate any community college of the state except as specifically provided by law or rules of the State Board of Education.

History.—s. 16, ch. 70-94; s. 70, ch. 72-221; s. 49, ch. 79-222.
Note.—Former s. 230.7535.

240.319 Community college board of trustees; duties and powers.—

(1) Community college boards of trustees are vested with the responsibility to operate their respective community colleges and with such necessary authority as may be needed for the proper operation thereof in accordance with regulations of the state board.

(2) In carrying out this responsibility, the trustees, after considering recommendations submitted by the community college president, shall be authorized to adopt such rules and procedures as are necessary to operate the community college in such a manner as to assure the fulfillment of the responsibilities assigned to the board.

(3) Such rules and procedures for the boards of trustees include, but are not limited to, the following:

(a) Each board of trustees shall determine and adopt such policies as are deemed necessary by it for the efficient operation and general improvement of the community college.

(b) Each board of trustees shall adopt such rules to supplement those prescribed by the State Board of Education as in its opinion will contribute to the more orderly and efficient operation of the community college and to the provision of educational services to all qualified citizens of the community college district.

(c) Each board of trustees shall adopt such minimum standards consistent with and no less stringent than those of the State Board of Education, including, but not limited to:

1. The prescribing of student performance standards for the award of certificates or degrees.

2. The establishment and discontinuance of program and course offerings; provision for instructional and noninstructional community services, location of classes, and services provided; and dissemination of information concerning such programs and services.

(d) Each board of trustees shall constitute the contracting agent of the community college. It may when acting as a body make contracts, sue, and be sued in the name of the board of trustees. In any suit, a change in personnel of the board shall not abate the suit, which shall proceed as if such change had not taken place.

(e) Each board of trustees shall perform those duties and exercise those responsibilities which are assigned to it by law or by rules of the State Board of Education and in addition thereto those which it may find necessary for the improvement of the community college.

(f) Whenever the Department of Education finds it necessary for the welfare and convenience of any community college to acquire private property for the use of said community college and the same cannot be acquired by agreement satisfactory to the district board of trustees of such community college and the parties interested in, or the owners of, said private property, the said district board of trustees may exercise the right of eminent domain and proceed to condemn the property in the manner provided by chapters 73 and 74.

(g) Each board of trustees may enter into lease-purchase arrangements with private individuals or corporations for necessary grounds and buildings for community college purposes, other than dormitories, or for buildings other than dormitories to be erected for community college purposes. Such arrangements shall be paid from capital outlay and debt service funds as provided by s. 240.359(4), with terms not to exceed 30 years at a stipulated rate. The provisions of such contracts, including building plans, shall be subject to approval by the Department of Education, and no such contract shall be entered into without said approval. The State Board of Education is authorized to promulgate such rules as it deems necessary to implement the provisions of this paragraph.

(h) Each board of trustees may purchase, acquire, receive, hold, own, manage, lease, sell, dispose of, and convey title to real property, [1]in the best interests of the college, pursuant to rules adopted by the state board.

(i) Each board of trustees is authorized to enter into agreements for, and accept, credit card payments as compensation for goods, services, tuition, and fees. However, no discount shall be given and no service charge assessed. Each community college is further authorized to establish accounts in credit card banks for the deposit of credit card sales invoices.

(j) Each board of trustees may adopt, by rule, a uniform code of appropriate penalties for violations of rules by students and employees. Such penalties, unless otherwise provided by law, may include fines, the withholding of diplomas or transcripts pending compliance with rules or payment of fines, and the imposition of probation, suspension, or dismissal.

(k) Each board of trustees may consider the past actions of any person applying for admission or employment and may provide, by board rule or procedure, for denying admission, enrollment, or employment to a person if past actions have been found to disrupt or interfere with the orderly conduct, processes, functions, or programs of any other university, college, or community college.

(l) Each board of trustees is authorized to develop and produce work products which relate to educational endeavors which are subject to trademark, copyright, or patent statutes. To this end, the board shall consider the relative contribution by the personnel employed in the development of such work products and shall enter into binding agreements with such personnel, organizations, corporations, or government entities, which agreements shall establish the percentage of ownership of such trademarks, copyrights, or patents. Any other law to the contrary notwithstanding, the board is authorized in its own name to:

1. Perform all things necessary to secure letters of patent, copyrights, and trademarks on any such work products and to enforce its rights therein.
2. License, lease, assign, or otherwise give written consent to any person, firm, or corporation for the manufacture or use thereof, on a royalty basis or for such other consideration as said board shall deem proper.
3. Take any action necessary, including legal action, to protect the same against improper or unlawful use of infringement.
4. Enforce the collection of any sums due said board for the manufacture or use thereof by any other party.
5. Sell any of the same and execute all instruments necessary to consummate any such sale.
6. Do all other acts necessary and proper for the execution of powers and duties provided by this paragraph.

(m) Each board of trustees shall provide rules governing parking and the direction and flow of traffic within campus boundaries and may hire appropriate personnel to enforce campus parking rules. Such persons shall have no authority to arrest or issue citations for moving traffic violations. The board of trustees may adopt, by rule, a uniform code of appropriate penalties for violations. Such penalties, unless otherwise provided by law, may include the levying of fines, the withholding of diplomas or transcripts pending compliance with rules or payment of fines, and the imposition of probation, suspension, or dismissal. Moneys collected from parking rule infractions shall be deposited in appropriate funds at each community college for student financial aid purposes.

(n) Each board of trustees shall provide for the appointment, employment, and removal of personnel, including the president of the community college, and the compensation, including salaries and fringe benefits, and other conditions of employment for such personnel. It may appoint a search committee for making recommendations to the board for the selection of the president. The activities of the committee, up to the point of transmitting a list of nominees to the board, shall be exempted from the provisions of s. 286.011 and chapter 119. The board is authorized to enter into a contract with the president in accordance with the provisions of this chapter. Any such contract may fix the duration of employment and the compensation therefor and may contain any other terms and conditions the board may deem appropriate. In addition, the board may furnish the president with the use of a motor vehicle or an allowance in lieu thereof. If any such vehicle is furnished, the board shall determine and fix the maximum noncollege use of the same.

(o) Each board of trustees may provide for recognition of employees who have contributed outstanding and meritorious service in their fields and may adopt and implement a program of meritorious service awards to employees who propose procedures or ideas which are adopted and which will result in eliminating or reducing community college expenditures or improving community college operations.

The community college is authorized to expend funds for such recognition and awards. No award granted under the provisions of this paragraph shall exceed $2,000 or 10 percent of the first year's gross savings, whichever is greater.

(p) Each board of trustees shall provide admissions counseling to all students entering college credit programs, which counseling shall utilize tests designated by the Articulation Coordinating Committee to measure achievement of college-level communication and computation competencies by all students entering college credit programs.

(q) Each board of trustees may limit students whose level of achievement of communication and computation skills is below that defined by the college as required for successful performance in a college credit program to compensatory courses and any other instruction for which they are adequately prepared.

(r) Each board of trustees shall provide students who are being awarded an associate of arts degree opportunity to demonstrate superior levels of achievement of communication and computation competencies as defined by the Articulation Coordinating Committee and to recognize same in the awarding of that degree.

(s) Each board of trustees may adopt rules to provide for loans, scholarships, and other student services.

History.—s. 2, ch. 19159, 1939; s. 48, ch. 23726, 1947; s. 1, ch. 29637, 1955; s. 5, ch. 57-252; s. 37, ch. 65-239; s. 8, ch. 68-5; ss. 15, 35, ch. 69-106; s. 1, ch. 69-123; s. 1, ch. 71-220; s. 1, ch. 72-102; ss. 59, 70, ch. 72-221; s. 2, ch. 74-312; s. 1, ch. 77-59; s. 1, ch. 79-140; s. 2, ch. 79-150; ss. 1, 2, ch. 79-286; s. 50, ch. 79-222.
[1]**Note.**—The word "in" was substituted for "to" by the editors.
Note.—Former s. 242.42; s. 230.47; s. 230.0103; s. 230.754.

240.321 Community college board of trustees; rules for admissions of students.—The board of trustees shall make rules governing admissions of students and fees pursuant to provisions of this part. Admission to the Associate of Arts Degree program shall require a high school diploma or its equivalent, except as provided in s. 240.115(3). Admission to other programs within the community college shall include education requirements as established by the board of trustees. Nonresident students may be admitted to the community college upon such terms as the board may establish.

History.—s. 51, ch. 79-222.

240.323 Student records.—Rules of the State Board of Education may prescribe the content and custody of records and reports which a community college may maintain on its students. Such records shall be open to inspection only as provided in s. 228.093 or upon order of a court of competent jurisdiction.

History.—s. 13, ch. 73-338; s. 3, ch. 77-60; s. 60, ch. 79-222.
Note.—Former s. 230.7681.

240.325 Minimum standards, definitions, and guidelines for community colleges.—The State Board of Education shall prescribe minimum standards, definitions, and guidelines for community colleges which will assure quality education, systemwide coordination, and that the purposes of the community college are attained. Such guidelines may include, but are not limited to, the following areas:

(1) Personnel.
(2) Contracting.
(3) Program offerings and classification including college-level communication and computation skills associated with successful performance in college, with tests and other assessment procedures which measure student achievement of those skills. It should be provided that students moving from one level of education to the next acquire the necessary competencies for that level.
(4) Provisions for curriculum development, graduation requirements, college calendars, and program service areas.
(5) Student admissions, conduct and discipline, nonclassroom activities, and fees.
(6) Budgeting.
(7) Business and financial matters.
(8) Student services.
(9) Reports, surveys, and information systems, including forms and dates of submission.
(10) Waiver of registration and tuition fees.

History.—s. 2, ch. 19159, 1939; s. 48, ch. 23726, 1947; s. 1, ch. 29637, 1955; s. 5, ch. 57-252; s. 38, ch. 65-239; s. 70, ch. 72-221; s. 52, ch. 79-222; s. 3, ch. 79-286.
Note.—Former s. 242.42; s. 230.47; s. 230.0104; s. 230.755.

240.327 Planning and construction of community college facilities.—The need for community college facilities shall be established by a survey made under the supervision of the department or an agency approved by the commissioner; the facilities recommended by such survey must be approved by the state board; and the projects must be constructed according to the provisions of chapter 235 and state board rules.

History.—s. 2, ch. 29638, 1955; s. 137, ch. 65-239; ss. 15, 35, ch. 69-106; s. 70, ch. 72-221; s. 25, ch. 77-458; s. 53, ch. 79-222.
Note.—Former s. 236.073; s. 230.0105; s. 230.756.

240.329 Residence of president.—

(1) In all community college districts of the state having a total community college enrollment in excess of 20,000 students as of January 1, 1970, the district board of trustees is authorized to provide a home for the president of such community college. Any such home shall be built on land donated to the appropriate district board of trustees and approved by the Department of Education for this purpose.

(2) The title to such home shall be vested in the appropriate district board of trustees and shall be held for the use and benefit of the incumbent president and his successors in office.

(3) It is the express legislative intent that provision of such residences shall be financed from gifts, auxiliary funds, and other undesignated funds derived from local sources. No student fees, local tax funds, or state appropriations may be used for this purpose.

History.—ss. 1-3, ch. 70-124; s. 70, ch. 72-221; s. 53, ch. 79-222.
Note.—Former s. 230.7565.

240.331 Direct-support organizations; use of property; audit; status.—

(1) DEFINITIONS.—For the purposes of this section:

(a) "Community college direct-support organization" means an organization which is:

1. A Florida corporation not for profit, incorporated under the provisions of chapter 617 and ap-

proved by the Department of State.

2. Organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to, or for the benefit of, a community college in Florida.

3. An organization which the board of trustees, after review, has certified to be operating in a manner consistent with the goals of the community college and in the best interest of the state. Any organization which is denied certification by the board of trustees shall not use the name of the community college which it serves.

(b) "Personal services" includes full-time or part-time personnel as well as payroll processing.

(2) USE OF PROPERTY.—

(a) The board of trustees is authorized to permit the use of property, facilities, and personal services at any state community college by any community college direct-support organization, subject to the provisions of this section.

(b) The board of trustees is authorized to prescribe by rule any condition with which a community college direct-support organization must comply in order to use property, facilities, or personal services at any state community college.

(c) The board of trustees shall not permit the use of property, facilities, or personal services at any state community college by any community college direct-support organization which does not provide equal employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.

(3) ANNUAL AUDIT.—Each direct-support organization shall make provisions for an annual postaudit of its financial accounts to be conducted by an independent certified public accountant in accordance with rules to be promulgated by the district board of trustees. The annual audit report shall be submitted to the Auditor General and the board of trustees for review. The board of trustees and the Auditor General shall have the authority to require and receive from the organization or from its independent auditor any detail or supplemental data relative to the operation of the organization. The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report. All records of the organization other than the auditor's report and supplemental data requested by the board of trustees and the Auditor General shall not be considered public records for the purposes of chapter 119.

History.—s. 9, ch. 75-302; s. 53, ch. 79-222.
Note.—Former s. 230.7566.

240.333 Purchase of land by municipality.—Any municipality wherein a community college (as defined by s. 228.041(1)) is situated is authorized and empowered to purchase land with municipal funds and to donate and convey such land or any other land to the school board of the district wherein such municipality is located for the use of any such community college.

History.—s. 1, ch. 57-736; s. 8, ch. 65-239; s. 1, ch. 69-300; s. 70, ch. 72-221; s. 53, ch. 79-222.
Note.—Former s. 228.161; s. 230.0107; s. 230.757.

240.335 Employment of community college personnel.—Employment of all personnel in each community college shall be upon recommendation of the president, subject to rejection for cause by the board of trustees; to the rules and regulations of the state board relative to certification, tenure, leaves of absence of all types, including sabbaticals, remuneration, and such other conditions of employment as the Division of Community Colleges deems necessary and proper; and to policies of the board of trustees not inconsistent with law.

History.—s. 15, ch. 65-239; s. 10, ch. 68-5; ss. 15, 35, ch. 69-106; ss. 6l, 70, ch. 72-221; s. 1, ch. 72-348; s. 53, ch. 79-222.
Note.—Former s. 230.0109; s. 230.759.

240.337 Records of personnel.—Rules of the State Board of Education shall prescribe the content and custody of limited access records which a community college may maintain on its employees. Such records shall be limited to information reflecting evaluations of employee performance and shall be open to inspection only by the employee and by officials of the college who are responsible for supervision of the employee. Except as required for use by the president in the discharge of his official responsibilities, the custodian of limited access employee records may release information from such records only upon authorization, in writing, from the employee or the president or upon order of a court of competent jurisdiction.

History.—s. 14, ch. 73-338; s. 1, ch. 78-3; s. 53, ch. 79-222.
Note.—Former s. 230.7591.

240.339 Contracts with administrative and instructional staff.—Each person employed in an administrative or instructional capacity in a community college shall be entitled to a contract as provided by regulations of the state board.

History.—s. 16, ch. 65-239; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 17, ch. 69-353; s. 3, ch. 70-198; ss. 62, 70, ch. 72-221; s. 2, ch. 72-348; s. 1, ch. 73-90; s. 53, ch. 79-222.
Note.—Former s. 230.0110; s. 230.760.

240.341 Teaching faculty; minimum teaching hours per week.—Each full-time member of the teaching faculty at any institution under the supervision of the Division of Community Colleges of the Department of Education who is paid wholly from funds appropriated from the state community college program fund shall teach a minimum of 15 classroom contact hours per week at such institution. However, the required classroom contact hours per week may be reduced upon approval of the president of the institution in direct proportion to specific duties and responsibilities assigned the faculty member by his departmental chairman or other appropriate college administrator. Such specific duties may include specific research duties, specific duties associated with developing television, video tape, or other specifically assigned innovative teaching techniques or devices, or assigned responsibility for off-campus student internship or work study programs. A classroom contact hour consists of a regularly scheduled classroom activity of not less than 50 minutes in a course of instruction which has been approved by the board of trustees of the community college. Any full-time faculty member who is paid partly from state community college program funds and partly from other funds or appropriations shall

teach a minimum number of classroom contact hours per week in such proportion to 15 classroom contact hours as his salary paid from state community college program funds bears to his total salary.

History.—s. 1, ch. 71-253; s. 54, ch. 79-222.
Note.—Former s. 230.7601.

240.343 Sick leave.—Each community college board shall adopt rules whereby any full-time employee who is unable to perform his duties at the college because of illness, or because of illness or death of the employee's father, mother, brother, sister, husband, wife, child, or other close relative or member of the employee's own household and who consequently has to be absent from work shall be granted leave of absence for sickness by the president or by the president's designated representative. The following provisions shall govern sick leave:

(1) EXTENT OF LEAVE WITH COMPENSATION.—

(a) Each full-time employee shall earn 1 day of sick leave with compensation for each calendar month or major fraction of a calendar month of service, not to exceed 12 days for each fiscal year. Such leave shall be taken only when necessary because of sickness as herein prescribed. Such sick leave shall be cumulative from year to year. Accumulated sick leave may be transferred from another Florida community college, the Florida Department of Education, the State University System, or a Florida district school board, provided that at least one-half of the sick leave accumulated at any time must have been established in the college in which such employee is currently employed.

(b) A board may establish rules and prescribe procedures whereby a full-time employee may, at the beginning date of employment in any year, be credited with 12 days of sick leave with compensation in excess of the number of days the employee has earned. Upon termination of employment, the employee's final compensation shall be adjusted in an amount necessary to ensure that sick leave with compensation shall not exceed the days of earned sick leave as provided herein.

(c) A board may establish rules and prescribe standards to permit a full-time employee to be absent no more than 2 days for personal reasons and 2 days for emergencies. However, such absences for personal reasons and emergencies shall be charged only to accrued sick leave, and leave for personal reasons and emergencies shall be noncumulative.

(d) A board may establish rules to provide terminal pay to a full-time employee on retirement, or to his beneficiary if service is terminated by death, who has attained eligibility for retirement benefits under the Teachers' Retirement System of Florida, Florida Retirement System, or State and County Officers and Employees' Retirement System; however, such terminal pay shall not exceed an amount determined by the daily rate of pay of the employee at retirement or death multiplied by one-half of the total number of accumulated sick leave days credited to the employee or 60 days, whichever is less at the time of retirement or death. If an employee retires and receives terminal pay benefits based on unused sick leave credit, all unused sick leave credit shall become invalid; however, if an employee retires without receiving terminal pay benefits and interrupts retirement to return to employment, his sick leave credit shall be reinstated.

(2) CLAIM MUST BE FILED.—Any full-time employee who finds it necessary to be absent from his duties because of illness as defined in this section shall notify the president or a college official designated by the president, if possible before the opening of college on the day on which the employee must be absent or during the day, except for emergency reasons recognized by the board as valid. Any employee shall, before claiming and receiving compensation for the time absent from his duties while absent because of sick leave as prescribed in this section, make and file a written certificate which shall set forth the day or days absent, that such absence was necessary, and that he is entitled or not entitled to receive pay for such absence in accordance with the provisions of this section. The board may prescribe rules under which the president may require a certificate of illness from a licensed physician or from the county health officer.

(3) COMPENSATION.—Any full-time employee having unused sick leave credit shall receive full-time compensation for the time justifiably absent on sick leave; no compensation may be allowed beyond that provided in subsection (4).

(4) SICK LEAVE POOL.—Notwithstanding any other provision of this section, a board may, by rule, based upon the maintenance of reliable and accurate records by the community college showing the amount of sick leave which has been accumulated and is unused by employees in accordance with this section, establish a plan allowing participating full-time employees of the community college to pool sick leave accrued and allowing any sick leave thus pooled to be disbursed to any participating employee who is in need of sick leave in excess of that amount he has personally accrued. Such rules shall include, but not be limited to, the following provisions:

(a) Participation in the sick leave pool shall at all times be voluntary on the part of employees.

(b) Any full-time employee shall be eligible for participation in the sick leave pool after 1 year of employment with the community college, provided that such employee has accrued a minimum amount of unused sick leave, which minimum shall be established by rule.

(c) Any sick leave pooled pursuant to this section shall be removed from the personally accumulated sick leave balance of the employee donating such leave.

(d) Participating employees shall make equal contributions to the sick leave pool. There shall be established a maximum amount of sick leave which may be contributed to the pool by an employee. After the initial contribution which an employee makes upon electing to participate, no further contributions shall be required except as may be necessary to replenish the pool. Any such further contribution shall be equally required of all employees participating in the pool.

(e) Any sick leave time drawn from the pool by a participating employee must be used for said employee's personal illness, accident, or injury.

(f) A participating employee shall not be eligible

to use sick leave from the pool until all of his or her sick leave has been depleted. There shall be established a maximum number of days for which an employee may draw sick leave from the sick leave pool.

(g) A participating employee who uses sick leave from the pool shall not be required to recontribute such sick leave to the pool, except as otherwise provided herein.

(h) A participating employee who chooses to no longer participate in the sick leave pool shall not be eligible to withdraw any sick leave already contributed to the pool.

(i) Alleged abuse of the use of the sick leave pool shall be investigated, and, on a finding of wrongdoing, the employee shall repay all of the sick leave credits drawn from the sick leave pool and be subject to such other disciplinary action as determined by the board to be appropriate. Rules adopted for the administration of this program shall provide for the investigation of the use of sick leave utilized by the participating employee in the sick leave pool.

History.—s. 4, ch. 79-109.

240.345 Financial support of community colleges.—

(1) STATE SUPPORT OF COMMUNITY COLLEGES.—Each community college which has been approved by the Department of Education and meets the requirements of law and regulations of the state board shall participate in the state community college program fund.

(2) STUDENT FEES.—

(a) Fees may be charged to students attending a community college only as authorized by, and pursuant to, rules of the state board.

(b) The state board shall adopt rules permitting the deferral of registration and tuition fees for those students receiving financial aid from federal or state assistance programs when such aid is delayed in being transmitted to the student through circumstances beyond the control of the student. Failure to make timely application for such aid shall be insufficient reason to receive such deferral.

1. Veterans and other eligible students receiving benefits under chapter 32, chapter 34, or chapter 35, 38 U.S.C., shall be entitled to one deferment each academic year and an additional deferment each time there is a delay in the receipt of their benefits.

2. In adopting such rules, the state board is required to enforce the collection of or otherwise settle delinquent accounts.

3. The state board shall require that each institution within the community college system withdraw all requests for course approval from the Veterans Administration for education programs offered in correctional facilities which are provided through state funding at no cost to the inmate.

(c) Any dependent child of a special risk member as defined in s. 121.021(15) shall be entitled to a full waiver of undergraduate fees if the special risk member was killed in the line of duty. This waiver shall apply until the child's 25th birthday. To qualify for this waiver, the child shall be required to meet regular admission requirements.

History.—s. 3, ch. 19159, 1939; s. 49, ch. 23726, 1947; s. 6, ch. 57-252; s. 39, ch. 65-239; s. 11, ch. 68-5; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 10, ch. 70-94; s. 70, ch. 72-221; s. 4, ch. 72-348; s. 8, ch. 77-338; s. 2, ch. 78-91; s. 2, ch. 78-338; s. 2, ch. 79-182; s. 55, ch. 79-222.

Note.—Former ss. 242.43, 230.48, 230.0111, 230.761.

240.347 State Community College Program Fund.—There is established a State Community College Program Fund. This fund shall comprise all appropriations made by the Legislature for the support of the current operating program and shall be apportioned and distributed to the community college districts of the state on the basis of procedures established by law and regulations of the state board. The annual apportionment for each community college district shall be distributed on a monthly basis in as nearly equal payments as possible.

History.—s. 7, ch. 63-495; s. 159, ch. 65-239; s. 12, ch. 68-5; s. 70, ch. 72-221; s. 5, ch. 72-348; s. 55, ch. 79-222.

Note.—Former ss. 236.70, 230.0112, 230.762.

240.349 Requirements for participation in community college program fund.—Each district which participates in the state appropriations for the community college program fund shall provide evidence of its effort to maintain an adequate community college program which shall meet the minimum standards prescribed by the State Board of Education in accordance with s. 240.325.

History.—s. 7, ch. 63-495; s. 160, ch. 65-239; s. 13, ch. 68-5; s. 70, ch. 72-221; s. 6, ch. 72-348; s. 56, ch. 79-222.

Note.—Former ss. 236.71, 230.0113, 230.763.

240.351 Department of Education to determine units for community colleges.—The Department of Education shall determine from reports submitted by presidents of community colleges as prescribed by regulations of the state board the number of full-time equivalent students enrolled in the current year and the number of students transported in the community colleges authorized by law and regulations of the state board. On the basis of said reports, the department shall determine the number of instruction and transportation units in each community college as hereinafter prescribed.

History.—s. 7, ch. 63-495; s. 161, ch. 65-239; s. 14, ch. 68-5; s. 1, ch. 68-4; ss. 15, 35, ch. 69-106; s. 11, ch. 70-94; s. 2, ch. 70-198; s. 64, ch. 71-355; ss. 63, 70, ch. 72-221; s. 7, ch. 72-348; s. 1, ch. 72-352; s. 57, ch. 79-222.

Note.—Former ss. 236.72, 230.0114, 230.764.

240.353 Procedure for determining number of instruction units for community colleges.—The number of instruction units for community colleges in districts which meet the requirements of law for operating a community college shall be determined from the full-time equivalent students in the community college, provided that full-time equivalent students may not be counted more than once in determining instruction units. Instruction units for community colleges shall be computed as follows:

(1) One unit for each 12 full-time equivalent students at a community college for the first 420 students and one unit for each 15 full-time equivalent students for all over 420 students, in other than occupational programs as defined by rules of the State Board of Education, and one unit for each 10 full-time equivalent students in occupational programs and compensatory education programs as defined by rules of the State Board of Education. Full-time equivalent students enrolled in a community college shall be defined by rules of the State Board of Education.

(2) For each 8 instruction units in a community

college, 1 instruction unit or proportionate fraction of a unit shall be allowed for administrative and special instructional services, and for each 20 instruction units, 1 instruction unit or proportionate fraction of a unit shall be allowed for student personnel services.

History.—s. 7, ch. 63-495; s. 162, ch. 65-239; s. 2, ch. 68-14; s. 1, ch. 69-214; s. 1, ch. 69-300; s. 1, ch. 70-176; s. 1, ch. 70-439; ss. 64, 70, ch. 72-221; s. 8, ch. 72-348; s. 2, ch. 72-352; s. 57, ch. 79-222.
Note.—Former ss. 236.73, 230.0115, 230.765.

240.355 State Board of Education rules.—The State Board of Education shall adopt rules which will enable community college district boards of trustees to initiate and provide comprehensive occupational education programs. The State Board of Education shall adopt procedures for determining the extent to which minimum requirements are being met. Furthermore, procedures shall include examination of the employment performance of program graduates. The minimum requirements so adopted shall include standards of educational output, with particular emphasis on job placement and satisfactory performance in employment. All such procedures should take into account the cost of the procedure. Whenever possible, proven research methods, including sampling, shall be utilized.

History.—s. 1, ch. 70-176; s. 70, ch. 72-221; s. 58, ch. 79-222.
Note.—Former s. 230.7651.

240.357 Procedure for determining the transportation density index for community colleges.—

(1) Each board of trustees shall annually, each term, on the dates and in the manner prescribed by the State Board of Education, determine and report to the Department of Education the average number of registered or enrolled students who are transported at public expense to a community college by reason of living 2 miles or more from the college and the average number of students transported at public expense from one center of the college district to another center; however, the mileage limitation shall not apply to transportation of physically handicapped students as authorized under regulations of the State Board of Education. The average number of transported students for the college year shall be the sum of the number transported each term divided by the number of terms.

(2) Each board of trustees shall annually, each term, on the dates and in the manner prescribed by the State Board of Education, determine and report to the Department of Education the one-way route mileage required to transport students to the college for the first time on any day of regularly scheduled classes and the one-way miles on routes between college centers. If a route operates for a fewer number of days than the full college year, the mileage of the route will be computed proportionately less.

(3) A density index for each district shall be computed annually by the Department of Education by dividing the number of transported students as determined by subsection (1) by the bus route mileage as determined in subsection (2). Districts with a density index of 1.10 students per route mile or less will be counted as 1.10 per mile and districts with a density of 5.90 or more students per route mile will be counted as 5.90 per mile.

History.—s. 1, ch. 74-293; s. 1, ch. 77-174; s. 57, ch. 79-222.
Note.—Former s. 230.7661.

240.359 Procedure for determining state financial support and annual apportionment of state funds to each community college district.—The procedure for determining state financial support and the annual apportionment to each community college district authorized to operate a community college under the provisions of s. 240.313 shall be as follows:

(1) DETERMINING THE AMOUNT TO BE INCLUDED IN THE STATE COMMUNITY COLLEGE PROGRAM FUND FOR THE CURRENT OPERATING PROGRAM.—

(a) The Department of Education shall determine annually from an analysis of operating costs, prepared in the manner prescribed by rules of the State Board of Education, the costs per full-time equivalent student served in courses and fields of study offered in community colleges. Such fields of study shall be classified into multilevel cost categories in relation to the average statewide costs and the costs adjusted to the year of apportionment for changes in economic conditions and other factors as prescribed by rules of the State Board of Education.

(b) The allocation of funds for community colleges shall be based on advanced and professional disciplines, occupational disciplines, compensatory programs, and adult elementary and secondary programs. The occupational disciplines shall be further subdivided into technical, skilled and semi-skilled, and supplemental.

(c) The amounts determined by multiplying the cost of each field of study times the full-time equivalent students estimated by the Department of Education shall be submitted to the Executive Office of the Governor with the legislative budget request prior to each regular session of the Legislature.

(d) The State Board of Education shall adopt rules to implement s. 9(d)(8)f., Art. XII of the State Constitution. These rules shall provide for the use of the funds available under s. 9(d)(8)f., Art. XII by an individual community college for operating expense in any fiscal year during which the State Board of Education has determined that all major capital outlay needs have been met. Highest priority for the use of these funds for purposes other than financing approved capital outlay projects shall be for the proper maintenance and repair of existing facilities for projects approved by the State Board of Education. However, in any fiscal year in which funds from this source are authorized for operating expense other than approved maintenance and repair projects, the allocation of community college program funds shall be reduced by an amount equal to the sum used for such operating expense for that community college that year, and that amount shall not be released or allocated among the other community colleges that year.

(2) DETERMINING THE AMOUNT TO BE INCLUDED FOR CAPITAL OUTLAY AND DEBT SERVICE.—The amount included for capital outlay and debt service shall be as determined and provided in s. 18, Art. XII of the State Constitution of 1885, as

adopted by s. 9(d), Art. XII of the 1968 revised State Constitution and State Board of Education rules.

(3) DETERMINING THE APPORTIONMENT FROM STATE FUNDS.—

(a) By December 15 of each year, the Department of Education shall estimate the annual enrollment of each community college for the current fiscal year and for the 6 subsequent fiscal years. These estimates shall be based upon prior years' enrollments, upon the initial fall term enrollments for the current fiscal year for each college, and upon each college's estimated current enrollment and demographic changes in the respective community college districts.

(b) The enrollment as accepted or modified by the Legislature shall be the assigned enrollment and the basis for the allocation of appropriated funds to the Division of Community Colleges by the Legislature and to the individual colleges by the division.

(c) The apportionment to each community college from the community college program fund for current operations shall be based on an assigned full-time equivalent enrollment as determined in paragraphs (a) and (b) and shall consider the cost level of each field of study and such other factors as prescribed by rules of the State Board of Education.

(d) If the actual enrollment for any community college is from 0 to 5 percent or 100 full-time equivalent students, whichever is greater, less than the assigned enrollment for any fiscal year, and no more than 8 percent less for any biennium, the college shall receive full funding as allocated. If the actual enrollment is more than 5 percent below the assigned enrollment for any fiscal year or more than 8 percent for any biennium, the college's allocation for direct instructional cost shall be reduced proportionately to the difference between 5 percent and the actual percentage reduction in enrollment for any fiscal year or the difference between 8 percent and the actual percentage reduction in enrollment for the biennium, whichever is larger. If actual enrollment of a college exceeds the assigned enrollment, there shall be no increased allocation. Any institution not meeting its assigned enrollments within the 5-percent difference shall enroll the elderly in existing courses, at no charge to them, within the 5-percent difference. "Elderly" shall be defined as persons 65 years of age or older. If the course is offered for credit, the elderly may enroll in the course, but shall not receive credit for the course.

(e) No community college shall commit funds for the employment of personnel or resources in excess of those required to continue the same level of support for either the previously approved enrollment or the revised enrollment, whichever is lower.

(f) The apportionment to each community college district for capital outlay and debt service shall be the amount determined in accordance with subsection (2). This amount, less any amount determined as necessary for administrative expense by the State Board of Education and any amount necessary for debt service on bonds issued by the State Board of Education, shall be transmitted to the community college district board of trustees to be expended in a manner prescribed by rules of the State Board of Education.

(g) The total apportionment to each community college district from state funds shall be the total apportionment from the community college program fund for each community college district as determined in paragraph (c) and the amount for capital outlay and debt service as provided in paragraph (f).

(h) Colleges shall seek to maintain an unencumbered fund balance of between 4 and 10 percent of the funds available in the current general fund of the operating budget. If the 10-percent upper level is exceeded for 2 consecutive years, the appropriation to the college in a succeeding fiscal year shall be reduced by the average of the excess of the fund balance over the 10 percent for the 2 years. In exceptional cases, when fund balances greater than 10 percent are necessary for a college, prior approval shall be obtained from the director of the Division of Community Colleges.

(4) EXPENDITURE OF ALLOCATED FUNDS. —Any funds allocated herein to any district for a public community college shall be expended only for the purpose of supporting said college.

History.—s. 7, ch. 63-495; ss. 163-165, ch. 65-239; s. 1, ch. 65-434; s. 1, ch. 68-2; s. 15, ch. 68-5; ss. 3-5, ch. 68-14; ss. 15, 35, ch. 69-106; s. 1, ch. 69-213; s. 31, ch. 69-216; s. 1, ch. 69-300; ss. 12-14, ch. 70-94; ss. 65, 70, ch. 72-221; ss. 3, 9, ch. 72-348; s. 4, ch. 72-352; s. 1, ch. 73-232; s. 2, ch. 74-293; s. 1, ch. 77-174; s. 104, ch. 79-190; s. 59, ch. 79-222.

Note.—See former ss. 236.74, 230.0117, 230.767.

240.361 Budgets for community colleges.—The president of each community college shall recommend to the board of trustees a budget of income and expenditures at such time and in such form as the state board may prescribe. Upon approval of a budget by the board of trustees, such budget shall be transmitted to the Department of Education for review and approval. Rules and regulations of the state board shall prescribe procedures for effecting budget amendments subsequent to the final approval of a budget for a given year.

History.—s. 2, ch. 28068, 1953; s. 7, ch. 57-252; s. 40, ch. 65-239; s. 17, ch. 68-5; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; s. 15, ch. 70-94; s. 70, ch. 72-221; s. 61, ch. 79-222.

Note.—Former s. 242.431; s. 230.49; s. 230.0119; s. 230.769.

240.363 Financial accounting and expenditures.—All funds accruing to the benefit of a community college shall be received, accounted for, and expended in accordance with rules and regulations of the state board.

History.—s. 17, ch. 65-239; s. 16, ch. 68-5; s. 70, ch. 72-221; s. 60, ch. 79-222.

Note.—Former s. 230.0118; s. 230.768.

240.365 Delinquent accounts.—

(1) The district board of trustees shall exert every effort to collect all delinquent accounts.

(2) The district board of trustees is authorized to charge off such accounts as may prove uncollectible in accordance with rules and regulations of the state board.

(3) The district board of trustees is authorized to employ the services of a collection agency when deemed advisable in collecting delinquent accounts.

History.—s. 4, ch. 70-198; s. 60, ch. 79-222.

Note.—Former s. 230.7685.

240.367 Current loans to community college boards of trustees.—

(1) At any time the current funds on hand are insufficient to pay obligations created by the board of trustees of any community college district in accordance with the approved budget of the community college, the board of trustees may request approval by the Department of Education of a proposal to negotiate a current loan, with provisions for the repayment of such loan during the fiscal year in which the loan is made, in order to meet these obligations.

(2) The department shall approve such proposal when, in its opinion, the proposal is reasonable and just, the expenditure is necessary, and revenues sufficient to meet the requirements of the loan can reasonably be anticipated.

History.—ss. 1, 2, ch. 69-390; ss. 15, 35, ch. 69-106; s. 70, ch. 72-221; s. 61, ch. 79-222.
Note.—Former s. 230.7695.

240.369 Exemption from county civil service commissions.—

(1) Any community college located in a county which has either a budget commission or a civil service commission is exempt from the regulation, supervision, and control of any such commission.

(2) Any general or special law conflicting with this section is repealed to the extent that said law conflicts with this section.

History.—s. 1, ch. 67-600; s. 1, ch. 69-300; ss. 67, 70, ch. 72-221; s. 62, ch. 79-222.
Note.—Former s. 230.0121; s. 230.771.

240.371 Transfer of benefits arising under local or special acts.—All local or special acts in force on July 1, 1968, which provide benefits for a community college through a school board shall continue in full force and effect, and such benefits shall be transmitted to the community college district board of trustees.

History.—s. 18, ch. 68-5; s. 1, ch. 69-300; s. 70, ch. 72-221; s. 63, ch. 79-222.
Note.—Former s. 230.0122; s. 230.772.

240.373 Transfer of authority and control.— It is the legislative intent that as of July 1, 1968, all responsibility, authority, and control of the operation of the community college, as well as all property, assets, and liabilities of the community college, shall be transferred from the school board of the district of location to the community college district board of trustees.

History.—s. 19, ch. 68-5; ss. 15, 35, ch. 69-106; s. 1, ch. 69-300; ss. 68, 70, ch. 72-221; s. 63, ch. 79-222.
Note.—Former s. 230.0123; s. 230.773.

240.375 Payment of costs of civil actions against officers of district board of trustees.— Whenever any civil action has been brought against any officer of a district board of trustees, including a board member, or person employed by the district board of trustees of any public community college for any act or omission arising out of and in the course of the performance of his duties and responsibilities, the district board of trustees may defray all costs of defending such action, including reasonable attorney fees and expenses together with costs of appeal, if any, and may save harmless and protect such person from any financial loss resulting therefrom; and said board of trustees may arrange for and pay the premium for appropriate insurance to cover all such losses and expenses.

History.—s. 1, ch. 69-210; s. 70, ch. 72-221; s. 63, ch. 79-222.
Note.—Former s. 230.774.

240.377 Promotion and public relations, funding.—Each community college is authorized to budget and use a portion of funds accruing from auxiliary enterprises and undesignated gifts for promotion and public relations as prescribed by regulations of the state board. Such funds may be used to provide expenditures for hospitality of business guests at the college or elsewhere. However, such hospitality expenses shall not exceed the amount authorized for such contingency fund as prescribed by regulations of the state board.

History.—s. 1, ch. 70-101; s. 70, ch. 72-221; s. 63, ch. 79-222.
Note.—Former s. 230.775.

240.379 Certain chapters inapplicable to community colleges.—Chapters 231, 233, 234, 236, and 237 are not applicable to community colleges, except for those sections specifically referred to in this part and in the State Board of Education rules.

History.—s. 10, ch. 70-399; ss. 69, 70, ch. 72-221; s. 26, ch. 77-458; s. 64, ch. 79-222.
Note.—Former s. 230.776.

PART IV

SCHOLARSHIP AND FINANCIAL AID

240.401 State tuition vouchers.—

(1) There is created the State Tuition Voucher Fund to be administered by the Department of Education. The department shall adopt rules for the administration of such fund.

(2) The department shall issue from the fund a tuition voucher to any full-time undergraduate student registered at a nonprofit college or university which is located in and chartered by the state, which is accredited by an agency holding membership in the Council on Postsecondary Accreditation, which grants baccalaureate degrees and whose credits are acceptable without qualification for transfer to state universities, and which is not a state university or a pervasively sectarian institution.

(3) A person is eligible to receive such tuition voucher if:

(a) He is a graduate of a Florida high school;

(b) He has resided continuously in the state for the 2 years immediately preceding the award of the tuition voucher and is not a resident of another state;

(c) He is registered:

1. As a freshman after July 31, 1979;

2. As a freshman or sophomore after July 31, 1980;

3. As a freshman, sophomore, or junior after July 31, 1981; or

4. As a freshman, sophomore, junior, or senior after July 31, 1982; and

(d)1. He is enrolled as a full-time undergraduate student at an eligible college or university;

2. He is not enrolled in a program of study leading to a degree in theology or divinity; and

3. He is making satisfactory academic progress as defined by the college or university in which he is enrolled.

(4)(a) The amount of the tuition voucher issued to a full-time student shall be no more than $1,000 per academic year or as specified in the General Appropriations Act. The tuition voucher shall be paid on a prorated basis at the beginning of each quarter, semester, or term. The department shall make such payments to the college or university in which the student is enrolled for credit to the student's account for payment of tuition and fees. Students shall not be eligible to receive the award for more than 4 years, 8 semesters, or 12 quarters.

(b) If the combined amount of the tuition voucher issued pursuant to this act and all other scholarships and grants for tuition or fees exceeds the amount charged to the student for tuition and fees, the department shall reduce the tuition voucher issued pursuant to this act by an amount equal to such excess.

History.—s. 67, ch. 79-222.

240.403 Ex-Confederate Soldiers' and Sailors' Home Endowment Trust Fund.—Any funds which have been or may hereafter be deposited into the state treasury under chapter 8505, Laws of Florida, 1921, shall be known as the Ex-Confederate Soldiers' and Sailors' Home Endowment Trust Fund, and the same shall be invested as provided by law. The proceeds thereof shall be used for the endowment of a scholarship or scholarships in the State University System or in a state community college. The said scholarship or scholarships shall be awarded upon competitive examination under such rules and regulations as the Department of Education may make; provided, that no one shall be eligible to compete in said examination for said scholarships except a lineal descendant of a Confederate soldier or sailor; provided further, that whenever it shall appear that no one can qualify for said competitive examination as a lineal descendant of a Confederate soldier or sailor, the Department of Education shall use said endowment trust fund to erect a permanent memorial to the Confederate soldiers and sailors in the form of a building upon the campus of the University of Florida or Florida State University, in the discretion of the Department of Education, and suitably mark said building as a memorial to the Confederate soldiers and sailors. The Department of Education shall administer this scholarship program subject to regulations of the department.

History.—s. 1, ch. 8505, 1921; CGL 2126; s. 2, ch. 61-119; s. 4, ch. 65-130; s. 8, ch. 67-354; s. 1, ch. 69-180; ss. 15, 35, ch. 69-106; s. 70, ch. 72-221; s. 68, ch. 79-222.

Note.—Former s. 239.34.

240.405 Scholarships for teachers for special training in exceptional child education.—

(1) The Department of Education is authorized to make training grants to teachers who seek special training in exceptional child education to qualify said teachers to meet professional requirements and shall be responsible for the administration of said program.

(2) These grants are limited to teachers who are under contract to teach in the exceptional child program in this state, the Sunland training centers, the child training centers, and at the Florida School for the Deaf and the Blind.

(3) Each grant shall cover the cost of tuition, housing, and food, to a maximum of $200, for residence enrollment in specific courses approved by the Department of Education for certification in exceptional child education. Said courses shall be offered on the campuses of the institutions of higher learning in this state.

(4) When courses are not available in this state in the areas requiring certification in exceptional child education, the recipient may receive said grant for attending an out-of-state institution of higher learning approved by the Department of Education to meet the professional requirements of the state.

(5) The Department of Education shall administer this program under regulations established by the department.

History.—s. 1, ch. 63-561; s. 19, ch. 67-387; s. 2, ch. 69-180; ss. 15, 35, ch. 69-106; s. 70, ch. 77-104; s. 68, ch. 79-222.
Note.—Former s. 239.371.

240.407 General scholarship loans; value; appropriations; authority for collection of notes.—

(1) For the purpose of attracting the state's most capable youth to the teaching profession, there shall be established 1,550 general scholarship loans for the preparation of teachers, each scholarship loan having a value of $600 each year. However, when a recipient wishes to accelerate his or her training by attending 4 quarters during a regular school term the scholarship shall have an annual value of $800. Fifty of said scholarships are designated Stonewall Jackson memorial scholarships, and the Department of Education is directed to so denominate and publicize said scholarships as such. For the purpose of making such scholarship loans effective there shall be included in the annual general appropriations act sufficient funds for the administration of such scholarship loans.

(2) The Department of Education shall administer this program subject to regulations of the department. The Department of Education may enforce the collection of and otherwise settle any delinquent scholarship notes.

History.—s. 2, ch. 22944, 1945; s. 22, ch. 26869, 1951; s. 5, ch. 28102, 1953; s. 1, ch. 29726, 1955; s. 1, ch. 59-255; s. 14, ch. 59-371; s. 1, ch. 63-543; s. 1, ch. 68-19; s. 3, ch. 69-180; ss. 15, 35, ch. 69-106; s. 1, ch. 73-305; s. 68, ch. 79-222.
Note.—Former s. 239.38.

240.409 State Student Assistance Grant Fund created; eligibility for grants.—

(1) There is hereby created a State Student Assistance Grant Fund to be administered by the Department of Education in accordance with policies and regulations to be established by the department.

(2)(a) Student assistance grants from said fund shall be made only to full-time students who have been bona fide residents of Florida for the preceding 2 years. Provided, a renewal applicant who was in the program prior to June 30, 1978, shall be eligible for a renewal grant for the amount of demonstrated unmet need for educational expenses only, which grant shall not exceed a total of $1,200 per academic year. Such grants shall be awarded for the amount of demonstrated unmet need for tuition and fees only and shall not exceed a total of $1,200 per academic year to any one individual applicant. A demonstrated unmet need of less than $200 shall render the applicant ineligible for a student assistance grant. Recipients of such grants must have been accepted at a state university or community college authorized by Florida law, a nursing diploma school approved by the Florida Board of Nursing, or any Florida college, university, or community college which is accredited by a member of the Council on Postsecondary Accreditation or any Florida institution whose credits are acceptable for transfer to state universities. No student may receive an award for more than the equivalent of 8 semesters or 12 quarters in a period of not more than 6 consecutive years.

(b) The criteria and procedure for establishing standards of eligibility shall be determined by the department, but no person shall be eligible who has not demonstrated high moral character, good citizenship, and dedication to American ideals. The department is directed to establish a rating system upon which to base the approval of grants, and such system shall include a certification of acceptability by the college, university, community college, or nursing diploma school of the applicant's choice and a determination of unmet need based on the use of a nationally recognized system or method of need analysis.

(3) Priority in the awarding of student assistance grants for the first year shall be given to entering first-year freshman students and then to community college transfer students. In any event, priority in the awarding of grants shall be given to those applicants who have demonstrated the most promise for academic success as evidenced by a standardized examination and their record of academic achievement. Renewal grants shall take precedence over new awards in any year in which funds are not sufficient to meet the total need.

(4)(a) Each person awarded a student assistance grant under the terms of this law shall be eligible, upon completion of satisfactory work each year and upon compliance with eligibility standards in subsections (1)-(3) and regulations of the Department of Education, to have his student assistance grant renewed from year to year. A grant renewal period may not exceed 9 quarters or the equivalent semesters or trimesters in a period not to exceed 5 years or until graduation or termination of full-time attendance, whichever comes earlier.

(b) In the event that a student assistance grant recipient transfers from one accredited Florida college, university, community college, or nursing diploma school to another, his grant shall be transferable upon approval of the department. When approved by the department, the amount of the unmet need shall be recalculated for the new institution in accordance with subsections (1)-(3) and shall be adjusted accordingly.

(5) Payment of student assistance grants shall be transmitted to the president of the college, university, community college, or nursing diploma school which the recipient is attending or to his representative. Should any recipient terminate his enrollment for any reason during the academic year, the unused portion of the grant, as determined by rules and regulations of the Department of Education, shall be refunded within 60 days to the department for the purposes of this section by the president of the Florida accredited college, university, community college, or nursing diploma school or by his representative.

History.—ss. 1-3, ch. 72-199; s. 70, ch. 72-221; s. 4, ch. 73-273; s. 1, ch. 78-66; s. 68, ch. 79-222.
Note.—Former s. 239.461.

240.411 Professional and practical nursing education; scholarships; value.—

(1) There are established and provided 190 schol-

arships in nursing education to be awarded to students for attendance at approved professional diploma schools of nursing or approved community college schools of nursing in Florida in the amount of $300 per school year for a period not exceeding 3 years.

(2) There are established 120 scholarships in nursing education to be awarded to students for attendance at approved basic collegiate schools of nursing in Florida, in the amount of $600 per school year for a period not exceeding 4 years; however, when the recipient wishes to accelerate his or her training by attending 4 quarters during a regular school term, the scholarship shall have an annual value of $800.

(3) There are hereby established 100 scholarships in practical nursing education to be awarded to students for attendance at approved practical schools of nursing in Florida, in the amount of $300, for a period not exceeding 1 year.

(4) There is hereby established a sum of $11,000 in scholarship funds for additional education leading to a baccalaureate or master's degree in nursing, nursing education, or nursing administration, to be awarded to licensed Florida resident professional nurses. The amount of the baccalaureate scholarship shall be $1,000 and the amount of the master's scholarship shall be $1,500 per school year for educational pursuit within the state not to exceed 6 quarters, but in no event shall any scholarship funds be awarded after receipt of a master's degree.

(5) The foregoing scholarships shall be interchangeable at the discretion of the Department of Education.

(6) From the nursing scholarship loans available to be awarded in any year, the Department of Education shall have authority to designate on the basis of existing and projected need a specific number of such scholarships to be awarded only to recipients who pledge their services to a state institution or agency. If at the time of graduation or completion of training it is determined that the services of recipients of such scholarship loans shall not be needed by a state institution or agency, the Department of Education may accept in lieu thereof service rendered to a county or municipal institution or agency. Recipients of such scholarship funds who pledge their services to a state institution or agency shall do so at the regular rate of pay and periods of time. However, no new awards shall be made after July 1, 1971.

(7) The Department of Education shall administer the scholarship programs created by this section subject to regulations established by the department.

History.—s. 2, ch. 29819, 1955; s. 2, ch. 57-789; ss. 1-3, ch. 61-367; ss. 24, 25, ch. 63-376; s. 1, ch. 65-28; s. 1, ch. 67-132; s. 9, ch. 69-180; ss. 15, 35, ch. 69-106; s. 3, ch. 71-372; s. 70, ch. 72-221; s. 69, ch. 79-222.

Note.—Former s. 239.47.

240.413 Seminole and Miccosukee Indian scholarships.—

(1) AWARD.—There shall be awarded by the Department of Education, subject to regulations of the department, each fiscal year, beginning with the fiscal year commencing July 1, 1963, one scholarship each to a Seminole or Miccosukee Indian girl or boy. All Seminole and Miccosukee Indians residing within the boundaries of this state shall be deemed eligible to participate under the provisions of this section.

(2) ELIGIBILITY.—To be eligible to receive a scholarship, an applicant must:

(a) Have graduated from high school or be enrolled in the final year of high school study;

(b) Meet the admission requirements of an accredited community college, college, or university in Florida; and

(c) Demonstrate financial need as determined by standards to be established by the student scholarship and loan council.

(3) AWARDING SCHOLARSHIPS.—The Department of Education shall award a scholarship to the Seminole Indian girl and boy who earn the highest scores on a standardized examination conducted by the Department of Education each year and who meet the requirements of subsection (2). Each scholarship recipient shall be eligible to have the scholarship renewed from year to year for a period of 4 years or until graduation with a bachelor's degree whichever comes earlier; provided, however, that all academic and other requirements of the college attended and rules and regulations as may be prescribed by the department as provided for hereinafter shall be met.

(4) VALUE OF SCHOLARSHIPS, DISBURSEMENT OF FUNDS.—Each scholarship shall have a value of $600 each year; provided, however, that where a recipient wishes to accelerate his or her training by attending 4 quarters during a regular school term the scholarship shall have an annual value of $800. At the beginning of each semester or quarter, the Commissioner of Education shall certify the name of each scholarship holder eligible to receive funds for that registration period to the Comptroller, who shall draw a warrant in favor of each scholarship holder.

(5) NUMBER OF SCHOLARSHIPS.—The Department of Education shall include in its legislative budget request sufficient amounts for the payment of 2 additional scholarships each year until a total of 8 scholarships are available each year.

History.—ss. 1-6, ch. 63-404; s. 1, ch. 65-515; s. 1, ch. 67-133; ss. 13, 14, ch. 69-180; s. 1, ch. 69-300; ss. 15, 35, ch. 69-106; s. 1, ch. 71-217; s. 70, ch. 72-221; s. 70, ch. 79-222.

Note.—Former s. 239.66.

240.415 Student Financial Aid Fund; administration.—

(1) There is hereby created a Student Financial Aid Fund to be administered by the State Department of Education in accordance with policies and regulations to be established by the department.

(2) The department shall have as its purposes relating to loans and scholarships the coordination of state financial aid programs and the planning, development, and continuous evaluation of a comprehensive and long-range program of financial aid for Florida students. In the performance of its responsibilities the department shall make a comprehensive study of the needs of Florida students and the provisions of existing institutional, state, and federal programs of student financial aid. The department is authorized to employ such consultants or professional assistants as may be necessary to conduct comprehensive studies. The department shall systematically collect information on all finan-

cial aid available from private or governmental sources to students of Florida for pursuit of studies at Florida institutions of higher learning. Information on financial aid shall be made available by the department upon request and shall be periodically distributed to superintendents who shall in turn distribute such information to all junior and senior high school principals in their districts.

(3) There is hereby appropriated to the use of the said department the sum of $500,000 for carrying out the purposes of this act during the 1963-65 biennium. Said sum shall be maintained by the State Treasurer in a permanent, special trust fund, to be expended upon vouchers approved by the department and submitted to the Comptroller, for payment. Any unexpended balance therein at the end of any biennium shall remain therein and be available for carrying out the purposes of this law.

(4) Scholarship loans from said fund, as determined by the department, shall be made only to full-time students in good academic and conduct standing who can demonstrate financial need. Said loans shall be made only to students who are citizens of the United States, or who are in the United States for other than a temporary purpose with the intent to become a permanent resident thereof, and who have been bona fide residents of Florida for the preceding 3 years. Priority shall be given to applicants who have demonstrated the most promise for academic success as evidenced by a standardized examination or their record of academic achievement. Such loans shall be granted only for unmet financial need for educational expenses and shall not exceed a total of $1,800 per academic year to any one individual applicant. Recipients of such loans may attend any institution of higher learning in Florida, either private or public, which is a member of the Southern Association of Colleges and Secondary Schools or whose credits are acceptable for transfer to state universities in Florida or professional nursing diploma schools.

(5)(a) The criteria and procedure for establishing standards of eligibility shall be as the same are determined by the department, but no person shall be eligible who has not demonstrated high moral character, good citizenship, and dedication to American ideals. The department is directed to establish a rating system upon which to base the approval of loans, and such system shall include a certification of acceptability by the university, college, community college, or professional nursing diploma school of the applicant's choice. The individual recipient shall be selected by the department on the basis of criteria established by the department as provided in this section.

(b) Each person who receives a scholarship loan as herein provided shall execute, as principal, a promissory note, under seal, which shall be endorsed by his parent or guardian or by some other responsible citizen, as surety, and shall deliver said note to the president of the institution he is attending or to his representative. The Department of Education may require collateral or waive endorsement requirements under rules and regulations which shall be adopted by the Department of Education. Each note shall be made payable to the state for the amount of the quarter or semester payment and shall bear interest at the rate of 4 percent per annum beginning 6 months from the date of graduation or termination of full-time college attendance, whichever comes earlier; interest on the note or notes executed by each scholarship loan recipient who elects to transfer from any public or private community college in Florida to any public or private college or university in Florida which is a member of the Southern Association of Colleges and Secondary Schools or whose credits are acceptable for transfer to state universities in Florida shall be deferred until 6 months following graduation with the bachelor's degree or termination of full-time college attendance, whichever comes earlier. The president shall transmit said note to the Department of Education along with his requisition for funds. Each person awarded a scholarship loan under the terms of this law shall be eligible, upon completion of satisfactory work each year and compliance with subsection (4) and regulations of the Department of Education, to have his scholarship loan renewed from year to year. A university student renewal period may not exceed 12 quarters or the equivalent semesters or trimesters in a period not to exceed 6 consecutive years or until receipt of the bachelor's degree or termination of full-time college attendance, whichever comes earlier. A community college student renewal period may not exceed 6 quarters or the equivalent semesters or trimesters in a period not to exceed 4 years or until receipt of associate's degree or termination of full-time community college attendance, whichever comes earlier. A professional nursing diploma school student renewal period may not exceed 9 quarters or the equivalent semesters or trimesters in a period not to exceed 4 years or until receipt of professional nursing diploma or termination of full-time professional nursing diploma school attendance, whichever comes earlier.

(6) The department shall be authorized to receive and administer grants and donations from any source and in its discretion to establish criteria, select recipients and award scholarships and loans from such funds and to fix the interest rates and terms of repayment thereof.

(7)(a) Each person who executes a note for a scholarship loan under the provisions of this law shall begin repayment of the principal and interest no later than 6 months following graduation with the bachelor's degree or termination of full-time attendance, whichever comes earlier. The monthly installment shall be at a rate which will satisfy the loan in not more than 10 years or at the rate of $25 per month, whichever is greater. Repayment may be waived in the event of his death or permanent total disability. Repayment may be temporarily waived by the Department of Education for military service, full-time graduate study, or temporary total disability.

(b) If it becomes necessary, the Department of Education shall make every effort to enforce the collection of the principal and interest on all uncanceled and unpaid notes and shall deposit said sum to the loan trust fund. Any expense incurred by the Department of Education in enforcing collection of any such scholarship loan notes shall be borne by the

signer of the note and the endorser thereof and shall be added to the amount of the principal of said note or notes.

(8) No loans authorized by subsections (4) and (5) shall be made after June 30, 1975, except to students who received such loans prior to June 30, 1975, and who continue their eligibility as defined by this section. To the extent that they are not required for purposes of the Student Financial Aid Trust Fund, moneys deposited in the trust fund shall be used to support a program of short-term loans to students who have applied for a Florida-insured student loan but who have not received such loan by the first day of registration of the school term for which the insured loan applies. Only students attending state universities or public community colleges will be eligible for the short-term loans authorized by this section. Of the moneys available for this purpose, a maximum of $1,000,000 may be used each year. One-half of the funds shall be allocated to each institution in the same proportion as its total amount of Florida-insured student loans for the preceding year is to the total amount of Florida-insured student loans for all state universities and public community colleges for that year, and one-half of the funds shall be allocated proportionally according to enrollment. However, each eligible institution shall receive a minimum allocation of $1,000. It is further provided that no loan authorized by this section shall exceed the amount of disbursement to be made to the student by the forthcoming insured loan. The Department of Education is authorized to prescribe such rules and regulations for this program as are necessary for its efficient and orderly administration and to assess a fixed, nonrebatable service charge equal to 50 cents on each $100, or major fraction thereof, loaned to students participating in the short-term loan program.

History.—ss. 1-7, ch. 63-452; s. 1, ch. 67-139; s. 11, ch. 67-438; ss. 15, 35, ch. 69-106; s. 15, ch. 69-180; s. 1, ch. 69-300; ss. 5-7, 10, ch. 71-372; s. 70, ch. 72-221; ss. 1-3, ch. 73-273; s. 13, ch. 75-302; s. 1, ch. 76-227; s. 71, ch. 79-222.
Note.—Former s. 239.67.

240.417 Increased registration or tuition fees for funding scholarship loan program.—Student registration or tuition fees at each state university and public community college shall include up to $4.68 per quarter, or $7.02 per semester, per full-time student, or the per-student credit hour equivalents of such amounts. These funds shall be paid into the Student Financial Aid Trust Fund, to be maintained in a separate account therein and administered by the Department of Education under the provisions of this act. The fees provided for by this section shall be adjusted from time to time, as necessary, to comply with the debt service coverage requirements of the student loan revenue bonds issued pursuant to s. 240.441. If the Division of Bond Finance of the Department of General Services and the Commissioner of Education determine that such fees are no longer required as security for revenue bonds issued pursuant to ss. 240.439-240.463, moneys previously collected pursuant to this section which are held in escrow, after administrative expenses have been met and up to $150,000 has been used to establish a financial aid data processing system for the State University System incorporating the necessary features to meet the needs of all nine universities for application through disbursement processing, shall be reallocated to the generating institutions to be used for student loan programs. Upon such determination, such fees shall no longer be assessed and collected.

History.—s. 8, ch. 71-372; s. 14, ch. 72-169; s. 70, ch. 72-221; s. 2, ch. 76-227; s. 1, ch. 78-233; s. 72, ch. 79-222.
Note.—Former s. 239.671.

240.419 Maximum allocation of loans from general revenue funds to students in private institutions.—Moneys allocated for loans to students in private colleges, universities, community colleges, and professional nursing diploma schools shall not exceed 40 percent of general revenue payments to the Student Financial Aid Trust Fund.

History.—s. 9, ch. 71-372; s. 70, ch. 72-221; s. 73, ch. 79-222.
Note.—Former s. 239.672.

[1]240.421 Florida Student Financial Aid Advisory Council.—There is created the Florida Student Financial Aid Advisory Council for the purpose of advising the Commissioner of Education on any matters related to student financial aid. Said council shall be composed of nine members who shall be appointed by the Commissioner of Education. The membership of the council shall be as follows:

(1) Three representatives of accredited private institutions of higher learning in Florida.

(2) Two representatives of public community colleges in Florida.

(3) Two representatives of state universities in Florida.

(4) Two representatives of the Professional Financial Aid Administrators' Association.

(5) At no time shall more than one person from the same institution serve as a member of the council.

(6) The terms of members shall be 4 years, but the terms of new members shall be fixed by the commissioner in such manner as will provide for the expiration each year of the terms of at least two members.

(7) Each member shall be a practicing financial aid administrator at the institution represented.

(8) Any vacancy shall be filled by the appointment of a person of the same classification or status as his predecessor, and such appointee shall hold office only for the balance of the unexpired term.

(9) The council shall elect a chairperson from its membership who shall be its principal officer. The council shall meet at least once each year and at such other times as the chairperson may designate.

(10) The members of the council shall receive no compensation for their services, but they shall be entitled to per diem and travel expenses, as provided in s. 112.061, when actually engaged in discharging their duties as members of the council.

History.—s. 2, ch. 63-452; ss. 15, 35, ch. 69-106; s. 15, ch. 69-180; s. 70, ch. 72-221; s. 7, ch. 75-302; s. 4, ch. 78-323; s. 73, ch. 79-222.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.
Note.—Former s. 239.67(2)(a)-(h); s. 239.68.

240.423 Florida Student Financial Assistance Commission.—

(1) There is hereby established the Florida Student Financial Assistance Commission, which is assigned to the Department of Education. The commis-

sion shall serve as a state-chartered, nonprofit corporation to administer the comprehensive program of student grants, scholarships, loans, and loan guarantees authorized by law for citizens declared eligible under the applicable provisions of the law. The commission shall include nine members appointed as follows:

(a) Three persons from the commercial financial community in Florida, appointed by the Governor.

(b) Three persons from the postsecondary education community in Florida, appointed by the Governor.

(c) One student currently enrolled in postsecondary education in Florida, appointed by the Governor.

(d) Two lay citizens who do not derive a majority of their income from education or the commercial financial field, appointed by the Governor.

(2) Each of the members shall be appointed, subject to confirmation by the Senate, for a term of 3 years. Of the original members appointed, three shall serve for a term of 1 year, three shall serve for a term of 2 years, and three shall serve for a term of 3 years. All members shall be residents of this state. In the event of a vacancy on the commission caused other than by expiration of a term, the appointing authority shall appoint a successor to serve the unexpired term.

(3) Members shall be paid travel and per diem expenses as provided in s. 112.061 while performing their duties under the provisions of this act.

History.—s. 1, ch. 77-338; s. 73, ch. 79-222.
Note.—Former s. 239.681.

240.425 Powers and duties of the commission.—

(1) The commission shall:

(a) Hold such meetings as are necessary efficiently to administer the provisions of this act.

(b) Adopt and use an official seal in the authentication of its acts.

(c) Adopt rules for its own government.

(d) Recommend rules to the State Board of Education.

(e) Administer this act and the rules adopted by the State Board of Education.

(f) Appoint, on the recommendations of its chairman, executives, deputies, clerks, and employees of the commission.

(g) Maintain a record of its proceedings.

(h) Cooperate with state and federal agencies in administering the provisions of this act.

(i) Prepare an annual budget.

(2) The commission may:

(a) Sue or be sued.

(b) Enter into contracts for services or contracts to provide services with the federal government, state departments and agencies, or individuals.

(c) Receive bequests and gifts.

(d) Appoint committees to assist in carrying out applicable provisions of the law.

History.—s. 2, ch. 77-338; s. 73, ch. 79-222.
Note.—Former s. 239.682.

240.427 Administration by the commission.—

(1) The provisions of this act shall be administered by the commission pursuant to law and rules adopted by the State Board of Education.

(2) When federal funding, insurance, or reinsurance is applicable to an assistance program administered by the commission, such shall be administered in full compliance with applicable federal law and regulation.

History.—s. 3, ch. 77-338; s. 73, ch. 79-222.
Note.—Former s. 239.683.

240.429 Assistance programs and activities of the commission.—

(1) The commission may contract for the administration of the student financial assistance programs as specifically provided in ss. 240.413, 240.415, 240.417, 240.419, 240.439, and 295.01.

(2) The commission may contract to provide the planning and development activities provided in ss. 240.421 and 240.437.

(3) The commission shall administer the guarantee of student loans made by participating commercial financial institutions in such a manner as to fully comply with applicable provisions of the Higher Education Act of 1965, as amended, relating to loan reinsurance.

History.—s. 4, ch. 77-338; s. 74, ch. 79-222.
Note.—Former s. 239.684.

240.431 Funding for programs administered by the commission.—

(1) In the preparation of its annual budget, the commission shall request that the Legislature continue to provide funding for applicable programs from the General Revenue Fund.

(2) The commission is authorized to expend moneys from available trust funds in applicable student financial assistance programs.

(3) There is hereby created a Student Loan Guaranty Reserve Fund, which shall be administered by the commission in carrying out the provisions of this act.

(4) The principal sources of operating funds shall be from the earnings from the temporary investment of the Student Loan Guaranty Reserve Fund and from compensation for services performed under contract for the administration of student financial assistance programs pursuant to s. 240.429.

(5) The commission is authorized to accept grant funds under the State Student Incentive Grant Program of the Federal Government, as provided by the Higher Education Act of 1965, as amended.

(6) The commission is authorized to accept federal advances for the establishment of the Student Loan Guaranty Reserve Fund pursuant to the Higher Education Act of 1965, as amended, under agreement with the United States Commissioner of Education and to maintain such advances until recalled by the United States Commissioner of Education.

(7) The commission is authorized to assess a student loan insurance premium on each loan guaranteed by the commission. The amount of insurance premium will be determined by the commission in the amount sufficient to maintain the pledged level of reserve funds but in no event may the amount of the insurance premium exceed the maximum provided by federal law.

(8) The commission shall invest, or contract for the temporary investment of, any unencumbered cash, and the interest earned therefrom, except as

otherwise provided for by law or covenant, shall accrue to the Student Loan Guaranty Reserve Fund or for the administration of the commission.

History.—s. 5, ch. 77-338; s. 75, ch. 79-222; s. 108, ch. 79-400.
Note.—Former s. 239.685.

240.433 Location of the commission.—

(1) The principal offices of the commission shall be in Leon County; however, the commission is authorized to establish secondary offices elsewhere in the state when determined to be necessary and feasible by the commission. The principal location of the commission, for legal purposes, shall be Leon County, and all legal actions sought by the commission shall be initiated in Leon County.

(2) The commission is authorized to rent, lease, purchase, or otherwise occupy sufficient physical office space and rent, lease, or purchase equipment, supplies, and services necessary to administer the programs of the commission.

History.—s. 6, ch. 77-338; s. 76, ch. 79-222; s. 109, ch. 79-400.
Note.—Former s. 239.686.

240.435 Financial and legal requirements of the commission.—

(1) The commission is authorized to establish banking accounts under negotiated terms and is authorized to perform necessary financial transactions.

(2) The Auditor General shall annually conduct postaudits and performance audits of the books, records, and accounts of the commission.

History.—s. 7, ch. 77-338; s. 76, ch. 79-222.
Note.—Former s. 239.687.

240.437 Student financial aid planning and development.—

(1) There is created a student financial aid planning and development program which shall be administered by the Department of Education. It is the intent of the Legislature that a specific sum of funds shall be allocated each year for the purpose of sponsoring the design, development, and implementation of a comprehensive program of student financial aid and of initiating activities of inservice training for student financial aid administrators and activities to encourage maximum lender participation in guaranteed loans. The Florida Student Scholarship and Loan Council shall serve as the advisory body to the Department of Education in the development of a comprehensive program of student financial aid.

(2) The objective of a state program shall be the maintenance of a state student financial aid program to supplement a basic national program which will provide equal access to post high school education to Florida citizens who have the ability and motivation to benefit from a post high school education. In the development of a state program to achieve this objective, it shall be the policy that:

(a) Student financial aid be provided on the basis of financial need;

(b) Admission to an institution be the criterion for eligibility for financial aid;

(c) Student financial aid be available to Florida residents for attendance at accredited institutions of higher education in Florida, public or private;

(d) Student financial aid be provided for all levels of post high school education; and

(e) State student financial aid be administered by a central state agency.

Planning and development shall be in accordance with the above objective and policies.

(3) The planning and development procedures shall provide for:

(a) The review of public policy;

(b) The development of performance objectives;

(c) The development of alternate approaches;

(d) The evaluation of performance; and

(e) The participation and involvement in the planning process of representatives of the groups affected by a state program of student financial aid.

(4) The Department of Education, with the advice of the Florida Student Scholarship and Loan Council, shall develop and present by December 1, 1970, to the Legislature a plan for a comprehensive program of student financial aid in accordance with procedures and policies provided herein.

(5) The 1970-1971 fiscal year shall be used for planning and developing a state program of student financial aid, initiating activities of inservice training for financial aid administrators, and initiating activities to encourage maximum lender participation in guaranteed loans. The Department of Education is authorized to use up to $30,000 from the Student Financial Aid Trust Fund during the 1970-1971 fiscal year for carrying out the purpose of this section.

History.—s. 8, ch. 70-399; s. 76, ch. 79-222.
Note.—Former s. 239.69.

240.439 Student Loan Trust Fund.—There is hereby created a Student Loan Trust Fund, herein referred to as the fund.

History.—s. 1, ch. 72-169; s. 76, ch. 79-222.
Note.—Former s. 239.70.

240.441 Issuance of revenue bonds pursuant to s. 15, Art. VII, State Constitution.—

(1) The issuance of revenue bonds to finance the establishment of the fund, to be payable primarily from payments of interest, principal, and handling charges to the fund from the recipients of the loans, and with the other revenues authorized hereby being pledged as additional security, is hereby authorized, subject and pursuant to the provisions of s. 15, Art. VII, State Constitution; the State Bond Act, ss. 215.57-215.83; and ss. 240.439-240.463.

(2) The amount of such revenue bonds to be issued shall be determined by the Division of Bond Finance of the Department of General Services. However, the total principal amount outstanding shall not exceed $80 million, other than refunding bonds issued pursuant to s. 215.79.

History.—ss. 2, 3, ch. 72-169; s. 3, ch. 76-227; s. 10, ch. 77-338; s. 77, ch. 79-222.
Note.—Former s. 239.705.

240.443 Fees collected under s. 240.415 as security for bonds.—The Department of Education shall have power to pledge, collect, and apply the fees provided for in s. 240.417 in the Student Financial Aid Trust Fund, created by s. 240.415, as additional security for such revenue bonds, together with the revenues provided for under s. 240.441 and any other moneys contained in the fund. Any such pledged fees not used for debt service on the revenue

bonds issued pursuant to ss. 240.439-240.463 shall be used for the other purposes of the Student Financial Aid Trust Fund, including the purposes specified in s. 240.417.

History.—s. 4, ch. 72-169; s. 2, ch. 78-233; s. 78, ch. 79-222.
Note.—Former s. 239.71.

240.445 Eligibility requirements for loans.—Loans may be made from the fund:

(1) To students who have been admitted to attend any institution of higher learning or community college in Florida, private or public, which is a member of the Southern Association of Colleges and Secondary Schools, or any institution of higher learning or community college accredited by an association which is a member of the Council on Postsecondary Accreditation, or whose credits are acceptable for transfer to state universities in Florida; any professional nursing diploma school; any public vocational training center, as provided in chapter 230; any accredited private vocational school approved for veterans' training under Chapter 36, Title 38, U.S.C., and standards adopted by the State of Florida.

(2) To students certified as participants in the Southern Regional Education Board program or other such programs as may be approved by the Legislature.

However, loans shall be made only to students who are domiciled in Florida and have been residents of the State of Florida for the preceding 1 year.

History.—s. 5, ch. 72-169; s. 70, ch. 72-221; s. 4, ch. 76-227; s. 79, ch. 79-222.
Note.—Former s. 239.715.

240.447 Approval of loans; administration of fund.—

(1) The loans to be made with the proceeds of the fund shall be determined and approved by the Department of Education, pursuant to rules and regulations promulgated by the State Board of Education. The fund shall be administered by the Department of Education as provided by law and shall be maintained and secured in the same manner as other public trust funds.

(2) The Department of Education is authorized to contract for the purchase of federally insured student loans to be made by other eligible lenders under the federally insured student loan program; however, any such loans must comply with all applicable requirements of s. 15, Art. VII of the State Constitution, ss. 240.439-240.463, the rules of the State Board of Education relating to the federally insured student loan program, and the proceedings authorizing the student loan revenue bonds, and the loans so purchased shall have been made during the period specified in the contract.

(3) The Department of Education is authorized to sell loan notes acquired pursuant to ss. 240.439-240.463 to the federally created Student Loan Marketing Association and shall take such action as is necessary to comply with applicable federal law and regulations and the provisions of any agreement with the Student Loan Marketing Association for the sale of such loan notes not inconsistent with such law and regulations, including, but not limited to, making agreements for the repurchase of loan notes sold to the Student Loan Marketing Association.

History.—s. 6, ch. 72-169; s. 5, ch. 76-227; s. 1, ch. 78-11; s. 80, ch. 79-222.
Note.—Former s. 239.72.

240.449 Loan agreements.—The Department of Education is hereby authorized to enter into loan agreements between the department and the recipients of loans from the fund for such periods and under such other terms and conditions as may be prescribed by the applicable rules and regulations and mutually agreed upon by the parties thereto in order to carry out the purposes of s. 15, Art. VII, State Constitution and ss. 239.70-239.76.

History.—s. 7, ch. 72-169; s. 81, ch. 79-222.
Note.—Former s. 239.725.

240.451 Terms of loans.—The term of all authorized loans shall be fixed by the regulations adopted by the Department of Education and the loan agreements to be entered into with the student borrowers.

History.—s. 8, ch. 72-169; s. 81, ch. 79-222.
Note.—Former s. 239.73.

240.453 Rate of interest and other charges.—The Department of Education shall from time to time fix the interest and other charges to be paid for any student loan, at rates sufficient to pay the interest on revenue bonds issued pursuant to ss. 240.439-240.463, plus any costs incident to issuance, sale, security, and retirement thereof, including administrative expenses.

History.—s. 9, ch. 72-169; s. 82, ch. 79-222.
Note.—Former s. 239.735.

240.455 Loan use of Student Financial Aid Trust Fund to finance loans until issuance of bonds.—Subject to approval by the Department of Administration, the Department of Education is authorized to use up to $75,000 from the Student Financial Aid Trust Fund during the 1972-1973 fiscal year for carrying out the provisions of ss. 240.439-240.463; provided such funds shall be repaid from the proceeds of the first issue of bonds under the provisions of ss. 240.439-240.463.

History.—s. 10, ch. 72-169; s. 83, ch. 79-222.
Note.—Former s. 239.74.

240.457 Procurement of insurance as security for loans.—The Department of Education may contract with any insurance company or companies licensed to do business in the state for insurance payable in the event of the death or total disability of any student borrower in an amount sufficient to retire the principal and interest owed under a loan made as provided in ss. 240.439-240.463. The cost of any insurance purchased under this section shall be paid by the student borrower as a part of the handling charges for the loan or as a separate item to be paid in connection with the loan.

History.—s. 11, ch. 72-169; s. 84, ch. 79-222.
Note.—Former s. 239.745.

240.459 Participation in federally insured student loan program.—The Department of Education shall adopt rules and regulations necessary for participation in the federally insured student loan program, as provided by the Higher Education

Act of 1965 (Chapter 20, U.S.C., s. 1071 et seq.), as amended or as may be amended from time to time. The intent of this act is to authorize student loans when the State of Florida, through the Department of Education, has become an eligible lender under the provisions of the applicable federal laws providing for the guarantee of loans to students and the partial payment of interest on such loans by the United States Government.

History.—s. 12, ch. 72-169; s. 85, ch. 79-222.
Note.—Former s. 239.75.

240.461 Provisions of ss. 240.439-240.463 cumulative.—The provisions of ss. 240.439-240.463 shall be in addition to the other provisions of this chapter and shall not be construed to be in derogation thereof, except as otherwise expressly provided hereby.

History.—s. 13, ch. 72-169; s. 86, ch. 79-222.
Note.—Former s. 239.755.

240.463 Validation of bonds.—Revenue bonds issued pursuant to ss. 240.439-240.463 shall be validated in the manner provided by chapter 75. In actions to validate such revenue bonds, the complaint shall be filed in the circuit court of the county where the seat of state government is situated, the notice required by s. 75.06 to be published shall be published only in the county where the complaint is filed, and the complaint and order of the circuit court shall be served only on the attorney of the circuit in which the action is pending.

History.—s. 15, ch. 72-169; s. 82, ch. 73-333; s. 87, ch. 79-222.
Note.—Former s. 239.76.

240.465 Delinquent accounts.—

(1) The Department of Education is directed to exert every lawful and reasonable effort to collect all delinquent unpaid and uncanceled scholarship loan notes and student loan agreements.

(2) The department is authorized to establish a recovery account into which unpaid and uncanceled scholarship loan note and student loan agreement accounts may be transferred.

(3) The department is authorized to settle any delinquent unpaid and uncanceled scholarship loan notes and student loan agreements and to employ the service of a collection agency when deemed advisable in collecting delinquent accounts. However, no collection agency shall be paid a commission in excess of 35 percent of the amount collected.

(4) The department is authorized to charge off unpaid and uncanceled scholarship loan notes and student loan agreements which are at least 3 years delinquent and which prove uncollectable after good-faith collection efforts. However, delinquent accounts with past due balances of $25 or less may be charged off as uncollectable when an account becomes 6 months past due and the cost of further collection effort or assignment to a collection agency would not be warranted.

(5) No individual borrower who has been determined to be delinquent in making legally required scholarship loan or student loan repayments shall be furnished with his academic transcripts or other student records until such time as the delinquent status has been removed.

(6) The State Board of Education shall adopt such rules as are necessary to regulate the collection, settlement, and charging off of delinquent unpaid and uncanceled scholarship loan notes and student loan agreements.

History.—s. 14, ch. 75-302; s. 6, ch. 76-227; s. 88, ch. 79-222.
Note.—Former s. 239.80.

PART V

SPECIFIC PROGRAMS AND INSTITUTIONS

240.501 Assent to provisions of Act of Congress approved May 8, 1914; Board of Regents authorized to receive grants, etc.—The Legislature, in behalf of and for the state, assents to, and gives its assent to, the provisions and requirements of a certain Act of Congress approved by the President May 8, 1914, being entitled "An Act to provide for co-operative agricultural extension work between the agricultural colleges in the several states receiving the benefits of the Act of Congress, approved July 2, 1862, and of acts supplementary thereto, and the United States Department of Agriculture"; and the Board of Regents, having supervision over and control of the University of Florida, located at Gainesville, may receive the grants of money appropriated under said Act of Congress and organize and conduct agricultural and home economics extension work, which shall be carried on in connection with the University of Florida, in accord-

ance with the terms and conditions expressed in said Act of Congress.

History.—s. 1, ch. 6839, 1915; RGS 656; CGL 836; s. 18, ch. 65-130; s. 99, ch. 79-222.
Note.—Former s. 241.18.

240.503 Assent to Act of Congress approved May 22, 1928; Board of Regents authorized to receive grants, etc.—The assent of the Legislature is given to the provisions and requirements of the Act of Congress approved May 22, 1928, being entitled "An Act to provide for the further development of agricultural extension work between the agricultural colleges in the several states receiving the benefits of the act entitled 'An Act donating public lands of the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts' approved July 2, 1862, and all acts supplementary thereto, and the United States Department of Agriculture"; and the Board of Regents of the Division of Universities of the Department of Education may receive grants of money appropriated under said act and organize and conduct agricultural extension work, which shall be carried on in connection with the College of Agriculture of said University of Florida, in accordance with the terms and conditions expressed in the Act of Congress aforesaid.

History.—s. 1, ch. 13567, 1929; CGL 1936 Supp. 836(1); s. 18, ch. 65-130; ss. 15, 35, ch. 69-106; s. 99, ch. 79-222.
Note.—Former s. 241.19.

240.505 County or area extension programs; cooperation between counties and University of Florida.—

(1) County or area extension programs will be developed, based on local situations, needs, and problems, supported by scientific and technical information developed by the University of Florida, the United States Department of Agriculture, and other sources of research information. This information will be made available through the local program, with the aid of research scientists and extension specialists of the Institute of Food and Agricultural Sciences.

(2) In each county or other geographic subdivision the board of county commissioners or other legally constituted governing body will annually determine the extent of its financial participation in cooperative extension work. The extent of such financial participation by the counties will influence the number of county extension agents and clerical staff employed and the scope of the local extension program.

(3) Boards of county commissioners or other legally constituted governing bodies will approve or disapprove of persons recommended for extension positions in the county. If a person recommended is not approved, the extension service will recommend another qualified candidate. Extension agents so appointed will be staff members of the University of Florida. It is the responsibility of the cooperative extension service to determine qualifications for positions.

(4) Although county extension agents are jointly employed by the federal, state, and county governments for the purposes of administration of the cooperative extension service, the policies and procedures of the Board of Regents and the University of Florida will apply except in those instances when federal legislation or the basic memorandum of understanding is applicable.

(5) The University of Florida will provide the staff of county extension personnel in the county with supervision and resources for planning and programming. The university is responsible for the programming process. It will make available needed program materials to the extension agents through the subject matter specialists or through other resource persons available from within the university. It will be responsible for maintaining a high level of technical competence in the county extension staff through a continuous program of in-service training.

(6) The county extension director will report periodically to the board of county commissioners or other legally constituted governing body on programs underway and results in the county. Each board of county commissioners or other legally constituted governing body will develop a plan which will enable it to be kept informed on the progress and results of the local extension program so that its own knowledge of program needs and problems may become a part of the educational work carried on by the agents. Such plan shall provide for a means of communicating the board's satisfaction with the extension program to the county extension director and the cooperative extension service.

History.—s. 1, ch. 72-98; s. 99, ch. 79-222.
Note.—Former s. 241.193.

240.507 Extension personnel; federal health insurance programs notwithstanding the provisions of s. 110.123.—The Institute of Food and Agricultural Sciences at the University of Florida is authorized to pay the employer's share of premiums to the Federal Health Benefits Insurance Program from its appropriated budget for any cooperative extension employee of the institute having both state and federal appointments and participating in the Federal Civil Service Retirement System.

History.—s. 1, ch. 77-473; s. 32, ch. 79-190; s. 99, ch. 79-222.
Note.—Former s. 241.195.

240.509 Assent to Morrill Land-Grant Act; annual appropriation and repayment.—

(1) The assent of the Legislature is given to the provisions and requirements of the Act of Congress commonly known as the "Hatch Act," and the Act of Congress commonly known as the "Morrill Act" and all acts supplemental thereto, and the Board of Regents may receive grants of money appropriated under said acts, insofar as the same, or so much thereof, can be used and appropriated for the benefit of the State University System. The provisions of chapter 3564, Acts of 1885, and s. 7 of chapter 1776, Acts of 1870, are made applicable to the State University System insofar as the same are or can be made effective; and all estate, right, property claim, emoluments and the rents and issues thereof, or any substitutions thereof, and all claims and demands arising or that may or can arise thereunder, or any Act of Congress in that regard, are hereby preserved, maintained, and transferred to the Board of Regents for the use and benefit of the State University System.

(2) A continuing annual appropriation from the general revenue fund in the sum of $7,750 is made to the Agricultural College Trust Fund to be used, as the interest thereon would be used, for instruction in agricultural and mechanic arts under the provisions of the Morrill Land-Grant Act approved July 2, 1862, and acts supplemental thereto.

(3) The interest annually received on the bonds constituting the Agricultural College Trust Fund shall be transferred, in a sum not to exceed $7,750 annually, to the General Revenue Fund for the purposes thereof.

History.—s. 26, ch. 5384, 1905; RGS 607; CGL 763; ss. 1, 2, ch. 19137, 1939; s. 2, ch. 61-119; s. 8, ch. 65-130; s. 99, ch. 79-222.
Note.—Former s. 241.23(2); s. 241.21.

240.511 Agricultural experiment stations; assent to Act of Congress; federal appropriation.—The objects and purposes contained in the Act of Congress entitled "An Act to provide for an increased annual appropriation for agricultural experiment stations and regulating the expenditure thereof" are assented to; and the Department of Education is authorized to accept and receive the annual appropriations for the use and benefit of the agricultural experiment station fund of the Agricultural Department of the University of Florida, located at Gainesville, upon the terms and conditions contained in said Act of Congress.

History.—s. 1, ch. 5704, 1907; RGS 653; CGL 823; ss. 15, 35, ch. 69-106; s. 99, ch. 79-222.
Note.—Former s. 241.22.

240.513 University of Florida; J. Hillis Miller Health Center.—

(1) There is established the J. Hillis Miller Health Center at the University of Florida, which shall include the following colleges:

(a) College of Dentistry.
(b) College of Health-Related Professions.
(c) College of Medicine.
(d) College of Nursing.
(e) College of Pharmacy.
(f) College of Veterinary Medicine.

(2) Each college of the health center shall be so maintained and operated as to comply with the standards approved by a nationally recognized association for accreditation.

(3)(a) The State Board of Education shall lease the hospital facilities of the health center, known as the Shands Teaching Hospital and Clinics, and consisting of Building 446 and parts of Buildings 204 and 205 on the campus of the University of Florida and all furnishings, equipment, and other chattels or choses in action used in the operation of the hospital, to a private nonprofit corporation organized solely for the purpose of operating the hospital and ancillary health care facilities of the health center. The rental for the hospital facilities shall be an amount equal to the debt service on bonds or revenue certificates issued solely for capital improvements to the hospital facilities or as otherwise provided by law. The board shall request recommendations from the Board of Regents of the State University System as to the terms of the lease not otherwise provided for in this act.

(b) The board shall provide in the lease or by separate contract or agreement with the nonprofit corporation for the following:

1. Approval of the articles of incorporation of the nonprofit corporation by the Board of Regents and the governance of the nonprofit corporation by a board of directors appointed by the President of the University of Florida and chaired by the Vice President for Health Affairs of the University of Florida.

2. The orderly and just transition of hospital employees from state to corporate employment with the same or equivalent seniority, earnings, and benefits.

3. The use of hospital facilities and personnel in the teaching role of the health center.

4. The continued recognition of the collective bargaining units and collective bargaining agreements as currently composed and recognition of the certified labor organizations representing those units and agreements.

5. The use of hospital facilities and personnel in connection with research programs conducted by the health center.

6. Reimbursement to the hospital for indigent patients, state-mandated programs, underfunded state programs, and costs to the hospital for support of the teaching and research programs of the health center. Such reimbursement shall be appropriated to the board each year by the Legislature after review and approval of the request for funds.

7. The transfer of funds appropriated for and accumulated from the operation of the hospital to the health center to be used to fund contracts for services with the hospital.

(c) The board may, with the approval of the Legislature, increase the hospital facilities or remodel or renovate them, provided that the rental paid by the hospital for such new, remodeled, or renovated facilities shall be sufficient to amortize the costs thereof over a reasonable period of time or fund the debt service for any bonds or revenue certificates issued to finance such improvements.

(d) The Board of Regents is authorized to provide to the nonprofit corporation leasing the hospital facilities comprehensive general liability insurance including professional liability from the self-insurance trust fund established pursuant to s. 240.191.

(e) Any unencumbered general revenue and trust funds appropriated to the Shands Teaching Hospital and Clinics for the fiscal year in which the lease of the hospital facilities to the nonprofit corporation becomes effective and any trust funds accumulated from the operation of the hospital that have not been appropriated shall be transferred to the J. Hillis Miller Health Center and are hereby appropriated to fund contracts for services between the health center and the nonprofit corporation leasing the hospital.

(f) The Board of Regents shall continue to manage and operate the Shands Teaching Hospital and Clinics until such time as the lease of such facilities between the State Board of Education and the nonprofit corporation takes effect. In the event the lease of the hospital facilities to the nonprofit corporation is terminated for any reason, the Board of Regents shall resume management and operation of the hospital facilities. In such event, the Administration Commission is authorized to appropriate revenues generated from the operation of the hospital facili-

ties to the Board of Regents to pay the costs and expenses of operating the hospital facility for the remainder of the fiscal year in which such termination occurs.

History.—ss. 1-3, ch. 25249, 1949; s. 2, ch. 61-119; s. 1, ch. 63-537; s. 12, ch. 65-130; s. 1, ch. 74-255; s. 100, ch. 79-222; ss. 1, 2, ch. 79-248.
Note.—Former s. 241.471.

240.515 Florida State Museum; functions.—The functions of the Florida State Museum, located at the University of Florida, are to make scientific investigations toward the further development of the natural resources of the state and to maintain a depository and exhibitions of the collections and specimens coming into its possession and a library of publications pertaining to the work as herein provided. The collections and library of said museum shall be open, free to the public, under suitable rules and regulations to be promulgated by the director of said museum, and approved by the University of Florida.

History.—s. 2, ch. 7368, 1917; RGS 627; CGL 796; s. 2, ch. 63-204; s. 7, ch. 65-130; s. 98, ch. 79-222.
Note.—Former s. 241.13.

240.517 Certain books furnished by Clerk of Supreme Court.—

(1) The Clerk of the Supreme Court of the state shall furnish the Board of Regents three bound copies of each volume of the Florida Supreme Court Reports as the same are issued and published for the use of the School of Law of the University of Florida and three bound copies of each volume of such reports for the use of the Florida State University College of Law.

(2) The Clerk of the Supreme Court shall transmit to the Board of Regents for distribution to said schools of law any law books coming into his possession for the Supreme Court which are not necessary for said court. The clerk of said court shall furnish said Supreme Court Reports and said surplus law books without cost to the Board of Regents or said law schools.

History.—s. 2, ch. 6170, 1911; RGS 624; CGL 793; s. 1, ch. 29687, 1955; s. 18, ch. 65-130; s. 2, ch. 67-441; s. 73, ch. 77-104; s. 97, ch. 79-222.
Note.—Former s. 241.10.

240.519 School of optometry.—It is the intent of the Legislature that the Board of Regents shall, within the next biennium, establish a school of optometry in conjunction with an existing accredited College of Medicine which will meet the standards of accreditation of the American Optometric Association and shall have as its purpose the aim of providing quality eye care to the citizens of Florida.

History.—s. 1, ch. 74-156; s. 101, ch. 79-222.
Note.—Former s. 241.74.

240.521 East Central Florida; authorization for establishment of university, engineering college extension.—

(1) The State Board of Education is hereby authorized to establish a state university and/or a branch of an existing state university to be located in the East Central section of Florida. The Board of Regents and the State Board of Education are authorized to determine the exact location of said university. The term East Central Florida shall include the Counties of Flagler, Orange, Seminole, Lake, Brevard, Volusia, Osceola, Indian River, and St. Lucie.

(2) The Board of Regents is hereby authorized and directed to establish an extension of the University of Florida Engineering College to provide graduate studies at the masters and doctorate level and research facilities in order that proper instruction and research can be carried on in the field of sciences and engineering. Such facilities shall be located in East Central Florida, and such location shall be determined by the Board of Regents and the State Board of Education.

History.—ss. 1, 2, ch. 63-347; s. 1, ch. 63-348; s. 18, ch. 65-130; s. 120, ch. 79-222.
Note.—Former s. 239.011.

240.523 Four-year college, Dade County.—

(1) The State Board of Education and the State Board of Regents are authorized to establish a degree-granting 4-year college in Dade County and to make a study relating to the feasibility of such action. The State Board of Education and the Board of Regents are authorized to enter into such contracts as may be necessary to carry out the provisions of this act.

(2) The Board of County Commissioners of Dade County is authorized to cooperate with the State Board of Education, the Board of Regents, any city or other county in the establishment of such institution. Dade County and any cooperating city and county are authorized to acquire lands by purchase, gift, condemnation, or otherwise for such use as a county or county and city public purpose and to donate same to the state. The State Board of Education and the Board of Regents are authorized to acquire lands and other property for the purposes of this act as a public purpose.

(3) The provisions of this act shall be cumulative and shall not be construed to repeal or limit any of the powers now vested by law in any of such state agencies, counties, or cities, but shall be construed to create authority in addition to any such powers.

History.—ss. 1-3, ch. 65-297; s. 120, ch. 79-222.
Note.—Former s. 239.012.

240.525 State university or branch, Duval County.—

(1) The State Board of Education is authorized to establish a state university or a branch of an existing state university or state college in Duval County. Said board is directed to have a study made as to the feasibility of such action. The Board of Regents and the State Board of Education are authorized to enter into all contracts necessary to carry out the provisions of this act.

(2) In furtherance of the authority granted under subsection (1), the City of Jacksonville and the Board of County Commissioners of Duval County may cooperate and confer with each other and with the Board of Regents, State Board of Education, or any constituted agency, and with the other counties of the state, in establishing a state university, branch of an existing state university, or state college in Duval County. The City of Jacksonville and said board of county commissioners are authorized to acquire lands and buildings in Duval County, and to donate lands, buildings, or equipment held or acquired by them to the state, and to condemn lands and issue

interest-bearing revenue certificates for the purpose of establishing sites for the university, branch of an existing state university, or state college. The acquisition or donation of such lands, buildings, or equipment shall be deemed to be a public purpose.

(3) The provisions of this act shall be cumulative and shall not be construed to repeal or limit any other law, special or general, but shall create additional authority in the State Board of Education, the Board of Regents, the Duval County Commission, and the City of Jacksonville.

History.—ss. 1-3, ch. 65-308; s. 120, ch. 79-222.
Note.—Former s. 239.013.

240.527 St. Petersburg branch, University of South Florida.—

(1)(a) The Board of Regents of the Division of Universities of the Department of Education is hereby authorized to establish the St. Petersburg branch of the University of South Florida in Pinellas County on properties of the state held by and on behalf of the Board of Regents.

(b) The St. Petersburg branch of the University of South Florida shall be operated and maintained as a part of the University of South Florida and shall be administered by a dean or such administrative head as shall be determined by the Board of Regents.

(c) The space presently occupied by the marine research laboratory facilities located on the St. Petersburg campus of the University of South Florida shall not be affected by this section.

(d) The St. Petersburg campus of the University of South Florida shall be known as the "University of South Florida, St. Petersburg."

(2) The City of St. Petersburg, the Board of County Commissioners of Pinellas County, and all other governmental entities are authorized to cooperate with the Board of Regents in establishing this institution. The acquisition and donation of lands, buildings, and equipment for use of the St. Petersburg branch of the University of South Florida are hereby authorized and shall be deemed to be for a public purpose.

History.—s. 1, ch. 69-363; ss. 15, 35, ch. 69-106; s. 120, ch. 79-222.
Note.—Former s. 239.014.

240.529 Approved teacher education programs.—

(1) Each teacher education program of an institution of higher learning within the state which has been approved by the Department of Education, as provided for by rules of the State Board of Education, shall require, as a prerequisite for admission into the teacher education program, that a student receive a passing score at the 40th percentile or above, to be established by state board rule, on a nationally normed standardized college entrance examination. However, the State Board of Education shall provide by rule for a waiver of this requirement for up to 10 percent of the applicants on an institutional basis or on a systemwide basis in the case of the State University System.

(2) Effective July 1, 1982, continued approval of specific teacher education programs at each institution of higher learning within the state shall be contingent upon the passing of the state written examination required by s. 231.17(2) by at least 80 percent of the graduates of the program who take the examination.

History.—s. 2, ch. 78-423; s. 96, ch. 79-222.
Note.—Former s. 239.795.

240.531 Establishment of educational research centers for child development.—

(1) Upon approval of the university president, the student government association of any university within the State University System may establish an educational research center for child development in accordance with the provisions of this section. Each such center shall be a child day care center established to provide care for the children of students, both graduate and undergraduate, faculty, and other staff and employees of the university and to provide an opportunity for interested schools or departments of the university to conduct educational research programs and establish internship programs within such centers. Whenever possible, such center shall be located on the campus of the university. There shall be a director of each center, selected by the board of directors of the center.

(2) There shall be a board of directors for each educational research center for child development, consisting of the president of the university or his designee, the student government president or his designee, the chairman of each department participating in the center or his designee, and one parent for each 50 children enrolled in the center, elected by the parents of children enrolled in the center. The director of the center shall be an ex officio, nonvoting member of the board. The board shall establish local policies and perform local oversight and operational guidance for the center.

(3) Each center is authorized to charge fees for the care and services it provides. Such fees must be approved by the Board of Regents and may be imposed on a sliding scale based on ability to pay or any other factors deemed relevant by the board.

(4) The Board of Regents is authorized and directed to promulgate rules for the establishment, operation, and supervision of educational research centers for child development. Such rules shall include, but need not be limited to: a defined method of establishment of and participation in the operation of centers by the appropriate student government associations; guidelines for the establishment of an intern program in each center; and guidelines for the receipt and monitoring of funds from grants and other sources of funds consistent with existing laws.

(5) Each educational research center for child development shall be funded by a portion of the Capital Improvement Trust Fund fee established by the Board of Regents pursuant to [1]s. 240.062. Each university which establishes a center shall receive a portion of such fees collected from the students enrolled at that university, usable only at that university, equal to 15 cents per student per quarter hour taken per quarter, based on four quarters per year. This allocation shall be used by the university only for the establishment and operation of a center as provided by this section and rules promulgated hereunder. Said allocation may be made only after all current bond obligations required to be paid from such fees have been met.

History.—s. 1, ch. 79-197.
[1]**Note.**—Section 240.062 was repealed by s. 121, ch. 79-222, effective July 1, 1979.

CHAPTER 242

SPECIALIZED STATE EDUCATIONAL INSTITUTIONS

242.331 Florida School for the Deaf and the Blind; board of trustees.—

(1) There is hereby created a board of trustees for the Florida School for the Deaf and the Blind of the Department of Education, which shall consist of seven members. Of these seven members, one appointee shall be a blind person, and one appointee shall be a deaf person. Each member shall have been a resident of the state for a period of at least 10 years. Their terms of office shall be 4 years except the first members, one of whom shall be for a term of 1 year, two for a term of 2 years, two for a term of 3 years and two for a term of 4 years. The appointment of the trustees shall be by the Governor with the confirmation of the Senate. The Governor may remove any member for cause, and shall fill all vacancies which occur.

(2) The board of trustees shall elect a chairman annually. The trustees shall be reimbursed for traveling expenses as provided in s. 112.061, the accounts of which shall be paid by the State Treasurer upon itemized vouchers duly approved by the chairman.

(3) The board of trustees shall act at all times in conjunction with and under the supervision and general policies adopted by the State Board of Education.

(4) The board of trustees for the Florida School for the Deaf and the Blind is a body corporate and shall have a corporate seal. Title to all property and other assets of the Florida School for the Deaf and the Blind shall vest in the State Board of Education; but the board of trustees shall have complete jurisdiction over the management of the school and is invested with full power and authority to appoint a president, faculty, teachers, servants, and other employees, and to remove the same as in their judgment may be best; fix their compensation; determine eligibility of students and procedure for admission; provide for the students of the Florida School for the Deaf and the Blind necessary bedding, clothing, food and medical attendance, and such other things as may be proper for the health and comfort of said students without cost to their parents or guardians; provide for the proper keeping of accounts and records; budgeting of funds; to enter into contracts; to sue and be sued; to secure public liability insurance; and to do and perform every other matter or thing requisite to the proper management, maintenance, support and control of the Florida School for the Deaf and the Blind at the highest efficiency economically possible taking into consideration the purposes of the establishment.

(5) The board of trustees of the Florida School for the Deaf and the Blind, located in St. Johns County, shall designate a portion of the school as "The Verle Allyn Pope Complex for the Deaf," in tribute to the late Senator Verle Allyn Pope.

History.—ss. 1-4, ch. 63-231; s. 19, ch. 63-400; s. 1, ch. 67-49; ss. 15, 35, ch. 69-106; s. 1, ch. 74-86; s. 1, ch. 74-159.
cf.—s. 20.15 Department of Education, board of trustees.

242.332 Use of out-of-state educational facilities, financing.—

(1) The Florida School for the Deaf and the Blind is hereby authorized to expend funds for the purpose of sending children under the age of 20, who are deaf as well as blind, for which there are no facilities for education in this state, to any school, institution, or other place outside the state providing a qualified program of education for such children. Such funds may be spent for room, board, tuition, transportation, and other items which are necessarily relevant to the education of such children.

(2) In interpreting and carrying out the provisions of this act, the words "deaf-blind children," wherever used, will be construed to include any child whose combination of handicaps of deafness and blindness would prevent him from profiting satisfactorily from educational programs provided for the blind child or the deaf child.

(3) The Florida School for the Deaf and the Blind is hereby authorized to determine if such children should be sent to such out-of-state places, and the Florida School for the Deaf and the Blind is hereby authorized to promulgate such rules and regulations as it deems necessary and proper for carrying out the purposes and intents of this act.

History.—s. 1, ch. 67-268.
cf.—s. 20.15 Department of Education, board of trustees.

242.391 Construction of state school in St. Johns County.—If and when the State School for Deaf and Blind as provided for by law is separated and there is created a special state school for the blind and a state school for the deaf, such schools shall both be located in St. Johns County.

History.—s. 1, ch. 63-164.

242.62 Appropriation to first accredited medical school.—

(1) Unless otherwise provided for in the annual appropriations act and subject to the provisions hereinafter set forth, the state shall pay the first accredited and approved medical school established in the state the sum of $6,500 per year for each student admitted and enrolled in the 4-year medical doctorate curriculum in such institution and the sum of $8,500 per year for each student admitted and enrolled in a medical doctorate curriculum of not more than 3 years duration in such institution. Such payments shall be made in semiannual installments.

(2) In order for a medical school to qualify under the provisions of this section and to be entitled to the benefits herein, said medical school:

(a) Shall be primarily operated and established to offer, afford and render a medical education to

residents of the state qualifying for admission to said institution;

(b) Shall be operated by a municipality or county of this state, or by a nonprofit organization heretofore or hereafter established exclusively for educational purposes;

(c) Shall, upon the formation and establishment of an accredited medical school, transmit and file with the Board of Regents of the Division of Universities of the Department of Education documentary proof evidencing the facts that such institution has been certified and approved by the council on medical education and hospitals of the American Medical Association and has adequately met the requirements of said council in regard to its administrative facilities, administrative plant, clinical facilities, curriculum and all other such requirements as may be necessary to qualify with said council as a recognized, approved and accredited medical school;

(d) Shall certify to the Board of Regents the name, address and educational history of each student approved and accepted for enrollment in said institution for the ensuing school year.

(3) The Board of Regents shall, within 60 days of the receipt of the student enrollment of said medical school, pay to said school, each year, the sum provided in subsection (1) for each student accepted and approved for enrollment in said medical institution, provided said medical student is a legal resident of the state or, if said student is not of legal age, his parents or legal guardian are residents of the state at the time of said student's acceptance and approval as a medical student; and provided the enrollment of the first accredited medical school shall consist of not more than 470 such Florida residents, unless otherwise provided for in the annual appropriations act. In the event any student shall resign or be dismissed from said medical institution for any reason whatsoever before the end of a school year, then such medical institution shall, within 30 days from said dismissal or resignation, remit to the state, through the Board of Regents, a pro rata amount of the sum before paid by the state to said medical institution, said amount to be computed by dividing the total number of days in the school year into the sum paid for that student and multiplying the result by the total number of days remaining in such school year after such resignation or dismissal.

(4) Such institution is herewith and hereby prohibited from expending any of said sums received under the terms of this section for any purposes whatsoever, except the operation and maintenance of a medical school and for medical research. Said institution is further prohibited from expending any sums received under the terms of this section for the construction or erection of any buildings of any kind, nature or description or for the maintenance and operation of any hospital in any form or manner whatsoever.

History.—ss. 1-5, ch. 26763, 1951; s. 8, ch. 57-400; s. 1, ch. 59-484; s. 1, ch. 63-52; s. 2, ch. 63-204; s. 18, ch. 65-130; s. 1, ch. 65-305; s. 1, ch. 67-439; s. 1, ch. 69-61; ss. 15, 35, ch. 69-106; s. 1, ch. 69-319; s. 1, ch. 72-56.

CHAPTER 243

EDUCATIONAL INSTITUTIONS LAW; REVENUE CERTIFICATES

PART I EDUCATIONAL INSTITUTIONS LAW (ss. 243.01-243.151)

PART II COUNTIES HIGHER EDUCATIONAL FACILITIES AUTHORITIES LAW (ss. 243.18-243.40)

PART I

EDUCATIONAL INSTITUTIONS LAW

243.01 Definitions.—The following terms, wherever used or referred to in this law, shall have the following meanings unless a different meaning clearly appears in the context:

(1) The term "institution" shall mean any institution under the jurisdiction of the State Board of Regents.

(2) The term "board" shall mean the State Board of Regents.

(3) The term "revenue certificate" shall mean certificates with respect to the repayment of any loans or borrowed money, issued by the State Board of Control or Board of Regents pursuant to this law.

(4) The term "to acquire" shall include to purchase, to erect, to build, to construct, to reconstruct, to repair, to replace, to extend, to better, to equip, to develop, and to improve a project.

(5) The term "project" shall mean and include buildings, structures, improvements, and equipment of every kind, nature and description, which may be required by or convenient for the purpose of an institution, including, without limiting the generality of the foregoing, administration, dining, exhibition, lecture, recreational and teaching halls, or parts thereof, or additions thereto; commons, dining halls, dormitories, auditoriums, libraries, infirmaries, laundries, laboratories, metallurgical plants, museums, swimming pools, watertowers, fire prevention and firefighting systems, gymnasia, stadia, dwellings, greenhouses, farm buildings, and stables, or parts thereof, or additions thereto; or any one, or more than one, or all of the foregoing, or any combination thereof, acquired pursuant to this law.

(6) The term "Recovery Act" shall mean the National Industrial Recovery Act, approved June 16, 1933, and the Emergency Relief Appropriation Act of 1935, approved April 8, 1935, and any acts or joint resolutions amendatory thereof and any acts or joint resolutions supplemental thereto, and revisions thereof, and any further acts or resolutions of the Congress of the United States to encourage public works, to provide relief, work relief, or to increase employment by providing for useful projects and providing for the making of loans or grants or both.

(7) The term "federal agency" shall mean the United States, the President of the United States, the Federal Emergency Administrator of Public Works, or such other agency or agencies as may be designated or created to make loans or grants or both pursuant to the Recovery Act.

(8) The term "private agency, corporation or individual" shall mean any private corporation, trust company, firm or individual doing business as such.

History.—s. 2, ch. 16981, 1935; CGL 1936 Supp. 788(2); s. 2, ch. 20920, 1941; s. 2, ch. 21788, 1943; s. 7, ch. 22858, 1945; s. 2, ch. 63-204; s. 18, ch. 65-130.
Note.—Former s. 240.16.

243.02 Powers.—The board, subject to the limitations and restrictions appearing in this law, shall have power and is hereby authorized:

(1) To have a corporate seal and alter the same at pleasure;

(2) To sue and be sued;

(3) To acquire by purchase, gift or the exercise of the right of eminent domain and hold real or personal property or rights or interests therein and water rights;

(4) To make contracts and to execute all instruments necessary or convenient;

(5) To acquire by contract or contracts or by its own agents and employees, or otherwise than by contract, any project or projects, and to operate and maintain such project;

(6) To accept grants of money or materials or property of any kind from a federal agency, private agency, corporation or individual, upon such terms and conditions as such federal agency, private agency, corporation or individual may impose;

(7) To borrow money and issue revenue certificates and to provide for the payment of the same and for the rights of the holders thereof as herein provided;

(8) To perform all acts and do all things necessary or convenient to carry out the powers granted

herein, to obtain loans or grants or both from any federal agency, private agency, corporation or individual, and to accomplish the purposes of this law and secure the benefits of the Recovery Act.

History.—s. 3, ch. 16981, 1935; CGL 1936 Supp. 788(3); s. 3, ch. 20920, 1941; s. 3, ch. 21788, 1943; s. 7, ch. 22858, 1945.
Note.—Former s. 240.17.

243.03 Resolution for issuance of revenue certificates.—Revenue certificates issued under the provisions of s. 243.02 shall be authorized by resolution of the board. Said revenue certificates shall bear interest at such rate or rates not exceeding 7½ percent per annum, unless the total cost of payment of interest in excess of 7½ percent shall be committed to be paid by an agency of the Federal Government, payable semiannually, may be issued in one or more series, may bear such date or dates, may be in such denomination or denominations, may mature at such time or times, not exceeding 50 years from their respective dates, may be in such form, either coupon or registered, may carry such registration privileges, may be executed in such manner, may be payable in such medium of payment and at such place or places, may be subject to such terms of redemption, with or without premium, may contain such terms, covenants, and conditions, and may be declared or become due before the maturity date thereof as such resolution or other resolutions may provide. The revenue certificate may be sold at public or private sale at not less than par. Pending the preparation of the definitive certificates, interim receipts or certificates in such form and with such provisions as said board may determine may be issued to the purchaser or purchasers of certificates sold pursuant to s. 243.02. Said certificates and interim receipts shall be fully negotiable within the meaning and for all the purposes of the Negotiable Instruments Law.

History.—s. 4, ch. 16981, 1935; CGL 1936 Supp. 788(4); s. 4, ch. 20920, 1941; s. 4, ch. 21788, 1943; s. 7, ch. 22858, 1945; s. 1, ch. 67-97; s. 1, ch. 68-6; s. 1, ch. 68-109; s. 22, ch. 73-302.
Note.—Former s. 240.18.

243.04 Powers to secure revenue certificates.—The board, in connection with the issuance of revenue certificates to acquire any projects for an institution or in order to secure the payment of such revenue certificates and interest thereon, shall have power by resolution:

(1) To fix and maintain fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, such projects.

(2) To provide that such revenue certificates shall be secured by a first, exclusive and closed lien on the income and revenue (but not the real property of such institution) derived from, and shall be payable from, fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, such project.

(3) To pledge and assign to, or in trust for the benefit of, the holder or holders of such revenue certificates an amount of the income and revenue derived from fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, such project.

(4) To covenant with or for the benefit of the holder or holders of such revenue certificates that so long as any of such revenue certificates shall remain outstanding and unpaid, such institution will fix, maintain, and collect in such installments as may be agreed upon an amount of the fees, rentals, and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, such project, which shall be sufficient to pay when due such revenue certificates and interest thereon, and to create and maintain reasonable reserves therefor, and to pay the cost of operation and maintenance of such project, including, but not limited to, reserves for extraordinary repairs, insurance and maintenance, which costs of operation and maintenance shall be determined by the board in its absolute discretion.

(5) To make and enforce and agree to make and enforce parietal rules that shall insure the use of such project by all students in attendance at such institutions to the maximum extent to which such project is capable of serving such students, or if such project is designed for occupancy as living quarters for the faculty members, by as many faculty members as may be served thereby.

(6) To covenant that so long as any of such revenue certificates shall remain outstanding and unpaid, it will not, except upon such terms and conditions as may be determined:

(a) Voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge having priority to or being on a parity with the lien of such revenue certificates upon any of the income and revenues derived from fees, rentals, and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, such project, or

(b) Convey or otherwise alienate such project or the real estate upon which such project shall be located, except at a price sufficient to pay all such revenue certificates then outstanding and interest accrued thereon, and then only in accordance with any agreements with the holder or holders of such revenue certificates, or

(c) Mortgage or otherwise voluntarily create or cause to be created any encumbrance on such project or the real estate upon which it shall be located.

(7) To covenant as to the procedure by which the terms of any contract with a holder or holders of such revenue certificates may be amended or abrogated, the amount of percentage of revenue certificates the holder or holders of which must consent thereto, and the manner in which such consent may be given.

(8) To vest in a trustee or trustees the right to receive all or any part of the income and revenue pledged and assigned to, or for the benefit of, the holder or holders of such revenue certificates and to hold, apply and dispose of the same and the right to enforce any covenant made to secure or pay or in relation to such revenue certificates; to execute and deliver a trust agreement or trust agreements which may set forth the powers and duties and the remedies available to such trustee or trustees and limiting the liabilities thereof and describing what occur-

rences shall constitute events of default and prescribing the terms and conditions upon which such trustee or trustees or the holder or holders of revenue certificates of any specified amount or percentage of such revenue certificate may exercise such rights and enforce any and all such covenants and resort to such remedies as may be appropriate.

(9) To vest in a trustee or trustees or the holder or holders of any specified amount or percentage of revenue certificates the right to apply to any court of competent jurisdiction for and have granted the appointment of a receiver or receivers of the income and revenue pledged and assigned to or for the benefit of the holder or holders of such revenue certificates, which receiver or receivers may have and be granted such powers and duties as such court may order or decree for the protection of the revenue certificate holders.

(10) To make covenants with any federal agency, private agency, corporation or individual to perform any and all acts and to do any and all such things as may be necessary or convenient or desirable in order to secure such revenue certificates, or as may in the judgment of the board tend to make the revenue certificates more marketable, notwithstanding that such acts or things may not be enumerated herein, it being the intention hereof to give the board power to make all covenants, including any covenants or agreements giving a lien upon any project constructed, to the agency lending the money for the construction of such project, as security for such loan; and including the power to make any conveyance which may be necessary, of any lot or parcel of land, to any federal agency, private agency, corporation or individual as the means of security for any loan made by such agency for the construction or improvement of a building or structure thereon, and also the right to lease any structure constructed upon the lands of the state for a fair rental; and to perform all acts and to do all things, not inconsistent with the Constitution of the state, in the issuance of such revenue certificates and for their security, which a private business corporation might do.

History.—s. 5, ch. 16981, 1935; CGL 1936 Supp. 788(5); s. 5, ch. 20920, 1941; s. 5, ch. 21788, 1943; s. 7, ch. 22858, 1945.
Note.—Former s. 240.19.

243.06 Remedies of any holder of revenue certificates.—Any holder or holders of revenue certificates, including a trustee, or trustees for holders of such revenue certificates, shall have the right, in addition to all other rights:

(1) By mandamus or other suit, action or proceeding in any court of competent jurisdiction to enforce his or their rights against the board and the Department of Education and any officer, agent or employee of such board or department to fix and collect such rentals and other charges adequate to carry out any agreement as to or pledge of such fees, rentals or other charges, and require the said Department of Education and the board and any of their officers, agents or employees to carry out any other covenants and agreements and to perform their duties under this law.

(2) By action to enjoin any acts or things which may be unlawful or a violation of the rights of such holders of revenue certificates.

History.—s. 7, ch. 16981, 1935; CGL 1936 Supp. 788(7); s. 7, ch. 20920, 1941; s. 7, ch. 21788, 1943; s. 7, ch. 22858, 1945; s. 10, ch. 26484, 1951; ss. 15, 35, ch. 69-106.
Note.—Former s. 240.21.

243.07 Moneys of institutions.—No moneys derived from the sale of revenue certificates or otherwise borrowed under the provisions of this law, or received as a grant, shall be required to be paid into the state treasury, but shall be deposited by the treasurer or other fiscal officer of the board in a separate bank account or accounts in such bank or banks or trust company or trust companies as may be designated by the board. Each such separate bank account or accounts shall be designated with the name of the institution where such project is acquired. All deposits of such moneys shall, if required by the board, be secured by obligations of the United States, of a market value equal at all times to the amount of the deposit; and all banks and trust companies are hereby authorized to give such security. Such money shall be disbursed as may be directed by the board and in accordance with the terms of any agreements with the holder or holders of any revenue certificates. This section shall not be construed as limiting the power of the institution to agree in connection with the issuance of any of its revenue certificates, or the receipt of any grant, as to the custody and disposition of the moneys received from the sale of such revenue certificates or as payment of any such grant or the income and revenue of the institution pledged and assigned to or in trust for the benefit of the holder or holders thereof.

History.—s. 8, ch. 16981, 1935; CGL 1936 Supp. 788(8); s. 8, ch. 20920, 1941; s. 8, ch. 21788, 1943; s. 7, ch. 22858, 1945.
Note.—Former s. 240.22.

243.08 Validity of revenue certificates.—The revenue certificates bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon shall have ceased to be officers of the board. The validity of the revenue certificates shall not be dependent on nor affected by the validity or regularity of any proceedings to acquire the project financed by the revenue certificates or taken in connection therewith.

History.—s. 9, ch. 16981, 1935; CGL 1936 Supp. 788(9); s. 9, ch. 20920, 1941; s. 9, ch. 21788, 1943; s. 7, ch. 22858, 1945.
Note.—Former s. 240.23.

243.09 Prohibitions against obligating State of Florida.—Nothing in this law contained shall be construed to authorize the board to contract a debt on behalf of, or in any way to obligate, the state, or to pledge, assign or encumber in any way, or to permit the pledging, assigning or encumbering in any way of, appropriations made by the Legislature, or revenue derived from the investment of the proceeds of the sale, and from the rental of such lands as have been set aside by legislative enactments of the United States, for the use and benefit of the respective state educational institutions.

History.—s. 10, ch. 16981, 1935; CGL 1936 Supp. 788(10); s. 10, ch. 20920, 1941; s. 10, ch. 21788, 1943; s. 7, ch. 22858, 1945.
Note.—Former s. 240.24.

243.10 Revenue certificate obligations of Board of Regents.—All revenue certificates issued pursuant to this law shall be obligations of the board, payable only in accordance with the terms thereof and shall not be obligations general, special or otherwise of the state. Such revenue certificates shall not be a bond or debt of the state, and shall not be enforceable against the state, nor shall payment thereof be enforceable out of any funds of the board other than the income and revenue pledged and assigned to, or in trust for the benefit of, the holder or holders of such revenue certificates.

History.—s. 11, ch. 16981, 1935; CGL 1936 Supp. 788(11); s. 11, ch. 20920, 1941; s. 11, ch. 21788, 1943; s. 7, ch. 22858, 1945.
Note.—Former s. 240.25.

243.11 Supplemental nature of law; construction and purpose.—The powers conferred by this law shall be in addition to and supplemental to, and the limitations imposed by this law shall not affect, the powers conferred by any other law, general or special, and revenue certificates may be issued hereunder without any referendum, notwithstanding the provisions of any other such law and without regard to the procedure required by any other such law. Insofar as the provisions of the law are inconsistent with the provisions of any other law, general or special, the provisions of this law shall be controlling, except in pursuance of any contract or agreement theretofore entered into by and between any institution and any federal agency.

History.—s. 13, ch. 16981, 1935; CGL 1936 Supp. 788(12); s. 1, ch. 17729, 1937; s. 1, ch. 19347, 1939; s. 13, ch. 20920, 1941; s. 13, ch. 21788, 1943; s. 7, ch. 22858, 1945.
Note.—Former s. 240.26.

243.12 Short title.—Sections 243.01-243.11 may be cited as the "Educational Institutions Law of 1935."

History.—s. 1, ch. 16981, 1935; CGL 1936 Supp. 788(1); s. 1, ch. 20920, 1941; s. 1, ch. 21788, 1943; s. 7, ch. 22858, 1945.
Note.—Former s. 240.15.

243.131 Federal aid; financing dormitories and auxiliary accommodations, institutions of higher learning.—

(1) The Board of Regents is authorized to negotiate with the federal government and, after advertising for bids, with any governmental or private agency, for funds to construct dormitories and other auxiliary accommodations, including student unions, food and health service facilities, bookstores, and recreational facilities necessary and desirable to serve the needs of the students and faculty at the institutions in the State University System, such loans to be secured through the issuance of revenue certificates by the said Board of Regents. Income derived from the rental of said dormitories and other auxiliary accommodations shall be used to retire said revenue certificates so issued and for such other purposes as may be provided in the loan agreement.

(2) In order to furnish said facilities, authority is hereby given for the use of surplus auxiliary money for the purpose of equipping and furnishing said dormitories and other auxiliary accommodations.

(3) Authority is further granted to the Board of Regents for the pledging of any trust funds, available and not otherwise obligated, for the purpose of securing said loans. Trust funds described herein shall be restricted to auxiliary trust funds and such student building fees as established by the Board of Regents and approved by the Legislature pursuant to s. 240.062.

(4) The Board of Regents is authorized to use the funds for the construction of dormitories and other auxiliary accommodations under the terms of the agreements with the agency involved.

History.—ss. 1-4, ch. 29879, 1955; s. 2, ch. 57-400; s. 3, ch. 59-470; s. 1, ch. 61-143; s. 2, ch. 61-119; s. 2, ch. 63-204; s. 18, ch. 65-130; s. 2, ch. 67-97.
Note.—Former s. 229.41.

243.141 Board of Administration to act as fiscal agent.—In furtherance of the provisions of this chapter, the State Board of Administration may upon request of the Board of Regents or of each university act as fiscal agent for the Board of Regents in the issuance and sale of any revenue certificates which may be issued pursuant to this chapter and may upon request of the Board of Regents take over the management, control, administration, custody, and payment of any or all debt services or funds or assets now or hereafter available for any revenue certificates issued pursuant to this chapter. The Board of Regents may from time to time provide by its duly adopted resolution the duties said fiscal agent shall perform, and such duties may be changed, modified, or repealed by subsequent resolution as the Board of Regents may deem appropriate.

History.—s. 1, ch. 63-427; s. 2, ch. 63-204; s. 18, ch. 65-130; s. 115, ch. 79-222.

243.151 Lease agreements; land, facilities.—

(1) Each university is authorized to negotiate and enter into agreements to lease land under its jurisdiction to individuals or corporations for the purpose of erecting thereon facilities and accommodations necessary and desirable to serve the needs and purposes of the university, as determined by the systemwide master plan adopted by the Board of Regents. Such agreement will be for a term not in excess of 40 years and shall include as a part of the consideration provisions for the eventual ownership of the completed facilities by the university. The Board of Trustees of the Internal Improvement Trust Fund upon request of the university shall lease any such property to the university for sublease as heretofore provided.

[1](2) Each university is authorized to enter into lease agreements whereby income-producing buildings, improvements, and facilities are leased to the university for a period of time specified in such agreement. However, such lease agreement shall provide that no funds other than rentals or other income produced by such building, improvement, or facility shall be pledged for the payment of rent to the owner thereof.

(3) The powers granted in this section shall be supplemental to those provided elsewhere in part I, and the university may do any and all things necessary to implement a lease program including the powers enumerated in part I. The board shall be empowered to negotiate contracts under this section.

(4) Agreements negotiated by the Board of Regents prior to January 1, 1980, for the purposes list-

ed herein shall be validated, and said board's capacity to act in such cases ratified and confirmed.

History.—ss. 1, 2, 4, ch. 69-404; ss. 27, 35, ch. 69-106; s. 12, ch. 75-302; s. 1, ch. 79-216; s. 116, ch. 79-222.

[1]Note.—Subsection (2) is published in the text as amended by s. 116, ch. 79-222, an act extensively revising the law relating to postsecondary education. Subsection (2) was also amended by s. 1, ch. 79-216, in a conflicting sense, to read as follows:

(2) The Board of Regents, upon recommendation of the respective university president, is authorized to enter into lease agreements whereby income-producing buildings, improvements, and facilities are leased to the Board of Regents for a period of time specified in such agreement. The Board of Regents is authorized to use any trust funds, available and not otherwise obligated, for the purpose of paying rent to the owner should income from student housing facilities not be sufficient in any payment period. The trust funds actually used for payment of rent shall be replaced as soon as possible to the extent that income from student housing facilities exceeds the amount necessary for such payment. Trust funds described herein shall be restricted to auxiliary trust funds and such student activity and service fees as established by the Board of Regents and approved by the Legislature pursuant to ss. 240.062 and 240.0951.

This note is intended to call attention to the apparent conflict pending resolution by further act of the Legislature. Note also that ss. 240.062 and 240.0951, which are referred to in this amendment, were repealed by s. 121, ch. 79-222.

PART II

COUNTIES HIGHER EDUCATIONAL FACILITIES AUTHORITIES LAW

243.18 Short title.—Part II of chapter 243, may be referred to as the "Higher Educational Facilities Authorities Law."

History.—s. 1, ch. 69-345.

243.19 Findings and declaration of necessity.—It is declared that for the benefit of the people of the state, the increase of their commerce, welfare, and prosperity, and the improvement of their health and living conditions, it is essential that this and future generations of youth be given the fullest opportunity to learn and to develop their intellectual and mental capacities; that it is essential that institutions for higher education within each county in the state be provided with appropriate additional means to assist such youth in achieving the required levels of learning and development of their intellectual and mental capacities and that it is the purpose of part II of this chapter to provide a measure of assistance and an alternate method to enable institutions of higher education in each county of this state to provide the facilities and structures which are sorely needed to accomplish the purposes of this part. The necessity in the public interest of the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

History.—s. 2, ch. 69-345.

243.20 Definitions.—The following terms, wherever used or referred to in this part of chapter 243 shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Authority" or "educational facilities authority" means any of the public corporations created by s. 243.21 or any board, body, commission, department, or officer of the county succeeding to the principal functions thereof or to whom the powers conferred upon each authority by this part shall be given by this part.

(2) "Commission" means the board of county commissioners or other legislative body charged with governing the county (as the case may be).

(3) "Clerk" means the clerk of the commission or the officer of the county charged with the duties customarily imposed upon the clerk thereof.

(4) "Real property" includes all lands, including improvements and fixtures thereon, and any property of any nature appurtenant thereto, or used in connection therewith and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(5) "Project" means a structure suitable for use as a dormitory or other housing facility, dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, and maintenance, storage, or utility facility, and other structures or facilities related thereto, or required thereto, or required or useful for the instruction of students, or the conducting of research, or the operation of an institution for higher education, including parking and other facilities or structures, essential or convenient for the orderly conduct of such institution for higher education and shall also include equipment and machinery and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended but shall not include such items as books, fuel, supplies or other items which are customarily deemed to result in a current operating charge.

(6) "Cost," as applied to a project or any portion thereof financed under the provisions of this part, embraces all or any part of the cost of construction and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests acquired or used for a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such

buildings or structures may be removed, the cost of all machinery and equipment, financing charges, interest prior to, during and for a period of 30 months after completion of such construction, provisions for working capital, reserves for principal and interest and for extensions, enlargements, additions and improvements, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing the project and such other expenses as may be necessary or incident to the construction and acquisition of the project, the financing of such construction and acquisition and the placing of the project in operation.

(7) "Bonds" or "revenue bonds" mean revenue bonds of the authority issued under the provisions of this part, including revenue refunding bonds, notwithstanding that the same may be secured by mortgage or the full faith and credit of a participating institution for higher education or any other lawfully pledged security of a participating institution for higher education.

(8) "Institution for higher education" means an educational institution which by virtue of law or charter is an accredited, nonprofit educational institution empowered to provide a program of education beyond the high school level.

(9) "Participating institution" means an institution for higher education which, pursuant to the provisions of this part, shall undertake the financing and construction or acquisition of a project or shall undertake the refunding or refinancing of obligations or of a mortgage or of advances as provided in and permitted by this part.

History.—s. 3, ch. 69-345.

243.21 Creation of educational facilities authorities.—

(1) In each county there is hereby created a public body corporate and politic to be known as the ".....County Educational Facilities Authority." Each of said authorities is constituted as a public instrumentality and the exercise by an authority of the powers conferred by this part shall be deemed and held to be the performance of an essential public function. Each of said authorities shall not transact any business or exercise any power hereunder until and unless the commission by proper ordinance or resolution shall declare that there is a need for an authority to function in such county. The determination as to whether there is such need for an authority to function

(a) May be made by the commission on its own motion, or

(b) Shall be made by the commission upon filing of a petition signed by 25 residents of the county asserting that there is need for an authority to function in such county and requesting that the commission so declare.

(2) The commission may adopt the ordinance or resolution declaring that there is need for an educational facilities authority in the county if it shall find that the youth of the county do not have the fullest opportunity to learn and to develop their intellectual and mental capacities because there is a shortage of educational facilities or projects at the institutions for higher education located within the county.

(3) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of an ordinance or resolution by the commission declaring the need for the authority. Such ordinance or resolution shall be sufficient if it declares that there is such a need for an authority in the county. A copy of such ordinance or resolution duly certified by the clerk shall be admissible in evidence in any suit, action or proceeding.

(4) The aforementioned ordinance or resolution shall designate five persons as members of the authority created for said county. One of such members shall be a trustee, director, officer, or employee of an institution for higher education if there be such an institution located in such county. Of the members first appointed, one shall serve for 1 year, one for 2 years, one for 3 years, one for 4 years, and one for 5 years, and in each case until his successor is appointed and has qualified. Thereafter, the commission shall appoint for terms of 5 years each a member or members to succeed those whose terms expire. The commission shall fill any vacancy for an unexpired term. A member of the authority shall be eligible for reappointment. Any member of the authority may be removed by the commission for misfeasance, malfeasance or willful neglect of duty. Each member of the authority before entering upon his duties shall take and subscribe the oath or affirmation required by the State Constitution. A record of each such oath shall be filed in the office of the Department of State and with the clerk.

(5) The authority shall annually elect one of its members as chairman and one as vice chairman, and shall also appoint an executive director who shall not be a member of the authority and who shall serve at the pleasure of the authority and receive such compensation as shall be fixed by the authority.

(6) The executive director shall keep a record of the proceedings of the authority and shall be custodian of all books, documents and papers filed with the authority and of the minute book or journal of the authority and of its official seal. He may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.

(7) Three members of the authority shall constitute a quorum, and the affirmative vote of a majority of the members present at a meeting of the authority shall be necessary for any action taken by an authority; provided, however, any action may be taken by an authority with the unanimous consent of all of the members of an authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the provisions of this part may be authorized by resolution at any regular or special

meeting, and each such resolution shall take effect immediately and need not be published or posted.

(8) The members of the authority shall receive no compensation for the performance of their duties hereunder but each such member shall be paid his necessary expenses incurred while engaged in the performance of such duties.

(9) Notwithstanding any other law to the contrary, it shall not be or constitute a conflict of interest for a trustee, director, officer, or employee of an institution for higher education to serve as a member of the authority.

History.—s. 4, ch. 69-345; ss. 10, 35, ch. 69-106.
cf.—s. 112.061 Per diem and traveling expenses, etc.
s. 5, Art. II, State Const. Dual officeholding.

243.22 Powers of authority.—The purpose of the authority shall be to assist institutions for higher education in the construction, financing, and refinancing of projects, and for this purpose the authority is authorized and empowered:

(1) To have perpetual succession as a body politic and corporate and to adopt bylaws for the regulation of its affairs and the conduct of its business.

(2) To adopt an official seal and alter the same at pleasure.

(3) To maintain an office at such place or places in the county as it may designate.

(4) To sue and be sued in its own name, and plead and be impleaded.

(5) To determine the location and character of any project to be financed under the provisions of this part; and

(a) To construct, reconstruct, maintain, repair, operate, lease as lessee or lessor and regulate the same;

(b) To enter into contracts for any or all of such purposes;

(c) To enter into contracts for the management and operation of a project; and

(d) To designate a participating institution for higher education as its agent to determine the location and character of a project undertaken by such participating institution for higher education under the provisions of this part and as the agent of the authority, to construct, reconstruct, maintain, repair, operate, lease as lessee or lessor, and regulate the same, and, as the agent of the authority, to enter into contracts for any or all of such purposes, including contracts for the management and operation of such project.

(6) To issue bonds, bond anticipation notes and other obligations of the authority for any of its corporate purposes, and to fund or refund the same, all as provided in this part.

(7) Generally, to fix and revise from time to time and charge and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by a project or any portion thereof and to contract with any person, partnership, association, or corporation or other body public or private in respect thereof.

(8) To establish rules and regulations for the use of a project or any portion thereof and to designate a participating institution for higher education as its agent to establish rules and regulations for the use of a project undertaken by such participating institution for higher education.

(9) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment, and to fix their compensation.

(10) To receive and accept from any public agency loans or grants for or in aid of the construction of a project or any portion thereof, and to receive and accept loans, grants, aid, or contributions from any source of either money, property, labor, or other things of value, to be held, used, and applied only for the purposes for which such loans, grants, aid, and contributions are made.

(11) To mortgage any project and the site thereof for the benefit of the holders of revenue bonds issued to finance such projects.

(12) To make loans to any participating institution for higher education for the cost of a project in accordance with an agreement between the authority and the participating institution for higher education; provided no such loan shall exceed the total cost of the project as determined by the participating institution for higher education and approved by the authority.

(13) To make loans to a participating institution for higher education to refund outstanding obligations, mortgages or advances issued, made or given by such participating institution for higher education for the cost of a project.

(14) To charge to and equitably apportion among participating institutions for higher education its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this part.

(15) To do all things necessary or convenient to carry out the purposes of this part.

History.—s. 5, ch. 69-345.

243.23 Payment of expenses.—All expenses incurred in carrying out the provisions of this part shall be payable solely from funds provided under the authority of this part, and no liability or obligation shall be incurred by an authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this part.

History.—s. 6, ch. 69-345.

243.24 Acquisition of real property.—The authority is authorized and empowered, directly or by and through a participating institution for higher education as its agent, to acquire by purchase solely from funds provided under the authority of this part, or by gift or devise, such lands, structures, property, real or personal, rights, rights-of-way, franchises, easements, and other interests in lands, including lands lying under water and riparian rights, which are located within or without the state as it may deem necessary or convenient for the construction or operation of a project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the

authority or in the name of a participating institution for higher education as its agent.

History.—s. 7, ch. 69-345.

243.25 Conveyance of title or interest to participating institutions.—When the principal of and interest on revenue bonds of the authority issued to finance the cost of a particular project or projects at a participating institution for higher education, including any revenue refunding bonds issued to refund and refinance such revenue bonds, have been fully paid and retired or when adequate provision has been made fully to pay and retire the same, and all other conditions of the resolution or trust agreement authorizing and securing the same have been satisfied and the lien of such resolution or trust agreement has been released in accordance with the provisions thereof, the authority shall promptly do such things and execute such deeds and conveyances as are necessary and required to convey title to such project or projects to such participating institution for higher education, free and clear of all liens and encumbrances, all to the extent that title to such project or projects shall not, at the time, then be vested in such participating institution for higher education.

History.—s. 8, ch. 69-345.

243.26 Notes of authority.—The authority is authorized from time to time to issue its negotiable notes for any corporate purpose and renew from time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed and delivered in the same manner as bonds. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution or resolutions authorizing revenue bonds of the authority or any issue thereof, and the authority may include in any notes any terms, covenants or conditions which it is authorized to include in any bonds. All such notes shall be payable solely from the revenues of the authority, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding.

History.—s. 9, ch. 69-345.

243.27 Revenue bonds.—

(1) The authority is authorized from time to time to issue its negotiable revenue bonds for any corporate purpose. In anticipation of the sale of such revenue bonds the authority may issue negotiable bond anticipation notes and may renew the same from time to time, but the maximum maturity of any such note, including renewals thereof, shall not exceed 5 years from the date of issue of the original note. Such notes shall be paid from any revenues of the authority available therefor and not otherwise pledged, or from the proceeds of sale of the revenue bonds of the authority in anticipation of which they were issued. The notes shall be issued in the same manner as the revenue bonds. Such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions or limitations which a bond resolution of the authority may contain.

(2) The revenue bonds and notes of every issue shall be payable solely out of revenues of the authority, subject only to any agreements with the holders of particular revenue bonds or notes pledging any particular revenues. Notwithstanding that revenue bonds and notes may be payable from a special fund, they shall be and be deemed to be for all purposes negotiable instruments, subject only to the provisions of the revenue bonds and notes for registration.

(3) The revenue bonds may be issued as serial bonds or as term bonds, or the authority, in its discretion, may issue bonds of both types. The revenue bonds shall be authorized by resolution of the members of the authority and shall bear such date or dates, mature at such time or times not exceeding 50 years from their respective dates, bear interest at such rate or rates not exceeding 7½ percent per annum, be payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States at such place or places, and be subject to such terms of redemption, as such resolution or resolutions may provide. The revenue bonds or notes may be sold at public or private sale for such price or prices as the authority shall determine. Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

(4) Any resolution or resolutions authorizing any revenue bonds or any issue of revenue bonds may contain provisions, which shall be a part of the contract with the holders of the revenue bonds to be authorized, as to:

(a) Pledging of all or any part of the revenues of a project or any revenue-producing contract or contracts made by the authority with any individual, partnership, corporation or association or other body, public or private, to secure the payment of the revenue bonds or of any particular issue of revenue bonds, subject to such agreements with bondholders as may then exist.

(b) The rentals, fees and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues.

(c) The setting aside of reserves or sinking funds, and the regulation and disposition thereof.

(d) Limitations on the right of the authority or its agent to restrict and regulate the use of the project.

(e) Limitations on the purpose to which the proceeds of sale of any issue of revenue bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the revenue bonds or any issue of the revenue bonds.

(f) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured and the refunding of outstanding bonds.

(g) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given.

(h) Limitations on the amount of moneys derived

from the project to be expended for operating, administrative, or other expenses of the authority.

(i) The acts or omissions to act which shall constitute a default in the duties of the authority to holders of its obligations and providing the rights and remedies of such holders in the event of a default.

(j) The mortgaging of a project and the site thereof for the purpose of securing the bondholders.

(5) Neither the members of the authority nor any person executing the revenue bonds or notes shall be liable personally on the revenue bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

(6) The authority shall have power out of any funds available therefor to purchase its bonds or notes. The authority may hold, pledge, cancel or resell such bonds, subject to and in accordance with agreements with bondholders.

History.—s. 10, ch. 69-345; s. 23, ch. 73-302; s. 1, ch. 77-174.

243.28 Security of bondholders.—In the discretion of the authority any revenue bonds issued under the provisions of this part may be secured by a trust agreement by and between the authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or the resolution providing for the issuance of such revenue bonds may pledge or assign the revenues to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion thereof. Such trust agreement or resolution providing for the issuance of such revenue bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including particularly such provisions as have hereinabove been specifically authorized to be included in any resolution or resolutions of the authority authorizing revenue bonds thereof. Any bank or trust company incorporated under the laws of this state which may act as depository of the proceeds of bonds or of revenues or other moneys may furnish such indemnifying bonds or pledge such securities as may be required by the authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of a project.

History.—s. 11, ch. 69-345.

243.29 Payment of bonds.—Revenue bonds issued under the provisions of this part shall not be deemed to constitute a debt or liability of the state or of the county or a pledge of the faith and credit of the state or of any such county, but shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the State of Florida nor the authority shall be obligated to pay the same or the interest thereon except from revenues of the project or the portion thereof for which they are issued and that neither the faith and credit nor the taxing power of the state or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue bonds under the provisions of this part shall not directly or indirectly or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

History.—s. 12, ch. 69-345; s. 1, ch. 77-174.

243.30 Rents, rates and charges.—

(1) The authority is authorized to fix, revise, charge and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by each project and to contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof. Such rates, rents, fees and charges shall be fixed and adjusted in respect of the aggregate of rates, rents, fees and charges from such project so as to provide funds sufficient with other revenues, if any:

(a) To pay the cost of maintaining, repairing and operating the project and each and every portion thereof, to the extent that the payment of such cost has not otherwise been adequately provided for.

(b) To pay the principal of and the interest on outstanding revenue bonds of the authority issued in respect of such project as the same shall become due and payable.

(c) To create and maintain reserves required or provided for in any resolution authorizing, or trust agreement securing, such revenue bonds of the authority.

Such rates, rents, fees and charges shall not be subject to supervision or regulation by any department, commission, board, body, bureau or agency of this state other than the authority.

(2) A sufficient amount of the revenues derived in respect of a project, except such part of such revenues as may be necessary to pay the cost of maintenance, repair and operation and to provide reserves and for renewals, replacements, extensions, enlargements and improvements as may be provided for in the resolution authorizing the issuance of any revenue bonds of the authority or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or trust agreement in a sinking or other similar fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such revenue bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the rates, rents, fees and charges and other revenues or other moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irre-

spective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the authority.

(3) The use and disposition of moneys to the credit of such sinking or other similar fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking or other similar fund shall be a fund for all such revenue bonds issued to finance projects at a particular institution for higher education without distinction or priority of one over another; provided the authority in any such resolution or trust agreement may provide that such sinking or other similar fund shall be the fund for a particular project at an institution for higher education and for the revenue bonds issued to finance a particular project and may, additionally, permit and provide for the issuance of revenue bonds having a subordinate lien in respect of the security herein authorized to other revenue bonds of the authority and, in such case, the authority may create separate sinking or other similar funds in respect of such subordinate lien bonds.

History.—s. 13, ch. 69-345.

243.31 Trust funds.—All moneys received pursuant to the authority of this part, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this part. Any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this act and the resolution authorizing the bonds of any issue or the trust agreement securing such bonds may provide.

History.—s. 14, ch. 69-345.

243.32 Remedies of bondholders.—Any holder of revenue bonds issued under the provisions of this part or any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by any resolution authorizing the issuance of, or any such trust agreement securing, such bonds, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this part or by such resolution or trust agreement to be performed by the authority or by any officer, employee or agent thereof, including the fixing, charging and collecting of the rates, rents, fees and charges herein authorized and required by the provisions of such resolution or trust agreement to be fixed, established and collected.

History.—s. 15, ch. 69-345.

243.33 Tax exemption.—The exercise of the powers granted by this part will be in all respects for the benefit of the people of this state, for the increase of their commerce, welfare and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of a project by the authority or its agent will constitute the performance of an essential public function, neither the authority nor its agent shall be required to pay any taxes or assessments upon or in respect of a project or any property acquired or used by the authority or its agents under the provisions of this part or upon the income therefrom, and any bonds issued under the provisions of this part, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the state, the county and by the municipalities and other political subdivisions in the state. The exemption granted by this section shall not be applicable to any tax imposed by chapter 220 on interest, income or profits on debt obligations owned by corporations.

History.—s. 16, ch. 69-345; s. 7, ch. 73-327.

243.34 Refunding bonds.—

(1) The authority is hereby authorized to provide for the issuance of revenue bonds of the authority for the purpose of refunding any revenue bonds of the authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the earliest or subsequent date of redemption, purchase or maturity of such revenue bonds, and, if deemed advisable by the authority, for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a project or any portion thereof.

(2) The proceeds of any such revenue bonds issued for the purpose of refunding outstanding revenue bonds may, in the discretion of the authority, be applied to the purchase or retirement at maturity or redemption of such outstanding revenue bonds either on their earliest or any subsequent redemption date or upon the purchase or at the maturity thereof and may, pending such application, be placed in escrow to be applied to such purchase or retirement at maturity or redemption on such date as may be determined by the authority.

(3) Any such escrowed proceeds, pending such use, may be invested and reinvested in direct obligations of the United States of America, or in certificates of deposit or time deposits secured by direct obligations of the United States, maturing at such time or times as shall be appropriate to assure the prompt payment, as to principal, interest and redemption premium, if any, of the outstanding revenue bonds to be so refunded. The interest, income, and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding revenue bonds to be so refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, income and profits, if any, earned or realized on the investments thereof may be returned to the authority for use by it in any lawful manner.

(4) The portion of the proceeds of any such revenue bonds issued for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a project may be invested and reinvested in direct obligations of the United States, or in certificates of deposit or time deposits secured by

direct obligations of the United States, maturing not later than the time or times when such proceeds will be needed for the purpose of paying all or any part of such cost. The interest, income and profits, if any, earned or realized on such investment may be applied to the payment of all or any part of such cost or may be used by the authority in any lawful manner.

(5) All such revenue bonds shall be subject to the provisions of this part in the same manner and to the same extent as other revenue bonds issued pursuant to this part.

History.—s. 17, ch. 69-345.

243.35 Legal investment.—Bonds issued by the authority under the provisions of this part are hereby made securities in which all public officers and public bodies of the state and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law.

History.—s. 18, ch. 69-345.

243.36 Reports.—Within the first 90 days of each calendar year, the authority shall make a report to the governing body of the county of its activities for the preceding calendar year. Each such report shall set forth a complete operating and financial statement covering its operations during such year. The authority shall cause an audit of its books and accounts to be made at least once each year by certified public accountants and the cost thereof shall be paid by the authority from funds available to it pursuant to this part.

History.—s. 19, ch. 69-345.

243.37 State agreement.—The state does hereby pledge to and agree with the holders of any obligations issued under this part, and with those parties who may enter into contracts with an authority pursuant to the provisions of this part, that the state will not limit or alter the rights hereby vested in the authority until such obligations, together with the interest thereon, are fully met and discharged and such contracts are fully performed on the part of the authority, provided nothing herein contained shall preclude such limitation or alteration if and when adequate provision shall be made by law for the protection of the holders of such obligations of an authority or those entering into such contracts with an authority. An authority is authorized to include this pledge and undertaking for the state in such obligations or contracts.

History.—s. 20, ch. 69-345.

243.38 Alternate means.—The foregoing sections of this part shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred by other laws; provided the issuance of revenue bonds and revenue refunding bonds under the provisions of this part need not comply with the requirements of any other law applicable to the issuance of bonds. Except as otherwise expressly provided in this part, none of the powers granted to the authority under the provisions of this part shall be subject to the supervision or regulation or require the approval or consent of any municipality or political subdivision or any commission, board, body, bureau, official or agency thereof or of the state.

History.—s. 21, ch. 69-345.

243.39 Liberal construction.—This part, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes hereof.

History.—s. 22, ch. 69-345.

243.40 Provisions of part controlling.—To the extent that the provisions of this part are inconsistent with the provisions of any general statute or special act or parts thereof, the provisions of this part shall be deemed controlling.

History.—s. 23, ch. 69-345; s. 1, ch. 77-174.

CHAPTER 244

EDUCATIONAL COMPACTS

PART I

SOUTHERN REGIONAL COMPACT

244.01 Regional education; state policy.—It is hereby declared to be the policy of the state to promote the development and maintenance of regional education services and facilities in the Southern States in the professional, technological, scientific, literary and other fields so as to provide greater educational advantages for the citizens of the state and the citizens in the several states in said region; and it is found and determined by the Legislature of the state that greater educational advantages and facilities for the citizens of the state in certain phases of the professional, technological, scientific, literary and other fields in education can best be accomplished by the development and maintenance of regional educational services and facilities, under the plan embodied in "The Regional Pact" hereinafter adopted; and this law shall be liberally construed to accomplish such purposes.

History.—s. 1, ch. 25017, 1949.

244.02 Regional compact.—The compact entered into by the state and other Southern States by and through their respective governors on February 8, 1948, as amended, relative to the development and maintenance of regional education services and schools in the Southern States in the professional, technological, scientific, literary and other fields so as to promote greater educational facilities for the citizens of the several states who reside in said region, a copy of said compact, as amended, being as follows:

THE REGIONAL COMPACT
(as amended)

WHEREAS, The States who are parties hereto have during the past several years conducted careful investigation looking toward the establishment and maintenance of jointly owned and operated regional educational institutions in the Southern States in the professional, technological, scientific, literary, and other fields, so as to provide greater educational advantages and facilities for the citizens of the several states who reside within such region; and

WHEREAS, Meharry Medical College of Nashville, Tennessee, has proposed that its lands, buildings, equipment, and the net income from its endowment be turned over to the Southern States, or to an agency acting in their behalf, to be operated as a regional institution for medical, dental and nursing education upon terms and conditions to be hereafter agreed upon between the Southern States and Meharry Medical College, which proposal, because of the present financial condition of the institution, has been approved by the said states who are parties hereto; and

WHEREAS, the said states desire to enter into a compact with each other providing for the planning and establishment of regional educational facilities;

NOW, THEREFORE, in consideration of the mutual agreements, covenants and obligations assumed by the respective states who are parties hereto (hereinafter referred to as "states"), the said several states do hereby form a geographical district or region consisting of the areas lying within the boundaries of the contracting states which, for the purposes of this compact, shall constitute an area for regional education supported by public funds derived from taxation by the constituent states and derived from other sources for the establishment, acquisition, operation and maintenance of regional educational schools and institutions for the benefit of citizens of the respective states residing within the region so established as may be determined from time to time in accordance with the terms and provisions of this compact.

The states do further hereby establish and create a joint agency which shall be known as the Board of Control for Southern Regional Education (hereinafter referred to as the "board"), the members of which board shall consist of the governor of each state, ex officio, and four additional citizens of each state to be appointed by the governor thereof, at least one of whom shall be selected from the field of education, and at least one of whom shall be a member of the legislature of that state. The governor shall continue as a member of the board during his tenure of office as governor of the state, but the members of the board appointed by the governor shall hold office for a period of four years except that in the original appointments one board member so appointed by the governor shall be designated at the time of his appointment to serve an initial term of two years, one board member to serve an initial term of three years, and the remaining board member to serve the full term of four years, but thereafter the successor of each appointed board member shall serve the full term of four years. Vacancies on the board caused by death, resignation, refusal or inability to serve, shall be filled by appointment by the governor for the

unexpired portion of the term. The officers of the board shall be a chairman, a vice chairman, a secretary, a treasurer, and such additional officers as may be created by the board from time to time. The board shall meet annually and officers shall be elected to hold office until the next annual meeting. The board shall have the right to formulate and establish bylaws not inconsistent with the provisions of this compact to govern its own actions in the performance of the duties delegated to it including the right to create and appoint an executive committee and a finance committee with such powers and authority as the board may delegate to them from time to time. The board may, within its discretion, elect as its chairman a person who is not a member of the board, provided such person resides within a signatory state, and upon such election such person shall become a member of the board with all the rights and privileges of such membership. This paragraph as amended in 1957 shall be effective when eight or more of the states party to the compact have given legislative approval to the amendment.

It shall be the duty of the board to submit plans and recommendations to the states from time to time for their approval and adoption by appropriate legislative action for the development, establishment, acquisition, operation and maintenance of educational schools and institutions within the geographical limits of the regional area of the states, of such character and type and for such educational purposes, professional, technological, scientific, literary, or otherwise, as they may deem and determine to be proper, necessary or advisable. Title to all such educational institutions when so established by appropriate legislative actions of the states and to all properties and facilities used in connection therewith shall be vested in said board as the agency of and for the use and benefit of the said states and the citizens thereof, and all such educational institutions shall be operated, maintained and financed in the manner herein set out, subject to any provisions or limitations which may be contained in the legislative acts of the states authorizing the creation, establishment and operation of such educational institutions.

In addition to the power and authority heretofore granted, the board shall have the power to enter into such agreements or arrangements with any of the states and with educational institutions or agencies, as may be required in the judgment of the board, to provide adequate services and facilities for the graduate, professional, and technical education for the benefit of the citizens of the respective states residing within the region, and such additional and general power and authority as may be vested in the board from time to time by legislative enactment of the said states.

Any two or more states who are parties of this compact shall have the right to enter into supplemental agreements providing for the establishment, financing and operation of regional educational institutions for the benefit of citizens residing within an area which constitutes a portion of the general region herein created, such institutions to be financed exclusively by such states and to be controlled exclusively by the members of the board representing such states provided such agreement is submitted to and approved by the board prior to the establishment of such institutions.

Each state agrees that, when authorized by the legislature, it will from time to time make available and pay over to said board such funds as may be required for the establishment, acquisition, operation and maintenance of such regional educational institutions as may be authorized by the states under the terms of this compact, the contribution of each state at all times to be in the proportion that its population bears to the total combined population of the states who are parties hereto as shown from time to time by the most recent official published report of the bureau of the census of the United States of America; or upon such other basis as may be agreed upon.

This compact shall not take effect or be binding upon any state unless and until it shall be approved by proper legislative action of as many as six or more of the states whose governors have subscribed hereto within a period of eighteen months from the date hereof. When and if six or more states shall have given legislative approval to this compact within said eighteen months period, it shall be and become binding upon such six or more states sixty days after the date of legislative approval by the sixth state and the governors of such six or more states shall forthwith name the members of the board from their states as hereinabove set out, and the board shall then meet on call of the governor of any state approving this compact, at which time the board shall elect officers, adopt bylaws, appoint committees and otherwise fully organize. Other states whose names are subscribed hereto shall thereafter become parties hereto upon approval of this compact by legislative action within two years from the date hereof, upon such conditions as may be agreed upon at the time. Provided, however, that with respect to any state whose constitution may require amendment in order to permit legislative approval of the compact, such state or states shall become parties hereto upon approval of this compact by legislative action within seven years from the date hereof, upon such conditions as may be agreed upon at the time.

After becoming effective this compact shall thereafter continue without limitation of time; provided, however, that it may be terminated at any time by unanimous action of the states and provided further that any state may withdraw from this compact if such withdrawal is approved by its legislature, such withdrawal to become effective two years after written notice thereof to the board accompanied by a certified copy of the requisite legislative action, but such withdrawal shall not relieve the withdrawing state from its obligations hereunder accruing up to the effective date of such withdrawal. Any state so withdrawing shall ipso facto cease to have any claim to or ownership of any of the property held or vested in the board or to any of the funds of the board held under the terms of this compact.

If any state shall at any time become in default in the performance of any of its obligations assumed herein or with respect to any obligation imposed upon said state as authorized by and in compliance with the terms and provisions of this compact, all rights, privileges and benefits of such defaulting

state, its members on the board and its citizens shall ipso facto be and become suspended from and after the date of such default. Unless such default shall be remedied and made good within a period of one year immediately following the date of such default this compact may be terminated with respect to such defaulting state by an affirmative vote of three-fourths of the members of the board (exclusive of the members representing the state in default), from and after which time such state shall cease to be a party to this compact and shall have no further claim to or ownership of any of the property held by or vested in the board or to any of the funds of the board held under the terms of this compact, but such termination shall in no manner release such defaulting state from any accrued obligation or otherwise affect this compact or the rights, duties, privileges or obligations of the remaining states thereunder.

IN WITNESS WHEREOF this compact has been approved and signed by governors of the several states, subject to the approval of their respective legislatures in the manner hereinabove set out, as of the 8th day of February, 1948.

STATE OF FLORIDA BY Millard F. Caldwell, Governor. STATE OF MARYLAND BY Wm. Preston Lane, Jr., Governor. STATE OF GEORGIA BY M. E. Thompson, Governor. STATE OF LOUISIANA BY J. H. Davis, Governor. STATE OF ALABAMA BY James E. Folsom, Governor. STATE OF MISSISSIPPI BY F. L. Wright, Governor. STATE OF TENNESSEE BY Jim McCord, Governor. STATE OF ARKANSAS BY Ben Laney, Governor. COMMONWEALTH OF VIRGINIA BY Wm. M. Tuck, Governor. STATE OF NORTH CAROLINA BY R. Gregg Cherry, Governor. STATE OF SOUTH CAROLINA BY J. Strom Thurmond, Governor. STATE OF TEXAS BY Beauford H. Jester, Governor. STATE OF OKLAHOMA BY Roy J. Turner, Governor. STATE OF WEST VIRGINIA BY Clarence W. Meadows, Governor.

be and the same is hereby approved and the State of Florida is hereby declared to be a party to said compact and the agreements, covenants and obligations contained therein are hereby declared to be binding upon the State of Florida.

History.—s. 2, ch. 25017, 1949; ss. 1, 2, ch. 57-177.

244.03 Copies to other states approving.—After the effective date of this law (May 4, 1949) the Secretary of State of Florida shall furnish to each of the states approving the said compact an engrossed copy of this bill.

History.—s. 3, ch. 25017, 1949.

PART II

NATIONAL COMPACT

244.06 Member jurisdictions.—The compact for education is entered into with all jurisdictions legally joining therein and enacted into law in the following form:

COMPACT FOR EDUCATION

ARTICLE I

PURPOSE AND POLICY.

A. It is the purpose of this compact to:

1. Establish and maintain close cooperation and understanding among executive, legislative, professional educational and lay leadership on a nationwide basis at the state and local levels.

2. Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.

3. Provide a clearinghouse of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.

4. Facilitate the improvement of state and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advance in educational opportunities, methods and facilities.

B. It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.

C. The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because the products and services contributing to the health, welfare and economic advancement of each state are supplied in significant part by persons educated in other states.

ARTICLE II

STATE DEFINED.—

As used in this compact, "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

ARTICLE III

THE COMMISSION.—

A. The Education Commission of the States, hereinafter called "the commission," is hereby established. The commission shall consist of seven members representing each party state. One of such members representing Florida shall be the governor; two shall be members of the state senate appointed by the president; two shall be members of the house of representatives appointed by the speaker; and two shall be appointed by and serve at the pleasure of the governor. The guiding principle for the composition

of the membership on the commission shall be that the members, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and nonpublic educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to exceed ten nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

B. The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III, J.

C. The commission shall have a seal.

D. The commission shall elect annually, from among its members, a chairman, who shall be a governor, a vice chairman and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and, together with the treasurer and such other personnel as the commission may deem appropriate, shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.

E. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, subject to the approval of the steering committee, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

F. The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

G. The commission may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph F of this Article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

H. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

I. The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

J. The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

ARTICLE IV

POWERS.—

In addition to authority conferred on the commission by other provisions of the compact, the commission shall have authority to:

1. Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

2. Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

3. Develop proposals for adequate financing of education as a whole and at each of its many levels.

4. Conduct or participate in research of the types referred to in this article in any instance where the commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.

5. Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.

6. Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

ARTICLE V

COOPERATION WITH FEDERAL GOVERNMENT.—

A. If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States

may be represented on the commission by not to exceed ten representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representative shall have a vote on the commission.

B. The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

ARTICLE VI

COMMITTEES.—

A. To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of thirty-two members which, subject to the provisions of this compact and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One-fourth of the voting membership of the steering committee shall consist of governors, one-fourth shall consist of legislators, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the commission shall be elected as follows: sixteen for one year and sixteen for two years. The chairman, vice chairman, and treasurer of the commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two term limitations.

B. The commission may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the party states.

C. The commission may establish such additional committees as its bylaws may provide.

ARTICLE VII

FINANCE.—

A. The commission shall advise the governor or designated officer or officers of each party state of its budget and estimated expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

B. The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.

C. The commission shall not pledge the credit of any party states. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III, G of this compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to Article III, G thereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

D. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.

E. The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

F. Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VIII

ELIGIBLE PARTIES; ENTRY INTO AND WITHDRAWAL.—

A. This compact shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a governor, the term "governor," as used in this compact, shall mean the closest equivalent official of such jurisdiction.

B. Any state or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same; provided that in order to enter into initial effect, adoption by at least ten eligible party jurisdictions shall be required.

C. Adoption of the compact may be either by enactment thereof or by adherence thereto by the governor; provided that in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until December 31, 1967. During any period when a state is participating in this compact through gubernatorial action, the governor shall appoint those persons who, in addition to himself, shall serve as the members of the commission from his state, and shall provide to the commission an equitable share of the financial support of

the commission from any source available to him.

D. Except for a withdrawal effective on December 31, 1967, in accordance with paragraph C of this article, any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE IX

CONSTRUCTION AND SEVERABILITY.—

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

History.—s. 1, ch. 67-344.

244.07 Florida Education Council.—There is hereby established the Florida Education Council, composed of the members of the Education Commission of the States representing this state, and six other persons appointed by the Governor. Initial appointments shall be staggered so that, after the initial appointments have been made, one-third of the membership is appointed annually. The maximum length of any appointment shall be 3 years. In addition, the President of the Senate and Speaker of the House shall each appoint two members who shall serve 2-year terms. These four persons shall not be members of the Legislature and shall not derive a majority of their incomes from educational or education-related fields. The ten persons shall broadly represent the people of Florida. The chairman shall be designated by the Governor from among council members. The council shall meet on the call of its chairman or at the request of a majority of its members, but in any event the council shall meet at least two times each year. The council may consider any matter relating to the Education Commission of the States and state issues on which Florida may receive technical assistance from the Education Commission of the States. The activities of the council shall be supported through existing resources of the Department of Education.

History.—s. 2, ch. 67-344; s. 8, ch. 77-426.

244.08 Commission bylaws.—Pursuant to Article III, I of the compact, the commission shall file a copy of its bylaws and any amendment thereto with the Governor.

History.—s. 4, ch. 67-344.

PART III

COMPACT ON QUALIFICATIONS OF EDUCATIONAL PERSONNEL

244.09 Interstate agreement on qualifications of educational personnel.—The interstate agreement on qualifications of educational personnel is hereby enacted into law and entered into with all jurisdictions legally joining therein, in form substantially as follows:

ARTICLE I

PURPOSE, FINDINGS, AND POLICY

1. The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

2. The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this compact can increase the availability of educational manpower.

ARTICLE II

DEFINITIONS

As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

1. "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

2. "Designated state official" means the education official of a state selected by that state to negotiate and enter into, on behalf of this state, contracts pursuant to this agreement.

3. "Accept," or any variant thereof, means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

4. "State" means a state, territory, or possession of the United States; the district of Columbia; or the Commonwealth of Puerto Rico.

5. "Originating state" means a state and the subdivision thereof, if any, whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

6. "Receiving state" means a state and the subdivisions thereof which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

ARTICLE III
INTERSTATE EDUCATIONAL
PERSONNEL CONTRACTS

1. The designated state official of a party state may make one or more contracts on behalf of his state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this article only with states in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in his own state.

2. Any such contract shall provide for:

(a) Its duration.

(b) The criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state.

(c) Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.

(d) Any other necessary matters.

3. No contract made pursuant to this agreement shall be for a term longer than five years but any such contract may be renewed for like or lesser periods.

4. Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state or any persons qualified because of successful completion of a program prior to January 1, 1954.

5. The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

6. A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting states.

ARTICLE IV
APPROVED AND ACCEPTED PROGRAMS

1. Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

2. To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

ARTICLE V
INTERSTATE COOPERATION

The party states agree that:

1. They will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this agreement.

2. They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

ARTICLE VI
AGREEMENT EVALUATION

The designated state officials of any party states may meet from time to time as a group to evaluate progress under the agreement, and to formulate recommendations for changes.

ARTICLE VII
OTHER ARRANGEMENTS

Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

ARTICLE VIII
EFFECT AND WITHDRAWAL

1. This agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

2. Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one

year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

3. No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

ARTICLE IX
CONSTRUCTION AND SEVERABILITY

This agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters.

History.—s. 1, ch. 69-340.

244.10 Commissioner designated official.—For the purposes of the agreement set forth in Article IX, the "designated state official" for this state shall be the Commissioner of Education. The Commissioner of Education shall enter into contracts pursuant to Article III of the agreement only with the approval of the specific texts thereof by the State Board of Education.

History.—s. 1, ch. 69-340.

244.11 Copies of contracts with other states; depository.—Two copies of all contracts made on behalf of this state pursuant to the agreement set forth in Article IX shall be kept on file in the office of the Commissioner of Education and in the office of the Department of State. The Department of Education shall publish all such contracts in convenient form.

History.—s. 1, ch. 69-340; ss. 10, 15, 35, ch. 69-106.

CHAPTER 245

DISPOSITION OF DEAD BODIES

245.06 Unclaimed dead bodies, disposition, procedure.—All public officers, agents or employees of every county, city, village, town or municipality and every person in charge of any prison, morgue, hospital, funeral parlor or mortuary and all other persons coming into possession, charge or control of any dead human body which is unclaimed or which is required to be buried at public expense are hereby required to notify, immediately, the Division of Universities of the Department of Education, or such person or persons as may from time to time be designated by the said division, whenever any such body or bodies come into its possession, charge or control. Should the person coming into possession, charge or control of such dead human body be other than a licensed embalmer or licensed funeral director, the division shall cause said body to be embalmed either by a licensed embalmer or funeral director, or by the institution to which such body is distributed. The division shall cause the fingerprints to be taken and such fingerprint records shall be sent to the Federal Bureau of Investigation in Washington, D.C. and a copy thereof retained by the division. The division shall make reasonable effort to determine the identity of the body and shall further make reasonable effort to contact any relatives of such deceased person. Upon the receipt by a licensed embalmer or funeral director of an unclaimed body or one which must be buried at public expense, such embalmer or funeral director shall embalm said body by the most acceptable procedure. Such dead human bodies as described in this chapter shall be delivered to the division through its duly authorized agents as soon as possible after death. Nothing herein shall affect the right of a coroner to hold such dead body for the purpose of investigating the cause of death, nor shall this chapter affect the right of any court of competent jurisdiction to enter an order affecting the disposition of such body.

History.—s. 6, ch. 28163, 1953; ss. 15, 35, ch. 69-106; s. 22, ch. 73-334.

245.07 Bodies to be kept 48 hours before use; unfit, excess number of bodies, procedure.—All bodies received by the Division of Universities shall be retained in receiving vaults for a period of not less than 48 hours before allowing their use for medical science; if at any time more bodies are made available to the division than can be used for medical science under its jurisdiction, or if a body shall be deemed by the division to be unfit for anatomical purposes, the division may notify, in writing, the county commissioners of the county where such person died, who shall direct some person to take charge of such body and cause it to be buried in accordance with the already existing rules, laws and practices for disposing of such unclaimed bodies within the confines of the said county.

History.—s. 8, ch. 28163, 1953; ss. 15, 35, ch. 69-106; s. 1, ch. 72-40; s. 1, ch. 77-174.

245.08 Death of indigents; notice; delivery to division when unclaimed; exceptions.—Notice of death shall be given to the Division of Universities in all cases of indigent persons, but no such body shall be delivered to the division if any relative, by blood or marriage, shall claim the body for burial at the expense of such relative, but the body shall be surrendered to said claimant for interment; nor shall any such body be delivered to the division if any friend or any representative of a fraternal society of which the deceased was a member, or a representative of any charitable or religious organization shall claim the body for burial at his or their expense. No body shall be delivered to the division if the deceased person was an honorably discharged member of the Armed Forces of the United States or the state, who served between the dates of April 6, 1917, and July 2, 1921; December 7, 1941, and September 2, 1945; June 25, 1950, and February 1, 1955; August 4, 1964 to the date of cessation of hostilities as determined by the United States Government, in which case said body shall be buried in accordance with the provisions of the existing laws.

History.—s. 7, ch. 28163, 1953; s. 1, ch. 67-564; ss. 15, 35, ch. 69-106.

245.09 Bodies may be claimed after delivery to division.—Any dead human body which has been delivered to the Division of Universities may be claimed by any friend or any representative of a fraternal society of which the deceased was a member, or a representative of any charitable or religious organization. Upon receipt of such claim, the body or remains shall be surrendered to the claimant by the division after the payment to the division for the expenses incurred in obtaining and handling such body or remains.

History.—s. 8, ch. 28163, 1953; ss. 15, 35, ch. 69-106; s. 2, ch. 72-40.

245.10 Contracts for delivery of body after death prohibited.—The Division of Universities is specifically prohibited from entering into any con-

tract, oral or written, whereby any sum of money shall be paid to any living person in exchange for which the body of said person shall be delivered to the division when such living person dies.

History.—s. 9, ch. 28163, 1953; ss. 15, 35, ch. 69-106.

245.11 Acceptance of bodies under will.—If any person being of sound mind shall execute a will leaving his or her body to the Division of Universities for the advancement of medical science and such person dies within the geographical limits of the state, the division is hereby empowered to accept and receive such body.

History.—s. 10, ch. 28163, 1953; ss. 15, 35, ch. 69-106.

245.12 Distribution of dead bodies.—The Division of Universities or its duly authorized agent shall take and receive the bodies delivered to it under the provisions of this chapter and shall distribute them, proportionately and equitably, to and among the medical and dental schools and to those teaching hospitals wherein the resident training program requires cadaveric material for study; or the same may be loaned for examination or study purposes to recognized associations of licensed embalmers or funeral directors, or medical or dental examining boards at the discretion of the division.

History.—s. 11, ch. 28163, 1953; ss. 15, 35, ch. 69-106.

245.13 Fees; authority to accept additional funds; annual audit.—

(1) The Division of Universities is empowered to prescribe a schedule of fees to be collected from the institution or association to which the bodies, as described in this chapter, are distributed or loaned to defray the costs of obtaining and preparing such bodies.

(2) The division is hereby empowered to receive money from public or private sources in addition to the fees collected from the institution or association to which the bodies are distributed to be used to defray the costs of embalming, handling, shipping, storage, cremation and other costs relating to the obtaining and use of such bodies as described in this chapter; the division is empowered to pay the reasonable expenses incurred by any person delivering the bodies as described in this chapter to the division and is further empowered to enter into contracts and perform such other acts as are necessary to the proper performance of its duties; a complete record of all fees and other financial transactions of said division shall be kept and audited annually by the Department of Banking and Finance and a report of such audit shall be made annually to the Department of Health and Rehabilitative Services.

History.—ss. 12, 15, ch. 28163, 1953; ss. 12, 15, 19, 35, ch. 69-106; s. 3, ch. 79-12.

245.14 Bonds; institutions receiving bodies.—No university, school, college, teaching hospital or association shall be allowed or permitted to receive any such body or bodies as described in this chapter until a bond, approved as to form by the Department of Legal Affairs shall have been given to the Division of Universities which bond shall be in the penal sum of $1,000 conditioned that all such bodies received by such university, school, college, teaching hospital or association shall be used for no other purpose than the promotion of medical science.

History.—s. 13, ch. 28163, 1953; ss. 11, 15, 35, ch. 69-106; s. 3, ch. 72-40.

245.15 Disposition of bodies after use.—At any time when any body or bodies or part or parts of any body or bodies, as described in this chapter, shall have been used and deemed of no further value to medical or dental science, then the person or persons having charge of said body or parts of said body may dispose of the remains by cremation.

History.—s. 14, ch. 28163, 1953.

245.16 Selling, buying, shipping bodies outside of state regulated; penalty.—Any person who shall sell or buy any body or parts of bodies as described in this chapter or shall transmit or convey or cause to be transmitted or conveyed such body or parts of bodies to any place outside this state except a recognized medical or dental school shall be guilty of a misdemeanor of the first degree, punishable as provided in ss. 775.082 and 775.083. However, nothing in this chapter shall be construed as prohibiting the Division of Universities from transporting human specimens outside of the state for educational, scientific, or other therapeutic purposes.

History.—s. 16, ch. 28163, 1953; ss. 15, 35, ch. 69-106; s. 144, ch. 71-136; s. 4, ch. 72-40.

CHAPTER 246

NONPUBLIC POSTSECONDARY INSTITUTIONS

[1]246.011 Purpose.—

[2](1) It is the intent of the Legislature to encourage privately supported higher education and to protect the integrity of degrees and diplomas conferred by privately supported educational institutions. This chapter shall provide for the protection of the health, education, welfare, and morals of the citizens of Florida and shall facilitate and promote the acquisition of a minimum satisfactory education by all the citizens of this state. Presently existing in this state are many fine nonpublic colleges, but there are some nonpublic colleges which do not generally offer those educational opportunities which the citizens of this state deem essential. The latter type of college also fails to contribute to the ultimate health, education, welfare, and morals of the citizens of Florida. It is in the interest of, and essential to, the public health, education, welfare, and morals that the state create the means whereby all nonpublic colleges as defined in this chapter shall satisfactorily meet minimum educational standards.

(2) A common practice in our society is to use diplomas and degrees for many purposes. Some of these purposes are for employers to judge the qualifications of prospective employees; for public and nonpublic professional groups, educational agencies, governmental agencies, and educational institutions to determine the qualifications for admission to, and continuation of, educational and occupational goals, professional or occupational affiliations; and public and professional assessment of the extent of competency of individuals engaged in a wide range of activities within our society.

(3) Because of the common use of diplomas and degrees, the minimum legal requirements as provided by this chapter for the establishment and operation of nonpublic colleges will protect the individual student from deceptive, fraudulent, or substandard education; protect the nonpublic institutions; and protect the citizens of this state holding diplomas or degrees.

(4) Nothing contained herein is intended to regulate the stated purpose of a nonpublic college or to restrict any religious instruction or training in a nonpublic college.

History.—s. 1, ch. 71-128; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 6, 10, 16, ch. 79-385.

[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]Note.—Section 16, ch. 79-385, provides that, if ch. 231 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-385 shall also be repealed on the same date as is therein provided.

[1]246.021 Definitions.—As used in this chapter, unless the context otherwise requires:

(1) "College" means any educational facility maintained or conducted by any person, association, partnership, corporation, or trust and operating as an institute, community college, college, university, or entity of whatever kind which furnishes or offers to furnish a degree as defined herein or which furnishes or offers to furnish instruction leading toward, or prerequisite to, an academic degree beyond the secondary level and which requires that, in order to obtain a degree or diploma, the recipient thereof satisfactorily completes appropriate courses or classes or laboratory or research study in person or by correspondence. The following shall be excluded from this definition as it applies to the licensing and regulation requirements of this chapter:

(a) Colleges provided, operated, and supported by the State of Florida or its political subdivisions or the Federal Government.

(b) Colleges licensed or approved for establishment and operation under chapters 464, 466, 475, 476 and 477 and any other chapters of the Florida Statutes, requiring licensing or approval as defined in this chapter.

(c) Nonpublic colleges accredited by an accrediting agency recognized by the United States Office of Education or the State Board of Education and chartered in Florida.

(d) Classes or tutoring provided, operated, and entirely supported by an employer solely for his employees. However, no degree or diploma as hereinaft-

er defined shall be awarded.

(e) Classes or tutoring provided, operated, and supported by a recognized labor union beyond the basic level of instruction, or by a professional or fraternal organization, solely for the union's or organization's membership. However, no degree or diploma as hereinafter defined shall be awarded.

(f) Colleges that offer instruction of an avocational or recreational nature that does not lead to an occupational objective. However, no degree or diploma as hereinafter defined shall be awarded.

[2](g) Chartered religious colleges whose only purpose is to prepare students in religious disciplines for either missionary or ministerial service and whose catalogs honestly and accurately present their academic programs, offering only degrees of an ecclesiastical nature.

(h) Colleges chartered in Florida whose credits or degrees are accepted for credit by at least three accredited institutions of higher learning.

(2) "Out-of-state college" or "college outside the state" means any college where the place of instruction, the legal place of residence, or the place of evaluation of instruction or work by correspondence is not within the legal boundaries of this state.

(3) "Instruction" means the dissemination of knowledge or practice which signifies, purports, or is generally taken to signify, the preparation or education of a person, generally or specifically, for further understanding, study, skill, or training.

(4) "Agent" means a person employed by or representing a college within or outside the state to procure Florida students, enrollees, or subscribers by solicitation in any form made at a place or places other than the office or legal place of business of a college.

(5) "Colleges whose credits or degrees are accepted for credit by at least three accredited institutions of higher learning" shall mean those institutions which have notarized letters from appropriate officials from colleges accredited by an accrediting agency recognized by the United States Office of Education or the State Board of Education stating that the credits are accepted with no limitation of their full acceptance such as validation upon successful completion of a probationary period such as a quarter or semester of full-time work.

(6) "Diploma" means a certificate, transcript, report, document, title of designation, mark, appellation, series of letters, numbers, or words which signifies, purports, or is generally taken to signify, attendance, progress, or satisfactory completion of the requirements or prerequisite of an academic degree which may be used for any purpose whatsoever.

(7) "Degree" means any academic or honorary title of designation, mark, appellation, series of letters, numbers, or words, such as, but not limited to, bachelors, masters, doctorate, or fellow, which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, educational, or professional program of study beyond the secondary school level or for a recognized title conferred for meritorious recognition and associate degree awarded by a community college or other institution in liberal arts which may be used for any purpose whatsoever.

(8) "Board" means the State Board of Independent Colleges and Universities.

History.—s. 2, ch. 71-128; s. 1, ch. 72-203; s. 70, ch. 72-221; s. 1, ch. 73-91; s. 1, ch. 73-252; s. 1, ch. 73-294; s. 1, ch. 76-43; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 7, 10, 16, ch. 79-385.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—Section 16, ch. 79-385, provides that if ch. 231 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-385 shall also be repealed on the same date as is therein provided.

[1]246.031 State Board of Independent Colleges and Universities.—

(1) There shall be established in the Department of Education a State Board of Independent Colleges and Universities. This board shall include nine members appointed by the Governor as follows:

(a) Five educators selected from private community colleges, colleges, or universities in this state.

(b) Two educators selected from publicly supported community colleges, colleges, or universities.

(c) Two lay citizens who do not derive a majority of their income from educational, or education-related, fields.

(2) Each of the members shall be appointed, subject to confirmation by the Senate, for a term of 3 years. Of the original members appointed by the Governor, three shall serve for a term of 1 year, three shall serve for a term of 2 years and three shall serve for a term of 3 years. All members shall be residents of this state. In the event of a vacancy on the board caused other than by expiration of a term, the Governor shall appoint a successor to serve the unexpired term.

(3) Members shall be paid travel and subsistence expenses as provided by law while performing their duties under the provisions of this chapter.

History.—s. 3, ch. 71-128; s. 70, ch. 72-221; s. 3, ch. 76-168; s. 3, ch. 77-85; s. 1, ch. 77-457; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.041 Powers and duties of board.—

(1) The board shall:

(a) Hold such meetings as are necessary to administer efficiently the provisions of this chapter;

(b) Adopt and use an official seal in the authentication of its acts;

(c) Make rules and regulations for its own government;

(d) Promulgate and recommend rules and regulations to the State Board of Education;

(e) Administer this chapter and the rules and regulations adopted by the State Board of Education;

(f) Appoint, on the recommendation of its chairman, executives, deputies, clerks, and employees of the board;

(g) Maintain a record of its proceedings;

(h) Cooperate with other state and federal agencies in administering the provisions of this chapter;

(i) Prepare an annual budget;

(j) Transmit all fees, donations, or other receipts of money to the State Treasurer to be deposited in the general revenue fund of the state.

[2](k) Serve as a repository for current information and as a clearinghouse for inquiries relating to insti-

tutions under its purview.

(2) The board may:

(a) Sue or be sued;

(b) Enter into contracts with the Federal Government, with other departments of the state, or with individuals;

(c) Receive bequests and gifts which shall be used only for the purpose stated by the person making such bequests;

(d) Appoint committees to assist it in developing standards or in determining the qualifications which shall be met in a given field of endeavor;

(e) Issue a license to any college which is excluded from the licensing and regulatory requirements of this chapter by s. 246.021(1), upon voluntary application for such license and upon payment of the appropriate fee as set forth in s. 246.101;

(f) Borrow money when necessary in anticipation of fees reasonably to be expected during the year as shown by the budget.

History.—s. 4, ch. 71-128; s. 4, ch. 72-203; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 6, 16, ch. 79-385.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—Section 16, ch. 79-385, provides that, if ch. 231 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-385 shall also be repealed on the same date as is therein provided.

[1]246.051 Administration by board.—

(1) The provisions of this chapter shall be administered by the board which in connection therewith has the power to prescribe and recommend to the State Board of Education minimum standards and rules as it may find necessary to aid in carrying out the objectives and purposes of this chapter, to execute such standards and rules and regulations as shall be adopted by the State Board of Education on the operation and establishment of nonpublic colleges as defined in this chapter, and to expend funds as necessary to assist in the enforcement of this chapter.

(2) The minimum educational standards for the licensing of colleges shall include: purpose, administrative organization, educational program and curricula, finances, faculty, library, student personnel services, physical plant and facilities, publications, and disclosure statements about the status of the institution in relation to professional certification and licensure.

(3) The minimum educational standards for the licensing of agents shall include: name, residential and business address, background training, and institution to be represented.

History.—s. 5, ch. 71-128; s. 2, ch. 73-294; s. 2, ch. 76-43; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.061 Expenditures.—The State Treasurer shall pay out all moneys and funds provided for in this chapter upon proper warrant issued by the Comptroller, drawn upon vouchers approved by the board for all lawful purposes necessary to the administration of this chapter. The board shall make annual reports to the Governor showing in detail amounts received and all expenditures, when paid, and to whom. All fees, donations, or other receipts of money by the board shall be paid into the State Treasury, and the funds appropriated for the purposes of this chapter shall be from the general revenue fund, based on an appropriate budget approved by the board and submitted to the Legislature through the Governor in accordance with chapter 216. The board shall include in its annual report to the Governor a statement of major activities during the period covered by such report.

History.—s. 6, ch. 71-128; s. 5, ch. 72-203; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.071 Power of State Board of Education.—The State Board of Education, acting on the recommendation of the State Board of Independent Colleges and Universities, shall adopt such minimum standards and rules and regulations as are required for the administration of this chapter.

History.—s. 7, ch. 71-128; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.081 License required.—

(1) No nonpublic college shall continue operation or be established within the state after January 1, 1972, unless such school shall apply for, and obtain from the board, a license in the manner and form prescribed by the board. Any college in operation on January 1, 1972 which, within 10 days thereafter, applies for such license shall be permitted to continue in operation until such license has been issued or has been denied by the board. Upon receipt of approved articles of incorporation from the Department of State that purport to be for an institution of higher learning within the meaning and intent of this chapter, the newly formed corporation shall, within 60 days of such approval, make an application to the board for a license as required by law. The approval of articles of incorporation by the Department of State shall not be deemed to be an authorization to engage in the operation of an institution of higher learning until such time as a license has been obtained from the board. Upon articles of incorporation being issued to an institution of higher learning, the Department of State shall immediately furnish a copy of the articles of incorporation to the board.

(2) No employee or agent shall, for remuneration, solicit any prospective student within this state to enroll in a college established or to be established within or outside this state unless such college within this state has been approved by the board and unless such employee or agent within or without this state shall apply for and obtain from the board an agent's license in the manner and form prescribed by the board. Any agent employed on or before January 1, 1972 by any college who shall within 10 days thereafter apply for such license shall be permitted to continue in employment until such license has been issued or has been denied by the board.

(3) No nonpublic college which is required to have a license issued pursuant to this chapter and no person acting on behalf of such college shall cause to be published in any publication any advertisement soliciting students or offering a diploma or degree, unless such college has a valid license issued pursuant to the provisions of this chapter, nor shall any

such nonpublic college or any person acting on behalf of such college cause to be published in any publication any advertisement soliciting students or offering a diploma or degree while such college is under an injunction against operating, soliciting students, or offering a diploma or degree.

History.—s. 8, ch. 71-128; s. 3, ch. 73-294; s. 3, ch. 76-168; s. 1, ch. 77-426; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.091 License period and renewal.—

[2](1) Each original license shall be subject to an annual review and renewal by the board to determine if the licensee is in compliance with this chapter. An institution affected under this act may be granted a temporary or provisional license for a period up to 1 year. Nothing in this act shall prevent the extension of such temporary or provisional licenses provided a good faith effort has been made by the college and agent. The burden of determining compliance or a good faith effort shall rest with the board.

(2) A licensed college which seeks to expand its educational program and degrees to be conferred shall file an amendment to the application.

(3) A licensed college, prior to the discontinuance of operation, shall have the duty to convey all student records to the board or to another location designated by the board.

History.—s. 9, ch. 71-128; s. 4, ch. 73-294; s. 3, ch. 76-43; s. 3, ch. 76-168; s. 3, ch. 77-426; s. 1, ch. 77-457; ss. 8, 10, 16, ch. 79-385.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—Section 16, ch. 79-385, provides that, if ch. 231 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by s. 1, ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-385 shall also be repealed on the same date as is therein provided.

[1]246.095 Disclosure to prospective students; condition of licensing.—

[2](1) Every institution which is required to be licensed under the provisions of s. 246.081 and which either directly or indirectly solicits for enrollment any student shall disclose to each prospective student a statement of the institution's purpose, its educational programs and curricula, a description of its physical facilities, its status regarding licensure, and the fact that additional information regarding the institution may be obtained by contacting the State Board of Independent Colleges and Universities, Department of Education, Tallahassee. The disclosures required to be made under the provisions of this subsection shall be made in writing and prior to the collection of any fee or tuition from the prospective student to whom disclosure is required to be made.

(2) No license shall be granted or renewed by the board under the provisions of s. 246.081 or s. 246.091 unless the institution seeking to be licensed or seeking a renewal of license provides the board with a sworn statement of compliance with the provisions of this section. Such statement shall be made in the manner and form as prescribed by the board.

(3) Refusal of any institution to comply with the provisions of this section shall constitute cause for revocation or suspension of a license under the provisions of s. 246.111.

History.—s. 4, ch. 76-43; s. 3, ch. 76-168; ss. 9, 10, 16, ch. 79-385.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[2]**Note.**—Section 16, ch. 79-385, provides that, if ch. 231 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-385 shall also be repealed on the same date as is therein provided.

[1]246.101 License fees.—Each original application for a license to conduct a college chartered in Florida shall be accompanied by a license fee of $300, and each original application for a license to conduct a Florida center of an out-of-state college shall be accompanied by a license fee of $500. Each application for the renewal of a license to conduct a college chartered in Florida or a Florida center of an out-of-state college shall be accompanied by a license fee of $150. A fee of $100 shall be charged to any in-state or out-of-state college for a supplementary application for the approval of any additional field or course of instruction. Fees for agents representing in-state colleges shall be $25 per year. Fees for agents representing out-of-state colleges shall be $50 per year. All license fees shall be submitted by the board to the State Treasurer and shall be deposited in the General Revenue Fund of the state.

History.—s. 10, ch. 71-128; s. 6, ch. 72-203; s. 3, ch. 76-168; s. 2, ch. 77-426; s. 1, ch. 77-457; s. 112, ch. 79-400.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.111 Refusal, suspension, or revocation of license.—Any license under the provisions of this chapter may be refused, revoked, or suspended by the board for cause. The board shall have the power to refuse to issue a license and the power to suspend or revoke a license in any case in which the board finds that the licensee has violated any of the rules and regulations of the State Board of Education pertaining to this chapter.

History.—s. 11, ch. 71-128; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 13, ch. 78-95.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.121 Designation "college" or "university."—The designated use of the title, "college" or "university" in combination with any series of letters, numbers, or words shall be restricted in Florida to degree-granting institutions accredited as defined in s. 246.021(1) or licensed under this chapter or such institutions as were in active operation and using such designation on April 1, 1970, except with respect to branches or divisions of the parent corporation.

History.—s. 12, ch. 71-128; s. 3, ch. 76-168; s. 1, ch. 77-457.

[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.131 Injunctive relief.—The board may obtain an injunction or take any action it deems necessary against any college or agent in violation of this chapter, but no such proceedings and no orders issued therein, or as a result thereof, shall bar the

imposition of any other penalties which may be imposed for the violation of this chapter.

History.—s. 13, ch. 71-128; s. 2, ch. 72-203; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.141 License not to be considered accreditation.—The granting of a license under this chapter shall not be considered an accreditation for the purpose of tax exemptions under Florida law.

History.—s. 14, ch. 71-128; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.151 Penalties.—Any person who violates any of the provisions of this chapter shall be punished as follows:

(1) For the first conviction he shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) For a second and subsequent convictions he shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 3, ch. 72-203; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.201 Legislative intent.—

(1) Sections 246.201-246.231 shall provide for the protection of the health, education, and welfare of the citizens of Florida and shall facilitate and promote the acquisition of a minimum satisfactory vocational, technical, trade, and business education by all the citizens of this state. There are presently many fine nonpublic schools existing in this state, but there are some nonpublic schools which do not generally offer those educational opportunities which the citizens of Florida deem essential. The latter type of school also fails to contribute to the ultimate health, education, and welfare of the citizens of Florida. It shall be in the interest of, and essential to, the public health and welfare that the state create the means whereby all independent postsecondary vocational, technical, trade, and business schools as defined in s. 246.203(1) shall satisfactorily meet minimum educational standards.

(2) A common practice in our society is to use diplomas and degrees for many purposes. Some of these purposes are: for employers to judge the qualifications of prospective employees; for public and nonpublic professional groups, vocational groups, educational agencies, governmental agencies, and educational institutions to determine the qualifications for admission to, and continuation of, educational goals, occupational goals, professional affiliations, or occupational affiliations; and for public and professional assessment of the extent of competency of individuals engaged in a wide range of activities within our society.

(3) Because of the common use of diplomas and degrees, the minimum legal requirements provided by ss. 246.201-246.231 for the establishment and operation of independent postsecondary vocational, technical, trade, and business schools shall protect the individual student from deceptive, fraudulent, or substandard education; protect such independent postsecondary vocational, technical, trade, and business schools; and protect the citizens of Florida holding diplomas or degrees.

(4) Nothing contained herein is intended in any way, nor shall be construed, to regulate the stated purpose of an independent postsecondary vocational, technical, trade, and business school or to restrict any religious instruction or training in a nonpublic school. Any school or business regulated by the state or approved, certified, or regulated by the Federal Aviation Administration is hereby expressly exempt from ss. 246.201-246.231. Nonprofit schools, owned, controlled, operated, and conducted by religious, denominational, eleemosynary, or similar public institutions exempt from property taxation under the laws of this state shall be exempt from the provisions of ss. 246.201-246.231. However, such schools may choose to apply for a license hereunder, and, upon approval and issuance thereof, such schools shall be subject to ss. 246.201-246.231.

History.—s. 1, ch. 74-360; s. 1, ch. 75-32; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-323.
[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.203 Definitions.—As used in ss. 246.201-246.231, unless the context otherwise requires:

(1) "School" means any nongovernmental, postsecondary, vocational, technical, trade, or business noncollegiate educational institution, organization program, home study course, or class maintained or conducted in residence or through correspondence by any person, partnership, association, organization, or corporation for the purpose of offering instruction of any kind leading to occupational objectives or of furnishing a diploma or degree, as defined in subsections (6) and (7), in business, management, trade, technical, or other vocational education and professional schools not otherwise regulated. Colleges and universities which award a baccalaureate or higher degree and junior colleges which award an associate degree in liberal arts do not fall under the authority granted in ss. 246.201-246.231; nor does a nonprofit class provided and operated entirely by an employer, a group of employers in related business or industry, or a labor union solely for its employees or prospective employees or members.

(2) "Business, management, trade, technical, or vocational education" means any instruction which prepares a person for employment in an occupation listed in the latest dictionary of occupational titles issued by the United States Department of Labor or declared by that department to be eligible for such listing or which is indicated by a school as leading to employment in an occupation.

(3) "Out-of-state school" or "school outside the state" means any school for which the place of instruction or legal place of residence or the place of evaluation of instruction or work by correspondence is not within the legal boundaries of the state.

(4) "Instruction" means the dissemination of knowledge or practice which signifies, purports to signify, or is generally taken to signify, the preparation or education of a person generally or specifically for further understanding, study, skill, or training.

(5) "Agent" means a person employed by or representing a school within or outside the state to pro-

cure Florida students, enrollees, or subscribers by solicitation in any form, made at a place or places other than the office or legal place of business of a school.

(6) "Diploma" means a certificate, transcript, report, document, or title or designation, mark, appellation, or series of letters, numbers, or words which signifies, purports to signify, or is generally taken to signify attendance, progress, or satisfactory completion of the requirements of an academic, educational, technical, or vocational program of study, training, or course except degrees as defined in subsection (7).

(7) "Degree" means any academic or honorary title or designation, mark, appellation, series of letters, numbers, or words, limited to the associate or equivalent degree which signifies, purports to signify, or is generally taken to signify satisfactory completion of the requirements of an academic, educational, or professional program of study representing 2 years or its equivalent beyond the secondary school level or for a recognized title conferred for meritorious achievement.

(8) "Board" means the State Board of Independent Postsecondary Vocational, Technical, Trade, and Business Schools.

(9) "Governmental," refers to schools provided, operated, and supported by federal, state, or county governments or any of their political subdivisions.

History.—s. 2, ch. 74-360; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-323; s. 59, ch. 79-164.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.205 State Board of Independent Postsecondary Vocational, Technical, Trade, and Business Schools.—

(1) There shall be established in the Department of Education a State Board of Independent Postsecondary Vocational, Technical, Trade, and Business Schools. The board shall be assigned to the Department of Education only for the purpose of payroll, procurement, and related administrative functions which shall be exercised by the head of the Department of Education. The board shall independently exercise the other powers, duties, and functions prescribed by law, including, but not limited to, rule making, licensing, regulation, and enforcement. The board shall include nine members, appointed by the Governor as follows:

(a) One from a business school;

(b) One from a technical school;

(c) One from a home study school;

(d) Two from nonpublic vocational or business schools;

(e) Three from business and industry; and

(f) One from public education schools.

(2) Each of the members shall be appointed by the Governor, subject to confirmation by the Senate, for a term of 3 years. Of the original members appointed by the Governor, three shall serve for terms of 1 year, three shall serve for terms of 2 years, and three shall serve for terms of 3 years. Of the appointive members from the independent schools, each shall have occupied executive or managerial positions in an independent school in this state for at least 5 years. All members shall be residents of this state. In the event of a vacancy on the board caused other than by the expiration of a term, the Governor shall appoint a successor to serve the unexpired term.

(3) Board members shall be paid travel and subsistence expenses as provided by law while performing their duties under this act.

History.—s. 3, ch. 74-360; s. 3, ch. 76-168; s. 4, ch. 77-85; s. 1, ch. 77-457; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.207 Powers and duties of board.—

(1) The board shall:

(a) Hold such meetings as are necessary to efficiently administer ss. 246.201-246.231.

(b) Adopt and use an official seal in the authentication of its acts.

(c) Make rules and regulations for its own government.

(d) Promulgate and recommend rules and minimum standards to the Department of Education for schools under ss. 246.201-246.231, including minimum standards for accrediting agencies.

(e) Administer ss. 246.201-246.231 and the rules and regulations adopted pursuant thereto by the State Board of Education.

(f) Appoint, on the recommendation of its chairman, executives, deputies, clerks, and employees of the board.

(g) Maintain a record of its proceedings.

(h) Cooperate with other state and federal agencies in administering ss. 246.201-246.231.

(i) Prepare an annual budget.

(j) Transmit all fees, donations, and other receipts of money to the State Treasurer to be deposited in the General Revenue Fund.

(2) The board may:

(a) Sue or be sued.

(b) Enter into contracts with the Federal Government, other departments of the state, or individuals.

(c) Receive bequests and gifts, which shall be used only for the purpose stated by the person making such bequest.

(d) Appoint committees to assist in developing standards or in determining the qualifications which shall be met in a given field of endeavor.

(e) Issue a license to any school subject to ss. 246.201-246.231 which is excluded from the licensing and regulatory requirements of ss. 246.201-246.231, upon voluntary application for such license and upon payment of the appropriate fee as set forth in s. 246.219.

(f) Borrow money, when necessary, in anticipation of funds reasonably to be expected during the year as shown by the budget.

History.—s. 4, ch. 74-360; s. 3, ch. 76-168; s. 77, ch. 77-104; s. 4, ch. 77-426; s. 1, ch. 77-457; s. 4, ch. 78-323; s. 113, ch. 79-400.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.209 Administration by board.—Sections 246.201-246.231 shall be administered by the board which in connection therewith has the power to prescribe and recommend to the State Board of Educa-

tion minimum standards, rules, and regulations as are required by ss. 246.201-246.231 or as it may find necessary to aid in carrying out the objectives and purposes of ss. 246.201-246.231 and to execute such standards, rules, and regulations as shall be adopted by the State Board of Education on the operation and establishment of independent schools as defined in s. 246.203(1).

History.—s. 5, ch. 74-360; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.211 Expenditures.—The State Treasurer shall pay out all moneys and funds provided for in ss. 246.201-246.231 upon proper warrant issued by the comptroller drawn upon vouchers approved by the board for all lawful purposes necessary for the administration of ss. 246.201-246.231. The board shall make an annual report to the Governor showing in detail the amounts received and all expenditures, when paid, and to whom. The board shall include in its annual report to the Governor a statement of major activities during the period covered by such report.

History.—s. 6, ch. 74-360; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.213 Power of State Board of Education.—
(1) The State Board of Education, acting on the recommendation of the State Board of Independent Postsecondary Vocational, Technical, Trade, and Business Schools, shall adopt such minimum standards and rules as are required for the administration of ss. 246.201-246.231.
[2](2) The minimum educational standards for the licensing of schools shall include, but not be limited to: purpose, administrative organization, educational program and curricula, finances, financial stability, faculty, library, student personnel services, physical plant and facilities, publications, and disclosure statements about the status of the institution in relation to professional certification and licensure.
(3) The minimum requirements for the licensing of agents shall include: name, residential and business addresses, background training, and institution or institutions to be represented.

History.—s. 6, ch. 74-360; s. 3, ch. 76-168; s. 6, ch. 77-426; s. 1, ch. 77-457; s. 4, ch. 78-323; ss. 1, 6, ch. 79-48.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.
[2]**Note.**—Section 6, ch. 79-48, provides that, if ch. 246 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-48 shall also be repealed on the same date as is therein provided.

[1]246.215 License required.—
(1) No independent postsecondary vocational, technical, trade, and business school shall continue operation or be established within the state after January 1, 1975, unless such school has submitted a notarized application to and obtained from the board a license in the manner and form prescribed by the board; however, any school in operation on January 1, 1975, which shall apply for such license within 10 days thereafter shall be permitted to continue in operation until such license has been issued or denied by the board.
(2) No employee or agent shall solicit for remuneration any prospective student within this state to enroll in a school established or to be established within or without this state unless such school within this state has been licensed by the board and unless such employee or agent within or without this state has submitted a notarized application to and obtained from the board an agent's license.
(a) The board shall grant or deny each application for an agent's license within 60 days from the date of receipt. If the board fails to act within 60 days, the application shall be automatically granted. Upon filing an application for an agent's license with the board, the agent may solicit students for an approved school pending an approval or denial of a license by the board.
(b) Any agent employed on or before January 1, 1975, by any school who shall apply for such license within 10 days thereafter shall be permitted to continue in employment until such license has been issued or denied by the board.

History.—s. 8, ch. 74-360; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-323; ss. 2, 6, ch. 79-48.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date. Section 6, ch. 79-48, provides that, if ch. 246 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-48 shall also be repealed on the same date as is therein provided.
cf.—s. 246.081 Nonpublic colleges and agents' licenses required.

[1]246.217 License period and renewals.—
[2](1) Each original license issued shall be effective for a maximum period of 1 year from the date of issuance and be subject to renewal annually thereafter by an application on notarized forms prepared and furnished by the board. Each school and agent shall have a separate license, which shall not be transferable.
(2) A licensed school which seeks to expand its educational program and degrees to be conferred shall file an amendment to the application.
(3) A licensed school, prior to discontinuance of operation, shall convey all student records to the State Board of Independent Postsecondary Vocational, Technical, Trade, and Business Schools, or to another location designated by the board.

History.—s. 9, ch. 74-360; s. 3, ch. 76-168; s. 7, ch. 77-426; s. 1, ch. 77-457; s. 4, ch. 78-323; ss. 3, 6, ch. 79-48.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.
[2]**Note.**—Section 6, ch. 79-48, provides that, if ch. 246 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-48 shall also be repealed on the same date as is therein provided.
cf.—s. 228.092 Retention of records of students attending nonpublic schools.

[1]246.219 License fees.—
(1) Each original application for a license to conduct a school shall be accompanied by a license fee of not less than $150 or more than $250, and each application for the renewal of such license shall be accompanied by a license fee of $50. No fee shall be charged for a supplementary application for the approval of any additional field or course of instruction.

(2) Fees for agents representing schools shall be $10 per year.

(3) All license fees shall be transmitted by the board to the State Treasurer to be deposited in the General Revenue Fund.

History.—s. 10, ch. 74-360; s. 3, ch. 76-168; s. 5, ch. 77-426; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.220 Surety bonds or insurance.—Surety bonds or insurance shall not be required of any school licensed by the State Board of Independent Postsecondary Vocational, Technical, Trade, and Business Schools, except as may be required by the board to insure the train-out of currently enrolled students or issuance of refunds to currently enrolled students.

History.—s. 4, ch. 75-32; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-323; ss. 4, 6, ch. 79-48.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date. Section 6, ch. 79-48, provides that, if ch. 246 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-48 shall also be repealed on the same date as is therein provided.
cf.—s. 229.821 Surety bond or insurance to indemnify students on closing of school; expiration and renewal.

[1]246.221 Refusal, suspension, or revocation of license.—Any license under ss. 246.201-246.231 may be refused, suspended, or revoked by the board for cause. Under ss. 246.201-246.231, the board shall have the power to refuse to issue a license and to suspend or revoke a license in any case in which the board finds that the licensee has violated any of the rules and regulations of the State Board of Education pertaining to ss. 246.201-246.231.

History.—s. 11, ch. 74-360; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 13, ch. 78-95; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, and by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to those dates.

[1]246.223 Accredited schools.—

[2](1) Any independent postsecondary vocational, technical, trade, or business school which is accredited by any of the accreditation agencies herein recognized by the board and any school that has been in continuous existence for 50 years or more under the same ownership or in operation in the state 20 years or more whose ownership does not change by virtue of purchase, merger, or structural change after July 1, 1974, including Dale Carnegie Programs, shall be presumed to be in substantial compliance with this act, unless otherwise determined by the board, by making an initial application for a license and by making an annual report to the board which includes the name and location of the school, the number of students enrolled, the number of staff members employed, the grade level at which instruction is offered, the name of the principal, headmaster, or chief administrative officer, a bound and printed catalog, a printed contract, and an unaudited financial statement prepared by a certified public accountant. Such reports may be made by the school or by the accrediting agency.

(2) Every independent postsecondary vocational, technical, trade, and business school which is not accredited by one of the said agencies shall establish its compliance with the minimum standards provided herein in accordance with ss. 246.201-246.231.

(3) Accrediting agencies which are recognized by the United States Office of Education or the State Board of Education are hereby recognized for the purposes of ss. 246.201-246.231.

(4) The State Board of Education may prescribe regulations for the recognition of voluntary accreditation agencies as defined by ss. 246.201-246.231, and execute such regulations for the purpose of providing an incentive for improvement and identification of schools providing quality instruction.

History.—s. 12, ch. 74-360; s. 3, ch. 75-32; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-323; ss. 5, 6, ch. 79-48.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.
[2]**Note.**—Repealed by s. 6, ch. 78-48, provides that, if ch. 246 is repealed in accordance with the intent expressed in the Regulatory Reform Act of 1976, as amended by ch. 77-457, or as subsequently amended, it is the intent of the Legislature that ch. 79-48 shall also be repealed on the same date as is therein provided.

[1]246.225 No tax exemptions.—The granting of a license or accreditation under ss. 246.201-246.231 shall not be considered an accreditation for the purpose of tax exemption under state law.

History.—s. 16, ch. 74-360; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.227 Injunctive relief.—

(1) The board may obtain an injunction or take any action it deems necessary against any school or agent in violation of ss. 246.201-246.231, but no such proceedings and no orders issued therein or as a result thereof shall bar the imposition of any other penalties which may be imposed for the violation of this act.

(2) If any school subject to the provisions of ss. 246.201-246.231, or any person or persons acting on behalf of said school, shall cause to be published in any publication any advertisement soliciting students or offering a diploma or degree without first having been issued a license under the provisions of this act or while under a temporary or permanent injunction against operating or offering diplomas or degrees, such school or person or persons shall be deemed prima facie to be in violation of ss. 246.201-246.231 or of said injunctive order upon presentment in court of the publication containing such advertisement.

History.—s. 13, ch. 74-360; s. 3, ch. 76-168; s. 1, ch. 77-437; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.229 Enforcement.—The Department of Legal Affairs or the State Attorney shall have authority to enforce ss. 246.201-246.231.

History.—s. 14, ch. 74-360; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

[1]246.231 Penalties.—Any person who violates or fails to comply with ss. 246.201-246.231 or any of the rules, regulations, or standards promulgated thereunder:

(1) For the first conviction, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) For a second or subsequent conviction, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) May have his license revoked.

History.—s. 15, ch. 74-360; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date. Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1982, except for the possible effect of laws affecting this section prior to that date.

TITLE XVII

MILITARY CODE AND RELATED MATTERS

CHAPTER 250

MILITARY CODE

250.01 Definitions.—

(1) For the purpose of this chapter the words "National Defense Act" shall be taken to mean an Act of the Congress entitled "An Act for making further and more effectual provisions for the national defense, and for other purposes," approved by the President June 3, 1916, and any and all acts that have been enacted or may hereafter be enacted by the Congress amendatory thereof and supplementary thereto.

(2) The designations of all military units shall be the same as similar units are designated in the tables of organization of federal military establishments.

History.—s. 3, ch. 8502, 1921; CGL 2014; s. 1, ch. 25112, 1949.
Note.—Former s. 250.03.

250.02 Militia.—

(1) The militia shall consist of all able-bodied citizens of this state, and all other able-bodied persons who shall have declared their intention to become citizens.

(2) The Organized Militia shall be composed of the National Guard and such other organized military forces as are now or may be authorized by law.

(3) The unorganized militia shall be composed of all persons subject to military duty but who are not members of units of the Organized Militia.

(4) Only persons exempt from military duty by the terms of the National Defense Act shall be exempt from military duty in this state.

History.—s. 4, ch. 8502, 1921; CGL 2015; s. 1, ch. 25112, 1949; s. 1, ch. 73-93.
Note.—Former ss. 250.04, 250.05.

250.03 National Defense Act.—All provisions of the National Defense Act and all laws amendatory thereof and supplemental thereto insofar as they relate to the Florida National Guard, and are not inconsistent with the State Constitution, are declared to be a part of the military laws of the state and the Governor of Florida, as commander in chief, may do and perform all acts and make and publish such rules and regulations to raise and keep the Florida National Guard in every respect up to the standard required by the laws of the United States and the rules and regulations of the Secretary of Defense governing the National Guard, now existing or which may hereafter be enacted or promulgated for the National Guard.

History.—s. 16, ch. 8502, 1921; CGL 2028; s. 1, ch. 25112, 1949.
Note.—Former s. 250.18.

250.04 Naval Militia; Marine Corps.—The Governor is authorized in his discretion to organize a Naval Militia and a Marine Corps in accordance with the laws now existing or which may hereafter be enacted by the Congress governing the Naval Militia or Marine Corps of the United States, and regulations issued by the Secretary of the Navy for the government of the United States Navy, Naval Militia and Marine Corps.

History.—s. 17, ch. 8502, 1921; CGL 2029; s. 1, ch. 25112, 1949.
Note.—Former s. 250.19.

250.05 Department of Military Affairs.—The agency of the state government heretofore known as the Military Department shall henceforth be known as the Department of Military Affairs of the State, which shall be composed of the military forces as provided in the laws of this state.

History.—ss. 5, 40, ch. 8502, 1921; CGL 2016, 2052; s. 1, ch. 25112, 1949; s. 1, ch. 57-82; s. 2, ch. 73-93.
Note.—Former s. 250.46.

250.06 Commander in chief.—

(1) The Governor of Florida shall be the commander in chief of all the militia of the state.

(2) The Governor of Florida, as commander in chief, may alter, increase, divide, annex, consolidate, disband, organize or reorganize an organization, department, corps or staff, so as to conform as far as practicable to any organization, system, drill, instruction, corps or staff, uniform or equipment, or period of enlistment, now or hereafter prescribed by the laws of the United States, and the rules and regulations promulgated thereunder by the Department of Defense, for the organization, armament, training and discipline of the Organized Militia.

(3) The Governor shall have the power, in order to preserve the public peace, execute the laws of the state, suppress insurrection, repel invasion, respond to public disaster or riot or imminent danger thereof, or in case of the calling of all or any portion of the militia of Florida into the services of the United States, to increase the Organized Militia of this state and organize the same in accordance with the existing rules and regulations governing the Armed Forces of the United States, or in accordance with such other system as the Governor may consider the exigency to require; and such organization and increase may be either pursuant to or in advance of any call made by the President. The Governor shall have the power, in order to preserve the public peace, execute the laws of the state, or respond to public disaster, to order into active service of the state all or any part of the militia that he may deem proper. During the absence of any organization in the service of the United States, its state designation shall not be given to any new organization.

(4) The Governor may authorize all or any part of the Organized Militia to participate in any parade, review or other public exercise, or to serve for escort duty, and such expenses incidental thereto as he may authorize may be paid as hereinafter provided for active service.

History.—ss. 7, 8, ch. 8502, 1921; CGL 2018, 2019; s. 1, ch. 25112, 1949; s. 3, ch. 73-93.
Note.—Former ss. 250.07, 250.08.

250.07 Composition of Florida National Guard; organization of departments for army and air.—The Florida National Guard shall consist of members of the militia enlisted therein and of commissioned officers and warrant officers who are citizens of the United States, organized, armed, equipped, and federally recognized, in accordance with the laws of the state and the laws and regulations of the Department of the Army and the Department of the Air Force. The state headquarters of the Florida National Guard shall be organized so as to establish a department for army and a department for air. The state headquarters will be under the administration of the state adjutant general, who shall hold the rank of major general or such higher rank as may be authorized by applicable tables of organization of the Department of the Army. There shall be an assistant adjutant general for army who shall hold rank, not higher than brigadier general, and who shall assist and advise the adjutant general in the supervision and operation of the Florida Army National Guard, and an assistant adjutant general for air who shall hold rank, not higher than brigadier general, and who shall assist and advise the adjutant general in the supervision and operation of the Florida Air National Guard. Each of the three aforementioned officers shall be a federally recognized officer of the Florida National Guard, who shall have served therein as such for at least 5 years and has attained the rank of major or higher.

History.—s. 6, ch. 8502, 1921; s. 1, ch. 10185, 1925; s. 1, ch. 12089, 1927; CGL 2017; s. 1, ch. 25112, 1949; s. 1, ch. 59-67.
Note.—Former s. 250.06.

250.08 Florida National Guard organized.—The Governor of Florida may perform any and all acts, and make and publish all such rules and regulations, as he may deem necessary to effect the organization or reorganization of the Florida National Guard, in conformity to the terms of the National Defense Act, and the rules, regulations, and proclamations promulgated by the President or the Department of Defense, relating to the National Guard of this or the several states.

History.—s. 1, ch. 8502, 1921; CGL 2012; s. 1, ch. 25112, 1949.
Note.—Former s. 250.01.

250.09 Appropriations, property and equipment.—The Governor of Florida may take all necessary steps to obtain all appropriations, property and equipment, now or hereafter provided by the United

States or authorized by law for the use, aid, equipment, benefit, or instruction of the National Guard.

History.—s. 2, ch. 8502, 1921; CGL 2013; s. 1, ch. 25112, 1949.
Note.—Former s. 250.02.

250.10 Appointment and duties of the adjutant general.—

(1) In case of a vacancy, the Governor shall, subject to confirmation by the Senate, appoint a federally recognized officer of the Florida National Guard who shall have served therein as such for at least 5 years and attained the rank of major or higher, to be the adjutant general of the state with the rank of not less than brigadier general or such higher rank as may be authorized by applicable tables of organization of the Department of the Army. The adjutant general and all other officers of the Florida National Guard on permanent duty with the Military Department and who are paid from state funds shall receive the pay and allowances of their respective grade as prescribed by applicable pay tables of the national military establishment for similar grade and period of service of personnel, unless a different rate of pay and allowances be specified in the appropriation bill, in which event such pay shall be the amount therein specified. An officer, with his consent, may be ordered to active state service for administrative duty with the Military Department at a grade lower than he currently holds. The adjutant general of the state shall be the Chief of the Military Department. He shall:

(a) Supervise the receipt, preservation, repair, distribution, issue and collection of all arms and military stores of the state.

(b) Supervise all troops, arms, and branches of the militia, such supervisory powers covering primarily all duties pertaining to their organization, armament, discipline, training, recruiting, inspection, instruction, pay, subsistence, and supplies.

(c) Maintain records of all officers and men of the Organized Militia, and keep on file in his office, copies of all orders, reports, and communications received and issued by him.

(d) Cause the law and orders relating to the militia of Florida to be indexed, printed, and bound, and prepare and publish blank books, forms, and stationery when necessary, and furnish them at the expense of the state.

(e) Prepare and publish, by order of the Governor, such orders, rules and regulations, consistent with law, as are necessary to bring the organization, armament, equipment, training, and discipline of the Florida National Guard to a state of efficiency as nearly as possible to that of the regular United States Army and Air Force, and he shall attest all orders of the commander in chief relating to the militia.

(f) Prepare such reports and returns as the Secretary of Defense may prescribe and require.

(g) Perform such other duties as may be required of him by the commander in chief.

(h) The adjutant general may employ such clerical help as is necessary for the proper conduct of the Military Department, and he is authorized to accept such clerical, technical, or other assistants as may be provided by the Federal Government.

(i) Establish and maintain as part of his office a repository of records of the services of Florida troops, including Florida officers and enlisted men, during all wars, and shall be the custodian of all records, relics, trophies, colors, and histories relating to such wars, now in possession of or which may be acquired by the state.

(j) The adjutant general shall have a seal of office, to be approved by the commander in chief, and all copies of papers in his office, duly certified and authenticated under the said seal, shall be admissible in evidence in all cases in like manner as if the original were produced.

(k) The adjutant general shall, not less than 10 days before each session of the Legislature, report to the Governor the number and condition of the Organized Militia, and the number and condition of the arms and accouterments in the custody of the state, and shall transmit to the Governor at said time a detailed report of all funds and moneys received and disbursed by the Military Department. He shall also make such recommendations as to needed legislation as he may deem proper.

(2) There shall be furnished suitable buildings for conducting the business of the Military Department and for the proper storage, repair and issuance of military property.

(3) The adjutant general shall employ a federally recognized officer of the Florida National Guard who shall have served therein as such for at least 5 years and have obtained the rank of major or higher, to be the assistant adjutant general who shall perform such duties as the adjutant general may require, and who shall in the absence of the adjutant general be the acting adjutant general and perform the duties required of the adjutant general.

(4) The adjutant general shall employ a federally recognized officer of the Florida National Guard as the state quartermaster who under the direction of the adjutant general shall be accountable for all funds accruing to the Military Department, receive, preserve, repair, issue, distribute and account for all State Military Department property to include real estate pertaining to the State Armory Board; construct, maintain, improve and repair facilities pertaining to the Military Department and the armory board; he will be the recorder of the armory board, and will perform such other duties as may be required of him by the adjutant general; he shall give a surety bond in a surety company approved by the adjutant general in such amount as the adjutant general may determine.

History.—ss. 10, 10½, 12, 13, ch. 8502, 1921; s. 2, ch. 10185, 1925; CGL 2021, 2022, 2024, 2025; s. 4, ch. 20849, 1941; s. 1, ch. 25112, 1949; s. 83, ch. 73-333; s. 5, ch. 77-85; s. 114, ch. 79-400.
Note.—Former ss. 250.11, 250.12, 250.14, 250.15.

250.11 Audit of books, accounts, and vouchers.—The books, accounts, and vouchers of the adjutant general and all other officers of the Florida National Guard handling state or government property shall be audited upon the direction of the Governor, in the same manner as the accounts of other state officers are audited.

History.—s. 14, ch. 8502, 1921; CGL 2026; s. 1, ch. 25112, 1949.
Note.—Former s. 250.16.

250.12 Appointment of commissioned and warrant officers.—The appointment of commissioned officers and warrant officers shall conform in number, rank and designation, and shall be based upon and made in conformity with tables of organization for the National Guard as prescribed in National Guard regulations published by the National Guard Bureau. The appointees shall hold their appointments subject to continuance of federal recognition, or attainment of age 64 years, unless relieved by reason of resignation, disability, or for a cause to be determined by a court-martial or efficiency board, legally convened for that purpose. Vacancies shall, when practicable, be filled by appointment from personnel of the National Guard of this state.

History.—s. 11, ch. 8502, 1921; s. 1, ch. 14761, 1931; s. 7, ch. 20849, 1941; CGL 2023; s. 1, ch. 25112, 1949.

Note.—Former s. 250.13.

250.13 General officers.—All general officers of the Florida National Guard shall be appointed by the Governor, subject to confirmation by the Senate.

History.—s. 18, ch. 8502, 1921; CGL 2030; s. 1, ch. 25112, 1949; s. 6, ch. 77-85.

Note.—Former s. 250.20.

250.16 Authority to incur charge against state.—No officer of the militia or National Guard shall make any purchases or enter into any contract or agreement for purchases or services as a charge against the state without the authority of the adjutant general.

History.—s. 29, ch. 8502, 1921; s. 3, ch. 10185, 1925; CGL 2041; s. 1, ch. 25112, 1949.

Note.—Former s. 250.32.

250.18 Commissioned officers and warrant officers, clothing and uniform allowance.—

(1) Acceptance of appointment as a commissioned or warrant officer in the National Guard of Florida shall involve an obligation upon the part of the appointee to immediately supply himself with such arms, uniform and articles of personal military equipment as are prescribed under Department of the Army and Department of the Air Force regulations for commissioned or warrant officers of the National Guard or officers of the Army or Air Force of the United States, of like grade and office.

(2) There shall be paid to each federally recognized commissioned and warrant officer in the Florida National Guard, upon his requisition, approved by the adjutant general, the sum of $75 as a uniform allowance for the first year of service, and annually thereafter an allowance of $25.

History.—s. 41, ch. 8502, 1921; s. 6, ch. 9337, 1923; s. 4(e), ch. 12089, 1927; CGL 2053(e); s. 4, ch. 14761, 1931; CGL 1936 Supp. 2039(1); s. 1, ch. 25112, 1949.

Note.—Former s. 250.30.

250.19 Expenses for travel on military business.—Any officer or enlisted man of the Florida National Guard, traveling on military business not with troops, in obedience to the orders of the Governor, shall be reimbursed for expenses incurred in the performance of such duties as prescribed by law for state officers and employees.

History.—s. 28, ch. 8502, 1921; CGL 2040; s. 1, ch. 25112, 1949.

Note.—Former s. 250.31.

250.20 Maintenance allowances.—

(1) There shall be paid quarterly to the post commander of each National Guard armory from funds appropriated to the Department of Military Affairs, upon the approval of the adjutant general, a monetary allowance based on a calculation of need as determined by the adjutant general, exclusive of any space utilized and maintained by a federally funded activity of the Florida National Guard. The allowance shall cover costs for the operation, maintenance, and repair of the armory facilities, and for necessary expenses of the units located at the armory. The amount of the allowance shall be computed by the adjutant general as of June 30 of each year for purposes of determining the total amounts payable for inclusion in his budget request to the Legislature.

(2) Payment of all allowances authorized under this section shall be subject to such rules as may be prescribed by the adjutant general and all moneys so paid shall be treated as public moneys and accounted for as prescribed by rules.

(3) In the event an insufficient appropriation be made to the Department of Military Affairs to pay the allowances hereinabove set forth in subsection (1), or if for other sufficient reason said amounts require redistribution among the National Guard armories, then the amount to be paid to such armories shall be adjusted as may be administratively determined by the adjutant general.

History.—s. 41, ch. 8502, 1921; s. 6, ch. 9337, 1923; s. 4, ch. 12089, 1927; CGL 2053; s. 1, ch. 13639, 1929; CGL 1936 Supp. 2053; s. 1, ch. 25112, 1949; s. 1, ch. 59-271; s. 1, ch. 77-22.

Note.—Former s. 250.47.

250.21 Retired list of the Florida National Guard.—

(1) When any commissioned officer, warrant officer or enlisted man has served 20 years in the active elements of the Florida National Guard, he may, upon his own application, be placed upon the retired list.

(2) A place on the retired list being a distinction only given in recognition of long and meritorious service, no officer or enlisted man will ever be retired whose service has not been honest and faithful; nor will any officer or enlisted man be retired as a means of punishment.

(3) Individuals making application for retirement shall be retired with rank held by him at the time of making such application or with highest rank attained while serving in the Florida National Guard or the federal forces.

(4) The names of officers and enlisted men on the retired list shall be kept on a separate roster under the supervision of the adjutant general. They shall report to the adjutant general once a year by letter, during the month of December, and failing to do so, their names may be dropped from the rolls of the retired list of the Florida National Guard. They shall also report to the adjutant general any change in their place of residence and address.

(5) Individuals now carried on the retired list ros-

ter of the state adjutant general are hereby placed on the retired list of the Florida National Guard.

History.—s. 44½, ch. 8502, 1921; ss. 7, 8, ch. 12089, 1927; CGL 2056; s. 2, ch. 13639, 1929; s. 1, ch. 25112, 1949; s. 4, ch. 73-93.
Note.—Former s. 250.50.

250.22 Retirement.—

(1) Any person who shall have reached the age of 64 years, and shall have completed not less than 30 years of service as an officer or enlisted man in the Organized Militia of Florida (exclusive of time served on the inactive or retired lists) on, before or subsequent to the passage of this section shall be eligible upon his own application, whether on the active or retired list of said Organized Militia, to be retired under the provisions of this section with the rank or rating held by him at the time of such retirement, and shall receive pay in an amount equal to one-half of the base pay as is now or hereafter may be prescribed in the applicable pay tables for similar grades and periods of service of personnel in the United States Army or Air Force; provided that in computing service in the Organized Militia of Florida, service in federal military forces during a period of war or upon order of the President of the United States, in any military duty, where the applicant has been inducted from the Organized Militia of Florida shall be included; and provided further that in computing such service performed after July 1, 1955, only federally recognized service shall be included. Eligibility for retirement under this section shall be in addition to any other retirement that such person is eligible to receive except that any person who elects to retire and is retired under the provisions of this section and who is eligible to receive retirement pay from the state under any other provision of law may not include, in determining eligibility and benefits for such other retirement, service performed or contribution made while employed by the Military Department of the state; provided, however, that retirement pay under this section shall be reduced by any amount of retirement pay, pension or compensation which such person is eligible to receive from the Federal Government for military service.

(2) Any person who shall have reached the age of 60 years (but less than 64) and is otherwise qualified to receive the retirement pay provided in subsection (1) above may elect to retire and thereafter receive a reduced benefit which would be the actuarial equivalent of his benefit under subsection (1).

(3) Sufficient money to meet the requirements of this section is hereby appropriated out of any moneys in the state treasury not otherwise appropriated and payments under this section will be made to those eligible to receive the same on the first day of each calendar month from the general revenue fund by the State Comptroller upon prescribed pay vouchers certified to by the adjutant general of the state.

(4) In computing time of service of an officer or enlisted man in the Organized Militia of the state for purposes of retirement under this section, service in federal military forces during the period from August 27, 1940, to December 31, 1946, both dates inclusive, when inducted into such federal service from the Organized Militia of Florida, shall be included at double the time of actual service.

(5) All powers, duties, and functions related to the administration of this section are vested in the Department of Administration and shall be assigned to the Division of Retirement.

History.—ss. 1, 2, ch. 20848, 1941; s. 1, ch. 23018, 1945; s. 1, ch. 25112, 1949; ss. 1, 2, ch. 29725, 1955; s. 3, ch. 77-124.
Note.—Former ss. 250.76, 250.78.

250.23 Pay for active service in state.—Officers and enlisted men, when ordered to active service by the state, as now defined by law, shall receive the pay and allowance as prescribed in the applicable pay tables for similar grades and periods of service of personnel in the United States Army or Air Force. Enlisted men shall be provided subsistence in kind, or commutation therefor in such amount as may be prescribed by the adjutant general.

History.—s. 30, ch. 8502, 1921; s. 4, ch. 9337, 1923; s. 3, ch. 12089, 1927; CGL 2042(a); s. 2, ch. 14761, 1931; CGL 1936 Supp. 2042(1); s. 1, ch. 22038, 1943; s. 1, ch. 25112, 1949.
Note.—Former s. 250.33.

250.24 Pay and expenses; appropriation.—The pay and expenses of troops called out in active service shall be paid from any appropriation for preserving the public peace or from the pay and expenses of troops called out in aid of civil authorities. Payments shall be made upon prescribed forms of payrolls and vouchers, accompanied by copies of the order under which troops were acting, certified by the adjutant general and approved by the Governor.

History.—s. 30, ch. 8502, 1921; s. 4, ch. 9337, 1923; s. 3, ch. 12089, 1927; CGL 2042; s. 1, ch. 25112, 1949; s. 5, ch. 73-93.
Note.—Former s. 250.34.
cf.—s. 250.25 Governor and comptroller authorized to borrow.
s. 250.26 Transfer of funds.

250.25 Governor and Comptroller authorized to borrow money.—When there is no state appropriation available for the pay and expenses of troops called out in active service to preserve the peace or in aid of civil authorities, and funds are not immediately available for this purpose, the Governor and Comptroller may borrow money to make such payments, in such sum or sums as may from time to time be required, and any such loans, so obtained, shall be promptly repaid out of the first funds that become available for such use.

History.—s. 30, ch. 8502, 1921; s. 4, ch. 9337, 1923; s. 3, ch. 12089, 1927; CGL 2042; s. 1, ch. 25112, 1949.
Note.—Former s. 250.35.

250.26 Transfer of funds.—Where the available funds are not sufficient for the purposes specified in ss. 250.23, 250.24, and 250.34, the Governor and Comptroller may transfer from any available fund in the state treasury, such sum as may be necessary to meet such emergency, and the said moneys, so transferred, shall be repaid to the fund from which transferred when moneys become available for that purpose by legislative appropriation or otherwise.

History.—s. 30, ch. 8502, 1921; s. 4, ch. 9337, 1923; s. 3, ch. 12089, 1927; CGL 2042; s. 1, ch. 25112, 1949.
Note.—Former s. 250.36.

250.27 Active service defined; orders to specify allowance of pay, travel, or expenses.—The troops ordered into the service of the state for the enforcement of the law, the preservation of the peace, or for the security of the rights or lives of citizens, protection of property, or ceremonies shall be deemed to be in active service. Officers and enlist-

ed men employed under orders of the Governor in recruiting, making tours of instruction, inspection of troops, armories, storehouses, campsites, rifle ranges, and military property, sitting on general or special courts-martial, boards of examination, courts of inquiry or boards of officers, or making and assisting in the physical examinations, shall be deemed to be in active service when it is so specified in orders. Orders shall specify in every case if pay and travel or expenses are allowed.

History.—s. 31, ch. 8502, 1921; CGL 2043; s. 1, ch. 25112, 1949.
Note.—Former s. 250.37.

250.28 Order for troops to aid civil authorities.—When an invasion or insurrection in the state is made or threatened, or whenever there exists a riot, mob, unlawful assembly, breach of the peace or resistance to the execution of the laws of the state, or there is imminent danger thereof, and the civil authorities are unable to suppress the same, the Governor, or in case he cannot be reached and the emergency will not permit of awaiting his orders, the adjutant general, shall issue an order to the officer in command of the body of troops best suited for the duty for which a military force is required, directing him to proceed with the troops under him, or as many thereof as may be necessary, with all possible promptness, to suppress the same.

History.—s. 32, ch. 8502, 1921; s. 5, ch. 9337, 1923; CGL 2044; s. 1, ch. 25112, 1949.
Note.—Former s. 250.38.

250.29 Duty of officer receiving order to aid civil authority; penalty for failure to comply.—Any officer receiving such orders shall immediately notify the officers and enlisted men under his command, and as soon as his troops can be assembled, proceed to the place where such mob or body of riotous persons assembled to break the law may be, and he or the sheriff of the county or other peace officer accompanying him, shall warn all such persons to desist and disperse, and use such force as may be necessary to restore peace and overcome resistance. Any officer failing to comply with the provisions of this section and any officer or enlisted man so notified by his commanding officer, who shall fail to obey such order, unless prevented by physical disability, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and may also be dismissed or dishonorably discharged by sentence of court-martial.

History.—s. 33, ch. 8502, 1921; CGL 2045, 8124; s. 1, ch. 25112, 1949; s. 145, ch. 71-136.
Note.—Former s. 250.39.

250.30 Orders of civil authorities; tactical direction of troops; efforts to disperse before attack.—When an armed force is called out in aid of the civil authorities, the orders of the civil officer or officers may extend to a direction of the general or specific objects to be accomplished and the duration of service by the active militia, but the tactical direction of the troops, the kind and extent of force to be used, and the particular means to be employed to accomplish the objects specified by the civil officers, are left solely to the officers of the active militia. Every endeavor consistent with the preservation of life and property must be made, both by the civil officers and officers commanding the troops, to induce rioters or persons lawlessly assembled to disperse before an attack is made upon them by which their lives may be endangered.

History.—s. 34, ch. 8502, 1921; CGL 2046; s. 1, ch. 25112, 1949.
Note.—Former s. 250.40.

250.31 Liability of members of the Organized Militia; defense of actions or proceedings.—

(1) Members of the Organized Militia ordered into the active service of the state shall not be liable, civilly or criminally, for any lawful act or acts done by them in the performance of their duty.

(2) In any action or proceeding of any nature, civil or criminal, commenced in any court by any person or by the state against any member of the Organized Militia because of any such act done or caused, ordered, or directed to be done, the defendant in such action or proceeding, upon his request, shall be defended at the expense of the state by a qualified attorney or attorneys designated by the Department of Legal Affairs. However, nothing in this section shall prohibit any such defendant from employing his own private counsel at the defendant's own expense.

(3) Such defendant may be ordered to state active duty with full pay and allowances for such time as his presence is required in defense of such actions or proceedings.

(4) In any such action or proceeding, in the event that the plaintiff shall dismiss his suit, or a verdict or judgment in favor of the defendant or defendants is entered, the court shall award costs and reasonable attorney's fees incurred by the state and the defendant in the defense of such action or proceeding.

History.—s. 35, ch. 8502, 1921; CGL 2047; s. 1, ch. 25112, 1949; s. 1, ch. 73-92.
Note.—Former s. 250.41.

250.32 Commanding officer's control of arms sales.—When any part of the militia of Florida is in active service by the order of the Governor to aid in the enforcement of the laws, the commanding officer of such troops may order the closing of any places where arms, ammunition, dynamite, explosives, or intoxicating liquors, are sold, and forbid the selling, bartering, lending or giving away of any of said commodities in the city, town, or village where the troops are on duty, or in the vicinity of such place, for so long as any of the troops remain on duty in said vicinity. Such orders shall take effect whether any civil officer has issued a similar order; and the commanding officer of such troops may continue said prohibition in force until the departure of the troops, although the sheriff, mayor or intendant of the county, city, town or village may have prescribed an earlier or different date after which such selling, bartering, lending or giving away shall be carried on.

History.—s. 36, ch. 8052, 1921; CGL 2048; s. 1, ch. 25112, 1949.
Note.—Former s. 250.42.

250.33 Powers of commanding officer in active service.—The commanding officer of troops in camp, garrison, or other active service may incarcerate and detain until such person can be turned over to the civil authorities, any person guilty of drunkenness, breach of the peace or disorderly conduct, within 1 mile of such camp, garrison, or station. Such commanding officer may also abate any menace to

the health or safety of his command, camp, garrison or station.

History.—s. 38, ch. 8502, 1921; CGL 2050; s. 1, ch. 25112, 1949.
Note.—Former s. 250.44.

250.34 Injury or death in active service.—

(1) Every member of the Organized Militia who shall be injured or disabled while in the active military service of the state under competent orders shall be furnished medical attention and necessary hospitalization at the expense of the state, and shall be continued in a pay status in the active service of the state until such time as a board of inquiry, appointed by the adjutant general, may determine that the disability no longer justifies such pay, hospitalization or medical attention; provided that in no instance will such pay, hospitalization or medical attention be provided for a period extending more than 1 year from the date that such injury or disability was incurred; and provided further, that such injury or disability was incurred in line of duty and not due to the misconduct of such individual so injured or disabled, as determined by a line of duty board appointed by the adjutant general.

(2) The pay such individual shall be entitled to during the period of 1 year from the date of injury or disability shall be either the full military pay and allowances to which such individual would be entitled if on full-time state active service or the amount of compensation provided under ss. 440.14 [F. S. 1973] and 440.15 [F. S. 1973], based on such individual's average weekly wages in his civilian occupation or employment at the time of entry into active service of the state during which such injury arose, whichever amount is greater.

(3) After the expiration of 1 year from the date of injury or disability, such individual shall be provided hospitalization, medical services and supplies, and compensation for wages and compensation for disability based on the average weekly wages of such injured individual on pay status in the active service of the state or in his civilian occupation or employment, whichever is greater, in amounts provided under chapter 440 [F. S. 1973], as if such individual were covered under the Workers' Compensation Law, except that payments made during the first year after such injury shall not be duplicated after the expiration of that year.

(4) Every member of the Organized Militia who shall be killed, or who shall die as the result of injuries incurred, while in active military service of the state under competent orders shall qualify for benefits as a law enforcement officer pursuant to the provisions of s. 112.19 or any successor statute providing for death benefits for law enforcement officers, and his survivors or estate shall be entitled to the death benefits provided therein. However, nothing in this section shall prohibit survivors or the estate of any such decedent from presenting a claim bill for approval of the Legislature in addition to the death benefits provided in this section.

History.—s. 39, ch. 8502, 1921; CGL 2051; s. 3, ch. 14761, 1931; CGL 1936 Supp. 2051, 2053(1); s. 8, ch. 20849, 1941; s. 1, ch. 25112, 1949; s. 1, ch. 73-319; s. 66, ch. 79-40.
Note.—Former s. 250.45.

cf.—s. 250.26 Transfer of funds.

250.35 Courts-martial.—Courts-martial in the state shall be of three kinds, namely: general courts-martial, special courts-martial, and summary courts-martial. They shall be constituted and have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts provided for by the laws of the United States for the National Guard. The proceedings of courts-martial shall be assimilated to the forms and modes of procedure prescribed for like courts organized under the Uniform Code of Military Justice and the federal rules and regulations for the government of the National Guard.

(1) General courts-martial in the Florida National Guard may be convened by order of the Governor, and such courts, shall have the power to impose fines not exceeding $200; to sentence to confinement, provided that such sentence of confinement shall not exceed 1 day for each dollar of fine authorized; to forfeiture of pay and allowances; to reprimand; to dismissal or dishonorable discharge from the service; to a reduction of noncommissioned officers to the ranks; provided, however, that any two or more of such punishments may be combined in the sentence herein authorized to be imposed by such courts.

(2) When not in the active service of the United States, the commanding officer of each garrison, fort, post, camp or other place, division, brigade, group, regiment or separate battalion may appoint special courts-martial for his command; but such special courts-martial may in any case, be appointed by superior authority when by the latter deemed advisable. Special courts-martial may try any person subject to military law, for any crime or offense made punishable by the military laws of the United States or of the state; and such special courts-martial shall have the same powers of punishment as do general courts-martial, except that fines imposed by such special courts-martial shall not exceed $100.

(3) When not in active service of the United States, the commanding officer of each garrison, fort, post, or other place, regiment, group, separate battalion, company or similar type unit, may appoint for such place or command a summary court to consist of one officer who may administer oaths and try the enlisted men of such place or command for breaches of discipline and violations of the laws governing such organizations; and said court when satisfied of the guilt of such soldier or soldiers may impose a fine not to exceed $25 for any single offense; to sentence to confinement, provided that such sentence to confinement shall not exceed 1 day for each dollar of fine authorized to be imposed; or may sentence to forfeiture of pay and allowance. The proceedings of such summary court shall be informal; the minutes thereof shall be made and preserved, and in all respects shall be as far as practicable, identical with proceedings of similar courts of the Army of the United States.

(4) When the Florida National Guard is not in the service of the United States, sentence of dismissal from the service or dishonorable discharge from

same, imposed by court-martial, shall not be executed until approved by the Governor.

History.—ss. 44-47, 49, ch. 8502, 1921; s. 7, ch. 9337, 1923; ss. 5, 6, ch. 10185, 1925; CGL 2057-2060, 2062; s. 1, ch. 25112, 1949; s. 78, ch. 77-104.
Note.—Former ss. 250.51, 250.52, 250.53, 250.54, 250.56.

250.36 Mandates and process.—

(1) Military courts may issue all process and mandates, including writs and warrants necessary and proper to carry into full effect the powers vested in said courts. Such mandates and process may be directed to the sheriff of any county, and shall be in such form as may, from time to time, be prescribed and published by the adjutant general in the rules and regulations issued by him under this chapter. All officers to whom such mandates and process are directed shall execute the same and make returns of their acts thereunder, according to the requirements of the form of process. Any sheriff or other officer who shall neglect or refuse to perform the duty enjoined upon him by this chapter shall be subject to the same liabilities, penalties and punishments as are prescribed by the law for neglect or refusal to perform any other duty of his office.

(2) When not in the active service of the United States, presidents of courts-martial and summary court officers of the Florida National Guard may issue warrants, directed to the sheriff of any county in the state, directing him to arrest accused persons and to bring them before the court for trial whenever any such accused shall have disobeyed an order in writing delivered to him in person or mailed to his last known address from the convening authority to appear before such courts, a copy of the charge or charges having been delivered to the accused with such order; issue subpoena duces tecum and enforce by attachment attendance of witnesses and the production of books and papers; and sentence for a refusal to be sworn or to answer as provided in actions before civil courts.

(3) When a sentence of confinement is imposed by any court-martial of the Florida National Guard, the reviewing authority whose approval makes effective the sentence imposed by the court-martial, shall issue his warrant directing the sheriff of the appropriate county to take the delinquent into custody and confine him in the jail of such county for the period specified in the sentence of the court. Any sheriff receiving such warrant shall promptly execute the same by taking the delinquent into custody and causing him to be confined in said jail. The sheriff or jailor in charge of any county jail shall receive any person committed for confinement in such jail under proper process from a court-martial, and provide for the care, subsistence, and safekeeping of such prisoner just as he would a prisoner properly committed for custody under the sentence of any civil court.

(4) All sums of money collected through fines imposed by a general, or special, or summary court of the Florida National Guard shall at once be paid over by the officer collecting the fine to the commanding officer of the organization to which the delinquent belongs, and will be taken up by the latter upon his account current and treated as public moneys.

History.—ss. 50, 52, ch. 8502, 1921; ss. 9, 11, ch. 9337, 1923; s. 8, ch. 10185, 1925; CGL 2063, 2065; s. 1, ch. 25112, 1949; s. 22, ch. 73-334.
Note.—Former ss. 250.57, 250.59.

250.37 Expenses of courts-martial.—

(1) All expenses incurred in a court-martial proceeding, including the payment of one stenographer, sheriff's fees for service of warrants, summons, subpoenas and all other necessary and lawful fees to civil officers for service, and witness fees at the same rate allowed by law in criminal cases, together with the pay, subsistence, and necessary expenses of the members of the court, shall, except as provided in subsection (4) below, be paid by the state in the usual manner upon the approval of the Governor. Members of the court shall be reimbursed for traveling expenses as provided in s. 112.061. Courts-martial may subpoena any witness residing within 100 miles of the place where the court is sitting, to appear and testify before it, and the sheriff of any county upon receiving any subpoena issued by direction of a court-martial, and signed by the judge advocate thereof or summary court officer, shall make service and return of service as provided by law in criminal cases.

(2) The employment of a reporter may be authorized by the convening authority for all general courts-martial. When a reporter is employed, he shall be paid upon the certificate of the judge advocate upon the approval of the Governor from the military appropriation, such fees as are provided for official reporters.

(3) Fees for sheriffs for the service of all process issuing out of military courts, and for the attendance of deputy sheriffs upon such courts, shall be the same as provided by law for the service of similar process issued by the civil courts of the state. In courts-martial trials, the fees and pay of sheriffs and deputy sheriffs shall be upon an account certified as correct by the judge advocate of the court and approved by the adjutant general. The fees and costs in cases tried by general and special courts-martial shall be paid by the state, as provided in subsection (1) above.

(4) In trials by summary court, the sheriff's costs and fees, including costs of subsistence of the soldier or soldiers, if sentenced to confinement, shall be paid by the county in which the summary court convenes and exercises its jurisdiction and powers. Such costs, fees and subsistence charges to be made from the fine and forfeiture fund of any such county.

History.—ss. 48, 51, 54, 55, ch. 8502, 1921; ss. 8, 10, ch. 9337, 1923; ss. 7, 9, ch. 10185, 1925; CGL 2061, 2064, 2067, 2068; s. 1, ch. 25112, 1949; s. 10, ch. 26484, 1951; s. 19, ch. 63-400.
Note.—Former ss. 250.55, 250.58, 250.61, 250.62.

250.38 Liability.—No action or proceeding shall be prosecuted or maintained against a member of the military court or officer or person acting under its authority or reviewing its proceeding, on account of the approval or imposition or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any warrant, writ, execution, process or mandate of any military court. The jurisdiction of the courts and boards established by the code shall be presumed, and the burden of

proof will rest upon any person seeking to oust such courts or boards of jurisdiction in any action or proceeding.

History.—s. 56, ch. 8502, 1921; CGL 2069; s. 1, ch. 25112, 1949.
Note.—Former s. 250.63.

250.39 Penalty for contempt.—Any person who shall be guilty of disorderly, contemptuous or indecorous language or expression to or before any military court, or any member of such court, in open court, tending to interrupt its proceedings, or to impair the respect due its authority, or who shall commit any breach of the peace, or make any noises or other disturbances, directly tending to interrupt its proceedings, may be committed by warrant under the hand of the president of the court to the jail of the county in which said court shall sit, there to remain without bail in confinement for a time to be limited, not exceeding 3 days.

History.—s. 53, ch. 8502, 1921; s. 12, ch. 9337, 1923; CGL 2066; s. 1, ch. 25112, 1949.
Note.—Former s. 250.60.

250.40 Armory Board; armories, how obtained.—

(1) The Armory Board of the state shall consist of the Governor, the adjutant general, the state quartermaster, the general officers of the line, regimental commanders, group commander, and senior air commander in the active National Guard of the state. This board is charged with the supervision and control of all military buildings and real property within the state applied to military uses.

(2) The term of each member of the Armory Board shall be the period during which he possesses the qualifications for such membership under the provisions of subsection (1) of this section.

(3) The members of the Armory Board shall perform the duties imposed upon them by the provisions of this chapter without any special compensation for their services; members of the Armory Board shall be reimbursed for traveling expenses as provided in s. 112.061, and be paid from the appropriation for the expenses of the Florida National Guard.

(4) It shall be the duty of the Armory Board to consider and approve the plans for or of all armories and other buildings before such buildings shall be rented, constructed or otherwise acquired for military uses by the state.

(5) Since our national military policy as enunciated in the National Defense Act recognized the National Guard as an important and necessary component of the Army of the United States, and as the defense of the country is a joint responsibility of all political divisions and subdivisions thereof, and since the National Guard is a citizen force by reason of its militia status, it is considered equitable that the expense of the maintenance of the National Guard be not only shared by the state with the Federal Government, but that it should properly be shared also by the counties, cities and other subdivisions of the state. As the federal government is providing liberally for the equipment and training of the National Guard and the state for its administration and management, an equitable division of the responsibility of maintenance would leave with the communities in which units of the National Guard are established the duty of supplying the necessary personnel and adequate housing for the organization.

(6) In order to provide for the cooperative support of the National Guard, and that armories may be provided which will furnish suitable training facilities and adequate storage accommodations for all arms, equipment and other military property, the Armory Board shall have authority to receive from counties, municipalities and other sources, donations of land and contributions of money to aid in providing, improving and maintaining an arsenal, armories, campsites, target ranges, and other facilities, throughout the state, and any property so donated, shall be held as other property for the use of the state and such counties and municipalities are hereby authorized and empowered to make such donations of lands by deed or long-term leases and contributions of moneys for the purposes herein set forth, and to issue bonds or certificates of indebtedness to provide funds for such purposes; and boards of county commissioners are hereby authorized to levy taxes, not to exceed 1 mill, to provide funds for the construction of armories or for the retirement of such bonds or certificates of indebtedness issued to provide funds for the construction of armories.

(7) Counties and municipalities are hereby authorized to construct armories upon state-owned land which may be made available for such purpose by action of the Armory Board.

(8) Counties and municipalities are also authorized to grant to the State Armory Board, for military uses, by deed or long-term leases, property that may have been acquired, or buildings that may have been constructed by them, for use as armories and rifle ranges.

(9) Whenever it may become necessary in the public interest to acquire private property in order to provide necessary land for campgrounds, rifle ranges or armories for the Organized Militia of the state, and the same cannot be acquired by agreement satisfactory to the Armory Board and the parties interested in, or the owners of, such private property, the armory board is hereby authorized and empowered to exercise the right of eminent domain, and to proceed to condemn such property in the manner provided by law. Any suit or action brought by the Armory Board to condemn property, as provided for under this section, shall be brought in the name of the Armory Board, and it shall be the duty of the Department of Legal Affairs of the state to conduct the proceedings for and to act as the counsel of the said board in such matters.

(10) The county commissioners, or municipal authorities, may, in their discretion, appropriate a sufficient sum not otherwise appropriated, to pay the necessary expenses of any unit of the Organized Militia of the state located in their respective counties or municipalities, to be accounted for to the adjutant general by the organization receiving such appropriation as other military funds.

History.—ss. 42, 43, 63, ch. 8502, 1921; s. 4, ch. 10185, 1925; s. 5, ch. 12089, 1927; CGL 2054, 2073; s. 6, ch. 20849, 1941; s. 1, ch. 25112, 1949; s. 19, ch. 63-400; ss. 11, 35, ch. 69-106.

Note.—Former ss. 250.48, 250.70.

250.41 Armory defined; control and management of state military properties; annual report of Armory Board.—

(1) The term "armory," as used in this chapter, shall be understood to mean a building used primarily for the housing and training of troops, and no building will be used for those purposes, or for storing of arms and other military property, that is not under full control and supervision of the properly constituted military authorities.

(2) The Armory Board shall also constitute a board for the general management and control of all armories when established, and may adopt and prescribe rules for their government and management. All United States and state military property must be kept therein, and the commanders of troops using the armories will be held responsible for the safekeeping and proper care of such property and its protection against misappropriation or loss. Armories, while occupied and in use by troops, shall be considered military posts, and be under exclusive control and jurisdiction of the officer commanding the post.

(3) The Armory Board shall also be charged with the supervision and management of any permanent campsite, target range or ranges, which are now or may hereafter become the property of the state; or which, being the property of the United States, may be provided to the state to be used for military purposes; such board may provide for the maintenance and proper equipment of the same from any funds which may be available for that purpose. Any and all moneys accruing to the Armory Board from the operation and management of properties hereinabove mentioned are hereby appropriated for the maintenance of state properties under control of the Armory Board.

(4) The Armory Board shall make a report annually of the proceedings incident to the location and management of armories, respectively, and also as to the management of other property entrusted to its care, and with a detailed account of all disbursements; which report shall be filed in the office of the adjutant general, and shall be printed in the report of his department.

History.—s. 43, ch. 8502, 1921; s. 6, ch. 12089, 1927; CGL 2055; s. 1, ch. 25112, 1949.
Note.—Former s. 250.49.

250.42 State Armory Board authorized to convey, etc., certain lands.—The State Armory Board is hereby authorized to convey, lease or release any lands under its ownership, supervision or control which are in the opinion of said board not required for military uses.

History.—ss. 1, 2, ch. 20717, 1941; s. 1, ch. 25112, 1949.
Note.—Former s. 250.75.

250.43 Wearing of uniform and insignia of rank; penalty.—

(1) The uniform or insignia of rank worn by officers of the Florida National Guard shall be worn only by persons entitled thereto by commission under the laws of the state or the United States. Any person violating any provision of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

(2) Every person other than an officer or enlisted man of the National Guard, Naval Militia, or Marine Corps of this state or any other state, or of the United States Army, Navy, Marine Corps, Air Force, or Revenue Service, who wears the uniform of the United States Army, Navy, Marine Corps, Air Forces, or Revenue Service, or National Guard, Air National Guard, Naval Militia or Marine Corps or any part of such uniform, or a uniform or part of uniform similar thereto, or in imitation thereof, within the bounds of the state, except in cases where the wearing of such uniform is permitted by the laws of the United States and the regulations of the Secretary of Defense, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Nothing in this chapter shall be construed as prohibiting persons in the theatrical profession from wearing such uniforms while actually engaged in such profession, in any playhouse or theater, in a production in no way reflecting upon such uniform; and provided, that nothing in this chapter shall prohibit the uniform rank of civic societies parading or traveling in a body or assembling in a lodge room; and provided further, that this section shall not apply to cadets of any military school or to the Boy Scouts.

History.—ss. 58, 59, ch. 8502, 1921; CGL 2071, 8125, 8126; s. 1, ch. 25112, 1949; s. 146, ch. 71-136.
Note.—Former ss. 250.65, 250.66.

250.44 Military equipment regulations; penalties.—

(1) Any person who shall sell, or offer for sale, barter or exchange, pledge, loan or give away, secrete, or retain after demand made by civil or military officers of the state, any clothing, arms, military outfits or accouterments, furnished by or through the state to any member of the militia, or who shall receive by purchase, barter, exchange, pledge, loan or gift, any such clothing, arms, military outfits or accouterments, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) All men in the military service of the Florida National Guard, to whom shall have been entrusted any military property by reason of their being in such military service, shall account for the same to the proper military authority in accordance with the rules and regulations or special orders made by superior authority in reference to the same, and such military property shall not be removed beyond the limits of the county in which the post is located without authority of the adjutant general, and any person, whether in the military service or not, or whether his enlistment or appointment shall have expired or not, who shall fail to account for or return to proper military authority any property which shall have come into his possession to which the state military authorities may be entitled, or who shall conceal or convert the same to his own use, or remove the same from the county in which the same came into his possession, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any prosecution had under the provisions of this section may be abated upon full satisfaction being made for such property to the

military authorities of the state and the payment of all court costs accruing by reason of the institution of any such prosecution.

(3) The clothing, arms, military outfits and accouterments, furnished by or through the state to any member of the militia, shall not be sold, bartered, loaned, exchanged, pledged or given away, and no person not a member of the military forces of this state or the United States, or duly authorized agent of this state or the United States, who has possession of such clothing, arms, military outfits, or accouterments so furnished, and which have been subject to any such unlawful disposition, shall have any right, title or interest therein, but the same shall be seized and taken wherever found by any civil or military officer of the state, and shall thereupon be delivered to any commanding officer, or other officer authorized to receive the same, who shall make an immediate report to the adjutant general. The possession of any such clothing, arms, military outfits or accouterments by any person not a member of the military forces of this state, or any other state, or of the United States, shall be presumptive evidence of such sale, barter, loan, exchange, pledge or gift.

History.—ss. 61, 62, ch. 8502, 1921; s. 9, ch. 12089, 1927; CGL 2072, 8128; s. 1, ch. 25112, 1949; s. 147, ch. 71-136.
Note.—Former ss. 250.68, 250.69.

250.45 Military uniform discriminated against; penalty.—Any proprietor, manager or employee of any theater or other public place of entertainment or amusement within this state, who shall discriminate against any person lawfully wearing the uniform of any branch of the military or naval service of the United States or of the state, because of that uniform, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

History.—s. 60, ch. 8502, 1921; CGL 8127; s. 1, ch. 25112, 1949; s. 148, ch. 71-136.
Note.—Former s. 250.67.

250.46 Salaried employees not entitled to additional pay.—Officers and enlisted men of the militia employed by the military department of the state, who receive monthly salaries from the state for military duties, shall not be entitled to any other pay from the state for military service of any character; provided, that the provisions of this section shall not prohibit any officer or enlisted man from receiving pay from the United States for participation in maneuvers, camps, field service or other service or duty.

History.—s. 15, ch. 8502, 1921; CGL 2027; s. 1, ch. 25112, 1949.
Note.—Former s. 250.17.

250.47 Governor's permission for unit to leave state.—No unit of the National Guard shall go out of the state without first securing permission of the Governor.

History.—s. 24, ch. 8502, 1921; CGL 2036; s. 1, ch. 25112, 1949.
Note.—Former s. 250.26.

250.48 Leaves of absence.—All officers and employees of the state and of the several counties and municipalities within the state, who are members of the Florida National Guard, shall be entitled to leave of absence from their respective duties, without loss of pay, time or efficiency rating, on all days during which they shall be engaged in active state duty, field exercises or other training ordered under the provisions of this chapter, provided the leaves of absence without loss of pay, granted under the provisions of this section, shall not exceed 17 days at any one time.

History.—s. 26, ch. 8502, 1921; s. 2, ch. 12089, 1927; CGL 2038; s. 5, ch. 20849, 1941; s. 1, ch. 25112, 1949.
Note.—Former s. 250.28.

250.49 Annual encampment.—Subject to the restrictions of the National Defense Act, the Governor may annually order into service the whole, or such portion of the Florida National Guard as he may deem proper; the period of such service to be fixed by the Governor, subject to the restrictions mentioned above. When so ordered into the service of the state, and such rations are not furnished by the United States Government, the state shall furnish rations for the officers and men of the same quality as the rations furnished by the regular army, and pay such expenses of said encampment as the Governor may deem proper, including the traveling expenses of officers and men incurred in obeying such orders, when such expenses are not paid by the Government of the United States.

History.—s. 37, ch. 8502, 1921; CGL 2049; s. 1, ch. 25112, 1949.
Note.—Former s. 250.43.

250.51 Insult to troops; penalty.—When troops of the Organized Militia of the state are at drill in their respective armories, on the streets, public roads or other places, where such drills are conducted or when they are performing other duties required of them by the state or the United States, it is unlawful for any person to make any disloyal or insulting remark either to or about said troops or to make any sign, motion or gesture calculated to insult or humiliate said troops, and any person found guilty of making any such disloyal or insulting remark, or of making any such sign, motion or gesture, for the purpose and in the manner as aforesaid, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 64, ch. 8502, 1921; CGL 8129; s. 1, ch. 25112, 1949; s. 149, ch. 71-136.
Note.—Former s. 250.71.

250.52 Unlawful to persuade citizens not to enlist; penalty.—Whenever the United States is at war, or our foreign relations tend to indicate an impending war or state of war, it is unlawful for any person or persons to solicit or persuade a citizen or citizens of the United States not to enlist or serve in the Army, Air Force, Marine Corps, Coast Guard or Navy thereof, or in any reserve component thereof, or in the National Guard or active militia of the state, or to publicly attempt to dissuade any such citizen or citizens from so enlisting; the provisions of this chapter shall not apply to such soliciting or persuading done by any person related by affinity or consanguinity to the person solicited or persuaded or whose advice is requested by the person solicited or persuaded. Any person adjudged guilty of a violation of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, ch. 7392, 1917; RGS 1422, 1423; CGL 2076, 2077; s. 1, ch. 25112, 1949; s. 1, ch. 67-332; s. 150, ch. 71-136.
Note.—Former s. 250.73.

CHAPTER 251

FLORIDA STATE GUARD

251.01 Authority and name.—

(1) Whenever any part of the National Guard of this state is in active federal service, the Governor is hereby authorized to organize and maintain, within this state during such period, under such regulations as the Secretary of Defense of the United States may prescribe for discipline in training, such military forces as the Governor may deem necessary to assist the civil authorities in maintaining law and order. Such forces shall be composed of officers commissioned or assigned, and such able-bodied male citizens of the state as shall volunteer for service therein, supplemented, if necessary, by men of the state militia enrolled by draft or otherwise, as provided by law. Such forces shall be additional to and distinct from the National Guard and shall be known as the Florida State Guard. Such forces shall be uniformed.

(2) The Governor is authorized to maintain a Florida State Guard reserve cadre of officers and noncommissioned officers, said officers to be a trained nucleus for such time as the Florida State Guard may be activated. Said officers shall be volunteers and shall serve with no pay or allowances except when called to active duty.

History.—s. 1, ch. 20214, 1941; s. 1, ch. 65-186; s. 84, ch. 73-333.

251.02 Organization; rules and regulations.— The Governor is hereby authorized to prescribe rules and regulations, not inconsistent with the provisions of this chapter, governing the enlistment, organization, administration, equipment, maintenance, training and discipline of such guard; provided, such rules and regulations, insofar as he deems practicable and desirable, shall conform to existing law governing and pertaining to the National Guard and the rules and regulations promulgated thereunder; and prohibit the acceptance of gifts, donations, gratuities, or anything of value, by such guard, or by any member of such guard, from any individual, firm, association, or corporation, by reason of such membership.

History.—s. 2, ch. 20214, 1941.

251.03 Pay and allowances.— The members of the Florida State Guard shall receive no pay and allowances, except when called out on active duty, during which time they shall receive the same base pay and allowances as are now provided by law for the National Guard when on similar duty.

History.—s. 3, ch. 20214, 1941.
cf.—s. 250.23 Pay for active service of National Guard.

251.04 Requisitions; armories; other buildings.— For the use of such guard, the Governor is hereby authorized to requisition from the Secretary of Defense such arms and equipment as may be in possession of, and can be spared by, the Defense Department; and to make available to such guard the facilities of state armories and their equipment and such other state premises and property as may be available.

History.—s. 4, ch. 20214, 1941; s. 85, ch. 73-333.
cf.—ss. 250.28, 250.29 Calling out in aid of civil authorities.

251.05 Calling out of guard.— The Florida State Guard may be called out to aid the civil authorities as now provided by the law for calling out the National Guard; except whenever the adjutant general would be authorized to call out the Florida State Guard, but is unable to do so for any reason, his assistant shall have such authority.

History.—s. 5, ch. 20214, 1941.
cf.—ss. 250.28, 250.29 Calling out in aid of civil authorities.

251.06 Use without this state.— Such guard shall not be required to serve outside the boundaries of this state, except that any organization, unit or detachment of such guard, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces beyond the borders of this state into another state until they are apprehended or captured by such organization, unit or detachment, or until the military or police forces of the other state, or the forces of the United States, have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons; provided, such other state shall have given authority by law for such pursuit by such guards of this state. Any such person, who shall be apprehended or captured in such other state by an organization, unit or detachment of the guard of this state, shall, without unnecessary delay, be surrendered to the military or police forces of the state in which he is taken or to the United States; but such surrender shall not constitute a waiver by this state of its right to extradite or prosecute such person for any crime committed in this state.

History.—s. 6, ch. 20214, 1941.

251.07 Permission to forces of other states.— Any military forces or organization, unit or detachment thereof, of another state, who are in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces, may continue such pursuit into this state until the military or police forces of this state or the forces of the United States, have had a reasonable opportunity to take up the pursuit or to apprehend

or capture such persons; and they are hereby authorized to arrest or capture such persons within this state while in fresh pursuit. Any such person, who shall be captured or arrested by the military forces of such other state while in this state, shall without unnecessary delay be surrendered to the military or police forces of this state to be dealt with according to law. This section shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

History.—s. 7, ch. 20214, 1941.

251.08 Federal service.—Nothing in this chapter shall be construed as authorizing such guard, or any part thereof, to be called, ordered or in any manner drafted, as such, into the military service of the United States; but, no person shall, by reason of his enlistment or commission in any such guard, be exempted from military service under any law of the United States.

History.—s. 8, ch. 20214, 1941.

251.09 Civil groups.—No civil organization, society, club, post, order, fraternity, association, brotherhood, body, union, league, or other combination of persons, or civil groups, shall be enlisted in such guard as an organization or unit.

History.—s. 9, ch. 20214, 1941.

251.10 Disqualifications.—No person shall be commissioned or enlisted in such guard who is not a citizen of the United States, or who has been expelled or dishonorably discharged from any military or naval organization of this state, or of another state, or of the United States.

History.—s. 10, ch. 20214, 1941.

251.11 Commissioned officers.—The term of commission in the Florida State Guard shall be for 3 years, subject to termination at the pleasure of the Governor prior to the expiration of such period. The oath to be taken by officers commissioned in such guard shall be substantially in the form prescribed for officers of the National Guard, substituting the words Florida State Guard where necessary, and omitting the reference to the President of the United States.

History.—s. 11, ch. 20214, 1941.

251.12 Enlisted men.—The term of enlistment in the Florida State Guard shall be for 3 years, subject to termination at the pleasure of the Governor prior to the expiration of such period. The oath to be taken upon enlistment in such guard shall be substantially in the form prescribed for enlisted men of the National Guard, substituting the words Florida State Guard where necessary, and omitting the reference to the President of the United States.

History.—s. 12, ch. 20214, 1941.

251.13 Uniform Code of Military Justice; freedom from arrest; jury duty.—

(1) Whenever such guard, or any part thereof, shall be ordered out for active service, the Uniform Code of Military Justice of the United States, applicable to members of the National Guard of this state in relation to courts-martial, their jurisdiction and the limits of punishment, and the rules and regulations prescribed thereunder, shall be in full force and effect with respect to the Florida State Guard.

(2) No officer or enlisted man of such guard shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from, a place where he is ordered to attend for military duty. Every officer and enlisted man of such guard shall, during his service therein, be exempt from service upon any posse comitatus, and from jury duty.

History.—s. 13, ch. 20214, 1941; s. 78, ch. 77-104.

251.14 Discharge of guard.—The Florida State Guard shall be discharged by the Governor upon the return of the National Guard to state control, or within 30 days thereafter, subject however to the provision of s. 251.01(2).

History.—s. 14, ch. 20214, 1941; s. 2, ch. 65-186.

251.15 Expenses.—The expenses incurred in carrying out the provisions of this chapter shall be paid from the fund for current expenses of the military department, by whatever name or title such fund shall be known and designated, upon requisition of the adjutant general, approved by the governor.

History.—s. 15, ch. 20214, 1941.

251.16 Short title.—This chapter may be cited as the Florida State Guard.

History.—s. 18, ch. 20214, 1941.

251.17 Awards to officers and enlisted men.— The adjutant general of the state be and he is hereby authorized and directed to cause to be prepared suitable medals, service bars, ribbons, awards or other indicia of service in Florida State Guard (formerly Florida Defense Force); to prescribe regulations for awarding such medals, service bars, ribbons, awards or other indicia of service in Florida State Guard to the officers and enlisted men of said Florida State Guard and from time to time to make such awards to the officers and enlisted men of said Florida State Guard entitled to receive the same.

History.—s. 1, ch. 21877, 1943.

CHAPTER 252

DISASTER PREPAREDNESS

252.31 Short title.—This chapter shall be known and may be cited as the "State Disaster Preparedness Act of 1974."

History.—s. 1, ch. 74-285.

252.32 Policy and purpose.—

(1) Because of the existing and continuing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action or from natural or man-made causes; in order to ensure that preparations of this state will be adequate to deal with, reduce vulnerability to, and recover from, such disasters and emergencies; generally to provide for the common defense and to protect the public peace, health, and safety; and to preserve the lives and property of the people of the state, it is hereby found and declared to be necessary:

(a) To create a state disaster emergency agency to be known as the [1]"Division of Disaster Preparedness," to authorize the creation of local organizations for disaster preparedness in the political subdivisions of the state, and to authorize cooperation with the Federal Government and the governments of other states.

(b) To confer upon the Governor, the [1]Division of Disaster Preparedness, and the governing body of each political subdivision of the state the emergency powers provided herein.

(c) To provide for the rendering of mutual aid among the political subdivisions of the state, with other states, and with the Federal Government with respect to carrying out all civil defense functions and responsibilities.

(d) To authorize the establishment of such organizations and the development and employment of such measures as are necessary and appropriate to carry out the provisions of this act.

(e) To provide the means to assist in the prevention of disasters caused or aggravated by inadequate planning for, and regulation of, public and private facilities and land use.

(2) It is further declared to be the purpose of this act and the policy of the state that all civil defense functions of the state be coordinated to the maximum extent with comparable functions of the Federal Government, including its various departments, agencies of other states and localities, and private agencies of every type, to the end that the most effective preparation and use may be made of the nation's manpower, resources, and facilities for dealing with any disaster or emergency that may occur.

History.—s. 1, ch. 74-285.

[1]Note.—See s. 47, ch.79-190, which changed the name of the Division of Disaster Preparedness to the Division of Public Safety Planning and Assistance.

cf.—s. 255.042 Shelter in public buildings.

252.33 Limitations.—Nothing in this act shall be construed to:

(1) Interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by this act or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety.

(2) Interfere with dissemination of news or comment on public affairs; but any communications facility or organization, including, but not limited to, radio and television stations, wire services, and newspapers, may be required to transmit or print public service messages furnishing information or instructions in connection with a disaster emergency.

(3) Affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the Armed Forces of the United States, or any personnel thereof, when on active duty; but state, local, and interjurisdictional disaster emergency plans shall place reliance upon the forces available for performance of functions related to disaster emergencies.

(4) Limit, modify, or abridge the authority of the Governor to proclaim martial law or exercise any other powers vested in him under the constitution, statutes, or common law of this state independent of, or in conjunction with, any provisions of this act.

History.—s. 1, ch. 74-285.

252.34 Definitions.—As used in ss. 252.31-252.52:

(1) "Civil defense" means the preparation for, and the carrying out of, all emergency responsibilities and functions other than those for which military forces or other federal agencies are primarily responsible, to prevent, minimize, and repair injury and damage resulting from the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from disasters. These responsibilities shall include, but not be limited to:

(a) Reduction of vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made catastrophes or hostile military or paramilitary action.

(b) Preparation for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disasters.

(c) Provision of a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters.

(d) Provision of a disaster management system embodying all aspects of predisaster preparedness and postdisaster response.

(e) Assistance in prevention of disasters caused or aggravated by inadequate planning for, and regulation of, public and private facilities and land use.

(2) "Political subdivision" means any county or municipality created pursuant to law.

(3) "Local organization for civil defense" means an organization created in accordance with the provisions of ss. 252.31-252.52 to discharge civil defense responsibilities and functions of a political subdivision.

(4) "Division" means the [1]Division of Disaster Preparedness of the Department of Community Affairs, or the successor to said division.

(5) "Disaster" means occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including, but not limited to, enemy attack, sabotage or other hostile military or paramilitary action, fire, flood, earthquake, windstorm, wave action, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, or accident involving radiation byproducts.

History.—s. 1, ch. 74-285.

[1]**Note.**—See s. 47, ch. 79-190, which changed the name of the Division of Disaster Preparedness to the Division of Public Safety Planning and Assistance.

252.35 Civil defense powers; Division of Public Safety Planning and Assistance.—

(1) The [1]Division of Disaster Preparedness shall be responsible for carrying out the provisions of this act. In the event of a disaster or emergency beyond local control, the Governor or, in his absence, his successor as provided by law, may assume direct operational control over all or any part of the civil defense functions within this state, and shall have the power through proper process of law to carry out the provisions of this section. The Governor is authorized to delegate such powers as he may deem prudent.

(2) In performing its duties under this act, the division is authorized and empowered:

(a) In accordance with the provisions of chapter 120, to make, amend, and rescind rules, regulations, programs, and plans to carry out the provisions of this act with due consideration for, and in cooperation with, the plans and programs of the Federal Government.

(b) To prepare a comprehensive plan and program for the civil defense of this state, such plan and program to be integrated into, and coordinated with, the survival plans and programs of the Federal Government.

(c) In accordance with such plan and program for the civil defense of this state, to ascertain the requirements of the state and its political subdivisions for equipment and supplies of all kinds in the event of emergency; to plan for and procure supplies, medicines, materials, and equipment; to use and employ from time to time any of the property, services, and resources within the state in accordance with this act; to institute training programs and public information programs; and to take all other preparatory steps, including the partial or full mobilization of civil defense forces and organizations in advance of actual disaster, to ensure the furnishing of adequately trained and equipped forces of civil defense personnel in time of need.

(d) To cooperate with the President, the heads of the Armed Forces, the Civil Defense Agency of the United States, and the officers and agencies of other states in matters pertaining to the civil defense of the state and the nation and incidents thereof and, in connection therewith, to take any measures which it may deem proper to carry into effect any request of the President and the appropriate federal officers and agencies for any civil defense action, including the direction or control of:

1. Civil defense drills, tests, or exercises of whatever nature.

2. Warnings and signals for drills, attacks, or other impending disasters or threats of disaster and the mechanical devices to be used in connection therewith.

(e) To make recommendations for zoning, building, and other land-use controls, safety measures for securing mobile homes or other nonpermanent or semipermanent structures, and other prevention and preparedness measures designed to eliminate or reduce disasters or their impact.

(f) To render assistance to local officials in designing local emergency action plans.

(g) To prepare and distribute to appropriate state and local officials state catalogs of federal, state, and private assistance programs.

(h) To coordinate federal, state, and local disaster activities.

(i) To promulgate standards and requirements for local and interjurisdictional disaster plans.

(j) To review periodically local and interjurisdictional disaster plans.

(k) To make such surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of this act.

(l) To prepare, for issuance by the Governor, executive orders, proclamations, and regulations as necessary or appropriate in coping with disasters.

(m) To cooperate with the Federal Government and any public or private agency or entity in achieving any purpose of this act and in implementing programs for disaster prevention, preparation, response, and recovery.

(n) To delegate authority vested in it under ss. 252.31-252.52 and to provide for the subdelegation of such authority.

(o) To do other things necessary, incidental, or appropriate for the implementation of this act.

History.—s. 1, ch. 74-285.

[1]**Note.**—See s. 47, ch. 79-190, which changed the name of the Division of Disaster Preparedness to the Division of Public Safety Planning and Assis-

tance.

252.36 The Governor; disaster emergencies.—

(1) The Governor is responsible for meeting the dangers presented to this state and its people by disasters. The Governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations shall have the force and effect of law.

(2) A disaster emergency shall be declared by executive order or proclamation of the Governor if he finds a disaster has occurred or that the occurrence or the threat thereof is imminent. The state of disaster emergency shall continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and terminates the state of disaster emergency by executive order or proclamation, but no state of disaster emergency may continue for longer than 30 days unless renewed by the Governor. The Legislature by concurrent resolution may terminate a state of disaster emergency at any time. Thereupon, the Governor shall issue an executive order or proclamation ending the state of disaster emergency. All executive orders or proclamations issued under this section shall indicate the nature of the disaster, the area or areas threatened, and the conditions which have brought it about or which make possible termination of the state of disaster emergency. An executive order or proclamation shall be promptly disseminated by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, promptly filed with the Department of State and in the offices of the county commissioners in the counties to which it applies.

(3) An executive order or proclamation of a state of disaster emergency shall activate the disaster response and recovery aspects of the state, local, and interjurisdictional disaster emergency plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this chapter or any other provision of law relating to disaster emergencies.

(4) During the continuance of a state of disaster emergency, the Governor is commander in chief of the organized and unorganized militia and of all other forces available for emergency duty. To the greatest extent practicable, the Governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or regulations, but nothing herein restricts his authority to do so by orders issued at the time of the disaster emergency.

(5) In addition to any other powers conferred upon the Governor by law, he may:

(a) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules, and regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency.

(b) Utilize all available resources of the state government and of each political subdivision of the state, as reasonably necessary to cope with the disaster emergency.

(c) Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services.

(d) Subject to any applicable requirements for compensation under s. 252.43, commandeer or utilize any private property if he finds this necessary to cope with the disaster emergency.

(e) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery.

(f) Prescribe routes, modes of transportation, and destinations in connection with evacuation.

(g) Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein.

(h) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.

(i) Make provision for the availability and use of temporary emergency housing.

(j) Take effective measures for limiting or suspending lighting devices and appliances, gas and water mains, electric power distribution, and all other utility services in the general public interest.

(k) Take measures concerning the conduct of civilians, the movement and cessation of movement of pedestrian and vehicular traffic prior to, during, and subsequent to drills and actual or threatened disasters, the calling of public meetings and gatherings, and the evacuation and reception of civilian population, as provided in the civil defense plan of the state and political subdivisions thereof.

(l) Authorize the use of forces already mobilized as the result of an executive order, regulation, or proclamation to assist the private citizens of the state in clean-up and recovery operations during disaster emergencies when proper permission to enter onto or into private property has been obtained from the property owner. The provisions of s. 768.28(9) shall apply to this paragraph.

(6) The Governor shall take such action and give such direction to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this act and with the orders, rules, and regulations made pursuant thereto.

(7) The Governor shall employ such measures and give such directions to the Department of Health and Rehabilitative Services or local boards of health as may be reasonably necessary for the purpose of securing compliance with the provisions of this act or with the findings or recommendations of such agency of health by reason of conditions arising from disasters or threats of disaster.

(8) The Governor shall delegate emergency responsibilities to the officers and agencies of the state and of the political subdivisions thereof prior to a disaster or threat of a disaster and shall utilize the

services and facilities of existing officers and agencies of the state and of the political subdivisions thereof, including their personnel and other resources, as the primary civil defense forces of the state, and all such officers and agencies shall cooperate with and extend their services and facilities to the [1]Division of Disaster Preparedness, as it may require.

(9) The Governor and the [1]Division of Disaster Preparedness shall establish agencies and offices and appoint executive, professional, technical, clerical, and other personnel as may be necessary to carry out provisions of this act, including, with due consideration to the recommendations of local authorities, full-time state and area directors.

(10) The Governor shall formulate and execute plans and regulations for the control of traffic in order to provide for the rapid and safe movement or evacuation over public highways and streets of people, troops, or vehicles and materials for national defense or for use in any defense industry and may coordinate the activities of the departments or agencies of the state and the political subdivisions thereof concerned directly or indirectly with public highways and streets in a manner which will best effectuate such plans.

History.—s. 1, ch. 74-285; s. 1, ch. 77-47; s. 4, ch. 79-12.

[1]Note.—See s. 47, ch. 79-190, which changed the name of the Division of Disaster Preparedness to the Division of Public Safety Planning and Assistance.

252.37 Financing.—

(1) It is the intent of the Legislature and declared to be the policy of the state that funds to meet disaster emergencies shall always be available.

(2) It is the legislative intent that the first recourse shall be to funds regularly appropriated to state and local agencies. If the Governor finds that the demands placed upon these funds in coping with a particular disaster are unreasonably great, he may make funds available by transferring and expending moneys appropriated for other purposes or out of any unappropriated surplus funds.

(3) Nothing contained in this section shall be construed to limit the Governor's authority to apply for, administer, and expend any grants, gifts, or payments in aid of disaster prevention, preparedness, response, or recovery.

History.—s. 1, ch. 74-285.

252.38 Local disaster agencies.—

(1) Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state.

(2) In order to provide effective and orderly governmental control and coordination of emergency operations in disasters and emergencies within the scope of this act, each county within this state shall be within the jurisdiction of, and served by, the division. Except as otherwise provided in this act each local disaster agency shall have jurisdiction over and serve an entire county. The board of county commissioners of each county of the state, or the legally constituted governing body of any combined county-city government, is hereby authorized and directed to establish and maintain such a local disaster preparedness agency in accordance with, and in support of, the state civil defense plan and program.

(3) Each local disaster preparedness agency created and established pursuant to the provisions of this act shall have a director who shall be appointed, and have his annual salary fixed, by the board of county commissioners of the county or the governing body of a city or town, as appropriate. However, no person shall be appointed or reappointed as a director unless such person shall first have been approved for such appointment by the director of the division. Each local director shall have direct responsibility for the organization, administration, and operation of such local organization, subject only to the direction and control of the governing body of the political subdivision and of the [1]Division of Disaster Preparedness. The local director shall coordinate the activities, services, and programs for civil defense within his county and shall maintain liaison with other local organizations for civil defense and the state.

(4) Each local disaster agency shall perform civil defense functions within the territorial limits of the political subdivision within which it is organized and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of this act and in accordance with state and county civil defense plans.

(5) The governing body of each political subdivision of this state authorized pursuant to this act to create and establish a local disaster agency is further authorized to create a disaster advisory council for advice and counsel on matters pertaining to civil defense.

(6) In carrying out the provisions of this act, each political subdivision shall have the power and authority:

(a) To appropriate and expend funds; make contracts; obtain and distribute equipment, materials, and supplies for civil defense purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any disaster; and direct and coordinate the development of civil defense plans and programs in accordance with the policies and plans set by the federal and state disaster agencies.

(b) To appoint, employ, remove, or provide, with or without compensation, coordinators, rescue teams, fire and police personnel, and other disaster preparedness workers.

(c) To establish, as necessary, a primary, and one or more secondary, emergency operating centers to provide continuity of government and direction and control of emergency operations.

(d) To assign and make available for duty the offices and agencies of the subdivision, including their employees, property, or equipment relating to firefighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for civil defense purposes as the primary civil defense forces of the subdivision for employment within or outside the political limits of the subdivision.

(e) In the event of a disaster emergency, to waive procedures and formalities otherwise required by law pertaining to:

1. The performance of public work.
2. The entering into of contracts.

3. The incurring of obligations.
4. The employment of permanent and temporary workers.
5. The utilization of volunteer workers.
6. The rental of equipment.
7. The purchase and distribution, with or without compensation, of supplies, materials, and facilities.
8. The appropriation and expenditure of public funds.

(7) If the Governor finds that two or more adjoining counties would be better served by an interjurisdictional arrangement than by maintaining separate disaster agencies and services, he may delineate by executive order or regulation an interjurisdictional area adequate to plan for, prevent, or respond to disaster in that area and direct steps to be taken as necessary, including the creation of an interjurisdictional relationship, a joint disaster emergency plan, a provision for mutual aid, or an area organization for emergency planning and services. A finding of the Governor pursuant to this subsection shall be based on one or more factors related to the difficulty of maintaining an efficient and effective disaster prevention, preparedness, response, and recovery system on a unijurisdictional basis, such as:

(a) Small or sparse population.

(b) Limitations on public financial resources severe enough to make maintenance of a separate disaster agency and services unreasonably burdensome.

(c) Unusual vulnerability to disaster as evidenced by a past history of disasters, topographical features, drainage characteristics, disaster potential, and presence of disaster-prone facilities or operations.

(d) The interrelated character of the counties in a multicounty area.

(e) Other relevant conditions or circumstances.

History.—s. 1, ch. 74-285; s. 1, ch. 77-174.

[1]Note.—See s. 47, ch. 79-190, which changed the name of the Division of Disaster Preparedness to the Division of Public Safety Planning and Assistance.

252.39 Local services.—

(1) Whenever the employees of any political subdivision are rendering outside aid pursuant to the authority contained in s. 252.38, such employees shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the political subdivisions in which they are normally employed.

(2) The political subdivision in which any equipment is used pursuant to this section shall be liable for any loss or damage thereto and shall pay any expense incurred in the operation and maintenance thereof. No claim for such loss, damage, or expense shall be allowed unless, within 60 days after the same is sustained or incurred, an itemized notice of such claim under oath is served by mail or otherwise upon the chief fiscal officer of such political subdivision where the equipment was used. The political subdivision which is aided pursuant to this section shall also pay and reimburse the political subdivision furnishing such aid for compensation paid to employees furnished under this section during the time of the rendition of such aid and shall defray the actual traveling and maintenance expenses of such employees while they are rendering such aid. Such reimbursement shall include any amounts paid or due for compensation due to personal injury or death while such employees are engaged in rendering such aid. The term "employee" as used in this section shall mean, and the provisions of this section shall apply with equal effect to, paid, volunteer, and auxiliary employees and civil defense workers.

History.—s. 1, ch. 74-285.

252.40 Mutual-aid arrangements.—

(1) The governing body of each political subdivision of the state is authorized to develop and enter into, through the division, mutual-aid agreements with other public entities and private agencies within the state for reciprocal civil defense aid and assistance in case of disasters too great to be dealt with unassisted. Such agreements shall be consistent with the state civil defense plan and program, and in time of emergency it shall be the duty of each local disaster preparedness agency to render assistance in accordance with the provisions of such mutual-aid agreements to the fullest possible extent.

(2) The Governor may enter into a compact with any state if he finds that joint action with that state is desirable in meeting common intergovernmental problems of emergency disaster planning, prevention, response, and recovery.

History.—s. 1, ch. 74-285.

252.41 Civil defense support forces.—

(1) The division is authorized to provide, within or without the state, support from available personnel, equipment, and other resources of state agencies and the political subdivisions of the state, as may be necessary to reinforce civil defense organizations in stricken areas. Such support shall be rendered with due consideration of the plans of the Federal Government, this state, the other states, and of the criticality of the existing situation. Civil defense support forces shall be called to duty upon orders of the division and shall perform functions in any part of the state or, upon the conditions specified in this section, in other states.

(2) Personnel of civil defense support forces while on duty, whether within or without the state, shall:

(a) If they are employees of the state, have the powers, duties, rights, privileges, and immunities, and receive the compensation, incidental to their employment.

(b) If they are employees of a political subdivision of the state, whether serving within or without such political subdivision, have the powers, duties, rights, privileges, and immunities, and receive the compensation, incidental to their employment.

(c) If they are not employees of the state or a political subdivision thereof, they shall be entitled to the same rights and immunities as are provided by law for the employees of this state and to such compensation as may be fixed by the division. All personnel of civil defense support forces shall, while on duty, be subject to the operational control of the authority in charge of civil defense activities in the area in which they are serving and shall be reim-

bursed for all actual and necessary travel and subsistence expenses to the extent of funds available.

History.—s. 1, ch. 74-285.

252.42 Government equipment, services, and facilities.—In the event of any disaster, the division may make available any equipment, services, or facilities owned or organized by the state or its political subdivisions for use in the affected area upon request of the duly constituted authority of the area affected or upon the request of any recognized and accredited relief agency through such duly constituted authority.

History.—s. 1, ch. 74-285.

252.43 Compensation.—

(1) Compensation for services or for the taking or use of property shall be owed only to the extent that a claimant may not be deemed to have volunteered his services or property without compensation and only to the extent that such taking exceeds the legal responsibility of a claimant to render such services or make such property so available.

(2) Compensation owed for personal services shall be only such as may be fixed by the division.

(3) Compensation for property shall be owed only if the property was commandeered or otherwise used in coping with a disaster emergency and its use or destruction was ordered by the Governor or a member of the disaster emergency forces of this state.

(4) Any person claiming compensation for the use, damage, loss, or destruction of property under this act shall file a claim therefor with the division in the form and manner that the division provides.

(5) Unless the amount of compensation owed on account of property damaged, lost, or destroyed is agreed between the claimant and the division, the amount of compensation shall be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation laws of this state.

(6) Nothing in this section applies to or authorizes compensation for the destruction or damaging of standing timber or other property in order to provide a firebreak or damage resulting from the release of waters or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood or applies to or authorizes compensation beyond the extent of funds available for such compensation.

History.—s. 1, ch. 74-285; s. 1, ch. 77-174.

252.44 Disaster prevention.—

(1) In addition to disaster prevention measures as included in the state and local disaster plans, the governor shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters. At his direction and pursuant to any other authority and competence they have, state agencies, including, but not limited to, those charged with responsibilities in connection with flood plain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land-use planning, and construction standards, shall make studies of disaster prevention related matters. The Governor, from time to time, shall make such recommendations to the Legislature, local governments, and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters.

(2) The appropriate state agencies, in conjunction with the division, shall keep land uses and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence, man-made or natural. The studies under this subsection shall concentrate on means of reducing or avoiding the dangers caused by these occurrences or the consequences thereof.

(3) If the division believes, on the basis of the studies or other competent evidence, that an area is susceptible to a disaster of catastrophic proportions without adequate warning, that existing building standards and land-use controls in that area are inadequate and could add substantially to the magnitude of the disaster, and that changes in zoning regulations, other land-use regulations, or building requirements are essential in order to further the purposes of this section, it shall specify the essential changes to the Governor. If the Governor upon review of the recommendation finds after public hearing that changes are essential, he shall so recommend to the agencies or local governments with jurisdiction over the area and subject matter. If no action or insufficient action pursuant to his recommendations is taken within the time specified by the Governor, he shall so inform the Legislature and request legislative action appropriate to mitigate the impact of disaster.

History.—s. 1, ch. 74-285.

252.45 Lease or loan of state property; transfer of state personnel.—Notwithstanding any inconsistent provision of law:

(1) Whenever the Governor deems it to be in the public interest, he may:

(a) Authorize any department or agency of the state to lease or lend, on such terms and conditions as it may deem necessary to promote the public welfare and protect the interests of the state, any real or personal property of the state government to the President, the heads of the Armed Forces, or the Civil Defense Agency of the United States.

(b) Enter into a contract on behalf of the state for the lease or loan to any political subdivision of the state, on such terms and conditions as he may deem necessary to promote the public welfare and protect the interests of the state, of any real or personal property of the state government or the temporary transfer or employment of personnel of the state government to or by any political subdivision of the state.

(2) The governing body of each political subdivision of the state may:

(a) Enter into such contract or lease with the state, accept any such loan, or employ such personnel, and such political subdivision may equip, maintain, utilize, and operate any such property and employ necessary personnel therefor in accordance with the purposes for which such contract is executed.

(b) Do all things and perform any and all acts which it may deem necessary to effectuate the purpose for which such contract was entered into.

History.—s. 1, ch. 74-285.

252.46 Orders, rules, and regulations.—

(1) In accordance with the provisions of chapter 120, the political subdivisions of the state and other agencies designated or appointed by the Governor are authorized and empowered to make, amend, and rescind such orders, rules, and regulations as may be necessary for civil defense purposes and to supplement the carrying out of the provisions of this act, but which are not inconsistent with any orders, rules, or regulations promulgated by the division or by any state agency exercising a power delegated to it by the Governor or the [1]Division of Disaster Preparedness.

(2) All orders, rules, and regulations promulgated by the [1]Division of Disaster Preparedness or any political subdivision or other agency authorized by this act to make orders, rules, and regulations shall have full force and effect of law after adoption in accordance with the provisions of chapter 120 in the event of issuance by the [1]Division of Disaster Preparedness or any state agency, or, if promulgated by a political subdivision of the state or agency thereof, when filed in the office of the clerk or recorder of the political subdivision or agency promulgating the same. All existing laws, ordinances, rules, and regulations inconsistent with the provisions of this act, or any order, rule, or regulation issued under the authority of this act, shall be suspended during the period of time and to the extent that such conflict exists.

(3) In order to attain uniformity so far as practicable throughout the country in measures taken to aid civil defense, all action taken under this act and all orders, rules, and regulations made pursuant thereto shall be taken or made with due consideration of the orders, rules, regulations, actions, recommendations, and requests of federal authorities relevant thereto and, to the extent permitted by law, shall be consistent with such orders, rules, regulations, actions, recommendations, and requests.

History.—s. 1, ch. 74-285; s. 1, ch. 77-174; s. 12, ch. 78-95.

[1]Note.—See s. 47, ch. 79-190, which changed the name of the Division of Disaster Preparedness to the Division of Public Safety Planning and Assistance.

252.47 Enforcement.—The law enforcement authorities of the state and the political subdivisions thereof shall enforce the orders, rules, and regulations issued pursuant to this act.

History.—s. 1, ch. 74-285.

252.49 Authority to accept services, gifts, grants, and loans.—

(1) Whenever the Federal Government or any agency or officer thereof shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds, by way of gift, grant, or loan for the purposes of civil defense, the state, acting through the [1]Division of Disaster Preparedness, or such political subdivision, acting with the consent of the state civil defense officer, may accept such offer and, upon such acceptance, the [1]Division of Disaster Preparedness or the executive officer or governing body of such political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(2) Whenever any person, firm, or corporation shall offer to the state or to any political subdivision thereof services, equipment, supplies, materials, or funds by way of gift, grant or loan for the purpose of civil defense, the state, acting through the [1]Division of Disaster Preparedness, or such political subdivision, acting through its governing body or a local organization for civil defense, may accept such offer and, upon such acceptance, the [1]Division of Disaster Preparedness or governing body of a political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision and subject to the terms of the offer.

History.—s. 1, ch. 74-285.

[1]Note.—See s. 47, ch. 79-190, which changed the name of the Division of Disaster Preparedness to the Division of Public Safety Planning and Assistance.

252.50 Penalties.—Any person violating any provision of ss. 252.31-252.52 or any rule, order, or regulation made pursuant to ss. 252.31-252.52 is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 74-285.

252.51 Liability.—Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege or otherwise permits the designation or use of the whole or any part of such real estate or premises for the purpose of sheltering persons during an actual, impending, mock, or practice disaster, together with his successor in interest, if any, shall not be liable for the death of, or injury to, any person on or about such real estate or premises during an actual, impending, mock, or practice disaster or for loss of, or damage to, the property of such person, solely by reason or as a result of such license, privilege, designation, or use, unless gross negligence or willful and wanton misconduct of such person owning or controlling such real estate or premises or his successor in interest shall be the proximate cause of such death, injury, loss, or damage.

History.—s. 1, ch. 74-285.

252.52 Liberality of construction.—This act shall be construed liberally in order to effectuate its purposes.

History.—s. 1, ch. 74-285.

252.55 Civil Air Patrol, Florida Wing; appropriations; procurement authority; wing commander bond.—

(1) The Florida Wing of the Civil Air Patrol, an auxiliary of the United States Air Force, shall be recognized as a nonprofit, educational, and civil defense-affiliated organization, and shall be eligible to

purchase materials from the various surplus warehouses of the state.

(2) The sum of $50,000 shall be appropriated annually from the General Revenue Fund for the purpose of acquisition, installation, conditioning, and maintenance of the Florida Wing of the Civil Air Patrol. However, no part of the annual appropriation shall be expended for the purchase of uniforms or personal effects of members of the organization or for compensation or salary to such members.

(3) The wing commander of the Florida Wing of the Civil Air Patrol may employ administrative help and purchase educational materials for the training of Florida youth for which funds from the annual appropriation may be used.

(4) Purchase of aircraft shall be limited to not more than $15,000 per year, and not more than $15,000 per year may be placed in a building reserve fund toward acquisition of a permanent state headquarters and operations facility.

(5) The wing commander of the Florida Wing of the Civil Air Patrol shall furnish to the Comptroller of the state a surety company bond, payable to the Governor in a principal amount of not less than $50,000.

History.—ss. 1-4, ch. 74-333.

TITLE XVIII

PUBLIC LANDS AND PROPERTY

CHAPTER 253

STATE LANDS

253.001 Board of Trustees of the Internal Improvement Trust Fund; duty to hold lands in trust.—The existence of the Board of Trustees of the Internal Improvement Trust Fund is reaffirmed. All lands held in the name of the board of trustees shall continue to be held in trust for the use and benefit of the people of the state pursuant to s. 7, Art. II, and s. 11, Art. X of the State Constitution.

History.—s. 1, ch. 79-255.

253.002 Division of State Lands; powers and duties with respect to state lands.—The Division of State Lands shall perform all staff duties and functions related to acquisition, administration, and disposition of state lands, title to which is or will be vested in the Board of Trustees of the Internal Improvement Trust Fund.

History.—s. 4, ch. 79-255.

[1]253.01 Internal Improvement Trust Fund established.—So much of the 500,000 acres of land granted to this state for internal improvement purposes, by an Act of Congress passed March 3, A. D. 1845, as remains unsold, and the proceeds of the sales of such said lands heretofore sold as now remain on hand and unappropriated, and all proceeds that may hereafter accrue from the sales of said lands; also, all the swampland or lands subject to overflow, granted this state by an Act of Congress approved September 28, A. D. 1850, together with all the proceeds that have accrued or may hereafter accrue to the state from the sale of such lands, are set apart, and declared a separate and distinct fund called the Internal Improvement Trust Fund of the state, and are to be strictly applied according to the provisions of this chapter.

History.—s. 1, ch. 610, 1854; RS 428; GS 616; RGS 1054; CGL 1384; s. 2, ch. 61-119.

[1]**Note.**—See that portion of s. 15, ch. 75-22, appearing at s. 375.043 which provides for the deposit of the uncommitted balance of the Internal Improvement Trust Fund as of July 1, 1975, and of all revenues subsequently accruing for deposit in that fund, in the Land Acquisition Trust Fund.

cf.—s. 270.08 Sale of public lands, disposal of proceeds.

253.02 Board of trustees; powers and duties.—

(1) For the purpose of assuring the proper application of the Land Acquisition Trust Fund for the purposes of this chapter, the land provided for in ss. 253.01 and 253.03, and all the funds arising from the sale thereof, after paying the necessary expense of selection, management and sale, are irrevocably vested in a board of seven trustees, to wit: The Governor, the Secretary of State, the Attorney General, the Comptroller, the State Treasurer, the Commissioner of Education, the Commissioner of Agriculture and their successors in office, to hold the same in trust for the uses and purposes provided in this chapter, with the power to sell and transfer said lands to the purchasers and receive payment for the same, and invest the surplus moneys arising therefrom, from time to time, in stocks of the United States, stocks of the several states, or the internal improvement bonds issued under the provisions of law; also, the surplus interest accruing from such investments. Said board of trustees have all the rights, powers, property, claims, remedies, actions, suits and things whatsoever belonging to them, or appertaining before and at the time of the enactment hereof, and they shall remain subject to and pay, fulfill, perform and discharge all debts, duties and obligations of their trust, existing at the time of the enactment hereof or provided in this chapter.

(2) The board of trustees shall not sell, transfer or otherwise dispose of any lands the title to which is vested in the board of trustees except by vote of at least five of the seven trustees.

(3) In the event submerged tidal land is to be sold and transferred by said board of trustees, the board of trustees shall first require the Department of Natural Resources to inspect said lands and to file a written report with the board of trustees which report shall state whether or not the development of said lands would be detrimental to established conservation practices.

(4) The board of trustees is authorized to acquire by condemnation such submerged lands, except Murphy Act Lands and Holland Act Lands, as shall be in the public interest and for a public purpose.

(5) The board of trustees shall be a necessary party to any action or petition which seeks to acquire submerged lands or lands lying beneath any naviga-

ble waters in the state through eminent domain proceedings.

History.—s. 2, ch. 610, 1854; RS 429; GS 617; RGS 1055; CGL 1385; s. 2, ch. 61-119; s. 1, ch. 67-5; s. 1, ch. 67-269; s. 1, ch. 67-2236; ss. 25, 27, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 70-358; s. 8, ch. 79-65.

253.023 Conservation and Recreation Lands Trust Fund established; purpose.—

(1) It is the policy of the state that the citizens of this state shall be assured the availability of public lands on which to recreate. In recognition of this policy, it is the intent of the Legislature to provide such public lands for the people residing in urban and metropolitan areas of the state as well as those residing in less populated, rural areas; it is the further intent of the Legislature, with regard to the lands described in paragraph (3)(b), that a high priority be given to the acquisition of such lands in or near counties exhibiting the greatest concentration of population.

(2) There is established within the Department of Natural Resources the Conservation and Recreation Lands Trust Fund, to be used as a nonlapsing, revolving fund exclusively for the purposes of this section. To the fund shall be credited 50 percent of the total moneys collected from the excise tax on the severance of:

(a) Oil, such moneys to be taken from the first oil tax provided in s. 211.02(1)(a);

(b) Gas, such moneys to be taken from the first gas tax provided in s. 211.02(1)(c);

(c) Solid minerals other than phosphate rock, such moneys to comprise that portion of the tax paid into the State Treasury in accordance with s. 211.31(1)(a); and

(d) Phosphate rock, such moneys to be taken from that portion of the tax paid into the State Treasury in accordance with s. 211.31(3)(a).

The Department of Revenue, upon compilation of each month's receipts of the severance tax, shall credit the amount provided in this section to the fund, commencing with the funds collected in October 1979. If the moneys credited to the fund at any time during the fiscal year or the balance of the fund at the end of the fiscal year exceeds $3 million for fiscal year 1979-1980 or 1980-1981, in either case, the excess shall be transferred to the General Revenue Fund. If the moneys credited to the fund at any time during the fiscal year or the balance of the fund at the end of the fiscal year exceeds $20 million for fiscal year 1981-1982 or any fiscal year thereafter, in either case the excess shall be transferred to the General Revenue Fund.

(3) The Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund, may allocate moneys from the fund in any 1 year to acquire the fee or any lesser interest in land in each of the following categories and proportions:

(a) Up to 70 percent of such moneys for any interest in lands qualified for purchase as environmentally endangered lands as defined in [1]s. 259.03(2), or

(b) Up to 70 percent of such moneys for any interest in lands which the board of trustees determines should be acquired in the public interest for the following purposes:

1. For use and protection as natural floodplain, marsh, or estuary, if the protection and conservation of such lands is necessary to enhance or protect water quality or quantity or to protect fish or wildlife habitat which cannot otherwise be accomplished through local and state regulatory programs;

2. For use as state parks, recreation areas, public beaches, state forests, wilderness areas, or wildlife management areas;

3. For restoration of altered ecosystems to correct environmental damage that has already occurred; or

4. For preservation of significant archaeological or historical sites.

(4) Moneys in the fund not needed to meet obligations incurred under this section shall be deposited with the Treasurer to the credit of the fund and may be invested in the manner provided by law. Interest received on such investments shall be credited to the Conservation and Recreation Lands Trust Fund.

(5) The board of trustees may enter into any contract necessary to accomplish the purposes of this section.

(6) Prior to or concurrent with the acquisition under this section of any interest in lands, the board of trustees shall designate an agency or agencies to manage such lands and shall make a preliminary determination as to the extent and nature of public use for which the lands will be available.

(7) Lands shall be acquired under this section in accordance with acquisition procedures for state lands provided for in s. 253.025.

(8) Agencies designated to manage lands under this section shall develop and adopt, with the approval of the board of trustees, individual management plans for each project designed to conserve and protect such lands and their associated natural resources.

(9) The board of trustees may allocate, in any year, an amount not to exceed 10 percent of the moneys credited to the fund in that year, such allocation to be used for maintenance and management of any lands acquired pursuant to this section.

(10) All lands managed under this section shall be open for public use and enjoyment to the extent the board of trustees find compatible with the conservation and protection of public lands. Such public use may include, upon approval of the board of trustees, fishing, hunting, camping, hiking, nature study, swimming, boating, and canoeing.

History.—s. 8, ch. 79-255.

[1]Note.—This cross reference was changed by the editors from "s. 259.03(1)" to conform to the renumbering of subsections within s. 259.03 by s. 13, ch. 79-255. Subsection (2) defines "state capital projects for environmentally endangered lands."

253.025 Acquisition of state lands.—

(1) Neither the Board of Trustees of the Internal Improvement Trust Fund nor its duly authorized agent shall commit the state, through any instrument of negotiated contract or agreement for purchase, to the purchase of lands with or without appurtenances unless the provisions of this section have been fully complied with. Prior to any state agency initiating any land acquisition, the title to which land is to vest in the board of trustees, such agency shall coordinate with the Division of State Lands to determine the availability of existing state-

owned lands in the area and the public purpose for which the acquisition is being proposed. Once the state agency has determined and established the public purpose for an acquisition and the unavailability of existing suitable state-owned lands, the state agency may proceed to acquire such lands by employing all available statutory authority for acquisition. Land acquisition procedures provided for in this section are for voluntary, negotiated acquisitions.

(2) For the purposes of this section, the term "negotiations" shall not include preliminary contacts with the property owner to determine the availability of the property, existing appraisal data, existing abstracts, and surveys.

(3) Prior to approval by the board of trustees of any final agreement for purchase, evidence of marketable title shall be provided by the landowner. Such evidence of marketability shall be in the form of title insurance or an abstract of title with a title opinion.

(4) Prior to negotiations with the parcel owner, an appraisal of the parcel shall be required as follows:

(a) Each parcel to be acquired shall have at least one appraisal. Two appraisals are required when the value of the first appraisal exceeds $100,000. However, when the value of either appraisal exceeds $100,000 and the parcel appraisal is of a peculiar or complex nature, a third appraisal shall be obtained.

(b) Appraisal fees shall be paid by the agency proposing the acquisition. The board of trustees shall approve qualified fee appraisal organizations which shall include, but not be limited to, the American Institute, Society of Real Estate Appraisers, American Society of Appraisers, Farm Managers and Rural Appraisers, and National Association of Independent Fee Appraisers. The Division of State Lands shall maintain a current list of all fee appraisers who are members of the professional organizations approved by the board of trustees and who desire to conduct appraisals under contract for the division. The list of qualified fee appraisers shall contain information relative to the fee appraiser's qualifications, location of practice, business reputation, and areas of specialization, if any. An agency proposing an acquisition shall select fee appraisers from this list. When the Division of State Lands determines that the need for an appraisal exists, it shall publish notice of such need in the general area of the proposed land acquisition that an assignment is available and specify the substantive requirements of the appraisal and when it must be completed. If at least three qualified fee appraisers on the current list are not located within the general area, the notice shall be published statewide. When the division has received three responses to the notice from qualified fee appraisers, it shall evaluate the various proposals submitted and, based upon all pertinent factors including quoted completion date, anticipated fees, appraiser's expertise, and previous appraisals, it shall select the required number of qualified appraisers. Each fee appraiser selected to appraise a particular parcel shall, prior to contracting with the agency, submit to that agency an affidavit substantiating that he has no vested or fiduciary interest in such parcel.

(c) After the contract between the agency and the fee appraiser is signed, the agency shall transmit to the fee appraiser all pertinent title information developed pursuant to subsection (3); a specification of the rights to be acquired; a list of items, if any, considered to be noncompensable; minimum appraisal requirements that apply; required appraisal forms; and a certified survey which meets the minimum requirements for upland parcels established by the Florida Society of Professional Land Surveyors and the Florida Land Title Association and which accurately portrays to the greatest extent practical the condition of the parcel as it currently exists. However, in cases where a survey cannot be practically completed or where the cost of the survey will be prohibitive relative to the expected value of the parcel, the requirement for such certified survey may, in part or in whole, be waived by the board of trustees any time prior to submission of the agreement for purchase to the division. The fee appraiser and the review appraiser for the agency shall not act in any way that may be construed as negotiating with the property owner. Appraisal reports shall be confidential, for use by the agency and the board of trustees, until such time as both reports, if two appraisals are required, are accepted by the agency. Prior to acceptance, the agency shall submit a copy of such report to the Division of State Lands. The division shall review such report in accordance with generally accepted professional standards of appraisal review. With respect to proposed purchases in excess of $100,000, this review shall include a general field inspection of the subject property by the review appraiser. The review appraiser may reject an appraisal report following a desk review, but is prohibited from approving an appraisal report in excess of $100,000 without a field review. This review shall include a check for comparable sales which may have been omitted by the fee appraiser. Prior to acceptance of an appraisal report, the review appraiser shall request the appropriate local property appraiser's comments on the value of the proposed acquisition. Any questions of applicability of laws affecting an appraisal shall be addressed by the legal office of the agency.

(d) Techniques and methods used by a fee appraiser shall be consistent with generally accepted appraisal standards. If the fee appraiser uses comparable sales in determining value, he shall thoroughly describe each such sale including date of sale, legal description, present use, highest and best use, the official record book and page where the transaction is recorded, the grantor and grantee, purchase price, terms and conditions of the sale, and when and with whom verified. The fee appraiser shall consider any enhanced value to adjoining property of the landowner whose land is being considered for acquisition and which may occur as a proximate result of the proposed acquisition.

(e) The appraisal report must document and adequately support the fee appraiser's estimate of conclusion as to value. The report shall include a description of the location, size, shape, topography, access, highway frontage, and present zoning of the

property. The availability of utilities, if any, and a detailed description of any appurtenances shall also be included. Further, the appraisal report shall contain the sales history of the parcel for the prior 10 years. Such sales history shall include all parties and considerations with the amount of consideration verified, if possible, and the amount of assessed value of the parcel.

(f) If the divergencies as to conclusions of values between two appraisals for the same parcel are greater than 20 percent of the lower value, a third appraisal shall be required.

(g) The board of trustees shall not consider an appraisal acquired by a seller, or any part thereof, in determining value.

(5)(a) Negotiations for land acquisition between a landowner or his designated agent and a state agency, title to whose land is held by the board of trustees, shall not be commenced prior to completion of the appraisal report pursuant to subsection (4).

(b) When the owner is represented by an agent or broker, negotiations shall not be initiated or continued until a written statement verifying such agent's or broker's legal or fiduciary relationship with the owner is on file with the agency.

(c) Upon the initiation of negotiations, the state agency shall inform the owner in writing that all agreements for purchase are subject to approval by the board of trustees.

(d) All offers or counter-offers shall be in writing and shall be available for examination by the board of trustees. No offer by a state agency shall exceed the value for that parcel as determined pursuant to a single appraisal or the average of two appraisals if such are required. If three appraisals are required, the offer shall not exceed the average of the two closest appraisals. All offers by the agency, including the final offer, shall be reviewed by the legal counsel of the agency. Final offers shall be in the form of an agreement for purchase and shall be signed and attested to by the owner and the representative of the agency. Before the agency signs the agreement for purchase, the provisions of s. 286.23 shall be complied with. Within 10 days after the signing of the agreement for purchase, the state agency shall furnish the Division of State Lands with the original of the agreement for purchase along with copies of the disclosure notice, evidence of marketability, the appraisal report, the fee appraiser's affidavit, a statement that the inventory of existing state-owned lands was examined and contained no available suitable land in the area, and a statement outlining the public purpose for which the acquisition is being made and the statutory authority therefor.

(e) Within 45 days of receipt by the Division of State Lands of the agreement for purchase and the required documentation, the board of trustees shall either reject or approve the agreement. Approved agreements for purchase shall be binding on both parties. Agreements disapproved shall be returned to the agency, along with a statement as to the deficiencies of the agreement or the supporting documentation. Agreements for purchase disapproved by the board of trustees may be resubmitted when such deficiencies have been corrected.

(6) No dedication, gift, grant, or bequest of lands and appurtenances shall be accepted by the board of trustees until the receiving state agency receives sufficient evidence of marketability of title. The board of trustees shall not accept by dedication, gift, grant, or bequest any lands and appurtenances that are determined as being owned by the state either in fee or by virtue of the state's sovereignty or which are so encumbered so as to preclude use of such land and appurtenances for any reasonable public purpose. The state shall not be required to appraise the value of such donated lands and appurtenances as a condition of receipt.

(7) Any conveyance to the board of trustees of fee title shall be made by no less than a special warranty deed. The title to lands acquired pursuant to this section shall vest in the board of trustees as provided in [1]s. 253.031. All such lands, title to which is vested in the board pursuant to this section, shall be administered pursuant to the provisions of s. 253.03.

(8) The Auditor General shall conduct performance postaudits of all acquisitions and divestitures within 60 days following the board's final approval of land acquisitions under this section and shall submit an audit report to the board of trustees, President of the Senate, Speaker of the House of Representatives, and their designees, except that the Auditor General may at his discretion not postaudit those acquisitions and divestitures involving sums of less than $100,000.

(9) The board of trustees and all affected agencies shall adopt and may modify or repeal such rules and regulations as are necessary to carry out the purposes of this section, including rules governing the terms and conditions of land purchases. When multiple landowners are involved in an acquisition, such rules shall address the procedures to be followed in obtaining written option agreements so that the interests of the state are fully protected.

History.—s. 9, ch. 79-255.

[1]**Note.**—This reference contains an apparent error. The intended reference is probably s. 253.03(1).

253.03 Board of trustees to administer state lands; lands enumerated.—

(1) The Board of Trustees of the Internal Improvement Trust Fund of the state is vested and charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by, or which may hereafter inure to, the state or any of its agencies, departments, boards or commissions, excluding lands held for road and canal rights-of-way, spoil areas and lands required for disposal of materials or borrow pits, any land, title to which is vested or may become vested in any port authority, flood control district or water management district or navigation district or agency created by any general or special act, and any lands, including the Camp Blanding Military Reservation, which have been conveyed to the state for military purposes only, and which are subject to reversion if conveyed by the original grantee, or if the conveyance to the Board of Trustees of the Internal Improvement Trust Fund under this act would work a reversion from any other cause, or where any conveyance of lands held by a state agency which are encumbered by or subject to liens, trust agreements or any form of contract which encum-

bers state lands for the repayment of funded debt. Lands vested in the Board of Trustees of the Internal Improvement Trust Fund shall be deemed to be:

(a) All swamp and overflowed lands held by the state, or which may hereafter inure to said state;

(b) All lands owned by the state by right of its sovereignty;

(c) All internal improvement lands proper;

(d) All tidal lands;

(e) All lands covered by shallow waters of the ocean, gulf, or bays or lagoons thereof, and all lands owned by the state covered by fresh water;

(f) All parks, reservations, or lands or bottoms set aside in the name of the state, excluding lands held for road and canal rights of way;

(g) All lands which have accrued, or which may hereafter accrue, to the state from any source whatsoever, excluding lands held for road and canal rights-of-way or spoil areas or borrow pits, or any land, title to which is vested or may become vested in any port authority, flood control district, water management district or navigation district or agency created by any general or special act.

(2) It is the intent of the Legislature that the Board of Trustees of the Internal Improvement Trust Fund shall continue to receive proceeds from the sale or disposition of the products of lands and the sale of lands of which the use and possession are not subsequently transferred by appropriate lease or similar instrument from the board of trustees to the proper using agency. Such using agency shall be entitled to the proceeds from the sale of products on, under or growing out of, or connected with, lands which such using agency shall hold under lease or similar instrument from the board of trustees. The Board of Trustees of the Internal Improvement Trust Fund is directed and authorized to enter into leases or similar instruments, without consideration, for the use, benefit and possession of public lands by state agencies which may properly use and possess them for the benefit of the state.

(3) The provisions of s. 270.11, requiring the board of trustees to reserve unto itself certain oil and mineral interest in all deeds of conveyances executed by said board of trustees, shall not have application to any lands that inure to the board of trustees from other state agencies, departments, boards or commissions under the terms and provisions of this act.

(4) It is the intent of the Legislature that where title to any lands are in the State of Florida, with no specific agency authorized by the Legislature to convey or otherwise dispose of such lands, the Board of Trustees of the Internal Improvement Trust Fund shall be vested with such title and shall hereafter be authorized to exercise over such lands such authority as may be provided by law.

(5) It is the specific intent of the Legislature that this act shall repeal any provision of state law which may require the Board of Trustees of the Internal Improvement Trust Fund to pay taxes or assessments of any kind to any state or local public agency on lands which are transferred or conveyed to the Board of Trustees of the Internal Improvement Trust Fund under the terms of this act and which at the time of the passage of this act are entitled to tax-exempt status under the Constitution or laws of the state.

(6) Commencing September 1, 1967, all land held in the name of the state or any of its boards, departments, agencies or commissions shall be deemed to be vested in the Board of Trustees of the Internal Improvement Trust Fund for the use and benefit of the state. By October 1, 1967, any board, commission, department or agency holding title to any state lands used for public purpose shall execute all instruments necessary to transfer such title to the said Board of Trustees of the Internal Improvement Trust Fund for the use and benefit of the state, except lands which reverted to the state under the provisions of chapter 18296, Laws of Florida, 1937, commonly known and referred to as the "Murphy Act."

(7) The Board of Trustees of the Internal Improvement Trust Fund is hereby authorized and directed to administer all state-owned lands and shall be responsible for the creation of an overall and comprehensive plan of development concerning the acquisition, management, and disposition of state-owned lands so as to insure maximum benefit and use. The Board of Trustees of the Internal Improvement Trust Fund shall adopt rules and regulations necessary to carry out the purposes of this act as herein set forth.

(8)(a) The Board of Trustees of the Internal Improvement Trust Fund shall maintain an annual inventory of all publicly owned lands within the state. Such inventory shall include all lands owned by any unit of state government or local government; by the federal government, to the greatest extent possible; and by any other public entity. The board shall submit a copy of the inventory to the President of the Senate and the Speaker of the House of Representatives on or before March 1 of each year.

(b) In addition to any other parcel data available, the inventory shall include a legal description or proper reference thereto, the number of acres or square feet within the boundaries, and the assessed value of all publicly owned uplands. To the greatest extent practical, the legal description or proper reference thereto and the number of acres or square feet shall be determined for all publicly owned submerged lands. For the purposes of this subsection, the term "submerged lands" means publicly owned lands below the ordinary high-water mark of freshwaters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state. The Department of Revenue shall furnish annual, current, property assessments for tax-exempt public lands to the board to be used in compiling the assessed value portion of the inventory.

(c) State agencies or bodies, including the Game and Fresh Water Fish Commission, the Department of Transportation, the Department of Agriculture and Consumer Services, the Armory Board, water management districts, water control districts, navigation districts, and authorities, which hold title to real property shall, by December 31 of each year, submit a list of their respective holdings to the board. The Department of Revenue shall furnish the board, by December 31 of each year, from data it has obtained pursuant to the requirements of chapter

195, a compilation of all tax-exempt public lands within the state, listed by county. The Department of Revenue and the board shall use common or cross-indexed parcel numbers to facilitate data comparisons. To the greatest extent possible, the board shall attempt, at the county level, to record and report discrepancies between information supplied by the Department of Revenue and by other state agencies or bodies. The board shall include a listing of all major unresolved discrepancies in the annual inventory submitted to the Legislature.

(9) The Board of Trustees of the Internal Improvement Trust Fund shall be responsible for the acquisition and disposal of federal lands and buildings which are declared surplus or excess. The Board of Trustees of the Internal Improvement Trust Fund shall establish regular procedures to assure that state and local agencies are made aware of the availability of federal lands and buildings.

(10) The Board of Trustees of the Internal Improvement Trust Fund and the State of Florida through any of its agencies are hereby prohibited from levying any charge, by whatever name known or attaching any lien, on any and all materials dredged from state-sovereignty tidal lands or submerged bottom lands or on the lands constituting the spoil areas on which such dredged materials are placed, except as otherwise provided for in this subsection, when such materials are dredged by or on behalf of the United States or the local sponsors of active federal navigation projects in the pursuance of the improvement, construction, maintenance, and operation of such projects or by a public body authorized to operate a public port facility (all such parties referred to herein shall hereafter be called "public body") in pursuance of the improvement, construction, maintenance, and operation of such facility, including any public transfer and terminal facilities, which actions are hereby declared to be for a public purpose. "Local sponsor" shall mean the local agency designated pursuant to an Act of Congress to assume a portion of the navigation project costs and duties. Active federal navigation projects are those congressionally approved projects which are being performed by the Corps of Engineers, United States Army, or maintained by the local sponsors.

(a) No materials dredged from state-sovereignty tidal or submerged bottom lands by a public body shall be deposited on private lands until:

1. The United States Army Corps of Engineers shall first have certified that no public lands are available within a reasonable distance of the dredging site, and

2. The public body shall have published notice of its intention to utilize certain private lands for the deposit of materials in a newspaper published and having general circulation in the appropriate county at least three times within a 60-day period prior to the date of the scheduled deposit of any such material, and therein advised the general public of the opportunity to bid on the purchase of such materials for deposit on the purchaser's designated site, provided any such deposit shall be at no increased cost to the public body. Such notice shall state the terms, location, and conditions for receipt of bids and shall state that the public body shall accept the highest responsible bid. All bids shall be submitted to the Trustees of the Internal Improvement Trust Fund. All moneys obtained from such purchases of materials shall be remitted forthwith to the Trustees of the Internal Improvement Trust Fund. Compliance with this subsection shall vest, without any obligation, full title to the said materials in the owner of the land where deposited.

(b) When public lands on which are deposited materials dredged from state-sovereignty tidal or submerged bottom lands by the public body, are sold or leased for a period in excess of 20 years, which term shall include any options to a private party, 50 percent of any remuneration received shall forthwith be remitted to the Trustees of the Internal Improvement Trust Fund and the balance shall be retained by the public body owning the land.

(c) Any materials which have been dredged from state-sovereignty tidal or submerged bottom lands by the public body and deposited on public lands may be removed by the public body to private lands or interests only after due advertisement for bids, which shall mean a notice published at least three times within a 60-day period in a newspaper published and having general circulation in the appropriate county. The purchase price submitted by the highest responsible bidder shall be remitted to the Trustees of the Internal Improvement Trust Fund. If no bid is received, the public body shall have the right to fully convey title to, and dispose of, any such material on its land, with no requirement of payment to the Trustees of the Internal Improvement Trust Fund.

(d) Nothing in this subsection shall affect any preexisting contract or permit to engage in dredging of materials from state-sovereignty tidal and submerged bottom lands, nor shall it be construed to void any preexisting agreement or lien against the lands upon which dredged materials have been placed or to have any retroactive effect.

(11) The Board of Trustees of the Internal Improvement Trust Fund may adopt rules to provide for the assessment and collection of reasonable fees, commensurate with the actual cost to the board, for disclaimers, easements, exchanges, gifts, leases, releases, or sales of any interest in lands or any applications therefor and for reproduction of documents.

History.—s. 1, ch. 15642, 1931; CGL 1936 Supp. 1446(13); s. 2, ch. 61-119; ss. 2, 3, ch. 67-269; s. 2, ch. 67-2236; ss. 27, 35, ch. 69-106; s. 8, ch. 71-286; s. 1, ch. 75-76; s. 1, ch. 78-251; s. 10, ch. 79-255.

253.031 Land office; custody of documents, etc., concerning land; moneys; plats, etc.—

(1) The Board of Trustees of the Internal Improvement Trust Fund, hereinafter called the board, shall establish and maintain a public land office to be located at the seat of government of the state, in which office shall be deposited and preserved all records, surveys, plats, maps, field notes, and patents, and all other evidence touching the title and description of the public domain, and all lands granted by Congress to this state, or which may hereafter be granted, for whatever purpose the same may be given.

(2) The Board of Trustees of the Internal Improvement Trust Fund shall have custody of all the records, surveys, plats, maps, field notes, patents

and all other evidence touching the title and description of the public domain.

(3) The board shall draw all deeds and conveyances and deliver the same for all sales and transfers, and other disposition of the public domain, that may from time to time be ordered and made by authority of law, and keep a true and faithful record of the same. The board shall keep accounts of the several grants or donations for fixing the seat of government, for seminaries of learning, for common schools, for internal improvements, or for any other purpose, in separate books, accounts, and reports, so that the rights and interests of one shall not be blended or mixed with the rights and interests of another, and each class of land shall pay the expenses of locating the same.

(4) The board shall, in behalf of this state, receive from the Treasury of the United States the 5 percent on sales of the public lands, or any other sums accruing from the general government to the seminary, common school, or Land Acquisition funds; and shall pay the same into the treasury of this state, or, if they shall belong to a fund, to the treasurer of such fund keeping the same separate and distinct under their respective proper heads. The board shall hold all needful correspondence with the several land offices of the United States in this state, or with the general land office at Washington, and shall attend the public land sales in this state, and visit the said land offices whenever, in their opinion, the interest of the state shall require it, and do and perform all things needful and proper to advance and promote the interests of the same.

(5) The board shall make selections of and secure all swamp and overflowed lands and any other lands enuring to the state under the several acts of Congress providing therefor, and shall provide plats or maps of all lands selected and secured, and append thereto an accurate description of the quality, situation and location of the same, and whatever else may affect the value of each tract or body of land selected and secured, taking care to keep in separate books, and maps or plats, the lands belonging to each separate fund, which books and maps and plats, with the description thereof, shall be kept and preserved in the office of the board.

(6) Upon the discontinuance by the federal authorities of the office of surveyor-general for the state, the board shall receive all of the field notes, surveys, maps, plats, papers and records heretofore kept in the office of said surveyor-general as part of the public records of its office, and shall at all times allow any duly accredited authority of the United States full and free access to any and all of such field notes, surveys, maps, plats, papers and records; and may make and furnish under their hands and seal certified copies of any or all of the same to any person making application therefor.

(7) The board shall receive all of the tract books, plats and such records and papers heretofore kept in the United States Land Office at Gainesville, Alachua County, as may be surrendered by the Secretary of the Interior, and the board shall carefully and safely keep and preserve, all of said tract books, plats, records and papers as part of the public records of its office, and at any time allow any duly accredited authority of the United States, full and free access to any and all of such tract books, plats, records and papers, and shall furnish any duly accredited authority of the United States with copies of any such records without charge.

(8) The board shall keep a suitable seal of office. An impression of this seal shall be made upon the deeds conveying lands sold by the state, by the Board of Education, and by the Board of Trustees of the Internal Improvement Trust Fund of this state, and all such deeds shall be personally signed by the officers or trustees making the same and impressed with said seal and shall be operative and valid without witnesses to the execution thereof; and the impression of such seal on any such deeds shall entitle the same to record and to be received in evidence in all courts.

(9) The fees of the board in the following matters shall be as follows: certification under seal of copies of maps or records in the office will be performed for a fee of $1.50 minimum. The charges for copying, making record searches and compiling reports and statistical data shall be commensurate with the work involved and cost of material used.

History.—s. 1, ch. 63-294; ss. 27, 35, ch. 69-106; s. 1, ch. 74-18; s. 9, ch. 79-65.

253.032 Land office; Commissioner of Agriculture transfer of powers and duties.—The powers and duties of the Commissioner of Agriculture in relation to the state land office, field notes, plats, and to any other public lands are hereby transferred to the Board of Trustees of the Internal Improvement Trust Fund. All records, files, supplies, papers and equipment of any nature pertaining to the commissioner's functions as set forth in chapter 19, pertaining to public lands, shall be transferred to the Board of Trustees of the Internal Improvement Trust Fund.

History.—s. 2, ch. 63-294; ss. 27, 35, ch. 69-106.

253.033 Inter-American Center property; transfer to board; continued use for government purposes.—

(1) All real and personal property presently owned by the Inter-American Center Authority, pursuant to s. 554.072 or otherwise, and all existing liabilities of said authority are hereby transferred to the Board of Trustees of the Internal Improvement Trust Fund. However, the liability to the Department of Transportation for road and bridge work is hereby waived and satisfied. Except as provided in s. 4, chapter 75-131, Laws of Florida, all obligations in connection with contracts and bond issues of the authority shall be assumed and performed by the trustees as provided by law or contract. No action shall be taken as a result of this act that will impair the obligations of any such contract or outstanding bonds.

(2) It is hereby recognized that certain governmental entities have expended substantial public funds in acquiring, planning for, or constructing public facilities for the purpose of carrying out or undertaking governmental functions on property formerly under the jurisdiction of the authority. All property owned or controlled by any governmental entity shall be exempt from any local building and zoning regulations which might otherwise be appli-

cable in the absence of this section in carrying out or undertaking any such governmental function and purpose.

(3) In no event shall any of the lands known as "the Graves tract," including, without limitation, the land previously transferred to the Cities of Miami and North Miami and Dade County by the Inter-American Center Authority and the lands transferred pursuant to this act, be used for other than public purposes.

(4) The Board of Trustees of the Internal Improvement Trust Fund may lease to Dade County approximately 300 acres of land, and approximately 90 acres of abutting lagoon and waterways, designated as the Primary Development Area, and may also transfer to Dade County all or any part of the plans, drawings, maps, etc., of the Inter-American Center Authority existing at the date of transfer, provided Dade County:

(a) Assumes responsibilities of the following agreements:

1. That certain agreement entered into on June 12, 1972, between the City of Miami and Inter-American Center Authority whereby the authority agreed to repurchase, with revenues derived from the net operating revenue of the project developed on the leased lands after expenses and debt service requirements, the approximately 93 acres of lands previously deeded to the City of Miami as security for repayment of the $8,500,000 owed by the authority to the City of Miami. Title to the land repurchased pursuant to the provisions of this subsection shall be conveyed to the State of Florida.

2. Those certain rights granted to the City of North Miami pursuant to the provisions of paragraph 554.29(1)(a) and section 554.30 obligating the authority to issue a revenue bond to the City of North Miami, containing provisions to be determined by Dade County, to be repaid from all ad valorem taxes, occupational license fees, franchise taxes, utility taxes, and cigarette taxes which would have accrued to the authority or the City of North Miami by nature of property owned by the authority having been in the City of North Miami and from the excess revenue after operating expenses, development cost and debt service requirements, of the project developed on the leased lands.

(b) Develops a plan for the use of the land that meets the approval of the Board of Trustees of the Internal Improvement Trust Fund or that meets the following purposes heretofore authorized:

1. To provide a permanent international center which will serve as a meeting ground for the governments and industries of the Western Hemisphere and of other areas of the world.

2. To facilitate broad and continuous exchanges of ideas, persons, and products through cultural, educational, and other exchanges.

3. By appropriate means, to promote mutual understanding between the peoples of the Western Hemisphere and to strengthen the ties which unite the United States with other nations of the free world.

Any property leased under this subsection shall not be leased for less than fair market value.

History.—ss. 2, 3, 5, 7, 8, ch. 75-131.

253.04 Duty of board to protect, etc., state lands; state may join in any action brought.—The Board of Trustees of the Internal Improvement Trust Fund may police, protect, conserve, improve; prevent trespass, damage, or depredation upon the lands and the products thereof, on or under the same, owned by the state as set forth in s. 253.03. Said board may bring in the name of the board all suits in ejectment, suits for damage, and suits in trespass, which in the judgment of the said board may be necessary to the full protection and conservation of the said lands, or take such other action or do such other things as may in the judgment of the board be necessary for the full protection and conservation of the said lands, and the state may join with the said board in any action or suit, or take part in any proceeding, when it may deem necessary, in the name of this state through the Department of Legal Affairs.

History.—s. 2, ch. 15642, 1931; CGL 1936 Supp. 1446(14); s. 11, ch. 25035, 1949; s. 2, ch. 61-119; ss. 11, 27, 35, ch. 69-106.

253.05 Prosecuting officers to assist in protecting state lands.—State Attorneys, other prosecuting officers of the state or county, wildlife officers of the Florida Game and Fresh Water Fish Commission, conservation officers, together with the executive director of the Department of Natural Resources, and county sheriffs and their deputies shall see that the lands owned by the state, as described in ss. 253.01 and 253.03, shall not be the object of damage, trespass, depredation, or unlawful use by any person. The said officers and their deputies shall, upon information that unlawful use is being made of state lands, report the same, together with the information in their possession relating thereto, to the Board of Trustees of the Internal Improvement Trust Fund and shall cooperate with the said board in carrying out the purposes of ss. 253.01-253.04 and this section. State Attorneys and other prosecuting officers of the state or any county, upon request of the Governor or Board of Trustees of the Internal Improvement Trust Fund, shall institute and maintain such legal proceedings as may be necessary to carry out the purpose of said sections.

History.—s. 3, ch. 15642, 1931; CGL 1936 Supp. 1446(15); s. 2, ch. 61-119; ss. 27, 35, ch. 69-106; s. 1, ch. 70-117.

cf.—Ch. 27 State attorneys, duties.
Ch. 30 Sheriffs, duties.

253.111 Notice to board of county commissioners before sale.—The Board of Trustees of the Internal Improvement Trust Fund of the state shall not sell or convey any land to which they hold title unless and until they shall afford an opportunity to the county in which such land is situated to receive such land for public purposes on the following terms and conditions:

(1) If an application is filed with the board requesting that they sell certain land to which they hold title and the board shall decide to sell such land or if the board shall, without such application, decide

to sell such land, the board shall, before consideration of any private offers, notify the board of county commissioners of the county in which such land is situated that such land is available to such county. Such notification shall be given by registered mail, return receipt requested.

(2) The board of county commissioners of the county in which such land is situated shall, within 90 days after receipt of such notification from the board, determine by resolution whether or not it proposes to devote such land to public parks, public beaches, public fishing piers, public boat ramps, public dockage facilities, or other public purposes, hereinafter referred to generally as public purposes.

(3) If the board of county commissioners shall determine that it proposes to devote such land in perpetuity to public purposes, it shall adopt a resolution specifying such determination and setting forth:

(a) The specific public purpose or purposes to which it proposes to devote such land;

(b) A tentative plan of development for such land;

(c) A tentative time schedule of development, which tentative time schedule shall set a date of commencement of development not later than 2 years after the date of such resolution and a date of conclusion of development not later than 4 years after the date of such resolution.

A certified copy of such resolution shall be furnished to the board within such 90-day period by registered mail, return receipt requested.

(4) If the board of county commissioners determines that it does not propose to devote such land to public purposes, it shall notify the board of such determination by sending, immediately after adoption, a certified copy of the resolution so specifying to the board by registered mail, return receipt requested. If the board of county commissioners shall fail to act as provided in subsection (3) within the 90-day period, such failure shall constitute a determination that it does not propose to devote such land to public purposes.

(5) If the board receives within the 90-day period the certified copy of the resolution provided in subsection (3), the board shall forthwith convey to the county such land upon such terms and conditions and at such price as the board shall determine (but in no case at a price higher than such property would be disposed of under any other provision of this chapter), but subject to a reverter to the board if such land shall not be devoted to the public purpose or purposes specified in such resolution in substantial accordance with the plan of development and the time schedule for development set forth in such resolution and shall not be devoted in perpetuity to some public purpose.

(6)(a) If the board of county commissioners shall determine that it does not propose to devote the land to public purposes, the board may dispose of the property as otherwise provided in this chapter.

(b) It shall not be a violation of the reverter clause of any deed from the board to a county under this section if the county shall in fact use the property for a public purpose other than that specified in the resolution provided in subsection (3) or not in substantial accordance with the plan of development and time schedule set forth in such resolution if the board shall by appropriate resolution approve such change or such failure to act in substantial accordance with the plan of development or time schedule.

(c) Nothing in this section shall restrict any right otherwise granted to the board by this chapter to convey land to which they hold title to the state or any department, office, authority, board, bureau, commission, institution, court, tribunal, agency, or other instrumentality of or under the state. The word "land" as used in this act means all lands vested in the Board of Trustees of the Internal Improvement Trust Fund.

(7) If any riparian owner shall exist with respect to any land to be sold by the board, such riparian owner shall have a right to secure such land, which right shall be prior in interest to the right in the county created by this section, provided that such riparian owner shall be required to pay for such land upon such prices, terms, and conditions as determined by the trustees. Such riparian owner may waive this prior right, in which case this section shall apply.

History.—s. 1, ch. 65-324; ss. 27, 35, ch. 69-106; s. 1, ch. 79-83.

253.115 Public notice and hearings.—

(1) After receiving an application in compliance with such forms as may be required by this chapter requesting the board to sell, exchange, or lease any land to which it holds title, the board shall give notice of the application by publication in a newspaper published in the county in which the lands are located not less than once a week for 3 consecutive weeks and mail copies of such notice by certified or registered mail to each owner of land lying within 1,000 feet of the land proposed to be leased, sold, or exchanged, addressed to such owner as his name and address appears on the latest county tax assessment roll.

(2) If no written objections are filed within 30 days after the date of first publication of the notice, and if the board finds that the proposed lease, sale, or exchange is not incompatible with the public interest, the board has authority to consummate the contract. However, failure to mail the notice to all landowners as set out in subsection (1) shall not invalidate the conveyance.

(3) If written objections are filed, the board shall consider the same in determining whether or not to consummate the contract. Any required hearing shall be held in the county in which the lands are located. If the lands are located in more than one county, the required hearing may be held in any county in which the lands lie. Timely notice of such hearing shall be given by at least one publication in a newspaper published in the county in which the lands are located and by certified or registered mail to each owner of land lying within 1,000 feet of the land proposed to be leased, sold, or exchanged, addressed to such owner as his name and address appears on the latest county tax assessment roll, in addition to any notice required by chapter 120.

(4) This section shall not apply to the release of any reservations contained in Murphy Act deeds or board of trustees' deeds; to any conveyance of land lying landward of the line of mean high water, the

area of which is less than 1 acre in size; to any lands covered by the provisions of ss. 253.12(6) and 253.129; or to the lease of any land acquired under the provisions of chapter 375, when the land is being leased to a state agency or political subdivision of the state.

History.—s. 1, ch. 74-26; s. 1, ch. 77-130; s. 23, ch. 78-95.
cf.—s. 1.01 Registered mail defined to include certified mail.

253.12 Title to tidal lands vested in state.—

(1) Except submerged lands heretofore conveyed by deed or statute, the title to all sovereignty tidal and submerged bottom lands, including all islands, sandbars, shallow banks, and small islands made by the process of dredging any channel by the United States Government and similar or other islands, sandbars, and shallow banks located in the navigable waters, and including all coastal and intracoastal waters of the state and all submerged lands owned by the state by right of its sovereignty in navigable freshwater lakes, rivers and streams, is vested in the Board of Trustees of the Internal Improvement Trust Fund. For purposes of fixing bulkhead lines, restrictions on filling land and dredging beyond bulkhead lines, and permits required for filling and dredging, the board shall exercise the same authority over submerged lands owned by the state by right of its sovereignty in navigable freshwater lakes, rivers, and streams as it does over submerged lands otherwise defined in this subsection. Submerged lands owned by the state by right of its sovereignty in navigable meandered freshwater lakes shall be administered in accordance with the provisions of s. 253.151, and the provisions of s. 253.151 shall be controlling when in conflict with other statutory provisions.

(2)(a) The Board of Trustees of the Internal Improvement Trust Fund may sell and convey such islands and submerged lands if determined by the board to be in the public interest, upon such prices, terms, and conditions as it sees fit. However, prior to consummating any such sale, the board shall determine to what extent the sale of such islands or submerged lands and their ownership by private persons or the conveyance of such islands or submerged lands to political subdivisions or public agencies would interfere with the conservation of fish, marine and other wildlife, or other natural resources, including beaches and shores, and would result in destruction of oyster beds, clam beds, or marine productivity, including, but not limited to, destruction of marine habitats, grass flats suitable as nursery or feeding grounds for marine life, and established marine soils suitable for producing plant growth of a type useful as nursery or feeding grounds for marine life, and if so, in what respect and to what extent, and it shall consider any other factors affecting the public interests.

(b) In addition to the requirements in paragraph (a), the board shall not sell or convey any interest in such islands and submerged lands to any applicant who does not, at the time of making application for purchase or conveyance, also have before the board:

[1]1. An application for the establishment of a bulkhead line, in the event no bulkhead line is established for the lands subject to the application; and

2. An application for approval of a fill permit issued in accordance with the provisions of this chapter; and

3. A permit or application for a permit to dredge fill material from beneath the navigable waters of the state, in accordance with the provisions of this chapter, in the event the applicant intends to secure such fill material. However, such islands or submerged lands may be sold or conveyed to an applicant who does not have such an application for a permit to dredge or fill lands before the board, upon the condition that the sale or conveyance to such an applicant shall contain a restrictive covenant prohibiting dredging, except for navigation purposes, or filling of such islands or submerged lands. The board shall reserve the authority to waive such restrictive covenant when such waiver is in the public interest, pursuant to such terms and conditions as the board may impose.

(3) After receiving application in compliance with such forms as may be required to show clearly what is intended to be accomplished in any proposed development of said lands and the manner in which said development will be accomplished, and after making the determination required by subsection (2)(a), the board shall give notice by publication in a newspaper published in the county in which such islands or submerged lands are located, not less than once a week for 3 consecutive weeks and mail copies of such notice by certified or registered mail to each riparian owner of upland lying within 1,000 feet of the island or submerged land proposed to be conveyed, addressed to such owner as his name and address appear upon the latest county tax assessment roll, in order that any persons who have objections to the sale or conveyance may have the opportunity to present the same. If no objections are filed within 30 days after the date of first publication of the aforesaid notice, the board has authority to consummate such sale or conveyance except as hereinafter provided. However, failure to mail the notice herein provided to such riparian upland owners shall not invalidate such sale or conveyance or the title or interest conveyed by the board pursuant thereto.

(4) If objections are filed, the board shall proceed to determine the merits of the objections. The report required by subsection (7) shall be made part of the record and duly considered at any hearing. If it appears that the sale of such islands and submerged lands and their ownership by private persons or the conveyance of such islands or submerged lands to political subdivisions or public agencies would:

(a) Be contrary to the public interest;

(b) Interfere with the lawful rights granted riparian owners;

(c) Be, or result in, a serious impediment to navigation;

(d) Interfere with the conservation of fish, marine, and wildlife or other natural resources, including beaches and shores, to such an extent as to be contrary to the public interest;

(e) Result in the destruction of oyster beds, clam beds, or marine productivity, including, but not limited to, destruction of natural marine habitats, grass flats suitable as nursery or feeding grounds for marine life, and established marine soils suitable for producing plant growth of a type useful as nursery

or feeding grounds for marine life to such an extent as to be contrary to the public interest,

the board shall withdraw the said lands from sale. Prior to making the determinations above required, the board may consider any other factors affecting the public interest. Anything in this section to the contrary notwithstanding, lands defined herein lying between the ordinary mean high waterline and any bulkhead line established hereunder shall be sold only to the upland riparian owner and to no other person, firm, or corporation; and such sale to said upland riparian owner shall be made pursuant to the provisions herein.

(5)(a) When any state agency or county, city, or other political subdivision extends or adds to existing lands or islands bordering on or being in the navigable waters, as defined in this section, of the state by filling in or causing to be filled in or by draining or causing to be drained such waters, the board may, upon application therefor, convey to the riparian owner or owners of the upland so extended or added to so much of such extended or added land as is not required exclusively for a municipal, county, state, or other public purpose. The board may, however, require a deposit to accompany such application of a sum sufficient to cover the actual cost and expenses of processing such application and preparing instruments of conveyance.

(b) Neither this subsection nor any other provision of this chapter shall be construed to permit any state agency or county, city, or other political subdivision to construct islands or extend or add to existing lands or islands bordering on or being in the navigable waters as defined herein or drain such waters for a municipal, county, state or other public purpose unless such agency is the riparian upland owner or holds the consent in writing of the riparian upland owner consenting to such construction or extension or drainage operation. For the purposes of this subsection, "riparian upland owners" shall be defined as those persons owning upland property abutting those portions of the waters to be filled or drained, which are within 1,000 feet outboard of said riparian upland, but not more than one-half the distance to the opposite upland, if any, and within the extensions of the side boundary lines thereof, when said side boundary lines are extended in the direction of the channel along an alignment which would be required to distribute equitably the submerged land between the upland and the channel. However, nothing herein shall be construed to deny or limit any state agency or county, city, or other political subdivision from exercising the right of eminent domain to the extent and for the purposes authorized by law in connection with such construction, extension, or drainage projects; and nothing herein shall be construed to have application in those instances when the board is authorized by law to establish an erosion control line to implement an authorized beach nourishment, replenishment, or erosion-control project.

(6) Where any person, state agency, county, city, or other political subdivision prior to June 11, 1957, extended or added to existing lands or islands bordering on or being in the navigable waters as defined in this section by filling in or causing to be filled in such lands, the board shall upon application therefor convey said land so filled to the riparian owner or owners of the upland so extended or added to. The consideration for such conveyance shall be the appraised value of said lands as they existed prior to such filling.

(7)(a) In order to assist it in making the determination required by subsection (2)(a), the board shall require that a biological survey and an ecological study of the lands or interests therein proposed to be sold or conveyed pursuant to any particular application be made, and, when determined by the Department of Natural Resources to be necessary, that a hydrographic survey be made. All such surveys and studies shall be made by or under the direction of the Department of Natural Resources, which shall make a report of all such surveys and studies to the board together with its recommendations. The board may adopt regulations requiring that the cost of making any such survey and report be paid by the applicant for purchase of such lands, requiring a deposit by the applicant sufficient to insure such payment, and providing procedures to be followed in applying for and obtaining such survey and report.

(b) If, in accordance with the provisions of subsection (2)(b), the surveys and study required by paragraph (a) above have already been made, the provisions of this section shall not operate to require an applicant to pay for any additional surveys or studies within 3 years prior to the issuance of such permit.

(8) All conveyances of sovereignty lands or fill material therein heretofore made by the Board of Trustees of the Internal Improvement Trust Fund of Florida subsequent to the enactment of chapter 6451, Acts of 1913, chapter 7304, Acts of 1917 and chapter 57-362, as amended, are hereby ratified, confirmed and validated in all respects.

History.—s. 1, ch. 7304, 1917; RGS 1061; CGL 1391; ss. 1, 2, ch. 26776, 1951; s. 1, ch. 57-362; s. 2, ch. 61-119; s. 1, ch. 67-393; ss. 25, 27, 35, ch. 69-106; s. 1, ch. 69-308; s. 1, ch. 70-81; s. 1, ch. 70-97; s. 1, ch. 70-147; s. 1, ch. 70-439; s. 1, ch. 72-214; s. 23, ch. 78-95.

[1]**Note.**—See s. 26, ch. 75-22, which repealed s. 253.122, relating to the power to fix bulkhead lines, and s. 7(3), ch. 75-22 (s. 253.1221), which reestablished all bulkhead lines previously established pursuant to s. 253.122 at the line of mean high water or ordinary high water.

253.121 Conveyances of such lands heretofore made, ratified, confirmed, and validated.—All conveyances of sovereignty lands heretofore made by the Board of Trustees of the Internal Improvement Trust Fund subsequent to the enactment of chapter 6451 (June 5, 1913), 6960 (June 2, 1915) and 7304 (May 21, 1917), Acts of 1913, 1915 and 1917, respectively, where advertisement therefor was published in the county of sale but not in the county seat, are hereby ratified, confirmed and validated in all respects, including all defects subject to ratification, confirmance and validation by the Legislature. Said conveyances shall be deemed valid notwithstanding defects in the publication of newspaper notices and the publication of such newspaper notices in newspapers not published at the county seat of the county in which the lands are located.

History.—s. 1, ch. 29763, 1955; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.1221 Bulkhead lines; reestablishment.—All bulkhead lines heretofore established pursuant to former s. 253.122 are hereby established at the line of mean high water or ordinary high water. There shall be no filling waterward of the line of mean high water or ordinary high water except upon compliance with this chapter.

History.—s. 7, ch. 75-22.

253.123 Restrictions on filling land and dredging.—

(1) No private person, firm or corporation shall construct islands or add to or extend existing lands or islands bordering on or being in the navigable waters of the state as defined in s. 253.12(1) by pumping sand, rock or earth from such waters or by any other means without first complying with [2]s. 253.122; provided, nothing herein contained shall relate to artificially created navigable waters.

(2) The removal of sand, rock or earth from the navigable waters of the state as defined in s. 253.12 and the submerged bottoms thereof by dredging, pumping, digging, or any other means shall not be permitted except in the following instances:

(a) For the construction, improvement or maintenance of navigation channels and drainage and water-control facilities;

(b) For the construction of trenches for the burial or installation of water, sewer, gas, oil, gasoline, fuel, electric, telegraph or telephone lines, cables or mains;

(c) For the operation of sand transfer plants; and

(d) For other purposes when, but only when, the board of trustees has determined, after consideration of a biological survey and an ecological study and a hydrographic survey, if such hydrographic survey is required by the board, made by or under the supervision of the [1]Department of Natural Resources of the area from which such sand, rock or earth is proposed to be removed, that such surveys and study show that such removal will not interfere with the conservation of fish, marine and wildlife or other natural resources, to such an extent as to be contrary to the public interest, and will not result in the destruction of oyster beds, clam beds, or marine productivity, including, but not limited to, destruction of natural marine habitats, grass flats suitable as nursery or feeding grounds for marine life, and established marine soils suitable for producing plant growth of a type useful as nursery or feeding grounds for marine life or natural shoreline processes to such an extent as to be contrary to the public interests.

(3)(a) Works authorized under paragraphs (a) and (b) of subsection (2) shall only be undertaken after receipt of a permit from the board of trustees, which permit shall be granted after consideration of a biological or ecological study, unless waived by the affirmative vote of at least five of the seven members of the board of trustees, upon a showing of the public interest which will be served by such works.

(b) The provisions of paragraph (d) of subsection (2) shall not be construed to eliminate the requirement of obtaining a permit for the removal of sand, rock or earth from any part of the navigable waters of the state as defined in s. 253.12, and the submerged bottoms thereof from the appropriate authority as elsewhere in this chapter or otherwise by law provided.

(4) Neither the sale and conveyance of islands and lands by the Board of Trustees of the Internal Improvement Trust Fund under the provisions of s. 253.12 nor the establishment of a [2]bulkhead line or lines by the appropriate authority under the provisions of s. 253.122, nor the granting of a construction permit under the provisions of s. 253.124 shall operate to vest any right whatsoever in the grantee, upland owner, or construction permitholder to remove sand, rock or earth from the navigable waters of the state as defined in s. 253.12, and the submerged bottoms thereof, unless a construction permit issued pursuant to the provisions of s. 253.124, and of this section specifically permits such removal.

History.—s. 3, ch. 57-362; s. 2, ch. 61-119; s. 5, ch. 67-393; ss. 25, 27, 35, ch. 69-106; s. 1, ch. 70-118; s. 1, ch. 70-167; s. 1, ch. 70-439.

[1]Note.—See s. 11, ch. 75-22, which transfers all powers of the Department of Natural Resources relating to permits, licenses, and exemptions to the Department of Environmental Regulation.

[2]Note.—See s. 26, ch. 75-22, which repealed s. 253.122, relating to the power to fix bulkhead lines, and s. 7(3), ch. 75-22 (s. 253.1221), which reestablished all previously established bulkhead lines at the line of mean high water or ordinary high water.

253.124 Application for filling land.—

(1) Any private person, firm or corporation desiring to construct islands or add to or extend existing lands or islands located in the unincorporated area of any county bordering on or in the navigable waters of the state, as defined in s. 253.12, by pumping sand, rock or earth from such waters or by any other means shall make application in writing to the board of county commissioners of the county wherein such construction is desired for a permit authorizing such person, firm or corporation to engage in such construction; provided, that where it is desired to construct islands or add to or extend existing lands or islands within the territory of any municipality such application for a construction or fill permit shall be made to the governing body of such municipality.

(2) In each instance the written application herein provided for shall be accompanied by a plan or drawing showing the proposed construction and the manner in which said construction will be accomplished and also the area from which any fill material is to be dredged if the proposed construction is intended to be created from dredged material. In the event the board of county commissioners or other authorized body shall find that such proposed extension or filling of land or such proposed dredging is not violative of any statute, zoning law, ordinance, or other restrictions which may be applicable thereto, that no harmful obstruction to or alteration of the natural flow of the navigable water, as defined in s. 253.12, within such area will arise from the proposed construction, that no harmful or increased erosion, shoaling of channels or stagnant areas of water will be created thereby, and that no material injury or monetary damage to adjoining land will accrue therefrom, the same shall be granted to the applicant, subject to the approval of the Board of Trustees of the Internal Improvement Trust Fund, who shall have the power to approve, reject or issue; provided, however, that prior to the issuance of such permit, the board of county commissioners or other authorized body shall determine whether the granting of such permit and the construction to be done pursu-

ant thereto would interfere with the conservation of fish, marine and wildlife or other natural resources to such an extent as to be contrary to the public interest, and whether the destruction of oyster beds, clam beds, or marine productivity, including, but not limited to, destruction of natural marine habitats, grass flats suitable as nursery or feeding grounds for marine life, including established marine soils suitable for producing plant growth of a type useful as nursery or feeding grounds for marine life, will result therefrom to such an extent as to be contrary to the public interest. The board shall also consider any other factors affecting the public interests.

(3) No construction permit shall be issued or approved until the board of county commissioners or other authorized body shall have obtained, at the expense of the applicant, a biological survey, an ecological study, and, where deemed necessary by the [1]Department of Natural Resources, a hydrographic survey of the area within which such construction and dredging is proposed, each by or under the supervision of the [1]Department of Natural Resources and shall have in hand the report and findings thereof. The report shall be read into the record and duly considered at the same meeting at which the board of county commissioners or other authorized body takes final action on the application for permit. [2]Such surveys and studies may not be required if the proposed construction or dredging is wholly shoreward of a previously established bulkhead line which was fixed after consideration by the bulkhead authority of a biological survey and ecological study previously made by the [1]Department of Natural Resources or under its supervision in connection with the fixing of such line or if the proposed construction or dredging is wholly within lands or islands heretofore purchased from the Board of Trustees of the Internal Improvement Trust Fund under s. 253.12 and in the consummation of such sale the board had before it a biological survey made by or under the supervision of the [1]Department of Natural Resources.

(4) No construction permit issued under chapters 253 and 403 shall authorize work for a period of time in excess of 5 years. After approval and issuance of such permit, said 5-year period shall commence upon receipt by the applicant of all governmental authorizations, local, state, and federal, including such license, permit, or variance from the Department of Environmental Regulation under chapter 403 as may be required for completion of the proposed work. The Department of Environmental Regulation may grant permits for periods of time of less than 5 years, depending upon the size and scope of the construction. The department may revoke such construction permit if the applicant fails to use due diligence in obtaining such required governmental authorizations. Such time may be extended for additional periods of up to 3 years by the board for good cause, upon showing that all due efforts and diligence toward completion of said work have been made. Before such time may be extended, the studies required by s. 253.123 shall be brought up to date to assist the board in determining if such extension of time would not be contrary to the public interest. The construction permit herein provided for may be revoked by the board for noncompliance with, or violation of, its terms.

(5)(a) Except as provided in paragraph (b), any person who violates any provision of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who violates this section by creating or causing to be created an illegal fill is guilty of a misdemeanor of the first degree punishable as provided in s. 775.082 or s. 775.083. Each day in which such a violation continues, subsequent to the initial citation, shall constitute a separate offense.

(6) The board shall have the authority to direct the abutting upland owner to remove any fill created in violation of this section, either on behalf of itself or on behalf of itself and the Department of Natural Resources. In the event that the abutting upland owner does not remove said fill as directed, the board may remove it at its own expense and the costs thereof shall become a lien upon the property of said abutting upland owner; provided, that the board may, if it chooses, allow said fill to remain as state-owned land, and may employ a surveyor to determine the boundary between such state land and that of the previous abutting upland owner. The amount of the cost of such survey shall become a lien upon the property of the previous abutting upland owner. Nothing herein shall be construed to grant the board authority to direct an upland owner to adjust, alter or remove silt, fill or other solid material which has accumulated or been deposited seaward of his property through no action on his part.

(7)(a) The board shall in no case issue an "after the fact" construction permit to any applicant authorizing construction regulated by this section subsequent to the time it has occurred, unless, upon consideration of a report by the [1]Department of Natural Resources, the board finds that the exercise of any other remedy or penalty available to it, either as provided by subsection (6) or otherwise by law or by rule or regulation adopted by the board would be more damaging to the environment or the marine resources sought to be protected by this chapter than would be the granting of such permit.

(b) The granting of such an "after the fact" construction permit shall not absolve any applicant from the provisions of subsection (5) of this section.

(8) Any riparian upland owner of land bordering on or in the navigable waters of the state who desires to repair, rebuild, replace, or reconstruct coastal structures in the nature of seawalls, revetments, retaining walls, bulkheads, or other similar protective structures installed upon his riparian upland, or who desires to restore such uplands after damage by avulsion or by artificially induced erosion, shall, before undertaking such project, obtain a permit for such work from the board of county commissioners or other authorized body or from the governing body of a municipality if the work proposed shall be within the territory of such municipality. Such a permit shall be subject to the approval of the board of trustees and shall not be valid without such approval. [2]The riparian owner making application for such a permit may not be required to comply with s. 253.122. A biological survey and ecological study may not be required if the proposed work lies at no

greater distance than 25 feet into the waters where such work is proposed from the existing and established line of mean high water or existing coastal structure. A permit issued under the provisions of this subsection shall not be construed to allow construction of coastal structures or restoration of lands that may be subject to the provisions of chapter 161. In an emergency threatening damage to life or public property, the Department of Transportation will be permitted temporarily to repair, reconstruct, rebuild, or replace any structures or roadways on the state-maintained transportation system, subject to immediate notification of the executive director of the Board of Trustees of the Internal Improvement Trust Fund and his subsequent review and approval.

(9)(a) The written application herein provided for shall indicate whether the applicant holds title to the submerged land or islands upon which he seeks permission to dredge or fill lands and whether he is a riparian owner with respect to such submerged lands or islands. If the applicant does not hold title to such lands and is not a riparian owner with respect to such lands and his application so indicates, the board of county commissioners shall, upon receipt of the application, be on notice that the applicant intends to apply to the Board of Trustees of the Internal Improvement Trust Fund for purchase of such lands, and the provisions of s. 253.111(2)-(5) shall become operative.

(b) If as a result of the provisions of paragraph (a) above, the provisions of s. 253.111(2)-(5) become operative and the board of county commissioners determines that it does not propose to devote the land to public outdoor recreational purposes, the board of county commissioners shall proceed to consider the application for permission to dredge or fill land.

History.—s. 4, ch. 57-362; s. 2, ch. 61-119; s. 7, ch. 61-530; s. 10, ch. 63-512; s. 4, ch. 67-393; ss. 25, 27, 35, ch. 69-106; s. 1, ch. 69-336; s. 3, ch. 70-81; s. 1, ch. 70-116; s. 1, ch. 70-333; s. 1, ch. 70-439; s. 153, ch. 71-136; s. 1, ch. 72-89; ss. 2-4, ch. 72-214; s. 23, ch. 78-95; s. 1, ch. 78-388.

[1]**Note.**—See s. 11, ch. 75-22, which transfers all powers of the Department of Natural Resources relating to permits, licenses, and exemptions to the Department of Environmental Regulation.

[2]**Note.**—See s. 26, ch. 75-22, which repealed s. 253.122, relating to the power to fix bulkhead lines, and s. 7(3), ch. 75-22 (s. 253.1221), which reestablished all previously established bulkhead lines at the line of mean high water or ordinary high water.

253.1241 Studies by Department of Natural Resources.—The [1]Department of Natural Resources shall have a period of 90 days, after application therefor, in which to make the studies and surveys required by ss. 253.12, 253.123 and 253.124. The Board of Trustees of the Internal Improvement Trust Fund and other governing bodies required by said sections to obtain such studies and surveys shall request them from the [1]Department of Natural Resources within 30 days after the receipt of an application for sale, [2]setting of a bulkhead line, or a dredge or fill permit as the case may be.

History.—s. 6, ch. 67-393; ss. 25, 27, 35, ch. 69-106; s. 1, ch. 69-337; s. 79, ch. 77-104.

[1]**Note.**—See s. 11, ch. 75-22, which transfers all powers of the Department of Natural Resources relating to permits, licenses, and exemptions to the Department of Environmental Regulation.

[2]**Note.**—See s. 26, ch. 75-22, which repealed s. 253.122, relating to the power to fix bulkhead lines, and s. 7(3), ch. 75-22 (s. 253.1221), which reestablished all previously established bulkhead lines at the line of mean high water or ordinary high water.

253.125 Permit; filing fee and cost.—The board of county commissioners or governing body of any municipality shall assess such filing fees and costs as may be necessary for the filing, processing and issuance of such construction permit as provided for herein.

History.—s. 5, ch. 57-362.

253.1252 Citation of rule.—In addition to any other provisions within this chapter or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this chapter or such rules promulgated hereunder, cite a specific rule. If a request for information cannot be accompanied by a rule citation, failure to provide such information cannot be grounds to deny a permit.

History.—s. 2, ch. 79-161.

253.126 Legislative intent.—The limitations and restrictions imposed by this chapter as amended by chapter 67-393 upon the construction of islands or the extension or addition to existing lands or islands bordering on or being in the navigable waters, as defined in s. 253.12, shall apply to the state, its agencies and all political subdivisions and governmental units. No other general or special act shall operate to grant exceptions to this section unless this section is specifically repealed thereby.

(1) Notwithstanding any other provision of this chapter, the Department of Environmental Regulation may authorize, by rule, the Department of Transportation to perform any activity covered by this chapter, upon certification by the agency that it will meet all requirements imposed by statute, rule, or standard for environmental control and protection as such statute, rule, or standard applies to a governmental program. To this end, the department may accept such certification of compliance for programs of the agency, conduct investigations for compliance, and, if a violation is found to exist, take all necessary enforcement action pertaining thereto, including, but not limited to, the revocation of certification. The authorization shall be by rule of the department, shall be limited to the maintenance, repair, or replacement of existing structures, and shall be conditioned upon compliance by the agency with specific guidelines or requirements which are set forth in the formal acceptance and deemed necessary by the department to assure future compliance with this chapter and applicable department rules. Failure of the agency to comply with any provision of the written acceptance shall constitute grounds for its revocation by the department.

(2) The provisions of chapter 120 shall be accorded any person where substantial interests will be affected by an activity proposed to be conducted by such agency pursuant to its certification and the department's acceptance. If a proceeding is conducted pursuant to s. 120.57, the department may intervene as a party. Should a hearing officer of the Division of Administrative Hearings of the Department of Administration submit a recommended order pursuant to s. 120.57, the Department of Environmental Regulation shall issue a final department order

adopting, rejecting, or modifying the recommended order pursuant to such action.

History.—s. 6, ch. 57-362; ss. 8, 9, ch. 67-393; s. 75, ch. 71-355; s. 1, ch. 78-437.

253.127 Enforcement.—The Board of Trustees of the Internal Improvement Trust Fund, the board of county commissioners or governing body of any municipality, or any aggrieved person, shall have the power to enforce the provisions of this law by appropriate suit in equity.

History.—s. 7, ch. 57-362; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.128 Enforcement; board or agency under special law.—In any county where the Legislature by special law or general law with local application has heretofore or hereafter transferred or delegated to any county board or agency other than the board of county commissioners or the governing body of any municipality powers and duties over the establishment of bulkhead line or lines, dredging permits, fill permits, seawall construction or any other powers of a like nature such agency shall have jurisdiction under this law in lieu of the board of county commissioners or the governing body of any municipality as the case may be.

History.—s. 8, ch. 57-362.

253.1281 Review by board.—

(1) All special acts granting exceptions to the provisions of this chapter relating to issuance of dredge or fill permits shall provide that all action on applications for such permits shall be subject to approval of the Board of Trustees of the Internal Improvement Trust Fund, which shall have the power to reject such permits.

(2) Notwithstanding any provisions to the contrary, any action after July 7, 1970, on any application for a dredge or fill permit pursuant to any special act heretofore or hereafter enacted shall be subject to approval of the board of trustees, which shall have the power to reject such permit.

History.—s. 1, ch. 70-375.

253.129 Confirmation of title in upland owners.—The title to all lands heretofore filled or developed is herewith confirmed in the upland owners and the trustees shall on request issue a disclaimer to each such owner.

History.—s. 9, ch. 57-362; s. 13, ch. 59-1.

253.135 Construction of ss. 253.12, 253.123, 253.124, 253.125-253.128, 253.129.—

(1) This law shall not be construed to be in conflict with any general or special law whereby the state has divested itself of title to submerged land or has granted such title to another.

(2) The provisions of ss. 253.12, 253.123, 253.124, 253.125-253.128, 253.129 shall not affect or apply to the construction of islands or the extension or addition to existing lands or islands bordering on or being in the navigable waters as defined in s. 253.12 of the state which was commenced or application for permit to fill which was filed with the United States Corps of Engineers prior to June 11, 1957, as to lands or bottoms lying between ordinary high watermark and a bulkhead line heretofore established by any county, city or other political subdivision of the state by official action of its governing body.

History.—ss. 10-12, ch. 57-362; s. 1, ch. 72-261; s. 79, ch. 77-104.
Note.—Former s. 253.0013.

253.14 Rights of riparian owners; board of trustees to defend suit.—

(1) It is expressly provided that nothing contained in this chapter shall be so construed as to deprive any private riparian owner from bringing an injunction suit in equity against the sale provided for in s. 253.12 on the ground that he would be thereby deprived of his riparian rights granted to him by law; provided, that such suit must be commenced within 30 days after the board of trustees shall have overruled the objections of such owner to such proposed sale.

(2) In case suit is brought by any private owner to enjoin such sale, it shall be in the discretion of the board of trustees to defend such suit or to withdraw said lands from sale.

History.—ss. 3, 4, ch. 7304, 1917; RGS 1063; CGL 1393; ss. 27, 35, ch. 69-106.

253.151 Navigable meandered freshwater lakes.—

(1) The submerged lands located under navigable meandered freshwater lakes shall be considered as a separate class of sovereignty lands. Such separate class of sovereignty lands shall not be construed to be of the same character as tidal lands, streams, watercourses, or rivers or as lakes attached to tidal waters by means of navigable watercourses, but, rather, shall be administered in accordance with the provisions of this section.

(2) For the purposes of this section:

(a) "Board" means the Board of Trustees of the Internal Improvement Trust Fund.

(b) "Boundary line" means the line which separates the sovereignty lands of the state from those of a riparian upland owner. Such boundary line shall be described in terms of elevation above mean sea level of the state as indicated on the bench mark of the United States Coast and Geodetic Survey nearest the respective navigable meandered freshwater lake.

(c) "Elevation" means the distance above mean sea level as established by official United States Coast and Geodetic Survey bench marks.

(d) "Usufructuary right" means the temporary right of using the land lakeward of the boundary line to the existing waterline. The term shall not be construed to convey to any riparian owner the right to erect permanent structures of any type upon sovereignty lands without the express consent of the board.

(e) "Commercial operation" means the operation of any facility located on submerged land in navigable meandered freshwater lakes for the purpose of earning a profit from such operations.

(3) The boundary line shall be established by, or under the supervision of, the board by use of one or more of the following procedures:

(a) Where physical evidence exists indicating the actual water's edge of any navigable meandered freshwater lake as of the date such body came under

the jurisdiction of the state, regardless of where the water's edge exists on the date of the determination of the boundary line, the water's edge as evidenced on the former date shall be deemed the boundary line.

(b) Where sufficient physical evidence cannot be found, or in conjunction with such physical evidence as may exist, affidavits of local, longtime residents attesting to the average levels of such lakes shall be used. Such affidavits shall not be used unless they can be dated back to a period of time at least 25 years prior to July 1, 1970.

(c) Where gauging stations have been installed and continuous data at lake water elevations have been obtained therefrom for a period of no less than 10 consecutive years, such data may be used for ascertaining the boundary line at such lake.

(d) Actual onsite examination of the terrain (landward and lakeward of the existing waterline) and of plant life, including upland and aquatic, by qualified personnel and the other physical indications of present and past waterlines which shall be deemed reasonable may be used in determining the boundary line. This investigation may include public hearings, as well as examination of existing docks, structures, and other physical evidence which may properly be construed as germane to the location of the boundary line.

(4) The boundary line elevation shall be placed in the public records of the county or counties in which the navigable meandered freshwater lake is situated. A suitable monument shall be placed in or on such lake as a permanent point of reference so that all interested persons may be able to determine the physical boundary line by proper survey and projection onto the shoreline.

(5) The riparian owner shall have the usufructuary right over lands lakeward of the boundary line down to the existing waterline, but such riparian owner shall not deny the use of the water above the established boundary line to any other owner or to the general public so long as such public does not come onto the land above the existing waterline. A riparian owner shall have the right of ingress and egress to and from the water for purposes of boating, swimming, fishing, skiing, and similar activities and shall:

(a) Be granted the privilege of clearing the aquatic vegetation, except woody plants of a diameter greater than 2 inches, measured at the base, out in the water to the extent necessary to enable him to use the public waters reasonably for boating, swimming, skiing, fishing, and similar activities. If an area greater than one-fifth of an acre is to be cleared within a period of 3 months, a permit must be applied for and granted by the board.

(b) Be permitted to fill to combat erosion. However, in no case shall this section be construed to grant a riparian owner the right to add on land out into the main body of the water in such a manner as to constitute an encroachment upon the sovereignty submerged bottoms to gain more property or to restrict others from reasonable use of the water. A permit from the board shall be necessary for such fill projects to combat erosion.

(c) Be granted usufructuary right in any strip of land which may be exposed due to natural recession of the waters, between the boundary line and the existing waterline.

(6) Any authorized dock, boathouse, or other structure, erected under permit, shall be for the sole use and control of the riparian owner.

(7) Nothing contained in this section or s. 253.12(1) shall be construed as affecting privately owned lakes, streams, watercourses, or submerged lands.

(8) The board shall promulgate such rules and regulations as may be necessary to carry out the purposes of this section.

History.—s. 2, ch. 70-97; s. 23, ch. 78-95.

253.21 Board of trustees may surrender certain lands to the United States and receive indemnity.—Whenever it may appear that any of the swamplands, granted by the United States to this state by Act of Congress approved September 28, 1850, entitled "An Act to enable the State of Arkansas and other states to reclaim the swamplands within their limits," have been sold or located, the Board of Trustees of the Internal Improvement Trust Fund may surrender to the United States the right, title and claim of the state to said lands, and receive from the United States, in lieu thereof, such reclamation as may be due.

History.—Ch. 631, 1855; RS 439; GS 627; RGS 1076; CGL 1407; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.29 Board of trustees to refund money paid where title to land fails.—Any person having heretofore, or who may hereafter purchase in good faith and for value, any lands in the state from the Board of Trustees of the Internal Improvement Trust Fund of the state, and which title has failed by reason of the fact that the Board of Trustees of the Internal Improvement Trust Fund had no title or right to convey the same, the Board of Trustees of the Internal Improvement Trust Fund shall refund to said party the sums of money so paid for said lands without interest thereon upon due proof being made.

History.—s. 1, ch. 5175, 1903; GS 635; RGS 1084; CGL 1415; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.34 Transfer of notes owned by board.—The Board of Trustees of the Internal Improvement Trust Fund may endorse and transfer to any person, with or without recourse, any bills, notes or other obligations which the said board may now own, or may hereafter acquire.

History.—s. 5, ch. 6453, 1913; RGS 1089; CGL 1420; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.36 Title to reclaimed marsh, etc., lands in board of trustees.—The title to all marsh, wet or lowlands as have become permanently reclaimed, title to which is in the state, is vested in the Board of Trustees of the Internal Improvement Trust Fund to be held by the state and disposed of, as provided in this chapter.

History.—s. 1, ch. 7891, 1919; CGL 1425; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.37 Survey to be made; sale of lands; preference to buyers.—When it shall be brought to the attention of the Board of Trustees of the Internal Improvement Trust Fund that such lands exist as

are defined in s. 253.36, the board may cause a survey of the same to be made, which survey shall be connected with the surveys of the United States Government, or other surveys adjoining such lands, as far as may be practicable, and shall be made in conformity with the rules and regulations prescribed by the Department of the Interior for making federal surveys. When such surveys have been completed and, with the plats thereof, have been filed in the office of the said board, the board may proceed to sell and convey the said lands so surveyed in the same manner that other swamp and overflowed lands are sold and disposed of; provided, that in making sales of such land the board shall give first right to purchase to any adjacent owner thereof who desires to complete or square up any fractional section now owned by him or to any person who has settled on, or preempted the same, in amounts not exceeding 80 acres; and, provided further, that any and all other such lands as are covered hereby shall be sold by the board to bona fide settlers in amounts not exceeding 80 acres to each settler.

History.—s. 2, ch. 7891, 1919; CGL 1426; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.38 Riparian rights not affected.—Nothing in ss. 253.36 and 253.37 shall be construed as in anywise affecting the riparian rights now or heretofore existing under the laws of this state; but it is expressly provided that the provisions of said sections shall apply only to such lands as the Department of the Interior has declined to convey to the state, or which have become permanently reclaimed; and in making sales thereof, the board of trustees may provide for a complete system of reclamation as part of the consideration thereof, or contract for such permanent reclamation in the manner it deems advisable.

History.—s. 3, ch. 7891, 1919; CGL 1427; ss. 27, 35, ch. 69-106.

253.381 Unsurveyed marsh lands; sale to upland owners.—The Board of Trustees of the Internal Improvement Trust Fund of the state and the State Board of Education are hereby authorized to make sales of unsurveyed marshlands to record owners of uplands which have been surveyed by the United States, and to make equitable divisions of unsurveyed marsh areas and allocations of the same for sales with due respect to upland ownership, sales heretofore made, natural divisions of the unsurveyed marshes which are indicated by the general courses of water channels within or across the unsurveyed marshes and to other topographical features of the affected areas.

History.—s. 1, ch. 59-497; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.382 Oyster beds, minerals, oils, etc., reserved to state.—The state saves, reserves and excepts all natural oyster beds upon and all minerals and oils in or under the submerged lands until the same shall be filled in and improved by the riparian owner.

History.—s. 4, ch. 8537, 1921; CGL 1777.
Note.—Former s. 271.04.

253.39 Surveys, etc., approved by chief cadastral surveyor validated.—All surveys of lands into townships, sections or other regular land divisions, heretofore or hereafter made in this state, and which have or may hereafter be approved by the chief cadastral surveyor for the Board of Trustees of the Internal Improvement Trust Fund, together with the field notes, plats, or other accessories pertaining thereto, are validated and confirmed and are official public surveys of this state of equal force, tenor and effect as surveys made by or under the direction of the United States Government.

History.—s. 1, ch. 7892, 1919; CGL 1428; s. 1, ch. 61-187; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.40 To what lands applicable.—The provisions for land surveys in ss. 253.39 and 253.41 shall only apply to such lands as have not heretofore been surveyed by the Federal Government; and all acts of the Board of Trustees of the Internal Improvement Trust Fund, together with any and all contracts, resolutions and instructions relating to such surveys, are approved, validated and confirmed.

History.—s. 2, ch. 7892, 1919; CGL 1429; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.41 Plats and field notes filed in office of Board of Trustees of Internal Improvement Trust Fund.—When such surveys, as provided for in ss. 253.39 and 253.40, shall have been made and approved by the chief cadastral surveyor, the plats and field notes thereof shall be filed in the office of the Board of Trustees of the Internal Improvement Trust Fund of this state, which shall be the custodian of such plats and field notes for the use of the public, under such regulations as may apply to the use of plats and field notes of the public land surveys of the United States, and a duly certified copy of the same shall be admissible as evidence in any court of this state.

History.—s. 3, ch. 7892, 1919; CGL 1430; s. 5, ch. 63-294; ss. 27, 35, ch. 69-106.

253.42 Board of trustees may exchange lands.—The Board of Trustees of the Internal Improvement Trust Fund of the state may exchange lands held or owned by, or vested in, said board for other lands in the state owned by private individuals or corporations; and fix the terms and conditions of any such exchange, and select and agree upon the lands to be so conveyed by said board; and the lands to be conveyed to said board in exchange therefor; and agree upon and pay or receive, as the case may in the judgment of said board require, any sum or sums of money deemed necessary by said board for the purpose of equalizing the values of such exchanged property, and make and enter into contracts or agreements for such purpose or purposes.

History.—s. 1, ch. 8525, 1921; CGL 1432; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.
cf.—ss. 285.04, 285.05 Exchanged state lands for benefit of Seminole Indians.

253.43 Convey by deed.—The Board of Trustees of the Internal Improvement Trust Fund may execute and deliver a deed of conveyance, in its discretion necessary or proper, for the purpose of carrying into effect any such exchange or any contract or agreement therefor, made by said board under or pursuant to the power vested in it by this chapter, or otherwise; and any such deed shall fully convey to and vest in the purchaser or grantee the property so conveyed.

History.—s. 2, ch. 8525, 1921; CGL 1433; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.431 Agents may act on behalf of board of trustees.—The Board of Trustees of the Internal Improvement Trust Fund may, by resolution duly recorded in the records of said board, authorize or employ agents or employees to act in its behalf in the execution and delivery of deeds of conveyance, for the purpose of carrying into effect any exchange or contract or agreement therefor made by said board under or pursuant to the power vested in said board by this chapter, by virtue of the state's equity in lands under chapter 197, pursuant to conveyances by authority of s. 288.14 or chapter 270, by authority of s. 591.19 or s. 285.14, and by such agents or employees issue disclaimers, releases of oil and mineral rights, quit claim deeds, releases of any and all reservations of whatever kind in the lands of the state, and such other documents as may be authorized by the board to release or convey the state's interests. Any deed executed by said agents or employees shall fully convey to and vest in the purchaser or grantee the property so conveyed.

History.—s. 2, ch. 67-5; ss. 27, 35, ch. 69-106.

253.44 Disposal of lands received.—All lands conveyed to the Board of Trustees of the Internal Improvement Trust Fund, pursuant to ss. 253.42, 253.43, 253.44, or ratified by s. 253.43, shall be held and disposed of by said board, pursuant to the laws of the state affecting said Board of Trustees of the Internal Improvement Trust Fund, and acts amendatory thereto.

History.—s. 3, ch. 8525, 1921; CGL 1434; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.45 Sale or lease of phosphate, clay, minerals, etc., in or under state lands.—

(1) The Board of Trustees of the Internal Improvement Trust Fund may sell or lease any phosphate, earth or clay, sand, gravel, shell, mineral, metal, timber or water, or any other substance similar to the foregoing, in, on, or under, any land the title to which is vested in the state, the Department of General Services, the Department of Natural Resources, the Game and Fresh Water Fish Commission, the State Board of Education, or any other state board, department, or agency; provided that the board of trustees may not grant such a sale or lease on the land of any other state board, department or agency without first obtaining approval therefrom. No sale or lease provided for in this section shall be allowed on hard-surfaced beaches that are used for bathing or driving and areas contiguous thereto out to a mean low-water depth of 3 feet and landward to the nearest paved public road. Any sale or lease provided for in this section shall be conducted by competitive bidding as provided for in ss. 253.52, 253.53 and 253.54. The proceeds of such sales or leases are to be credited to the board of trustees, board, department or agency which has title or control of the land involved.

(2) The Board of Trustees of the Internal Improvement Trust Fund or any other state agency authorized to grant leases under this section shall specify in each such lease, in clear and precise terms, the particular minerals for which the lessee is permitted to drill or mine and the manner in which the same may be extracted.

History.—s. 1, ch. 9289, 1923; ss. 1, 2, ch. 9315, 1923; s. 1, ch. 13670, 1929; CGL 1936 Supp. 1438(1); s. 1, ch. 59-178; s. 2, ch. 61-119; s. 1, ch. 69-181; s. 1, ch. 69-239; s. 1, ch. 69-369; ss. 22, 25, 27, 35, ch. 69-106.

cf.—s. 270.13 Disposition of money derived from sale, lease or rental of products in, on, or under state lands.

253.451 Construction of term "land the title to which is vested in the state."—For the purposes of ss. 253.45-253.61 the phrase "land the title to which is vested in the state" or words of similar import shall include lands previously held by the state or any agency thereof, in which mineral rights have been retained by the state or such agency.

History.—s. 10, ch. 69-369.

253.47 Board of trustees may lease, sell, etc., bottoms of bays, lagoons, straits, etc., owned by state, for petroleum purposes.—The Board of Trustees of the Internal Improvement Trust Fund of the state may lease for royalties or for other agreed compensation, or sell and otherwise dispose of the right to drill wells for the discovery and the production of petroleum and natural gas in the bottoms, owned by the state in its sovereign capacity, of the bays, lagoons, straits, sounds, gulf, streams and lakes within the state; provided, that such leases or sales shall not confer upon the person acquiring the same the right to enter upon any private property of another, nor the right to drill any well or otherwise place permanent or stationary obstruction in such waters or upon such bottoms within one-quarter of 1 mile of the shoreline of the lands of any upland owner, without first having the written consent of such upland owner so to do. The leases and sales so made shall convey to the lessee or vendee the rights of ingress and egress to, from, and over the bottoms leased or acquired, and the right to construct and maintain on and over such leased or acquired bottoms, in such manner as not to obstruct transportation, any structures, tanks, docks, stations and other equipment, as may be required for the proper development of such leases and the purposes for which the same are made.

History.—s. 1, ch. 12429, 1927; CGL 1445; s. 7, ch. 22858, 1945; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

cf.—s. 270.13 Disposition of money derived from leases.

253.51 Oil and gas leases on state lands by the board of trustees.—The Board of Trustees of the Internal Improvement Trust Fund is hereby authorized and empowered to negotiate, sell, and convey leasehold estates in and to lands the title to which is vested in any state board, department or agency thereof or lands the title to which is vested in the state with its control and management in any such board, department or agency, for the purpose of the development thereof, and the production therefrom, of oil and gas, to any person, firm, corporation or association authorized to do business in the state, upon such terms and conditions as may be agreed upon by the contracting parties, not inconsistent with law and the provisions of the chapter.

History.—s. 1, ch. 22824, 1945; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106; s. 2, ch. 69-369.

253.511 Reports by lessees of oil and mineral rights, state lands.—

(1) The Board of Trustees of the Internal Improvement Trust Fund shall require from each lessee of public land under s. 253.45, s. 253.47 or s. 253.51 an annual notarized report as to the status of operations on the land under lease. Such report shall include the number of holes drilled, the dates of drilling, the depth of drilling, and the results of the operation. Reports of mining operations shall also include the number of cubic yards mined. The notarized report of both mining or drilling operations shall include a financial report of moneys paid over to the state, if any. The board may require reasonable additional information, as may be necessary, for a better understanding of the operation under lease; provided, that this shall not be construed as authorizing the board to require any lessee to divulge information relating to its work product, trade secrets, or methods of operation not commonly shared with a leasing agency. Failure to submit the report required by this section within 90 days following the anniversary date of the respective lease may be grounds for revoking and setting aside any lease as to which such report should have been made.

(2) The report required by this section may be introduced in evidence in behalf of the state or any agency thereof in any court proceeding as prima facie evidence of the information contained therein.

History.—s. 1, ch. 69-236; ss. 27, 35, ch. 69-106.

253.512 Applicants for lease of gas, oil, or mineral rights; report as to lease holdings.— Each applicant for a lease concerning oil, gas, or mineral exploitation or exploration in the state shall submit to the agency of the state issuing the lease a certified statement as to any lease holdings regarding oil, gas, or minerals the applicant has which were granted by the same or any other agency of the state. Such statement shall also include the number and identification of such leases issued and the state agency which issued the lease or leases.

History.—s. 1, ch. 69-237.

253.52 Placing oil and gas leases on market by board.—Whenever in the opinion of the Board of Trustees of the Internal Improvement Trust Fund there shall be a demand for the purchase of oil and gas leases on any area, tract, or parcel of the land so owned, controlled, or managed, by any state board, department, or agency, then the board shall place such oil and gas lease or leases on the market in such blocks, tracts, or parcels as it may designate. The lease or leases shall only be made after notice by publication thereof has been made not less than once a week for 4 consecutive weeks in a newspaper of general circulation published in Leon County, and in a similar newspaper for a similar period of time published in the vicinity of the lands offered to be leased, the last publication in both newspapers to be not less than 5 days in advance of the sale date. Such notice shall be to the effect that a lease or leases will be offered for sale at such date and time as may be named in said notice and shall describe the land upon which such lease, or leases, will be offered. Before any lease of any block, tract, or parcel of land, submerged, or unsubmerged, within a radius of 3 miles of the boundaries of any incorporated city, or town, or within such radius of any bathing beach, or beaches, outside thereof, such board, department, or agency, shall through one or more of its members hold a public hearing, after notice thereof by publication once in a newspaper of general circulation published at least 1 week prior to said hearing in the vicinity of the land, or lands, offered to be leased, of the offer to lease the same, calling upon all interested persons to attend said hearing where they would be given the opportunity to be heard, all of which shall be considered by the board prior to the execution of any lease or leases to said land, and the board may withdraw said land, or any part thereof, from the market, and refuse to execute such lease or leases if after such hearing, or otherwise, it considers such execution contrary to the public welfare. Before advertising any land for lease the form of the lease or leases to be offered for sale, not inconsistent with law, or the provisions of this section, shall be prescribed by the board and a copy, or copies, thereof, shall be available to the general public at the office of the Board of Trustees of the Internal Improvement Trust Fund and the advertisements of such sale shall so state.

History.—s. 2, ch. 22824, 1945; s. 1, ch. 24339, 1947; s. 11, ch. 25035, 1949; s. 10, ch. 26484, 1951; ss. 27, 35, ch. 69-106; s. 3, ch. 69-369.

253.53 Sealed bids required.—All lands subject to this law shall be leased upon sealed bids. All bids shall be directed to the Board of Trustees of the Internal Improvement Trust Fund. The board shall determine in advance the amount of royalty, never less than one-eighth in kind, or in value, and a definite rental, increasing annually after the first 2 years, upon lands not developed for oil or gas, or upon which no well has been commenced in good faith to secure production in paying quantities of gas or oil. The board may, in its discretion, incorporate within the terms of any lease provisions for pooling or unitizing the leased premises, in whole or in part, with other lands or leases; and provisions for payments that may be made in lieu of royalty on wells which have been completed as gas wells and are capable of producing gas in paying quantities but are shut in pending development of a satisfactory market outlet, provided this shut-in period pending development of a satisfactory market outlet shall not exceed 48 months from the date of completion of such gas well or wells as herein described, if the lease is not being otherwise maintained by drilling or reworking or by production, which, if made, shall operate to cause the lease to be considered as producing in paying quantities for all purposes thereof. In addition to such fixed charges for said lease, there shall be a cash consideration. The bids shall be for this cash consideration, offered for said lease, in addition to such fixed charges for royalty, rental, and payments in lieu of royalty, and shall be payable upon acceptance of said bid. All bids shall be accompanied by a cashier's check, or certified check, for the amount of such cash consideration and shall be payable to the state board, department, or agency which holds title to or controls the land offered for lease. No bid filed subsequent to the date and hour of sale

specified in the advertisement of sale shall be considered.

History.—s. 3, ch. 22824, 1945; s. 4, ch. 69-369; s. 1, ch. 69-405; ss. 27, 35, ch. 69-106.

253.54 Competitive bidding.—On the date and at the hour specified in the advertisement of sale, the Board of Trustees of the Internal Improvement Trust Fund shall at a public meeting, open and consider any and all bids submitted prior to such date and hour for the leasing of the land, or lands, so advertised, and, in the discretion of the board, award the lease to the highest and best bidder submitting a bid therefor; provided, that if, in the judgment of the board, the bids submitted do not represent the fair value of such lease, or leases, or the execution of same is contrary to the public welfare, or the responsibility of the bidder offering the highest amount has not been established to its satisfaction, or for any other reason, it may in its discretion reject said bids, give notice and call for new or other bids, or withdraw said land from the market. If several distinct blocks, parcels, or tracts of land can be separately considered, then, and in that event, the board may so consider them, but, if they cannot be so considered, then the rejection for any cause of the highest and best bid shall result in the rejection of all bids.

History.—s. 4, ch. 22824, 1945; ss. 27, 35, ch. 69-106; s. 5, ch. 69-369.

253.55 Limitation on term of lease.—

(1) Subject to the further provisions hereof, each lease shall be for a primary term prescribed by the Board of Trustees of the Internal Improvement Trust Fund not to exceed 10 years from the date of the lease, and shall provide that such lease, upon which operations are being carried on in good faith and in a workmanlike and diligent manner with no cessation of more than 30 consecutive days, or oil or gas is being produced therefrom in paying quantities, shall remain in force and effect. The lease shall provide that if, after production is obtained therefrom, such production should cease, the lease may be maintained, if it is within the primary term, by commencing or resuming the payment of rentals or commencing operations for drilling or reworking said land, in good faith and in a workmanlike and diligent manner, on or before the rental payment date next ensuing after the expiration of 60 days, or, if it be after the expiration of the primary term, the lease may be maintained in force and effect by commencing and continuing operations for drilling or reworking said land for the development and production of oil or gas on or before 60 days after the cessation of production and prosecuting same with diligence and in a workmanlike manner with no cessation for more than 30 consecutive days, and if such operations within a reasonable time thereafter result in the production of oil or gas from such leased land in paying quantities, the lease shall remain in effect thereafter as long as oil or gas is produced therefrom in paying quantities. The provisions of this section shall not be construed to permit the automatic renewal of a lease by option after the expiration of the primary term, nor to permit the continuance of any lease except in accordance with the provisions of this section.

(2) Each lease shall provide for its termination in the absence of drilling or reworking operations or production of oil or gas therefrom in paying quantities.

(3) Every such lease executed by the board of trustees shall require the lessee and his assigns to commence and complete operations for the drilling of at least one test well on the lands leased within the first two and one-half year period of the term of such lease and to commence and complete operations for the drilling of at least one additional well in each succeeding two and one-half-year period of the term of said lease, until the total number of wells drilled shall equal one-half the number of sections of land embraced in the lease, and, after commencing such operations, to prosecute same in good faith, and with reasonable diligence and in a workmanlike manner, to discover and to develop said land for the production of oil and gas, until such well is completed or abandoned. The lessee and his assigns, at the time the drilling of each well is commenced, shall file with the lessor a written declaration describing the two sections of land to which such well shall apply. If no well shall be commenced and continued to completion with reasonable diligence and in a workmanlike manner, to discover and develop said land for the production of oil and gas, until such well is completed or abandoned, within the first two and one-half year period of the term of such lease, the entire lease shall be void. If no additional well shall be commenced and continued to completion with reasonable diligence and in a workmanlike manner, to discover and develop said land for the production of oil and gas, until such well is completed, or abandoned, then such lease at the end of such applicable two and one-half year period of the term of such lease shall become forfeited and void as to all of the land covered by said lease except that upon which wells have been drilled in accordance with the provisions of this law.

History.—s. 5, ch. 22824, 1945; s. 1, ch. 69-238; ss. 27, 35, ch. 69-106; s. 6, ch. 69-369.

253.56 Responsibility of bidder.—Before the acceptance of any bid for such lease the Board of Trustees of the Internal Improvement Trust Fund shall establish to its satisfaction the responsibility of the bidder. And no lease shall be assigned in whole, or in part, nor any land covered thereby, until and except the board shall approve and consent to such assignment, and such permission shall not be unreasonably withheld.

History.—s. 6, ch. 22824, 1945; ss. 27, 35, ch. 69-106; s. 7, ch. 69-369.

253.57 Royalties.—The state's royalties, a part of the consideration of every lease, shall be computed after deducting any oil or gas reasonably used for the production hereof.

History.—s. 7, ch. 22824, 1945.

253.571 Surety or property bond required of lessee prior to commencement of drilling.—The Board of Trustees of the Internal Improvement Trust Fund shall require a surety or property bond from each lessee of public land prior to the time such lessee mines, drills or extracts in any manner, petroleum, petroleum products, gas, sulphur, or any other mineral from such land. The surety bond shall be

from a surety company authorized to do business in the state. The bond shall serve as security and is to be forfeited to the board to pay for any damages caused by mining or drilling operations of the lessee. In the case of operations planned in the waters of the state or under other particular circumstances which, by their nature warrant greater security in view of possible damages, the board shall give special consideration to the extent of such possible damages and shall set the amount of an adequate and sufficient bond accordingly. For the purposes of this section damages shall include, but not be limited to, air and water pollution, destruction of wildlife or marine productivity and any other damage which impairs the health and general welfare of the citizens of the state.

History.—s. 1, ch. 69-367; ss. 27, 35, ch. 69-106.

253.58 Manner of drilling.—All wells in this law referred to required in the several periods of said lease to be drilled, shall be drilled in an efficient, diligent, and workmanlike manner, and in accordance with the best practice, to a depth of 6,000 feet before the abandonment thereof, unless oil or gas has been found in paying quantities at a lesser depth.

History.—s. 8, ch. 22824, 1945.

253.60 Conflicting laws.—The development of the lands leased by the Board of Trustees of the Internal Improvement Trust Fund for the production of oil and gas therefrom shall be in accord with the laws of Florida relating to conservation and control and, if herein is found any conflict with those laws, such laws relating to conservation and control shall prevail.

History.—s. 10, ch. 22824, 1945; ss. 27, 35, ch. 69-106; s. 8, ch. 69-369.

253.61 Lands not subject to lease.—

(1) Regardless of anything to the contrary contained in this law in any previous section or part thereof, no board or agency mentioned therein or the state shall have the power or authority to sell, execute or enter into any lease of the type covered by this law relating to any of the following lands, submerged or unsubmerged, except under the circumstances and conditions as hereinafter set out in this section, to wit:

(a) No lease of the type covered by this law shall be granted, sold or executed covering such lands within the corporate limits of any municipality unless the governing authority of the municipality shall have first duly consented to the granting or sale of such lease by resolution.

(b) No lease of the type covered by this law shall be granted, sold or executed covering any such lands in the tidal waters of the state, abutting on or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters, unless the governing authority of the municipality shall have first duly consented to the granting or sale of such lease by resolution.

(c) No lease of the type covered by this law shall be granted, sold or executed covering such lands on any improved beach, located outside of an incorporated town or municipality, or covering such lands in the tidal waters of the state abutting on or immediately adjacent to any improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters, unless the county commissioners of the county in which such beach is located shall have first duly consented to the granting or sale of such lease by resolution.

(2) For the purposes of this section and law an improved beach, situated outside of the corporate limits of any municipality or town, shall be and is hereby defined to be any beach adjacent to or abutting upon the tidal waters of the state and having not less than ten hotels, apartment buildings, residences or other structures, used for residential purposes, on or to any given miles of such beach.

History.—s. 11, ch. 22824, 1945.

253.62 Board of trustees authorized to convey certain lands without reservation.—

(1) The Board of Trustees of the Internal Improvement Trust Fund in making exchanges of land under ss. 253.42 and 253.43, is hereby authorized in its discretion to convey said land without reservations of oil and gas or of phosphate and other minerals required by s. 270.11, where deeds to lands received in exchange convey title in fee simple without such reservations or to determine the part or parts to be reserved and the part or parts to be conveyed, so as to facilitate exchange on a basis as nearly equal as may be.

(2) The Board of Trustees of the Internal Improvement Trust Fund is further authorized in its discretion to convey land to the United States free from reservations for oil, gas, phosphate and other minerals, provided agreement satisfactory to the board be effectuated with the United States whereby, in the event oil, gas, phosphate or other minerals are ever produced from said land, said board shall receive the customary royalty therefrom. In any conveyance heretofore made to the United States for national park or related purpose subsequent to June 30, 1943, which contained such reservations, said board shall have authority to convey said reservations subject to the conditions hereof in respect to customary royalty.

(3) The authority to convey, granted in subsection (2), shall apply to the conveyance of lands by the board of trustees to the United States for the establishment of the Biscayne National Monument, as defined by Pub. L. No. 90-606 of the United States, and the board is authorized to convey public lands to the United States for the establishment of the Biscayne National Monument. All acts and actions of the board of trustees and all agreements between the board and the United States Government regarding the conveyance of any state lands to the United States for the establishment of the Biscayne National Monument are hereby ratified, confirmed, and validated. For the purposes of the conveyance authorized by this subsection, no provision of this chapter shall apply, and the board of trustees shall not be required, prior to such conveyance, to comply with any conditions precedent to sale of lands set out in this chapter, nor shall the board be required to reserve oil, gas, phosphate, or other mineral rights, or enter into an agreement for royalties, if any, if same are produced from said lands. However, the waiver

herein shall not apply to the requirements of this chapter relating to the setting of bulkhead lines and to dredging and filling.

(4) The legislative intent embodied in this section is to authorize the board of trustees to convey or obligate itself to convey the herein referred to state-owned lands in accordance with the provisions of Pub. L. No. 90-606. Upon certification to the board by the United States Government that all private lands intended to be acquired have been acquired and that owners of private property who have not donated or otherwise conveyed their lands have been paid therefor, the conveyance herein authorized shall become absolute. Nothing herein shall alter the right of the United States Government to immediate possession of said state-owned lands.

History.—ss. 1, 2, ch. 23617, 1947; s. 11, ch. 25035, 1949; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106; s. 1, ch. 70-364; s. 1, ch. 70-439.

[1]253.66 Change in bulkhead lines, Pinellas County.—

(1) As soon as a county bulkhead line as provided in s. 253.122 has been fixed by the water and navigation control authority of Pinellas County around the mainland of the county and the offshore islands therein, and the bulkhead line has been formally approved by the Board of Trustees of the Internal Improvement Trust Fund of the state, all in accordance with the provisions of s. 253.122, no further change in said bulkhead line shall be made notwithstanding the provisions of s. 253.122(5).

(2) It is hereby declared to be the intent of the Legislature that subsection (1) is necessary for the protection of navigable waters in Pinellas County and the fish, wildlife and natural resources therein.

History.—ss. 1-5, ch. 59-522; s. 2, ch. 61-119; s. 1, ch. 61-264; ss. 27, 35, ch. 69-106.

[1]Note.—See s. 26, ch. 75-22, which repealed s. 253.122, relating to the power to fix bulkhead lines, and s. 7(3), ch. 75-22 (s. 253.1221), which reestablished all previously established bulkhead lines at the line of mean high water or ordinary high water.

253.665 Grant of easements, licenses, leases, etc.—

(1) The Board of Trustees of the Internal Improvement Trust Fund of this state is authorized and empowered to grant unto riparian owners as herein defined, their heirs, successors and assigns, perpetual easements and easements, licenses and leases for specified terms of years, permitting such riparian owners, their heirs, successors and assigns, to construct, maintain and operate structures and facilities on, in and under the bed of any navigable stream or any river owned in whole or in part by the state, for the purpose of providing water of a suitable quality for industrial, domestic or other use; provided, however, any instrument granting such easement, lease or license may contain provisions to the effect that such structures and facilities shall be so constructed as not to obstruct the channel of the stream or river or unreasonably interfere with navigation, commerce or fishing thereon.

(2) For the purposes of this section, the term "riparian owners" shall include the owners of uplands bounded by either the high-or low-water mark of any stream or river and shall include lessees and licensees of any such owners or grantees in easements from such owners of such uplands or river bottoms. The term "channel" shall mean the marked, buoyed, or artificially dredged channel, if any, and if none, shall mean a space equal to 20 percent of the average width of the river or stream at the point concerned which furnishes uninterruptedly, through its course, the deepest water at mean low water.

(3) This section is cumulative and shall not restrict or limit any title, right, interest or privilege of any riparian owner under the common law.

History.—ss. 1-3, ch. 57-325; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.
Note.—Former s. 271.10.

253.67 Definitions.—As used in ss. 253.67-253.75:

(1) "Aquaculture" means the cultivation of animal and plant life in a water environment.

(2) "Water column" means the vertical extent of water, including the surface thereof, above a designated area of submerged bottom land.

(3) "Department" means the Department of Natural Resources.

(4) "Board" means the Board of Trustees of the Internal Improvement Trust Fund.

History.—s. 1, ch. 69-46; ss. 25, 27, 35, ch. 69-106.

253.68 Authority to lease submerged land and water column.—To the extent that it is not contrary to the public interest, and subject to limitations contained in ss. 253.67-253.75, the board of trustees may lease submerged lands to which it has title for the conduct of aquaculture activities and grant exclusive use of the bottom and the water column to the extent required by such activities. Such leases may authorize use of the submerged land and water column for either commercial or experimental purposes. However no lease shall be granted by the board when there is filed with it a resolution of objection adopted by a majority of the county commission of a county within whose boundaries, if the same were extended to the extent of the interest of the state, the proposed leased area would lie. Said resolution shall be filed with the board of trustees within 30 days of the date of the first publication of notice as required by s. 253.70. Prior to the granting of any such leases, the board shall establish and publish a list of guidelines to be followed when considering applications for lease. Such guidelines shall be designed to protect the public's interest in submerged lands and the publicly owned water column.

History.—s. 1, ch. 69-46; ss. 27, 35, ch. 69-106.

253.69 Application to lease submerged land and water column.—Any applicant desiring to lease a portion of the submerged lands of this state for the purpose of conducting aquaculture activities shall file with the board a written application in such form as it may prescribe, setting forth the following information:

(1) The name and address of the applicant.

(2) A reasonably concise description of the location and amount of submerged land desired and either:

(a) Attaching a map or plat of a survey of such lands; or

(b) Enclosing a sum sufficient to defray the cost of such a survey as estimated by the department.

(3) A description of the aquaculture activities to be conducted, including a specification whether such

activities are to be experimental or commercial and an assessment of the current capability of the applicant to carry on such activities.

(4) Such other information as the board of trustees may by regulation require.

History.—s. 1, ch. 69-46; ss. 25, 27, 35, ch. 69-106.

253.70 Public notice and hearings.—

(1) Upon receiving an application under this act that satisfactorily sets forth the information required by s. 253.69, the board shall give notice of the application by publication in a newspaper published in the county in which the submerged lands are located not less than once a week for 3 consecutive weeks and mail copies of such notice by certified or registered mail to each riparian owner of upland lying within 1,000 feet of the submerged land proposed to be leased, addressed to such owner as his name and address appears on the latest county tax assessment roll.

(2) If no written objections are filed within 30 days after the date of first publication of the notice and if the board finds that the proposed lease is not incompatible with the public interest, the board has authority to consummate the lease contract as hereinafter provided. However, failure to mail the notice to the riparian upland owners shall not invalidate such lease.

(3) If written objections are filed, the board shall proceed to determine the same. Any required hearing shall be held in the county from which the application was received. Timely notice of such hearing shall be given by at least one publication in a newspaper published in the county in which the submerged lands are located and by certified or registered mail to each riparian owner of upland lying within 1,000 feet of the submerged land proposed to be leased, addressed to such owner as his name and address appears on the latest county tax assessment roll, in addition to any other notice required by law.

History.—s. 1, ch. 69-46; ss. 27, 35, ch. 69-106; s. 23, ch. 78-95.
cf.—s. 1.01 "Registered mail" defined to include certified mail.

253.71 The lease contract.—When the board has determined that the proposed lease is not incompatible with the public interest and that the applicant has demonstrated his capacity to perform the operations upon which the application is based, it may proceed to consummate a lease contract having the following features in addition to others deemed desirable by the board:

(1) TERM.—The maximum initial terms shall be 10 years. Leases shall be renewable for successive terms up to the same maximum upon agreement of the parties. However, before renewing the term of any lease, the board shall invite objections by following the publication procedures of s. 253.70.

(2) RENTAL FEES.—

(a) The lease contract shall specify such amount of rental per acre of leased bottom as may be agreed to by the parties and shall take the form of:

1. Fixed rental to be paid throughout the term of the lease; or

2. A basic rental charge which will be supplemented by royalties after the productivity of the aquaculture enterprise has been established.

(b) In setting the amount of the rental charge or royalties the board shall consider such factors as the probable rates of productivity and the marketability and value of the product of the enterprise.

(c) All leases shall stipulate for the payment of the annual rental in advance on or before January 1. Failure of the lessee to pay such rent within 30 days of such date shall constitute ground for cancellation of the lease and forfeiture to the state of all works, improvements, and animal and plant life in and upon the leased land and water column.

(3) MAXIMUM AREA TO BE LEASED.—The board shall not lease a larger area of submerged land to any single lessee than has been demonstrated to be within his capacity to utilize efficiently and consistent with the public interest. However, the board may hold a reasonable area of adjacent bottom land in reserve for the time when a holder of an experimental lease will begin operation under a commercial lease. Successful conduct of aquaculture activities on an experimental basis may be accepted as a demonstration of capacity to conduct such operations on a commercial basis.

(4) PERFORMANCE REQUIREMENTS; BOND.—Failure of the lessee to perform substantially the aquaculture activities for which the lease was granted shall constitute ground for cancellation of the lease and forfeiture to the state of all the works, improvements, and animal and plant life in and upon the leased land and water column. In addition, the board shall require execution of a bond in an amount and with a surety satisfactory to it and conditioned upon the active pursuit of the aquaculture activities specified in the lease.

(5) DISPOSITION OF IMPROVEMENTS AT TERMINATION OF CONTRACT.—Each contract entered into under this act shall stipulate the disposition of improvements and assets upon the leased lands and waters, including animal and plant life resulting from aquaculture activities.

(6) ASSIGNABILITY OF LEASES.—Leases granted under this act shall be assignable in whole or in part with the approval of the board.

History.—s. 1, ch. 69-46; ss. 27, 35, ch. 69-106.

253.72 Marking of leased areas; restrictions on public use.—

(1) The board shall require all lessees to stake off and mark the areas under lease by appropriate ranges, monuments, stakes, buoys, and fences, so placed as not to interfere unnecessarily with navigation and other traditional uses of the surface. All lessees shall cause the area under lease and the names of the lessees to be shown by signs appropriately placed pursuant to regulations of the board.

(2) Except to the extent necessary to permit the effective development of the species of animal or plant life being cultivated by the lessee, the public shall be provided with means of reasonable ingress and egress to and from the leased area for traditional water activities such as boating, swimming, and fishing. All limitations upon the use by the public of the areas under lease that are authorized by the terms of the lease shall be clearly posted by the lessee pursuant to regulations by the board. Any person willfully violating posted restrictions shall be guilty of a

misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 69-46; ss. 27, 35, ch. 69-106; s. 154, ch. 71-136.

253.73 Rules and regulations; ss. 253.67-253.75.—Subject to the requirements of chapter 120, the board may adopt rules and regulations necessary and appropriate to carry out the provisions of ss. 253.67-253.75.

History.—s. 1, ch. 69-46; ss. 27, 35, ch. 69-106.

253.74 Penalties.—

(1) Any person who conducts aquaculture activities in excess of those authorized by lease agreement with the board or who conducts such activities on state-owned submerged lands without having previously leased the same shall be guilty of a misdemeanor and subject to imprisonment for not more than 6 months or fine of not more than $1,000, or both. In addition to such fine and imprisonment, all works, improvements, animal and plant life involved in the project, may be forfeited to the state.

(2) Any person who is found by the Department of Natural Resources or the Department of Environmental Regulation to have violated the provisions of chapter 403 shall be subject to having his lease of state-owned submerged lands canceled.

History.—s. 1, ch. 69-46; ss. 25-27, 35, ch. 69-106; s. 2, ch. 71-137; s. 10, ch. 79-65.

253.75 Studies and recommendations by the Department of Natural Resources and the Game and Fresh Water Fish Commission; designation of recommended traditional and other use zones; supervision of aquaculture operations.—

(1) Prior to the granting of any lease under this act, the board shall request a recommendation by the [1]Department of Natural Resources, when the application relates to tidal bottoms, and by the Game and Fresh Water Fish Commission, when the application relates to bottom land covered by fresh water. Such recommendations shall be based on such factors as an assessment of the probable effect of the proposed leasing arrangement on the lawful rights of riparian owners, navigation, commercial and sport fishing, and the conservation of fish or other wildlife or other natural resources, including beaches and shores.

(2) The [1]department and the Game and Fresh Water Fish Commission shall both have the following responsibilities with respect to submerged land and water column falling within their respective jurisdictions:

(a) To undertake, or cause to be undertaken, the studies and surveys necessary to support their respective recommendations to the board;

(b) To institute procedures for supervising the aquaculture activities of lessees holding under this act and reporting thereon from time to time to the board; and

(c) To designate in advance areas of submerged land and water column owned by the state for which they recommend reservation for uses that may possibly be inconsistent with the conduct of aquaculture activities. Such uses shall include, but not be limited to, recreational, commercial and sport fishing and other traditional uses, exploration for petroleum and other minerals, and scientific instrumentation. The existence of such designated areas shall be considered by the board in granting leases under this act.

History.—s. 1, ch. 69-46; ss. 25, 27, 35, ch. 69-106.

[1]Note.—See s. 11, ch. 75-22, which transfers all powers of the Department of Natural Resources relating to permits, licenses, and exemptions to the Department of Environmental Regulation.

253.76 Appeals; proceedings.—The Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund and as the owners of state lands are vested with the authority to hear and decide appeals of decisions of the Department of Environmental Regulation under this chapter. Notice of such appeal shall be filed with the Governor and Cabinet within 15 days of such decision. The hearing shall be appellate in nature; however, the Governor and Cabinet may, at their discretion, take additional testimony. Such hearings shall be completed and a decision rendered within 60 days of receipt of the appeal. Hearings shall be in accordance with provisions of chapter 120.

History.—s. 5, ch. 75-22; s. 11, ch. 79-65.

253.763 Judicial review relating to permits and licenses.—

(1) As used in this section, unless the context otherwise requires:

(a) "Agency" means any official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of state government.

(b) "Permit" means any permit or license required by this chapter.

(2) Any person substantially affected by a final action of any agency with respect to a permit may seek review within 90 days of the rendering of such decision and request monetary damages and other relief in the circuit court in the judicial circuit in which the affected property is located; however, circuit court review shall be confined solely to determining whether final agency action is an unreasonable exercise of the state's police power constituting a taking without just compensation. Review of final agency action for the purpose of determining whether the action is in accordance with existing statutes or rules and based on competent substantial evidence shall proceed in accordance with chapter 120.

(3) If the court determines the decision reviewed is an unreasonable exercise of the state's police power constituting a taking without just compensation, the court shall remand the matter to the agency which shall, within a reasonable time:

(a) Agree to issue the permit;

(b) Agree to pay appropriate monetary damages; however, in determining the amount of compensation to be paid, consideration shall be given by the court to any enhancement to the value of the land attributable to governmental action; or

(c) Agree to modify its decision to avoid an unreasonable exercise of police power.

(4) The agency shall submit a statement of its agreed-upon action to the court in the form of a proposed order. If the action is a reasonable exercise of police power, the court shall enter its final order approving the proposed order. If the agency fails to submit a proposed order within a reasonable time

not to exceed 90 days which specifies an action that is a reasonable exercise of police power, the court may order the agency to perform any of the alternatives specified in subsection (3).

(5) The court shall award reasonable attorney's fees and court costs to the agency or substantially affected person, whichever prevails.

(6) The provisions of this section are cumulative and shall not be deemed to abrogate any other remedies provided by law.

History.—ss. 1-6, ch. 78-85.
Note.—Also published at ss. 161.212, 373.617, 380.085, and 403.90.

253.77 State lands; state agency authorization for use prohibited without consent of agency in which title vested.—

(1) No department, including any division, bureau, section, or other subdivision thereof, or any other agency of the state possessing regulatory powers involving the issuance of permits shall issue any permit, license, or other evidence of authority involving the use of sovereignty or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund or the Department of Natural Resources under chapter 253, until the applicant for such permit, license, or other evidence of permission shall have received from the Board of Trustees of the Internal Improvement Trust Fund the required lease, license, easement, or other form of consent authorizing the proposed use and exhibited it to such agency or department or subdivision thereof having regulatory power to permit such use.

(2) This act shall not apply to any permit, license, or other form of consent to take the regulated action which was issued and outstanding on June 23, 1976.

History.—ss. 1, 2, ch. 76-245.

[1]253.781 Authority to convey state-owned lands in the Oklawaha River and Valley to the Federal Government for inclusion in Ocala National Forest.—

(1) It is the intent of the Legislature to conserve and protect the natural resources and scenic beauty of the Oklawaha River and Valley bounding the Ocala National Forest in Putnam and Marion Counties. It is the finding of the Legislature that said Oklawaha River and Valley bounding the Ocala National Forest are areas containing and having a significant impact upon environmental and recreational resources of statewide importance and that public ownership of and access to such areas are necessary and desirable to protect the health, welfare, safety, and quality of life of the residents of this state and to implement s. 7, Art. II of the State Constitution. It is further the finding of the Legislature that ownership and control of the said lands by the Federal Government as part of the Ocala National Forest will properly protect and conserve the natural resources and scenic beauty of Florida, enhance recreational opportunities, and be in the public interest.

(2) The Department of Natural Resources is authorized and directed to transfer ownership of all lands or interests in lands owned by the Board of Trustees of the Internal Improvement Trust Fund, including all fee and less-than-fee interests in lands previously owned by the Canal Authority, contained within the extended boundary of the Ocala National Forest as shown on the map dated July 1978 on file with the Chief of the Forest Service, Department of Agriculture, Washington, District of Columbia, and available to the public in the office of the appropriate United States regional forester, forest supervisor, or forest ranger and in the office of the Department of Natural Resources, to the United States Department of Agriculture for the purpose of inclusion in the Ocala National Forest. The Department of Natural Resources shall make such conveyance for payment of no less than the fair market value for such lands as authorized by the head of the Department of Natural Resources. Any conveyance by the Department of Natural Resources to the United States Department of Agriculture or other federal department or agency shall include the lands which comprise the Rodman Dam and Rodman Reservoir, also known as Lake Ocklawaha, only if the Governor and Cabinet, as the head of the Department of Natural Resources, shall determine that such conveyance is consistent with the conclusions of the land management plan required herein. If such plan shall provide for the continued use and maintenance of the Lake Ocklawaha lands for recreational and scientific purposes, any deed conveying such lands shall contain appropriate restrictions assuring such continued use.

(3) The Governor and Cabinet as the head of the Department of Natural Resources are empowered and authorized to acquire by purchase, exchange of other state lands, or the exercise of the power of eminent domain the fee title to lands acquired in less-than-fee title along the canal route within the area described in subsection (2). The Legislature finds that such exercise of the power of eminent domain to accomplish the purposes of this section is necessary and for a public purpose. Such power of eminent domain shall be exercised pursuant to the provisions of chapter 73.

(4) Lands transferred pursuant to this section by the Department of Natural Resources may reserve existing road rights-of-way.

History.—s. 2, ch. 79-167.
[1]Note.—Effective only upon deauthorization of the Cross Florida Barge Canal Project by the United States Congress, on the effective date of such deauthorization by the United States Congress.

[1]253.782 Retention of state-owned lands in and around Lake Rousseau and the Cross Florida Barge Canal right-of-way from Lake Rousseau west to the Withlacoochee River.—

(1) It is the intent of the Legislature to conserve, protect, and maintain the natural resources, recreational values, and water management capabilities of Lake Rousseau and the Withlacoochee River. It is the finding of the Legislature that said lands and waters are areas containing and having a significant impact on environmental and recreational resources of statewide importance and that public ownership of and access to such areas are necessary and desirable to protect the health, welfare, safety, and quality of life of the residents of this state and to implement s. 7, Art. II of the State Constitution. It is further the finding of the Legislature that retention of ownership and control of said lands by the state will properly protect and conserve the natural resources of

Florida, enhance recreational opportunities, and be in the public interest.

(2) The Department of Natural Resources is authorized and directed to retain ownership of and maintain all lands or interests in land owned by the Board of Trustees of the Internal Improvement Trust Fund including all fee and less-than-fee interests in lands previously owned by the Canal Authority in Lake Rousseau and the Cross Florida Barge Canal right-of-way from Lake Rousseau at U.S. Highway 41 west to and including the Withlacoochee River.

(3) The Governor and Cabinet as head of the Department of Natural Resources are empowered, authorized, and directed to acquire by purchase, exchange of other state lands, or the exercise of the power of eminent domain the fee title to any less-than-fee title interest in land owned by the Board of Trustees of the Internal Improvement Trust Fund, including interests previously owned by the Canal Authority, as described in subsection (2). The Legislature finds that such exercise of the power of eminent domain to accomplish the purposes of this section is necessary and for a public purpose. Such power of eminent domain shall be exercised pursuant to the provisions of chapter 73.

(4) The Department of Natural Resources shall recommend to the Governor and Cabinet the establishment of an interagency advisory committee to report to the department regarding restoration and management of the Withlacoochee River, with special emphasis on control of saltwater intrusion.

History.—s. 3, ch. 79-167.

[1]**Note.**—Effective only upon deauthorization of the Cross Florida Barge Canal Project by the United States Congress, on the effective date of such deauthorization by the United States Congress.

[1]253.783 Additional powers and duties of the Department of Natural Resources.—

(1) The Department of Natural Resources shall make no further expenditures for the purpose of acquiring land for constructing, operating, or promoting a canal across the peninsula of Florida connecting the waters of the Atlantic Ocean with the waters of the Gulf of Mexico via the St. Johns River.

(2) It is declared to be in the public interest that the department shall do and is hereby authorized to do any and all things and incur and pay from the Cross Florida Barge Canal Trust Fund, for the public purposes described herein, any and all expenses necessary, convenient, and proper to:

(a) Develop a management plan to be submitted to the Legislature no later than 1 year from the effective date of this act for the retention or disposition of lands acquired for the Cross Florida Barge Canal and not disposed of by this act, which plan shall reflect a consideration of alternatives for disposition of all lands in fee or less than fee owned by the Board of Trustees of the Internal Improvement Trust Fund, including those previously owned by the Canal Authority and the U.S. Army Corps of Engineers, from the western boundary of the expanded Ocala National Forest west to U.S. Highway 41, the Cross Florida Barge Canal right-of-way from the Withlacoochee River west to the Gulf of Mexico, and from the eastern boundary of the expanded Ocala National Forest, as depicted by the map referred to in s. 253.781(2), east to the St. Johns River. Such alternatives for disposition will include possible retention by any interested state agency for specific public purposes and a declaration of lands not to be retained as surplus lands to be disposed of pursuant to paragraph (d), paragraph (e), or paragraph (f). The management plan shall also address any remedial measures necessary to correct any environmental or economic damage caused by works constructed as a part of or as a result of the uncompleted sections of the Cross Florida Barge Canal.

(b) Develop a management plan for the lands comprising the Rodman Dam and Rodman Reservoir, also known as Lake Ocklawaha, identifying the recreational and scientific management options which are most environmentally desirable and cost-effective. Such management plan shall contain a specific determination regarding the continued maintenance of the Rodman Dam and Reservoir (Lake Ocklawaha) or the drainage of the reservoir and restoration of the area to its former natural state, as the case may be.

(c) Operate and maintain existing lands and interests in lands, appurtenances, structures, and facilities until further disposition is directed by the Legislature pursuant to the management plan.

(d) Offer any land declared surplus, at current appraised value, to only the original owner from whom the Canal Authority of the State of Florida or the U.S. Army Corps of Engineers acquired the land but not to his heirs or assigns or any other person. The department shall offer and is authorized to reconvey, for no consideration, any donated land declared surplus to only the original donor or his heirs but not his assigns or any other person. These offers shall be made by public advertisement in not less than three newspapers of general circulation within the area of the canal route, one of which shall be a newspaper in the county where the lands declared surplus are located. These offers shall be valid for 1 calendar year from the date the management plan is adopted by the Legislature.

(e) Extend the second right of refusal to counties in which the surplus land lies for acquisition for specific public purposes with any such sale price at current appraised value charged against the dollar figure, including interest, of the repayment to be made to that county.

(f) Offer surplus lands not purchased or transferred under paragraph (c) or paragraph (d) to the highest bidder at public sale. Such surplus lands and the public sale shall be described and advertised in a newspaper of general circulation within the county in which the lands are located not less than 14 calendar days prior to the date on which the public sale is to be held. The current appraised value of such surplus lands will be the minimum acceptable bid.

(g) Refund to the counties of the Cross Florida Canal Navigation District funds derived from the conveyance of lands of the project to the Federal Government or any agency thereof, pursuant to s. 253.781, and from the sales of surplus lands pursuant to this section. Such refunds shall be in proportion to the ad valorem tax share paid to the Cross Florida Canal Navigation District by the respective counties. Refunds to the counties shall include interest on the amounts from the time of their payment

by the counties to the date of repayment pursuant to this act. Interest to be refunded to the counties shall be compounded annually at the following rates: 1937-1950, 4 percent; 1951-1960, 5 percent; 1961-1970, 6 percent; 1971-1975, 7 percent; 1976-refund date, 8 percent. In computing interest, amounts already repaid to the counties shall not be subject to further assessments of interest. Any partial repayments provided to the counties under this act shall be considered as contributing to the total repayment owed to the counties. Should the funds generated by conveyance to the Federal Government and sales of surplus lands be more than sufficient to repay said counties in accordance with this section, such excess funds shall be deposited in the Cross Florida Barge Canal Trust Fund. In no case shall general revenue funds be used to repay interest owed to the counties.

(h) Establish an advisory committee to report to the department regarding the development of the management plan. This committee shall be composed of one representative from each of the following: Department of Natural Resources, Department of Environmental Regulation, Game and Fresh Water Fish Commission, Department of Transportation, [2]Department of Administration-Division of State Planning, Southwest Florida Water Management District, St. Johns Water Management District, Duval County, Clay County, Putnam County, Marion County, Levy County, and Citrus County, and it shall also be composed of four members of the public at large appointed by the Governor and Cabinet. The department shall conduct public hearings to receive comments and recommendations as to the disposition of lands under the management plan.

(i) Carry out the purposes of this act.

(3) The department shall seek and utilize federal funds and enter into agreements with the Federal Government or any agency thereof to effectuate the purposes of this act.

History.—s. 4, ch. 79-167.

[1]**Note.**—Effective only upon deauthorization of the Cross Florida Barge Canal Project by the United States Congress, on the effective date of such deauthorization by the United States Congress.

[2]**Note.**—See s. 2, ch. 79-190, which abolished the Division of State Planning and transferred the bulk of its powers, duties, and functions to the Executive Office of the Governor.

[1]**253.784 Contracts.**—The Department of Natural Resources shall have the power and authority to enter into any and all contracts necessary or convenient to the exercise of any of the powers granted to the department by this act. The department is authorized to assign, transfer, and convey to the United States, or to any appropriate agency thereof, such assets, franchises, and property, or interests therein, of the department, including lands, easements, and rights-of-way acquired by the state, and to accept moneys for the same as may be necessary or convenient to the exercise of such powers consistent with this act. The department is authorized to receive by dedication, grant, or transfer any fee or less-than-fee lands owned by the U.S. Army Corps of Engineers. The department is authorized to enter into agreements with the Federal Government for restoration of areas or receipt of funds for restoration of areas in and around Lake Rousseau, the Cross Florida Barge Canal right-of-way from Lake Rousseau to the Withlacoochee River, the Withlacoochee River, and the Cross Florida Barge Canal right-of-way from the eastern boundary of the expanded Ocala National Forest to the St. Johns River.

History.—s. 6, ch. 79-167.

[1]**Note.**—Effective only upon deauthorization of the Cross Florida Barge Canal Project by the United States Congress, on the effective date of such deauthorization by the United States Congress.

[1]**253.785 Liberal construction of act.**—It is intended that the provisions of this act shall be liberally construed for accomplishing the work authorized and provided for or intended to be provided for by this act, and when strict construction would result in the defeat of the accomplishment of any part of the work authorized by this act, and a liberal construction would permit or assist in the accomplishment thereof, the liberal construction shall be chosen.

History.—s. 10, ch. 79-167.

[1]**Note.**—Effective only upon deauthorization of the Cross Florida Barge Canal Project by the United States Congress, on the effective date of such deauthorization by the United States Congress.

CHAPTER 254

NATIONAL FOREST TRUST FUND

254.01 Comptroller may distribute National Forest Trust Fund.—The Comptroller may make distribution of the National Forest Trust Fund, when so requested by the counties in interest, of such amounts as may be accumulated in said fund.

History.—s. 3, ch. 7405, 1917; RGS 1096; CGL 1449; s. 2, ch. 61-119.

254.02 Comptroller to apportion funds; method of distribution.—The Comptroller shall ascertain, from the records of the General Land Office, or other departments in Washington, D. C., the number of acres of land situated in the several counties in which the Choctawhatchee and the Ocala Forest Reserves are located, and the number of acres of land of such forest reserve embraced in each of the counties in each of said reserves, and also, the amount of money received by the United States Government from each of said reserves, respectively; and the Comptroller shall apportion the money on hand to each county in each reserve, respectively and separately; said distribution to be based upon the number of acres of land embraced in the Choctawhatchee Forest and Ocala Forest, respectively, in each county; and to be further based upon the amount collected by the United States from each of said forests, so that such distribution, when made, will include for each county the amount due each county, based upon the receipts for the particular forest, and the acreage in the particular county in which such forest is located; and said Comptroller shall issue a warrant on the State Treasurer in each case, payable to each of said counties, and the amount so apportioned to each county shall be applied by such counties, equally divided between the district school fund and the general road fund of said counties.

History.—ss. 1, 2, ch. 6966, 1915; ss. 2, 3, ch. 7405, 1917; RGS 1094, 1095; CGL 1447, 1448; s. 7, ch. 22858, 1945; s. 1, ch. 69-300; s. 81, ch. 77-104.

254.03 Comptroller to adjust apportionment when actual figures not obtainable.—In the event that actual figures of receipts from different reserves cannot be obtained by counties, so as to fully comply with ss. 254.01 and 254.02, the Comptroller may adjust the matter according to the United States Statutes, or as may appear to him to be just and fair, and with the approval of all counties in interest.

History.—ss. 1, 2, ch. 6966, 1915; ss. 2, 3, ch. 7405, 1917; RGS 1094, 1095; CGL 1447, 1448.

254.05 Fund appropriated for payment of warrants.—The moneys that may be received and credited to the National Forest Trust Fund are appropriated for the payment of the warrants of the Comptroller drawn on the State Treasurer in pursuance of this chapter.

History.—s. 4, ch. 7405, 1917; RGS 1097; CGL 1450; s. 2, ch. 61-119.

CHAPTER 255

PUBLIC PROPERTY AND PUBLICLY OWNED BUILDINGS

255.01 Proceeds of insurance may be used to replace property destroyed.—When any state, county, municipal, or other public property of this state, is destroyed or partially destroyed, by fire or otherwise, upon which there is insurance, the proceeds of such insurance, when collected, may be used by the officer having the supervision of the property destroyed, for the purpose of construction to replace such property, or for the repair thereof.

History.—s. 1, ch. 6184, 1911; RGS 1203; CGL 1680.
cf.—ch. 284, Part I Florida Fire Insurance Trust Fund.

255.02 Boards authorized to replace buildings destroyed by fire.—The Department of General Services, the Board of Regents of the Department of Education, or any other board or person having the direct supervision and control of any state building or state property, may have rebuilt or replaced, out of the proceeds from the fire insurance on such buildings or property, any buildings or property owned by the state, which may be destroyed in whole or in part by fire.

History.—s. 1, ch. 6518, 1913; RGS 1204; CGL 1681; s. 2, ch. 63-204; ss. 15, 22, 35, ch. 69-106.
cf.—ch. 284, Part I Florida Fire Insurance Trust Fund.

255.03 Proceeds of insurance to be paid into State Treasury; disbursement of funds.—

(1) The proceeds from the insurance of any state building or state property covered by insurance which may be destroyed in whole or in part by fire, or other damage, shall be paid into the State Treasury and constitute a fund for the rebuilding or replacing of such property; and the Comptroller may draw his warrant on the State Treasurer for such amounts, not to exceed the proceeds so paid in, as may be approved by the board or persons having the direct supervision and control of such buildings or property for the purpose of rebuilding or replacing the same.

(2) The provisions of this section shall not apply to proceeds received from insurance carried by a lessee of a donated building which was under lease at the time of donation and is not to be replaced. Such proceeds received by a board or agency of the state may be used by that board or agency for any purpose or function authorized by law.

History.—s. 2, ch. 6518, 1913; RGS 1205; CGL 1682; s. 1, ch. 61-140.
cf.—ch. 284, Part I Florida Fire Insurance Trust Fund.

255.04 Preference to home industries in building public buildings.—Every official board in the state, whether of the state, a county or municipality, which may be charged with the duty of erecting or constructing any public administrative or institutional building, shall give preference, in the purchase of material and in letting contracts for the construction of such building, to materialmen, contractors, builders, architects and laborers, who reside within the state, whenever such material can be purchased or the services of such materialmen, contractors, builders, architects and laborers, can be employed, at no greater expense than that which would obtain if such purchase was made, or contract let, or such employment given, to a person residing beyond the limits of the state; provided, however, that this section in no way prohibits the right of the said official boards to compare quality of materials proposed for purchase and to compare qualifications,

character, responsibility and fitness of materialmen, contractors, builders and architects proposed for employment in their consideration of the purchase of materials or employment of persons.

History.—s. 1, ch. 9146, 1923; CGL 1686.

255.041 Separate specifications for building contracts.—Every officer, board, department, commission or commissions charged with the duty of preparing specifications or awarding or entering into contract for the erection, construction or altering of buildings for the state, when the entire cost of such work shall exceed $10,000, may have prepared separate specifications for each of the following branches of work to be performed:

(1) Heating and ventilating and accessories.
(2) Plumbing and gas fitting and accessories.
(3) Electrical installations.
(4) Air-conditioning, for the purpose of comfort cooling by the lowering of temperature, and accessories.

All such specifications may be so drawn as to permit separate and independent bidding upon each of the classes of work enumerated in the above subdivisions. All contracts hereafter awarded by the state or a department, board, commissioner, or officer thereof, for the erection, construction or alteration of buildings, or any part thereof, may award the respective work specified in the above subdivisions separately to responsible and reliable persons, firms or corporations regularly engaged in their respective line of work; provided, however, that all or any part of the work specified in the above subdivisions may be awarded to the same contractor.

History.—s. 1, ch. 25397, 1949.

255.042 Shelter in public buildings.—

(1) It shall be the policy of the state that fallout protection be incorporated to the fullest practical extent in all public buildings of the state and its political subdivisions, which would have a floor area capable of sheltering 100 or more persons in order to provide protection against radiation hazards for the greatest number of persons, including employees of state and local government, in the event of nuclear attack.

(2) Every officer, department, board, agency or commission of the state, or of the political subdivisions thereof, responsible for the preparation of, or contracting for, plans and specifications for new public buildings, or for the substantial modification of or additions to existing public buildings, may require that the architect, architect-engineer firm, or other person or persons involved in the design of such buildings, provide a minimum protection factor of 40-to-1 or such protection as is possible within available funds in such design, or provide for consideration at the same time as the basic plan, alternate plans affording this protection.

(3) The Department of Community Affairs shall, in those cases where the architect-engineer firm does not possess the specialized training required for the inclusion of fallout protection in building design and, upon request from the architect-engineer concerned or the responsible state or local agency, provide, at no cost to the architect-engineer or agency, professional development service to increase fallout protection through shelter slanting and cost-reduction techniques.

(4) Nothing in this act shall be construed as establishing a mandatory requirement for the incorporation of fallout shelter in the construction, modification of, or addition to the public buildings concerned. It is mandatory, however, that the incorporation of such protection be given every consideration through acceptable shelter slanting and cost-reduction techniques. The responsible state or local official shall determine whether cost, or other related factors, precludes or makes impracticable the incorporation of fallout shelter in public buildings. Further, the Department of Community Affairs may waive the requirement for consideration of shelter in those cases where presently available shelter spaces equal or exceed the requirements of the area concerned.

(5) Nothing in this act shall apply to school buildings erected by the school board.

History.—s. 1, ch. 67-88; ss. 18, 35, ch. 69-106; s. 1, ch. 69-300.
cf.—Ch. 252 Disaster preparedness.

255.043 Art in state buildings.—

(1) Each appropriation for the original construction of a state building which provides public access shall include an amount of up to 0.5 percent of the total appropriation for the construction of the building to be used for the acquisition of works of art produced by, but not limited to, Florida artists or craftsmen. Those works of art acquired shall be displayed for viewing in public areas in the interior or on the grounds or exterior of the building and not in private offices or areas with limited public access.

(2) The Department of General Services shall, in consultation with the Fine Arts Council, determine any construction projects which may be exempt from the provisions of this section and shall determine the amount to be made available for purchase of works of art for each project. Payments therefor shall be made from funds appropriated for fixed capital outlay according to law.

(3) The selection and commissioning of artists or craftsmen, the reviewing of design, and the acceptance of works of art shall be the responsibility of the Fine Arts Council.

(4) This section shall not apply to any funds for the construction of public buildings if the funds were appropriated prior to July 1, 1979.

History.—s. 1, ch. 79-188.

255.05 Bond of contractor constructing public buildings; action by materialmen, etc.—

(1) Any person entering into a formal contract with the state or any county, city, or political subdivision thereof, or other public authority, for the construction of any public building, for the prosecution and completion of any public work, or for repairs upon any public building or public work shall be required, before commencing the work, to execute a payment and performance bond with a surety insurer authorized to do business in this state as surety. Such bond shall be conditioned that the contractor perform the contract in the time and manner prescribed in the contract and promptly make payments to all persons who are defined in s. 713.01,

whose claims derive directly or indirectly from the prosecution of the work provided for in the contract. Any claimant may apply to the governmental entity having charge of the work for copies of the contract and bond and shall thereupon be furnished with a certified copy of the contract and bond. The claimant shall have a right of action against the contractor and surety for the amount due him. Such action shall not involve the public authority in any expense. However, at the discretion of the director of the Department of General Services when such work is done for the state, or at the discretion of the official or board awarding such contract when such work is done for any county, city, political subdivision, or public authority, any person entering into such a contract which is for $25,000 or less may be exempted from executing the [1][payment and performance bond].

(2) A claimant, except a laborer, who is not in privity with the contractor and who has not received payment for his labor, materials, or supplies shall, within 45 days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish the contractor with a notice that he intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his labor, materials, or supplies shall, within 90 days after performance of the labor or after complete delivery of the materials or supplies, deliver to the contractor and to the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. No action for the labor, materials, or supplies may be instituted against the contractor or the surety unless both notices have been given. No action shall be instituted against the contractor or the surety on the bond after 1 year from the performance of the labor or completion of delivery of the materials or supplies.

(3) The bond required in subsection (1) may be in substantially the following form:

PUBLIC CONSTRUCTION BOND

BY THIS BOND, We ....., as Principal and ....., a corporation, as Surety, are bound to ....., herein called Owner, in the sum of $....., for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated ....., 19..... between Principal and Owner for construction of ....., the contract being made a part of this bond by reference, at the times and in the manner prescribed in the contract and;

2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract and;

3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract and;

4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract;

then this bond is void; otherwise it remains in full force.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

DATED ON ....., 19.....

(Name of Principal)

By .....

As Attorney in Fact

(Name of Surety)

(4) In addition to the provisions of chapter 47, any action authorized under this section may be brought in the county in which the public building or public work is being constructed or repaired. This subsection shall not apply to an action instituted prior to May 17, 1977.

History.—s. 1, ch. 6867, 1915; RGS 3533; s. 1, ch. 10035, 1925; CGL 5397; s. 1, ch. 59-491; s. 1, ch. 63-437; s. 1, ch. 71-47; ss. 1, 2, ch. 77-40; s. 1, ch. 77-78; s. 1, ch. 77-81.

[1]**Note.**—Bracketed words substituted for "usual penal bond" by the editors to conform to the terminology of ch. 77-81.

cf.—s. 337.18 Surety bonds required; defaults; damage assessment.

255.051 Public bids; check or draft as good faith deposit.—Whenever any form of bid of the state or any county or municipality thereof or any department or agency of the state, county or municipality or any other public body or institution shall specify that a good faith deposit shall be made by way of a certified check accompanying such bid, such requirement shall be satisfied by the bidder depositing in lieu of such certified check a cashier's check, treasurer's check or bank draft of any national or state bank.

History.—s. 1, ch. 27999, 1953.

255.0515 Bids for state contracts; substitution of subcontractors.—With respect to state contracts let pursuant to competitive bidding, whether under chapter 235, relating to educational facilities, or chapter 255, relating to public buildings, the contractor shall not remove or replace subcontractors listed in the bid subsequent to the lists being made public at the bid opening, except upon good cause shown.

History.—s. 1, ch. 78-389.

255.052 Substitution of securities for amounts retained on state contracts.—

(1) Under any contract made or awarded by the state or by any public department or official thereof, the contractor may, from time to time, withdraw the whole or any portion of the amount retained for payments to the contractor pursuant to the terms of the contract, upon depositing with the treasurer:

(a) United States Treasury bonds, United States Treasury notes, United States Treasury certificates of indebtedness, or United States Treasury bills;

(b) Bonds or notes of the State of Florida; or

(c) Bonds of any political subdivision in the state; or

(d) Certificates of deposit from state or national banks or state or federal savings and loan associa-

tions in the state.

No amount shall be withdrawn in excess of the market value of the securities listed in paragraphs (a), (b), and (c) at the time of withdrawal or of the par value of such securities, whichever is lower.

(2) The Treasurer shall, on a regular basis, collect all interest or income on the obligations so deposited, and shall pay the same, when and as collected, to the contractor who deposited the obligations. If the deposit is in the form of coupon bonds, the Treasurer shall deliver each coupon as it matures to the contractor.

(3) Any amount deducted by the state or by any public department or official thereof, pursuant to the terms of the contract, from the amounts retained for payments due the contractor shall be deducted, first from that portion of the amounts retained for which no security has been substituted, then from the proceeds of any deposited security. In the latter case, the contractor shall be entitled to receive interest, coupons, or income only from those securities which remain after such amount has been deducted.

History.—s. 1, ch. 70-70; s. 1, ch. 74-253.

255.20 Contracts for public construction works; specification of Florida produced lumber.—All county officials, boards of county commissioners, school boards, city councils, city commissioners and all other public officers of state boards or commissions which are charged with the letting of contracts for public work, for the construction of public bridges, buildings and other structures shall always, price, fitness and quality being equal, specify lumber, timber and other forest products produced and manufactured in Florida whenever such products are available. This act shall not apply when plywood is specified for monolithic concrete forms. Whenever the structural or service requirements for timber for a particular job cannot be supplied by native species, this act shall not apply. When construction is financed in whole or in part from federal funds with the requirements that there be no restrictions as to species or place of manufacture, this act shall not apply.

History.—s. 1, ch. 61-495.

255.21 Special facilities for physically disabled.—

(1) Any building or facility intended for use by the general public which, in whole or in part, is constructed or altered, or operated as a lessee, by or on behalf of the state or any political subdivision, municipality, or special district thereof or any public administrative board or authority of the state shall, with respect to the altered or newly constructed or leased portion of such building or facility, comply with standards and specifications established by the Department of General Services under this section. If any building or facility subject to the provisions of this section is remodeled and the cost of such remodeling exceeds 50 percent of the building's fair market value, the entire building must conform to the standards and specifications established by the Department of General Services under this section. If any such building or facility is remodeled and the cost of remodeling is between 20 percent and 50 percent of the building's fair market value, the remodeled part of the building must conform to the standards and specifications. If the remodeling cost is less than 20 percent of the building's fair market value, only the doors, entrances, exits, and public toilet rooms in the remodeled part of the building must conform to the standards and specifications. If the remodeling cost is less than 20 percent of the building's fair market value and:

(a) The remodeling does not alter any load-bearing structure, or

(b) The remodeling is only for the purpose of decor or maintenance,

then this section shall not apply. This section shall not apply to buildings or facilities existing on October 1, 1973 except as to alterations or new leases.

(2) The Department of General Services shall provide by regulation such standards for the design, construction, and alteration of such buildings as may be necessary to insure that physically handicapped persons will have ready access to, and use of, such buildings. Such regulations:

(a) Shall adhere to the standards for such buildings or facilities prescribed from time to time by the United States of America Standards Institute.

(b) May be modified or waived in individual cases upon application made in the form provided and upon a determination by the authorized agency that:

1. The general public and the physically disabled will not, except under extraordinary circumstances, be users of the facility or the services of the agency or agencies housed therein, or

2. The services or activities which would be housed in the facility covered by the application for modification or waiver are housed to the extent necessary to serve the physically disabled in other facilities which do conform to the standards and specifications established by the department,

or for other reasons in the discretion of the department.

(3) Each county or municipality, with respect to county or municipal buildings; the Department of Education, with respect to public schools and community colleges; the Department of General Services, with respect to state buildings; and each state agency, with respect to private sector leased space, shall be responsible for insuring compliance with the rules promulgated by the Department of General Services.

(4) Each state agency may conduct surveys and investigations which it deems necessary to insure compliance with this section.

(5) Each state agency shall provide by rule for the establishment of a committee, to include at least one consumer member not employed by the agency, to consider modification or waiver requests provided for in subsection (2).

History.—s. 1, ch. 65-493; s. 1, ch. 72-281; s. 1, ch. 73-255; s. 82, ch. 77-104; s. 1, ch. 78-166.

255.211 Special symbol may be displayed.—All state-owned buildings providing facilities for

wheelchair users, including, but not limited to, entrance and exit facilities, shall display at all entrances the internationally recognized symbol for wheelchair users.

History.—s. 1, ch. 70-403.

255.22 Reconveyance of lands not used for purpose specified.—In event any party owning adjoining land, shall convey real property, without receipt of valuable consideration, to any municipality or county for a specific purpose or use and if such county or municipality shall fail to use such property for such purpose for a period of 60 consecutive months, then in that event upon written demand of the grantor, or grantor's successors in title owning such adjoining land, the municipality or county may execute and deliver a quit claim deed to the party making such demand provided such party is the owner of land adjoining such property on at least one side. No such quit claim deed shall be delivered hereunder unless the specific purpose or use to be made of the property was disclosed to the grantee at the time of delivery of the conveyance or appeared in the conveyance or an official record of the county; provided however, that as to any such conveyance after July 1, 1967, the specific purpose or use must appear of record.

History.—s. 1, ch. 67-383.

255.23 Conclusive presumption of abandonment of purpose in certain circumstances.—In event the purpose for which the property was conveyed required physical improvement or construction on such property or the maintenance thereof, any such municipality or county, failing to construct, improve or maintain such property for the period above specified, shall be conclusively deemed to have abandoned the property for the purpose for which it was conveyed.

History.—s. 2, ch. 67-383.

255.24 Safety of Capitol building.—The Division of Building Construction and Property Management of the Department of General Services shall develop a comprehensive and long-range plan for:

(1) The permanent safety of the Capitol building and its inhabitants, including the institution of programs for the training of members of the Legislature, employees of the Legislature, and all others employed in the Capitol building, as well as visitors to the Capitol building in fire prevention and safety;

(2) Making the necessary alterations to the capitol building to insure the health, safety and welfare of its occupants in the case of fire or other disaster;

(3) The development of evacuation routes in the event of fire or other disaster;

(4) The promulgation of statement of emergency procedures in the event of disaster;

(5) Making the location of evacuation routes known to those in the Capitol building and all other programs necessary for the adequate safety of the public, members of the Legislature and other employees in the Capitol building.

History.—ss. 1-3, ch. 67-605; ss. 22, 35, ch. 69-106; s. 70, ch. 71-377; s. 2, ch. 75-70.

cf.—Ch. 252 Disaster preparedness.

255.245 State-owned office buildings; rental fees.—

(1) The Department of General Services shall, by rule or regulation, adopt a fee schedule for the rental of space occupied by state agencies and other authorized occupants in office buildings owned by the state, taking into consideration debt service obligations, if any, costs of operation, security, maintenance, repair, renovation, rental fees for comparable space in privately owned buildings, contractual or property rights encumbering such buildings, if any, and other factors deemed to be material for such purpose. The adoption of the fee schedule, and of modifications thereto from time to time as needed, by the Department of General Services shall be subject to prior approval by the Administration Commission.

(2) The Department of General Services shall, in adopting a fee schedule for the rental of space in state-owned office buildings, adopt rental fees to assure that the space will be self-supporting from the income derived from the rental fees and that such income will be sufficient for the payment of debt service obligations, if any, and the costs of operation, security, maintenance, repair, and renovation.

(3) All office buildings owned by the state, including any in which the state is the purchaser under a lease-purchase agreement, shall be included in the fee schedule and subject to the provisions of this section, except those at state hospitals and educational and custodial institutions and those specifically excluded from the fee schedule approved and adopted; however, no building that was purchased or constructed from agricultural or citrus trust funds shall be included in the approved fee schedule.

(4) A copy of the fee schedule adopted by the Department of General Services shall be furnished to each state agency, the President of the Senate, and the Speaker of the House of Representatives prior to September 1, 1975, for use in the preparation of the legislative budget and Appropriations Act for fiscal year 1976-1977 and each fiscal year thereafter. In its legislative budget for fiscal year 1976-1977 and each fiscal year thereafter, each state agency shall show the state-owned office buildings in which it occupies space and the number of square feet it occupies in each and shall include in its legislative budget the rental fee for such space calculated according to the fee schedule.

(5) Beginning July 1, 1976, the rental fees shall be assessed against and collected from all state agencies and other authorized occupants for space in office buildings included in the fee schedule.

(6) Income derived from rental fees pursuant to subsection (5) shall be collected by the Division of Building Construction and Property Management of the Department of General Services and deposited in a trust fund for the payment of debt service obligations, costs of operation, security, maintenance, repair, renovation, or further construction of such office buildings, pursuant to appropriations by the Legislature for such purposes.

History.—ss. 1, 2, ch. 75-263; s. 1, ch. 77-174.

255.248 Definitions; ss. 255.249 and 255.25.—The following definitions shall apply when used in sections 255.249 and 255.25:

(1) The term "state-owned office building"

means any building title to which is vested in the state and which is used by one or more executive agencies predominantly for administrative direction and support functions. This term excludes:

(a) District or area offices established for field operations where law enforcement, military, inspections, road operations, or tourist welcoming functions are performed.

(b) All educational facilities and institutions under the supervision of the Department of Education.

(c) All custodial facilities and institutions used primarily for the care, custody, or treatment of wards of the state.

(d) Buildings or spaces used for legislative activities.

(e) Buildings purchased or constructed from agricultural or citrus trust funds.

(2) The term "privately owned building" shall mean any building not owned by a governmental agency.

(3) "Division" shall mean the Division of Building Construction and Property Management of the Department of General Services.

History.—s. 3, ch 75-70.

255.249 Division responsibility; department rules.—

(1) The division shall have responsibility and authority for the custodial and preventive maintenance, repair, security, and allocation of space of all state-owned office buildings and the grounds located adjacent thereto.

(2) The department shall promulgate rules pursuant to chapter 120 providing:

(a) Methods for accomplishing the duties outlined in subsection (1).

(b) Procedures for soliciting and accepting competitive proposals for leased space of 2,000 square feet or more in privately owned buildings, for evaluating the proposals received, and for exemption from competitive bidding requirements of any lease the purpose of which is the provision of care and living space for persons.

(c) A standard method for determining square footage or any other measurement used as the basis for lease payments or other charges.

(d) Methods of allocating space in both state-owned office buildings and privately owned buildings leased by the state based on use, personnel, and office equipment.

(e) Acceptable terms and conditions for inclusion in lease agreements.

(f) Maximum rental rates, by geographic areas or by county, for leasing privately owned space.

(g) A standard method for the assessment of rent to state agencies and other authorized occupants of state-owned office space, notwithstanding the source of funds.

(h) For full disclosure of the names and the extent of interest of the owners holding a 4-percent or more interest in any privately owned property leased to the state or in the entity holding title to the property, for exemption from such disclosure of any beneficial interest which is represented by stock in any corporation registered with the Securities and Exchange Commission or registered pursuant to chapter 517, which stock is for sale to the general public, and for exemption from such disclosure of any leasehold interest in property located outside the territorial boundaries of the United States.

(i) For full disclosure of the names of all public officials, agents, or employees holding any interest in any privately owned property leased to the state or in the entity holding title to the property, and the nature and extent of their interest, for exemption from such disclosure of any beneficial interest which is represented by stock in any corporation registered with the Securities and Exchange Commission or registered pursuant to chapter 517, which stock is for sale to the general public, and for exemption from such disclosure of any leasehold interest in property located outside the territorial boundaries of the United States.

(j) A method for reporting leases for nominal or no consideration.

(k) For a lease of less than 2,000 square feet, a method for certification by the agency head that all criteria for leasing have been fully complied with and for the filing of a copy of such lease with the department.

(3) The division shall prepare a form listing all conditions and requirements adopted pursuant to this chapter which must be met by any state agency leasing any building or part thereof. In the case of any lease entered into under provisions of s. 255.25(2)(b), this form shall be certified by the agency head. Certification authority shall not be delegated.

History.—s. 4, ch. 75-70; s. 2, ch. 78-166.

255.25 Approval of the Division of Building Construction and Property Management prior to construction or lease of buildings.—

(1) No state agency shall construct a building for state use unless prior approval of the architectural design and preliminary construction plans is first obtained from the division.

(2)(a) Except as provided in paragraph (b), no state agency shall lease a building or any part thereof unless prior approval of the lease conditions and of the need therefor is first obtained from the division. Any approved lease may include an option to purchase or an option to renew the lease, or both, upon such terms and conditions as are established by the division subject to final approval by the head of the Department of General Services.

(b) The approval of the division need not be obtained for the lease of less than 2,000 square feet of space within a privately owned building, provided the agency head has certified compliance with applicable leasing criteria and fire safety standards as may be provided pursuant to s. 255.249(2)(k) and has determined such lease to be in the best interest of the state. Such a lease which is for a term extending beyond the end of a fiscal year shall be subject to the provisions of s. 216.311.

(c) Each state agency shall develop procedures and adopt rules to ensure that the leasing practices of that agency are in substantial compliance with the rules adopted pursuant to this section and to s. 255.249.

(3)(a) No state agency shall enter into a lease as lessee for the use of 2,000 square feet or more of space in a privately owned building except upon ad-

vertisement for and receipt of competitive bids and award to the lowest and best bidder. The division shall have the authority to approve a lease for 2,000 square feet or more of space that covers more than one fiscal year, subject to the provisions of s. 216.311, if such lease is, in the judgment of the division, in the best interests of the state. This paragraph shall not apply to buildings or facilities of any size leased for the purpose of providing care and living space for persons.

(b) The division may approve extensions of an existing lease of 2,000 square feet or more of space if such extensions are determined to be in the best interests of the state, but in no case shall the total of such extensions exceed 11 months. If at the end of the 11th month an agency still needs space, it shall be procured by competitive bid in accordance with s. 255.249(2)(b).

(4) The division shall not authorize any state agency to enter into a lease agreement for space in a privately owned building when suitable space is available in a state-owned building located in the same geographic region, except upon presentation to the division of sufficient written justification, acceptable to the division, that a separate space is required in order to fulfill the statutory duties of the agency making such request. The term "state-owned building" as used in this subsection means any state-owned facility regardless of use or control.

(5) Before construction or renovation of any state-owned or state-leased building is commenced, the division shall ascertain that the proposed construction or renovation plan complies with the fire safety standards of the State Building Code. The division may delegate this responsibility to any ex officio agent of the State Fire Marshal. Whenever the division determines that a construction or renovation plan is not in compliance with such fire safety standards, the division may issue an order to cease all construction or renovation activities until compliance is obtained, except those activities required to achieve such compliance. The division shall withhold approval of any proposed lease until the construction or renovation plan complies with fire safety standards. The cost of all modifications or renovations made for the purpose of bringing leased property into compliance with fire safety standards shall be borne by the lessor. Compliance with fire safety standards in the case of a building leased pursuant to paragraph (2)(b) shall be certified by the agency head as provided in that paragraph and shall not be subject to the requirements of this subsection.

(6) Before construction or substantial improvement of any state-owned building is commenced, the division shall ascertain that the proposed construction or substantial improvement complies with the flood-plain-management criteria, as prescribed in the rules and regulations of the United States Department of Housing and Urban Development at 24 C.F.R., Parts 1909-1925, promulgated pursuant to 42 U.S.C. ss. 4001-4128, and the division shall monitor the project to assure compliance with the criteria. In accordance with chapter 120, the division shall adopt any necessary rules to insure that all such proposed state construction and substantial improvement of state buildings in designated flood prone areas complies with said flood-plain-management criteria. Whenever the division determines that a construction or substantial improvement project is not in compliance with the established flood-plain-management criteria, the division may issue an order to cease all construction or improvement activities until compliance is obtained, except those activities required to achieve such compliance.

(7) This section shall not apply to any lease having a term of less than 21 consecutive days for the purpose of securing the one-time special use of the leased property. This section shall not apply to any lease for nominal or no consideration.

(8) No agency shall enter into more than one lease for space in the same privately owned facility or complex within any 12-month period except upon the solicitation of competitive bids.

History.—s. 22, ch. 69-106; s. 5, ch. 75-70; s. 12, ch. 75-151; s. 1, ch. 77-174; s. 2, ch. 77-280; s. 3, ch. 78-166.

255.251 Short title.—This act shall be cited as the "Florida Energy Conservation in Buildings Act of 1974."

History.—s. 1, ch. 74-187.

255.252 Findings and intent.—

(1) Operating and maintenance expenditures associated with energy equipment and with energy consumed in state-financed and leased buildings represent a significant cost over the life of a building. Energy conserved by appropriate building design not only reduces the demand for energy but also reduces costs for building operation. For example, commercial buildings are estimated to use from 20 to 80 percent more energy than would be required if energy-conserving designs were used. The size, design, orientation, and operability of windows, the ratio of ventilating air to air heated or cooled, the level of lighting consonant with space-use requirements, the handling of occupancy loads, and the ability to zone off areas not requiring equivalent levels of heating or cooling are but a few of the considerations necessary to conserving energy.

(2) Significant efforts are underway by the General Services Administration, the National Bureau of Standards, and others to detail the considerations and practices for energy conservation in buildings. Most important is that energy-efficient designs provide energy savings over the life of the building structure. Conversely, energy-inefficient designs cause excess and wasteful energy use and high costs over that life. With buildings lasting many decades and with energy costs escalating rapidly, it is essential that the costs of operation and maintenance for energy-using equipment be included in all design proposals for state buildings.

(3) In order that such energy efficiency considerations become a function of building design, and also a model for future application in the private sector, it shall be the policy of the state that buildings constructed and financed by the state be designed and constructed in a manner which will minimize the consumption of energy used in the operation and maintenance of such buildings.

(4) In addition to designing and constructing new buildings to be energy-efficient, it shall be the policy of the state to operate, maintain, and renovate exist-

ing state facilities, or provide for their renovation, in a manner which will minimize energy consumption and ensure that facilities leased by the state are operated so as to minimize energy use.

History.—s. 2, ch. 74-187; s. 1, ch. 78-26.

255.253 Definitions; ss. 255.251-255.256.—

(1) "Division" means the Division of Building Construction and Property Management of the Department of General Services.

(2) "Facility" means a building or other structure.

(3) "Energy performance index or indices" (EPI) means a number describing the energy requirements at the building boundary of a facility, per square foot of floor space or per cubic foot of occupied volume, as appropriate under defined internal and external ambient conditions over an entire seasonal cycle. As experience develops on the energy performance achieved with state building, the indices (EPI) will serve as a measure of building performance with respect to energy consumption.

(4) "Life-cycle costs" means the cost of owning, operating, and maintaining the facility over the life of the structure. This may be expressed as an annual cost for each year of the facility's use.

History.—s. 3, ch. 74-187.

255.254 No facility constructed or leased without life-cycle costs.—

(1) No state agency shall lease, construct, or have constructed, within limits prescribed herein, a facility without having secured from the division a proper evaluation of life-cycle costs, as computed by an architect or engineer. Furthermore, construction shall proceed only upon disclosing, for the facility chosen, the life-cycle costs as determined in s. 255.255 and the capitalization of the initial construction costs of the building. The life-cycle costs shall be a primary consideration in the selection of a building design. Such analysis shall be required only for construction of buildings with an area of 5,000 square feet or greater. For leased areas of 20,000 square feet or greater within a given building boundary, a life-cycle analysis shall be performed, and a lease shall only be made where there is a showing that the life-cycle costs are minimal compared to available like facilities.

(2) On and after January 1, 1979, no state agency shall initiate construction or have construction initiated, prior to approval thereof by the Division of Building Construction and Property Management of the Department of General Services, on a facility, or self-contained unit of any facility, the design and construction of which incorporates or contemplates the use of an energy system other than a solar energy system when the life-cycle costs analysis prepared by the Division of Building Construction and Property Management has determined that a solar energy system is the most cost-efficient energy system for the facility or unit.

History.—s. 4, ch. 74-187; s. 1, ch. 78-27.

255.255 Life-cycle costs.—

(1) The division shall promulgate rules and procedures, including energy conservation performance guidelines, for conducting a life-cycle cost analysis of alternative architectural and engineering designs and for developing energy performance indices to evaluate the efficiency of energy utilization for competing designs in the construction of state-financed and leased facilities. Such rules and procedures shall take effect 270 days after the enactment of this law.

(2) Such life-cycle costs shall be the sum of:

(a) The reasonably expected fuel costs over the life of the building, as determined by the division, that are required to maintain illumination, power, temperature, humidity, and ventilation and all other energy-consuming equipment in a facility, and

(b) The reasonable costs of probable maintenance, including labor and materials, and operation of the building.

(3) To determine the life-cycle costs as defined in subsection (2)(b), the department shall promulgate rules that shall include, but not be limited to:

(a) The orientation and integration of the facility with respect to its physical site.

(b) The amount and type of glass employed in the facility and the directions of exposure.

(c) The effect of insulation incorporated into the facility design and the effect on solar utilization of the properties of external surfaces.

(d) The variable occupancy and operating conditions of the facility and subportions of the facility.

(e) An energy consumption analysis of the major equipment of the facility's heating, ventilating, and cooling system, lighting system, hot water system, and all other major energy-consuming equipment and systems as appropriate. This analysis shall include:

1. The comparison of alternative systems.

2. A projection of the annual energy consumption of major energy-consuming equipment and systems for a range of operation of the facility over the life of the facility.

3. The evaluation of the energy consumption of component equipment in each system, considering the operation of such components at other than full or rated outputs.

(4) Such rules shall be based on the best currently available methods of analysis, including such as those of the National Bureau of Standards, the Department of Housing and Urban Development, and other federal agencies and professional societies and materials developed by the department. Provisions shall be made for an annual updating of rules and standards as required.

History.—s. 5, ch. 74-187.

255.256 Energy performance index.—The department shall promulgate rules for energy performance indices as defined in s. 255.253(3) to audit and evaluate competing design proposals submitted to the state.

History.—s. 6, ch. 74-187.

255.257 Energy management plan; buildings occupied by state agencies.—

(1) DIVISION RESPONSIBILITY.—The division shall constitute the responsible state agency for developing and implementing an energy management plan for state agencies occupying state-owned or state-leased buildings. The Executive Office of the

Governor shall assist in the development of this plan.

(2) ENERGY CONSUMPTION AND COST DATA.—Each state agency shall submit, in the form and manner to be prescribed by the division, data on energy consumption and cost. These data will be used in the computation of the effectiveness of the state energy management plan and the effectiveness of the energy management program of each of the reporting agencies. The division shall advise the various agencies on the effectiveness of their energy management programs.

(3) ENERGY MANAGEMENT COORDINATORS.—Each state agency, the Florida Public Service Commission, the Department of Military Affairs, and the judicial branch shall appoint a coordinator whose responsibility shall be to advise the head of the agency on matters relating to energy consumption in facilities under the control of that head or in space occupied by the various units comprising that agency, in vehicles operated by that agency, and in other energy-consuming activities of the agency. The coordinator shall cooperate with the division in the implementation of the state energy management plan. The coordinator shall implement the energy management program jointly agreed upon by the agency concerned and the division.

(4) CONTENTS OF THE STATE ENERGY MANAGEMENT PLAN.—The division shall develop a state energy management plan consisting of, but not limited to, the following elements:

(a) Data-gathering requirements;

(b) Building energy audit procedures;

(c) Uniform data analysis procedures;

(d) Employee energy education program measures;

(e) Energy consumption reduction techniques;

(f) Training program for agency energy management coordinators; and

(g) Guidelines for building managers.

The plan shall include a description of actions to reduce consumption of electricity and nonrenewable energy sources used for space heating and cooling, ventilation, lighting, water heating, and transportation.

(5) INFORMATION TRANSFER.—The state energy management plan, with results, shall be made available to aid in improving local government energy management programs.

History.—s. 2, ch. 78-26; s. 115, ch. 79-190.

255.27 State policy concerning smoking in public buildings.—The supervisor of each unit of government located in a governmental building shall establish rules governing smoking in that portion of the building for which he is responsible. For the purposes of this section, "governmental building" means any building or any portion of any building owned or leased by the state for governmental purposes. For purposes of this section, the President of the Senate and the Speaker of the House are deemed to be the supervisors of areas of the Capitol Center occupied by the Legislature, its committees and personnel. The rules adopted shall include the following guidelines:

(1) CONFERENCE ROOMS AND AUDITORIUMS.—Separate smoking and nonsmoking areas shall be set aside.

(2) MEDICAL CARE FACILITIES.—In medical clinics and employee or student health units, smoking shall be restricted to staff lounges, private offices, and specially designated areas.

(3) CORRIDORS, LOBBIES, RESTROOMS.—There will be no limitation on smoking in corridors, lobbies, and restrooms.

(4) OTHER AREAS.—The designation of any other nonsmoking areas shall be determined by the individual characteristics of the building or room such as size, ventilation, the purposes for which it is utilized, and other criteria relating to public health, safety and comfort.

History.—s. 1, ch. 77-52.

255.28 Department authority to acquire land with or for facility thereon.—

(1) For the purposes of this section:

(a) "Agency" means any state board, commission, department, division, or bureau.

(b) "Party" means any individual, partnership, corporation, association, or other business entity which is licensed by the Department of State to do business in the state.

(c) "Building" or "facility" means those construction projects under the purview of the Department of General Services. It shall not include environmentally endangered land, recreational land, or roads and highway construction under the purview of the Department of Transportation.

(d) "Department" means the Department of General Services.

(2) The department may acquire lands by gift, donation, or dedication or otherwise enter into agreements with any person, the Federal Government, or any other agency for acquiring such lands for constructing a building or other state facility thereon. Lands shall be acquired by the department in accordance with acquisition procedures for state lands provided for in s. 253.025.

(3) In administering such authority, the department may enter into a contract with a party who shall be authorized to assist in the purchase of land containing, or to be used for constructing, a building or other facility thereon.

(4) The department shall prescribe, by administrative rule, procedures for adequate public notice concerning all acquisitions of land or construction of a building or facility by any state agency.

History.—ss. 6, 7, ch. 75-243; s. 11, ch. 79-255.

255.29 Construction contracts; department rules.—The Department of General Services shall establish, through the promulgation of administrative rules as provided in chapter 120:

(1) Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts, including procedures for the rejection of bidders who are reasonably determined from prior experience to be unqualified or irresponsible to perform the work required by a proposed contract.

(2) Procedures for awarding each state agency construction project to the lowest qualified bidder as

well as procedures to be followed in cases in which the Department of General Services declares a valid emergency to exist which would necessitate the waiver of the rules governing the awarding of state construction contracts to the lowest qualified bidder.

(3) Procedures to govern negotiations for construction contracts and modifications to contract documents when such negotiations are determined by the executive director of the Department of General Services to be in the best interest of the state.

History.—s. 8, ch. 75-243.

255.30 Fixed capital outlay projects; department rules; delegation of supervisory authority.—The Department of General Services shall make and promulgate rules pursuant to chapter 120 in order to establish a procedure for delegating to state agencies the supervisory authority of the Division of Building Construction and Property Management as it relates to the repair, alteration, and construction of fixed capital outlay projects.

History.—s. 9, ch. 75-243.

CHAPTER 256

STATE, UNITED STATES, AND CONFEDERATE FLAGS

256.01 Flag of United States to be displayed.—The flag of the United States shall be displayed daily when the weather permits, from a staff upon the state capitol and upon each county courthouse.

History.—s. 1, ch. 7369, 1917; RGS 1206; CGL 1683.
cf.—s. 228.101 Display of flag on school buildings.

256.011 Display of flag on election day.—

(1) The board of county commissioners of each county in this state shall provide a flag of the United States for each polling place in the county. The flag shall be displayed properly and prominently at all designated polling places on all days when an election is being held.

(2) The board of county commissioners of each county in the state shall make the flags available to each municipality or governmental body holding an election within such county for each election held for any such municipality or governmental body within such county. The municipality or governmental body shall have the responsibility of properly and prominently displaying the flag at each such polling place on all days when an election is being held and shall bear the expense of displaying the flag of the United States.

(3) Each board of county commissioners is authorized to purchase a sufficient number of flags to carry out the purpose of this act out of the general revenue fund of each such county.

History.—s. 1, ch. 63-227.

256.02 Certain officers to provide flag.—The officer charged with the maintenance or upkeep of the buildings mentioned in s. 256.01 shall provide suitable flags and cause them to be displayed, the expense to be borne out of the funds provided for the upkeep and maintenance of said buildings.

History.—s. 2, ch. 7369, 1917; RGS 1207; CGL 1684.

256.031 Department of State custodian of state flag.—

(1)(a) The Department of State is the custodian of the official state flag, and, for the purpose of assisting schools, governmental agencies, and other groups and organizations in the care, handling, and history of the state flag, including all flags that have flown over any part of the State of Florida by those sovereigns to which Florida has belonged, the department is hereby authorized to present, at no cost to such schools, governmental agencies, or other groups, and organizations, flags and printed material giving information in the care, handling, and history of such flags, up to an annual cost of $15,000.

(b) The department is authorized to buy and sell flags and to establish a trust fund designated as the "Flag Trust Fund" in which moneys received from the sale of flags will be placed. The moneys in the flag trust fund are to be used for the purchase of flags and printed material giving information in the care, handling, and history of flags.

(c) The Department of State may also furnish official flags, plaques, and proclamations for state functions and ceremonies, up to an annual cost of $2,000.

(2) Each flag so presented shall carry a note indicating the following: "This flag is being presented to you by courtesy of the people of Florida" and no other name.

History.—s. 1, ch. 29747, 1955; ss. 10, 35, ch. 69-106; ss. 1, 2, ch. 72-123.

256.032 Display of state flag at public schools.—The state flag shall be displayed at a suitable place and in the appropriate manner on the grounds of each elementary and secondary public school. The school boards shall furnish flags whenever necessary.

History.—s. 1, ch. 65-200; s. 1, ch. 69-300.

256.05 Improper use of state or United States flag, or other symbol of authority.—No person shall, in any manner, for exhibition or display:

(1) Place or cause to be placed any word, figure, mark, picture, design, drawing or advertisement of any nature upon any flag, standard, color, ensign or shield of the United States or of this state, or authorized by any law of the United States or this state; or

(2) Expose to public view any such flag, standard, color, ensign or shield upon which shall have been printed, painted or otherwise produced, or to which shall have been attached, appended, affixed or annexed any such word, figure, mark, picture, design, drawing or advertisement.

History.—ss. 1-3, ch. 7819, 1919; s. 1, ch. 9325, 1923; CGL 8117, 8118; s. 1, ch. 57-74.

256.051 Improper use or mutilation of state or Confederate flag or emblem prohibited.—

(1) From and after July 1, 1961, it shall be unlawful for any person, firm or corporation to copy, print, publish or otherwise use the flag or state emblem of Florida, or the flag or emblem of the Confederate States, or any flag or emblem used by the Confederate States or the military or naval forces of the Confederate States at any time within the years 1860 to 1865, both inclusive, for the purpose of advertising, selling or promoting the sale of any article of mer-

chandise whatever within this state.

(2) It shall also be unlawful for any person, firm or corporation to mutilate, deface, defile or contemptuously abuse the flag or emblem of Florida or the flag or emblem of the Confederate States by any act whatever.

(3) Nothing in this section shall be construed to prevent the use of any flag, standard, color, shield, ensign or other insignia of Florida or of the Confederate States for decorative or patriotic purposes.

History.—ss. 1-3, ch. 61-375.

256.06 Mutilation or disrespect of state or United States flag.—No person shall publicly mutilate, deface, defile, defy, trample upon, or by word or act cast contempt upon any such flag, standard, color, ensign or shield.

History.—ss. 1-3, ch. 7819, 1919; s. 1, ch. 9325, 1923; CGL 8117, 8118.
cf.—s. 876.52 Public mutilation of flag.

256.07 Exceptions.—Sections 256.05 and 256.06 shall not apply to any act permitted by the Statutes of the United States or of this state, or by the United States Army and Navy Regulations, nor shall it apply to any printed or written document or production, stationery, ornament, picture or jewelry whereon shall be depicted said flag, standard, color, ensign or shield with no design or words thereon.

History.—New in Florida Statutes, 1941; s. 7, ch. 22858, 1945; s. 2, ch. 57-74.

256.08 Definition.—The words "flag," "standard," "color," "ensign," or "shield," as used in ss. 256.05-256.07, shall include any flag, standard, color, ensign or shield, or copy, picture or representation thereof, made of any substance or represented or produced thereon, and of any size, evidently purporting to be such flag, standard, color, ensign or shield of the United States or of this state, or a copy, picture or representation thereof.

History.—New in Florida Statutes, 1941.

256.09 Penalty.—Any person violating the provisions of s. 256.05 or s. 256.06 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-3, ch. 7819, 1919; s. 1, ch. 9325, 1923; CGL 8117, 8118; s. 155, ch. 71-136.

256.10 Mutilation of or disrespect for Confederate flags or replicas.—No person shall publicly mutilate, deface, defile, defy, trample upon, or by word or act cast contempt upon the flags of the Confederacy, or replicas thereof, for crass or commercial purposes; provided however nothing contained herein shall be construed to prevent or prohibit the use of such flags for decorative or patriotic purposes.

History.—s. 1, ch. 61-115.

256.11 Public auditoriums; display of the United States flag.—

(1) Each publicly supported and controlled auditorium within a separate building shall display daily the flag of the United States upon a suitable flagstaff upon the grounds of the auditorium except when the weather does not permit such display, and each publicly supported and controlled auditorium within a part of a building shall display daily the flag of the United States inside of the auditorium whenever the auditorium is open.

(2) It is the duty of the person responsible for the administration of such auditorium to provide a suitable flag and cause it to be displayed in the manner provided in subsection (1). If any such person willfully fails to cause the flag to be so displayed, such person is guilty of a noncriminal violation, punishable as provided in s. 775.083.

History.—s. 1, ch. 76-99.

CHAPTER 257

PUBLIC LIBRARIES

257.01 State Library; creation; administration.—There is created and established the State Library which shall be located at the capital. The State Library shall be administered by the Division of Library Services of the Department of State. There shall be an advisory council to the division consisting of seven members to be known as the State Library Council.

History.—s. 1, ch. 10278, 1925; CGL 1687; s. 1, ch. 63-39; ss. 10, 35, ch. 69-106; s. 21, ch. 69-353; s. 1, ch. 70-250; s. 1, ch. 71-279; s. 86, ch. 73-333; s. 1, ch. 74-228.

[1]257.02 Members of council; appointment.—

(1) The members of the council shall be appointed by the Department of State. Of the members first appointed, two shall be appointed for terms of 1 year, two for terms of 2 years, two for terms of 3 years, and one for a term of 4 years. Subsequent appointments, except for filling vacancies, shall be for the full term of 4 years. Vacancies shall be filled for the period of the unexpired term.

(2) Members of the council shall serve without compensation but shall be entitled to receive reimbursement for traveling expenses as provided in s. 112.061. The council shall meet a minimum of four times a year.

(3) The Department of State may, in making appointments, consult the Florida Library Association and related organizations for suggestions as to persons having special knowledge and interest concerning libraries.

History.—s. 2, ch. 10278, 1925; CGL 1688; s. 2, ch. 63-39; s. 19, ch. 63-400; ss. 10, 35, ch. 69-106; s. 21, ch. 69-353; s. 2, ch. 70-250; s. 1, ch. 70-439; s. 1, ch. 71-279; s. 2, ch. 74-228; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]257.031 Organization of council; appointment of State Librarian.—

(1) The officers of the State Library Council shall be a chairman, elected from the members thereof, and a secretary, who shall be librarian of the State Library and who shall be a person trained in modern library methods, not a member of the council. The State Librarian shall be appointed by the Department of State and shall serve as the director of the Division of Library Services of the Department of State. The Department of State may, in making the appointment of State Librarian, consult the members of the State Library Council.

(2) The State Librarian shall:

(a) Keep a record of the proceedings of the council;

(b) Keep an accurate account of the division's financial transactions;

(c) Have charge of the work of the division in organizing new libraries and improving those already established; and

(d) In general, perform such duties as may, from time to time, be assigned to him by the Department of State.

History.—s. 4, ch. 70-250; s. 1, ch. 70-439; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

257.04 Publications, etc., received to constitute part of state library; powers and duties of division.—

(1) All books, pictures, documents, publications, and manuscripts received through gifts, purchase, or exchange, or on deposit from any source for the use of the state, shall constitute a part of the State Library, and shall be placed therein for the use of the public, under the control of the Division of Library Services of the Department of State. The division may receive gifts of money, books or other property which may be used or held for the purpose or purposes given; and may purchase books, periodicals, furniture and equipment as it deems necessary to promote the efficient operation of the service it is expected to render the public.

(2) The division may, upon request, give aid and assistance, financial, advisory, or otherwise, to all school, state institutional, free, and public libraries, and to all communities in the state which may propose to establish libraries, as to the best means of establishing and administering libraries, selecting and cataloging books, and other details of library management.

(3) The division shall maintain a library for state officials and employees, especially of informational material pertaining to the phases of their work, and provide for them material for general reading and study.

(4) The division shall maintain and provide research and information services for all state agencies.

(5) The division shall make all necessary arrangements to provide library services to the blind and physically handicapped persons of the state.

(6) The division may issue printed material, such as lists and circulars of information, and in the publication thereof may cooperate with state library commissions and libraries of other states in order to secure the more economical administration of the work for which it is formed. It may conduct courses of library instruction and hold librarians' institutes in various parts of the state.

(7) The division shall perform such other services and engage in any other activity, not contrary to law, that it may think appropriate in the development of library service to state government, to the libraries and library profession of the state, and to the citizens of the state.

History.—s. 4, ch. 10278, 1925; CGL 1690; s. 4, ch. 63-39; ss. 10, 35, ch. 69-106; s. 21, ch. 69-353; s. 3, ch. 74-228.

257.05 Copies of reports of state departments furnished division.—

(1) A "public document" as referred to in this section shall be defined as any annual, biennial, regular or special report or publication of which at least 500 copies are printed and which may be subject to distribution to the public.

(2) Each and every state official, state department, state board, state court or state agency of any kind, issuing public documents shall furnish the Division of Library Services of the Department of State 25 copies of each of those public documents, as issued, for deposit in and distribution by the division. However, if the division shall so request, as many as 25 additional copies of each public document shall be supplied to it.

(3) It shall be the duty of the division to:

(a) Designate university, college, and public libraries as depositories for public documents.

(b) Provide a system of distribution of the copies furnished to it under subsection (2) to such depositories.

(c) Publish a periodic bibliography of the publications of the state.

The division is authorized to exchange copies of public documents for those of other states, territories and countries. Depositories receiving public documents under this section shall keep them in a convenient form accessible to the public.

(4) The division shall also be furnished by any state official, department or agency having charge of their distribution, as issued, bound journals of each house of the Legislature; acts of the Legislature, both local or special and general; annotated acts of the Legislature; and revisions and compilations of the Laws of Florida. The number of copies furnished shall be determined by requests of the division, which number in no case shall exceed 25 copies of the particular publication and, in the case of legislative acts, annotated legislative acts, and revisions and compilations of the laws, not more than 2 copies.

(5) In any case in which any state official, state department, state board, state court, or state agency of any class or kind has more than 10 copies of any one kind of publication from time to time heretofore issued, he or it shall, upon request of the division, supply said division with 1 copy of each such publication for deposit in the state library.

History.—s. 5, ch. 10278, 1925; CGL 1691; s. 1, ch. 22064, 1943; s. 1, ch. 21758, 1943; s. 4, ch. 63-39; s. 1, ch. 67-223; ss. 10, 35, ch. 69-106; s. 21, ch. 69-353; s. 1, ch. 73-305.

cf.—s. 283.15 Journals of the legislature.

257.06 Annual report of division.—The Division of Library Services of the Department of State shall, prior to March 1 of each year, make a report to the governor, which report shall show the condition of the state library and library conditions and progress in Florida and shall contain a detailed statement of the expenses of the division. This report, when printed, shall be presented to the legislature and distributed by the division. This report and other printing and binding for the division shall be printed under the same regulations as other reports of the executive officers of the state.

History.—s. 6, ch. 10278, 1925; CGL 1692; s. 4, ch. 63-39; ss. 10, 35, ch. 69-106; s. 21, ch. 69-353; s. 1, ch. 73-305.

257.08 Division to submit budget to legislature for appropriations.—To carry out the provisions of this chapter, the division shall submit to the Department of State its budget for maintenance as a basis for appropriations.

History.—s. 8, ch. 10278, 1925; CGL 1694; s. 4, ch. 63-39; ss. 10, 35, ch. 69-106; s. 21, ch. 69-353.

257.12 Division of Library Services authorized to accept, etc., federal funds.—

(1) The Division of Library Services of the Department of State is authorized to accept, receive, administer and expend any moneys, materials or any other aid granted, appropriated, or made available by the United States or any of its agencies for the purpose of giving aid to libraries and providing educational library service in the state.

(2) The division is authorized to file any accounts required by federal law or regulation with reference to receiving and administering all such moneys, materials, and other aid for said purposes; provided, however, that the acceptance of such moneys, materials, and other aid shall not deprive the state from complete control and supervision of its library.

History.—ss. 1, 2, ch. 26976, 1951; s. 4, ch. 63-39; ss. 10, 35, ch. 69-106; s. 21, ch. 69-353.

257.13 Definitions; ss. 257.14-257.25.—The following terms, when used in ss. 257.14-257.25 or the rules, regulations and orders made pursuant hereto, shall be construed, respectively:

(1) "Population" means the latest reliable annual estimate of midyear population made by some state agency which is approved by the Division of Library Services of the Department of State.

(2) "Library unit" means all libraries operating under a single administration in any given area of the state wherein there is county participation.

(3) "Municipal library" means any library oper-

ated by a municipality the services of which are available to the entire county and which meets minimum standards established by the Division of Library Services. Any municipal library, as defined by this subsection, shall be considered a library unit for the purposes of subsection (2), except that the provisions of this subsection shall not apply with respect to s. 257.20.

History.—s. 1, ch. 61-402; s. 4, ch. 63-39; ss. 10, 35, ch. 69-106; s. 21, ch. 69-353; s. 1, ch. 72-353.

257.14 Division of Library Services; rules and regulations.—The Division of Library Services may make all necessary and reasonable rules and regulations to carry out the provisions of ss. 257.13-257.25.

History.—s. 2, ch. 61-402; s. 4, ch. 63-39; ss. 10, 35, ch. 69-106; s. 21, ch. 69-353.

257.15 Division of Library Services; standards.—The Division of Library Services shall establish reasonable and pertinent operating standards for public libraries under which counties maintaining a free library, free library service by contract or municipal libraries shall be eligible to receive state moneys.

History.—s. 3, ch. 61-402; s. 4, ch. 63-39; ss. 10, 35, ch. 69-106; s. 21, ch. 69-353; s. 2, ch. 72-353.

257.16 Reports.—All library units receiving grants under ss. 257.13-257.25 shall file with the Division of Library Services on or before December 1 of each year a financial report on its operations and furnish the said division with such other information as said division may require.

History.—s. 4, ch. 61-402; s. 4, ch. 63-39; ss. 10, 35, ch. 69-106; s. 21, ch. 69-353.

257.17 Operating grants.—Any county which establishes or maintains a free library or which gives or receives free library service by contract with a municipality or nonprofit library corporation or association within said county, or any municipality which establishes or maintains a free library, shall be eligible to receive an annual operating grant of not more than 25 percent of all local funds expended during the preceding fiscal year by said county, by said municipality, or by said county and municipality or nonprofit library corporation or association, for the operation and maintenance of a library unit. Any county which joins with one or more counties to maintain a free library or contracts with another county or with a municipality in another county to receive free library service shall be eligible to receive an annual operating grant of not more than 25 percent of the local funds which said county expended during the preceding fiscal year for the operation and maintenance of a jointly maintained free library unit or free library service. No county or municipality shall be eligible to receive a grant unless the total operating budget of the library unit is at least $20,000. Counties or municipalities establishing free public library service for the first time may submit a certified copy of their appropriation for library service, and their eligibility to receive an operating grant shall be based upon said appropriation.

History.—s. 5, ch. 61-402; s. 1, ch. 72-247; s. 3, ch. 72-353; s. 1, ch. 73-138.

257.18 Equalization grants.—Any county or municipality qualifying for an operating grant in which the appropriation for the library unit from all local sources is equivalent to the yield of a 1-mill county tax or $1 per capita, whichever is less, and whose equalization factor is less than $1, shall be eligible to receive an equalization grant computed by multiplying the population of the county by the difference between $1 and the equalization factor. The equalization formula shall be computed annually for each county by the division based upon the ratio of each county's contribution to the state full value of assessment of property to the actual contribution to actual assessment of the state. The level of assessment of property for each county shall be determined by the state agency authorized by law, which shall certify the results of such determination to the division. During the initial year that this formula is used to compute the grants, no participating county will receive less equalization money than it received pursuant to the formula employed in fiscal 1972-1973.

History.—s. 6, ch. 61-402; s. 4, ch. 72-353; s. 2, ch. 73-138.

257.19 Establishment grants.—Grants for the establishment or extension of library service may be paid for 1 year only to any county joining a regional library or to two or more counties forming a regional library or to any county contracting with a municipal library having a municipal budget of over $20,000. An establishment grant shall equal, and be in addition to, the total grant (operating and equalization) to which a county is otherwise entitled, provided that no establishment grant shall exceed $50,000. For the purposes of this section, s. 257.21 shall not be applicable.

History.—s. 7, ch. 61-402; s. 3, ch. 73-138.

257.191 Construction grants.—The Division of Library Services is authorized to accept and administer library construction moneys appropriated to it and shall allocate such appropriation to municipal, county, and regional libraries in the form of library construction grants on a matching basis. The local matching portion shall be no less than 50 percent. The division shall establish regulations for the administration of library construction grants and promulgate them pursuant to s. 257.14. For the purposes of this section, s. 257.21 shall not be applicable.

History.—s. 4, ch. 73-138.

257.192 Program grants.—The Division of Library Services is authorized to accept and administer appropriations for library program grants and to make such grants in accordance with the Florida long-range program for library services.

History.—s. 5, ch. 73-138.

257.20 Determination of municipal fiscal year.—Where county and municipal fiscal years do not coincide, the municipal appropriation for the municipal fiscal year ending during the county fiscal year for which grants are given shall be used for calculating the grant.

History.—s. 8, ch. 61-402.

257.21 Maximum grants allowable.—Any reduction in grants because of insufficient funds shall be prorated on the basis of maximum grants allowable.

History.—s. 9, ch. 61-402.

257.22 Division of Library Services; allocation of funds.—The moneys herein appropriated, and any moneys that may be hereafter appropriated for use by counties or municipalities maintaining a free library or free library service, shall be administered and allocated by the Division of Library Services in the manner prescribed by law. On or before November 1, for the current year, and on or before November 1 of each year thereafter, the division shall certify to the Comptroller the amount to be paid to each county or municipality, and the Comptroller shall issue warrants to the respective boards of county commissioners or chief municipal executive authorities for the amount so allocated.

History.—s. 10, ch. 61-402; s. 4, ch. 63-39; ss. 10, 35, ch. 69-106; s. 21, ch. 69-353; s. 5, ch. 72-353.

257.23 Application for grant.—

(1) The board of county commissioners of any county desiring to receive a grant under the provisions of ss. 257.13-257.25 shall apply therefor to the Division of Library Services on or before October 1, for the current year, and on or before October 1, of each year thereafter, on a form to be provided by said division. In said application, which shall be signed by the chairman of the board of county commissioners and attested by the clerk of the circuit court, the board of county commissioners shall agree to observe the standards established by the division as authorized in s. 257.15, shall certify the annual tax income and the rate of tax or the annual appropriation for the free library or free library service, and shall furnish such other pertinent information as the division may require.

(2) The chief municipal executive authority of any municipality desiring to receive a grant under the provisions of ss. 257.13-257.25 shall apply therefor to the Division of Library Services on or before October 1 for the current year, and on or before October 1 of each year thereafter, on a form to be provided by the division. In the application, which shall be signed by the chief municipal executive officer and attested to by the clerk of the circuit court, the chief municipal executive authority shall agree to observe the standards established by the division, as authorized in s. 257.15, certify the annual tax income and the rate of tax or the annual appropriation for the free library, and furnish such other pertinent information as the division may require.

History.—s. 11, ch. 61-402; s. 4, ch. 63-39; ss. 10, 35, ch. 69-106; s. 21, ch 69-353; s. 6, ch. 72-353.

257.24 Use of funds.—State funds allocated to any county or municipality for a free library or free library service shall be expended only for library purposes in the manner prescribed by the Division of Library Services. Such funds shall not be expended for the purchase or construction of a library building or library quarters, except such funds specifically appropriated for construction purposes as provided in this chapter.

History.—s. 12, ch. 61-402; s. 7, ch. 72-353; s. 6, ch. 73-138.

257.25 Free library service.—The service of books in libraries receiving state funds shall be free and shall be made available to all persons living in areas taxed for library purposes.

History.—s. 13, ch. 61-402.

257.261 Library registration and circulation records.—All registration and circulation records of every public library, except statistical reports of registration and circulation, shall be confidential information. Except in accordance with proper judicial order, no person shall make known in any manner any information contained in such records. As used in this section, the term "registration records" includes any information which a library requires a patron to provide in order to become eligible to borrow books and other materials, and the term "circulation records" includes all information which identifies the patrons borrowing particular books and other materials. Any person violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 78-81.

257.28 Compact.—The Interstate Library Compact is hereby enacted into law and entered into by this state with all states legally joining therein in the form substantially as follows:

INTERSTATE LIBRARY COMPACT

The contracting states solemnly agree that:

Article I

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis; and to authorize cooperation and sharing among localities, states and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

Article II

As used in this compact:

(a) "Public library agency" means any unit or agency of a local or state government operating or having power to operate a library.

(b) "Private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library.

(c) "Library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or cooperative fur-

nishing of library services.

Article III

(a) Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may cooperate therewith, assume duties, responsibilities and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(b) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(c) If a library agreement provides for joint establishment, maintenance or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

1. Undertake, administer and participate in programs or arrangements for securing, lending or servicing of books and other publications, any other materials suitable to be kept or made available by libraries, library equipment or for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof.

2. Accept for any of its purposes under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, (conditional or otherwise), from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and receive, utilize and dispose of the same.

3. Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.

4. Employ professional, technical, clerical and other personnel and fix terms of employment, compensation, and other appropriate benefits; and where desirable, provide for the inservice training of such personnel.

5. Sue and be sued in any court of competent jurisdiction.

6. Acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service.

7. Construct, maintain and operate a library, including any appropriate branches thereof.

8. Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

Article IV

(a) An interstate library district which establishes, maintains or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(b) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

Article V

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or cooperative library programs, render joint or cooperative library services, and enter into and perform arrangements for the cooperative or joint acquisition, use, housing and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriated for central collection and shared use. Any such programs, services or arrangements may include provision for the exercise on a cooperative or joint basis of any power exercisable by an interstate library district and an agreement embodying any such program, service, or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

Article VI

(a) In order to provide for any joint or cooperative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

1. Detail the specific nature of the services, programs, facilities, arrangements or properties to which it is applicable.

2. Provide for the allocation of costs and other financial responsibilities.

3. Specify the respective rights, duties, obligations and liabilities of the parties.

4. Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(b) No public or private library agency shall undertake to exercise itself, or jointly with any other library agency, by means of a library agreement any power prohibited to such agency by the constitution or statutes of its state.

(c) No library agreement shall become effective

until filed with the compact administrator of each state involved, and approved in accordance with Article VII of this compact.

Article VII

(a) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within ninety days of its submission shall constitute approval thereof.

(b) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (a) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to an approval by the attorneys general.

Article VIII

Nothing in this compact or in any library agreement shall be construed to supersede, alter or otherwise impair any obligation imposed on any library by otherwise applicable law, nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

Article IX

(a) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(b) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

Article X

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

Article XI

(a) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(b) This compact shall continue in force with respect to a party state and remain binding upon such state until six months after such state has given notice to each other party state of the repeal thereof. Such withdrawals shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

Article XII

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History.—s. 1, ch. 72-157.

257.29 Compliance with local laws.—No city, town, county, library system, library district, or other political subdivision of this state shall be party to a library agreement which provides for the construction or maintenance of a library pursuant to Art. III, subdivision (c)7. of the compact, pledge its credit in support of such a library, or contribute to the capital financing thereof except after compliance with any laws applicable to such cities, towns, counties, library systems, library districts, or other political subdivisions relating to or governing capital outlay and the pledging of credit.

History.—s. 2, ch. 72-157.

257.30 State library agency.—As used in the compact, "state library agency," with reference to this state, means Florida State Library or agency designated by the Secretary of State.

History.—s. 3, ch. 72-157.

257.31 Appropriations.—An interstate library district lying partly within this state may claim and be entitled to receive state aid in support of any of its functions to the same extent and in the same manner as such functions are eligible for support when carried on by entities wholly within this state. For the purposes of computing and apportioning state aid to interstate library districts hereinafter to be created, this state will consider that portion of the area which lies within this state as an independent entity for the performance of the aided function or functions and compute and apportion the aid accordingly. Subject to any applicable laws of this state, such a district also may apply for and be entitled to receive any federal aid for which it may be eligible.

History.—s. 4, ch. 72-157.

257.32 Compact administrator.—The Secretary of State shall be the compact administrator pursuant to Art. X of the compact. The Secretary of State may appoint a deputy compact administrator pursuant to said article.

History.—s. 5, ch. 72-157.

257.33 Notices.—In the event of withdrawal from the compact, the Secretary of State shall send and receive any notices required by Art. XI (b) of the compact.

History.—s. 6, ch. 72-157.

CHAPTER 258

STATE PARKS AND PRESERVES

258.001 Park regions.—For the purpose of administering this chapter, regulating the public parks, monuments and memorials of this state, the state is divided into five park regions which are defined as:

(1) FIRST REGION.—The Counties of Escambia, Santa Rosa, Okaloosa, Walton, Bay, Washington, Holmes, Jackson, Calhoun, Gulf, Gadsden, Liberty, Franklin, Wakulla, Leon, and Jefferson shall constitute the First Park Region.

(2) SECOND REGION.—The Counties of Madison, Taylor, Hamilton, Suwannee, Lafayette, Dixie, Levy, Gilchrist, Columbia, Baker, Union, Bradford, Alachua, Marion, Putnam, Clay, Duval, Nassau, and St. Johns shall constitute the Second Park Region.

(3) THIRD REGION.—The Counties of Citrus, Sumter, Lake, Hernando, Pasco, Hillsborough, Pinellas, Polk, Manatee, Hardee, Highlands, Sarasota, DeSoto, Charlotte, and Glades shall constitute the Third Park Region.

(4) FOURTH REGION.—The Counties of Flagler, Volusia, Seminole, Orange, Osceola, Brevard, Indian River, Okeechobee, St. Lucie, and Martin shall constitute the Fourth Park Region.

(5) FIFTH REGION.—The Counties of Lee, Hendry, Palm Beach, Collier, Broward, Dade, and Monroe shall constitute the Fifth Park Region.

History.—s. 2, ch. 25353, 1949; ss. 25, 35, ch. 69-106.
Note.—Former s. 592.02.

258.004 Duties of division.—

(1) It shall be the duty of the Division of Recreation and Parks of the Department of Natural Resources to supervise, administer, regulate, and control the operation of all public parks, including all monuments, memorials, sites of historic interest and value, sites of archaeological interest and value owned, or which may be acquired, by the state, or to the operation, development, preservation, and maintenance of which the state may have made or may make contribution or appropriation of public funds.

(2) The Division of Recreation and Parks shall preserve, manage, regulate, and protect all parks and recreational areas held by the state and may provide these services by contract or interagency agreement for any water management district when the governing board of a water management district designates or sets aside any park or recreation area within its boundaries.

History.—s. 6, ch. 25353, 1949; ss. 25, 35, ch. 69-106; s. 254, ch. 71-377; s. 14, ch. 75-22.
Note.—Former s. 592.06.

258.007 Powers of division.—

(1) The Division of Recreation and Parks shall have power to acquire, in the name of the state, any property real or personal, by purchase, grant, devise, condemnation, donation, or otherwise, in which in its judgment may be necessary or proper toward the administration of the purposes of this chapter, pro-

vided, however, that no property of any nature may be acquired by purchase, lease, grant, donation, devise, or otherwise, under conditions which shall pledge the credit of, or obligate in any manner whatsoever the state to pay any sum of money; provided, that the power of condemnation as herein granted is limited to the acquisition of property or property rights which may be required for park purposes and which are contiguous to areas under the jurisdiction of the Board of Parks and Historic Memorials on July 1, 1949. Express legislative approval is required for the acquisition by condemnation of any new area or memorial which the division may desire for the purposes set forth in this chapter, except that the division may maintain and insure with the Florida fire insurance trust fund buildings on property owned by the state or any of its agencies.

(2) The division shall make and publish such rules and regulations as it may deem necessary or proper for the management and use of the parks, monuments, and memorials under its jurisdiction, and the violation of any of the rules and regulations authorized by this section shall be a misdemeanor and punishable accordingly.

(3) The division may grant privileges, leases, concessions, and permits for the use of land for the accommodation of visitors in the various parks, monuments, and memorials, provided no natural curiosities or objects of interest shall be granted, leased, or rented on such terms as shall deny or interfere with free access to them by the public; provided further, such grants, leases, and permits may be made and given without advertisement or securing competitive bids; and provided further, that no such grant, lease, or permit shall be assigned or transferred by any grantee without consent of the division.

(4) The division is authorized to grant easements for rights-of-way over, across, and upon lands of the state for the maintenance of poles and lines for the transmission and distribution of electrical power and for telephone and telegraphic purposes, under such conditions and with such limitations as the division may impose.

(5)(a) The division is authorized and empowered to select and designate sites of historic interest and value of statewide significance and to erect and maintain appropriate signs or markers indicating said sites upon public property as well as upon private property where permission is obtained.

(b) The Department of Transportation, the governing body of each county and municipality is authorized to permit the Division of Recreation and Parks to erect and maintain said historic signs or markers within the right-of-way of any state highway, county road, or municipal street, or any other property under their jurisdiction and control, under such conditions and limitations as may be appropriate. The division is hereby vested with the exclusive authority and power to erect and maintain said historic signs or markers within the right-of-way of any state highway.

(c) The division is authorized to receive gifts and donations from any source to carry out the purpose of this section.

History.—s. 7, ch. 25353, 1949; s. 7, ch. 29615, 1955; s. 1, ch. 59-392; ss. 23, 25, 35, ch. 69-106; s. 1, ch. 70-302; s. 1, ch. 70-439.
Note.—Former s. 592.07.

258.011 Rules and regulations for certain parks.—The Division of Recreation and Parks may adopt and enforce such rules and regulations as may be necessary for the protection, utilization, development, occupancy, and use of said parks, and consistent with existing laws and with the purpose, or purposes, for which said areas were acquired, designated, and dedicated, and when such rules and regulations shall have been adopted they shall have the force and effect of law.

History.—s. 5, ch. 16030, 1933; CGL 1936 Supp. 4151(10e); ss. 25, 35, ch. 69-106.
Note.—Former s. 589.22, s. 592.071.

258.014 Fees for use of state parks.—

(1) The Division of Recreation and Parks shall have the power to charge reasonable fees, rentals or charges for the use or operation of facilities and concessions in state parks, and all such fees, rentals, and charges so collected shall be deposited in the State Treasury to the credit of "State Park Trust Fund," which is hereby created, the continuing balance of which fund is hereby appropriated to be expended by said division for the administration, improvement and maintenance of state parks and for the acquisition and development of lands hereafter acquired for state park purposes. The appropriation of said fund shall be continuing, and shall not revert to the General Revenue Fund at the end of any fiscal year or at any other time but shall, until expended, be continually available to said division for the uses and purposes set forth.

(2) Any moneys received in trust by the division by gift, devise, appropriation, or otherwise shall, subject to the terms of such trust, be deposited with the State Treasurer in a fund to be known as the "State Park Trust Fund," and shall be subject to withdrawal upon application of said division for expenditure or investment in accordance with the terms of said trust. Unless prohibited by the terms of the trust by which said moneys are derived, all of such moneys may be invested as provided by law.

History.—ss. 1, 2, ch. 20417, 1941; s. 2, ch. 61-119; s. 9, ch. 67-354; ss. 25, 35, ch. 69-106.
Note.—Former s. 589.25, s. 592.072.
cf.—ss. 518.07, 518.15, 654.05, 659.20 Authorized investments for trust companies.

258.017 Dedication of state park lands for public use.—The Division of Recreation and Parks is authorized and empowered, from time to time, by resolution, to dedicate and reserve for the use of the public all or any part of the lands acquired by the division for park purposes; provided however, that said dedication and reservation shall be subject to such rules and regulations, as to reasonable use by the public, as may be adopted by the division.

History.—s. 28, ch. 29615, 1955; ss. 25, 35, ch. 69-106.
Note.—Former s. 592.073.
cf.—s. 589.26 Dedication of state park lands for public use—Division of Forestry.

258.021 Power of eminent domain; procedure.—Whenever the Division of Recreation and Parks shall find it necessary to acquire private property for state parks, or rights-of-way for state parks, or for exercising any of the powers and duties authorized and prescribed by law to be exercised and performed by the division, the division is hereby empowered and authorized to exercise the right of emi-

nent domain and to proceed to condemn said property in the same manner as provided by law for the condemnation of private property by counties.

History.—s. 28, ch. 29615, 1955; ss. 25, 35, ch. 69-106.
Note.—Former s. 592.074.
cf.—Chs. 73, 74, 127 Eminent Domain.
s. 589.27 Power of eminent domain; procedure—Division of Forestry.

258.024 Police powers of director and park officers.—

(1) The Governor and cabinet as the head of the Department of Natural Resources are authorized to designate the director of the Division of Recreation and Parks. The director and such number of park officers as may be deemed necessary at each park site shall be constituted police officers having the following powers:

(a) To make arrest without warrant for the violation of any state law committed in their presence in accordance with the laws of this state only when such violations occur upon lands under jurisdiction of the division;

(b) To bear arms while in the performance of their official duties;

(c) To have the powers of search and seizure; as set forth in s. 901.21.

(2) The park officers so designated as officers having the power to arrest shall:

(a) Meet the requirements of the Police Standards Board; and

(b) Be assigned to one regular duty station only and perform such services in addition to their other regular duties as park officers.

(3) The Division of Recreation and Parks is not authorized by this section to establish a special law enforcement unit or division within that agency, and the park officers designated as having arrest powers shall not be employed as a patrol to move from one state park to another.

(4) It is unlawful for any person to resist arrest or otherwise interfere with the director or park officers in the performance of their lawful duties.

History.—s. 1, ch. 70-106; s. 8, ch. 73-333.
Note.—Former s. 592.075.

258.027 Division to take over certain functions.—The Division of Recreation and Parks is vested with all rights, powers, duties, privileges, and authority relating to park matters heretofore vested in and exercised by the Florida Board of Forestry and Parks and is charged with the responsibility of carrying out, performing and discharging all duties and liabilities, contractual and otherwise heretofore imposed upon or incurred by the Florida Board of Forestry and Parks in connection with or appertaining to the management, control, improvement, operation, and administration of state parks. All park property, real, personal and mixed now owned by, or held under management, direction and control, of Florida Board of Forestry is transferred to and vested in division.

History.—s. 8, ch. 25353, 1949; ss. 25, 35, ch. 69-106.
Note.—Former s. 592.08.

258.031 Department of Transportation to assist division.—The Division of Road Operations of the Department of Transportation is authorized and directed to construct, reconstruct, maintain, and improve, in cooperation with and under the direction of the Division of Recreation and Parks, roads, and trails, including necessary bridges, within and adjacent to state parks, monuments, and memorials which roads and trails when constructed, reconstructed, and improved shall become a part of the state system of highways, provided the Division of Recreation and Parks is vested with and shall exercise jurisdiction over the use of all such roads and trails lying within state parks, monuments, and memorials and shall make and enforce reasonable rules and regulations regarding their use for travel.

History.—s. 9, ch. 25353, 1949; ss. 23, 25, 35, ch. 69-106.
Note.—Former s. 592.09.

258.034 State Park Trust Fund created.—There is created a "State Park Trust Fund" to which shall be credited all money deposited in the State Treasury by appropriations, or from any other source, whether in trust, by gift, devise, fees, rentals, and charges, together with any unexpended balance of any appropriation heretofore made for the expenditure of public funds toward the support, maintenance, and preservation of any monument, memorial, or historic site which under this chapter comes under the jurisdiction of the Division of Recreation and Parks, to be expended by the division for the administration, improvement, and maintenance of state parks and historic memorials by this chapter placed under the jurisdiction of the division and for the acquisition and development of lands hereafter acquired for state park purposes.

History.—s. 11, ch. 25353, 1949; s. 2, ch. 61-119; ss. 25, 35, ch. 69-106.
Note.—Former s. 592.11.

258.037 Policy of division.—It shall be the policy of the Division of Recreation and Parks: To promote the state park system for the use, enjoyment, and benefit of the people of Florida and visitors; to acquire typical portions of the original domain of the state which will be accessible to all of the people, and of such character as to emblemize the state's natural values; conserve these natural values for all time; administer the development, use and maintenance of these lands and render such public service in so doing, in such a manner as to enable the people of Florida and visitors to enjoy these values without depleting them; to contribute materially to the development of a strong mental, moral, and physical fibre in the people; to provide for perpetual preservation of historic sites and memorials of statewide significance and interpretation of their history to the people; to contribute to the tourist appeal of Florida.

History.—s. 12, ch. 25353, 1949; ss. 25, 35, ch. 69-106.
Note.—Former s. 592.12.

258.041 Cooperation of division with counties, etc.—The Division of Recreation and Parks may cooperate with counties in county and state park work, and in this connection county commissioners may acquire, by gift, devise, or purchase from general funds, from individuals, corporations, the United States Government, or any of its departments or agencies, any lands, which are suitable for public parks or for the preservation of natural beauty or places of historic association, and operate the same as public parks. Said county commissioners may also convey any such lands so acquired to the

Board of Trustees of the Internal Improvement Trust Fund or the division, provided such lands are acceptable by said board of trustees or division.

History.—ss. 4-6, ch. 17025, 1935; CGL 1936 Supp. 1749(4)-(6); s. 2, ch. 61-119; ss. 25, 27, 35, ch. 69-106.
Note.—Former s. 589.24, s. 592.121.

258.08 Guide meridian and base parallel park located.—Guide meridian and base parallel park, a park for the perpetuation and preservation of the point or place from which the state was surveyed, is established and located in Tallahassee, Leon County, on a parcel of land one-half acre square, having for its center the intersection of the guide meridian and the base parallel of Florida, more particularly described as follows, to wit:

One-eighth of an acre in the form of a square, in the northwest corner of section six in township one south, range one east; one-eighth of an acre in the form of a square, in the southwest corner of section thirty-one in township one north, range one east; one-eighth of an acre in the form of a square, in the southeast corner of section thirty-six in township one north, range one west; and one-eighth of an acre in the form of a square in the northeast corner of section one in township one south, range one west.

History.—s. 1, ch. 10188, 1925; ss. 1, 2, ch. 11902, 1927; CGL 1740, 1742, 1743.

258.081 Stephen Foster Memorial.—The division shall maintain and operate the Stephen Foster Memorial facility in such manner that the performing arts component of the Folk Life Program provided in ss. 265.136 and 265.137 shall have priority use of the facility.

History.—s. 7, ch. 79-322.

258.083 John Pennekamp Coral Reef State Park; taking or damaging of coral prohibited.—

(1) It is unlawful for any person, firm, or corporation to bring into or transport through any part of the state, including its waters, any coral or other material taken from the subsoil or seabed of any portion of the John Pennekamp Coral Reef State Park adjacent to or in the vicinity of the state which has been taken in violation of any law or regulation of the Federal Government.

(2) It is unlawful for any person, firm, or corporation to destroy, damage, remove, deface, or take away any coral, rock, or other formation or any part thereof, of any portion of the John Pennekamp Coral Reef State Park adjacent to or in the vicinity of the state in which such action is in violation of any law or regulation of the Federal Government.

(3) Violation of any of the provisions of this act shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-3, ch. 61-454; s. 620, ch. 71-136.
Note.—Former s. 592.17.

258.09 Rauscher Park designated.—There is designated and established as a state park to be known as Rauscher Park, in Escambia County, the lands lying between the Big Lagoon and the Gulf of Mexico, now owned by Escambia County, or hereafter acquired by Escambia County, adjacent or contiguous thereto, from private owners or from the United States Government; and the board of county commissioners of Escambia County may execute proper conveyance to the board of commissioners of state institutions covering the property now owned by Escambia County, as aforesaid, and said board of county commissioners of Escambia County may acquire in the name of the Division of Recreation and Parks of the Department of Natural Resources any property adjacent or contiguous thereto, from private owners or from the United States Government; and said division may accept in the name of the state the title to any such lands, whether from said Escambia County, or whether same be property acquired from private owners or the United States Government.

History.—s. 1, ch. 19345, 1939; ss. 25, 35, ch. 69-106.

258.10 Division of Recreation and Parks to supervise and maintain Rauscher Park.—After the conveyance of said lands and such additional land as may, from time to time, be acquired, under the provisions of s. 258.09, said lands shall be deemed and held to be a state park, under the supervision of the Division of Recreation and Parks of the Department of Natural Resources, and the said division is charged with the duty of providing for the development, care, upkeep, maintenance and beautification of said Rauscher Park.

History.—s. 2, ch. 19345, 1939; s. 24, ch. 57-1; ss. 25, 35, ch. 69-106.

258.11 Land ceded for Royal Palm State Park; proviso.—Section fifteen, and the north half of section twenty-two of township fifty-eight south, range thirty-seven east, situated in Dade County, is ceded to the Florida Federation of Women's Clubs and designated as the "Royal Palm State Park," to be cared for, protected, and to remain in the full possession and enjoyment, with all the possessory rights and privileges thereunto, belonging to the Florida Federation of Women's Clubs, for the purpose of a state park, for the benefit and use of all the people of Florida, perpetually; provided, that the Florida Federation of Women's Clubs shall procure a deed to 960 acres of land in Dade County, in the vicinity of said state park, suitable for agricultural purposes, conveying to said Florida Federation of Women's Clubs fee simple title thereto, said land to be used as an endowment for the perpetual use and benefit of the said park, its protection, improvement and the beautifying thereof, including the construction of roads and other improvements, either in kind or by the use of the rents and profits accruing therefrom, or the proceeds of sale thereof or any part of said endowment tract.

History.—s. 1, ch. 6949, 1915; RGS 1210; CGL 1701.

258.12 Additional lands ceded for Royal Palm State Park.—For the use and benefit of all the people of the state, the state cedes to the Florida Federation of Women's Clubs the south half of section ten, southwest quarter of section eleven, west half of section fourteen, west half of section twenty-three, south half of section twenty-two, northwest quarter of section twenty-seven, north half of section twenty-eight, and northeast quarter of section twenty-nine, township fifty-eight south, range thirty-seven east, situated in Dade County, as additional acreage to "Royal Palm State Park," to be cared for and remain in the full possession and enjoyment of said Florida Federation of Women's Clubs, with all the

possessory rights and privileges to the same belonging or in anywise appertaining; provided, that said land is granted to the said Florida Federation of Women's Clubs upon the express condition that said land and every part thereof shall be used as a state park for the use and benefit of all the people of Florida, and for no other purpose; and in the event said grantee shall permit or suffer the use of said land for any other purpose, or shall discontinue the use thereof for such purpose, such misuse or discontinuance shall operate as a defeasance and said land and every part thereof shall revert to the state.

History.—s. 1, ch. 8577, 1921; CGL 1705.

258.14 Royal Palm State Park and endowment lands exempt from taxation.—The lands described in ss. 258.11 and 258.12 as the Royal Palm State Park, and the lands conveyed, and to be conveyed to the Florida Federation of Women's Clubs as an endowment for the use and benefit of said state property, are exempt from the payment of state, county, municipal, or any special assessment or any assessment of taxes.

History.—s. 3, ch. 6949, 1915; RGS 1212; s. 2, ch. 8577, 1921; CGL 1704, 1706.

258.15 St. Michael's Cemetery designated a state park.—

(1) St. Michael's Cemetery in Pensacola is designated and declared to be a state park.

(2) The Division of Recreation and Parks of the Department of Natural Resources shall manage and operate the said cemetery and shall be authorized to make such reasonable rules and regulations with respect to the said cemetery as the said division shall deem necessary for the orderly operation, protection and preservation of said cemetery. However, this section shall not be construed to prevent, and no rule and regulation shall be made which will prevent, the continued interment of bodies in the cemetery lots which are privately owned.

History.—ss. 1-3, ch. 25464, 1949; ss. 25, 35, ch. 69-106; s. 83, ch. 77-104.

258.16 Boca Ciega Bay Aquatic Preserve.—

(1) Boca Ciega Bay, in Pinellas County, as hereinafter described, is designated and established as an aquatic preserve under the provisions of this section. It is the intent of the Legislature that Boca Ciega Bay be preserved, insofar as possible, in an essentially natural condition so that its biological and aesthetic values may endure for the enjoyment of future generations.

(2)(a) For the purposes of this section, Boca Ciega Bay, sometimes referred to in this section as "the preserve," shall be comprised of that body of water in Pinellas County which lies south of the state road 688 bridge at, or near, Indian Rocks Beach and within the area enclosed by a line as follows: Beginning at a point where the east end of said bridge crosses the western shoreline of mainland Pinellas County and extending in a generally southerly direction along the western shoreline of mainland Pinellas County to the west end of the Seminole Bridge following the bridge easterly to exclude Long Bayou and Cross Bayou, thence in a southerly direction including the western shoreline of the Sunshine Skyway Causeway and extending to the southern boundary of Pinellas County, thence westerly along the Pinellas County line and around Mullet Key along a line one hundred yards seaward of the shoreline of Mullet Key and northerly along a line passing one hundred yards to the west of the shorelines of Summer Resort Key, Cabbage Key and Shell Key to the southernmost point of Long Key, thence in a generally northerly direction along the inner shoreline of Long Key, Treasure Island and Sand Key to a point where the west end of the state road 688 bridge crosses the inner shoreline of Sand Key, thence easterly along the south side of said bridge to the point of beginning. The boundary of the preserve designated as the shoreline shall mean the line of mean high water along such shoreline.

(b) The preserve established by this section shall include the submerged bottom lands, the water column upon such lands, and the islands owned by the state within the boundaries of the preserve. Any privately held land or submerged land within the established bulkhead lines or privately held islands within the preserve shall be deemed to be excluded therefrom. The Board of Trustees of the Internal Improvement Trust Fund may negotiate an arrangement with any such private owner whereby such lands or water bottoms may be included within the preserve.

(3) The Board of Trustees of the Internal Improvement Trust Fund are hereby directed to maintain Boca Ciega Bay as an aquatic preserve subject to the following provisions:

(a) No further sale, transfer, or lease of sovereignty submerged lands within the preserve shall be approved or consummated by the board of trustees except upon a showing of extreme hardship on the part of the applicant or when the overwhelming public interest so demands.

(b) No further dredging or filling of submerged lands within the preserve shall be approved or tolerated by the board of trustees except:

1. Such minimum dredging and spoiling as may be authorized for public navigation projects;

2. Such other alteration of physical conditions as may be necessary to enhance the quality or utility of the preserve as determined by the Pinellas County Water and Navigation Control Authority in a public hearing; and

3. Such dredging as is necessary for the purpose of eliminating conditions hazardous to the public health or for the purpose of eliminating stagnant waters, unsightly mud flats, islands, and spoil banks the dredging of which would enhance the aesthetic quality and utility of the preserve and is clearly in the public interest as determined by the Pinellas County Water and Navigation Control Authority in a public hearing.

There shall be no dredging beyond the bulkhead line for the sole purpose of providing fill for upland or submerged land within the bulkhead line. In addition there shall be no drilling of wells, excavation for shell or minerals, and no erection of structures (other than docks) within the preserve, unless such activity is associated with activity authorized by this section.

[1](c) The board of trustees shall not approve any seaward relocation of bulkhead lines or further establishment of bulkhead lines except when a pro-

posed bulkhead line is located at the line of mean high water along the shoreline.

(4)(a) The board of trustees shall adopt and enforce reasonable rules and regulations to carry out the provisions of this section and specifically to provide:

1. Additional preserve management criteria as may be necessary to accommodate special circumstances; and

2. Regulation of human activity within the preserve in such a manner as not to interfere unreasonably with such lawful and traditional public uses of the preserve as fishing (both sport and commercial), boating, and swimming.

(b) Other uses of the preserve, or human activity within the preserve, although not originally contemplated, may be permitted by the board of trustees, but only subsequent to a formal finding of compatibility with the purposes of this section.

(5) Neither the establishment nor the management of the Boca Ciega Bay Aquatic Preserve shall operate to infringe upon the riparian rights of upland property owners adjacent to or within the preserve. Reasonable improvement for ingress and egress, mosquito control, shore protection, bridges, causeways, and similar purposes may be permitted by the board of trustees, subject to the provisions of any other applicable laws under the jurisdiction of other agencies.

(6) Nothing herein shall be construed to deprive the Pinellas County Water and Navigation Control Authority of its jurisdiction, powers, and duties.

History.—ss. 1-6, ch. 69-342; ss. 27, 35, ch. 69-106.

[1]**Note.**—See s. 26, ch. 75-22, which repealed s. 253.122, relating to the power to fix bulkhead lines, and s. 7(3), ch. 75-22 (s. 253.1221), which reestablished all previously established bulkhead lines at the line of mean high water or ordinary high water.

258.165 Biscayne Bay Aquatic Preserve.—

(1) DESIGNATION.—Biscayne Bay in Dade and Monroe Counties, as hereinafter described to include Card Sound, is designated and established as an aquatic preserve under the provisions of this section. It is the intent of the legislature that Biscayne Bay be preserved in an essentially natural condition so that its biological and aesthetic values may endure for the enjoyment of future generations.

(2) BOUNDARIES.—

(a) For the purposes of this section, Biscayne Bay, sometimes referred to in this section as "the preserve," shall be comprised of the body of water in Dade and Monroe Counties known as Biscayne Bay whose boundaries are generally defined as follows:

Begin at the southwest intersection of the right-of-way of State Road 826 and the mean high-water line of Biscayne Bay (Township 52 South, Range 42 East, Dade County); thence southerly along the westerly mean high-water line of Biscayne Bay to its intersection with the right-of-way of State Road 905A (Township 59 South, Range 40 East, Monroe County); thence easterly along such right-of-way to the easterly mean high-water line of Biscayne Bay; thence northerly along the easterly mean high-water line of Biscayne Bay following the westerly shores of the most easterly islands and Keys with connecting lines drawn between the closest points of adjacent islands to the southeasterly intersection of the right-of-way of State Road 826 and the mean high-water line of Biscayne Bay; thence westerly to the point of beginning. Said boundary extends across the mouths of all artificial waterways, but includes all natural waterways tidally connected to Biscayne Bay. Excluded from the preserve are those submerged lands conveyed to the United States for the establishment of the Biscayne National Monument as defined by Public Law 90-606 of the United States.

(b) The preserve established by this section shall include the submerged bottom lands and the water column upon such lands, as well as all publicly owned islands, within the boundaries of the preserve. Any privately held upland within the boundaries of the preserve shall be deemed to be excluded therefrom. However, the Board of Trustees of the Internal Improvement Trust Fund may negotiate an arrangement with any such private upland owner by which such land may be included in the preserve.

(3) AUTHORITY OF TRUSTEES.—The Board of Trustees of the Internal Improvement Trust Fund is authorized and directed to maintain the aquatic preserve hereby created pursuant and subject to the following provisions:

(a) No further sale, transfer, or lease of sovereignty submerged lands in the preserve shall be approved or consummated by the Board of Trustees, except upon a showing of extreme hardship on the part of the applicant and a determination by the Board of Trustees that such sale, transfer, or lease is in the public interest.

(b) No further dredging or filling of submerged lands of the preserve shall be approved or tolerated by the Board of Trustees except:

1. Such minimum dredging and spoiling as may be authorized for public navigation projects or for such minimum dredging and spoiling as may be constituted as a public necessity or for preservation of the bay according to the expressed intent of this section.

2. Such other alteration of physical conditions as may be necessary to enhance the quality or utility of the preserve.

3. Such minimum dredging and filling as may be authorized for the creation and maintenance of marinas, piers, and docks and their attendant navigation channels and access roads. Such projects may only be authorized upon a specific finding by the Board of Trustees that there is assurance that the project will be constructed and operated in a manner that will not adversely affect the water quality of the preserve. This subparagraph shall not approve the connection of upland canals to the waters of the preserve.

4. Such dredging as is necessary for the purpose of eliminating conditions hazardous to the public health or for the purpose of eliminating stagnant waters, unsightly mud flats, islands, and spoil banks, the dredging of which would enhance the aesthetic quality and utility of the preserve and be clearly in the public interest as determined by the Board of Trustees.

Any dredging or filling under this subsection or improvements under subsection (5) shall be approved only after public notice and hearings in the area affected, pursuant to chapter 120.

(c) There shall be no drilling of wells, excavation for shell or minerals, or erection of structures other than docks within the preserve unless such activity is associated with activity authorized by this section.

[1](d) The Board of Trustees shall not approve any seaward relocation of bulkhead lines or further establishment of bulkhead lines except when a proposed bulkhead line is located at the line of mean high water along the shoreline. Construction, replacement, or relocation of seawalls shall be prohibited without the approval of the Board of Trustees, which approval may be granted only if riprap construction is used in the seawall.

(e) Notwithstanding other provisions of this section, the Board of Trustees may, respecting lands lying within Biscayne Bay:

1. Enter into agreements for and establish lines delineating sovereignty and privately owned lands.

2. Enter into agreements for the exchange of, and exchange, sovereignty lands for privately owned lands.

3. Accept gifts of land within or contiguous to the preserve.

4. Negotiate for, and enter into agreements with owners of lands contiguous to sovereignty lands for, any public and private use of any of such lands.

5. Take any and all actions convenient for, or necessary to, the accomplishment of any and all of the acts and matters authorized by this paragraph.

(4) RULES.—

(a) The Board of Trustees shall adopt and enforce reasonable rules and regulations to carry out the provisions of this section and specifically to provide:

1. Additional preserve management criteria as may be necessary to accommodate special circumstances.

2. Regulation of human activity within the preserve in such a manner as not to interfere unreasonably with lawful and traditional public uses of the preserve, such as fishing, (both sport and commercial), boating, and swimming.

(b) Other uses of the preserve, or human activity within the preserve, although not originally contemplated, may be permitted by the Board of Trustees, but only subsequent to a formal finding of compatibility with the purposes of this section.

(c) Fishing involving the use of seines or nets is prohibited in the preserve, except when the fishing is for shrimp or mullet and such fishing is otherwise permitted by state law or rules promulgated by the Department of Natural Resources.

(5) RIPARIAN RIGHTS.—Neither the establishment nor the management of the Biscayne Bay Aquatic Preserve shall operate to infringe upon the riparian rights of upland property owners adjacent to or within the preserve. Reasonable improvement for ingress and egress, mosquito control, shore protection, public utility expansion, and similar purposes may be permitted by the Board of Trustees or Department of Environmental Regulation, subject to the provisions of any other applicable laws under the jurisdiction of other agencies.

(6) DISCHARGE OF WASTES PROHIBITED.—No wastes or effluents which substantially inhibit the accomplishment of the purposes of this section shall be discharged into the preserve.

(7) ENFORCEMENT.—The provisions of this section may be enforced in accordance with the provisions of s. 403.412. In addition, the Department of Legal Affairs is authorized to bring an action for civil penalties of $5,000 per day against any person, natural or corporate, who violates the provisions of this section or any rule or regulation issued hereunder.

(8) SECTIONS 403.501-403.515 APPLICABLE.—The provisions of this section shall be subject to the provisions of ss. 403.501-403.515.

History.—ss. 1-8, ch. 74-171; s. 2, ch. 76-109; s. 1, ch. 77-174; s. 1, ch. 78-628; s. 12, ch. 79-65.

[1]**Note.**—Section 26, ch. 75-22, repealed s. 253.122, relating to the power to fix bulkhead lines.

258.17 Short title.—Sections 258.17-258.32 shall be known and may be cited as the "State Wilderness System Act."

History.—s. 1, ch. 70-355; s. 1, ch. 77-126.

258.18 Statement of legislative intent.—It is the legislative intent to establish a state wilderness system consisting of designated wilderness areas which shall be set aside in permanent preserves, forever off limits to incompatible human activity. These areas shall be dedicated in perpetuity as wilderness areas and shall be managed in such a way as to protect and enhance their basic natural qualities for public enjoyment and utilization as reminders of the natural conditions that preceded man.

History.—s. 2, ch. 70-355.

258.19 Definitions.—As used in ss. 258.17-258.32:

(1) "Wilderness area" means an area formally set aside for preservation essentially in its natural or existing condition by regulating all human activity which might have an effect on it. Such an area is generally unaltered by man and provides a feeling of solitude and remoteness. These areas are set aside for aesthetic, biological, or scientific reasons.

(2) "Department" means the Department of Natural Resources.

History.—s. 3, ch. 70-355; s. 1, ch. 70-439; s. 2, ch. 77-126.

258.21 Use of areas.—

(1) Wilderness areas may be available for use by the public, to the extent compatible with the purposes for which the areas are established, for the following activities:

(a) Hiking;
(b) Swimming;
(c) Fishing;
(d) Restricted boating;
(e) Hunting;
(f) Picnicking;
(g) Sightseeing;
(h) Primitive camping;
(i) Nature study; and
(j) Research.

(2) Wilderness areas may also be designated for use for, but not limited to, the following purposes:

(a) Natural water storage;
(b) Ground water recharge areas;
(c) Preservation of estuarine and marsh systems; and

(d) Fish and wildlife breeding grounds and refuges.

(3) Artificial manipulation to further the purposes enumerated in subsection (2) is prohibited, except for the purpose of restoring and maintaining optimum natural conditions.

History.—s. 5, ch. 70-355; s. 3, ch. 77-126.

258.22 Selection of wilderness areas.—

(1) The Department of Natural Resources may, upon recommendation of the state agency which manages any lands involved and after public notice and a public meeting in each county in which the area is to be located, establish wilderness areas, formally setting aside such areas by proper resolution.

(2) The resolution establishing a wilderness area shall include:

(a) A legal description of the area to be included.

(b) Dedication of the area in perpetuity.

(c) A general statement of what is sought to be preserved.

(d) A clear statement of the management objectives and procedures for the area.

(3) Such resolutions shall be filed for record in each county in which a portion of the wilderness area is located.

(4) Lands owned by the Board of Trustees of the Internal Improvement Trust Fund may, upon recommendation of the state agency which manages such lands, be included in wilderness areas if accepted by the department. Lands owned by any governmental agency may be included in a wilderness area, subject to affirmative action of the governmental agency owning the land and acceptance by the department.

History.—s. 6, ch. 70-355; s. 1, ch. 70-439; s. 4, ch. 77-126.

258.23 Authorization to acquire lands; dedication by lease agreement.—

(1) For the purpose of establishing wilderness areas, the Department of Natural Resources is authorized to acquire lands by any lawful means other than through the use of the power of eminent domain. Lands shall be acquired in accordance with acquisition procedures for state lands provided for in s. 253.025.

(2) Notwithstanding the provisions of s. 258.18 and s. 258.22(2)(b) requiring dedication in perpetuity, the department is authorized to lease privately owned lands to be included in the wilderness system upon the recommendation of the interagency advisory committee established pursuant to s. 258.28 and upon application by the owner of the property. Such lease shall be evidenced by a written instrument containing the following conditions:

(a) Term of the lease shall be for a minimum period of 50 years.

(b) The department shall have the power and duty to enforce the provisions of each lease agreement and shall additionally have the power to terminate any lease if the termination is demonstrated to be in the best interest of the wilderness system.

(c) The department shall pay no more than $1 per year for any such lease.

(d) The owner of such leased land is prohibited from any use of the land which use is incompatible with ss. 258.17-258.32.

(3) In assessing the leased land, the property appraiser of the county in which the land is located shall give full recognition to the duration of the lease and the extent of the restrictions imposed therein.

History.—s. 7, ch. 70-355; s. 1, ch. 70-439; s. 1, ch. 72-309; s. 1, ch. 77-102; s. 5, ch. 77-126; s. 12, ch. 79-255.

258.24 Size.—The size of a wilderness area shall be large enough to include the principal features which justify its establishment.

History.—s. 8, ch. 70-355.

258.25 Number.—There shall be no fixed limit on the number of wilderness areas to be established, but each such area shall be justified by its intrinsic merit, as determined by the department.

History.—s. 9, ch. 70-355; s. 1, ch. 70-439; s. 6, ch. 77-126.

258.26 Priority of establishment.—The order of selection and establishment of wilderness areas shall be governed by the relative vulnerability of the features of the area sought to be preserved. The Department of Natural Resources is directed to give early consideration to wilderness areas which:

(1) Are in close proximity to urban or rapidly developing areas.

(2) Are in imminent danger from some other source.

(3) Are designed to protect rare or endangered species or other unique natural features.

(4) Constitute the last vestiges of natural conditions within a given region.

History.—s. 10, ch. 70-355; s. 1, ch. 70-439; s. 7, ch. 77-126.

258.28 Interagency advisory committee.—The Department of Natural Resources shall create a continuing interagency advisory committee to advise and assist in:

(1) The selection of wilderness areas; and

(2) The formulation of rules and regulations for the use of such areas.

History.—s. 12, ch. 70-355; s. 1, ch. 70-439; s. 8, ch. 77-126.

258.29 Atlas of areas.—The Department of Natural Resources shall maintain an atlas of wilderness areas, on maps of suitable scale.

History.—s. 13, ch. 70-355; s. 1, ch. 70-439; s. 9, ch. 77-126.

258.30 Rules and regulations.—The Department of Natural Resources shall adopt rules and regulations prescribing a uniform set of general management criteria covering all wilderness areas.

(1) No alteration of physical conditions within a wilderness area shall be permitted except to provide:

(a) Minimal use facilities, such as hiking trails, pit toilets, manually operated water pumps, and primitive camp sites; and

(b) Minimum management facilities, which may include boundary fences and unimproved vehicle trails for control purposes and emergency access.

(2) The following are specifically prohibited activities or uses:

(a) Dredging and dredge spoil dumping;

(b) Artificial drainage or impoundments;

(c) Farming;

(d) Clearing of land;

(e) Dumping of wastes;
(f) Mining;
(g) Pesticide spraying, except emergency measures required to protect public health and spraying for forestry disease control;
(h) The use of motorized vehicles on land or water, except for emergencies or valid management purposes; and
(i) Removal of timber, except to restore original plant communities.
(3) All human activity within each wilderness area shall be subject to special rules and regulations for implementing the intent and purpose of ss. 258.17-258.32 for the particular area involved.
(4) Other uses of a wilderness area, or human activity within the area, although not originally contemplated, may be permitted by the department, but only after a formal finding of compatibility made by the department, and subject to regulation.
History.—s. 14, ch. 70-355; s. 1, ch. 70-439; s. 10, ch. 77-126; s. 115, ch. 79-400.

258.31 Signs and markers.—Wilderness areas shall be identified by appropriate signs and boundary markers.
History.—s. 15, ch. 70-355.

258.32 Withdrawal of lands from system.—Except pursuant to s. 258.23(2)(b), no part of any wilderness area may be withdrawn from the state wilderness system except by resolution of the Department of Natural Resources and only after notice of such proposed withdrawal is published in each county in which the area affected is located, in the manner prescribed by law and after a public meeting is held, if requested.
History.—s. 16, ch. 70-355; s. 2, ch. 72-309; s. 11, ch. 77-126.

258.331 Penalty for violation of ss. 258.17-258.32.—Any violation by any person, natural or corporate, of the provisions of this act or any rule or regulation issued hereunder shall be punishable by a fine not to exceed $500 per violation.
History.—s. 12, ch. 77-126.

258.332 Construction of ch. 77-126.—Nothing in this act shall be construed so as to prevent the lawful management of water resources by any water management district created pursuant to chapter 373, or so as to divest any lawful rights acquired prior to the effective date of this act.
History.—s. 13, ch. 77-126.

258.35 Short title.—Sections 258.35-258.46 shall be known and may be cited as the "Florida Aquatic Preserve Act of 1975."
History.—s. 1, ch. 75-172.

258.36 Legislative intent.—It is the intent of the Legislature that the state-owned submerged lands in areas which have exceptional biological, aesthetic, and scientific value, as hereinafter described, be set aside forever as aquatic preserves or sanctuaries for the benefit of future generations.
History.—s. 1, ch. 75-172.

258.37 Definitions.—As used in ss. 258.35 through 258.46:
(1) "Aquatic preserve" means an exceptional area of submerged lands and its associated waters set aside for being maintained essentially in its natural or existing condition.
(2) "Biological type" means an area set aside to promote certain forms of animal or plant life or their supporting habitat.
(3) "Aesthetic type" means an area set aside to maintain certain scenic qualities or amenities.
(4) "Scientific type" means an area set aside to maintain certain qualities or features which have scientific value or significance.
(5) "Board" means the Board of Trustees of the Internal Improvement Trust Fund.
History.—s. 1, ch. 75-172.

258.38 Types of aquatic preserves.—Each aquatic preserve shall be characterized as being one or more of the following principal types:
(1) Biological.
(2) Aesthetic.
(3) Scientific.
History.—s. 1, ch. 75-172.

258.39 Boundaries of preserves.—The submerged lands included within the boundaries of Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Indian River, St. Lucie, Charlotte, Pinellas, Martin, Palm Beach, Broward, Dade, Monroe, Collier, Lee, Citrus, Franklin, Gulf, Bay, Okaloosa, Santa Rosa, and Escambia Counties, as hereinafter described, with the exception of privately held submerged lands lying landward of established bulkheads and of privately held submerged lands within Monroe County where the establishment of bulkhead lines is not required, are hereby declared to be aquatic preserves. Such aquatic preserve areas include:
(1) The Fort Clinch State Park Aquatic Preserve, as described in the Official Records of Nassau County in Book 108, pages 343-346, and in Book 111, page 409.
(2) Nassau River-St. Johns River Marshes Aquatic Preserve, as described in the Official Records of Duval County in Volume 3183, pages 547-552, and in the Official Records of Nassau County in Book 108, pages 232-237.
(3) Pellicer Creek Aquatic Preserve, as described in the Official Records of St. Johns County in Book 181, pages 363-366, and in the Official Records of Flagler County in Book 33, pages 131-134.
(4) Tomoka Marsh Aquatic Preserve, as described in the Official Records of Flagler County in Book 33, pages 135-138, and in the Official Records of Volusia County in Book 1244, pages 615-618.
(5) Mosquito Lagoon Aquatic Preserve, as described in the Official Records of Volusia County in Book 1244, pages 619-623, and in the Official Records of Brevard County in Book 1143, pages 190-194.
(6) Banana River Aquatic Preserve, as described in the Official Records of Brevard County in Book 1143, pages 195-198.
(7) Indian River-Malabar to Sebastian Aquatic Preserve, as described in the Official Records of Brevard County in Book 1143, pages 199-202, and in the

Official Records of Indian River County in Book 368, pages 5-8.

(8) Indian River-Vero Beach to Fort Pierce Aquatic Preserve, as described in the Official Records of Indian River County in Book 368, pages 9-12, and in the Official Records of St. Lucie County in Book 187, pages 1083-1086.

(9) Jensen Beach to Jupiter Inlet Aquatic Preserve, as described in the Official Records of St. Lucie County in Book 218, pages 2865-2869.

(10) Loxahatchee River-Lake Worth Creek Aquatic Preserve, as described in the Official Records of Martin County in Book 320, pages 193-196, and in the Official Records of Palm Beach County in Volume 1860, pages 806-809.

(11) Biscayne Bay-Cape Florida to Monroe County Line Aquatic Preserve, as described in the Official Records of Dade County in Book 7055, pages 852-856, less, however, those lands and waters as described in s. 258.165.

(12) North Fork, St. Lucie Aquatic Preserve, as described in the Official Records of Martin County in Book 337, pages 2159-2162, and in the Official Records of St. Lucie County in Book 201, pages 1676-1679.

(13) Yellow River Marsh Aquatic Preserve, as described in the Official Records of Santa Rosa County in Book 206, pages 568-571.

(14) Fort Pickens State Park Aquatic Preserve, as described in the Official Records of Santa Rosa County in Book 220, pages 60-63, and in the Official Records of Escambia County in Book 518, pages 659-662.

(15) Rocky Bayou State Park Aquatic Preserve, as described in the Official Records of Okaloosa County in Book 593, pages 742-745.

(16) St. Andrews State Park Aquatic Preserve, as described in the Official Records of Bay County in Book 379, pages 547-550.

(17) St. Joseph Bay Aquatic Preserve, as described in the Official Records of Gulf County in Book 46, pages 73-76.

(18) Apalachicola Bay Aquatic Preserve, as described in the Official Records of Gulf County in Book 46, pages 77-81, and in the Official Records of Franklin County in Volume 98, pages 102-106.

(19) Alligator Harbor Aquatic Preserve, as described in the Official Records of Franklin County in Volume 98, pages 82-85.

(20) St. Martins Marsh Aquatic Preserve, as described in the Official Records of Citrus County in Book 276, pages 238-241.

(21) Matlacha Pass Aquatic Preserve, as described in the Official Records of Lee County in Book 800, pages 725-728.

(22) Pine Island Sound Aquatic Preserve, as described in the Official Records of Lee County in Book 648, pages 732-736.

(23) Cape Romano-Ten Thousand Islands Aquatic Preserve, as described in the Official Records of Collier County in Book 381, pages 298-301.

(24) Lignumvitae Key Aquatic Preserve, as described in the Official Records of Monroe County in Book 502, pages 139-142.

(25) Coupon Bight Aquatic Preserve, as described in the Official Records of Monroe County in Book 502, pages 143-146.

(26) Lake Jackson Aquatic Preserve, as established by chapter 73-534, Laws of Florida, and defined as authorized by s. 253.151 or as otherwise authorized by law.

(27) Pinellas County Aquatic Preserve, as established by chapter 72-663, Laws of Florida; Boca Ciega Aquatic Preserve, as established by s. 258.16; and the Biscayne Bay Aquatic Preserve, as established by s. 258.165. If any provision of this act is in conflict with an aquatic preserve established by s. 258.16, chapter 72-663, Laws of Florida, or s. 258.165, the stronger provision for the maintenance of the aquatic preserve shall prevail.

(28) Estero Bay Aquatic Preserve, the boundaries of which are generally: All of those sovereignty submerged lands located bayward of the mean high water line being in Sections 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 35 and 36, Township 46 South, Range 24 East; and in Sections 19, 20, 28, 29 and 34, Township 46 South, Range 24 East, lying north and east of Matanzas Pass Channel; and in Sections 19, 30 and 31, Township 46 South, Range 25 East; and in Section 6, Township 47 South, Range 25 East; and in Sections 1, 2 and 3, Township 47 South, Range 24 East, in Lee County, Florida. Any and all submerged lands conveyed by the Trustees of the Internal Improvement Trust Fund prior to October 12, 1966, and any and all uplands now in private ownership are specifically exempted from this preserve.

(29) Cape Haze Aquatic Preserve, the boundaries of which are generally: That part of Gasparilla Sound, Catfish Creek, Whiddon Creek, "The Cutoff", Turtle Bay, and Charlotte Harbor lying within the following described limits: Northerly limits: Commence at the northwest corner of Section 18, Township 42 South, Range 21 East, thence south along the west line of said Section 18 to its intersection with the Government Meander Line of 1843-1844, and the point of beginning, thence southeasterly along said Meander Line to the northwesterly shore line of Catfish Creek, thence northeasterly along said shore line to the north line of said Section 18, thence east along said north line to the easterly shore line of Catfish Creek, thence southeasterly along said shore line to the east line of said Section 18, thence south along said east line, crossing an arm of said Catfish Creek to the southerly shore line of said creek, thence westerly along said southerly shore line and southerly along the easterly shore line of Catfish Creek to said Government Meander Line, thence easterly and southeasterly along said Meander Line to the northerly shore line of Gasparilla Sound in Section 21, Township 42 South, Range 21 East, thence easterly along said northerly shore line and northeasterly along the westerly shore line of Whiddon Creek to the east west quarter line in Section 16, Township 42 South, Range 21 East, thence east along said quarter line and the quarter Section line of Section 15, Township 42 South, Range 21 East to the easterly shore line of Whiddon Creek, thence southerly along said shore line to the northerly shore line of "The Cutoff", thence easterly along said shore line to the westerly shore line of Turtle Bay, thence northeasterly along said shore line to its in-

tersection with said Government Meander Line in Section 23, Township 42 South, Range 21 East, thence northeasterly along said Meander Line to the east line of Section 12, Township 42 South, Range 21 East, thence north along the east line of said Section 12, and the east line of Section 1, Township 42 South, Range 21 East to the northwest corner of Section 6, Township 42 South, Range 22 East, thence east along the north line and extension thereof of said Section 6 to a point 2640 feet east of the westerly shore line of Charlotte Harbor and the end of the northerly limits. Easterly limits: Commence at the northwest corner of Section 6, Township 42 South, Range 22 East, thence east along the north line of said Section 6 and extension thereof to a point 2640 feet east of the westerly shore line of Charlotte Harbor and the point of beginning, thence southerly along a line 2640 feet easterly of and parallel with the westerly shore line of Charlotte Harbor and along a southerly extension of said line to the line dividing Charlotte and Lee Counties and the end of the easterly limits. Southerly limits: Begin at the point of ending of the easterly limits, above described, said point being in the line dividing Charlotte and Lee Counties, thence southwesterly along a straight line to the most southerly point of Devil Fish Key, thence continue along said line to the easterly right of way of the Intracoastal Waterway and the end of the southerly limits. Westerly limits: Begin at the point of ending of the southerly limits as described above, thence northerly along the easterly right of way line of the Intracoastal Waterway to its intersection with a southerly extension of the west line of Section 18, Township 42 South, Range 21 East, thence north along said line to point of beginning.

(30) Wekiva River Aquatic Preserve, the boundaries of which are generally: All the state-owned sovereignty lands lying waterward of the ordinary high water mark of the Wekiva River and the Little Wekiva River and their tributaries lying and being in Lake, Seminole, and Orange counties and more particularly described as follows:

(a) In Sections 15, 16, 17, 20, 21, 22, 27, 28, 29, and 30, Township 20 South, Range 29 East. These sections are also depicted on the Forest City Quadrangle (U.S.G.S. 7.5 minute series-topographic) 1959 (70PR); and

(b) In Sections 3, 4, 8, 9 and 10, Township 20 South, Range 29 East and in Sections 21, 28 and 33, Township 19 South, Range 29 East lying north of the right-of-way for the Atlantic Coast Line Railroad and that part of Section 33, Township 19 South, Range 29 East lying between the Lake and Orange County lines and the right-of-way of the Atlantic Coast Line Railroad. These sections are also depicted on the Sanford SW Quadrangle (U.S.G.S. 7.5 minute series-topographic) 1965 (70-1); and

(c) All state-owned sovereignty lands, public lands, and lands whether public or private below the ordinary high water mark of the Wekiva River and the Little Wekiva and their tributaries within the Peter Miranda Grant in Lake County lying below the 10 foot m.s.l. contour line nearest the meander line of the Wekiva River and all state-owned sovereignty lands, public lands, and lands whether public or private below the ordinary high water mark of the Wekiva River and the Little Wekiva and their tributaries within the Moses E. Levy Grant in Lake County below the 10 foot m.s.l. contour line nearest the meander lines of the Wekiva River and Black Water Creek as depicted on the PINE LAKES 1962 (70-1), ORANGE CITY 1964 (70PR), SANFORD 1965 (70-1), and SANFORD S.W. 1965 (70-1) QUADRANGLES (U.S.G.S. 7.5 minute topographic); and

(d) All state-owned sovereignty lands, public lands, and lands whether public or private below the ordinary high water mark of the Wekiva River and the Little Wekiva River and their tributaries lying below the 10 foot m.s.l. contour line nearest the meander line of the Wekiva and St. John's Rivers as shown on the ORANGE CITY 1964 (70PR), SANFORD 1965 (70-1), and SANFORD S.W. 1965 (70-1) QUADRANGLES (U.S.G.S. 7.5 minute topographic) within the following described property: Beginning at a point on the south boundary of the Moses E. Levy Grant, Township 19 South, Range 29 East, at its intersection with the meander line of the Wekiva River; thence south 60½ degrees east along said boundary line 4915.68 feet; thence north 29½ degrees east 15,516.5 feet to the meander line of the St. John's River; thence northerly along the meander line of the St. John's River to the mouth of the Wekiva River; thence southerly along the meander line of the Wekiva River to the beginning; and

(e) All state-owned sovereignty lands, public lands, and lands whether public or private below the ordinary high water mark of the Wekiva River and the Little Wekiva River and their tributaries within the Peter Miranda Grant lying east of the Wekiva River, less the following:

1. State Road 46 and all land lying south of said State Road No. 46.

2. Beginning 15.56 chains West of the Southeast corner of the SW ¼ of the NE ¼ of Section 21, Township 19 South, Range 29 East, run east 600 feet; thence north 960 feet; thence west 340 feet to the Wekiva River; thence southwesterly along said Wekiva River to point of beginning.

3. That part of the east ¼ of the SW ¼ of Section 22, Township 19 South, Range 29 East, lying within the Peter Miranda Grant east of the Wekiva River.

(31) Rookery Bay Aquatic Preserve, the boundaries of which are generally: All of the state owned sovereignty lands lying waterward of the mean high water line in Rookery Bay and in Henderson Creek and the tributaries thereto in Collier County, Florida. Said lands being more particularly described as lying and being in Sections 1, 2, 11, 12 and 13, Township 51 South, Range 25 East and in Sections 7, 8, 9, 16, 17, 18, 19 and 20, Township 51 South, Range 26 East, Collier County, Florida.

Any and all submerged lands theretofore conveyed by the Trustees of the Internal Improvement Trust Fund and any and all uplands now in private ownership are specifically exempted from this dedication.

History.—s. 1, ch. 75-172; s. 1, ch. 76-109; s. 1, ch. 76-211; s. 84, ch. 77-104.

258.391 Cockroach Bay Aquatic Preserve.—The designation by the Board of Trustees of the Internal Improvement Trust Fund on May 18, 1976, of the following described area in Hillsborough County for inclusion in the aquatic preserve system under the Florida Aquatic Preserve Act of 1975 is hereby confirmed. Such area, to be known as the Cockroach Bay Aquatic Preserve, shall be included in the aquatic preserve system for the period of a 40-year lease of such area by the board from the Tampa Port Authority and shall include the following described real property: Begin at the northeast corner of Section 1, Township 33 South, Range 17 East, Manatee County, thence west along the north line of said Section 1 to its intersection with the mean high water line of Tampa Bay, said point being the point of beginning; from said point of beginning continue west 500 feet into the waters of Tampa Bay, thence northeasterly along a line 500 feet westerly of the mean high water line of Tampa Bay, said line also being 500 feet westerly of the mean high water line on Beacon Key, Snake Key, Camp Key, Big Pass Key, Little Cockroach Island, and Sand Key, to a point due west from Bird Key, thence east to the most southwesterly point of Bird Key, thence easterly along a channel along the northerly side of Tropical Island and of Goat Island to the most easterly point of said Goat Island, thence south to the intersection of the mean high water line of the southerly shore of the Little Manatee River, thence in a northwesterly, westerly, and southwesterly direction along the mean high water line of Tampa Bay and Cockroach Bay to the point of beginning. Less any islands, submerged lands, or uplands not owned by the Tampa Port Authority.

History.—s. 1, ch. 76-197.

258.392 Gasparilla Sound-Charlotte Harbor Aquatic Preserve.—The following described area in Lee and Charlotte Counties is designated by the Legislature for inclusion in the aquatic preserve system under the Florida Aquatic Preserve Act of 1975. Such area, to be known as the Gasparilla Sound-Charlotte Harbor Aquatic Preserve, shall be included in the aquatic preserve system and shall include the following described real property: Commence at the northwest corner of Section 18, Township 42 South, Range 21 East; thence northerly along the line of mean high water to the intersection of State Road 776 with said mean high-water line; thence south-southwesterly along said road to the intersection of said road with the mean high-water line of Gasparilla Island; thence southerly along said mean high-water line to the most southerly point of Gasparilla Island; thence southeasterly to the northernmost point at the mean high-water line on Lacosta Island; thence southeasterly along said mean high-water line to the northwest corner of Section 6, Township 44 South, Range 21 East; thence east to a northerly extension of the east line of Section 25, Township 44 South, Range 21 East; thence southeasterly along the mean high-water line of Pine Island to the intersection of the east line of Section 28, Township 43 South, Range 22 East, with said mean high-water line; thence northeasterly to the intersection of the north line of Section 23, Township 43 South, Range 22 East with the mean high-water line; thence northerly along said mean high-water line to the intersection of State Road 45 (U.S. Highway 41) with said mean high-water line; thence northwesterly along said road to the intersection of said road with the mean high-water line at Live Oak Point; thence westerly along the mean high-water line to the intersection of State Road 771 with said mean high-water line; thence south-southwesterly along said road to the intersection of said road with the mean high-water line, on the southern shore of the Myakka River; thence southerly along the mean high-water line of the westerly shore of Charlotte Harbor to the northwest corner of Section 6, Township 42 South, Range 22 East; thence east along the north line and extension thereof of said Section 6 to a point 2,640 feet east of the westerly shoreline of Charlotte Harbor; thence southerly along a line 2,640 feet easterly of and parallel with the westerly shoreline of Charlotte Harbor and along a southerly extension of said line to the line dividing Charlotte and Lee Counties; thence southwesterly along a straight line to the most southerly point of Devil Fish Key; thence along said line to the easterly right-of-way of the Intracoastal Waterway; thence northerly along the easterly right-of-way of the Intracoastal Waterway to its intersection with a southerly extension of the west line of Section 18, Township 42 South, Range 21 East; thence north along said line to the point of beginning. Said boundary extends across the mouths of all artificial waterways, but includes all tidally connected natural waterways.

History.—s. 1, ch. 79-115.

258.40 Scope of preserves.—

(1) The aquatic preserves established under this act shall include only lands or water bottoms owned by the state as set forth in s. 253.03 and such lands or water bottoms owned by other governmental agencies as may be specifically authorized for inclusion by appropriate instrument in writing from such agency. Any privately owned lands or water bottoms shall be deemed to be excluded therefrom; however, the board may negotiate an arrangement with any such private owner by which such land may be included in the preserves.

(2) Any publicly owned and maintained navigation channel or other public works project authorized by the United States Congress designed to improve or maintain commerce and navigation shall be deemed excluded from the aquatic preserves established under this act.

(3) All lands lost by avulsion or by artificially induced erosion shall be deemed excluded from the provisions of this act.

History.—s. 1, ch. 75-172.

258.41 Establishment of aquatic preserves.—

(1) The board may establish additional areas to be included in the aquatic preserve system, subject to confirmation by the Legislature.

(2) The board may, after public notice and public hearing in the county or counties in which the proposed preserve is to be located, adopt a resolution formally setting aside such areas to be included in the aquatic preserve system.

(3) The resolution setting aside an aquatic preserve area shall include:

(a) A legal description of the area to be included.

(b) The designation of the type of aquatic preserve being set aside.

(c) A general statement of what is sought to be preserved.

(d) A clear statement of the management responsibilities for the area.

(4) Lands and water bottoms owned by other governmental agencies may be included in an aquatic preserve upon specific authorization for inclusion by an appropriate instrument in writing from the governmental agency.

(5) Lands and water bottoms in private ownership may be included in an aquatic preserve upon specific authorization for inclusion by an appropriate instrument in writing from the owner. The appropriate instrument shall be either a dedication in perpetuity or a lease. Such lease shall contain the following conditions:

(a) Term of the lease shall be for a minimum period of 10 years.

(b) The board shall have the power and duty to enforce the provisions of each lease agreement and shall additionally have the power to terminate any lease if the termination is in the best interest of the aquatic preserve system.

(c) The board shall pay no more than $1 per year for any such lease.

(6) Except as provided in subsection (5) no aquatic preserve or any part thereof shall be withdrawn from the state aquatic preserve system except by an act of the Legislature. Notice of such proposed legislation shall be published in each county in which the affected area is located, in the manner prescribed by law relating to local legislation.

(7) Within 30 days of the designation and establishment of an aquatic preserve, the Board of Trustees of the Internal Improvement Trust Fund shall record in the public records of the county or counties in which the aquatic preserve is located a legal description of the aquatic preserve.

History.—s. 1, ch. 75-172.

258.42 Maintenance of preserves.—The Board of Trustees of the Internal Improvement Trust Fund shall maintain such aquatic preserves subject to the following provisions:

(1) No further sale, lease, or transfer of sovereignty submerged lands shall be approved or consummated by the trustees except when such sale, lease, or transfer is in the public interest.

[1](2) The trustees shall not approve the waterward relocation or setting of bulkhead lines waterward of the line of mean high water within the preserve except when public road and bridge construction projects have no reasonable alternative and it is shown to be not contrary to the public interest.

(3)(a) No further dredging or filling of submerged lands shall be approved by the trustees except the following activities may be authorized pursuant to a permit:

1. Such minimum dredging and spoiling as may be authorized for public navigation projects.

2. Such minimum dredging and spoiling as may be authorized for the creation and maintenance of marinas, piers, and docks and their attendant navigation channels.

3. Such other alteration of physical conditions as may, in the opinion of the trustees, be necessary to enhance the quality or utility of the preserve or the public health generally.

4. Such other maintenance dredging as may be required for existing navigation channels.

5. Such restoration of land as authorized by s. 253.124(8).

6. Such reasonable improvements as may be necessary for public utility installation or expansion.

7. Installation and maintenance of oil and gas transportation facilities, provided such facilities are properly marked with marine aids to navigation as prescribed by federal law.

(b) There shall, in no case, be any dredging seaward of a bulkhead line for the sole or primary purpose of providing fill for any area landward of a bulkhead line.

(c) There shall be no drilling of gas or oil wells. However, this will not prohibit the state from leasing the oil and gas rights and permitting drilling from outside the preserve to explore for oil and gas if approved by the board.

(d) There shall be no excavation of minerals, except the dredging of dead oyster shells as approved by the Department of Natural Resources.

(e) There shall be no erection of structures within the preserve, except:

1. Private docks for reasonable ingress or egress of riparian owners;

2. Commercial docking facilities shown to be consistent with the use or management criteria of the preserve; and

3. Structures for shore protection, approved navigational aids, or public utility crossings authorized under subsection (3)(a).

(f) No wastes or effluents shall be discharged into the preserve which substantially inhibit the accomplishment of the purposes of this act.

(g) No non-permitted wastes or effluents shall be directly discharged into the preserve which substantially inhibit the accomplishment of the purposes of this act.

History.—ss. 1, 2, 4, ch. 75-172; s. 1, ch. 77-174.

[1]**Note.**—See s. 26, ch. 75-22, which repealed s. 253.122, relating to the power to fix bulkhead lines, and s. 7(3), ch. 75-22 (s. 253.1221), which reestablished all previously established bulkhead lines at the line of mean high water or ordinary high water.

258.43 Rules and regulations.—

(1) The Board of Trustees of the Internal Improvement Trust Fund shall adopt and enforce reasonable rules and regulations to carry out the provisions of this act and specifically to provide regulation of human activity within the preserve in such a manner as not to unreasonably interfere with lawful and traditional public uses of the preserve, such as sport and commercial fishing, boating, and swimming.

(2) Other uses of the preserve, or human activity within the preserve, although not originally contemplated, may be permitted by the trustees, but only

subsequent to a formal finding of compatibility with the purposes of this act.

History.—s. 1, ch. 75-172.

258.44 Effect of preserves.—Neither the establishment nor the management of the aquatic preserves under the provisions of this act shall operate to infringe upon the traditional riparian rights of upland property owners adjacent to or within the preserves. Reasonable improvement for ingress and egress, mosquito control, shore protection, public utility expansion, surface water drainage, installation and maintenance of oil and gas transportation facilities, and similar purposes may be permitted by the trustees subject to the provisions of any other applicable laws under the jurisdiction of other agencies.

History.—s. 1, ch. 75-172.

258.45 Provisions not superseded.—The provisions of this act shall not supersede, but shall be subject to, the provisions of ss. 403.501 through 403.515.

History.—ss. 3, 6, ch. 75-172.

258.46 Enforcement; violations; penalty.—The provisions of this act may be enforced by the Board of Trustees of the Internal Improvement Trust Fund or in accordance with the provisions of s. 403.412. However, any violation by any person, natural or corporate, of the provisions of this act or any rule or regulation issued hereunder shall be further punishable by a civil penalty of not less than $500 per day or more than $5,000 per day of such violation.

History.—s. 5, ch. 75-172.

CHAPTER 259

LAND CONSERVATION ACT OF 1972

259.01 Short title.—This chapter shall be known and may be cited as the "Land Conservation Act of 1972."

History.—s. 1, ch. 72-300.

259.02 Authority; full faith and credit bonds.—Pursuant to the provisions of s. 11(a) of Art. VII of the State Constitution and s. 215.59, the issuance of state bonds pledging the full faith and credit of the state in the principal amount, including any refinancing, not to exceed $200 million for state capital projects for environmentally endangered lands and $40 million for state capital projects for outdoor recreation lands is hereby authorized, subject to the provisions of ss. 259.01-259.06.

History.—s. 1, ch. 72-300.

259.03 Definitions.—The following terms and phrases when used in ss. 259.01-259.06 shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Selection committee" means that committee established pursuant to s. 259.035.

(2) "State capital projects for environmentally endangered lands" means a state capital project, as required by s. 11(a) of Art. VII of the State Constitution, which shall have as its purpose the conservation and protection of environmentally unique and irreplaceable lands as valued ecological resources of this state, including without limitation:

(a) Those areas of ecological significance the development of which by private or public works would cause the deterioration of submerged lands, inland or coastal waters, marshes, or wilderness areas essential to the environmental integrity of the area or of adjacent areas;

(b) Those areas the development of which, in the judgment of the selection committee, would require a remedial public works project to limit or correct environmental damage;

(c) Any beaches or beach areas within the state which have been eroded or destroyed by natural forces or which are threatened, or potentially threatened, by erosion or destruction by natural forces; or

(d) Those lands within any area designated as an area of critical state concern under s. 380.05, which in the judgment of the selection committee cannot adequately be protected by application of land development regulations adopted pursuant to s. 380.05.

(3) "State capital project for outdoor recreation lands" means a state capital project, as required by s. 11(a) of Art. VII of the State Constitution, which shall be for the purposes set out in chapter 375.

(4) "Board" means the Governor and Cabinet, as the Board of Trustees of the Internal Improvement Trust Fund.

(5) "Division" means the Division of Bond Finance of the Department of General Services.

History.—s. 1, ch. 72-300; s. 13, ch. 79-255.

259.035 Selection committee; powers and duties.—There is created a selection committee to be composed of the Secretary of the Department of Environmental Regulation, the executive director of the Department of Natural Resources, the director of the Division of Forestry of the Department of Agriculture and Consumer Services, the executive director of the Game and Fresh Water Fish Commission, the director of the Division of Archives, History, and Records Management of the Department of State and the Secretary of the Department of Administration, or their respective designees. The chairmanship of the committee shall rotate annually in the order specified above. The committee shall hold periodic meetings at the request of the chairman. The Division of State Lands shall provide primary staff support to the committee and shall ensure that committee meetings are electronically recorded. Such recordings shall be preserved pursuant to chapters 119 and 267. The committee shall, by January 1 of each year, establish or update a list of acquisition projects on a priority basis. An affirmative vote of four members of the committee shall be required in order to place a proposed project on such list. The list shall contain at least twice the number of projects in terms of estimated cost as there are anticipated funds for purchase. The anticipated cost of each project shall include proposed costs for development of the lands necessary to meet the public purpose for which such lands are to be purchased. All proposals for acquisition projects pursuant to this chapter or s. 253.023 shall originate from the committee. The committee shall consider and evaluate in writing the merits, both favorable and unfavorable, of each proposed project submitted for acquisition and shall ensure that each proposed acquisition project will meet a stated public purpose for the preservation of environmentally endangered lands, the development of outdoor recreation lands or as provided in s. 253.023(3)(b) and shall determine whether each acquisition project conforms with the comprehensive plan developed pursuant to s. 259.04(1)(a) and the state lands management plan adopted pursuant to s. 253.03(7). Copies of a written report on each project evaluated or considered for acquisition shall be submitted to the board of trustees. The committee shall consider and include in each report its assessment of a project's ecological value, vulnerability, endangerment, ownership pattern, utilization, location, cost, and other pertinent

factors in determining whether to recommend for or against a purchase.

History.—s. 14, ch. 79-255.

259.04 Board; powers and duties.—

(1) For state capital projects for environmentally endangered lands:

(a) The board is given the responsibility, authority, and power to develop and execute a comprehensive plan to conserve and protect environmentally endangered lands in this state. This plan shall be kept current through continual reevaluation and revision.

(b) The board may enter into contracts with the government of the United States or any agency or instrumentality thereof; the state or any county, municipality, district authority, or political subdivision; or any private corporation, partnership, association, or person providing for or relating to the conservation or protection of certain lands in accomplishing the purposes of ss. 259.01-259.06.

(c) On or before March 15 of each year, the board shall approve, in whole or part, the list compiled by the selection committee. To the greatest extent possible, projects on the list shall be acquired in their order of priority.

(d) The board is authorized to acquire by purchase, gift, devise, or otherwise, the fee title or any lesser interest of lands, water areas, and related resources sufficient to meet the purposes specified in s. 259.03(2) for environmentally endangered lands.

(2) For state capital projects for outdoor recreation lands, the provisions of chapter 375 and s. 253.025 shall apply. Land acquisition projects for outdoor recreation may be included in the priority list established pursuant to s. 259.035.

History.—s. 1, ch. 72-300; s. 15, ch. 79-255.

259.045 Purchase of lands in areas of critical state concern; recommendations by department.—Within 45 days of the designation by the Administration Commission of an area as an area of critical state concern under s. 380.05, the Department of Natural Resources shall consider the recommendations of the state land planning agency pursuant to s. 380.05(1)(a) relating to purchase of lands within the proposed area and shall make recommendations to the board with respect to the purchase of the fee or any lesser interest in any lands situated in such area of critical state concern as environmentally endangered lands or outdoor recreation lands. The department may make recommendations with respect to additional purchases which were not included in the state land planning agency recommendations.

History.—s. 3, ch. 79-73.

259.05 Issuance of bonds.—

(1) Upon request of the board, by appropriate resolution, the Division of Bond Finance from time to time, subject to the debt limitation provided herein, may issue bonds pledging the full faith and credit of the state as shall be necessary to provide sufficient funds to achieve the purposes set out in such request.

(2) The issuance of such bonds to finance state capital projects for environmentally endangered lands or outdoor recreation lands is authorized in the manner, and subject to the limitations, provided by the State Bond Act, except as otherwise expressly provided herein.

History.—s. 1, ch. 72-300.

cf.—ss. 215.57-215.83 State Bond Act.

259.06 Construction.—The provisions of ss. 259.01-259.06 shall be liberally construed in a manner to accomplish the purposes thereof.

History.—s. 1, ch. 72-300.

259.07 Public meetings.—The Department of Natural Resources, before making recommendations to the board for the purchase of any environmentally endangered land, shall hold a public meeting on the proposed purchase of such land in the county where a major portion of such land is situated. At least 30 days in advance of such public meeting, notice shall be published in a newspaper of general circulation in the area where such land is located, indicating the date, time, and place of such public meeting. A report of the public meeting shall be submitted to the board along with the recommendation for purchase of such land.

History.—s. 1, ch. 74-59.

CHAPTER 260

RECREATIONAL TRAILS SYSTEM

260.011 Short title.—Sections 260.011-260.018 shall be known and may be cited as the "Florida Recreational Trails Act of 1979."

History.—s. 1, ch. 79-110.

260.012 Declaration of policy and legislative intent.—

(1) In order to provide the public with access to the use, enjoyment, and appreciation of the outdoor areas of Florida, and in order to conserve, develop, and use the natural resources of this state for healthful and recreational purposes, it is declared to be the public policy of this state and the purpose of ss. 260.011-260.018 to provide the means and procedures for establishing and expanding a network of recreational and scenic trails designated as the "Florida Recreational Trails System." The standards by which the trails system shall be administered, maintained, used, and expanded shall be consistent with the provisions of ss. 260.011-260.018. It is the intent of the Legislature that these recreational trails will serve to encourage horseback riding, hiking, bicycling, canoeing, and jogging and thereby improve the health and welfare of the people.

(2) It is the intent of the Legislature that recreational trails be established within and without boundaries of state parks and state forests and, when feasible, to interconnect units of the state park and forest system, as well as national forests and parks and such locally maintained parks as may be appropriate. It is also the intent of the Legislature to perpetuate the use of and provide access to regions and trails of special historic interest within the state; to encourage the multiple use of public rights-of-way and use to the fullest extent existing and future scenic roads, highways, park roads, parkways, and national recreational trails; to encourage the development of recreational trails by counties, cities, and special districts and to assist in such development by any means available; to coordinate recreational trail plans and development by local governments with one another and with the state government and Federal Government; and to encourage, whenever possible, the development of recreational trails on federal lands by the Federal Government.

(3) The planning, development, operation, and maintenance of the Florida Recreational Trails System authorized by ss. 260.011-260.018 is declared to be a public purpose, and the Department of Natural Resources, together with other governments and agencies of this state and all counties, municipalities, and special districts of this state, is authorized to spend public funds for such purposes and to accept gifts and grants of funds, property, or property rights from public or private sources to be used for such purposes.

(4) The provisions of s. 375.251 relating to the liability of persons making lands available for outdoor recreational purposes shall be applicable to ss. 260.011-260.018.

History.—s. 2, ch. 79-110.

260.013 Definitions.—As used in ss. 260.011-260.018, unless the context otherwise requires:

(1) "Recreational trails" means riding, hiking, canoeing, bicycling, or jogging trails for the use of the public.

(2) "Riders" and "riding" mean horseback riders and horseback riding.

(3) "Department" means the Department of Natural Resources.

(4) "Division" means the Division of Recreation and Parks of the Department of Natural Resources.

History.—s. 3, ch. 79-110.

260.014 Florida Recreational Trails System.—

(1) The Florida Recreational Trails System shall consist of individual trails and networks of trails designated as a part of the Florida Recreational Trails System by the department and administered in accordance with the rules published by the department.

(2) Insofar as is practicable, maps indicating the location of Florida recreational trails shall be published and distributed by the division. The description of canoe trails shall include a generalized map delineating the water body or section thereof designated, locations of suitable launch and take-out sites, as well as other points of interest to enhance the recreational opportunities of the public.

History.—s. 4, ch. 79-110.

260.015 Acquisition of land.—

(1) The division is authorized to acquire by gift or purchase the fee title or any lesser interest in land, including easements, for the purposes of ss. 260.011-260.018 pursuant to the provisions of chapter 375, except that no power of eminent domain is conveyed to the division by ss. 260.011-260.018.

(2) Easements and rights-of-way upon, over, under, across, or along any land, the fee title of which has been acquired for the purposes of ss. 260.011-260.018, may be granted by the division so long as the use permitted by the easement does not interfere with the purposes of ss. 260.011-260.018.

(3) The division may transfer any recreational trail or easement to a local governmental agency having jurisdiction over the area in which the easement is located upon agreement by such local agency to maintain and operate the recreational trail in a

manner consistent with department rules and the intent of ss. 260.011-260.018.

History.—s. 5, ch. 79-110.

260.016 General Powers of Division of Recreation and Parks.—The Division of Recreation and Parks may:

(1) Publish and distribute appropriate maps of recreational trails, including recommended extensions thereof.

(2) Establish access routes and related primitive public-use facilities along recreational trails which will not substantially interfere with the nature and purposes of the trail.

(3) Promulgate appropriate rules for the use of recreational trails.

(4) Coordinate the activities of all governmental units and bodies and special districts that desire to participate in the development of the Florida Recreational Trails System.

History.—s. 6, ch. 79-110.

260.017 Restrictions; rules.—The department may establish restrictions on the use of motorized watercraft within any defined canoe trail necessary to ensure the safe use of a water body for canoes. Restrictions established pursuant to this section must be adopted as a rule pursuant to s. 120.54, after proper notice and hearing, and may be enforced by any state or local law enforcement agency having jurisdiction over the area within which the trail is designated.

History.—s. 7, ch. 79-110.

260.018 Agency recognition.—All agencies of the state shall recognize the special character of the waters designated as canoe trails and shall not take any action which will impair their use as designated.

History.—s. 8, ch. 79-110.

CHAPTER 265

MEMORIALS, MUSEUMS, AND FINE ARTS

265.135 Folk life; definition.—For purposes of ss. 265.136-265.138, "folk life" means the traditional expressive culture shared within the various groups in Florida: familial, ethnic, occupational, religious, and regional. Expressive culture includes a wide range of creative and symbolic forms such as custom, belief, technical skill, language, literature, art, architecture, music, play, dance, drama, ritual, pageantry, and handicraft, which forms are generally learned orally, by imitation, or in performance and are maintained or perpetuated without formal instruction or institutional direction.

History.—s. 3, ch. 79-322.

265.136 Florida Folk Life Council.—

(1) The Florida Folk Life Council is created as a part of the Department of State, to consist of seven members appointed by the Secretary of State for a term of 4 years; however, of the members initially appointed, one shall be appointed for 1 year, two shall be appointed for 2 years, two shall be appointed for 3 years, and two shall be appointed for 4 years. The council shall meet no less than six times per year and shall annually elect from its membership a chairman, a vice chairman, and a secretary-treasurer. Members shall receive no compensation for their services, but shall be reimbursed for travel and expenses incurred in the performance of their duties as provided in s. 112.061.

(2) The council shall:

(a) Advise the Secretary of State with respect to folk arts and folk life;

(b) Stimulate and encourage statewide public interest and participation in folk arts and folklore;

(c) Develop and promote Florida folk artists, performers, festivals, folk life projects, and folk resources;

(d) Make studies, sponsor conferences and workshops throughout the state, and make recommendations for the development of a statewide Florida Folk Arts Program;

(e) Identify, document, collect, and preserve Florida folklore, folk arts, traditions, cultural heritage, skills, and customs and make these resources available throughout the state.

History.—s. 4, ch. 79-322.

265.137 Florida Folk Life Program.—

(1) The Department of State shall employ a Folk Life Director for the Florida Folk Arts Program component and establish his qualifications. The director shall be appointed by the Secretary of State and shall coordinate, direct, and administer the Florida Folk Life Program. The department may employ other employees and shall provide staff resources to the Florida Folk Life Council.

(2) The Department of State shall adopt rules necessary to carry out its duties and responsibilities with respect to such program. The department may make and enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies necessary to carry out its duties. The department may accept gifts, grants, bequests, loans, and endowments for purposes consistent with its responsibilities.

(3) The department shall identify, research, and develop Florida folk artists, performers, folklore, traditions, customs, and cultural heritage and make folk art resources, festivals, and folk life projects available throughout the state. The department may publish a directory and other folk life materials and maintain the Florida Folk Life Archives. The department may sponsor conferences, workshops, festivals, lectures, and exhibitions on Florida folk life and promote the folk resources of the state.

(4) The department shall use the facilities at the Stephen Foster Memorial as the primary location of the performing arts component of the Florida Folk Life Program.

History.—s. 5, ch. 79-322.

265.138 Florida Folk Life Trust Fund.—There is created within the Department of State the Florida Folk Life Trust Fund, which shall consist of moneys appropriated by the Legislature, moneys transferred from the Stephen Foster Memorial Trust Fund, grants from the Fine Arts Council or any other agency, moneys from fees, admissions, and sales of publications or items, and moneys contributed to the fund from any other source. The fund shall be administered by the Department of State for the purpose of financing grants and for the administration of the Folk Life Program in furtherance of the purposes of s. 265.136 and s. 265.137.

History.—s. 6, ch. 79-322.

[1]265.26 Trustees of Ringling Museum of Art.—

(1) There is hereby created within the Department of State a Board of Trustees of the John and Mable Ringling Museum of Art, which shall consist of five members, one of whom shall be a resident of Sarasota County and one of whom shall be a resident of Manatee County. Each member shall have been a resident and citizen of the state for a period of at least 10 years. Their terms of office shall be 4 years,

except the first members, one of whom shall be appointed for a term of 1 year, one for a term of 2 years, one for a term of 3 years and two for terms of 4 years. The appointment of the trustees shall be by the Governor. The Governor may remove any member for cause, and shall fill all vacancies that occur.

(2) The board of trustees shall elect a chairman annually. The trustees shall be reimbursed for traveling expenses as provided in s. 112.061, while in the performance of their duties, the accounts of which shall be paid by the State Treasurer upon itemized vouchers duly approved by the chairman.

(3) The board of trustees shall act at all times in conjunction with and under the supervision and general policies adopted by the Department of State.

(4) The board of trustees shall have complete jurisdiction over the management of the museum, and is invested with full power and authority to appoint a director, and other employees, and to remove the same as in their judgment may be best; fix their compensation, provide for the proper keeping of accounts and records; budgeting of funds; to enter into contracts; to secure public liability insurance; and to do and perform every other matter or thing requisite to the proper management, maintenance, support and control of the John and Mable Ringling Museum of Art at the highest efficiency economically possible taking into consideration the purposes of the establishment.

(5) All presently existing obligations, contracts, and other commitments of the John and Mable Ringling Museum of Art shall be honored by the board of trustees.

(6) Any authority assumed or vested by law in the director or other officer or employee of the John and Mable Ringling Museum of Art is vested in the board of trustees. The director upon approval of the trustees is authorized to expend not to exceed $1,000 annually from funds derived from admissions for public relations deemed by the trustees to be necessary and in the best interest of the museum in addition to publicity and advertising expenditures.

(7) Notwithstanding the provisions of s. 287.025(1)(e), the board of trustees may enter into contracts to insure paintings and other objects of art which it loans for public exhibition pursuant to s. 265.27.

History.—ss. 1-6, ch. 59-60; s. 19, ch. 63-400; s. 1, ch. 63-150; ss. 10, 35, ch. 69-106; s. 4, ch. 78-323; ss. 1, 2, ch. 79-29.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 272.19.

[1]265.261 Direct-support organizations; use of property; audit; status.—

(1) DEFINITIONS.—For the purposes of this section:

(a) A "John and Mable Ringling Museum of Art direct-support organization" or "direct-support organization" means an organization which:

1. Is a corporation not for profit incorporated under the provisions of chapter 617 and approved by the Department of State;

2. Is organized and operated exclusively to raise funds; to submit requests and receive grants from the Federal Government, the state, private foundations, and individuals; to receive, hold, invest, and administer property; and to make expenditures to or for the benefit of the John and Mable Ringling Museum of Art;

3. Has been determined by the Board of Trustees of the John and Mable Ringling Museum of Art to be operating in a manner consistent with the goals of the John and Mable Ringling Museum of Art and in the best interests of the state. Such determination shall be made once a year and reported in the official minutes of a meeting of the board of trustees; and

4. Has been approved by the Board of Trustees of the John and Mable Ringling Museum of Art for operation on the property of, or for the benefit of, the John and Mable Ringling Museum of Art. Such approval shall be reported in the official minutes of a meeting of the board of trustees.

(b) "Personal services" includes full-time or part-time personnel as well as payroll processing.

(2) USE OF PROPERTY.—The Board of Trustees of the John and Mable Ringling Museum of Art:

(a) May permit the use of property, facilities, and personal services at the John and Mable Ringling Museum of Art by a direct-support organization subject to the provisions of this section.

(b) May prescribe by rule any condition with which a direct-support organization shall comply in order to use property, facilities, or personal services at the John and Mable Ringling Museum of Art.

(c) Shall not permit the use of property, facilities, or personal services at the John and Mable Ringling Museum of Art by any direct-support organization which does not provide equal employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.

(3) ANNUAL AUDIT.—Each direct-support organization shall cause an annual postaudit of its financial accounts to be conducted by an independent, certified public accountant in accordance with rules to be adopted by the Board of Trustees of the John and Mable Ringling Museum of Art. The annual audit report shall be submitted to the Auditor General and to the board of trustees for review. The Auditor General and the board of trustees are each authorized to require and receive from the direct-support organization, or from its independent auditor, any detail or supplemental data relative to the operation of such organization. The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report. The records of the organization other than the auditor's report and supplemental data requested by the Auditor General or the board of trustees shall not be considered public records for the purposes of chapter 119.

History.—s. 1, ch. 77-322; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]265.27 Loan of objects of art.—The Board of Trustees of the John and Mable Ringling Museum of Art is hereby given authority to make temporary loans of paintings and other objects of art belonging to the John and Mable Ringling Museum of Art for the purpose of public exhibition in art museums or institutions of higher learning wherever located, including such museums or institutions in other states or countries. Temporary loans may also be made to the executive mansion in Tallahassee, chapters and

affiliates of the John and Mable Ringling Museum of Art, and, for educational purposes, to schools, public libraries, or other public buildings in the state, where such exhibition will benefit the general public as in the judgment of the board of trustees is deemed wise and for the best interest of the John and Mable Ringling Museum of Art, and under policies established by the board of trustees and approved by the Department of State for the protection of the paintings and other objects of art. In making such temporary loans the board of trustees shall give first preference to art museums and institutions of higher learning.

History.—s. 1, ch. 59-61; ss. 10, 35, ch. 69-106; s. 1, ch. 77-15; s. 1, ch. 78-254; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 272.20.

[1]265.28 Fine Arts Council; creation, membership, and duties.—

(1) The Fine Arts Council is created as a part of the Department of State, to consist of 15 members selected by the Secretary of State. In making the appointments, the Secretary of State shall give due consideration to geographical representation so that all areas of the state will have a voice on the council. The term of office of each member shall be 4 years; however, of the members first appointed, three shall be appointed for terms of 1 year, four for terms of 2 years, four for terms of 3 years, and four for terms of 4 years. Other than the chairman, no member of the council who serves a full 4-year term shall be eligible for reappointment during a 1-year period following the expiration of his term. The members shall elect a chairman from their number annually. The chairman shall be the chief executive officer of the council. Any vacancy on the council shall be filled for the remainder of the unexpired term in the same manner as original appointments. Members of the council shall not receive any compensation for their services, but shall be reimbursed for travel and expenses incurred in the performance of their duties as provided in s. 112.061.

(2) The duties of the council are:

(a) To advise the Secretary of State;

(b) To stimulate and encourage throughout the state the study and presentation of the performing and visual arts and public interest and participation therein;

(c) To make such surveys as may be deemed advisable to public and private institutions engaged within the state in artistic and cultural activities, including, but not limited to, music, theater, dance, painting, sculpture, architecture, literature, and allied arts;

(d) To make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

(e) To take such steps as may be necessary and appropriate to encourage public interest in the cultural heritage of our state and to expand the state's cultural resources;

(f) To encourage and assist freedom of artistic expression essential for the well-being of the arts; and

(g) To encourage the improvement of the visual environment of the state.

(3) The members of the Florida Arts Commission shall be eligible for appointment to the Florida Fine Arts Council and shall be considered by the Secretary of State for such appointment.

History.—s. 3, ch. 77-122; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 20.10(9).

[1]265.29 Additional powers and duties of Fine Arts Council.—The powers and duties of the Fine Arts Council of the Department of State shall include the following:

(1) To promote the decoration and beautification of interiors of the capitol and other public buildings, and advise and assist appropriate state officers and agencies in this regard, particularly the Division of Building Construction and Property Management of the Department of General Services.

(2) To seek and help assure a uniformity of art work within state buildings and review all art content of existing public buildings or buildings of state ownership for the purpose of making recommendations to the Governor and Division of Building Construction and Property Management as to matters of installation, relocation, restoration, removal or any other disposition of such works of art.

(3) To consult and advise on request, or at its own initiative, with other individuals, groups, organizations or state agencies and officials, particularly the Governor, the cabinet, the Stephen Foster Memorial Board of Trustees, the state museum, and the Ringling Museum officials, concerning the acquisition by gift or purchase of fine art works, the appropriate use and display of state-owned art treasures for maximum public benefit, and the suitability of any structures or fixtures primarily intended for ornamental or decorative purposes in public buildings.

(4) To foster the development of a receptive climate for the fine arts to culturally enrich and benefit the citizens of Florida in their daily lives, to make Florida visits and vacations all the more appealing to the world and to attract to Florida residency additional outstanding creators in the field of fine arts through appropriate programs of publicity, education, coordination and direct activities such as sponsorship of art lectures and exhibitions and central compilation and dissemination of information on the progress of the fine arts in Florida.

(5) To accept on behalf of Florida such donations of money, property, art objects and historical relics as in its discretion shall best further the orderly development of the artistic and cultural resources of Florida. Such donations of money and any cash income which may be received by the council from the disposal of any donations of property, art objects or historical relics previously accepted by the council shall be deposited in a separate trust fund in the State Treasury and are hereby appropriated to the use of the council.

(6) To file regular reports of progress and activities with the Governor and the Department of State.

History.—s. 3, ch. 59-275; s. 1, ch. 61-20; ss. 10, 22, 35, ch. 69-106; s. 2, ch. 75-70; s. 2, ch. 76-196; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the

possible effect of laws affecting this section prior to that date.
Note.—Former s. 272.21.

265.30 Art grants; Division of Cultural Affairs, powers and duties.—

(1) The Division of Cultural Affairs of the Department of State is authorized to accept and administer state appropriations for fine art grants. The division, pursuant to contract or grant agreement with any local group engaged in or concerned with the arts, shall expend all funds in accordance with general state law and use such appropriations to supplement the financial support of:

(a) Programs which have substantial artistic and cultural significance, giving emphasis to American creativity and the maintenance and encouragement of professional excellence.

(b) Programs meeting professional standards or standards of authenticity, irrespective of origin, which are of significant merit and which, without such assistance, would otherwise be unavailable to the citizens of this state.

(2) Subject to the recommendations of the Fine Arts Council of Florida and the approval of the Secretary of State, the total grant amount for a program shall not exceed 50 percent of the nonfederal share of the cost of the program, except that not more than 20 percent of the funds appropriated for fine art grants may be available for grants and contracts without regard to such limitations.

(3) The division is authorized to accept and administer moneys appropriated by the Legislature, and moneys received from the Federal Government or from other public or private sources, for the development of nationally recognized Florida performing arts groups through a state touring program. The division shall develop and establish a selection procedure which will ensure maximum opportunity for selection of and participation by Florida performing arts groups in the state touring program created by this subsection. The Secretary of State, upon the recommendations of the Fine Arts Council of Florida, shall have final authority for selection of participant performing arts groups.

History.—s. 1, ch. 76-196; s. 1, ch. 79-223.

265.32 County Fine Arts Council.—

(1) COUNTY AUTHORITY TO CREATE; PURPOSE.—Each county of the state is hereby vested with the authority to create a county fine arts council, hereinafter referred to as "council" or "arts council," a public agency corporate and politic, for the purposes of:

(a) Stimulating greater governmental and public awareness and appreciation of the importance of the arts to the people of Florida.

(b) Encouraging and facilitating greater and more efficient use of governmental and private resources for the development and support of the arts.

(c) Encouraging and facilitating opportunities for Florida residents to participate in artistic activities.

(d) Promoting the development of Florida artists, arts institutions, community organizations sponsoring arts activities, and audiences.

(e) Surveying and assessing the needs of the arts, artists, arts institutions, community organizations sponsoring arts activities, and people of this state relating to the arts.

(f) Supporting and facilitating the preservation and growth of the state's artistic resources.

(g) Otherwise serving the citizens of the county and state in the realm of the arts.

The purposes provided by this section are hereby deemed to be public purposes.

(2) MEMBERSHIP AND ORGANIZATION.—

(a) Initial members of the arts council shall be appointed by the Board of County Commissioners and shall be selected in such manner as to assure that the general arts needs of the people in the county may best be served. It shall be remembered that each council member will be charged with the responsibility of serving the best interests of the arts in the county within the purposes of this act, and no council member shall view his role as that of representing any particular geographic area of the county, interest group, arts institution, community organization, or audience. No individual committed to, or owing allegiance to, any particular arts faction shall be eligible to serve on the council.

(b)1. If a county is creating a council under the provisions of this act, the arts council shall consist of 15 members. Vacancies which exist on the council shall be filled by the Board of County Commissioners. However, in filling any vacancy which occurs, the Board of County Commissioners shall select the replacement council member from a list of three candidates to be submitted by the remaining members of the council. In the event that none of the three candidates suggested meets commission approval, the council shall submit another and entirely different list for commission consideration. This process shall continue until a suitable replacement has been found to fill the existing or anticipated vacancy.

2. The council shall make the general public aware of any vacancy which occurs, or which is expected, by complying with the notice and publication requirements established in paragraph (f). The council shall then consider suggestions or recommendations made by members of the public; representative civic, labor, and cultural associations; and groups concerned with encouraging the development and appreciation of the arts before submitting any list of candidates to the Board of County Commissioners.

3. There shall be an ex officio member who shall be a member of the Board of County Commissioners to be designated by it. The council may authorize additional ex officio members from any municipality within the county which it determines deserves representation, and any such member shall be designated by the city commission from its membership.

(c) The term of office for each member shall be 4 years; however, of the members first appointed, three shall serve for 1 year, four for 2 years, four for 3 years, and four for 4 years. All members of the council shall be qualified electors residing in the county.

(d) No council member who serves a full term shall be reappointed to the council during the 2-year period following expiration of his term.

(e) No council member may receive compensation for his services, but each member may be reim-

bursed in accordance with chapter 112 for actual expenses necessarily incurred in the performance of his duties.

(f) For purposes of this section, notice and publication requirements shall be deemed to have been met by daily advertisement in a newspaper, or in any of the electronic media, with countywide circulation or exposure for a period of 3 days at least 10 days prior to the taking of the intended action.

(g) Council members may be removed for cause, and continued and unexcused absence shall constitute a form of, but not limit, such cause for removal. The removed member's replacement shall be chosen as provided in paragraph (b). Removal shall only be accomplished by a two-thirds vote of the remaining council members.

(3) COUNCIL OFFICERS.—The council shall elect annually one of the members of the council to be its chairman. No member of the council may serve as its chairman for more than one term. The council may annually elect such other officers as it deems appropriate.

(4) EXECUTIVE DIRECTOR.—The council may appoint an executive director who shall be a full-time employee and shall serve at the pleasure of, and at a salary fixed by, the council. The executive director shall carry out the policies and programs established by the council, shall employ, subject to council approval, such full-time and part-time staff and consultants as appropriate to carry out those policies and programs, and shall be in charge of the day-to-day operations of those policies and programs.

(5) POWERS OF THE COUNCIL.—Within the limit of funds available to it and the conditions set forth in this act, the council shall have all legal powers necessary and appropriate to effectuate its purposes and duties as set forth in this act and as enumerated in the bylaws of the council. The council shall adopt at the earliest possible opportunity a set of bylaws enumerating its purposes, duties, powers, and rules of organization and operation, which bylaws shall not be inconsistent with, or exceed the provisions of, this act.

(6) BONDS AUTHORIZED.—

(a) Upon resolution of the county commission approving such authority, each county arts council created pursuant to this act shall have the power to issue, refund, or take any other action with respect to revenue bonds to finance or refinance a capital project as part I of chapter 159 authorizes, insofar as the provisions of part I of chapter 159 are applicable. For the purposes of this act, the term "unit," as defined in s. 159.02, shall be deemed to include any county fine arts council created pursuant to this act, and the term "governing body," as defined in s. 159.02, shall be deemed to include any county fine arts council created pursuant to this act.

(b) Bonds issued under the provisions of this act shall not constitute a debt of the county or any municipality therein or a pledge of the faith and credit of the county or any municipality therein, and a statement to that effect shall be recited on the face of the bonds. However, any county or municipality therein may, by express resolution, assume as its debt, or pledge its faith and credit as a guarantee of, the bonds of the county arts council if such bonds are issued to finance or refinance a capital project authorized by law and are approved by a vote of the electors.

(7) COUNCIL MEETINGS; PUBLIC HEARINGS; COMMITTEES AND ADVISORS; REPORTS; RULES.—

(a) The council shall meet at least quarterly pursuant to notice and at such times and places as the council shall determine. One-half of the council membership, plus one, shall comprise a quorum for the transaction of business at council meetings.

(b) The council shall hold at least one public hearing annually, pursuant to public notice specifying the date and place of hearing and the subjects to be considered, for the purposes of making the council's work known and investigating and assessing the needs and development of the arts in the county. Notwithstanding the publication of an agenda for the annual meeting, the specification of subjects shall not preclude consideration of any other subject pertinent to the above stated purpose of the meeting if that other subject is raised by any county resident present at the meeting.

(c) The council may establish such working committees of council members as it deems appropriate to carry out its objectives, duties, and powers.

(d) The council may convene such advisory panels and may consult with such advisors and experts as it deems necessary and appropriate for carrying out its objectives, duties, and powers.

(e) The council shall formulate and publish rules setting forth the criteria pursuant to which its financial aid is given and such other rules regarding its activities as it deems appropriate.

(f) The county arts council may, from time to time and at any time, submit to the Florida Fine Arts Council a report summarizing its activities and setting forth any recommendations it considers appropriate, including recommendations with respect to present or proposed legislation concerning state encouragement and support of the arts.

(8) ACT FOR PUBLIC PURPOSE; EFFECT ON EXISTING COUNCILS.—

(a) This act, being for public purpose and for the welfare of the citizens of Florida, shall be liberally construed to effect the purposes hereof.

(b) Nothing in this act shall affect the operation or structure of any existing arts council that provides service to any community or county and is so recognized by members of said community or county. Nonetheless, any existing council may be reorganized by resolution of the Board of County Commissioners into a public agency corporate and politic as provided in subsection (1); however, the council shall conform to the provisions of subsection (2) except as to number of appointed members. In such case, any and all prior enabling legislation pursuant to which said council was established shall be repealed and superseded by this act insofar as it is inconsistent with this act. Council members serving at the time of passage of the hereinbefore mentioned resolution may serve for the remaining portions of their terms. In the event that some council members are elected to their positions, those positions shall continue to be filled by election as they had been previously.

History.—ss. 1-7, 9, 10, ch. 76-244; s. 1, ch. 77-174.

CHAPTER 266

HISTORIC PRESERVATION, ETC., BOARDS OF TRUSTEES

PART I

HISTORIC ST. AUGUSTINE PRESERVATION BOARD OF TRUSTEES

[1]266.01 Historic St. Augustine Preservation Board of Trustees; creation.—There is created within the Department of State the Historic St. Augustine Preservation Board of Trustees, a body corporate, the purpose and function of which shall be to acquire, restore, preserve, maintain, reconstruct, reproduce and operate for the use, benefit, education, recreation, enjoyment, and general welfare of the people of this state and nation certain ancient or historic landmarks, sites, cemeteries, graves, military works, monuments, locations, remains, buildings, and other objects of historical or antiquarian interest of the City of St. Augustine, Florida, and surrounding territory.

History.—s. 1, ch. 59-521; ss. 10, 35, ch. 69-106; s. 1, ch. 70-160; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]266.02 Definitions.—Unless otherwise clearly indicated, the following words when used in this part shall have the following meanings:

(1) "Board"—the Historic St. Augustine Preservation Board of Trustees of the Department of State;

(2) "Facilities"—historic sites, objects, and facilities for exhibition owned, rented, leased, managed, or operated by the board;

(3) "Slum"—any areas where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to health, safety, or morals.

History.—s. 2, ch. 59-521; ss. 10, 35, ch. 69-106; s. 2, ch. 70-160; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]266.03 Membership; terms of office, etc.—The board of trustees shall consist of five members to be appointed by the Governor not later than 30 days after July 1, 1959. Members of the original board shall be appointed for terms as follows: One for 2 years, two for 3 years and two for 4 years, and thereafter members shall be appointed for 4-year terms except appointments to fill vacancies for unexpired terms in which event the appointment shall be for the unexpired term only. In addition to the above members, the board of trustees shall consist of two additional members who need not be residents of the state and who shall be appointed by the Governor not later than 30 days after July 1, 1965. All appointments of the board shall be confirmed by the Senate. The members of the board, including the chairman, shall receive no compensation for their services but shall be entitled to be reimbursed for per diem and travel expenses incurred in the performance of their official duties as members of the board, subject to the provisions and limitations of s. 112.061. Each member shall give a surety bond in the sum of $10,000 executed by a surety company authorized to do business in this state, payable to the Governor and his

successors in office, and conditioned upon the faithful performance of his duties.

History.—s. 3, ch. 59-521; s. 1, ch. 65-20; s. 3, ch. 70-160; s. 4, ch. 78-323.
[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]**266.04 Organization, meetings, records.**—Not later than 15 days after the appointment of its membership and annually thereafter, the board shall hold an organizational meeting at which it shall elect from its membership a chairman, a vice chairman, and a secretary-treasurer. No business shall be transacted by the board except at a regularly called meeting at which a quorum is present and the minutes thereof recorded. Permanent records shall be maintained which shall reflect all official transactions of the board.

History.—s. 4, ch. 59-521; s. 4, ch. 70-160; s. 4, ch. 78-323.
[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]**266.05 Treasurer.**—The State Treasurer shall be the ex officio treasurer of the board and shall have the custody of all of its funds, to be kept in a special account. All receipts and disbursements of the board shall be handled subject to the same laws, rules, and regulations as other state funds are handled.

History.—s. 5, ch. 59-521; s. 5, ch. 70-160; s. 4, ch. 78-323.
[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]**266.06 Powers.**—The board shall be the governing body and have power:

(1) To adopt a seal and alter the same at pleasure.

(2) To contract and be contracted with, to sue and be sued, to plead and be impleaded in all courts of law and equity.

(3) To exercise any power not in conflict with the constitution and laws of the state or the United States which is usually possessed by private corporations or public agencies performing comparable functions.

(4) To establish an office at or near the City of St. Augustine for the conduct of its affairs.

(5) To acquire, hold, rent, lease, and dispose of real and personal property or any interest therein for its authorized purpose.

(6) To own, operate, maintain, repair and improve its facilities wherever located.

(7) To acquire in its own name by purchase, grant, devise, gift, or lease, on such terms and conditions and in such manner as it may deem necessary or expedient, or by condemnation, except as otherwise herein provided, in accordance with and subject to state law applicable to condemnation of property for public use, real property or rights or easements therein or franchises necessary or convenient for its purposes and to use the same so long as its existence shall continue and to lease or make contracts with respect to the use or disposal of same, or any part thereof, in any manner deemed by the board to be in its best interest but only for the purposes for which it is created. No property shall be acquired under the provisions of this part upon which any lien or other encumbrance exists, unless at the time said property is so acquired, a sufficient sum of money be deposited in trust to pay and redeem such lien or encumbrance; nor shall any property be acquired hereunder by condemnation which is owned by a church, a cemetery association, or which is presently used as a historical attraction.

(8) To demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adaption of such area to public purposes, including parks or other recreational or community purposes; or to provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water services, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes; or to accomplish a combination of the foregoing. To plan buildings and improvements, to acquire property, to demolish existing structures, to construct, reconstruct, alter and repair improvements and all other work in connection therewith.

(9) To employ and dismiss at pleasure consulting engineers, architects, superintendents or managers, accountants, inspectors, attorneys, and such other employees as may be deemed necessary and to prescribe their powers and duties and to fix their compensation.

(10) To acquire from the City of St. Augustine, St. Johns County, the state, the United States, any state thereof, or any foreign country or colony, any existing property, real or personal now owned by it or hereafter acquired, suitable for the uses of the board, and to improve, operate and maintain the same for the purpose herein stated or to act as trustee for any such property under such terms and conditions as the owner may prescribe.

(11) To enter into contracts with the City of St. Augustine or St. Johns County for the purpose of providing police and fire protection, water, sanitation, and other public services deemed necessary or expedient and said municipality and county are authorized to enter into such contracts.

(12) To contract with any agency of the state or the Federal Government, the City of St. Augustine, County of St. Johns, or any firm or corporation upon such terms and conditions as the board finds in its best interest, with respect to the establishment, construction, operation, and financing of the facilities of the board in or near the City of St. Augustine, St. Johns County.

(13) To make and enter into all contracts or agreements, with or without competitive bidding as the board may determine, which are necessary, expedient, or incidental to the performance of its duties or the execution of its powers under this law.

(14) To engage in any lawful business or activity deemed by it necessary or useful in the full exercise of its powers to establish, finance, maintain, and operate the facilities contemplated by this law, including:

(a) The renting or leasing for revenue of any land, improved or restored real estate, or personal property directly related to carrying out the purposes for which the board is created.

(b) The selling of craft products created through the operation and demonstration of historical muse-

ums, craftshops and other facilities.

(c) The limited sale of merchandise relating to the historical and antiquarian period of St. Augustine, Florida, and surrounding territory.

(15) To fix and collect charges for admission to any of the facilities operated and maintained by the board under the provisions of this part and to adopt and enforce reasonable rules and regulations to govern the conduct of the visiting public.

(16) To borrow money for any of its authorized purposes and for expenses incidental thereto, including expenses incurred during the period of organization, restoration, and construction prior to the operation of the facilities of the board and to issue negotiable revenue certificates payable solely from revenue accruing from the operation of such facilities and from authorized activities incidental thereto.

(17) To perform all lawful acts necessary and convenient and incident to effectuating its function and purpose.

History.—s. 6, ch. 59-521; s. 1, ch. 70-62; s. 6, ch. 70-160; s. 1, ch. 70-439; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]**266.07 Appropriation.**—The Board of County Commissioners of St. Johns County and the City of St. Augustine are hereby authorized to appropriate annually from such funds as may be available an aggregate amount of $50,000 to be used by said board in defraying part of the cost incurred by it in carrying out the purposes of this part.

History.—s. 7, ch. 59-521; s. 22, ch. 69-353; s. 7, ch. 70-160; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

PART II

HISTORIC PENSACOLA PRESERVATION BOARD OF TRUSTEES

[1]**266.101 Historic Pensacola Preservation Board of Trustees.**—There is created within the Department of State the Historic Pensacola Preservation Board of Trustees, a body corporate, the purpose and function of which shall be to acquire, restore, preserve, maintain, reconstruct, reproduce, and operate for the use, benefit, education, recreation, enjoyment, and general welfare of the people of this state and nation certain ancient or historic landmarks, sites, cemeteries, graves, military works, monuments, locations, remains, buildings, and other objects of historical or antiquarian interest of the City of Pensacola and surrounding areas. The selection for acquisition, restoration, preservation, maintenance, reconstruction, reproduction, and operation shall be made by the board based on criteria of historical evaluation as established by the National Trust for Historic Preservation.

History.—s. 1, ch. 67-303; ss. 10, 35, ch. 69-106; s. 1, ch. 70-156; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]**266.102 Definitions.**—Unless otherwise clearly indicated, the following words when used in this part shall have the following meanings:

(1) "Board" shall mean the Historic Pensacola Preservation Board of Trustees of the Department of State.

(2) "Facilities" shall include historic sites, objects, and landmarks for exhibition, owned, leased, managed, or operated by the board.

History.—s. 2, ch. 67-303; ss. 10, 35, ch. 69-106; s. 2, ch. 70-156; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]**266.103 Membership; terms; compensation; bond.—**

(1) The board of trustees shall consist of seven members to be appointed by the Governor not later than 30 days after the effective date of this part and confirmed by the State Senate. Members of the original board shall be appointed for terms as follows: Two for 2 years; two for 3 years; and three for 4 years; thereafter, members shall be appointed for 4-year terms except for appointments to fill vacancies for unexpired terms, in which event the appointment shall be for the unexpired term only.

(2) Board members shall possess an active interest in the historical aspects of Pensacola and the surrounding area. The members of the board, including the chairman, shall receive no compensation for their services but shall be entitled to be reimbursed for per diem and travel expenses incurred in the performance of their official duties as members of the board, subject to the provisions and limitations of s. 112.061. Each member shall give a surety bond in the sum of $5,000, executed by a surety company authorized to do business in this state, payable to the Governor and his successors in office, and conditioned upon the faithful performance of his duties; the cost of each such bond shall be borne by the board.

History.—s. 3, ch. 67-303; s. 3, ch. 70-156; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]**266.104 Organization; records.**—Within 15 days after the appointment of its membership and annually thereafter, the board shall hold an organizational meeting at which it shall elect from its membership a chairman, a vice chairman, and secretary-treasurer. No business shall be transacted by the board except at a regular or specially called meeting at which a quorum is present and the minutes thereof recorded. Permanent records shall be maintained which shall reflect all official transactions of the board.

History.—s. 4, ch. 67-303; s. 4, ch. 70-156; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]**266.105 Treasurer; finances.**—The State Treasurer shall be the ex officio treasurer of the board and shall have the custody of all its funds to be kept in a special account. All receipts and disbursements of the board shall be handled subject to the same

laws, rules, and regulations as other state funds are handled.

History.—s. 5, ch. 67-303; s. 5, ch. 70-156; s. 4, ch. 78-323.
[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]266.106 Powers of the board of trustees.—The board shall be the governing body and have the power:

(1) To adopt a seal and alter the same at pleasure.

(2) To contract and be contracted with, to sue and be sued and to plead and be impleaded in all courts of law and equity.

(3) To exercise any power not in conflict with the Constitution of the state or United States which is usually possessed by private corporations or public agencies performing comparable functions.

(4) To establish an office at or near the City of Pensacola for the conduct of its affairs.

(5) To acquire, hold, lease, and dispose of real and personal property or any interest therein for its authorized purpose.

(6) To plan buildings and improvements, to demolish existing structures, to construct and reconstruct, alter, repair and improve the facilities wherever located.

(7) To acquire in its own name, by purchase, grant, devise, gift, or lease, on such terms and conditions and in such manner as it may deem necessary or expedient; or by condemnation except as otherwise herein provided, in accordance with and subject to the state law applicable to condemnation of property for public use, real property or rights or easements therein or franchises necessary or convenient for its purposes and to use the same so long as its existence shall continue and to lease or make contracts with respect to the use or disposal of the same or any part thereof, in any manner deemed by it to be in the best interest of the board, but only for the purposes for which it is created. No property shall be acquired under the provisions of this part upon which any lien or other encumbrance exists, unless at the time said property is so acquired, a sufficient sum of money is to be deposited in trust to pay and redeem such lien or encumbrance; nor shall any property be acquired hereunder by condemnation which is owned by a church or a cemetery association or is presently used as a historical attraction.

(8) To employ and dismiss at pleasure consulting engineers, architects, superintendents or managers, accountants, inspectors, attorneys, and such other employees as may be deemed necessary and to prescribe their powers and duties and to fix their compensation.

(9) To draft a historical plan of development for the City of Pensacola and surrounding area, and the board shall have the authority to recommend to the governing body of the City of Pensacola the creation of a historical district or districts which shall include any section or sections of the city containing buildings, landmarks, sites, or facilities of historical value and having an overall atmosphere of architectural or historical distinction, or both. Such facilities having historical value shall be designated by the board, based on criteria of historical evaluation as established by the National Trust for Historic Preservation or any other recognized professional historical group.

(10) To acquire from the City of Pensacola, Escambia County, the state, the United States or any state thereof, or any foreign country or colony any existing property, real or personal, now owned by it or hereafter acquired, suitable for the uses of the board and to improve, operate and maintain the same for the purposes herein stated or to act as trustee for any such property under such terms and conditions as the owner may prescribe.

(11) To enter into contracts with the City of Pensacola or Escambia County for the purposes of providing police and fire protection, water, sanitation, and other public services deemed necessary or expedient and said municipality and county are authorized to enter into such contracts.

(12) To contract with any agency of the state, the Federal Government, the City of Pensacola, the County of Escambia, or any firm or corporation upon such terms and conditions as the board finds in its best interest, with respect to the establishment, construction, operation, and financing of the facilities of the board in or near the City of Pensacola, Escambia County.

(13) To make and enter into all contracts or agreements with private individuals, corporations, organizations, historical societies, and others with reference to facilities; and to enter into contracts and agreements, with or without competitive bidding as the board may determine, which are necessary, expedient, or incidental to the performance of its duties or the execution of its powers under this part.

(14) To engage in any lawful business or activity deemed by it necessary or useful in the full exercise of its powers to establish, finance, maintain, and operate the facilities contemplated by this part, including:

(a) The renting or leasing for revenue of any land, improved or restored real estate, or personal property directly related to carrying out the purposes for which the board is created.

(b) The selling of craft products created through the operation and demonstration of historical museums, craftshops, and other facilities.

(c) The limited selling of merchandise relating to the historical and antiquarian period of Pensacola, Florida, and surrounding territory.

(15) To fix and collect charges for admission to any of the facilities operated and maintained by the board under the provisions of this part and to adopt and enforce reasonable rules and regulations to govern the conduct of the visiting public.

(16) To borrow money for any of its authorized purposes and for expenses incidental thereto, including expenses incurred during the period of organization, restoration, and construction prior to the operation of the facilities of the board and to issue negotiable revenue certificates payable solely from revenue for the operation of such facilities and from authorized activities incidental thereto.

(17) To perform all lawful acts necessary and convenient and incident to the effectuating of its function and purpose.

(18) To cooperate and coordinate all of its activi-

ties on a permissive basis through any statewide commission, including the Division of Archives, History and Records Management of the Department of State, and to participate in any overall statewide plan of historical development.

(19) To cooperate and coordinate its activities with any national project of historical development such as a national seashore and to coordinate and cooperate with any other agency, state, local, or national, undertaking historical objectives if the same are not in conflict with the objectives of the board.

History.—s. 6, ch. 67-303; ss. 10, 35, ch. 69-106; s. 6, ch. 70-156; s. 1, ch. 70-335; s. 1, ch. 70-439; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

266.107 Powers of governing body of City of Pensacola; Architectural Review Board.—

(1) GOVERNING BODY.—The governing body of the City of Pensacola is authorized:

(a) To establish historical districts.

(b) To name an architectural review board.

(c) To prescribe the procedure for the review of building plans (or for the destruction of a building) of any building which is to be erected, renovated or razed, which is located or to be located within the designated historical district or districts, including rules and governing decisions of the Architectural Review Board, and the procedure of appeal from decisions of the board.

(d) To adopt such other regulations as are necessary to effect the purposes of s. 266.106(9).

(e) To utilize its employees in the enforcement and regulation of the provisions of s. 266.106(9).

(2) ARCHITECTURAL REVIEW BOARD; MEMBERSHIP; TERMS; POWERS; EXPENDITURES.—

(a) *Membership.*—The Architectural Review Board shall be composed of the following members:

1. Two members from the Historic Pensacola Preservation Board of Trustees;

2. The city planner of the City of Pensacola;

3. The chairman of the Pensacola Planning Board;

4. One member at large who shall be a resident of Escambia County; and

5. Two members who are members of the American Institute of Architects and whose principal place of business or residence is in Escambia County.

(b) *Terms.*—Members shall be appointed for a term of 2 years except in the case of an appointment to fill a vacancy in which event the appointment shall be for the unexpired term only.

(c) *Powers.*—The Architectural Review Board shall have authority:

1. To approve or disapprove plans for buildings to be erected, renovated or razed which are located, or are to be located, within the historical district or districts and to regulate reasonably land use to the extent necessary to preserve the historical integrity and ancient appearance within any and all historical districts established by the governing body of the City of Pensacola, including but not limited to authority to deny or grant variances from the zoning ordinances of the City of Pensacola applicable to historical districts. The designation and preservation of buildings and structures within any historical district or districts established under s. 266.106(9) and the control of the erection, alteration, addition, repair, removal or demolition of new or existing buildings or structures, signs and any such facilities or appurtenances thereto to insure perpetuation of its or their historical character is hereby designated to be a public purpose but no regulation shall be adopted which is in conflict with any zoning ordinance of the City of Pensacola, applicable to such area.

2. To adopt rules for the transaction of its business, the holding of meetings and such other activities as are incident to its function.

(d) *Expenditures.*—The expenditures of the Architectural Review Board shall be within the amounts appropriated for its purpose by the city through its governing body.

History.—s. 6, ch. 67-303; s. 1, ch. 69-229; s. 7, ch. 70-156.

266.108 Appropriation.—The Board of County Commissioners of Escambia County and the City of Pensacola are hereby authorized to appropriate annually from such funds as may be available, and the board is hereby authorized to accept contributions from the United States or any agency thereof, individuals, organizations, societies or groups in the furtherance of the purposes of the board.

History.—s. 7, ch. 67-303; s. 22, ch. 69-353; s. 8, ch. 70-156.

PART III

HISTORIC TALLAHASSEE PRESERVATION BOARD OF TRUSTEES

[1]**266.110 Historic Tallahassee Preservation Board of Trustees.**—There is created within the Department of State the Historic Tallahassee Preservation Board of Trustees, a body corporate, the purpose and function of which shall be to acquire, restore, preserve, maintain, reconstruct, reproduce, and operate for the use, benefit, education, recreation, enjoyment, and general welfare of the people of this state and nation certain ancient or historic landmarks, sites, cemeteries, graves, military works, monuments, locations, remains, buildings, and other objects of historical or antiquarian interest of the City of Tallahassee, Florida, and surrounding areas. The selection for acquisition, restoration, preservation, maintenance, reconstruction, reproduction, and operation shall be made by the board based on criteria of historical evaluation as established by the Division of Archives, History and Records Management of the Department of State.

History.—s. 2, ch. 70-335; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]**266.111 Definitions.**—Unless otherwise clearly indicated, the following words when used in this part shall mean:

(1) "Board" shall mean the Historic Tallahassee Preservation Board of Trustees.

(2) "Facilities" shall include historic sites, objects and landmarks for exhibition owned, leased, managed, or operated by the board.

History.—s. 3, ch. 70-335; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]**266.112 Membership; terms of office; etc.**—

(1) The board shall consist of seven members to be appointed by the Governor not later than October 1, 1972. Members of the original board shall be appointed for terms as follows: Two for 2 years; two for 3 years; and three for 4 years; and thereafter members shall be appointed for 4-year terms except for appointments to fill vacancies for unexpired terms, in which event the appointment shall be for the unexpired term only.

(2) Board members shall possess an active interest in the historical aspects of Tallahassee and the surrounding area, and at least four members of the board shall be residents of the County of Leon. The members of the board, including the chairman, shall receive no compensation for their services, but shall be entitled to be reimbursed for per diem and travel expenses incurred in the performance of their official duties as members of the board, subject to the provisions and limitations of s. 112.061. Each member shall give a surety bond in the sum of $5,000, executed by a surety company authorized to do business in this state, payable to the Department of State and conditioned upon the faithful performance of his duties; the cost of each such bond shall be borne by the board.

History.—s. 4, ch. 70-335; s. 1, ch. 70-439; s. 4, ch. 72-259; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]**266.113 Organization, meetings, records.**—Within 15 days after the appointment of its membership and annually thereafter, the board shall hold an organizational meeting at which it shall elect from its membership a chairman, a vice chairman, and secretary-treasurer. No business shall be transacted by the board except at a regular or specially called meeting at which a quorum is present and the minutes thereof recorded. Permanent records shall be maintained which shall reflect all official transactions of the board.

History.—s. 5, ch. 70-335; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]**266.114 Treasurer; receipts and disbursement of funds.**—The State Treasurer shall be ex officio treasurer of the board and shall have the custody of all its funds to be kept in a special account. All receipts and disbursements of the board shall be handled subject to the same laws, rules, and regulations as other state funds are handled.

History.—s. 6, ch. 70-335; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]**266.115 Powers of the board of trustees.**—The board shall be the governing body and have the power:

(1) To adopt a seal and alter the same at pleasure.

(2) To contract and be contracted with, to sue and be sued, and to plead and be impleaded in all courts of law and equity.

(3) To exercise any power not in conflict with the Constitution of the state or of the United States which is usually possessed by private corporations or public agencies performing comparable functions.

(4) To establish an office at or near the City of Tallahassee for the conduct of its affairs.

(5) To acquire, hold, lease, and dispose of real and personal property or any interest therein for its authorized purpose.

(6) To plan buildings and improvements, to demolish existing structures, and to construct, reconstruct, alter, repair, and improve its facilities wherever located.

(7) To acquire in its own name by purchase, grant, devise, gift, or lease, on such terms and conditions and in such manner as it may deem necessary or expedient, or by condemnation except as otherwise herein provided, in accordance with and subject to the state law applicable to condemnation of property for public use, real property or rights or easements therein or franchises necessary or convenient for its purposes and the use of same so long as its existence shall continue and to lease or make contracts with respect to the use or disposal of the same or any part thereof in any manner deemed by it to be in the best interest of the board, but only for the purposes for which it is created. No property shall be acquired under the provisions of this part upon which any lien or other encumbrance exists, unless at the time said property is so acquired, a sufficient sum of money is to be deposited in trust to pay and redeem such lien or encumbrance; nor shall any property be acquired hereunder by condemnation which is owned by a church or cemetery association or which is presently used as a historical attraction.

(8) To employ and dismiss at pleasure consulting engineers, architects, superintendents or managers, accountants, inspectors, attorneys, and such other employees as may be deemed necessary and to prescribe their powers and duties and to fix their compensation.

(9) To draft a historical plan of development for the City of Tallahassee and surrounding area, and the board shall have the authority to recommend to the governing bodies of the County of Leon and the City of Tallahassee the creation of a historical district or districts which shall include any section or sections of the county containing buildings, landmarks, sites, and facilities of historical or architectural value and having an overall atmosphere of architectural or historical distinction. Such facilities having a historical or architectural value shall be designated by the board on the basis of criteria of historical evaluation as established by the Division of Archives, History and Records Management of the Department of State.

(10) To acquire from the City of Tallahassee, Leon County, the state, the United States or any

state thereof, or any foreign country or colony any existing property, real or personal, now owned by it or hereafter acquired, suitable for the uses of the board; to improve, operate, and maintain the same for the purposes herein stated; or to act as trustee for any such property under such terms and conditions as the owner may prescribe.

(11) To enter into contracts with the City of Tallahassee or Leon County for the purposes of providing police and fire protection, water, sanitation, and other public services deemed necessary or expedient, and said municipality and county are authorized to enter into such contracts.

(12) To contract with any agency of the state, the federal government, the City of Tallahassee, the County of Leon, or any firm or corporation upon such terms and conditions as the board finds in its best interest, with respect to the establishment, construction, operation, and financing of the facilities of the board in or near the City of Tallahassee.

(13) To make and enter into contracts or agreements with private individuals, corporations, organizations, historical societies, and others with reference to facilities; and to enter into contracts and agreements, with or without competitive bidding, as the board may determine, which are necessary, expedient or incidental to the performance of its duties or the execution of its powers under this part.

(14) To engage in any lawful business or activity deemed by it necessary or useful in the full exercise of its powers to establish, finance, maintain, and operate the facilities contemplated by this part, including the renting or leasing for revenue of any land, improved or restored real estate, or personal property directly related to carrying out the purposes for which the board is created.

(15) To fix and collect charges for admission to any of the facilities operated and maintained by the board under the provisions of this part and to adopt and enforce reasonable rules and regulations to govern the conduct of the visiting public.

(16) To borrow money for any of its authorized purposes and for expenses incidental thereto, including expenses incurred during the period of organization, restoration and construction prior to the operation of the facilities of the board, and to issue negotiable revenue certificates payable solely from revenue for the operation of such facilities and from authorized activities incidental thereto.

(17) To perform all lawful acts necessary and convenient and incident to the effectuating of its function and purpose.

(18) To cooperate and coordinate all of its activities on a permissive basis through any statewide commission, including the Division of Archives, History and Records Management, and to participate in any overall statewide plan of historical development.

(19) To cooperate and coordinate its activities with any national project of historical development such as a national seashore and to coordinate and cooperate with any other agency, state, local or national, undertaking historical objectives if the same are not in conflict with the objectives of the board.

History.—s. 7, ch. 70-335; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

266.116 Establishment of historical districts.—The governing bodies of the County of Leon and the City of Tallahassee are authorized to establish such historical district or districts and are empowered to name an architectural review board with the following membership:

(1) Two members from the Tallahassee Historical Restoration and Preservation Council;

(2) The executive director of the Leon County-Tallahassee Joint Planning Commission and the chairman of such planning commission.

(3) One member at large who shall be a resident of Leon County.

(4) Two members who are members of the American Institute of Architects and whose principal place of business or residence is in Leon County.

Members shall be appointed for a term of 2 years except in the case of an appointment to fill a vacancy in which event the appointment shall be for the unexpired term only.

History.—s. 7, ch. 70-335.

266.117 Powers and duties of Architectural Review Board.—

(1) It shall be the duty of the board to approve or disapprove plans for buildings to be erected, renovated, or razed which are located, or are to be located, within the historical district or districts.

(2) The governing bodies of Leon County and the City of Tallahassee shall prescribe the procedure for the review of plans for the erection, renovation, or razing of any building which is located or to be located within the designated historical district or districts, including rules and governing decisions of the Architectural Review Board, and the procedure for appeal from decisions of the board.

(3) The governing bodies of Leon County and the City of Tallahassee may adopt such other regulations as are necessary to effect the purposes of s. 266.115(9).

(4) The Architectural Review Board shall have the power to adopt rules for the transaction of its business, the holding of meetings, and such other activities as are incident to its function.

(5) The governing bodies of Leon County and the City of Tallahassee shall have the authority to utilize their employees in the enforcement and regulation of the provisions of s. 266.115(9).

(6) The expenditures of the Architectural Review Board shall be within the amounts appropriated for its purpose by the city through its governing body.

(7) The designation and preservation of buildings and structures within any historical district or districts established under s. 266.115(9), and the control of the erection, alteration, addition, repair, removal, or demolition of new or existing buildings or structures, signs, and any such facilities, or appurtenances thereto, to insure perpetuation of its or their historical character is designated to be a public purpose.

History.—s. 7, ch. 70-335.

PART IV

HISTORIC KEY WEST PRESERVATION BOARD OF TRUSTEES

[1]266.201 Historic Key West Preservation Board of Trustees.—There is created within the Department of State the Historic Key West Preservation Board of Trustees, a body corporate, the purpose and function of which shall be to acquire, restore, preserve, maintain, reconstruct, reproduce, and operate for the use, benefit, education, recreation, enjoyment, and general welfare of the people of this state and nation certain ancient or historic landmarks, sites, cemeteries, graves, military works, monuments, locations, remains, buildings, and other objects of historical or antiquarian interest of the City of Key West and surrounding areas. The selection for acquisition, restoration, preservation, maintenance, reconstruction, reproduction, and operation shall be made by the board based on criteria of historical evaluation as established by the Department of State.

History.—s. 1, ch. 72-259; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]266.202 Definitions.—Unless otherwise clearly indicated, as used in this part:

(1) "Board" means the Historic Key West Preservation Board of Trustees of the Department of State.

(2) "Facilities" means historic sites, objects, and landmarks for exhibition, owned, leased, managed, or operated by the board.

History.—s. 1, ch. 72-259; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]266.203 Membership; terms; compensation; bond.—

(1) The board shall consist of seven members to be appointed by the Governor not later than November 1, 1972 and confirmed by the State Senate. Members of the original board shall be appointed for terms as follows: Two for 2 years; two for 3 years; and three for 4 years. Thereafter, members shall be appointed for 4-year terms except for appointments to fill vacancies for unexpired terms, in which event the appointment shall be for the unexpired term only.

(2) Board members shall possess an active interest in the historical aspects of Key West and the surrounding area. The members of the board, including the chairman, shall receive no compensation for their services, but shall be entitled to be reimbursed for per diem and travel expenses incurred in the performance of their official duties as members of the board, subject to the provisions and limitations of s. 112.061. Each member shall give a surety bond in the sum of $5,000, executed by a surety company authorized to do business in this state, payable to the Governor and his successors in office and conditioned upon the faithful performance of his duties. The cost of each such bond shall be borne by the board.

History.—s. 1, ch. 72-259; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]266.204 Organization; records.—Within 15 days after the appointment of its membership and annually thereafter, the board shall hold an organizational meeting at which it shall elect from its membership a chairman, vice chairman, and secretary-treasurer. No business shall be transacted by the board except at a regular or specially called meeting at which a quorum is present and the minutes thereof recorded. Permanent records shall be maintained which shall reflect all official transactions of the board.

History.—s. 1, ch. 72-259; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]266.205 Treasurer; finances.—The State Treasurer shall be the ex officio treasurer of the board and shall have the custody of all its funds to be kept in a special account. All receipts and disbursements of the board shall be handled subject to the same laws, rules, and regulations as other state funds are handled.

History.—s. 1, ch. 72-259; s. 4, ch. 78-323.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]266.206 Powers of the board.—The board shall be the governing body and have the power:

(1) To adopt a seal and alter the same at pleasure.

(2) To contract and be contracted with, to sue and be sued, and to plead and be impleaded in all courts of law and equity.

(3) To exercise any power not in conflict with the Constitution of the state or the United States which is usually possessed by private corporations or public agencies performing comparable functions.

(4) To establish an office at or near the City of Key West for the conduct of its affairs.

(5) To acquire, hold, lease, and dispose of real and personal property or any interest therein for its authorized purpose.

(6) To plan buildings and improvements, to demolish existing structures, to construct and reconstruct, alter, repair, and improve the facilities wherever located.

(7) To acquire in its own name, by purchase, grant, devise, gift, or lease, on such terms and conditions and in such manner as it may deem necessary or expedient, or by condemnation, except as otherwise herein provided, in accordance with and subject to the state law applicable to condemnation of property for public use, real property or rights or easements therein or franchises necessary or convenient for its purposes; to use the same so long as its existence shall continue; and to lease or make contracts with respect to the use or disposal of the same or any

part thereof, in any manner deemed by it to be in the best interest of the board, but only for the purposes for which it is created. No property shall be acquired under the provisions of this part upon which any lien or other encumbrance exists, unless at the time said property is so acquired, a sufficient sum of money is to be deposited in trust to pay and redeem such lien or encumbrance; nor shall any property be acquired hereunder by condemnation which is owned by a church or a cemetery association or which is presently used as a historical attraction.

(8) To employ and dismiss at pleasure consulting engineers, architects, superintendents or managers, accountants, inspectors and attorneys, and such other employees as may be deemed necessary and to prescribe their powers and duties and fix their compensation.

(9) To draft a historical plan of development for the City of Key West and surrounding area, and the board shall have the authority to recommend to the governing body of the City of Key West the creation of a historical district or districts which shall include any section or sections of Monroe County containing buildings, landmarks, sites, or facilities of historical or architectural value and having an overall atmosphere of architectural or historical distinction, or both. Such facilities having historical or architectural value shall be designated by the board based on the criteria of historical evaluation as established by the Division of Archives, History and Records Management of the Department of State.

(10) To acquire from the City of Key West or Monroe County, the state, the United States or any state thereof, or any foreign country or colony any existing property, real or personal, now owned by it or hereafter acquired, suitable for the uses of the board, and to improve, operate, and maintain the same for the purposes herein stated or to act as trustee for any such property under such terms and conditions as the owner may prescribe.

(11) To enter into contracts with the City of Key West or Monroe County for the purposes of providing police and fire protection, water, sanitation, and other public services deemed necessary or expedient, and said municipality and county are authorized to enter into such contracts.

(12) To contract with any agency of the state, the federal government, the City of Key West, the County of Monroe, or any firm or corporation, upon such terms and conditions as the board finds in its best interest, with respect to the establishment, construction, operation, and financing of the facilities of the board in or near the City of Key West, Monroe County.

(13) To make and enter into all contracts or agreements with private individuals, corporations, organizations, historical societies, and others with reference to facilities and to enter into contracts and agreements, with or without competitive bidding as the board may determine, which are necessary, expedient, or incidental to the performance of its duties or the execution of its powers under this part.

(14) To engage in any lawful business or activity deemed by it necessary or useful in the full exercise of its powers to establish, finance, maintain, and operate the facilities contemplated by this part, including the renting or leasing for revenue of any land, improved or restored real estate, or personal property directly related to carrying out the purposes for which the board is created.

(15) To fix and collect charges for admission to any of the facilities operated and maintained by the board under the provisions of this part and to adopt and enforce reasonable rules and regulations to govern the conduct of the visiting public.

(16) To borrow money for any of its authorized purposes and for expenses incidental thereto, including expenses incurred during the period of organization, restoration, and construction prior to the operation of the facilities of the board and to issue negotiable revenue certificates payable solely from revenue from the operation of such facilities and from authorized activities incidental thereto.

(17) To perform all lawful acts necessary, convenient, and incident to the effectuating of its function and purpose.

(18) To cooperate and coordinate all of its activities on a permissive basis through any statewide board including the Division of Archives, History and Records Management of the Department of State, and to participate in any overall statewide plan of historical development.

(19) To cooperate and coordinate its activities with any national project of historical development, such as a national seashore, and to coordinate and cooperate with any other agency, state, local, or national, undertaking historical objectives if the same are not in conflict with the objectives of the board.

History.—s. 1, ch. 72-259; s. 87, ch. 73-333; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

266.207 Powers of governing body of City of Key West; Architectural Review Board.—

(1) GOVERNING BODY.—The governing body of the City of Key West is authorized:

(a) To establish historical districts.

(b) To name an Architectural Review Board.

(c) To prescribe the procedure for the review of building plans, or for the destruction of a building, of any building which is to be erected, renovated, or razed and which is located or to be located within the designated historical district or districts, including rules and governing decisions of the Architectural Review Board and the procedure of appeal from decisions of the board.

(d) To adopt such other regulations as are necessary to effect the purposes of s. 266.206(9).

(e) To utilize its employees in the enforcement and regulation of the provisions of s. 266.206(9).

(2) ARCHITECTURAL REVIEW BOARD; MEMBERSHIP; TERMS; POWERS; EXPENDITURES.—

(a) *Membership.*—The Architectural Review Board shall be composed of the following members:

1. Two members from the Historic Key West Preservation Board of Trustees.

2. The city planner of the City of Key West.

3. The chairman of the Key West Planning Board.

4. One member at large who shall be a resident of Monroe County.

5. Two members who are members of the Ameri-

can Institute of Architects and whose principal place of business or residence is in Monroe County.

(b) *Terms.*—Members shall be appointed for a term of 2 years except in the case of an appointment to fill a vacancy in which event the appointment shall be for the unexpired term only.

(c) *Powers.*—The Architectural Review Board shall have the authority:

1. To approve or disapprove plans for buildings to be erected, renovated, or razed which are located, or are to be located, within the historical district or districts and to regulate reasonably land use to the extent necessary to preserve the historical integrity and ancient appearance within any and all historical districts established by the governing body of the City of Key West, including, but not limited to, the authority to make recommendations to the Key West Zoning Board to deny or grant variances from the zoning ordinances of the City of Key West applicable to historical districts. The designation and preservation of buildings and structures within any historical district or districts established under s. 266.206(9), and the control of the erection, alteration, addition, repair, removal, or demolition of new or existing buildings or structures, signs, and any such facilities or appurtenances thereto to insure perpetuation of its or their historical character is hereby designated to be a public purpose, but no regulation shall be adopted which is in conflict with any zoning ordinance of the City of Key West, applicable to such area.

2. To adopt rules for the transaction of its business, the holding of meetings, and such other activities as are incident to its function.

(d) *Expenditures.*—The expenditures of the Architectural Review Board shall be within the amounts appropriated for its purpose by the city through its governing body. The members shall receive no compensation for their services, but shall be entitled to be reimbursed for per diem and travel expenses within the state excluding the City of Key West, incurred in the performance of their official duties as members of the board, subject to the provisions and limitations of s. 112.061; provided that such expenditures are authorized by majority vote of the Architectural Review Board at a general or special meeting at which a quorum is present prior to incurring such travel and per diem expenditures by any member or employee of said board.

History.—s. 1, ch. 72-259.

266.208 Appropriation.—The Board of County Commissioners of Monroe County and the City of Key West are hereby authorized to appropriate annually from such funds as may be available an aggregate amount of ten thousand dollars to be used by said board in defraying part of the costs incurred by it in carrying out the purposes of this part, and the board is hereby authorized to accept contributions from the United States or any agency thereof or any individuals, organizations, societies, or groups in the furtherance of the purposes of the board.

History.—s. 1, ch. 72-259.

PART V

HISTORIC BOCA RATON PRESERVATION BOARD OF COMMISSIONERS

[1]**266.301 Historic Boca Raton Preservation Board of Commissioners.**—There is created within the Department of State the Historic Boca Raton Preservation Board of Commissioners, a body corporate, the purpose and function of which shall be to acquire, restore, preserve, maintain, reconstruct, reproduce, and operate for the use, benefit, education, recreation, enjoyment, and general welfare of the people of this state and nation certain ancient or historic landmarks, sites, cemeteries, graves, military works, monuments, locations, remains, buildings, and other objects of historical or antiquarian interest of the City of Boca Raton and surrounding areas. The selection for acquisition, restoration, preservation, maintenance, reconstruction, reproduction, and operation shall be made by the board based on criteria of historical evaluation as established by the Division of Archives, History and Records Management of the Department of State.

History.—s. 1, ch. 74-265; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

266.302 Definitions.—Unless otherwise clearly indicated, the following words when used in this part shall mean:

(1) "Board" means the Historic Boca Raton Preservation Board of Commissioners.

(2) "Facilities" includes historic sites, objects, and landmarks for exhibition owned, leased, managed, or operated by the board.

History.—s. 1, ch. 74-265.

266.303 Membership; terms of office; etc.—

(1) The board shall consist of nine members to be appointed by the Governor not later than October 1, 1975. Members of the board shall be appointed for terms as follows: Three for 2 years, three for 3 years, and three for 4 years; thereafter all members shall be appointed for 4-year terms. Any appointment to fill a vacancy for an unexpired term shall be for the unexpired term only. In making the appointments, the Governor shall consider such persons as may be submitted by the Junior Service League of Boca Raton and the Boca Raton Historical Society or their successors.

(2) The terms of all current members of the Historic Boca Raton Preservation Board of Commissioners shall expire on September 30, 1975. New members shall be appointed pursuant to the provisions of

this act for terms initially commencing on October 1, 1975.

(3) Board members shall possess an active interest in the historical aspects of Boca Raton and the surrounding area, and all members of the board shall be residents of the City of Boca Raton. The members of the board, including the chairman, shall receive no compensation for their services, but shall be entitled to be reimbursed for per diem and travel expenses incurred in the performance of their official duties as members of the board, subject to the provisions and limitations of s. 112.061. Each member shall give a surety bond in the sum of $5,000, executed by a surety company authorized to do business in this state, payable to the Department of State and conditioned upon the faithful performance of his duties. The cost of each such surety bond shall be borne by the board.

History.—s. 1, ch. 74-265; ss. 1, 2, ch. 75-90.

266.304 Organization, meetings, records.—Within 15 days after the appointment of its membership and annually thereafter, the board shall hold an organizational meeting at which it shall elect from its membership a chairman, a vice chairman, and secretary-treasurer. No business shall be transacted by the board except at a regular or specially called meeting at which a quorum is present and the minutes thereof recorded. Permanent records shall be maintained which shall reflect all official transactions of the board.

History.—s. 1, ch. 74-265.

266.305 Treasurer; receipts and disbursement of funds.—The State Treasurer shall be ex officio treasurer of the board and shall have the custody of all its funds to be kept in a special account. All receipts and disbursements of the board shall be handled subject to the same laws, rules, and regulations as other state funds are handled.

History.—s. 1, ch. 74-265.

266.306 Powers of the board of commissioners.—The board shall be the governing body and have the power:

(1) To adopt a seal and alter the same at pleasure.

(2) To contract and be contracted with, to sue and be sued, and to plead and be impleaded in all courts of law and equity.

(3) To exercise any power not in conflict with the Constitution of the state or of the United States which is usually possessed by private corporations or public agencies performing comparable functions.

(4) To establish an office at or near the City of Boca Raton for the conduct of its affairs.

(5) To acquire, hold, lease, and dispose of real and personal property or any interest therein for its authorized purpose.

(6) To plan buildings and improvements; to demolish existing structures; and to construct, reconstruct, alter, repair, and improve its facilities, wherever located.

(7) To acquire in its own name by purchase, grant, devise, gift, or lease, on such terms and conditions and in such manner as it may deem necessary or expedient, or by condemnation except as otherwise herein provided, in accordance with and subject to the state law applicable to condemnation of property for public use, real property or rights or easements therein or franchises necessary or convenient for its purposes and the use of same so long as its existence shall continue and to lease or make contracts with respect to the use or disposal of the same or any part thereof in any manner deemed by it to be in the best interest of the board, but only for the purposes for which it is created. No property shall be acquired under the provisions of this part upon which any lien or other encumbrance exists, unless at the time said property is so acquired, a sufficient sum of money is to be deposited in trust to pay and redeem such lien or encumbrance; nor shall any property be acquired hereunder by condemnation which is owned by a church or cemetery association or which is presently used as a historical attraction or owned and used by a public utility.

(8) To employ, and dismiss at pleasure, consulting engineers, architects, superintendents or managers, accountants, inspectors, attorneys, and such other employees as may be deemed necessary and to prescribe their powers and duties and to fix their compensation.

(9) To draft a historical plan of development for the City of Boca Raton and surrounding area, and the board shall have the authority to recommend to the governing bodies of the County of Palm Beach and the City of Boca Raton the creation of a historical district or districts which shall include any section or sections of the county containing buildings, landmarks, sites, and facilities of historical or architectural value and having an overall atmosphere of architectural or historical distinction. Such facilities having a historical or architectural value shall be designated by the board on the basis of criteria of historical evaluation as established by the Division of Archives, History and Records Management of the Department of State.

(10) To acquire from the City of Boca Raton, Palm Beach County, the state, the United States or any state thereof, or any foreign country or colony any existing property, real or personal, now owned by it or hereafter acquired, suitable for the uses of the board; to improve, operate, and maintain the same for the purposes herein stated; or to act as trustee for any such property under such terms and conditions as the owner may prescribe.

(11) To enter into contracts with the City of Boca Raton or Palm Beach County for the purposes of providing police and fire protection, water, sanitation, and other public services deemed necessary or expedient, and said municipality and county are authorized to enter into such contracts.

(12) To contract with any agency of the state, the Federal Government, the City of Boca Raton, the County of Palm Beach, or any firm or corporation, upon such terms and conditions as the board finds in its best interest, with respect to the establishment, construction, operation, and financing of the facilities of the board in or near the City of Boca Raton.

(13) To make and enter into contracts or agreements with private individuals, corporations, organizations, historical societies, and others with reference to facilities; and to enter into contracts and

agreements, with or without competitive bidding, as the board may determine, which are necessary, expedient, or incidental to the performance of its duties or the execution of its powers under this part.

(14) To engage in any lawful business or activity deemed by it to be necessary or useful in the full exercise of its powers to establish, finance, maintain, and operate the facilities contemplated by this part, including the renting or leasing for revenue of any land, improved or restored real estate, or personal property directly related to carrying out the purposes for which the board is created.

(15) To receive and accept any financial gift or grant from any source, including but not limited to money, securities, and real and personal property. The board shall properly account for the same.

(16) To fix and collect charges for admission to any of the facilities operated and maintained by the board under the provisions of this part and to adopt and enforce reasonable rules and regulations to govern the conduct of the visiting public.

(17) To borrow money for any of its authorized purposes and for expenses incidental thereto, including expenses incurred during the period of organization, restoration, and construction prior to the operation of the facilities of the board, and to issue negotiable revenue certificates payable solely from revenue for the operation of such facilities and from authorized activities incidental thereto.

(18) To perform all lawful acts necessary and convenient and incident to the effectuating of its function and purpose.

(19) To cooperate and coordinate all of its activities on a permissive basis through any statewide commission, including the Division of Archives, History and Records Management, and to participate in any overall statewide plan of historical development.

(20) To cooperate and coordinate its activities with any national project of historical development such as a national seashore and to coordinate and cooperate with any other agency, state, local, or national, undertaking historical objectives if the same are not in conflict with the objectives of the board.

History.—s. 1, ch. 74-265; s. 1, ch. 77-174.

266.307 Establishment of historical districts.—

(1) The governing bodies of the County of Palm Beach and the City of Boca Raton are authorized to establish a historical district or districts and are empowered to name an architectural review board with the following membership:

(a) Two members from Junior Service League of Boca Raton.

(b) Two members from Boca Raton Historical Society.

(c) The chairman of the Palm Beach County Area Planning Board and the director of the Boca Raton Department of Planning.

(d) One member at large who shall be a resident of Palm Beach County.

(e) Two members who are members of the American Institute of Architects and whose principal place of business or residence is in Palm Beach County.

(2) Members shall be appointed for terms of 2 years except in the case of an appointment to fill a vacancy, in which event the appointment shall be for the unexpired term only.

History.—s. 1, ch. 74-265.

266.308 Powers and duties of Architectural Review Board.—

(1) It shall be the duty of the board to approve or disapprove plans for buildings to be erected, renovated, or razed which are located, or are to be located, within the historical district or districts.

(2) The governing bodies of Palm Beach County and the City of Boca Raton shall prescribe the procedure for the review of plans for the erection, renovation, or razing of any building which is located or to be located within the designated historical district or districts, including rules and governing decisions of the Architectural Review Board, and the procedure for appeal from decisions of the board.

(3) The governing bodies of Palm Beach County and the City of Boca Raton may adopt such other regulations as are necessary to effect the purposes of s. 266.306(9).

(4) The Architectural Review Board shall have the power to adopt rules for the transaction of its business, the holding of meetings, and such other activities as are incident to its function.

(5) The governing bodies of Palm Beach County and the City of Boca Raton shall have the authority to utilize their employees in the enforcement and regulation of the provisions of s. 266.306(9).

(6) The expenditures of the Architectural Review Board shall be within the amounts appropriated for its purpose by the city through its governing body.

(7) The designation and preservation of buildings and structures within any historical district or districts established under s. 266.306(9), and the control of the erection, alteration, addition, repair, removal, or demolition of new or existing buildings or structures, signs, and any such facilities or appurtenances thereto, to insure perpetuation of its or their historical character, is designated to be a public purpose.

History.—s. 1, ch. 74-265.

PART VI

HISTORIC TAMPA-HILLSBOROUGH COUNTY PRESERVATION BOARD OF TRUSTEES

control of Secretary of State.

[1]**266.401 Historic Tampa-Hillsborough County Preservation Board of Trustees.**—There is created within the Department of State the Historic Tampa-Hillsborough County Preservation Board of Trustees, a body corporate, the purpose and function of which shall be to acquire, restore, preserve, maintain, reconstruct, reproduce, and operate, for the use, benefit, education, recreation, enjoyment, and general welfare of the people of this state and nation, certain ancient or historic landmarks, sites, cemeteries, graves, military works, monuments, locations, remains, buildings, and other objects of historical or antiquarian interest of Hillsborough County. The selection for acquisition, restoration, preservation, maintenance, reconstruction, reproduction, and operation shall be made by the board, based on criteria of historical evaluation as established by the Department of State.

History.—s. 1, ch. 75-188; s. 4, ch. 78-323.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

266.402 Definitions.—Unless otherwise clearly indicated, as used in this part:

(1) "Board" means the Historic Tampa-Hillsborough County Preservation Board of Trustees of the Department of State.

(2) "Facilities" means historic sites, districts, objects, and landmarks for exhibition, owned, leased, managed, or operated by the board.

History.—s. 1, ch. 75-188.

266.403 Membership; terms; compensation; bond.—

(1) The board shall consist of nine members to be appointed by the Governor not later than November 1, 1975, and confirmed by the Senate. Members of the original board shall be appointed for terms as follows: Three for 2 years; three for 3 years; and three for 4 years. Thereafter, members shall be appointed for 4-year terms, except for appointments for unexpired terms, in which event the appointment shall be for the unexpired term only. The appointment of members to the board shall be made as follows: Four members shall be residents of the City of Tampa, selected from a list of not less than six nominees submitted to the Governor by the Tampa City Council; one member shall be a resident of the City of Temple Terrace, selected from a list of not less than three nominees submitted to the Governor by the Temple Terrace City Council; one member shall be a resident of the City of Plant City, selected from a list of not less than three nominees submitted to the Governor by the Plant City City Commission; and three members shall be residents of the unincorporated areas of Hillsborough County, selected from a list of not less than five nominees submitted to the Governor by the Board of County Commissioners of Hillsborough County.

(2) Board members shall be qualified through the demonstration of special interest, experience, or education in history, architecture, or other related fields and shall possess an active interest in the historical aspects of Tampa and the surrounding area of Hillsborough County, either through an organization or body the purposes of which are consistent with the purposes of this part or through personal interest and contribution. The members of the board, including the chairman, shall receive no compensation for their services, but shall be entitled to be reimbursed for per diem and travel expenses incurred in the performance of their official duties as members of the board, subject to the provisions and limitations of s. 112.061. Each member shall give a surety bond in the sum of $5,000, executed by a surety company authorized to do business in this state, payable to the Governor and his successors in office and conditioned upon the faithful performance of the member's duties. The cost of each such bond shall be borne by the board.

History.—s. 1, ch. 75-188.

266.404 Organization; records.—Within 15 days after the appointment of its membership, and annually thereafter, the board shall hold an organizational meeting at which it shall elect from its membership a chairman, vice chairman, and secretary-treasurer. No business shall be transacted by the board except at a regular or specially called meeting at which a quorum is present and the minutes thereof recorded. Permanent records shall be maintained which shall reflect all official transactions of the board.

History.—s. 1, ch. 75-188.

266.405 Treasurer; finances.—The State Treasurer shall be the ex officio treasurer of the board and shall have the custody of all its funds to be kept in a special account. All receipts and disbursements of the board shall be handled subject to the same laws, rules, and regulations as other state funds are handled.

History.—s. 1, ch. 75-188.

266.406 Powers of the board.—The board shall be the governing body and have the power:

(1) To adopt a seal and alter the same at pleasure.

(2) To contract and be contracted with, to sue and be sued, and to plead and be impleaded in all courts of law and equity.

(3) To exercise any power not in conflict with the Constitution of the state or the United States which is usually possessed by private corporations or public agencies performing comparable functions.

(4) To establish an office at Tampa for the conduct of its affairs.

(5) To acquire, hold, lease, and dispose of real and personal property or any interest therein for its authorized purpose.

(6) To plan facilities; to demolish existing structures; and to construct and reconstruct, alter, repair, and improve the facilities wherever located.

(7) To acquire in its own name, by purchase, grant, devise, gift, or lease, on such terms and conditions and in such manner as it may deem necessary or expedient, or by condemnation, except as otherwise herein provided, in accordance with and subject to the state law applicable to condemnation of property for public use, real property or rights or easements therein or franchises necessary or convenient for its purposes; to use the same so long as its exist-

ence shall continue; and to lease or make contracts with respect to the use or disposal of the same or any part thereof in any manner deemed by it to be in the best interest of the board, but only for the purposes for which it is created. No property shall be acquired under the provisions of this part upon which any lien or other encumbrance exists, unless at the time said property is so acquired, a sufficient sum of money is to be deposited in trust to pay and redeem such lien or encumbrance; nor shall any property be acquired hereunder by condemnation which is owned by a church or a cemetery association or which is presently used as a historical attraction.

(8) To employ and dismiss at pleasure consulting engineers, architects, superintendents or managers, accountants, inspectors, attorneys, and such other employees as may be deemed necessary and to prescribe their powers and duties and fix their compensation.

(9) To draft a historical plan of development for Hillsborough County; and the board shall have the authority to recommend to the governing bodies of Hillsborough County and the Cities of Tampa, Temple Terrace, and Plant City the creation of a historical district or districts which shall include any section or sections of Hillsborough County containing buildings, landmarks, sites, or facilities of historical or architectural value and having an overall atmosphere of architectural or historical distinction, or both. Such facilities having historical or architectural value shall be designated by the board, based on the criteria of historical evaluation as established by the Division of Archives, History and Records Management of the Department of State.

(10) To acquire from the City of Tampa, the City of Temple Terrace, the City of Plant City, Hillsborough County, the state, the United States or any state thereof, or any foreign country or colony any existing property, real or personal, now owned by it or hereafter acquired, suitable for the uses of the board, and to improve, operate, and maintain the same for the purposes herein stated or to act as trustee for any such property under such terms and conditions as the owner may prescribe.

(11) To enter into contracts with the City of Tampa, the City of Temple Terrace, the City of Plant City, or Hillsborough County for the purposes of providing police and fire protection, water, sanitation, and other public services deemed necessary or expedient; and said municipalities and county are authorized to enter into such contracts.

(12) To contract with any agency of the state, the federal government, the City of Tampa, the City of Temple Terrace, the City of Plant City, Hillsborough County, or any firm or corporation, upon such terms and conditions as the board finds in its best interest, with respect to the establishment, construction, operation, and financing of the facilities of the board in Hillsborough County.

(13) To make and enter into all contracts or agreements with private individuals, corporations, organizations, historical societies, and others with reference to facilities and to enter into contracts and agreements, with or without competitive bidding as the board may determine, which are necessary, expedient, or incidental to the performance of its duties or the execution of its powers under this part.

(14) To engage in any lawful business or activity deemed by it necessary or useful in the full exercise of its powers to establish, finance, maintain, and operate the facilities contemplated by this part, including the renting or leasing for revenue of any land, improved or restored real estate, or personal property directly related to carrying out the purposes for which the board is created.

(15) To fix and collect charges for admission to any of the facilities operated and maintained by the board under the provisions of this part and to adopt and enforce reasonable rules and regulations to govern the conduct of the visiting public.

(16) To borrow money for any of its authorized purposes and for expenses incidental thereto, including expenses incurred during the period of organization, restoration, and construction prior to the operation of the facilities of the board, and to issue negotiable revenue certificates payable solely from revenue from the operation of such facilities and from authorized activities incidental thereto.

(17) To perform all lawful acts necessary, convenient, and incident to the effectuating of its function and purpose.

(18) To cooperate and coordinate all of its activities on a permissive basis through any statewide board, including the Division of Archives, History and Records Management of the Department of State, and to participate in any overall statewide plan of historical development.

(19) To cooperate and coordinate its activities with any national project of historical development, such as a national seashore, and to coordinate and cooperate with any other agency, state, local, or national, undertaking historical objectives if the same are not in conflict with the objectives of the board.

History.—s. 1, ch. 75-188.

266.407 Powers of governing bodies in and of Hillsborough County; Architectural Review Board.—

(1) GOVERNING BODIES.—The governing bodies of Hillsborough County and the Cities of Tampa, Temple Terrace, and Plant City, within their boundaries to the extent that they do not conflict with one another, are authorized:

(a) To establish historical districts on the recommendation of the board.

(b) To name Architectural Review Boards in the manner prescribed in subsection (2)(a).

(c) To prescribe the procedure for the review of building plans or for the destruction of a building which is to be erected, renovated, or razed and which is located or to be located within the designated historical district or districts, including rules and governing decisions of the Architectural Review Board and the procedure of appeal from decisions of the board.

(d) To adopt such other regulations as are necessary to effect the purposes of s. 266.406(9).

(e) To utilize their employees in the enforcement and regulation of the provisions of s. 266.406(9).

(2) ARCHITECTURAL REVIEW BOARD; MEMBERSHIP; TERMS; POWERS; EXPENDITURES.—

(a) *Membership.*—The Architectural Review

Board shall be composed of the following members:

1. Four members from the Historic Tampa-Hillsborough County Preservation Board of Trustees, one appointed by each governing body from the members of the board representing their respective governmental units.

2. The executive director of the city-county planning commission, or his designee.

3. Four members who are registered architects in at least the State of Florida and who have demonstrated an active interest in the purposes of this part through training or experience in architectural history, one appointed by each of the four governing bodies.

(b) *Terms.*—Members shall be appointed for a term of 2 years, except in the case of an appointment to fill a vacancy, in which event the appointment shall be for the unexpired term only.

(c) *Powers.*—The Architectural Review Board shall have the authority:

1. To approve or disapprove plans for buildings to be erected, renovated, or razed which are located or are to be located within the historical district or districts, except said district established in s. 266.408, and to regulate reasonable land use to the extent necessary to preserve the historical integrity and ancient appearance within any and all historical districts established by the governing bodies, including, but not limited to, the authority to make recommendations to the appropriate zoning authorities to deny or grant variances from the zoning ordinances of the governing bodies applicable to historical districts. The designation and preservation of buildings and structures within any historical district or districts established under s. 266.406(9), and the control of the erection, alteration, addition, repair, removal, or demolition of new or existing buildings or structures, signs and any such facilities or appurtenances thereto to insure perpetuation of its or their historical character is hereby designated to be a public purpose, but no regulation shall be adopted which is in conflict with any zoning ordinance of any of the governing bodies applicable to such area.

2. To adopt rules for the transaction of its business, the holding of meetings, and such other activities as are incident to its function.

(d) *Expenditures.*—The expenditures of the Architectural Review Board shall be within the amounts appropriated for its purpose. The members shall receive no compensation for their services, but shall be entitled to be reimbursed for per diem and travel expenses within the state, excluding that travel within Hillsborough County, incurred in the performance of their official duties as members of the Architectural Review Board, subject to the provisions and limitations of s. 112.061, provided such expenditures are authorized by majority vote of the Architectural Review Board at a general or special meeting at which a quorum is present prior to incurring such travel and per diem expenditures by any member or employee of the Architectural Review Board.

History.—s. 1, ch. 75-188.

266.408 Ybor City Historic District; creation; Barrio Latino Commission.—

(1) There is created within the City of Tampa the Ybor City Historic District, within which is situated the Ybor City National Historic District, comprising all of the area within the City of Tampa contained in the following boundaries:

Rear property line on the north side of Columbus Drive on the north; the rear property line on the south side of Fourth Avenue on the south; the rear property line on the east side of Twenty-second Street on the east; and the rear property line on the west side of Nebraska Avenue on the west.

(2) There is created the Barrio Latino Commission which shall serve as the Architectural Review Board for the Ybor City Historic District and shall have for its purpose the designation and preservation of such facilities in the Ybor City Historic District as it may deem appropriate.

(a) *Membership.*—The membership of the Barrio Latino Commission shall be selected by the mayor of the City of Tampa with the concurrence of the city council in the following manner:

1. One from the Hillsborough County Historical Commission;

2. One from the Greater Tampa Chamber of Commerce;

3. Three from the Ybor City Chamber of Commerce;

4. One from the Tampa appointees to the Historic Tampa-Hillsborough County Preservation Board of Trustees, who shall serve as chairman for the initial term; and

5. Three who are registered architects at least in the State of Florida, who reside in the City of Tampa and who have demonstrated an active interest in the purposes of this part through training or experience in architectural history.

(b) *Powers and duties.*—

1. The Barrio Latino Commission shall have for its purpose the control of the erection, alteration, addition, repair, removal, or demolition of any new or existing buildings and structures not designated as historical and architectural value but which erection, alteration, addition, repair, removal, or demolition, in the opinion of said commission, will injuriously affect the quaint and distinctive character of the Ybor City Historic District. The Barrio Latino Commission shall have such other powers and duties as granted to the Architectural Review Board in s. 266.407(2)(c)1. and as granted to it by ordinance of the City of Tampa.

2. The procedures for hearings, submission of plans, and granting of permits shall be determined by the governing body of the City of Tampa.

History.—s. 1, ch. 75-188.

266.409 Appropriation.—The Board of County Commissioners of Hillsborough County, the City Council of Tampa, the City Council of Temple Terrace, and the City Commission of Plant City shall annually appropriate in the aggregate by population the amount of $50,000 to be used by said board in defraying part of the costs incurred by it in carrying out the purposes of this part in a manner determined by the board, and the board is hereby authorized to accept contributions from the United States or any

agency thereof or any individuals, organizations, societies, or groups in the furtherance of the purposes of the board.

History.—s. 1, ch. 75-188.

266.410 Boards under this chapter subject to direct control of Secretary of State.—The Historic Preservation Board established in this part and the historic preservation boards of trustees established under this chapter for St. Augustine, Pensacola, Tallahassee, and Key West shall exercise their powers, duties, and functions as prescribed by law, subject to budget review and approval by the Secretary of State. The boards of trustees shall not be placed within a division of the Department of State, but, administratively, shall be directly under the supervision of the Secretary of State.

History.—s. 1, ch. 75-188.

PART VII

HISTORIC BROWARD COUNTY, VOLUSIA COUNTY, AND FLAGLER COUNTY PRESERVATION BOARDS OF TRUSTEES

266.501 Historic Broward County and Historic Volusia County and Flagler County Preservation Boards of Trustees.—There is created within the Department of State the Historic Broward County Preservation Board of Trustees and the Historic Volusia County and Flagler County Preservation Board of Trustees, bodies corporate, the purpose and function of which shall be to acquire, restore, preserve, maintain, reconstruct, reproduce, and operate, for the use, benefit, education, recreation, enjoyment, and general welfare of the people of this state and nation, certain ancient or historic landmarks, sites, cemeteries, graves, military works, monuments, locations, remains, buildings, and other objects of historical or antiquarian interest in their respective counties. The selection for acquisition, restoration, preservation, maintenance, reconstruction, reproduction, and operation shall be made by each board, based on criteria of historical evaluation as established by the Department of State.

History.—s. 1, ch. 77-263.

266.502 Definitions.—Unless otherwise clearly indicated, as used in this part:

(1) "Board" means the Historic Broward County Preservation Board of Trustees of the Department of State or the Historic Volusia County and Flagler County Preservation Board of Trustees of the Department of State.

(2) "Facilities" means historic sites, districts, objects, and landmarks for exhibition, owned, leased, managed, or operated by the boards.

History.—s. 1, ch. 77-263.

266.503 Membership; terms; compensation; bond.—

(1) Each board shall consist of nine members to be appointed by the Governor not later than November 1, 1977, and confirmed by the Senate. Members of the original boards shall be appointed for terms as follows: Three for 2 years; three for 3 years; and three for 4 years. Thereafter, members shall be appointed for 4-year terms, except for appointments for unexpired terms, in which event the appointment shall be for the unexpired term only. No more than two members shall be appointed from any one city in each respective county.

(2) Board members shall be qualified through the demonstration of special interest, experience, or education in history, architecture, or other related fields and shall possess an active interest in local historical aspects, either through an organization or body the purposes of which are consistent with the purposes of this part or through personal interest and contribution. The members of each board, including the chairman, shall receive no compensation for their services, but shall be entitled to be reimbursed for per diem and travel expenses incurred in the performance of their official duties as members of the board, subject to the provisions and limitations of s. 112.061. Each member shall give a surety bond in the sum of $5,000, executed by a surety company authorized to do business in this state, payable to the Governor and his successors in office and conditioned upon the faithful performance of the member's duties. The cost of each such bond shall be borne by the board.

History.—s. 1, ch. 77-263.

266.504 Organization; records.—Within 15 days after the appointment of its membership, and annually thereafter, each board shall hold an organizational meeting at which it shall elect from its membership a chairman, vice chairman, and secretary-treasurer. No business shall be transacted by the board except at a regular or specially called meeting at which a quorum is present and the minutes thereof recorded. Permanent records shall be maintained which shall reflect all official transactions of the board.

History.—s. 1, ch. 77-263.

266.505 Treasurer; finances.—The State Treasurer shall be the ex officio treasurer of each board and shall have the custody of all its funds, to be kept in a special account. All receipts and disbursements of the board shall be handled subject to the same laws and rules as other state funds are handled.

History.—s. 1, ch. 77-263.

266.506 Powers of the boards.—Each board shall be the governing body and have the power:

(1) To adopt a seal and alter the same at pleasure.

(2) To contract and be contracted with, to sue and

be sued, and to plead and be impleaded in all courts of law and equity.

(3) To exercise any power not in conflict with the Constitution of the state or the United States which is usually possessed by private corporations or public agencies performing comparable functions.

(4) To establish an office for the conduct of its affairs.

(5) To acquire, hold, lease, and dispose of real and personal property or any interest therein for its authorized purpose.

(6) To plan facilities; to demolish existing structures; and to construct and reconstruct, alter, repair, and improve the facilities wherever located.

(7) To acquire in its own name, by purchase, grant, devise, gift, or lease, on such terms and conditions and in such manner as it may deem necessary or expedient, or by condemnation, except as otherwise herein provided, in accordance with and subject to the state law applicable to condemnation of property for public use, real property or rights or easements therein or franchises necessary or convenient for its purposes; to use the same so long as its existence shall continue; and to lease or make contracts with respect to the use or disposal of the same or any part thereof in any manner deemed by it to be in the best interest of the board, but only for the purposes for which it is created. No property shall be acquired under the provisions of this part upon which any lien or other encumbrance exists, unless at the time said property is so acquired a sufficient sum of money is to be deposited in trust to pay and redeem such lien or encumbrance; nor shall any property be acquired hereunder by condemnation which is owned by a church or a cemetery association or which is presently used as a historical attraction.

(8) To employ and dismiss at pleasure consulting engineers, architects, superintendents or managers, accountants, inspectors, attorneys, and such other employees as may be deemed necessary and to prescribe their powers and duties and fix their compensation.

(9) To acquire from any city within its respective county or counties, the state, the United States or any state thereof, or any foreign country or colony any existing property, real or personal, now owned by it or hereafter acquired, suitable for the uses of the board, and to improve, operate, and maintain the same for the purposes herein stated or to act as trustee for any such property under such terms and conditions as the owner may prescribe.

(10) To enter into contracts with any city within its respective county or counties for the purposes of providing police and fire protection, water, sanitation, and other public services deemed necessary or expedient; and said municipalities and counties are authorized to enter into such contracts.

(11) To contract with any agency of the state, the federal government, any city within its respective county or counties, or any firm or corporation, upon such terms and conditions as the board finds in its best interest, with respect to the establishment, construction, operation, and financing of the facilities of the board in its respective county or counties.

(12) To make and enter into all contracts or agreements with private individuals, corporations, organizations, historical societies, and others with reference to facilities and to enter into contracts and agreements, with or without competitive bidding as the board may determine, which are necessary, expedient, or incidental to the performance of its duties or the execution of its powers under this part.

(13) To engage in any lawful business or activity deemed by it necessary or useful in the full exercise of its powers to establish, finance, maintain, and operate the facilities contemplated by this part, including the renting or leasing for revenue of any land, improved or restored real estate, or personal property directly related to carrying out the purposes for which the board is created.

(14) To fix and collect charges for admission to any of the facilities operated and maintained by the board under the provisions of this part and to adopt and enforce reasonable rules to govern the conduct of the visiting public.

(15) To borrow money for any of its authorized purposes and for expenses incidental thereto, including expenses incurred during the period of organization, restoration, and construction prior to the operation of the facilities of the board, and to issue negotiable revenue certificates payable solely from revenue from the operation of such facilities and from authorized activities incidental thereto.

(16) To perform all lawful acts necessary, convenient, and incident to the effectuating of its function and purpose.

(17) To cooperate and coordinate all of its activities on a permissive basis through any statewide board, including the Division of Archives, History, and Records Management of the Department of State, and to participate in any overall statewide plan of historical development.

(18) To cooperate and coordinate its activities with any national project of historical development, and to coordinate and cooperate with any other agency, state, local, or national, undertaking historical objectives, if the same are not in conflict with the objectives of the board. The boards shall not be placed within a division of the Department of State, but, administratively, shall be directly under the supervision of the Secretary of State.

History.—s. 1, ch. 77-263.

266.507 Boards subject to direct control of Secretary of State.—The Historic Broward County Preservation Board of Trustees and the Historic Volusia County and Flagler County Preservation Board of Trustees established in this part shall exercise their respective powers, duties, and functions as prescribed by law, subject to budget review and approval by the Secretary of State. The boards shall not be placed within a division of the Department of State, but, administratively, shall be directly under the supervision of the Secretary of State.

History.—s. 1, ch. 77-263.

CHAPTER 267

ARCHIVES, HISTORY, AND RECORDS MANAGEMENT

267.011 Short title.—This act shall be known as the "Florida Archives and History Act."

History.—s. 1, ch. 67-50.

267.021 Definitions.—For the purpose of this act:

(1) "Division" shall mean the Division of Archives, History, and Records Management of the Department of State.

(2) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(3) "Agency" shall mean any state, county, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law.

(4) "Florida State Archives" shall mean an establishment maintained by the division for the preservation of those public records and other papers that have been determined by the division to have sufficient historical or other value to warrant their continued preservation by the state and have been accepted by the division for deposit in its custody.

(5) "Records center" shall mean an establishment maintained by the division primarily for the storage, processing, servicing, and security of public records that must be retained for varying periods of time but need not be retained in an agency's office equipment or space.

(6) "Historic sites and properties" shall mean real or personal property of historical value.

History.—s. 2, ch. 67-50; ss. 10, 35, ch. 69-106; s. 72, ch. 71-377.

267.031 Division of Archives, History, and Records Management.—

(1) The Division of Archives, History, and Records Management shall be organized into as many bureaus as deemed necessary by the division for the proper discharge of its duties and responsibilities under this chapter; provided, however, that in addition to the office of the director, there shall be at least four bureaus to be named as follows:

(a) Archives and records management.
(b) Historic sites and properties.
(c) Historical museums.
(d) Publications.

[1](2)(a) The Secretary of State is hereby authorized to appoint advisory councils to provide professional and technical assistance to the division. The councils shall consist of not less than five nor more than nine members, and such appointments shall consist of persons who are qualified by training and experience and possessed of proven interest in the specific area of responsibility and endeavor involved.

(b) The chairman of each of said councils shall be elected by a majority of the members of the council and shall serve for 2 years. If a vacancy occurs in the office of chairman before the expiration of his term, a chairman shall be elected by a majority of the members of the council to serve the unexpired term of such vacated office.

(c) It shall be the duty of any of the advisory councils appointed hereunder to provide professional and technical assistance to the division as to all matters pertaining to the duties and responsibilities of the division in the administration of the provisions of this chapter. Members of the councils shall serve without pay, but shall be entitled to reimbursement for their necessary travel expenses incurred in carrying out their official duties, as provided by s. 112.061.

(3) The division may employ a director of the division and shall establish his qualifications. The director shall act as the agent of the division in coordinating, directing, and administering the activities and responsibilities of the division. The director may also serve as the chief of any of the bureaus herein created. The division may employ other employees as deemed necessary for the performance of its duties under this chapter.

(4) The division shall adopt such rules and regulations deemed necessary to carry out its duties and responsibilities under this chapter, which rules shall be binding on all agencies and persons affected thereby. The willful violation of any of the rules and regulations adopted by the division shall constitute a misdemeanor.

(5) The division may make and enter into all contracts and agreements with other agencies, organizations, associations, corporations and individuals, or federal agencies as it may determine are necessary, expedient, or incidental to the performance of

its duties or the execution of its powers under this chapter.

(6) The division may accept gifts, grants, bequests, loans, and endowments for purposes not inconsistent with its responsibilities under this chapter.

(7) All law enforcement agencies and offices are hereby authorized and directed to assist the division in carrying out its duties under this chapter.

History.—s. 3, ch. 67-50; ss. 10, 25, 27, 35, ch. 69-106; s. 73, ch. 71-377; s. 1, ch. 73-280; s. 4, ch. 78-323.

[1]Note.—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subsection prior to that date.

267.041 Office of the director.—

(1) It shall be the duty and responsibility of the office of the director to render all services required by the division and the several bureaus herein set forth that can advantageously and effectively be centralized. The office shall perform such other functions and duties as the division may direct.

(2) The director shall supervise, direct, and coordinate the activities of the division and its bureaus.

History.—s. 4, ch. 67-50; ss. 10, 35, ch. 69-106.

267.051 Bureau of Archives and Records Management.—

(1) It shall be the duty and responsibility of the Bureau of Archives and Records Management to:

(a) Administer on behalf of the division the provisions of this section.

(b) Organize and administer the Florida State Archives.

(c) Preserve and administer such records as shall be transferred to its custody, and to accept, arrange, and preserve them, according to approved archival practices and to permit them at reasonable times and under the supervision of the division to be inspected, examined and copied; provided that any record placed in the keeping of the division under special terms or conditions restricting their use shall be made accessible only in accordance with such terms and conditions.

(d) Cooperate with and assist insofar as practicable state institutions, departments, agencies, the counties, municipalities and individuals engaged in activities in the field of state archives, manuscripts, and history, and to accept from any person any papers, books, records and similar materials which in the judgment of the division warrant preservation in the state archives.

(e) Provide a public research room where, under policies established by the division, the materials in the state archives may be studied.

(f) Conduct, promote, and encourage research in Florida history, government, and culture, and to maintain a program of information, assistance, coordination, and guidance for public officials, educational institutions, libraries, the scholarly community, and the general public engaged in such research.

(g) Cooperate with and, insofar as practicable, assist agencies, libraries, institutions, and individuals in projects designed to preserve original source materials relating to Florida history, government, and culture, and to prepare and publish, in cooperation with the Bureau of Publications, handbooks, guides, indexes, and other literature directed toward encouraging the preservation and use of the state's documentary resources.

(h) Establish and administer a records management program, including the operation of a record center or centers directed to the application of efficient and economical management methods relating to the creation, utilization, maintenance, retention, preservation and disposal of records.

(i) Analyze, develop, establish, and coordinate standards, procedures and techniques of record-making and record-keeping.

(j) Insure the maintenance and security of records which are deemed appropriate for preservation.

(k) Establish safeguards against unauthorized or unlawful removal or loss of records.

(l) Initiate appropriate action to recover records removed unlawfully or without authorization.

(m) Institute and maintain a training and information program in all phases of archives and records management to bring to the attention of all agencies approved and current practices, methods, procedures and devices for the efficient and economical management of records.

(n) Provide a centralized program of microfilming for the benefit of all agencies.

(o) Make continuous surveys of record-keeping operations.

(p) Recommend improvements in current record management practices, including the use of space, equipment, supplies and personnel in creating, maintaining and servicing records.

(q) Establish and maintain a program in cooperation with each agency for the selection and preservation of records considered essential to the operation of government and to the protection of the rights and privileges of citizens.

(r) Make, or to have made, preservation duplicates, or designate existing copies as preservation duplicates, to be preserved in the place and manner of safekeeping as prescribed by the division.

(2) Any agency is hereby authorized and empowered to turn over to the division any record no longer in current official use and the division, in its discretion, is authorized to accept such records and having done so shall provide for their administration and preservation as herein provided and upon acceptance shall be considered the legal custodian of such records.

(3)(a) All records transferred to the division may be held by it in a records center, to be designated by it, for such time as in its judgment retention therein is deemed necessary. At such time as it be established by the division, said records as are determined by it as having historical or other value warranting continued preservation shall be transferred to the Florida State Archives.

(b) Title to any record detained in any record center shall remain in the agency transferring such record to the division.

(c) Title to any record transferred to the state archives, as authorized in this chapter, shall be vested in the division.

(4) The division may make certified copies under seal of any records transferred to it upon the application of any person, and said certificates, signed by

the director, shall have the same force and effect as if made by the agency from which the records were received. The division may charge a reasonable fee for this service.

(5) Any preservation duplicate of any record made pursuant to this chapter shall have the same force and effect for all purposes as the original record. A transcript, exemplification, or certified copy of such preservation duplicate shall be deemed, for all purposes, to be a transcript, exemplification or certified copy of the original record.

(6) It shall be the duty of each agency to:

(a) Cooperate with the division in complying with the provisions of this chapter.

(b) Establish and maintain an active and continuing program for the economical and efficient management of records.

(7) Each agency shall submit to the division in accordance with the rules and regulations of the division a list or schedule of records in its custody that are not needed in the transaction of current business and that do not have sufficient administrative, legal or fiscal significance to warrant further retention by the agency. Such records shall, in the discretion of the division, be transferred to it for further retention and preservation, as herein provided, or may be destroyed upon its approval.

(8) No record shall be destroyed or disposed of by any agency unless approval of the division is first obtained. The division shall adopt reasonable rules and regulations not inconsistent with this chapter which shall be binding on all agencies relating to the destruction and disposal of records. Such rules and regulations shall provide but not be limited to:

(a) Procedures for complying and submitting to the division lists and schedules of records proposed for disposal.

(b) Procedures for the physical destruction or other disposal of records.

(c) Standards for the reproduction of records for security or with a view to the disposal of the original record.

(9) The division may employ a chief of the Bureau of Archives and Records Management. The chief shall possess such qualifications as the division may prescribe but shall be qualified by experience and training to administer the functions of the bureau and he shall serve at the pleasure of the division. It shall be the duty of the chief, under the general administration of the director, to supervise, direct, and coordinate the activities of the Bureau of Archives and Records Management.

History.—s. 5, ch. 67-50; ss. 10, 35, ch. 69-106.

267.061 Bureau of Historic Sites and Properties; state policy, responsibilities.—

(1) State policy relative to historic sites and properties:

(a) It is hereby declared to be the public policy of the state to protect and preserve historic sites and properties, buildings, artifacts, treasure trove, and objects of antiquity which have scientific or historical value or are of interest to the public, including, but not limited to monuments, memorials, fossil deposits, Indian habitations, ceremonial sites, abandoned settlements, caves, sunken or abandoned ships, historical sites and properties and buildings or objects, or any part thereof relating to the history, government and culture of the state.

(b) It is further declared to be the public policy of the state that all treasure trove, artifacts and such objects having intrinsic or historical and archaeological value which have been abandoned on state-owned lands or state-owned sovereignty submerged lands shall belong to the state with the title thereto vested in the Division of Archives, History, and Records Management of the Department of State for the purpose of administration and protection.

(2) It shall be the responsibility of the Bureau of Historic Sites and Properties to:

(a) Locate, acquire, protect, preserve, and promote the location, acquisition, and preservation of historic sites and properties, buildings, artifacts, treasure trove, and objects of antiquity which have scientific or historical value or are of interest to the public, including, but not limited to, monuments, memorials, fossil deposits, Indian habitations, ceremonial sites, abandoned settlements, caves, sunken or abandoned ships, or any part thereof.

(b) Develop a comprehensive statewide historic preservation plan.

(c) Encourage and promote the acquisition, preservation, restoration and operation of historic sites and properties by other agencies so that such property may be utilized to foster and promote appreciation of Florida history; provided, however, that no acquisition, preservation, restoration, or operation of such sites shall be made by the state and no contribution shall be paid from state funds for such purposes until:

1. A report and recommendation of the advisory council has been received and considered by the division.

2. The division has determined that there exists historical authenticity and a feasible means of providing for the acquisition, preservation, restoration, or operation of such property.

3. The property shall have been approved for such purpose by the division.

(d) Cooperate and coordinate with the Division of Recreation and Parks of the Department of Natural Resources in the operation and management of historic sites and properties subject to the Division of Archives, History, and Records Management.

(3) The division shall employ a state archaeologist, and such other archaeologists as deemed necessary, who shall possess such qualifications as the division may prescribe. The state archaeologist shall be assigned to the Bureau of Historic Sites and Properties and shall serve at the pleasure of the division. The state archaeologist, with emphasis on salvage archaeology, shall conduct an archaeological survey of the state and shall perform such other duties as the chief of the Bureau of Historic Sites and Properties may prescribe.

(4) The division may employ a chief of the Bureau of Historic Sites and Properties. The chief shall possess such qualifications as the division may prescribe but shall be qualified by experience and training to administer the functions of the bureau and he shall serve at the pleasure of the division. It shall be the duty of the chief, under the general administration of the director, to supervise, direct, and coordi-

nate the activities of the Bureau of Historic Sites and Properties.

History.—s. 6, ch. 67-50; ss. 10, 25, 35, ch. 69-106.

[1]267.0615 Historic Preservation Project Review Council; creation; members; membership; powers and duties.—

(1) There is hereby created within the Division of Archives, History, and Records Management the Historic Preservation Project Review Council. The council shall consist of the State Historic Preservation Officer, designated pursuant to Pub. L. No. 89-655, and six additional members to be appointed by the Governor not later than 60 days after July 1, 1978. Initial appointments shall be for terms as follows: One for 2 years; two for 3 years; and three for 4 years. Thereafter, members shall be appointed for 4-year terms, except for appointments for unexpired terms, in which event the appointment shall be for the unexpired term only. Members may be reappointed. Council members shall be qualified through the demonstration of special interest, experience, or education in historic preservation. At least three members shall possess professional educational credentials representing one or more of the following disciplines: Archaeology, architecture, architectural history, history, or urban planning. A chairman shall be elected by the council's members. The director of the Division of Archives, History, and Records Management of the Department of State, or his designee, shall serve without voting rights as secretary of the council; and it shall be his responsibility to provide staff assistance to the council. All action taken by the council shall be by majority vote.

(2) It shall be the responsibility of the council to evaluate all proposals for capital outlay involving projects requiring financial assistance from the state, relating to the preservation, restoration, reconstruction, or acquisition of any historical site; and, in making such evaluation, it shall apply, as a minimum standard, the following criteria:

(a) Benefit to the public.
(b) Historical significance.
(c) Site development plan.
(d) Economics.
(e) Maintenance.
(f) Need.
(g) Compatibility with the statewide historic preservation plan.

The council shall prepare a report and make recommendations reflecting such evaluation. The report and recommendations of the council shall be filed with the President of the Senate, the Speaker of the House of Representatives, the chairmen of the appropriations committees of both houses of the Legislature, the Secretary of State, and the division. No capital outlay projects shall be eligible for state financial assistance until the council's report and recommendations have been filed with the Division of Archives, History, and Records Management and have received the affirmative recommendation of the Secretary of State.

(3) The council shall develop and recommend to the Division of Archives, History, and Records Management appropriate rules and regulations relating to the performance of the duties and responsibilities of the council as provided in this act. Upon the adoption of said rules and regulations by the Department of State, the same shall govern the activities of the council. Said rules and regulations shall include, but not be limited to, rules and regulations relating to the following:

(a) The preparation and submission of proposals relating to historic preservation, restoration, reconstruction, or acquisition and their evaluation by the council.

(b) Contributions by federal, state, or local governments and private sources, except that no more than 50 percent of the nonfederal funds for any one capital outlay project shall be funded from state sources. In determining levels of nonstate funding for purposes of this chapter, "funds" may be construed to include the fair market value of real property donated from any source to any bona fide historic preservation board of trustees established under chapter 266.

(c) The preparation and submission of proposals relating to the creation of historic preservation boards of trustees and their evaluation by the council.

(4) It shall further be the responsibility of the council to monitor and evaluate all proposals for state historic preservation boards of trustees created after July 1, 1976; and, in making such evaluation, the council shall apply, as a minimum standard, the following criteria:

(a) *Geographic jurisdiction.*—The proposal shall specify geographic boundaries for the jurisdiction of the proposed board. The boundaries shall include at least one Historic Preservation District designated as such on the National Register of Historic Places.

(b) *Membership.*—The proposal shall specify that no less than one-third of the membership of the board shall possess professional educational credentials representing one or more of the following disciplines: History, architecture, architectural history, urban planning, or archaeology.

(c) *Architectural review board.*—The proposal shall provide evidence in the form of an ordinance or resolution that the local governing body shall empanel and empower an architectural review board as defined by the statutes covering state historic preservation boards of trustees previously created under chapter 266.

(d) *Responsibilities and duties; survey, inventory, and preliminary preservation plan.*—The proposal shall specify that it shall be the responsibility and duty of the proposed board to perform, as a minimum, the following tasks:

1. To locate and identify through research all historic districts, sites, buildings, structures, and objects of historical significance, as determined by evaluative criteria of the division, that are contained in the geographic jurisdiction of the board. Within 2 years of the first operational funding of the board, it shall be the duty of the board to have completed a professionally conducted intensive survey and inventory of all historic, architectural, and archaeological sites contained in the geographic jurisdiction of the board. Said survey and inventory shall not be considered complete until it is reviewed and approved by the division.

2. To develop a preliminary historic preservation plan for the area contained in the geographic jurisdiction of the board. Within 6 months of the approval of the survey and inventory by the division, the board shall develop a preliminary historic preservation plan to be submitted to the division for review and approval.

(e) *Economics.*—The proposal shall provide evidence in the form of an ordinance or resolution that the local governing body shall participate in the operational funding of the proposed board. The proposal shall specify the annual operating budget of the board and how it shall be funded.

(f) *Additional criteria.*—

1. Benefit to the public.
2. Need.
3. Compatibility with the comprehensive statewide historic preservation plan as provided for in s. 267.061(2)(b).

History.—s. 1, ch. 73-279; s. 1, ch. 76-93; s. 4, ch. 78-323; s. 1, ch. 78-357.
[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

267.0616 Submission of proposals for state historical preservation boards of trustees required; procedure.—

(1) Any person seeking the creation of a state historic preservation board of trustees shall submit the proposal to the division for review by the Historic Preservation Project Review Council as provided in s. 267.0615(4).

(2) The council shall submit each proposal it receives, together with a report and recommendation by the council regarding such proposal, to the President of the Senate, the Speaker of the House of Representatives, the chairmen of the appropriations committees of both houses of the Legislature, the Secretary of State, and the division.

History.—s. 2, ch. 76-93; s. 2, ch. 78-357.

267.0617 Historic Preservation Trust Fund.—

(1) There is hereby created within the Division of Archives, History, and Records Management of the Department of State the Historic Preservation Trust Fund, which shall consist of moneys appropriated by the Legislature, moneys deposited pursuant to s. [1]550.037(2), and moneys contributed to the fund from any other source. The fund shall be administered by the Department of State through the Division of Archives, History, and Records Management for the purpose of financing grants in furtherance of the purposes of this section.

(2) The division is authorized to conduct and carry out a program of grants-in-aid for historic preservation projects that meet the criteria of s. 267.0615(2) and (4) to any department or agency of the state; any unit of county, municipal, or other local government; or any nonprofit corporation or organization meeting the requirements of chapter 617. All moneys received from any source as appropriations, deposits, or contributions to this program shall be paid and credited to the Historic Preservation Trust Fund.

History.—s. 3, ch. 78-357.
[1]**Note.**—Section 4 of H.B. 1571 (ch. 78-357), which created s. 550.037, was amended (see 1978 House Journal p. 844). As a result of the amendment, the correct reference is s. 550.03(2)(l).

267.062 Naming of state buildings and other facilities.—

(1) Except as specifically provided by law, no state building, road, bridge, park, recreational complex, or other similar facility shall be named for any living person.

(2) The Division of Archives, History, and Records Management of the Department of State shall, after consulting with appropriate citizens' committees, recommend several persons whose contributions to the state have been of such significance that the division may recommend that state buildings and facilities be named for them.

History.—ss. 1, 2, ch. 71-267.

267.071 Bureau of Historical Museums.—

(1) It shall be the duty of the Bureau of Historical Museums to:

(a) Promote and encourage throughout the state knowledge and appreciation of Florida history by encouraging the people of the state to engage in the preservation and care of artifacts, museum items, treasure trove, and other historical properties; the display and interpretation of historical materials; the marking and preservation of historical or archaeological buildings and sites; the teaching of Florida history in the schools; the conduct and presentation of historical celebrations and dramas; the publicizing of the state's history through media of public information; and other activities in historical and allied fields.

(b) Encourage, promote, maintain, and operate historical museums, including but not limited to mobile museums, junior museums and an historical museum in the state capital.

(c) Organize and administer a junior historian program in cooperation with the Department of Education and other agencies, organizations, historical commissions and associations, corporations, and individuals, that may be concerned therein.

(2) The Division of Archives, History, and Records Management may employ a chief of the Bureau of Historical Museums. The chief shall possess such qualifications as the division may prescribe but shall be qualified by experience and training to administer the functions of the bureau and he shall serve at the pleasure of the division. It shall be the duty of the chief, under the general administration of the director, to supervise, direct, and coordinate the activities of the Bureau of Historical Museums.

History.—s. 7, ch. 67-50; ss. 10, 35, ch. 69-106.

267.081 Bureau of Publications.—

(1) It shall be the duty of the Bureau of Publications to:

(a) Promote and encourage the writing of Florida history.

(b) Collect, edit, publish, and print pamphlets, papers, manuscripts, documents, books, monographs, and other materials relating to Florida history, archives, and records management. The Bureau of Publications may establish a reasonable charge for such publications not to exceed the cost of preparation of and publishing said publications.

(c) Cooperate with and coordinate research and

publication activities of other agencies, organizations, historical commissions and societies, corporations, and individuals, which relate to archival and historical matters.

(2) The division may employ a chief of the Bureau of Publications. The chief shall possess such qualifications as the division may prescribe but shall be qualified by experience and training to administer the functions of the bureau, and he shall serve at the pleasure of the division. It shall be the duty of the chief, under the general administration of the director, to supervise, direct, and coordinate the activities of the bureau of publications.

History.—s. 8, ch. 67-50; ss. 10, 35, ch. 69-106.

267.09 Certain powers and duties transferred.—

(1) All powers and duties heretofore set forth in chapter 257, pertaining to the State Library, insofar as they may relate to historical archives or public records as set forth in chapter 257, are hereby transferred to the division to be administered pursuant to this law.

(2) All the powers and duties heretofore set forth in chapter 592 relating to the Division of Recreation and Parks of the Department of Natural Resources, insofar as they shall relate to historical memorials, shall be transferred to the division to be administered pursuant to this law.

History.—s. 9, ch. 67-50; ss. 10, 25, 35, ch. 69-106.

267.10 Legislative intent.—In enacting this law, the Legislature is cognizant of the fact that there may be instances where an agency may be microfilming and destroying public records or performing other records management programs, pursuant to local or special acts; the Legislature is further aware that it may not be possible to implement this chapter in its entirety immediately upon its enactment and it is not the legislative intent by this chapter to disrupt the orderly microfilming and destruction of public records pursuant to such local or special acts above referred to; provided, however, that such agencies make no further disposition of public records without approval of the Division of Archives, History, and Records Management of the Department of State pursuant to such rules and regulations as it may establish.

History.—s. 11, ch. 67-50; ss. 10, 35, ch. 69-106.

267.11 Designating archaeological sites.— The Division of Archives, History, and Records Management may publicly designate an archaeological site of significance to the scientific study or public representation of the state's historical, prehistorical, or aboriginal past as a "state archaeological landmark." In addition, the division may publicly designate an interrelated grouping of significant archaeological sites as a "state archaeological landmark zone." However, no site or grouping of sites shall be so designated without the express written consent of the private owner thereof. Upon designation of an archaeological site, the owners and occupants of each designated state archaeological landmark or landmark zone shall be given written notification of such designation by the division. Once so designated, no person may conduct field investigation activities without first securing a permit from the division.

History.—s. 1, ch. 73-166.

267.12 Research permits; procedure.—

(1) The division may issue permits for excavation and surface reconnaissance on state lands or lands within the boundaries of designated state archaeological landmarks or landmark zones to institutions which the division shall deem to be properly qualified to conduct such activity, subject to such rules and regulations as the division may prescribe, provided such activity is undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions or societies that possess or will secure the archaeological expertise for the performance of systematic archaeological field research, comprehensive analysis, and interpretation in the form of publishable reports and monographs, such reports to be submitted to the division.

(2) Those state institutions considered by the division permanently to possess the required archaeological expertise to conduct the archaeological activities allowed under the provisions of the permit may be designated as accredited institutions which will be allowed to conduct archaeological field activities on state-owned or controlled lands or within the boundaries of any designated state archaeological landmark or any landmark zone without obtaining an individual permit for each project, except that those accredited institutions will be required to give prior written notice of all anticipated archaeological field activities on state-owned or controlled lands or within the boundaries of any designated state archaeological landmark or landmark zone to the division, together with such information as may reasonably be required by the division to insure the proper preservation, protection, and excavation of the archaeological resources. However, no archaeological activity may be commenced by the accredited institution until the division has determined that the planned project will be in conformity with the guidelines, regulations, and criteria adopted pursuant to ss. 267.11-267.14. Such determination will be made by the division and notification to the institution given within a period of 15 days from the time of receipt of the prior notification by the division.

(3) All specimens collected under a permit issued by the division or under the procedures adopted for accredited institutions shall belong to the state with the title thereto vested in the Division of Archives, History, and Records Management of the Department of State for the purpose of administration and protection. The division may arrange for the disposition of the specimens so collected by accredited state institutions at those institutions and for the temporary or permanent loan of such specimens at permit-holding institutions for the purpose of further scientific study, interpretative displays, and curatorial responsibilities.

History.—s. 1, ch. 73-166.

267.13 Prohibited practices; penalties.—

(1) Any person who shall conduct field investigations on any land owned or controlled by the state or its departments or institutions or within the boundaries of any designated state archaeological landmark or landmark zone without first obtaining a permit or having first received from the division a notice to proceed under the procedures relating to accredited institutions, or any person who shall appropriate, deface, destroy, or otherwise alter any archaeological site or specimen located upon state lands or within the boundaries of a designated state archaeological landmark or landmark zone, except in the course of activities pursued under the authority of a permit or under procedures relating to accredited institutions granted by the division, shall be guilty of a misdemeanor punishable by a fine not exceeding $500 or by imprisonment in the county jail for a period not to exceed 6 months or both, and in addition, shall forfeit to the state all specimens, objects, and materials collected or excavated, together with all photographs and records relating to such material.

(2) Any person who shall reproduce, retouch, rework, or forge any archaeological or historical object originating from an archaeological site as designated by ss. 267.11-267.14, and deriving its principal value from its antiquity, or make any such object, whether copies or not, or falsely label, describe, identify, or offer for sale or exchange any object, with intent to represent the same to be an original and genuine archaeological or historical specimen, or any person who shall offer for sale or exchange any object with knowledge that it has previously been collected or excavated in violation of any of the terms of ss. 267.11-267.14 shall be guilty of a misdemeanor punishable by a fine not exceeding $500 or by imprisonment in the county jail for a period not to exceed 6 months or both.

History.—s. 1, ch. 73-166.

267.14 Legislative intent.—It is the declared intention of the Legislature that field investigation activities on privately owned lands should be discouraged except in accordance with both the provisions and spirit of ss. 267.11-267.14; and persons having knowledge of the location of archaeological sites are encouraged to communicate such information to the Division of Archives, History, and Records Management.

History.—s. 1, ch. 73-166.

CHAPTER 270

PUBLIC LANDS

270.01 Grant to aid construction of certain railroads accepted.—The lands, rights and privileges granted to, and conferred upon, the state by the Act of Congress entitled "An Act granting public lands in alternate sections to the States of Florida and Alabama, to aid in the construction of certain railroads in said states," approved May 17, 1856, are accepted upon the terms, conditions and restrictions in said Act of Congress.

History.—s. 1, ch. 776, 1856; RS 447; GS 636; RGS 1215; CGL 1760.

270.02 Titles of purchasers and transferees of railroad companies confirmed.—To remove all doubt as to the title of the purchasers and transferees, and their assigns, from the several railroad companies, of the land granted by the United States to the state, to aid in the construction of certain railroads in this state, by Act of Congress, approved May 17, 1856, the state has granted and confirmed to the purchasers and transferees from the several railroad companies which accepted the provisions of the act entitled, "An Act to provide for and encourage a liberal system of internal improvements in this state," approved January 6, 1855, and their assigns, the lands and titles thereto, which were granted to the state by the United States to aid in the construction of certain railroads in this state by Act of Congress, approved May 17, 1856; which said lands were afterwards selected and located for the several railroad companies accepting the provisions of this act as aforesaid, along the line of their respective roads, to the extent and in the proportion to which they severally became entitled under the said act to provide for and encourage a liberal system of internal improvements in this state, and the said Act of Congress granted the same.

History.—Ch. 3152, 1879; RS 448; GS 637; RGS 1216; CGL 1761.

270.03 Preemption of public lands.—Actual settlers on any of the public lands belonging to this state subject to entry, are permitted to enter the lands on which they reside or have in cultivation, not to exceed 160 acres, to be taken in a compact form according to the legal subdivisions, at the prices now or hereafter established for such lands, by paying one-third of the purchase money at the time of making entry, one-third of the same within 2 years thereafter, and the remaining one-third within 3 years after the date of entry; provided, that no person shall be entitled to make more than one entry under the provisions of this section.

History.—ss. 1, 3, ch. 3324, 1881; RS 449, 451; GS 638, 640; RGS 1217, 1219; CGL 1762, 1764.

270.04 Application and proof for entry.—The person applying for the benefit of s. 270.03 shall make affidavit before some officer authorized to administer oaths, that such application is made for his exclusive use and benefit, and that his entry is made for the purpose of actual settlement or cultivation, and not, either directly or indirectly, for the benefit of any other person, and that the lands applied for do not embrace the residence, cultivated lands or improvements of any other person, and shall prove, by the affidavits of two credible witnesses, that he is residing upon the land applied for, or has part of the same in actual cultivation.

History.—s. 2, ch. 3324, 1881; RS 450; GS 639; RGS 1218; CGL 1763.

270.05 Failure to pay installments.—Upon failure to pay installments on any entry made under the provisions of this chapter for 90 days after the same shall become due, the entry shall become null and void, and that portion of the purchase money already paid shall be forfeited.

History.—s. 4, ch. 3324, 1881; RS 452; GS 641; RGS 1220; CGL 1765.

270.06 Taxes on lands entered.—All persons entering lands under the provisions of this chapter shall be assessed for, and pay taxes on, the land so entered, from and after the date of entry and first payment thereon, and a failure to pay the taxes assessed thereon shall cause a forfeiture of all the benefits of this chapter and the part of the purchase money paid in.

History.—s. 5, ch. 3324, 1881; RS 453; GS 642; RGS 1221; CGL 1766.

270.07 Certain public lands not to be sold without advertisement.—No lands in the state that are now, or may hereafter be, vested in the Board of Trustees of the Internal Improvement Trust Fund of the state shall be sold, conveyed or disposed of by the said board of trustees until notice by publication shall have been given for the full term of 30 days prior to such sale; provided, that this section shall not apply to homestead, railroad or canal grants, as now provided for by law nor to any conveyance pursuant to the provisions of s. 253.111.

History.—s. 1, ch. 5943, 1909; RGS 1222; CGL 1767; s. 1091, ch. 19355, 1939; CGL 1940 Supp. 892(410); s. 2, ch. 61-119; s. 2, ch. 65-324; ss. 27, 35, ch. 69-106; s. 76, ch. 71-355.

270.08 Notice of sale of public lands by advertisement.—When the Board of Trustees of the Internal Improvement Trust Fund shall decide or regard it expedient to sell any of the lands that are now, or may hereafter be, vested in the Board of Trustees of the Internal Improvement Trust Fund of the state, it shall give 30 days' notice of such sale by publication in some newspaper published in the county or counties where such lands to be sold are situated, and also in such other papers as may be deemed advisable, once each week. Said notice shall contain a description of the lands, state the terms of sale and the time and place where such lands shall be sold, and notify the people that it will receive bids therefor at Tallahassee from the time of giving such notice until the day of sale. The board of trustees shall require the persons publishing said notice to file with it immediately after the expiration of the time of such sale proof of said publication, which shall at all times be subject to inspection by any person desiring to see same. None of the provisions of this section shall limit the applicability of s. 253.111.

History.—s. 2, ch. 5943, 1909; s. 1, ch. 6452, 1913; RGS 1223; CGL 1768; s. 1092, ch. 19355, 1939; CGL 1940 Supp. 892(411); s. 2, ch. 61-119; s. 3, ch. 65-324; ss. 27, 35, ch. 69-106; s. 76, ch. 71-355.

cf.—s. 1.01 Defines "person."

Ch. 50 Legal and official advertisements.

270.09 Bids to purchase public lands; sale to highest bidder; proviso, etc.—

(1) After the notice referred to in s. 270.07 shall have been issued, any person shall have the privilege of filing with the Board of Trustees of the Internal Improvement Trust Fund a bid or written proposition to purchase said lands; and same shall not be opened until the day of sale provided in said notice, at which time all bids shall be opened in the presence of the said board of trustees at the office of the said board of trustees in Tallahassee, at which time any person so desiring may be present.

(2) The board of trustees shall sell to the highest bidder, upon satisfactory terms, for cash or otherwise, as it may determine, the lands advertised as prescribed in s. 270.07, and shall make, execute, and deliver a deed or deeds to the purchaser or purchasers of such lands in the manner now provided by law and in accordance with the terms agreed upon.

(3) A record of all such sales and proceedings shall be kept by the said board of trustees, which shall at all times be subject to inspection by any and all persons. All bids may be rejected if the price offered is not satisfactory to those making the sale. Sections 270.06-270.08 and this section shall not apply when the quantity of land sought to be sold does not exceed a half section of land.

History.—s. 3, ch. 5943, 1909; s. 1, ch. 6160, 1911; RGS 1224; CGL 1769; s. 1093, ch. 19355, 1939; CGL 1940 Supp. 892(412); s. 2, ch. 61-119; ss. 27, 35, ch. 69-106; s. 76, ch. 71-355.

270.10 Sections not to impair law relative to homesteads, etc.—Sections 270.07-270.09, shall in no wise impair the law of the state relative to homesteads or preemptions, or the law relative to the granting of lands for the construction of highways, public roads and canals.

History.—s. 4, ch. 5943, 1909; RGS 1225; CGL 1770; s. 1094, ch. 19355, 1939; CGL 1940 Supp. 892(413).

270.11 Contracts for sale of public lands to reserve certain mineral rights in state.—In all contracts and deeds for the sale of land executed by the Board of Trustees of the Internal Improvement Trust Fund, there shall be reserved for the board of trustees and its successors an undivided three-fourths interest in, and title in and to, an undivided three-fourths interest in all the phosphate, minerals and metals that are or may be in, on, or under the said land and an undivided one-half interest in all the petroleum that is or may be in, on, or under said land with the privilege to mine and develop the same. The said board of trustees may in its discretion sell or release said reserved interest in or as to any particular parcel of land when such parcel has a building thereon or on which a building is proposed to be erected, and the State Board of Education may sell or release any such interest which was reserved for said board pursuant to this section prior to September 1, 1967. Such sale or release shall be made on application of the owner of the title to the particular parcel of land with statement of reason justifying such sale or release.

History.—ss. 1, 2, ch. 6159, 1911; RGS 1226; CGL 1771; s. 1095, ch. 19355, 1939; CGL 1940 Supp. 892(414); s. 1, ch. 26849, 1951; s. 1, ch. 59-220; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106; s. 76, ch. 71-355.

cf.—s. 229.121 State board authorized to exchange land.

270.12 State School Trust Fund to receive 25 percent of proceeds of sale of state lands.—The Board of Trustees of the Internal Improvement Trust Fund shall, pursuant to constitutional provision, set aside and pay into the State School Trust

Fund 25 percent of the proceeds derived from the sale of all state lands vested in said board of trustees.

History.—s. 1, ch. 15638, 1931; CGL 1936 Supp. 1771(1); s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

270.13 State School Trust Fund to receive 25 percent of proceeds of lease of state lands, and sale, etc., of products in, on, or under same.—The Board of Trustees of the Internal Improvement Trust Fund shall pay into the State School Trust Fund 25 percent of the proceeds derived from the lease or rental of said lands and from the sale, lease or rental of any products in, on, or under all state lands vested in said board of trustees.

History.—s. 2, ch. 15638, 1931; CGL 1936 Supp. 1771(2); s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

270.14 Method of ascertaining 25 percent due State School Trust Fund.—In determining the 25 percent to be paid to the State School Trust Fund, said amount shall be ascertained after all costs of improvements placed on the lands sold by said board of trustees and all current expenses have been allowed in connection with such sale, lease or rent, including taxes, if any, for the current year.

History.—s. 3, ch. 15638, 1931; CGL 1936 Supp. 1771(3); s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

270.15 Sections 270.12-270.14 not applicable to certain tax foreclosure lands.—The provisions of ss. 270.12-270.14, shall not apply to tax foreclosure lands, title to which vested in the Board of Trustees of the Internal Improvement Trust Fund, under chapter 14572, Laws of Florida, approved June 20th, 1929, until all costs required to be satisfied by law have been paid.

History.—s. 5, ch. 15638, 1931; CGL 1936 Supp. 1771(5); s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

270.16 Preservation of equity of state in lands sold; board of trustees may compromise unpaid balance.—In the sale of state lands or other state property, whether made in the name of the state or in the name of any state agency, when such sale is or has been made upon the basis of partial payment or payments upon said lands or other property and the remainder or balance of payment or payments is or was secured by note or notes, in turn secured by mortgage or mortgages, or other paper or instrument obligating the lands or property, or any part thereof, to the payment of any remaining or balance of payment or payments, the equity and interest of the state or any state agency making such sale as represented by said notes, mortgages, or other such instruments, shall never be extinguished, canceled or impaired so long as the obligation to the state or state agency shall remain unpaid or unfulfilled; provided, the Board of Trustees of the Internal Improvement Trust Fund may, in its discretion, compromise, or compound, any unpaid balance on any contract to purchase any lands over which said board of trustees has jurisdiction and control, where such contract to purchase is secured by a mortgage, if no less than 25 percent of the agreed purchase price has been theretofore paid.

History.—s. 1, ch. 15641, 1931; CGL 1936 Supp. 1771(6); s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

270.17 Foreclosure of mortgage for balance of purchase price on state lands.—The state, or any agency of the state in which was vested the primary title to said land or other property, may in case of nonpayment of the full purchase price upon said lands or other property sold by the state or its agency and subject to mortgage or other instrument of indebtedness held by the state or its agency, foreclose upon said mortgage or mortgages or other instrument of indebtedness, and recover said lands or other property subject to the liens for any taxes imposed upon said lands or other property; and upon the completion of said foreclosure and reinvestment of title to such lands or other property in the state or its agency, the state or its agency may pay all unpaid taxes or special assessments, not including interest, penalties, and costs, upon said lands and other property, which were legally assessable and collectible as if held and owned by the state or its agency.

History.—s. 2, ch. 15641, 1931; CGL 1936 Supp. 1771(7).

270.18 Tax liens extinguished when land reverts to state; exception.—Reinstatement of title in the state or its agency shall, by foreclosure or otherwise, operate to extinguish all liens for all taxes or assessments to which the lands would not have been subject had the title been in the state or its agency; provided, however, that any tax certificate or tax deed issued upon such lands or other property in the hands of a person, private firm or private corporation, shall represent a valid obligation against the said lands, and said certificate may be redeemed and paid for by the said state or its agency as provided by law in other cases for the purchase or redemption of tax certificates, and in case of deed, by paying to the holder the amount paid by him, plus interest at 6 percent per annum since the date of the said deed.

History.—s. 3, ch. 15641, 1931; CGL 1936 Supp. 1771(8).

270.19 Reconveyance to state; extinguishes tax liens.—Reinstatement of title by reconveyance or by forfeiture covering land or other property for which the state or its agency holds mortgage, or other instrument of indebtedness, or the vesting of title to lands or other property in the state or in its agency in any other manner, shall have the same effect as to tax or assessment liens as set forth in s. 270.18.

History.—s. 4, ch. 15641, 1931; CGL 1936 Supp. 1771(9).

270.20 When title reverts to state; lands, etc., go back to department from which it originated.—When title to lands or other property becomes vested in the state or its agency under ss. 270.16-270.19, such lands or other property shall be covered into that state fund or state department from which they originated or to which they may be conveyed. When title to lands or other property becomes so vested in the state or its agency, the title which may hereafter issue, from the state or its agency, will be a complete, new, independent title originating in the sovereign.

History.—s. 5, ch. 15641, 1931; CGL 1936 Supp. 1771(10).

270.21 Transactions to which sections applicable.—The provisions of ss. 270.16-270.18 shall apply to all transactions of the state, or any agency thereof, of the kind described in said sections in which the state or its agency has an equity.

History.—s. 6, ch. 15641, 1931; CGL 1936 Supp. 1771(11).

270.22 Proceeds from sale, etc., of state lands, to go into Land Acquisition Trust Fund.—The proceeds of state land, whether from sale, lease, rental, or the sale, lease or rental of products in, on, or under said land, title to which has been or may be vested in the Board of Trustees of the Internal Improvement Trust Fund by the Legislature of this state, or of land which has been or may be received by said board of trustees from other sources, shall be paid into the Land Acquisition Trust Fund to become a part of said fund, subject to disposition as is provided by the laws of Florida relating thereto.

History.—s. 1, ch. 17272, 1935; CGL 1936 Supp. 1771(12); s. 2, ch. 61-119; ss. 27, 35, ch. 69-106; s. 13, ch. 79-65.

270.23 Disposition of proceeds of sale, etc., of state land.—After payments have been made to the State School Trust Fund, as provided by the Constitution and by law, any balance shall be and remain a part of the Land Acquisition Trust Fund to be applied by the board of trustees of said fund to the payment of the expenses and the administration of said fund, including the lands thereof, and to such other purposes as prescribed by law.

History.—s. 2, ch. 17272, 1935; CGL 1936 Supp. 1771(13); s. 2, ch. 61-119; ss. 27, 35, ch. 69-106; s. 14, ch. 79-65.

270.24 Payment of special assessments, etc., upon state lands.—Where the lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund, are subject to special assessments or special levies of taxes imposed by authority of the Legislature, the board of trustees may pay such special assessments or special levies out of moneys received from the sale of lands so taxed, and said special assessments or special levies which shall include accumulated amounts, if any, shall be due and payable on the next due date for the collection of such special assessments or special levies after the sale of said land. And land conveyed into other ownership by legislative grant or by the Board of Trustees of the Internal Improvement Trust Fund, without monetary consideration or its equivalent, shall pass the obligation against the land for the payment of such special assessments or special levies to the grantee.

History.—s. 3, ch. 17272, 1935; CGL 1936 Supp. 1771(14); s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

270.25 Special assessments, etc., shall remain liens subject to payment.—Special assessments or special levies heretofore imposed by legislative authority, which are now a lien upon the lands, title to which is in the Board of Trustees of the Internal Improvement Trust Fund, shall continue as a lien subject to payment as provided for in s. 270.24; provided, however, that the provisions of this section shall not operate to extinguish or impair any obligation heretofore imposed upon said lands to pay special assessments or special taxes heretofore levied.

History.—s. 4, ch. 17272, 1935; CGL 1936 Supp. 1771(15); s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

270.26 Lands to which sections do not apply.—The provisions of ss. 270.22-270.25 shall not apply to any lands, title to which has vested or which may vest in the Board of Trustees of the Internal Improvement Trust Fund through any law foreclosing the lien for taxes until all such liens shall have been satisfied as provided by law.

History.—s. 5, ch. 17272, 1935; CGL 1936 Supp. 1771(16); s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

270.27 Sale of unused public lands.—

(1) The Division of Building Construction and Property Management of the Department of General Services is hereby authorized to sell, to the best possible advantage, any or all detached pieces or parcels of land held by the state for the use of any institution under the supervision and control of said division, whenever, in the judgment of said division, such detached pieces or parcels of land are not suitable for, or necessary and useful in, the operation and maintenance of such institution, and the proceeds from the sale of such land could be used to better advantage than said land in the operation and maintenance of such institution.

(2) The proceeds derived from the sale of any land, as authorized in this section, shall be deposited in the State Treasury to the account of the Department of General Services for the use of the particular institution from the sale of whose lands said funds were derived. Such funds may be used, from time to time, by said division, for the purpose of acquiring additional lands that may be needed for the particular institution credited with such funds, or for needed buildings or repairs for such institution, in the discretion of said division, and such funds, when obtained, are hereby appropriated for such purposes.

(3) The division is authorized to sell and convey, to the best possible advantage, any piece or parcel of land held by the state or by said division and located north of Pensacola Street in the City of Tallahassee and to receive as payment or part payment therefor any piece or parcel, or pieces or parcels, of land located within what is known as the Capitol Center at the state capital. The division, prior to the sale of any such piece or parcel of land, shall cause the same to be appraised by two or more competent appraisers and shall likewise have any piece or parcel, or pieces or parcels, of land which the said division proposes to acquire as payment or part payment for any piece or parcel of land proposed to be sold to be appraised in like manner.

History.—ss. 1, 2, ch. 20524, 1941; s. 1, ch. 57-88; ss. 22, 35, ch. 69-106; s. 2, ch. 75-70.

CHAPTER 272

CAPITOL CENTER

272.03 Division of Building Construction and Property Management to supervise Capitol Center buildings; title in state.—

(1) All state buildings now or hereafter constructed included in the Capitol Center at the state capital and the grounds and squares contiguous thereto shall be under the general control, custodianship and supervision of the Division of Building Construction and Property Management of the Department of General Services.

(2) Title to said buildings shall vest in the state.

(3) Nothing herein is intended to disturb or impair the contractual obligations for the discharge of the indebtedness incurred for the construction of the Florida Industrial Commission Building.

History.—ss. 1-3, ch. 25032, 1949; ss. 22, 35, ch. 69-106; s. 78, ch. 71-355; s. 73A, ch. 71-377; s. 2, ch. 75-70.

272.04 Division to allocate space.—The Division of Building Construction and Property Management of the Department of General Services shall have authority to allocate space to house the various departments, agencies, boards, and commissions in said buildings, excepting, however, the new Supreme Court Building, for which authority shall be vested in the Justices of the Supreme Court.

History.—s. 4, ch. 25032, 1949; ss. 22, 35, ch. 69-106; s. 2, ch. 75-70.

272.05 Budgets for repair, etc.; review.—The Division of Building Construction and Property Management of the Department of General Services and the Executive Office of the Governor shall be empowered to review, change, and modify the budgets of the departments, agencies, boards, and commissions relating to the repair, upkeep, and maintenance of said buildings.

History.—s. 5, ch. 25032, 1949; ss. 2, 3, ch. 67-371; ss. 22, 31, 35, ch. 69-106; s. 2, ch. 75-70; s. 116, ch. 79-190.

272.06 Division may provide for heating, lighting, etc., of buildings.—The Division of Building Construction and Property Management of the Department of General Services may provide or enter into contracts to provide heating, power, lighting, cooling systems and other necessary services or facilities for any or all of said buildings.

History.—s. 6, ch. 25032, 1949; ss. 22, 35, ch. 69-106; s. 74, ch. 71-377; s. 2, ch. 75-70.

272.07 Division may provide for parks, etc.—The Division of Building Construction and Property Management of the Department of General Services may provide for the establishment of parks and drives and walkways and parkways on said grounds and squares and for the supervision, regulation, and maintenance of the same including traffic and parking thereon.

History.—s. 7, ch. 25032, 1949; ss. 22, 35, ch. 69-106; s. 2, ch. 75-70.

272.08 Duty of repair, maintenance, etc.—Except when otherwise directed by the Division of Building Construction and Property Management of the Department of General Services, the official or officials now having the duty of repair, care, maintenance and supervision of any of said buildings shall continue to exercise such authority.

History.—s. 8, ch. 25032, 1949; ss. 22, 35, ch. 69-106; s. 2, ch. 75-70.

272.09 Management, maintenance and upkeep of Capitol Center.—The management, maintenance and upkeep of the Capitol Center as defined in s. 272.03, is hereby vested in and made the direct obligation of the Division of Building Construction and Property Management of the Department of General Services, which shall have authority to do all things necessary to satisfactorily accomplish these functions including the employment of a superintendent of grounds and buildings and other employees; the establishment of central repair and maintenance shops; and the designation or appointment of nonsalaried advisory committees to advise with them.

History.—s. 1, ch. 29843, 1955; s. 1, ch. 57-60; ss. 22, 35, ch. 69-106; s. 2, ch. 75-70.

272.11 Capitol information center.—The Division of Tourism of the Department of Commerce shall establish, maintain, and operate a capitol information center somewhere within the area of the

capitol center and employ personnel to maintain same.

History.—s. 3, ch. 29843, 1955; ss. 22, 35, ch. 69-106; s. 1, ch. 73-274.

272.111 Legislative intent.—It is hereby declared to be the finding of the Legislature that the area described herein as the "Capitol Center" is a vital part of the past, present, and future of the State of Florida and that its development must be regulated in such a manner as to insure the character and dignity of the public facilities which constitute the capitol buildings of the State of Florida. The Legislature, in adopting this act, has recognized that the downtown area of the City of Tallahassee and the other area included in the district is, first and foremost, the Capitol Center of a great state and that the final authority for planning and development within the Capitol Center, whether public or private, should vest in the state. It is not the purpose of this act to acquire property or to prohibit private development, but rather to insure that all development within the district, whether public or private, is consistent with the state concern for a well-planned, efficient and aesthetically attractive state capitol.

History.—s. 1, ch. 72-13.

272.12 Florida Capitol Center Planning District.—

(1) There is hereby created the Florida Capitol Center Planning District, which may be referred to in this chapter as "Capitol Center" or "district." The district shall extend to and include all lands within the following boundaries of the City of Tallahassee: Commence at the Northwest corner of lot 293 of the Old Plan of the City of Tallahassee as recorded in the office of the clerk of the circuit court, Leon County, Florida; thence East along the South right-of-way line of West College Avenue and East College Avenue and the East prolongation of East College Avenue to its intersection with the Westerly right-of-way line of the Seaboard Coastline Railroad; thence Southerly and Westerly along said Seaboard Coastline Railroad right-of-way line to a point of intersection with the South prolongation of the East right-of-way line of South Boulevard Street; thence North along said South prolongation of the East right-of-way line of South Boulevard Street and along the East right-of-way line of South Boulevard Street to the point of beginning.

[1](2)(a) There is hereby created within the Department of General Services a Capitol Center Planning Commission to be composed of seven persons, hereinafter referred to as the "planning commission." Membership on the planning commission shall be as follows:

1. Four private citizens who have distinguished themselves in planning, architecture, zoning, or such other fields as would promote the intent of this act shall be appointed by the Governor; two members shall be appointed by the City Commission of the City of Tallahassee; and one member shall be appointed by the Board of County Commissioners of Leon County. Each member shall serve for a term of 3 years, except as provided in subparagraph 2.

2. Each member of the planning commission serving on July 1, 1979, may continue to serve until October 1, 1979. On or before October 1, 1979, the Governor shall appoint two members for terms of 3 years each, and the City Commission of the City of Tallahassee shall appoint one member for a term of 3 years; the Governor shall appoint one member for a term of 2 years, and the Board of County Commissioners of Leon County shall appoint one member for a term of 2 years; and the Governor shall appoint one member for a term of 1 year, and the City Commission of the City of Tallahassee shall appoint one member for a term of 1 year. The terms of such members shall commence October 1, 1979. Thereafter, each member shall be appointed for a term of 3 years as provided for in subparagraph 1.

(b) Appointment of members shall be made within 30 days after this act becomes law. The commission shall thereafter meet upon call of the chairman, who shall be designated by the Governor from among the membership, and elect a secretary. The commission shall obtain such professional or expert clerical or other assistance from the Department of General Services as may be required to carry out the purposes of this act. Meetings of the commission shall be upon call of the chairman or at the request of a majority of the membership, and such meetings shall not be less frequent than semiannually. Members of the commission shall be entitled to receive compensation for per diem and travel expended in the furtherance of their duties as provided in s. 112.061. All rules, regulations, and procedures of the commission shall be adopted in accordance with the Administrative Procedure Act, chapter 120.

(c) The planning commission shall have the following powers and duties:

1. To be the sole planning and zoning authority within the district, exercising such powers consistent therewith according to rules and regulations adopted by the commission. However, any zoning regulation adopted by the planning commission which alters, modifies, or changes any existing rights-of-way or easements shall require the concurrence of the City Commission of the City of Tallahassee and the Leon County Commission. In pursuance of such authority, the commission shall adopt a planning and zoning regulation for development within the district which may, among other things, regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of lot that may be occupied; the size of yards, courts, and open spaces; the density of population; and the location and use of buildings, structures, and land within the district for all purposes.

2. To approve and coordinate additions to existing buildings as well as the location and construction of new buildings within the Capitol Center.

3. To develop appropriate landscaping and architectural style, as well as a long-range plan for traffic flow and control in and through the Capitol Center.

4. Periodically recommend to the Legislature any changes necessary in the designation of the Capitol Center Planning District itself.

[1](3) Upon the adoption by the planning commission of a plan for development within the district, or upon the adoption by the planning commission of an order to the City of Tallahassee and to Leon County, no building permit may be issued by the City of Tallahassee or Leon County for any development pro-

posal within the district unless the development proposal is first certified by the Department of General Services to comply with the provisions of this act. The commission shall promulgate rules and regulations for the certification of development proposals by the Department of General Services. The commission may retain the authority to approve each development proposal or it may delegate that authority to the Department of General Services, provided the proposal is consistent with the overall plan for development of the district.

(4) All rules, regulations, ordinances or orders of the City of Tallahassee or Leon County regulating development within the Capitol Center Planning District, in effect at the time of the effective date of this act, shall remain in effect until superseded by regulation or order of the planning commission.

(5) The Division of Building Construction and Property Management of the Department of General Services is hereby authorized to purchase at fair market value any lands or buildings owned by the Department of Transportation within the capitol center. The Division of Building Construction and Property Management may use for this purpose any funds which are available to the division at the time of the purchase.

History.—s. 1, ch. 29840, 1955; s. 1, ch. 63-28; ss. 22, 23, 35, ch. 69-106; ss. 2, 4, 5, ch. 72-13; s. 2, ch. 75-70; s. 17, ch. 78-95; s. 4, ch. 78-323; ss. 1, 2, ch. 79-214.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subsection prior to that date. Section 2, ch. 79-214, provides that, "If subsections (2) and (3) . . .are repealed in accordance with the intent expressed in the Sundown Act, it is the intent of the Legislature that this act shall also be repealed on the same date as is therein provided."

272.121 Capitol Center long-range planning.—

(1) The Division of Building Construction and Property Management of the Department of General Services shall develop a comprehensive and long-range plan for development within the Capitol Center, which plan, and amendments thereto, shall be presented to the planning commission for final approval. In developing this plan the division shall consider:

(a) The most efficient, expeditious, and economical method of accomplishing the desired results.

(b) The architectural and aesthetic coordination of the proposed plan with the existing structures.

(c) The effective utilization of all available space so as to minimize waste.

(d) The plans adopted by the local planning agencies in Leon County.

(2) The division shall further determine the needs of state government and the various agencies thereof occupying the Capitol Center and activities requiring space or facilities in the Capitol Center. When these needs have been determined the division shall develop a comprehensive plan for meeting these needs and for providing immediate facilities for state government and its agencies to effectively and efficiently discharge their duties and responsibilities, which plan shall be consistent with the plan for development of the Capitol Center Planning District.

(3) In carrying out the provisions of the foregoing, the division shall consult with the Capitol Center Planning Commission and shall request the cooperation of those state and private architects, engineers and interior designers determined by the division to possess expertise or information helpful to the development of a Capitol Plan and solicit and accept information, suggestions, and recommendations from all interested parties.

(4) The commission and the division shall prepare a report of their findings and recommendations and submit the same to the Governor and the Legislature every fifth year, except that the next report shall not be due until February 1, 1979. Said report shall reflect the actions of the commission and the division in carrying out the provisions of this act and shall include an updated comprehensive plan to carry out the provisions of this act each time the report is submitted.

(5) The division is authorized to contract with the City of Tallahassee, Leon County, the Tallahassee-Leon County Planning Department, or any other agency of such city or county to obtain planning services and functions required for the planning and development of the district in harmony with the coordinated planning of the city and the county. Services and functions covered under such agreements may include, but shall not be limited to, topographic surveys; base mapping; inventory of land use, employment, parking, and building floor areas; land acquisition information; analysis of trends; physical planning activities, including a master plan and any other required planning studies; preparation of zoning codes to provide for compatible development within the Capitol Center area and in the vicinity thereof; coordination of plans for development of the district with city and county development plans; and application for and use of federal funds which may be available for planning or related purposes.

History.—ss. 1-6, ch. 65-262; s. 1, ch. 67-532; ss. 22, 35, ch. 69-106; s. 76, ch. 71-377; s. 3, ch. 72-13; s. 2, ch. 75-70; s. 6, ch. 77-320.

272.122 Acquisition of land for state buildings and facilities in the Capitol Center.—The Division of Building Construction and Property Management of the Department of General Services is hereby authorized and directed to acquire both land and buildings now needed or to be needed for use in whole, or in part, by state government or any agency, board, bureau or commission thereof. However, no building can be constructed nor land acquired under this section without specific legislative approval. The acquisition of the land, buildings and facilities may be financed by grants, direct appropriations or by the issuance of revenue bonds or certificates pledging the revenues and rentals derived from the use of the buildings and facilities. The Department of General Services is expressly authorized to issue revenue certificates to carry out the purposes of this section. Title to any lands acquired pursuant to this section shall be vested in the Board of Trustees of the Internal Improvement Trust Fund for the use and benefit of the State of Florida.

History.—s. 1, ch. 65-385; s. 1, ch. 67-55; ss. 22, 27, 35, ch. 69-106; s. 77, ch. 71-377; s. 2, ch. 75-70.

272.124 Division of Building Construction and Property Management; power to contract.—The Division of Building Construction and Property Management of the Department of General Services is authorized and empowered to make and en-

ter into any contract or agreement, with any person or agency, public or private, to lease, buy, acquire, construct, hold, or dispose of real and personal property necessary to carry out the objects and purposes of this act; however, no contract may be entered into without specific authorization of the Legislature for the project. Lands shall be acquired by the Division of Building Construction and Property Management in accordance with acquisition procedures for state lands provided for in s. 253.025.

History.—s. 3, ch. 65-385; ss. 22, 35, ch. 69-106; s. 2, ch. 75-70; s. 16, ch. 79-255.

272.125 Construction of legislative building, time limitation.—No plans shall be finalized, nor shall a contract be let, for the quarters to house the House of Representatives, the Senate, and their offices, until there has been complete and final legislative reapportionment as to the total membership of each house, and final approval by the courts of jurisdiction, but in no event more than 1 year from the effective date of this act.

History.—s. 4, ch. 65-385.

272.126 Reconstruction of center section of Capitol, parking facilities in legislative building, maximum cost of construction.—Any provision of this act to the contrary notwithstanding the Division of Building Construction and Property Management of the Department of General Services is authorized to reconstruct the center section of the Capitol Building and to acquire land and construct a new legislative building to include parking facilities. The total amount for such construction shall not exceed $10 million.

History.—s. 5, ch. 65-385; ss. 22, 35, ch. 69-106; s. 2, ch. 75-70.

272.128 Florida Historic Capitol Preservation Act.—

(1) This act shall be known and may be cited as the "Florida Historic Capitol Preservation Act."

(2) Notwithstanding any law to the contrary, the Division of Building Construction and Property Management of the Department of General Services shall restore and preserve the Florida Historic Capitol in its authentic 1902 form, identified as the "1902 Capitol Restoration Alternative with Authentic Interior Improvements and with Existing Monroe Street Alignment" in the March, 1977, report of the Department of General Services entitled "Conservation Alternatives, Existing Capitol Building, Florida Capitol Complex."

(3) In carrying out the foregoing provisions, the division shall consult with the Division of Archives, History, and Records Management of the Department of State and with the Historic Tallahassee Preservation Board of Trustees.

(4) Upon this act becoming a law, the division shall take all appropriate measures to provide for the rerouting of Monroe Street so as to provide for additional park space between the front of the restored Capitol and the intersection of Monroe Street with Apalachee Parkway. This rerouting will be approximately 0.25 miles in length and move the centerline of Monroe Street at its intersection with Apalachee Parkway approximately 100 feet east of its present location. However, the provisions of subsection (2) shall proceed independently of other provisions of this act, and this subsection shall in no way impede or prevent the restoration of the 1902 Capitol provided for in subsection (2), and none of the funds appropriated by this act shall be used to provide for the rerouting of Monroe Street. Immediately upon this act becoming a law, the division shall conduct necessary site investigation and historical documentation, after which the division shall immediately raze those portions of the House and Senate wings of the Capitol necessary to restore and preserve the Historic Capitol in its 1902 form.

History.—ss. 1-4, ch. 78-127; ss. 1-4, ch. 78-371.

272.16 Parking areas within Capitol Center area.—

(1) The Division of Building Construction and Property Management of the Department of General Services may assign parking areas within the Capitol Center area, not to exceed 60 percent of said areas, to state officers and employees employed in Tallahassee; provided, however, that parking areas must be provided for members of the Legislature during session of the Legislature, regular and extraordinary. Not more than 15 percent of said parking areas may be set aside for the use of persons temporarily visiting or attending to business in the Capitol Center area, and which persons reside beyond the territorial limits of the City of Tallahassee. Any remaining portion of the parking areas not assigned as aforesaid may be limited in period of time for use. However, the Department of General Services shall have no power to assign parking spaces in the legislative office buildings, nor shall those spaces be included under the provisions of this section, except as provided in subsection (2).

(2) The presiding officer of each house of the Legislature shall be responsible for the assignment of parking spaces in its respective office building.

(3) The parking areas so assigned, or so limited in use, shall be clearly marked, and any violation of the same shall constitute a violation of this chapter and may be punished as if it constituted a violation of a municipal ordinance of the City of Tallahassee.

History.—s. 5, ch. 29840, 1955; ss. 22, 35, ch. 69-106; s. 1, ch. 73-34; s. 2, ch. 75-70.

272.161 Rental of reserved parking spaces.—

(1) The Department of General Services is authorized to rent reserved parking space to any state employee when so requested by the employee. Employees may request a reserved parking space in a manner prescribed by the Department of General Services. Assignments of reserved parking spaces shall be limited to the amount of available parking under the supervision of the Department of General Services.

(2) All parking spaces under the supervision of the Department of General Services for which a request for reserved parking has not been made shall continue to be made available to state employees.

(3) All parking fees shall be payable by the payroll deduction plan periodically according to the employee's pay schedule. The collection of such fees shall be prorated in those cases in which a reserved parking space is canceled prior to the full term of the normal payroll deduction.

(4) All fees collected under the provisions of this

section shall be deposited in the Capitol Center Parking Trust Fund which is hereby created. The Capitol Center Parking Trust Fund shall be used for the purposes of construction and maintenance of state parking facilities under the supervision of the Department of General Services.

(5) The Department of General Services shall adopt and promulgate such rules and regulations as are necessary to carry out the purposes of this section.

(6) The Department of General Services shall assess uniformly applicable fees on all reserved parking spaces in or around state-owned facilities in the Capitol Center and other facilities under the department's jurisdiction throughout the state; but in no case shall the total number of reserved parking spaces be in excess of 60 percent of the total number available.

(7) The Department of General Services shall have the authority to remove or tow away, or cause to be removed or towed away, any wrongfully parked vehicle in any assigned or reserved parking space or area under the control of the Department of General Services throughout the state at the expense of the owner of the wrongfully parked vehicle.

History.—s. 1, ch. 70-249; s. 1, ch. 72-124.

[1]272.18 Governor's Mansion Advisory Council.—

(1) There is hereby created a Governor's Mansion Advisory Council, composed of five members appointed by and to serve as an adjunct of the Division of Building Construction and Property Management of the Department of General Services.

(2) Three members of the council shall be appointed for terms ending June 30, 1959; their successors shall be appointed for 4-year terms thereafter. Two members of the council shall be appointed for terms ending June 30, 1961 and for 4-year terms thereafter.

(3) Members of the council shall not be paid any compensation but shall be reimbursed for their traveling expenses incurred in connection with the performance of their duties as provided in s. 112.061. All expenses of the council shall be paid from appropriations to be made by the Legislature for that purpose.

History.—s. 1, ch. 57-61; s. 1, ch. 61-30; s. 10, ch. 63-400; ss. 22, 35, ch. 69-106; s. 2, ch. 75-70; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

Note.—Former s. 272.18(1).

272.185 Maintenance of Governor's residence by Division of Building Construction and Property Management.—

(1) POWERS AND DUTIES OF DIVISION.—

(a) The Division of Building Construction and Property Management of the Department of General Services shall supervise and maintain all structures, furnishings, equipment and grounds of the Governor's residence.

(b) The division is specifically charged with the duty of maintaining the Governor's mansion structure, style and character consistent with its original plan of construction and furnishing, and insure the same with the Florida Fire Insurance Trust Fund as provided in s. 284.01.

(c) The division shall have authority to contract and be contracted with for work and materials required.

(d) The division shall keep a continuing and accurate inventory of all equipment and furnishings.

(2) FINANCING; BUDGETS.—The division shall submit its budgetary requirements to the Department of General Services for its approval and inclusion in its legislative budget requests. The division shall expend only such amounts of money as may be specifically appropriated by the Legislature for the use of the division.

History.—ss. 2, 3, ch. 57-61; s. 1, ch. 61-30; ss. 22, 35, ch. 69-106; s. 78, ch. 71-377; s. 2, ch. 75-70.

Note.—Former s. 272.18(2), (3).

CHAPTER 273

STATE-OWNED TANGIBLE PERSONAL PROPERTY

273.01 Definitions.—The following words as used in this act have the meanings set forth in the below subsections, unless a different meaning is required by the context.

(1) "Custodian" means any elected or appointed state officer, board, commission, or authority, and any other person or agency entitled to lawful custody of property owned by the state.

(2) "Property" means all tangible personal property owned by the state.

History.—s. 1, ch. 57-277.

273.02 Record and inventory of certain property.—The word "property" as used in this section means fixtures and other tangible personal property of a nonconsumable nature the value of which is $100 or more, and the normal expected life of which is 1 year or more. Each item of property which it is practicable to identify by marking shall be marked in the manner required by the Auditor General. Each custodian shall maintain an adequate record of property in his custody, which record shall contain such information as shall be required by the Auditor General. Once each year, on July 1, or as soon thereafter as shall be practicable, and whenever there is a change of custodians, each custodian shall take an inventory of property in his custody. The inventory shall be compared with the property record and all discrepancies shall be traced and reconciled.

History.—s. 2, ch. 57-277; s. 1, ch. 59-430; s. 1, ch. 69-74; s. 8, ch. 69-82.

273.03 Property supervision and control.—The custodian shall be primarily responsible for the supervision and control of the property in his custody but may delegate its use and immediate control to a person under his supervision and may require custody receipts.

History.—s. 3, ch. 57-277.

273.04 Property acquisition.—Whenever acquiring property the custodian may pay the purchase price in full or may exchange property with the seller as a trade-in after first offering such exchange property for sale to the Division of Surplus Property. The Division of Surplus Property may purchase the exchange property for the amount of trade-in allowance offered by the seller. The receipts from such sales are hereby appropriated and may be applied to the cost of the property acquisition. The division may authorize the custodian to exchange property with the seller as a trade-in and apply the exchange allowance to the cost of the property acquired. If, whenever acquiring property, the custodian may best serve the interests of the state by outright sale of property rather than by exchange as a trade-in, he may make the sale in the manner prescribed in this act for the disposal of surplus property, and the receipts from the sale are hereby appropriated and may be applied to the cost of the property acquired, except that the value of the property sold must not exceed the approximate value of the property acquired, and the property to be acquired shall be contracted for within the same biennium in which the property sold is disposed of.

History.—s. 4, ch. 57-277; s. 3, ch. 73-233.

273.05 Surplus property.—The custodian shall have discretion to classify as surplus any property in his custody that is obsolete or the continued use of which is uneconomical or inefficient or which serves no useful function as to any activity or location under his supervision. The fact that property is surplus shall be certified to the Surplus Property Division of the Department of General Services, together with information indicating the value and condition of the property.

History.—s. 5, ch. 57-277; ss. 22, 35, ch. 69-106; s. 4, ch. 70-146.

273.055 Disposition of state-owned tangible personal property.—

(1) The Division of Surplus Property of the Department of General Services shall have all right, title, interest, and equity in all state-owned tangible personal property certified and transferred to it as surplus. The division shall promulgate administrative rules and regulations pursuant to chapter 120 providing for, but not limited to, the assessment of fees for services rendered and the classification, certification, transfer, warehousing, bidding, destruction, scrapping, or other disposal of state-owned tangible personal property. However, the approval of the Executive Office of the Governor shall be required prior to the disposal of property the estimated value of which is $5,000 or more, except for motor vehicles, watercraft, or aircraft subject to approval of the Division of Motor Pool pursuant to ss. 287.15 and 287.16.

(2) All moneys received by the division from the disposition of state-owned tangible personal property shall be deposited into the State Surplus Property Working Capital Trust Fund, which is hereby created, and may be disbursed for the acquisition of exchange and surplus property and for all necessary operating expenditures.

History.—ss. 1, 2, ch. 73-233; s. 52, ch. 79-190.

273.09 Penalty.—Any custodian who violates any provision of this chapter or any rule prescribed pursuant to its authority shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 9, ch. 57-277; s. 157, ch. 71-136.

273.10 Repeal.—This act shall not repeal existing law relating to property but shall be interpreted to be supplementary in nature and shall be applicable to the extent that existing law is not in conflict.

History.—s. 11, ch. 57-277.

CHAPTER 274

TANGIBLE PERSONAL PROPERTY OWNED BY COUNTIES, DISTRICTS, ETC.

274.01 Definitions.—The following words as used in this act have the meanings set forth in the below subsections, unless a different meaning is required by the context:

(1) "Governmental unit" means the governing board, commission or authority of a county or taxing district of the state or the sheriff of the county.

(2) "Custodian" means the person to whom the custody of county or district property has been delegated by the governmental unit.

(3) "Property" means all tangible personal property, owned by a governmental unit, of a nonconsumable nature.

(4) "Fiscal year" means the governmental unit's fiscal year established pursuant to law; otherwise, it means the calendar year.

History.—s. 1, ch. 59-163; s. 1, ch. 61-102.

274.02 Record and inventory of certain property.—The word "property" as used in this section means fixtures and other tangible personal property of a nonconsumable nature the value of which is $100 or more and the normal expected life of which is 1 year or more. Each item of property which it is practicable to identify by marking shall be marked in the manner required by the Auditor General. Each governmental unit shall maintain an adequate record of its property, which record shall contain such information as shall be required by the Auditor General. Each governmental unit shall take an inventory of its property in the custody of a custodian whenever there is a change in such custodian. A complete physical inventory of all property shall be taken annually, and the date inventoried shall be entered on the property record. The inventory shall be compared with the property record and all discrepancies shall be traced and reconciled.

History.—s. 2, ch. 59-163; s. 8, ch. 69-82; s. 1, ch. 73-87.

274.03 Property supervision and control.—A governmental unit shall be primarily responsible for the supervision and control of its property but may delegate to a custodian its use and immediate control and may require custody receipts. A governmental unit may assign to or withdraw from a custodian the custody of any of its property at any time; provided, that if the custodian is an officer elected by the people or appointed by the Governor, the property may not be withdrawn from his custody without his consent. Each custodian shall be responsible to the governmental unit for the safekeeping and proper use of the property entrusted to his care. If the custodian is not a bonded officer, the governmental unit may require from the custodian a bond conditioned upon such safekeeping and proper use. In each county the sheriff shall be the custodian of the property of the office of sheriff.

History.—s. 3, ch. 59-163; s. 2, ch. 61-102.

274.04 Property acquisition.—Whenever acquiring property, the governmental unit may pay the purchase price in full or may exchange property with the seller as a trade-in and apply the exchange allowance to the cost of the property acquired. If, whenever acquiring property, the governmental unit may best serve the interests of the county or district by outright sale of the property to be replaced, rather than by exchange as a trade-in, it may make the sale in a manner otherwise prescribed in this act for the disposal of property. The receipts from the sale may be treated as a current refund if the property to be acquired shall be contracted for within the same fiscal year of the governmental unit in which the property sold is disposed of.

History.—s. 4, ch. 59-163.

274.05 Surplus property.—A governmental unit shall have discretion to classify as surplus any of its property, which property is not otherwise lawfully disposed of, that is obsolete or the continued use of which is uneconomical or inefficient, or which serves no useful function. Within the reasonable exercise of its discretion and having consideration for the best interests of the county or district, the value and condition of property classified as surplus, and the probability of such property's being desired by the prospective bidder to whom offered, the governmental unit first shall offer surplus property to other governmental units in the county or district; and, second, if no acceptable bid is received within a reasonable time, shall offer such property to such other governmental units as shall be determined by the governmental units on the basis of the foregoing criteria. Such offer shall disclose the value and condition of the property. The best bid shall be accepted by the governmental unit offering such surplus property. The cost of transferring the property shall be paid by the governmental unit that made the successful bid.

History.—s. 5, ch. 59-163.

274.06 Alternative procedure.—Having consideration for the best interests of the county or district, a governmental unit's property that is obsolete or the continued use of which is uneconomical or inefficient, or which serves no useful function, which property is not otherwise lawfully disposed of, may be disposed of for value to any person, or may be disposed of for value without bids to the state, to any governmental unit, or to any political subdivision as defined in s. 1.01, or if the property is without com-

mercial value it may be donated, destroyed, or abandoned. The determination of property to be disposed of by a governmental unit pursuant to this section instead of pursuant to other provisions of law shall be at the election of such governmental unit in the reasonable exercise of its discretion. Property, the value of which the governmental unit estimates to be between $100 and $200, shall be sold only to the highest responsible bidder after a request for at least three bids, or by public auction. Any sale of property the value of which the governmental unit estimates to be $200 or more shall be sold only to the highest responsible bidder, or by public auction, after publication of notice not less than 1 week nor more than 2 weeks prior to sale in a newspaper having a general circulation in the county or district in which is located the official office of the governmental unit, and in additional newspapers if in the judgment of the governmental unit the best interests of the county or district will better be served by the additional notices; provided that nothing herein contained shall be construed to require the sheriff of a county to advertise the sale of miscellaneous contraband of an estimated value of less than $200.

History.—s. 6, ch. 59-163.

274.07 Authorizing and recording the disposal of property.—Authority for the disposal of property shall be recorded in the minutes of the governmental unit. The disposal of property within the purview of s. 274.02 shall be recorded in the records required by that section.

History.—s. 7, ch. 59-163.

274.08 Penalty.—Any person who violates any provision of this act or any rule prescribed pursuant to its authority shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 8, ch. 59-163; s. 158, ch. 71-136.

274.09 Construction.—The provisions of this act shall be liberally interpreted to be cumulative and supplementary to any general, special or local law, heretofore or hereafter enacted.

History.—s. 10, ch. 59-163.

274.10 Initiation of act.—This act shall govern the administration of the property of each governmental unit from the beginning of such governmental unit's fiscal year next succeeding May 28, 1959.

History.—s. 11, ch. 59-163.

274.11 County health department property.—Title to property purchased by county health departments established pursuant to the provisions of chapter 154, whether purchased with federal, state or county funds, or any combination thereof, shall be vested in the board of county commissioners of the county where said county health department is located and shall be accounted for in accordance with the provisions of this chapter.

History.—s. 1, ch. 61-46.

274.12 Special districts subject to chapter 79-183, Laws of Florida.—Every special district governed by the provisions of this act shall comply with the provisions of s. 274.05.

History.—s. 12, ch. 79-183.

TITLE XIX

PUBLIC BUSINESS

CHAPTER 283

PUBLIC PRINTING AND STATIONERY

283.01 Public printing to be let to lowest bidder.—All the public printing of the state shall be let out upon contract to the lowest responsible bidder, who shall furnish all paper and other material used in printing and binding.

History.—s. 2, ch. 3699, 1887; RS 480; GS 652; RGS 1302; CGL 1978.

283.02 State officers not to be interested in contract.—No member of the Legislature or other officer of this state shall be interested, directly or indirectly, in such contract; provided, however, that nothing herein shall prohibit a member of the Legislature from receiving such a contract when he or his firm is the lowest bidder of all bidders submitting competitive bids for the contract.

History.—s. 3, ch. 3699, 1887; RS 481; GS 653; RGS 1303; CGL 1979; s. 1, ch. 28026, 1953.

283.03 Preference given printing within the state.—Every agency of the state, including agencies within the legislative and judicial branches of government, shall give preference to bidders located within the state when awarding contracts to have materials printed, whenever such printing can be done at no greater expense than, and at a level of quality comparable to, that obtainable from a bidder located outside of the state.

History.—s. 4, ch. 3699, 1887; RS 482; GS 654; RGS 1304; CGL 1980; s. 1, ch. 78-145; s. 1, ch. 79-135.

283.04 Public printing divided into two classes.—All the public printing of the state shall be divided into two classes: Class A, which shall embrace all printing required for the Legislative Department of the State Government, as defined in s. 283.07(2), and class B, which shall embrace all of the printing required for the state not included in class A.

History.—s. 5, ch. 3699, 1887; RS 483; GS 655; s. 1, ch. 6207, 1911; RGS 1305; CGL 1981; s. 1, ch. 14824, 1931; s. 1, ch. 18064, 1937; s. 2, ch. 69-94.

283.045 Definition.—As used in this chapter, unless the context clearly requires otherwise, "committee" means the Joint Legislative Management Committee of the Florida Legislature, created by s. 11.147.

History.—s. 14, ch. 72-178.

283.05 The committee requirements in calling for bids.—The committee shall give 30 days' notice by publication in one or more newspapers in this state, calling for bids on class A printing in accordance with s. 283.03.

History.—s. 5, ch. 3699, 1887; RS 483; GS 655; s. 1, ch. 6207, 1911; RGS 1305; CGL 1981; s. 1, ch. 14824, 1931; s. 1, ch. 18064, 1937; s. 3, ch. 69-94; s. 15, ch. 72-178; s. 1, ch. 78-145.

283.06 Separate and combined bid awards; deposit required with a bid.—

(1) The committee shall enter into all contracts for class A printing.

(2) Each bid for contract or contracts for class A printing shall be made separate and upon a unit bid price for each item to be contracted for or shall be made upon a combined bid price for more than one item or on all items to be contracted for by the committee. In the event the combined bid price is lower than the total of the lowest separate unit bid prices for each item, the combined bid price shall be accepted by the committee, in accordance with this chapter.

(3) The President of the Senate and the Speaker of the House of Representatives shall have authority to contract for the rule book required for the Senate and for the House of Representatives, and they shall not be required to receive bids thereon, but each shall be able to contract for the rule book required for his respective house without receiving competitive bids.

(4) The committee shall require to be submitted with the bids for public printing designated class A a certified check not to exceed $20,000.

History.—s. 5, ch. 3699, 1887; RS 483; GS 655; s. 1, ch. 6207, 1911; RGS 1305; CGL 1981; s. 1, ch. 14824, 1931; s. 1, ch. 18064, 1937; s. 1, ch. 65-417; s. 4, ch. 69-94; s. 15, ch. 72-178.

283.07 Term of new contract; further defining class A.—

(1) Upon the expiration of the contract or contracts now in force for printing which is herein designated as class A, the committee shall enter into a new contract or contracts, or extend the existing contract or contracts, for the portion of such printing it determines to let to contract, and such contract, or contracts may be made by the committee hereafter for a maximum period of 2 years.

(2) Class A printing shall include, but not be restricted to, the journal and the calendar for the House of Representatives, the journal and the calendar for the Senate, the bills for the House of Representatives and the Senate, the bound journals for the House of Representatives and the Senate, the pamphlet laws, the general laws, the special acts, and other items which the President of the Senate and Speaker of the House of Representatives from time to time require for the Legislature.

History.—s. 5, ch. 3699, 1887; RS 483; GS 655; s. 1, ch. 6207, 1911; RGS 1305; CGL 1981; s. 1, ch. 14824, 1931; s. 1, ch. 18064, 1937; s. 1, ch. 65-417; s. 5, ch. 69-94; s. 15, ch. 72-178.

283.08 Statements under oath required to be filed by bidder.—The committee is prohibited from considering any bids submitted for public printing, designated as class A, unless the bidder for such contract shall file, with the bid submitted, a statement under oath that such bidder is at the time of making such bid fully and completely able to perform such contract, and that such bidder is at the time of submitting said bid actually in said bidder's name the owner of a printing plant and in good faith operating such printing plant in the current operation of a printing business; and, if any of said statements under oath herein required are not filed by any bidder for any public printing designated as class A, the committee is prohibited from considering any such bid and from awarding any contract for public printing designated as class A to any such bidder.

History.—s. 5, ch. 3699, 1887; RS 483; GS 655; s. 1, ch. 6207, 1911; RGS 1305; CGL 1981; s. 1, ch. 14824, 1931; s. 1, ch. 18064, 1937; s. 6, ch. 69-94; s. 15, ch. 72-178; s. 1, ch. 78-145; s. 2, ch. 79-135.

283.09 False statements; forfeit of deposit as liquidated damages.—If any bidder for any contract for public printing, designated as class A, shall, in the statement under oath required in s. 283.08, make false statements concerning any of the information required to be furnished under said section, the certified check by such bidder submitted with the bid of such bidder shall be forfeited as liquidated damages.

History.—s. 5, ch. 3699, 1887; RS 483; GS 655; s. 1, ch. 6207, 1911; RGS 1305; CGL 1981; s. 1, ch. 14824, 1931; s. 1, ch. 18064, 1937; s. 7, ch. 69-94; s. 1, ch. 78-145.

283.10 Bids required on class B printing.—

(1) No general contract shall be let to cover the printing designated as class B, but each job coming under this classification shall be let separately under regulations adopted by the Division of Purchasing of the Department of General Services to the lowest responsible bidder who shall manufacture the same in accordance with s. 283.03. Such contract shall apply only to the work under consideration and shall require competitive bids on all purchases in excess of $1,000. However, the contract for the Florida Statutes shall be let by the committee upon receipt of competitive bids as provided in s. 11.242(6).

(2) The Secretary of the Senate and the Clerk of the House of Representatives may order envelopes, stationery, miscellaneous forms, records, memorandum pads, and the like without competitive bids upon a determination by either that a genuine emergency exists in his respective house so that any delay incident to the taking of bids would be detrimental to the efficient operation of the Legislative Department.

History.—s. 5, ch. 3699, 1887; RS 483; GS 655; s. 1, ch. 6207, 1911; RGS 1305; CGL 1981; s. 1, ch. 14824, 1931; s. 1, ch. 18064, 1937; s. 1, ch. 59-319; s. 1, ch. 65-417; s. 9, ch. 67-472; s. 8, ch. 69-94; ss. 22, 35, ch. 69-106; s. 80, ch. 71-377; s. 16, ch. 72-178; s. 1, ch. 76-71; s. 2, ch. 78-145; s. 3, ch. 79-135.

283.101 Printing of state agency annual and biennial reports.—

(1) Each state agency required by law to publish annual and biennial reports shall submit all material and copy for the content of such reports to the Division of Purchasing of the Department of General Services and the Division of Purchasing shall, to every extent possible, cause such reports to be printed commercially in uniform size and style, and by competitive sealed bid, sufficient copies of which shall be authorized and made available for direct delivery to the respective agencies for their individual distribution. Payment for all costs incident to the preparation and printing of such reports shall remain the responsibility of the individual agency as determined by the Division of Purchasing.

(2) The Division of Purchasing may, on an individual agency basis, grant exceptions to the provisions of subsection (1) when a determination shall be made that the content required by law of such individual agency's annual and biennial report does not lend itself to printing in uniform size and style; provided, however, that the Division of Purchasing shall

prescribe the size and style for the commercial printing of such reports.

History.—s. 1, ch. 65-395; ss. 22, 35, ch. 69-106.
cf.—Ch. 287, Part I, Purchasing.

283.102 Public information printing services.—Any agency whose authorized functions include public information programs is authorized to purchase, pursuant to this chapter and subject to its appropriation and any other limitations imposed by law, typesetting, printing, and media distribution services, when such services are less costly than the performance of same directly by the agency.

History.—s. 4, ch. 79-135.

283.12 Classification; publication; general laws, special acts, resolutions, memorials.—

(1) Immediately after any act of the Legislature or any resolution or memorial is filed in the office of the Department of State, it shall select, segregate, and classify all acts of the Legislature, including memorials and resolutions, dividing them into two classifications, to wit: Volume I, General Acts, and Volume II, Special Acts, and shall include in such general acts all acts that are passed as general laws and all memorials and resolutions, including proposed constitutional amendments, and in such special acts shall be included only those acts passing as special laws and becoming law as such, and shall assign a chapter number to each such act and furnish true and accurate copies of such laws, resolutions, and memorials passed by the Legislature to the committee for publication.

(2) The committee shall cause to be printed in pamphlet form a sufficient number of copies of any general act of the Legislature to supply any governmental agency, such copies to be delivered to, kept, and retained in the office of the Department of State until distributed as provided in s. 283.18.

(3) The committee shall furnish the contractor with copy for printing and binding the General Laws of Florida and the Special Acts of the Legislature in separate volumes broken down into as many books as may be necessary, with the general alphabetical index to each.

History.—s. 6, ch. 3699, 1887; RS 485; GS 657; RGS 1307; CGL 1983; s. 1, ch. 25033, 1949; s. 1, ch. 63-136; s. 9, ch. 69-94; ss. 10, 35, ch. 69-106; s. 17, ch. 72-178.

283.121 Publication of legislative statements of receipts and expenditures of public money.— Accurate statements of the receipts and expenditures of the public money shall be attached to and published with the laws passed at every regular session of the Legislature.

History.—Formerly s. 19, Art. III of the Constitution of 1885, as amended; converted to statutory law by s. 10, Art. XII of the Constitution as revised in 1968.

283.15 Journals of Legislature.—The contractor shall complete and deliver to the Secretary of the Senate such number of copies of the bound journal of the proceedings of the Senate and shall complete and deliver to the Clerk of the House of Representatives such number of copies of the bound journal of the proceedings of the House of Representatives as the President of the Senate and the Speaker of the House of Representatives shall determine. The Secretary of the Senate and the Clerk of the House of Representatives shall deliver one copy each to the Governor, each cabinet officer, each Justice of the Supreme Court, one copy of each to each member of the Senate and the House of Representatives, and upon requisition, one copy each to any official government agency, and shall retain in his office the remaining copies for sale at a price to be determined by the President of the Senate and the Speaker of the House of Representatives.

History.—s. 6, ch. 1904, 1872; RS 488; GS 660; RGS 1310; CGL 1986; s. 2, ch. 25033, 1949; s. 1, ch. 65-417.

283.18 Pamphlet copies of laws furnished for general use.—The Department of State shall distribute pamphlet copies of the general laws upon requisition to any official of the legislative, judicial or executive branches of state or county government in Florida; provided that surplus copies may be distributed to practicing attorneys in Florida upon their written request and payment of a nominal fee sufficient to pay for mailing.

History.—s. 2, ch. 12097, 1927; CGL 1988; s. 5, ch. 25033, 1949; ss. 10, 35, ch. 69-106.

283.20 Republication of session laws.—The committee shall have authority, in event of sufficient requests for sale, to provide for the republication of the general session laws of the legislature, when copies of such laws on hand and available for sale have been exhausted and to sell such republished laws at a price, to be fixed by the committee, sufficient to cover the cost of printing.

History.—s. 1, ch. 13686, 1929; CGL 1936 Supp. 1939(1); s. 6, ch. 25033, 1949; s. 10, ch. 69-94; ss. 10, 35, ch. 69-106; s. 6, ch. 70-157; s. 18, ch. 72-178.

283.205 Delivery of copies to committee.— The contractor shall complete and deliver to the committee for distribution such number of copies of the session laws as are required and ordered.

History.—s. 11, ch. 69-94; ss. 10, 35, ch. 69-106; s. 1, ch. 70-157; s. 18, ch. 72-178.

283.22 Public documents; university libraries.—The general library of each institution in the university system shall be entitled to receive copies of reports of state officials, departments, institutions and all other state documents published by the state. Each officer of the state empowered by law to distribute such public documents is hereby authorized to transmit without charge, except for payment of shipping costs, the number of copies of each public document desired upon requisition from the librarian. It is made the duty of the library to keep public documents in convenient form accessible to the public. The library under rules formulated by the Board of Regents is authorized to exchange documents for those of other states, territories and countries.

History.—ss. 1-3A, ch. 20229, 1941; s. 7, ch. 25033, 1949; s. 21, ch. 29615, 1955; s. 1, ch. 63-141; s. 2, ch. 63-204; s. 2, ch. 67-223.

283.23 Law libraries of certain colleges designated as state legal depositories.—

(1) The law libraries of the University of Florida, Florida State University, Stetson University, Nova University, and University of Miami are designated as state legal depositories.

(2) Each officer of the state empowered by law to distribute legal publications is authorized to transmit, upon payment of shipping costs or cash on deliv-

ery, to the state legal depositories copies of such publications as requested. However, the number of copies of each of the general and special laws shall be limited to eight copies to each of the state legal depositories; the number of each of the volumes of the Florida Statutes and supplements shall be up to a maximum computed on the basis of one set for every ten students enrolled during the school year, based upon the average enrollment as certified by the registrar; and the number of house and senate journals shall be limited to one copy of each to each state legal depository.

(3) It is made the duty of the librarian of any depository to keep all public documents in convenient form accessible to the public.

(4) The libraries of all community colleges approved by the State Board of Education under s. 230.752, shall be designated as state depositories for Florida Statutes and supplements published by or under the authority of the state; provided that these depositories may each receive one copy of each volume upon request, without charge except for payment of shipping costs.

History.—ss. 1-3, ch. 20742, 1941; s. 8, ch. 25033, 1949; s. 22, ch. 29615, 1955; s. 1, ch. 59-368; s. 10, ch. 67-50; s. 3, ch. 67-223; s. 70, ch. 72-221; s. 89, ch. 73-333; s. 1, ch. 79-313.

283.24 Public printing; copies to Library of Congress.—Any state official or state agency, board, commission, or institution having charge of publications hereinafter named, is hereby authorized and directed to furnish the Library of Congress in Washington, D. C., upon requisition from the Library of Congress, not to exceed three copies, of the Journals of both houses of the Legislature, volumes of the Supreme Court Reports, volumes of periodic reports of cabinet officers, and copies of reports, studies, maps or other publications by official boards or institutions of Florida, from time to time, as such are published and are available for public distribution.

History.—s. 1, ch. 22020, 1943; s. 9, ch. 25033, 1949; s. 2, ch. 69-183; s. 1, ch. 73-305.

283.25 Distribution of session laws.—

(1) Copies of session laws of each session of the Legislature shall be distributed free by the committee as follows:

(a) As many copies as the Governor, the Supreme Court, the District Courts of Appeal, and the Department of Legal Affairs may require for official use.

(b) One copy as requested by each agency of the Government of the United States, not to exceed a total of ten copies. A maximum of three copies shall be sent to the Library of Congress in Washington, D. C., on requisition of the library.

(c) A maximum of five copies upon request to each institution in the state university system, University of Miami, and Stetson University; two copies to the University of Tampa, Florida Southern College, and Rollins College, to be mailed to the president of each institution upon request.

(d) Such copies to each of the several cabinet members of this state (other than the Governor and the Attorney General); all duly constituted state departments, agencies, boards, commissions, and institutions; the Supreme Court of the United States; and the United States Circuit Court of Appeals for the Fifth Circuit; as they shall request for official use, the maximum number to be determined by the committee.

(e) One copy to each member of the Florida Senate and House of Representatives of each current session of the Legislature; the Secretary of the Senate and the Clerk of the House of each current session of the Legislature; the Judges of the Courts of Record, including the county court judges; the prosecuting attorneys and their assistants of the Courts of Record; the Clerks of the Courts of Record; the Public Defenders in each Judicial Circuit; each member of the Congress of the United States from this state; each of the judges, marshals, clerks, and district attorneys of the District Courts of the United States within this state, and the county law libraries; and, upon request, to the following county officers in each county: The sheriff, the property appraiser, the tax collector, the superintendent of schools, the supervisor of elections, and the board of county commissioners.

(2) The committee may exchange Florida Statutes and session laws for copies of statutes and session laws of other states, not exceeding four copies of each to any one state. The copies so procured by exchange shall be deposited in the Supreme Court Library, the Attorney General's library, the University of Florida Law Library, and the Florida State University Law Library, the same to become a part of the respective libraries.

(3) Prior to October 1, 1970, the Department of State shall take inventory of all officially published Laws of Florida, and the books and records previously kept by it shall be transferred to the committee. However, five sets may be reserved by the Department of State for reference purposes. The committee may after a period of 10 years, take inventory of said books and may destroy obsolete volumes over 10 years old, reserving five sets for reference purposes. A reasonable number of each volume shall be reserved for sale at a price to be set by the committee. Moneys received shall be deposited in the State Treasury and credited to the appropriation for legislative expense.

History.—s. 10, ch. 25033, 1949; s. 1, ch. 29903, 1955; s. 24, ch. 57-1; s. 2, ch. 63-141; s. 2, ch. 63-204; s. 1, ch. 63-279; s. 1, ch. 65-52; s. 2, ch. 65-60; s. 1, ch. 67-14; ss. 10, 11, 35, ch. 69-106; s. 1, ch. 69-183; s. 1, ch. 69-300; s. 1, ch. 70-76; ss. 2-5, ch. 70-157; s. 1, ch. 70-439; s. 19, ch. 72-178; s. 22, ch. 73-334; s. 1, ch. 77-102.

Note.—Former s. 16.15(4).

283.26 University of Florida Law Review; Florida State University Law Review.—

(1) Subject to the approval of the appropriate university, the University of Florida Law Review and the Florida State University Law Review are authorized to engage in the following activities relating to their respective publications, notwithstanding the contrary provision of any statute, rule, or regulation of the state or its subdivisions or agencies:

(a) The grant of reprint rights relating to any or all issues of the University of Florida Law Review, or the Florida State University Law Review, or any of the materials, articles, or ideas contained therein;

(b) The sale for adequate consideration of any or all past or future stock and inventory of published issues of the University of Florida Law Review, or

the Florida State University Law Review, or portions thereof; and

(c) The retention of the proceeds obtained under paragraph (a) or paragraph (b), together with all moneys received by the University of Florida Law Review or the Florida State University Law Review from current or future subscriptions, sale of individual issues, sale of advertising, binding service, royalties, donations, and all other sources except direct or indirect appropriations from the state, its subdivisions, or agencies.

(2) Moneys retained by the University of Florida Law Review pursuant to this section shall be placed in a trust fund to be known as the University of Florida Law Review Trust Fund. Moneys retained by the Florida State University Law Review pursuant to this section shall be placed in a trust fund to be known as the Florida State University Law Review Trust Fund. Said trust funds shall be used to pay or supplement the payment of printing costs or other costs incident to the publication of the respective law reviews and shall be administered by the dean of each college of law or his faculty designee.

History.—s. 2, ch. 70-76; s. 1, ch. 78-118; s. 117, ch. 79-222.

283.27 Public documents, statement of cost and purpose.—

(1) Every department or agency of the state which promulgates public documents, as defined in s. 257.05(1), shall cause the following statement, with cost data and purpose inserted, to be printed on the publication adjacent to the identification of the agency responsible for publication: "This public document was promulgated at an annual cost of $....., or $.....per copy to ...(statement of purpose)...." This statement shall be printed in the same size type as the body copy of the document and shall be set in a box composed of a one-point rule.

(2) For the purposes of this section, the following three factors shall be utilized in computing cost data:

(a) *Preparation.*—Expenditure for materials, salaries, and operating expenses of personnel involved in preparing the public document for publication.

(b) *Printing.*—Expenditure for reproduction, whether on bid or in-house.

(c) *Circulation.*—Expenditures for postage and for salaries of agency or department personnel involved in distribution of the public document.

History.—s. 1, ch. 72-377.

283.28 Public documents; purging of publication mailing lists; copies to State Library.—

(1)(a) Every agency defined in paragraph (d) shall, in the first quarter of each odd-numbered calendar year beginning January 1, 1977, audit and purge its publication mailing lists.

(b) Every agency defined in paragraph (d) shall provide each addressee the following form in the first quarter of each odd-numbered year:

...(Name of publication)...

Do you wish to continue receiving this publication? Yes..... No.....

Should your response to this survey not be received by April 30 next, your name will be automatically withdrawn from our mailing list.

Those addressees who respond shall be either maintained or removed from such mailing list in accordance with the responses. Those addressees not responding by April 30 of each odd-numbered year shall be removed from such mailing list forthwith. Agencies are prohibited from supplying addressees with postpaid response forms.

[1](c) Not later than the following June 30, a report shall be submitted by each agency to the office of the Auditor General providing the following information relating to the results of the survey and purge:

1. The number of copies of each publication regularly obtained or published by the agency.
2. The number of addressees on each mailing list.
3. The number of persons responding who indicated their desire to continue to receive such publication.
4. The number of persons responding who indicated their desire to discontinue receipt of such publication.
5. The number of persons who failed to respond to the survey.

(d) The provisions of this section shall apply to any agency of the state, except an agency of state government whose mailing list shall consist only of those registered with the agency and whose registration fee shall include payment by the registrants as subscribers for the publication of the agency.

(2) At the time of publication, or as soon thereafter as practicable, each agency, pursuant to subsection (1)(d), shall forward not less than the number of copies required in s. 257.05 of each of its publications to the State Library of the Division of Library Services of the Department of State.

History.—s. 1, ch. 75-84; ss. 1, 2, ch. 76-97; s. 1, ch. 77-174.

[1]**Note.**—Paragraph (1)(c) repealed effective July 1, 1980.

CHAPTER 284

STATE RISK MANAGEMENT AND SAFETY PROGRAMS

PART I FLORIDA FIRE INSURANCE TRUST FUND (ss. 284.01-284.17)

PART II FLORIDA CASUALTY INSURANCE RISK MANAGEMENT TRUST FUND (ss. 284.30-284.42)

PART III SAFETY PROGRAMS (s. 284.50)

PART I

FLORIDA FIRE INSURANCE TRUST FUND

284.01 Florida Fire Insurance Trust Fund; coverages to be provided.—

(1) A state self-insurance fund, designated as the Florida Fire Insurance Trust Fund, is created to be set up by the Department of Insurance and administered with a program of risk management. The fund shall insure those properties designated in subsection (2) which are owned by the state or its agencies, boards, or bureaus against loss from fire and hazards customarily insured by extended coverage. Furthermore, the fund may also insure the State Regional Office Building located in the City of Jacksonville, Duval County, including the parking facility owned by the City of Jacksonville, since such building is jointly owned by the State of Florida and the City of Jacksonville. The City of Jacksonville shall be responsible for the payment of all premiums charged by the fund to insure property owned by the City of Jacksonville. Flood insurance shall be provided for state-owned structures and contents designated in subsection (2) to the extent necessary to meet self-insurance requirements of the National Flood Insurance Program, as prescribed in rules and regulations of the Department of Housing and Urban Development at 24 C.F.R., Part 1925, promulgated pursuant to 42 U.S.C. ss. 4001-4128.

(2) The fund shall insure all buildings, whether financed in whole or in part by revenue bonds or certificates, and the contents thereof or of any other buildings leased or rented by the state. For the purpose of this section, all mobile homes and contents, whether permanently affixed to realty or otherwise, are included. Rental value insurance shall also be provided to indemnify the state or any of its agencies for loss of income when such rental income insurance is required to be carried by the terms of any bonding or revenue certificates or resolutions.

(3) No coverage shall be provided by the fund for museum collections, artifacts, relics, fine arts, boilers and machinery, or for any properties related in any way with nuclear reactors or the use, storage, or processing of nuclear fissionable materials. This exclusion as to nuclear properties or related reactors shall not be construed to eliminate the necessity of coverage on medical facilities, particle accelerators, cyclotrons, Van de Graff machines, or any properties associated therewith.

(4) The department may determine deductibles to be established and what coverages or risks are insurable in accordance with this section. Subjects of insurance with a valuation of less than $500 will not be covered by the fund. Coverage shall be provided upon application by agencies to the fund on forms furnished by it.

(5) Premiums charged to agencies for coverage shall be promulgated on a retrospective rating arrangement based upon actual losses accruing to the fund, taking into account reasonable expectations, maintenance, and stability of the fund and cost of reinsurance.

(6) In the event of any partial loss by a covered peril, the loss shall be adjusted on the basis of actual cash value of the property at the time of loss, but not exceeding the amount that it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss.

History.—s. 1, ch. 7294, 1917; s. 1, ch. 7902, 1919; RGS 1312; s. 1, ch. 8430, 1921; CGL 1991; s. 1, ch. 57-101; s. 2, ch. 61-119; s. 1, ch. 61-463; ss. 13, 22, 35, ch. 69-106; s. 1, ch. 70-272; s. 81, ch. 71-355; s. 3, ch. 77-280; s. 2, ch. 79-136.

cf.—s. 255.01 Proceeds of insurance may be used to replace property destroyed.
s. 255.02 Board authorized to replace buildings destroyed by fire.
s. 255.03 Proceeds of insurance to be paid into State Treasury.

284.02 Payment of premiums by each agency; handling of funds; payment of losses and expenses.—

(1) Premiums as calculated on all coverages shall be billed and charged to each state agency according to coverages obtained from the fund for their benefit, and such obligation shall be paid promptly by each agency from its operating budget upon presentation of a bill therefor. However, no state agency shall be liable for the cost of insurance protection under this

section prior to July 1, 1971, if any obligation therefor would be incurred against unappropriated funds. After July 1, 1971, billings and the obligation to pay shall be based on coverage provided during each fiscal year and annually thereafter.

(2) All premiums paid into the fund and all moneys received by the fund from investment or any other source pursuant to said program shall be held by the Department of Insurance and used for the purpose of paying losses, expenses incurred in adjustment of losses, premiums for reinsurance, and operating expenses.

(3) The Department of Insurance is authorized to employ a director of the fund and necessary administrative and clerical personnel, actuaries, consultants, and adjusters to maintain, operate, and administer the fund and to underwrite all certificates of insurance issued by the fund. All salaries and expenses of administration and operation shall be paid from the fund.

History.—s. 1, ch. 7294, 1917; s. 1, ch. 7902, 1919; RGS 1312; s. 1, ch. 8430, 1921; CGL 1991; s. 1, ch. 28092, 1953; s. 2, ch. 57-101; s. 2, ch. 61-119; s. 2, ch. 61-463; ss. 13, 22, 35, ch. 69-106; s. 2, ch. 70-272; s. 1, ch. 70-439.

cf.—s. 255.02 Agencies authorized to replace buildings destroyed by fire.

284.03 Deficits in fund supplied from General Revenue Fund; repayment.—Should a loss occur upon property insured in the Florida Fire Insurance Trust Fund that would require more funds, to pay the amount of any loss covered by insurance in said fund, than are at that time available in said fund, in that event there is appropriated out of any funds in the General Revenue Fund not otherwise appropriated a sum which, added to the sum then available in said Florida Fire Insurance Trust Fund, shall be sufficient to pay the amount of the covered loss. In the event any funds shall be paid out of the General Revenue Fund under this provision, such amounts so paid out of the General Revenue Fund shall be returned to it out of the first available assets of said Insurance Trust Fund after paying any necessary expenses as provided in s. 284.02(2) and (3).

History.—s. 1, ch. 7294, 1917; s. 1, ch. 7902, 1919; RGS 1312; s. 1, ch. 8430, 1921; CGL 1991; s. 2, ch. 61-119; s. 3, ch. 70-272.

284.04 Notice and information required by Department of Insurance of all newly erected or acquired state property subject to insurance.—The Department of General Services and all agencies in charge of state property shall notify the Department of Insurance of all newly erected or acquired property subject to coverage as soon as erected or acquired, giving its value, type of construction, location, whether inside or outside of corporate limits, occupancy, and any other information the Department of Insurance may require in connection with such property. Such department or agency shall also notify the Department of Insurance immediately of any change in value or occupancy of any property covered by the fund. Unless the above data is submitted in writing within a reasonable time following such erection, acquisition, or change, the Department of Insurance shall provide insurance coverage to the extent shown by the last notification in writing to the fund or in accordance with the last valuation shown by fund records. In case of disagreement between the Department of Insurance and the agency or person in charge of any covered state property as to its true value, the amount of the insurance to be carried thereon, the proper premium rate or rates, or amount of loss settlement, the matter in disagreement shall be determined by the Department of General Services.

History.—s. 1, ch. 7294, 1917; s. 1, ch. 7902, 1919; RGS 1312; s. 1, ch. 8430, 1921; CGL 1991; s. 2, ch. 61-119; ss. 13, 22, 35, ch. 69-106; s. 4, ch. 70-272.

284.05 Inspection of insured state property.—The Department of Insurance shall inspect all permanent buildings insured by the Florida Fire Insurance Trust Fund, and whenever conditions are found to exist which, in the opinion of the Department of Insurance, are hazardous from the standpoint of destruction by fire or other loss, the Department of Insurance may order the same repaired or remedied, and the agency, board, or person in charge of such property is required to have such dangerous conditions immediately repaired or remedied upon written notice from the Department of Insurance of such hazardous conditions. Such amounts as may be necessary to comply with such notice or notices shall be paid by the Department of General Services or by the agency, board, or person in charge of such property out of any moneys appropriated for the maintenance of the respective agency or for the repairs or permanent improvement of such properties or from any incidental or contingent funds they may have on hand. In the event of a disagreement between the Department of Insurance and the agency, board, or person having charge of such property as to the necessity of the repairs or remedies ordered, the matter in disagreement shall be determined by the Department of General Services.

History.—s. 1, ch. 7294, 1917; s. 1, ch. 7902, 1919; RGS 1312; s. 1, ch. 8430, 1921; CGL 1991; s. 2, ch. 61-119; ss. 13, 22, 35, ch. 69-106; s. 5, ch. 70-272.

cf.—s. 633.085 Inspection of state buildings and premises.

284.06 Department's annual report to Governor to be transmitted to Legislature.—The Department of Insurance shall report annually to the Governor, for transmittal to the Legislature, at each subsequent regular session, what investigations have been made by it and what actions taken to decrease the fire hazard of the various insurable properties of the state, together with its recommendations as to further safeguards and improvements.

History.—s. 1, ch. 7294, 1917; s. 1, ch. 7902, 1919; RGS 1312; s. 1, ch. 8430, 1921; CGL 1991; ss. 13, 35, ch. 69-106.

284.08 Reinsurance on excess coverage and approval by Department of General Services.—The Department of Insurance shall determine what excess coverage is necessary and may purchase reinsurance thereon upon approval by the Department of General Services.

History.—ss. 1, 2, ch. 9150, 1923; CGL 1992; s. 1, ch. 14520, 1929; s. 2, ch. 61-119; ss. 13, 22, 35, ch. 69-106; s. 6, ch. 70-272.

284.14 Florida Fire Insurance Trust Fund; leasehold interest.—In the event the state or any department or agency thereof has acquired or hereafter acquires a leasehold interest in any improved real property and by the terms and provisions of said lease it is obligated to insure such premises against loss by fire or other hazard to such premises, it shall insure such premises in the Florida Fire Insurance Trust Fund as required by the terms of said lease or as required by the provisions of this chapter. No

state agency shall enter into or acquire any such leasehold interest until the coverages required to be maintained by the provisions of the lease are approved in writing by the Department of Insurance.
History.—s. 1, ch. 20676, 1941; s. 2, ch. 61-119; s. 7, ch. 70-272.

284.17 Rules and regulations.—The Department of Insurance shall promulgate such reasonable rules and regulations as are necessary to aid in the implementation of this chapter.
History.—s. 8, ch. 70-272.

PART II

FLORIDA CASUALTY INSURANCE RISK MANAGEMENT TRUST FUND

284.30 Florida Casualty Insurance Risk Management Trust Fund; coverages to be provided.—There is created a Florida Casualty Insurance Risk Management Trust Fund to provide insurance, as authorized by s. 284.33, for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, and court-awarded attorney's fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or to awards by the Career Service Commission. A party to a suit in any court, to be entitled to have his attorney's fees paid by the state or any of its agencies, must serve a copy of the pleading claiming the fees on the Department of Insurance, and thereafter the department shall be entitled to participate with the agency in the defense of the suit and any appeal thereof with respect to such fees.
History.—s. 1, ch. 72-206; s. 67, ch. 79-40; s. 5, ch. 79-139.

284.31 Scope and types of coverages; separate accounts.—The insurance risk management trust fund shall, unless specifically excluded by the Department of Insurance, cover all departments of the State of Florida and their employees and agents and other authorized persons, and shall provide separate accounts for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, and court-awarded attorney's fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or to awards by the Career Service Commission.
History.—s. 1, ch. 72-206; s. 4, ch. 74-235; s. 68, ch. 79-40; s. 6, ch. 79-139.

284.32 Department of Insurance to implement and consolidate.—The Department of Insurance is hereby authorized to effect a consolidation and combination of all insurance coverages provided herein into one insurance program in accordance with the provisions of part I, chapter 287.
History.—s. 1, ch. 72-206.

284.33 Purchase of insurance, reinsurance, and services.—The Department of Insurance is authorized to provide insurance, specific excess insurance, and aggregate excess insurance through the Division of Purchasing, pursuant to the provisions of part I, chapter 287, as necessary to provide insurance coverages authorized by this part, consistent with market availability. The Department of Insurance is further authorized to purchase such risk management services, including, but not limited to, risk and claims control, legal, investigative, and adjustment services, as may be required and pay claims as may arise under any deductible provisions.
History.—s. 1, ch. 72-206; s. 90, ch. 73-333; s. 7, ch. 79-139.

284.34 Professional medical liability of the Board of Regents and nuclear energy liability excluded.—Unless specifically authorized by the Department of Insurance, no coverages shall be provided by this fund for professional medical liability insurance for the Board of Regents or the physicians, officers, employees, or agents of the board or for liability related to nuclear energy which is ordinarily subject to the standard nuclear energy liability exclusion of conventional liability insurance policies. This section shall not be construed as affecting the self-insurance programs of the Board of Regents established pursuant to [1]s. 240.191.
History.—s. 1, ch. 72-206; s. 5, ch. 74-235; s. 1, ch. 79-136.
[1]Note.—Section 240.191 was renumbered as s. 240.213 by the reviser following its amendment by s. 8, ch. 79-222.

284.35 Administrative personnel; expenses to be paid from fund.—The Department of Insurance is hereby authorized, in accordance with current budget and personnel requirements, to employ necessary administrative and clerical personnel and actuarial consultants, as necessary to maintain, operate, and administer the fund. All salaries and expenses of administration and operation shall be paid from the fund.
History.—s. 1, ch. 72-206.

284.36 Appropriation deposits; premium payment.—During the period beginning July 1, 1972, and ending June 30, 1973, the Department of Administration, at the request of the Treasurer, may transfer any funds appropriated in the General Appropriation Act or other acts of the Legislature for the purpose of providing workers' compensation, general liability, and fleet automotive liability coverage to the Florida Casualty Insurance Risk Management Trust Fund. Future premiums as calculated on all coverages shall be billed and charged to each state agency according to coverages obtained by the fund for their benefit, and such obligations shall be paid promptly by each agency from its operating budget upon presentation of a bill therefor. After the first year of operation, premiums to be charged to all departments of the state are to be computed on a retrospective rating arrangement based upon actual losses accruing to the fund, taking into account reasonable expectations, the maintenance and stability of the fund, and the cost of insurance.

History.—s. 1, ch. 72-206; s. 69, ch. 79-40.

284.37 Premium and investment accruals used for fund purposes.—All premiums paid into the fund and all moneys from investments or any other source pursuant to said program shall be held by the Department of Insurance and used for the purpose of paying losses, premiums for insurance, risk and claims management services, and operating expenses.

History.—s. 1, ch. 72-206.

284.38 Waiver of sovereign immunity; effect.—The insurance programs developed herein shall provide limits as established by the provisions of s. 768.28 if a tort claim. The limits provided in s. 768.28 shall not apply to a civil rights action arising under 42 U.S.C. s. 1983 or similar federal statute. Payment of a pending [1]or future claim or judgment arising under any of said statutes may be made upon this act becoming a law, unless the officer, employee, or agent has been determined in the final judgment to have caused the harm intentionally; however, the fund is authorized to pay all other court-ordered attorney's fees as provided under s. 284.31.

History.—s. 1, ch. 72-206; s. 8, ch. 79-139.

[1]Note.—The word "or" was substituted for "and" by the editors.

284.39 Promulgation of rules.—The Department of Insurance is authorized to promulgate rules and regulations for the proper management and maintenance of the fund.

History.—s. 1, ch. 72-206.

284.40 Division of Risk Management.—

(1) It shall be the responsibility of the Division of Risk Management of the Department of Insurance to administer this part and the provisions of s. 287.131.

(2) The claim files maintained by the Division of Risk Management shall be considered privileged and confidential and shall be only for the usage by the Department of Insurance in fulfilling its duties and responsibilities under this part.

(3) Upon certification by the division director or his designee to the custodian of any records maintained by the Department of Health and Rehabilitative Services that such records are necessary to investigate a claim against the Department of Health and Rehabilitative Services being handled by the Division of Risk Management, the records shall be released to the division subject to the provisions of subsection (2), any conflicting provisions as to the confidentiality of such records notwithstanding.

History.—s. 1, ch. 72-206; s. 6, ch. 74-235; s. 2, ch. 77-107; s. 1, ch. 78-408.

284.41 Transfer of personnel and funds to the Division of Risk Management; extension of Insurance Commissioner and Treasurer's public official bond.—

(1) All personnel and funds otherwise allocated to the Department of Insurance for this purpose are hereby transferred to the Division of Risk Management.

(2) The administration of parts I and II of chapter 284 shall be a function of the Division of Risk Management.

(3) Current public official bond covering the Insurance Commissioner and Treasurer is hereby extended to include the trust funds hereby created.

History.—s. 1, ch. 72-206.

284.42 Reports on state insurance program.—

(1) The Department of Insurance, with the Department of General Services, shall make an analysis of the state insurance program annually, which shall include:

(a) Complete underwriting information as to the nature of the risks accepted for self-insurance and those risks that are transferred to the insurance market.

(b) The funds allocated to the Florida Casualty Risk Management Trust Fund and premiums paid for insurance through the market.

(c) The method of handling legal matters and the cost allocated.

(d) The method and cost of handling inspection and engineering of risks.

(e) The cost of risk management service purchased.

(f) The cost of managing the State Insurance Program by the Department of Insurance and the Department of General Services.

(2) The departments shall make available complete claims history including description of loss, claims paid and reserved, and the cost of all claims handled by the state.

History.—s. 2, ch. 72-206; s. 7, ch. 77-320.

PART III

SAFETY PROGRAMS

284.50 Loss prevention program; safety coordinators; Interagency Advisory Council.—

(1) In each department of state government, except the Legislature, there shall be a safety coordinator, who shall be designated by the department head. The Department of Insurance shall provide appro-

priate training to the safety coordinators to permit them to effectively perform their duties within their respective departments. Each safety coordinator shall, at the direction of his department head:

(a) Develop and implement the loss prevention program, a comprehensive departmental safety program which shall include a statement of safety policy and responsibility.

(b) Provide for regular and periodic facility and equipment inspections.

(c) Investigate his department's job-related employee accidents.

(d) Establish a program to promote increased safety awareness [1]among employees.

(2) There shall be an Interagency Advisory Council on Loss Prevention composed of the safety coordinators from each department and representatives designated by the Division of State Fire Marshal and the Division of Risk Management. The chairman of the council shall be the Director of the Division of Risk Management. The council shall meet at least quarterly to discuss safety problems within state government, to attempt to find solutions for these problems, and, when possible, to assist in the implementation of the solutions.

(3) The council shall report annually to the Governor and the Legislature, by January 15 preceding any regular legislative session, any actions taken to prevent job-related employee accidents, together with suggestions of safeguards and improvements.

History.—s. 1, ch. 79-352.

[1]**Note.**—The word "among" was substituted for "by" by the editors.

CHAPTER 285

INDIAN RESERVATIONS AND AFFAIRS

285.01 Lands set aside; description.—The following described lands in the County of Monroe, are set aside and given to the Seminole Indians of Florida as a reservation, to wit:

(1) All of the lands now belonging to the state in township fifty-six south of range thirty-two east, being all of sections seven to fifteen, inclusive, and seventeen to thirty-six, inclusive, containing 18,560 acres, more or less.

(2) Also, all of sections one to four, inclusive; ten to fifteen, inclusive; twenty-two to twenty-four, inclusive, and sections thirty-five and thirty-six, in township fifty-seven south of range thirty-two east, containing 9,600 acres, more or less.

(3) Also, all of sections one to three, inclusive; ten to fourteen, inclusive; twenty-four, twenty-five, thirty-five and thirty-six, of township fifty-eight south of range thirty-two east, containing 7,680 acres, more or less.

(4) Also, all of sections seven to fifteen, inclusive, and seventeen to thirty-six, inclusive, of township fifty-six south of range thirty-three east, containing 18,560 acres, more or less.

(5) Also, all of sections one to fifteen, inclusive, and seventeen to thirty-six, inclusive, of township fifty-seven south of range thirty-three east, containing 22,400 acres, more or less.

(6) Also, all of sections one to fifteen, inclusive, and seventeen to thirty-six, inclusive, of township fifty-eight south of range thirty-three east, containing 22,400 acres, more or less.

History.—s. 1, ch. 7310, 1917; RGS 1313; CGL 1994; s. 7, ch. 22858, 1945.

285.011 Seminole Indian lands; trustee.—The Board of Trustees of the Internal Improvement Trust Fund shall hereafter serve as the trustee of all Seminole Indian lands, and title to all such lands shall be vested in said board to be held in trust for the perpetual use and benefit of the Seminole Indians and as a reservation for them.

History.—s. 1, ch. 71-286.

285.03 Grant of Florida lands to Seminole Indians.—

(1)(a) A grant is made, for use of the Seminole Indians of Florida, of a tract of land situated in Broward County, described as follows:

(b) Beginning three hundred thirty feet west of the northeast corner of lot fourteen, of section thirty-six, township fifty south, range forty-one east; thence west four hundred ninety-five feet; thence south one thousand three hundred twenty feet, thence east four hundred ninety-five feet, thence north one thousand three hundred twenty feet to point of beginning, being fifteen acres, more or less.

(2) The said described lands shall become a part of the Seminole Indian Reservation, reserved by Act of Legislature, 1931, to use of the Seminole Indians of Florida.

(3) If, at any time, said lands should be abandoned or not used for the purpose for which granted, such lands would revert to the State of Florida.

History.—ss. 1, 4, ch. 16175, 1933; CGL 1936 Supp. 1995(1).

285.04 Board of Trustees of Internal Improvement Trust Fund authorized to exchange state lands for United States lands.—To provide more adequately for the needs of the Seminole Indians in Florida, and for cooperating with the United States therein, the Board of Trustees of the Internal Improvement Trust Fund may, in its discretion, exchange state lands with the United States for lands owned by the United States.

History.—s. 1, ch. 17065, 1935; CGL 1936 Supp. 1995(2); s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

285.05 Board of Trustees of the Internal Improvement Trust Fund authorized to exchange lands with individuals.—The Board of Trustees of the Internal Improvement Trust Fund may, in its discretion, exchange state lands with private landowners, and, in turn, exchange any lands so acquired with the United States for government-owned lands, to facilitate the carrying out of the purpose described in s. 285.04.

History.—s. 2, ch. 17065, 1935; CGL 1936 Supp. 1995(3); s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

285.06 State Indian Reservation.—When, as the result of the exchanges provided for in ss. 285.04 and 285.05, there shall have been established a reservation for the Indians by the United States in Florida, the State Seminole Indian Reservation in Monroe County, created by Chapter 7310, Acts of 1917, shall be withdrawn and returned to the board of trustees; and thereupon the Board of Trustees of the Internal Improvement Trust Fund shall set aside a tract of land of approximately equal size and of suitable character, adjacently located, as nearly as may be, to the reservation to be established by the United States; and said lands, when so set aside, shall constitute the State Indian Reservation and shall be held in trust by the Department of General Services for the perpetual benefit of the Indians and as a reservation for them.

History.—s. 3, ch. 17065, 1935; CGL 1936 Supp. 1995(4); s. 2, ch. 61-119; ss. 22, 27, 35, ch. 69-106.

285.061 Transfer of land to United States in trust for Seminole and Miccosukee Indian Tribes.—

(1) The Board of Trustees of the Internal Improvement Trust Fund of state Indian reservation lands, is authorized in its discretion, to transfer to the United States to be held in trust for the use and benefit of the Seminole Tribe of Florida, the following described lands:

Sections 1, 2, 3, 4, 5 and 6, Township 48 South, Range 35 East, said lands situate, lying and being in Palm Beach County, Florida; that part of Section 7 lying West of the Miami Canal, and Sections 18, 19, 20, 29, 30, 31, 32, Township 48 South, Range 36 East, and Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, Township 48 South, Range 35 East, said lands situate, lying, and being in Broward county, Florida;

and the said board is further authorized to transfer to the United States to be held in trust for the use and benefit of the Miccosukee Tribe of Indians of Florida, the following described lands:

Sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, 32, Township 49 South, Range 36 East, and Township 49 South, Range 35 East, Township 50 South, Range 35 East, and Township 51 South, Range 35 East, said lands situate, lying and being in Broward County, Florida.

All of the aforesaid lands having been set aside as a reservation for the Seminole Indians of Florida by Legislative Acts of 1917 and 1935, and the purpose of this section is to divide the described reservation into two reservations for the use of and benefit of the two tribes named herein.

(2) For the purpose of this subsection: "Other Florida Indians" means Indian residents of the state who are not members of either the Seminole Tribe of Florida or the Miccosukee Tribe of Indians of Florida, who are qualified to meet the enrollment requirements of either the Seminole Tribe of Florida or the Miccosukee Tribe of Indians of Florida. Other Florida Indians shall be permitted to use, occupy and enjoy the Seminole Reservation or the Miccosukee Reservation on the same terms and conditions, and subject to the same limitations as are applicable to, or may be imposed upon, tribal members by its constitution, bylaws, or tribal regulations; provided, however, that if either of said tribes shall maintain its membership roll open to all other Florida Indians for a period of 3 years from the effective date of this act, then such Indians who, upon the expiration of said period, have not become enrolled members of either of said tribes, shall have no further right to the use, occupancy or enjoyment of either of said reservations.

(3) If at any time said lands shall be abandoned or not used for the purpose for which granted, such lands will revert to the state.

(4) All the provisions of this chapter, not in conflict with this section, remain in full force and effect. The state reserves both civil and criminal jurisdiction over said reservations in accordance with s. 285.16. The transfer of lands provided for herein when made shall be subject to all of the rights, easements and reservations in favor of the Central and Southern Florida Flood Control District.

History.—ss. 1-4, ch. 65-249; s. 1, ch. 65-472; ss. 22, 35, ch. 69-106; s. 4, ch. 71-286.

285.07 Purpose of law.—That the purpose of ss. 285.07-285.13 is to protect the Seminole Indians of Florida against undue and unnecessary hardships during these difficult years of transition from their ancestral culture to the culture of the white man's civilization and to aid said Indians to obtain economic independence as a tribe and as individuals.

History.—s. 1, ch. 29908, 1955.

285.08 Definitions.—For the purpose of ss. 285.09-285.13:

(1) "Tribe" means the Seminole Tribe in the state composed of bands of Indians known and referred to as Miccosukee and Muskogee or Cow Creek.

(2) "Indian" or "Indians" means one or more members of a tribe.

(3) "Trustee" means the Board of Trustees of the Internal Improvement Trust Fund.

(4) "Reservation" means that tract of land of approximately 104,800 acres located in Palm Beach and Broward Counties set aside for the perpetual use and benefit of Seminole Indians by Legislative Acts of 1917 and 1935, known as the Seminole Indian Reservation.

(5) The flood control project means the Central and South Florida Flood Control Program.

History.—s. 2, ch. 29908, 1955; ss. 22, 35, ch. 69-106; s. 5, ch. 71-286.

285.09 Lawful to take wild game and fish any time for food.—It shall be lawful for Indians to take wild game and fish at any time within the boundaries of the reservation, provided that game may be taken only for food for the Indians themselves.

History.—s. 3, ch. 29908, 1955.

285.10 No license required.—For a period of 25 years from the effective date of this law, no license shall be required for Indians to hunt and fish provided such hunting or fishing is for the sole purpose of obtaining food for the Indians themselves. Nothing

in this law shall serve to exempt Indians from purchasing licenses required for taking or dealing in fish (other than garfish), amphibians, reptiles, furbearing animals or any other form of wildlife for commercial purposes. Each Indian using such hunting and fishing privileges as provided herein shall be required to have an identification card issued without cost by the Game and Fresh Water Fish Commission of the Department of Natural Resources through the superintendent of the Seminole Indian agency. Each Indian is required to have said identification on his person at all times when using such hunting and fishing privileges and shall exhibit same to officers of the Game and Fresh Water Fish Commission upon the request of such officers.

History.—s. 4, ch. 29908, 1955; ss. 25, 35, ch. 69-106.

285.11 Reservation; improvement leases.—The trustee shall have the right to lease any part or parts of the reservation to any person willing to enter into an improvement lease. Such lease shall not exceed 15 years, unless such a lease is entered into with a Florida Indian, in which case it may be for a term not to exceed 25 years, and may include an option on the part of the lessee to renew such lease for an additional term of 25 years or less. The lessee shall be required to make such improvements to or on the property as are agreed upon in the lease. The improvements shall become a part of the lands of the reservation thereby accruing to the benefit of the tribe upon expiration of the lease. For the purposes of this section a "Florida Indian" is defined as a member of either the Seminole Tribe of Florida or the Miccosukee Tribe of Indians of Florida or an Indian who is eligible for enrollment as a member of either of the foregoing tribes.

History.—s. 5, ch. 29908, 1955; ss. 22, 35, ch. 69-106; s. 1, ch. 70-271.

285.12 Reservation; mineral deposits.—The tribe shall benefit from the discovery and development of all mineral deposits on the lands of the reservation the same as if the title to said lands were vested in the tribe and any law relating to the use of public lands shall not apply.

History.—s. 6, ch. 29908, 1955; s. 1, ch. 69-298.

285.13 Campsites; flood control.—Indians living in camps settled prior to the passage of ss. 285.07-285.13 within the boundaries of the flood control project shall be permitted to continue to live in such campsites. When any such campsite is threatened with floodwaters as a result of the building of the flood control project, the trustee shall cause such campsites to be relocated to a level above dangers resulting from said floodwaters or shall otherwise protect such campsites from said floodwaters.

History.—s. 7, ch. 29908, 1955.

285.14 Board of Trustees of the Internal Improvement Trust Fund as trustee to accept donations of and acquire property for Indians.—

(1) The Board of Trustees of the Internal Improvement Trust Fund, as the trustee defined in s. 285.08, may accept donations of real and personal property from any source whatsoever, and may include the same in the corpus of the trust created under this chapter.

(2) The board, as trustee, may acquire lands in the name of the state and devote the same to the exclusive use, occupancy, and benefit of said Indians for the purpose of promoting the health, general welfare, safety, and best interest of said Indians.

(3) All funds accruing to the trustee of the trust granted under this chapter, may be expended by said trustee for such purposes as in the judgment and discretion of the board will best promote the safety, health, general welfare and best interest of said Indians.

(4) The Department of General Services, the State Board of Education, and any other state board or agency having title to lands or having lands under their jurisdiction, management, or control, may in their discretion convey and transfer to the board of trustees the title to any of said lands in trust for the use and benefit of said Indians.

History.—s. 1, ch. 59-451; s. 2, ch. 61-119; ss. 22, 27, 35, ch. 69-106; s. 6, ch. 71-286.

285.15 Grant of fishing and hunting privileges by Board of Trustees of Internal Improvement Trust Fund.—

(1) The Board of Trustees of the Internal Improvement Trust Fund of the state, in their discretion, may grant exclusive hunting and fishing privileges and rights to the Seminole Indians of Florida as defined in s. 285.08, covering lands under its administration, management, control and supervision, not to exceed a term of 15 years. The rights granted under this section extend only to game taken by the said Indians for personal consumption, and no other license or permit shall be required, notwithstanding the provisions of any other law.

(2) The Board of Trustees of the Internal Improvement Trust Fund of Florida, in its discretion, may grant to the Seminole Indians of Florida, as defined in s. 285.08, the exclusive right to take frogs for personal consumption and for commercial purposes, covering lands under the said board of trustees' administration, management, control and supervision, not to exceed a term of 15 years.

History.—s. 1, ch. 59-451; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

285.16 Civil and criminal jurisdiction; Indian reservation.—

(1) The State of Florida hereby assumes jurisdiction over criminal offenses committed by or against Indians or other persons within Indian reservations and over civil causes of actions between Indians or other persons or to which Indians or other persons are parties rising within Indian reservations.

(2) The civil and criminal laws of Florida shall obtain on all Indian reservations in this state and shall be enforced in the same manner as elsewhere throughout the state.

History.—ss. 1, 2, ch. 61-252.

285.17 Special improvement districts; Seminole and Miccosukee Tribes.—There is hereby created a special improvement district for each of the areas contained within the reservations set aside for the Seminole and Miccosukee Tribes, respectively.

History.—s. 1, ch. 74-175.

285.18 Tribal council as governing body; powers and duties.—

(1) The respective governing bodies of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians recognized by the United States and organized pursuant to the provisions of the Act of June 18, 1934, 48 Stat. 987, 25 U.S.C. s. 476 shall be the respective governing bodies of the special improvement districts created by s. 285.17.

(2) The governing bodies of the special improvement districts shall have the duty and power:

(a) To plan and implement programs for the benefit of their members in law enforcement, housing, health care, and other social services, which shall include, without limitation, delivery of health services, manpower training, child services, and other programs to improve the health and economic opportunities of its members.

(b) To employ personnel to exercise law enforcement powers, including the investigation of violations of any of the criminal laws of the state occurring on reservations over which the state has assumed jurisdiction pursuant to s. 285.16.

1. All law enforcement personnel employed shall be considered peace officers for all purposes and shall have the authority to bear arms, make arrests, and apply for, serve, and execute search warrants, arrest warrants, capias, and other process of the court, within their respective special improvement districts.

2. All law enforcement personnel shall be entitled to the privileges, protection, and benefits of ss. 112.19 and 870.05.

(c) To employ such personnel as necessary to carry out the responsibilities of the special improvement districts and to prescribe all terms and conditions for the employment of such personnel, including, but not limited to, the fixing of their compensation, benefits, the filing of performance and fidelity bonds, and such policies of insurance as they may deem advisable, and apply for coverage of their employees under the State Retirement System subject to necessary action by the districts to pay employer contributions into the State Retirement Fund. However, any law enforcement officer employed must meet the standards required pursuant to [1]part IV of chapter 23.

(d) To execute any and all instruments, and do and perform any and all acts for things necessary, convenient, or desirable for its purposes or to carry out the powers expressly given in this section.

(e) To borrow money, accept gifts, and apply for and use grants or loans of money or other property from the United States, the state, a local unit of government or any person, for any district purpose and may enter into agreements required in connection therewith, and may hold, use, and dispose of such moneys or property in accordance with the terms of the gift, grant, loan, or agreement relating thereto.

History.—s. 1, ch. 74-175.

[1]**Note.**—Part IV, ch. 23, was repealed by ch. 74-386, Laws of Florida, which created s. 943.13 relating to police officer qualifications.

cf.—s. 240.413 Scholarships for Seminole and Miccosukee Tribes.

s. 320.0841 Free motor vehicle license plates for tribes.

285.19 Northwest Florida Creek Indian Council.—

(1) It is the purpose of this section to create a Creek Indian Council which, as a political subdivision of the state, shall enable the Creek Indians and their descendants residing in Escambia, Santa Rosa, and Okaloosa Counties and in other counties within the state to enjoy the full benefits of state, local, and federal programs for the economic, cultural, and social advancement of the Creek Indian.

(2) There is created the Northwest Florida Creek Indian Council, a political subdivision of the state.

(a) The council shall have members who shall be appointed by the Governor from lists of nominees provided by the council. The council shall nominate at least three persons for each council member appointment. At least four of the members shall reside in and represent Escambia County. Each other county whose Creek Indian population desires membership on the council shall have at least two members who shall reside in and represent that county. At least one-half of the council members from each county shall be Creek Indians, and all members may be Creek Indians.

(b) The term of office of each council member shall be 4 years. The terms of office of one-half of the members from each county represented shall begin with the beginning of the Governor's term of office, and the terms of office of one-half of the members from each county represented shall begin with the beginning of the Governor's third year of office.

(c) Each council member shall hold office for his designated term and until his successor shall have been appointed or until his earlier resignation, removal from office, or death.

(3) The Northwest Florida Creek Indian Council shall have the power to:

(a) Employ staff for its operations and establish rules governing the employment, compensation, and discharge of personnel.

(b) Adopt a seal.

(c) Sue or be sued.

(d) Apply for and accept gifts, grants, and donations of federal, state, private, and local funds.

(e) Acquire, lease, maintain, or sell real or personal property.

(f) Issue revenue certificates which bonds may be issued in its own name; however such bonds shall not constitute any fiscal obligation upon the state or Escambia County, Santa Rosa County, or Okaloosa County.

(g) Engage in other activities in promotion of the purposes of the council not inconsistent with general law.

(4) The Board of County Commissioners of Escambia County and such other counties or municipalities which are represented by council members are authorized to make gifts or grants or loans to the council.

(5) Nothing in this section shall be construed to grant the Northwest Florida Creek Indian Council authority to engage in the tax-exempt sale of cigarettes.

History.—ss. 1-3, ch. 79-421.

CHAPTER 286

PUBLIC BUSINESS; MISCELLANEOUS PROVISIONS

286.011 Public meetings and records; public inspection; penalties.—

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission. However, this subsection shall not apply to a state attorney or his duly authorized assistants or any officer charged with enforcing the provisions of this section.

(5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision appeals any court order which has found said board, commission, agency, or authority to have violated this section, and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such board, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.

(6) All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility.

(7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision is charged with a violation of this section and is subsequently acquitted, the board or commission is authorized to reimburse said member for any portion of his reasonable attorney's fees.

History.—s. 1, ch. 67-356; s. 159, ch. 71-136; s. 1, ch. 78-365.

286.012 Voting requirement at meetings of governmental bodies.—No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act, and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to

be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases said member shall comply with the disclosure requirements of s. 112.3143.

History.—s. 1, ch. 72-311; s. 9, ch. 75-208.

286.021 Department of State to hold title to patents, trademarks, copyrights, etc.—The legal title and every right, interest, claim or demand of any kind in and to any patent, trademark or copyright, or application for the same, now owned or held, or as may hereafter be acquired, owned and held by the state, or any of its boards, commissions or agencies, is hereby granted to and vested in the Department of State for the use and benefit of the state; and no person, firm or corporation shall be entitled to use the same without the written consent of said Department of State.

History.—s. 1, ch. 21959, 1943; ss. 22, 35, ch. 69-106; s. 2, ch. 70-440; s. 15, ch. 79-65.

Note.—Former s. 272.01.

cf.—s. 601.101 Ownership of rights under patent and trademark laws developed or acquired pursuant to the authorities of chapter 601.

286.031 Authority of Department of State in connection with patents, trademarks, copyrights, etc.—The Department of State is authorized to do and perform any and all things necessary to secure letters patent, copyright and trademark on any invention or otherwise, and to enforce the rights of the state therein; to license, lease, assign, or otherwise give written consent to any person, firm or corporation for the manufacture or use thereof, on a royalty basis, or for such other consideration as said department shall deem proper; to take any and all action necessary, including legal actions, to protect the same against improper or unlawful use or infringement, and to enforce the collection of any sums due the state and said department for the manufacture or use thereof by any other party; to sell any of the same and to execute any and all instruments on behalf of the state necessary to consummate any such sale; and to do any and all other acts necessary and proper for the execution of powers and duties herein conferred upon said department for the benefit of the state.

History.—s. 2, ch. 21959, 1943; ss. 22, 35, ch. 69-106; s. 2, ch. 70-440; s. 16, ch. 79-65.

Note.—Former s. 272.02.

cf.—s. 601.101 Ownership of rights under patent and trademark laws developed or acquired pursuant to the authorities of chapter 601.

286.035 Constitution Revision Commission; powers of chairman; assistance by state and local agencies.—

(1) The chairman of the Constitution Revision Commission, appointed pursuant to s. 2, Art. XI of the State Constitution, is authorized to employ personnel and to incur expenses related to the official operation of the commission or its committees, to sign vouchers, and to otherwise expend funds appropriated to the commission for carrying out its official duties.

(2) All state and local agencies are hereby authorized and directed to assist, in any manner necessary, the Constitution Revision Commission established pursuant to s. 2, Art. XI of the State Constitution upon its request or the request of its chairman.

History.—s. 1, ch. 77-201.

286.041 Prohibited requirements of bidders on contracts for public works relative to income tax returns.—

(1) The state or any of its departments, agencies, bureaus, commissions, and officers and the counties, consolidated governments, municipalities, school districts, special districts, and other public bodies of this state, and the departments, agencies, bureaus, commissions, and officers thereof, shall not require, directly or indirectly, an audit or inspection of any federal or state income tax returns of any company, corporation, or person as a prior condition before entering into contracts with said company, corporation, or person to construct any public work or to supply any materials, labor, equipment or services, or any combination thereof.

(2) Any person who violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, except that the fine shall not be less than $100.

History.—s. 1, ch. 72-130.

286.043 Limitation on use of funds for discriminatory contract or bid specifications relating to car rental concessions at airports.—No public funds shall be used by a unit of local government for the purpose of promulgating contract or bid specifications relating to car rental concessions at airports which would preclude a corporation authorized to do business in this state from submitting bids or entering into such contracts with such unit of local government. Nothing in this section shall prevent the local government from providing in such specifications a minimum annual guarantee of revenue to be paid to such unit of local government.

History.—s. 4, ch. 79-119.

286.23 Real property conveyed to public agency; disclosure of beneficial interests; notice; exemptions.—

(1) Any person or entity holding real property in the form of a partnership, limited partnership, corporation, trust, or any form of representative capacity whatsoever for others, except as otherwise provided in this section, shall, before entering into any contract whereby such real property held in representative capacity is sold, leased, taken by eminent domain, or otherwise conveyed to the state or any local governmental unit, or an agency of either, make a public disclosure in writing, under oath and subject to the penalties prescribed for perjury, which shall state his name and address and the name and address of every person having a beneficial interest in the real property, however small or minimal. This written disclosure shall be made to the chief officer, or to his officially designated representative, of the state, local governmental unit, or agency of either, with which the transaction is made at least 10 days prior to the time of closing or, in the case of an eminent domain taking, within 48 hours after the time when the required sum is deposited in the registry of the court. Notice of the deposit shall be made to the person or entity by registered or certified mail

before the 48-hour period begins.

(2) The state or local governmental unit, or an agency of either, shall send written notice by registered mail to the person required to make disclosures under this section, prior to the time when such disclosures are required to be made, which written request shall also inform the person required to make such disclosure that such disclosure must be made under oath, subject to the penalties prescribed for perjury.

(3)(a) The beneficial interest which is represented by stock in corporations registered with the Federal Securities Exchange Commission or in corporations registered pursuant to chapter 517, whose stock is for sale to the general public, is hereby exempt from the provisions of this section. When disclosure of persons having beneficial interests in trusts is required, the person shall not be required by the provisions of this section to disclose persons having less than a 5 percent vested, noncontingent, beneficial interest in the trust.

(b) In the case of an eminent domain taking, any entity or person other than a public officer or public employee, holding real property in the form of a trust which was created more than 3 years prior to the deposit of the required sum in the registry of the court, is hereby exempt from the provisions of this section. However, in order to qualify for the exemption set forth in this section, the trustee of such trust shall be required to certify within 48 hours after such deposit, under penalty of perjury, that no public officer or public employee has any beneficial interest whatsoever in such trust. Disclosure of any changes in the trust instrument or of persons having beneficial interest in the trust shall be made if such changes occurred during the 3 years prior to the deposit of said sum in the registry of the court.

(4) This section shall be liberally construed to accomplish the purpose of requiring the identification of the actual parties benefiting from any transaction with a governmental unit or agency involving the procurement of the ownership or use of property by such governmental unit or agency.

History.—ss. 1-5, ch. 74-174; s. 1, ch. 77-174.

cf.—s. 1.01 Defines registered mail to include certified mail with return receipt requested.

286.24 Termination of Bicentennial Commission; powers of Department of Commerce.—Part V, chapter 13, is repealed December 31, 1977. The Department of Commerce shall administer and enforce such grants and contracts, and shall be a successor in interest to such contracts, of the Commission as remain in effect at the time of its abolishment. The department shall have such powers and authority as may be necessary to protect the interests of the state in matters resulting from the programs and activities undertaken by the commission in fulfillment of its statutory responsibilities.

History.—s. 1, ch. 77-203.

286.25 Publication or statement of state sponsorship.—Any nongovernmental organization which sponsors a program financed partially by state funds or funds obtained from a state agency shall, in publicizing, advertising, or describing the sponsorship of the program, state: "Sponsored by (name of organization) and the State of Florida." If the sponsorship reference is in written material, the words "State of Florida" shall appear in the same size letters or type as the name of the organization.

History.—s. 1, ch. 77-224.

286.26 Accessibility of public meetings to the physically handicapped.—Whenever any board or commission of any state agency or authority, or of any agency or authority of any county, municipal corporation, or other political subdivision, which has scheduled a meeting at which official acts are to be taken, receives, at least 48 hours prior to the meeting, a written request by a physically handicapped person to attend the meeting, directed to the chairperson or director of such board, commission, agency, or authority, such chairperson or director shall provide a manner by which such person may attend the meeting at its scheduled site or reschedule the meeting to a site which would be accessible to such person.

History.—s. 1, ch. 77-277; s. 1, ch. 79-170; s. 116, ch. 79-400.

286.28 Liability insurance; authority of counties, state agencies, and certain political subdivisions to purchase.—

(1) The public officers in charge or governing bodies, as the case may be, of every county, district school board, governmental unit, department, board, or bureau of the state, including tax or other districts, political subdivisions, and public and quasi-public corporations, other than incorporated cities and towns, of the several counties and the state, all hereinafter referred to as political subdivisions, which political subdivisions in the performance of their necessary functions own or lease and operate motor vehicles upon the public highways or streets of the cities and towns of the state or elsewhere, own or lease and operate watercraft or aircraft, or own or lease buildings or properties or perform operations in the state or elsewhere are hereby authorized, in their discretion, to secure and provide for such respective political subdivisions, and their agents and employees while acting within the scope of their employment, insurance to cover liability for damages on account of bodily or personal injury or death resulting therefrom to any person, or to cover liability for damage to the property of any person or both, arising from or in connection with the operation of any such motor vehicles, watercraft, or aircraft, from the ownership or operation of any such buildings, property, or livestock, or any other such operations, whether from accident or occurrence; and to pay the premiums therefor from any general funds appropriated or made available for the necessary and regular expense of operations of such respective political subdivisions, without the necessity of specific appropriation or specification of expense with respect thereto. Provided, that in those instances where, by general law, provision has been made for the public officer in charge or governing body of any such political subdivision to provide such insurance, this section shall not be construed to impair any such previous acts but shall be construed as cumulative thereto.

(2) In consideration of the premium at which such insurance may be written, it shall be a part of

any insurance contract providing said coverage that the insurer shall not be entitled to the benefit of the defense of governmental immunity of any such political subdivisions of the state in any suit instituted against any such political subdivision as herein provided, or in any suit brought against the insurer to enforce collection under such an insurance contract; and that the immunity of said political subdivision against any liability described in subsection (1) as to which such insurance coverage has been provided, and suit in connection therewith, are waived to the extent and only to the extent of such insurance coverage; provided, however, no attempt shall be made in the trial of any action against a political subdivision to suggest the existence of any insurance which covers the whole or in part any judgment or award which may be rendered in favor of the plaintiff, and if a verdict rendered by the jury exceeds the limit of the applicable insurance, the court shall reduce the amount of said judgment or award to a sum equal to the applicable limit set forth in the policy.

History.—ss. 1-3, ch. 28220, 1953; s. 1, ch. 57-176; s. 1, ch. 59-342; s. 1, ch. 59-76; s. 1, ch. 63-499; s. 1, ch. 67-39; s. 1, ch. 69-300; s. 1, ch. 71-230; s. 5, ch. 79-36.

Note.—Former s. 455.06.

CHAPTER 287

DEPARTMENT OF GENERAL SERVICES; DUTIES

PART I PURCHASING (ss. 287.012-287.131)

PART II MOTOR POOL (ss. 287.15-287.20)

PART III COMMUNICATIONS SYSTEMS AND SERVICES (ss. 287.25-287.29)

PART IV SECURITY OF STATE PROPERTY (ss. 287.35-287.43)

PART I

PURCHASING

287.012 Definitions.—The following definitions shall apply in part I of chapter 287:

(1) "Agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, councils, and any other unit of organization however designated.

(2) "Commodity" means any of the various supplies, materials, goods, merchandise, class B printing, equipment, and other personal property purchased, leased, or otherwise contracted for by the state and its agencies. However, commodities purchased for resale except class B printing are excluded from this definition.

(3) "Division" means the Division of Purchasing of the Department of General Services.

History.—s. 22, ch. 69-106.

287.022 Purchase of insurance.—

(1) Insurance, while not a commodity, nevertheless shall be purchased for all agencies by the division, and the procedures for purchasing insurance shall be the same as those set forth herein for the purchase of commodities.

(2) When an insurer or agent pays a commission or any portion thereof to any person, on insurance purchased under part I of this chapter, such payment shall be reported to the division in writing and under oath within 30 days thereafter. Any failure to report as required herein shall subject the insurer or agent to the penalties provided in s. 624.15.

History.—s. 22, ch. 69-106.

287.025 Prohibition against certain insurance coverage on specified state property or insurable subjects.—

(1) No primary contract of insurance shall be purchased on insurable subjects or property titled in the name of the state or its departments, divisions, bureaus, commissions, or agencies with respect to any of the following properties, coverages, or insurable subjects:

(a) Physical damage insurance on motor vehicles which are licensed for use on the public highways of this state. For the purpose of this chapter, the term "physical damage insurance" means coverage against collision, upset or overturn, fire, theft, combined additional coverage, or comprehensive;

(b) Physical damage insurance on watercraft and related equipment;

(c) Loss of rental income on any buildings unless financed in whole or in part by revenue bonds or certificates and such coverage is required by the terms thereof;

(d) Miscellaneous equipment which is subject to a transportation feature and subject to ordinarily being covered by an inland marine insurance floater. The term "miscellaneous equipment" does not include boilers and machinery or nuclear equipment;

(e) Museum collections, artifacts, relics, or fine arts;

(f) Hull coverage on aircraft;

(g) Glass insurance;

(h) Coverage for loss against vandalism or malicious mischief unless these perils are included within an all risks of physical loss form; and

(i) Insurance against loss or damage to livestock and services of a veterinary for such animals.

(2) Excess insurance may be purchased to cover loss for physical damage on the above-described properties or risk if the aggregate exposure at any one location or actual cash value of any one item exceeds the sum of $50,000. However, no excess insurance shall be purchased on any items listed in paragraphs (c), (e), (g), (h), and (i), regardless of value or risk.

(3) Any items, property, or insurable subjects titled in the name of the state or its departments, divisions, bureaus, commissions, or agencies which are not included or insured by the Florida Fire Insurance Trust Fund under chapter 284 or specifically designated not to be insured by this section shall be eligible subjects for insurance coverage through commercial insurance carriers as otherwise provided by law.

(4) No primary insurance contracts shall be purchased on any property or insurable subjects when the same is loaned to, leased by, or intended to be leased by, the state or its departments, divisions, bureaus, commissions, or agencies unless such coverage is required by the terms of the lease agreement and unless the insurance coverages required by the provisions of the lease are approved in writing by the Department of General Services.

History.—ss. 1-4, ch. 70-435; s. 1, ch. 73-64.

287.032 Purpose of division.—It shall be the purpose of the Division of Purchasing to promote efficiency, economy, and the conservation of energy and to effect coordination in the purchase of commodities for the state. The Auditor General shall make an annual performance audit and report of the Division of Purchasing and submit such report to the Legislative Auditing Committee within 60 days after the affected agency has responded to the findings of the audit.

History.—s. 22, ch. 69-106; s. 8, ch. 69-82; s. 1, ch. 76-29; s. 1, ch. 77-316.

287.042 Powers, duties, and functions.—The division shall have the following powers, duties, and functions pertaining to commodities:

(1) To canvass all sources of supply and contract for the purchase, lease, or acquisition in any manner, including purchase by installment sales or lease-purchase contracts which may provide for the payment of interest on unpaid portions of the purchase price, of all commodities required by the state government or any of its agencies under competitive bidding or by contractual negotiation. Any contract providing for deferred payments and the payment of interest shall be subject to specific rules adopted by the division;

(2) To plan and coordinate purchases in volume and to negotiate and execute purchasing agreements and contracts under which the division shall require state agencies to purchase and under which a county, municipality, or other local public agency may purchase. Purchases by any county, municipality, or other local public agency under the provisions in the state purchasing contracts shall be exempt from the competitive bid requirements otherwise applying to their purchases;

(3) To have general supervision, through the state agencies, of all storerooms and stores operated by the agencies; to provide for transfer or exchange of commodities among all state agencies and the sale of all commodities which are surplus, obsolete, or unused; and to have supervision of inventories of all commodities belonging to the state agencies. The duties imposed by this section shall not relieve any state agency from accountability for commodities under its control;

(4) To prescribe the methods of securing bids or negotiating and awarding contracts;

(5) To prescribe items and quantities to be purchased locally;

(6) In the event that no bids are received, to negotiate on the best terms and conditions;

(7) To govern the purchase by any agency of any commodity; to establish standards and specifications for any commodity; and to set the maximum fair prices that shall be paid for any commodity;

(8) To furnish copies of any purchasing regulation to the Comptroller and all agencies affected thereby. Thereafter, no agency shall purchase any commodity covered by purchasing regulations without prior approval of the division. The Comptroller shall not approve any account nor direct any payment of any account for the purchase of any commodity covered by a purchasing regulation except as authorized therein. The division shall furnish to any county, municipality, or other local public agency requesting same, copies of regulations adopted by the division;

(9) To require that every agency furnish information relative to its purchases and methods of purchasing to the division; and

(10) Except as otherwise provided herein, to adopt rules and regulations necessary to carry out the purposes of this section, including the authority to delegate to any state agency any and all of the responsibility conferred by this section, retaining to the division any and all authority for supervision thereof. Such purchasing by state agencies shall be in strict accordance with the rules, regulations, and procedures prescribed by the Department of General Services.

History.—s. 22, ch. 69-106; s. 1, ch. 70-150; s. 1, ch. 79-92.

287.043 Printing or reproduction facilities; cost records.—If any of the funds appropriated to any agency are to be expended for equipping, operating, or maintaining printing, duplicating, or reproduction services or facilities, then each such agency shall furnish such cost records to the division as may be prescribed by the division. Nothing herein shall authorize the purchase of any printing, duplicating, or reproduction equipment except under such rules and regulations as are adopted by the division. All such equipment shall be used for efficient and economical production of printed material directly related to business of the state.

History.—s. 22, ch. 69-106; s. 1, ch. 77-345.

287.052 Contracts for acquisition or purchase of commodities.—Commodities shall not be acquired by any agency pursuant to any contract for services or incidental to the services performed thereunder. Any contract providing for the acquisition of both services and commodities shall be

deemed to be a contract for the acquisition or purchase of commodities, except that service contracts may provide for purchase of reports on the findings of consultants engaged thereunder.

History.—s. 22, ch. 69-106.

287.055 Acquisition of professional architectural, engineering, landscape architectural, or land-surveying services; definitions; procedures; contingent fees prohibited; penalties.—

(1) SHORT TITLE.—This section shall be known as the "Consultants' Competitive Negotiation Act."

(2) DEFINITIONS.—For purposes of this section:

(a) "Professional services" shall mean those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered land surveying, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered land surveyor in connection with his professional employment or practice.

(b) "Agency" means the state or a state agency, municipality, or political subdivision, a school district or a school board.

(c) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or land surveying in the state.

(d) "Compensation" means the total amount paid by the agency for professional services.

(e) "Agency official" means any elected or appointed officeholder, employee, consultant, person in the category of other personal service or any other person receiving compensation from the state, a state agency, municipality, or political subdivision, a school district or a school board.

(f) "Project" means that fixed capital outlay study or planning activity described in the public notice of the state or a state agency pursuant to paragraph (3)(a). An agency shall prescribe by administrative rule procedures for the determination of a project under its jurisdiction. Such procedures may include:

1. Determination of a project which constitutes a grouping of minor construction, rehabilitation, or renovation activities.

2. Determination of a project which constitutes a grouping of substantially similar construction, rehabilitation, or renovation activities.

(g) A "continuing contract" is a contract for professional services entered into in accordance with all the procedures of this act between an agency and a firm whereby the firm provides professional services to the agency for work of a specified nature as outlined in the contract required by the agency with no time limitation except that the contract shall provide a termination clause.

(3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES.—

(a) Each agency shall publicly announce, in a uniform and consistent manner, each occasion when professional services are required to be purchased for a project whose basic construction cost is estimated by the agency to be more than $100,000 or for a planning or study activity when the fee for professional services exceeds $5,000, except in cases of valid public emergencies so certified by the agency head. Public notice shall include a general description of the project and shall indicate how interested consultants can apply for consideration.

(b) Each agency shall encourage firms engaged in the lawful practice of their profession who desire to provide professional services to the agency to submit annually a statement of qualifications and performance data.

(c) Any firm or individual desiring to provide professional services to the agency must first be certified by the agency as qualified pursuant to law and the regulations of the agency. The agency shall make a finding that the firm or individual to be employed is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual.

(d) Each agency shall adopt administrative procedures for the evaluation of professional services, including, but not limited to, capabilities, adequacy of personnel, past record and experience, and such other factors as may be determined by the agency to be applicable to its particular requirements.

(e) The public shall not be excluded from the proceedings under this section.

(4) COMPETITIVE SELECTION.—

(a) For each proposed project, the agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with, and may require public presentations by, no less than three firms, regarding their qualifications, approach to the project, and ability to furnish the required service.

(b) The agency shall select, in order of preference, no less than three firms deemed to be most highly qualified to perform the required services after considering such factors as the ability of professional personnel, past performance, willingness to meet time and budget requirements, location, recent, current, and projected work loads of the firms, and the volume of work previously awarded to the firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

(c) This subsection shall not apply to a professional service contract for a project whose basic construction cost is estimated by the agency to be $100,000 or less or for a planning or study activity when the fee for professional services is $5,000 or less.

(d) Nothing in this act shall be construed to prohibit continuing contracts between firm and agency.

(5) COMPETITIVE NEGOTIATION.—

(a) The agency shall negotiate a contract with the most qualified firm for professional services at compensation which the agency determines is fair, competitive, and reasonable. In making such determination the agency shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For all lump-sum or cost-plus-a-fixed-fee professional service contracts over $50,000, the agency shall

require the firm receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract under which such a certificate is required shall contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within 1 year following the end of the contract.

(b) Should the agency be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the agency determines to be fair, competitive, and reasonable, negotiations with that firm shall be formally terminated. The agency shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency shall terminate negotiations. The agency shall then undertake negotiations with the third most qualified firm.

(c) Should the agency be unable to negotiate a satisfactory contract with any of the selected firms, the agency shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this subsection until an agreement is reached.

(6) PROHIBITION AGAINST CONTINGENT FEES.—

(a) Each contract entered into by the agency for professional services shall contain a prohibition against contingent fees as follows: "The architect (or registered land surveyor or professional engineer, as applicable) warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered land surveyor, or professional engineer, as applicable) to solicit or secure this agreement and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered land surveyor or professional engineer, as applicable) any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this agreement." For the breach or violation of this provision, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

(b) Any individual, corporation, partnership, firm, or company, other than a bona fide employee working solely for an architect, professional engineer, or registered land surveyor, who offers, agrees, or contracts to solicit or secure agency contracts for professional services for any other individual, company, corporation, partnership, or firm, and to be paid, or is paid, any fee, commission, percentage, gift, or any other consideration contingent upon, or resulting from, the award or the making of a contract for professional services shall, upon conviction in a competent court of this state, be found guilty of a first degree misdemeanor punishable as provided in s. 775.082 or s. 775.083.

(c) Any architect, professional engineer, or registered land surveyor, or any group, association, company, corporation, firm, or partnership thereof, who shall offer to pay, or pay, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or making of any agency contract for professional services, shall, upon conviction in a state court of competent authority, be found guilty of a first degree misdemeanor punishable as provided in s. 775.082 or s. 775.083.

(d) Any agency official who offers to solicit or secure, or solicits or secures, a contract for professional services and to be paid, or is paid, any fee, commission, percentage, gift, or any other consideration contingent upon the award or making of such a contract for professional services between the agency and any individual person, company, firm, partnership, or corporation shall, upon conviction by a court of competent authority, be found guilty of a first degree misdemeanor punishable as provided in s. 775.082 or s. 775.083.

(7) AUTHORITY OF DEPARTMENT OF GENERAL SERVICES.—Notwithstanding any other provision of this section, the Department of General Services, Division of Building Construction and Property Management, shall be the agency of state government which is solely and exclusively authorized and empowered to administer and perform the functions described in subsections (3), (4), and (5) respecting all projects for which the funds necessary to complete same are appropriated to the Department of General Services, irrespective of whether such projects are intended for the use and benefit of the Department of General Services or any other agency of government. However, nothing herein shall be construed to be in derogation of any authority conferred on the Department of General Services by other express provisions of law. Additionally, any agency of government may, with the approval of the Department of General Services, delegate to the Department of General Services authority to administer and perform the functions described in subsections (3), (4), and (5). Under the terms of the delegation, the agency may reserve its right to accept or reject a proposed contract.

(8) STATE ASSISTANCE TO LOCAL AGENCIES.—On professional service contracts for which the fee is over $25,000, the Department of Transportation or the Department of General Services shall provide, upon request by a municipality, political subdivision, school board, or school district, and upon reimbursement of the costs involved, assistance in selecting consultants and in negotiating consultant contracts.

(9) APPLICABILITY TO EXISTING CONTRACTS.—Nothing in this section shall affect the validity or effect of any contracts in existence on July 1, 1973.

(10) REUSE OF EXISTING PLANS.—Notwithstanding any other provision of this section, there shall be no public notice requirement or utilization of the selection process as provided in this section for projects in which the agency is able to reuse existing plans from a prior project. However, subsequent to

July 1, 1975, public notice for any plans which are intended to be reused at some future time shall contain a statement which provides that the plans are subject to reuse in accordance with the provisions of this subsection.

(11) CONSTRUCTION OF LAW.—Nothing in the amendment of this section by ch. 75-281, Laws of Florida, is intended to supersede the provisions of ss. 235.211 and 235.31.

History.—ss. 1-8, ch. 73-19; ss. 1-3, ch. 75-281; s. 1, ch. 77-174; s. 1, ch. 77-199.

287.057 Purchase of professional and technical services.—

(1) No purchase of professional or technical services shall be made by the state or any agency thereof, except by the Legislature, unless the same is evidenced by a written agreement embodying all provisions and conditions of the purchase and executed prior to the rendering of any service under the agreement except in cases of valid emergencies certified by the agency head.

(2) The written agreement shall include, but not be limited to, a provision that bills for fees or other compensation for services or expenses submitted for professional or technical services shall be submitted in detail sufficient for a proper preaudit and postaudit thereof and that bills for any travel expenses shall be submitted and paid in accordance with the rates specified in s. 112.061 governing payments by the state for travel expenses.

(3) Nothing in this section shall affect the validity or effect of any contract in existence on April 25, 1978.

History.—s. 1, ch. 78-4.

287.062 Competitive bids, when required; exception.—

(1) No purchase of commodities may be made when the purchase price thereof is in excess of $2,500 unless made upon competitive bids received, except:

(a) If the head of any state agency shall maintain that an emergency exists in regard to the purchase of any commodity, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the head of such agency shall file with the division a statement under oath certifying the conditions and circumstances. In the case of the emergency purchase of insurance, the period of coverage of such insurance shall not exceed a period of 30 days; and all such emergency purchases shall be reported to the head of the Department of General Services.

(b) Purchasing agreements, contracts, and maximum price regulations executed by the division are excepted from bid requirements.

(c) Commodities available only from a single source may be excepted from the bid requirements upon the filing by the head of an agency of a certification of conditions and circumstances with the division if, subsequent thereto, the division authorizes the exception in writing.

(d) When it is in the best interest of the state, the head of the Department of General Services may authorize the division director to purchase insurance by negotiation, but this shall be done only under conditions most favorable to the public interest and upon a showing that said purchase shall result in the lowest ultimate cost for the coverage obtained.

(2) When any contract requires deferred payments and the payment of interest, such contract shall be submitted to the Comptroller of the state for the purpose of preaudit review and approval prior to acceptance by the state. The Comptroller shall adopt rules for the purpose of this subsection. Annually, on or before February 1, the Comptroller shall submit to the presiding officer of each house of the Legislature a report containing a summary of each such contract approved or rejected during the previous calendar year. The report shall contain, for each contract, a description of the commodity or commodities, the name of the acquiring agency, the name of the vendor, and pertinent financial terms of the contract.

History.—s. 22, ch. 69-106; s. 1, ch. 78-109; s. 2, ch. 79-92.

287.072 Delegation of authority to purchase.—

(1) Except as limited herein, the division may delegate the authority for the contracting for, or the purchase, lease, or acquisition of, commodities in the following cases:

(a) Technical instruments and supplies, technical books, and other printed matter on technical subjects; manuscripts, maps, books, pamphlets, and periodicals for the use of the State Library or any other library in the state supported in whole or in part by state funds.

(b) Perishable articles, such as fresh vegetables, fruit, fish, meat, eggs, and milk. No other article shall be considered perishable within the meaning of this clause unless so classified by the division.

(c) Life and health insurance when no part of the premium is paid by the state.

(2) All contracts for, or purchases, leases, or acquisitions of, commodities described in this section made directly by the agencies shall, whenever possible, be based on two or more competitive bids. Whenever an order, contract, lease, or acquisition of such commodities is awarded by any agency, a copy of such order, contract, lease, or other document together with a record of the competitive bids, if any, upon which it was based shall be forwarded to the division.

History.—s. 22, ch. 69-106.

287.082 Commodities manufactured in state given preference.—Whenever two or more competitive bids are received, one or more of which relates to commodities manufactured within this state, and whenever all things stated in such received bids are equal with respect to price, quality, and service, the commodities manufactured within this state shall be given preference.

History.—s. 22, ch. 69-106.

287.083 Purchase of commodities.—

(1) It shall be the policy of the state for the Division of Purchasing to consider the life-cycle cost of commodities purchased by the state, when applicable and feasible as determined by the division.

(2) Definitions.—For the purpose of this section:

(a) "Major energy-consuming product" means any article so designated by the division in conjunc-

tion with the [1]State Energy Office of the Department of Administration.

(b) "Energy-efficiency standard" means a performance standard which prescribes the relationship of the energy use of a product to its useful output of services.

(3)(a) The division is authorized to establish by rule energy-efficiency standards for major energy-consuming products, in conjunction with the [1]State Energy Office of the Department of Administration.

(b) When federal energy-efficiency standards exist, the division shall, when feasible, adopt standards at least as stringent as the federal standards.

(4) When energy-efficiency standards are established, life-cycle costs shall be used by the division in contracting for major energy-consuming products.

(5) In determining the life-cycle cost, the division may consider the acquisition cost of the product; the energy consumption and the projected cost of energy over the useful life of the product; and the anticipated trade-in, resale, or salvage value of the product.

History.—s. 2, ch. 77-316.

[1]Note.—See s. 43, ch. 79-190, which transferred all records, property, and funds of the State Energy Office to the Executive Office of the Governor.

287.084 Preference to Florida businesses.—

(1) When a county, municipality, school district, or other political subdivision of the state is required to make purchases of personal property through competitive bidding and the lowest responsible bid is by a bidder whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state, then the county, municipality, school district, or other political subdivision of this state may award a preference to the lowest responsible bidder having a principal place of business within this state, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible bidder has his principal place of business. However, this section shall not apply to transportation projects for which federal aid funds are available.

(2) If an invitation for bids provides for the granting of such preference as is provided herein, any bidder whose principal place of business is outside the State of Florida must accompany any written bid documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts.

History.—s. 1, ch. 77-460; s. 117, ch. 79-400.

287.092 Preference to certain foreign manufacturers.—Any foreign manufacturing company with a factory in the state and employing over 200 employees working in the state shall have preference over any other foreign company when price, quality, and service are the same, regardless of where the product is manufactured.

History.—s. 22, ch. 69-106.

287.102 Class B printing.—No general contract shall be let to cover printing designated as class B, but each job coming under this classification shall be let separately, under regulations adopted by the division, to the lowest responsible bidder. Such contract shall apply only to the work under consideration and competitive bids shall be required on all purchases in excess of $1,000. All public printing governed hereby shall be done in accordance with s. 283.03.

History.—s. 22, ch. 69-106; s. 2, ch. 76-71; s. 3, ch. 78-145; s. 5, ch. 79-135.

287.121 Assistance of Department of Legal Affairs.—The Department of Legal Affairs shall assist in the preparation of forms of contracts and of contractual language for use in all contracts governed by this part of chapter 287.

History.—ss. 11, 22, 35, ch. 69-106.

287.131 Assistance of Department of Insurance.—The Department of Insurance shall provide the division with technical assistance in all matters pertaining to the purchase of insurance for all agencies, and shall make surveys of the insurance needs of the state and all departments thereof, including the benefits, if any, of self-insurance.

History.—ss. 13, 22, 35, ch. 69-106.

PART II

MOTOR POOL

287.15 Purchase or lease of motor vehicles, watercraft or aircraft; prior approval of Division of Motor Pool of the Department of General Services.—No state agency shall purchase, lease, or acquire any motor vehicle, watercraft, or aircraft of any type unless prior approval is first obtained from the Division of Motor Pool of the Department of General Services. However, nothing herein shall prohibit the lease for casual use of motor vehicles, or remove the requirement that all purchases be in compliance with the rules and regulations of the Division of Purchasing.

History.—s. 22, ch. 69-106.

287.16 Powers and duties of division.—The Division of Motor Pool shall have the following powers, duties, and responsibilities:

(1) To obtain the most effective and efficient use of motor vehicles, watercraft, and aircraft for state purposes.

(2) To establish and operate central facilities for the acquisition, disposal, operation, maintenance,

repair, storage, supervision, control, and regulation of all state-owned or leased aircraft and motor vehicles and to operate any state facilities for those purposes. Acquisition may be by purchase, lease, loan, or in any other legal manner.

(3) In its discretion, to require every state agency to transfer its ownership, custody, and control of every aircraft and motor vehicle, and associated maintenance facilities and equipment, except those used principally for law enforcement or fire control purposes, to the Department of General Services, including all right, title, interest, and equity therein.

(4) Upon requisition and showing of need, to assign suitable aircraft or motor vehicles, on a temporary (for a period up to and including 1 month) or permanent (for a period from 1 month up to and including 1 full year) basis, to any state agency.

(5) To allocate and charge fees to the state agencies to which aircraft or motor vehicles are furnished, based upon any reasonable criteria.

(6) To adopt and enforce rules and regulations for the efficient and safe use, operation, maintenance, repair, and replacement of all state-owned or leased aircraft and motor vehicles and to require the placement of appropriate stickers, decals, or other markings upon the aircraft and motor vehicles of the state. The division may delegate to the respective heads of the agencies to which aircraft and motor vehicles are assigned the duty of enforcing the rules and regulations adopted by the division.

(7) To contract for specialized maintenance services.

(8) To require any state agency to keep records and make reports regarding aircraft and motor vehicles to the division as may be required.

(9) To submit written recommendations to the Legislature no later than 60 days prior to the commencement of the next regular session of the Legislature as to efficient and effective methods by which central facilities could be established and operated for the acquisition, operation, maintenance, repair, storage, supervision, control, and regulation of all state-owned or leased motor vehicles and watercraft.

(10) To establish and operate central facilities to determine the mode of transportation to be used by state employees traveling on official state business and to schedule and coordinate use of state-owned or leased aircraft and passenger-carrying vehicles to assure maximum utilization of state aircraft, motor vehicles, and employee time by assuring that employees travel by the most practical and economical mode of travel. The division shall consider the number of employees making the trip to the same location, the most efficient and economical means of travel considering time of employee, transportation cost and subsistence required, the urgency of the trip, and the nature and purpose of the trip.

(11) To provide the Legislature annual reports at the end of each calendar year concerning the utilization of all aircraft in the executive pool and special purpose aircraft.

History.—s. 22, ch. 69-106; s. 1, ch. 70-328; ss. 1, 2, ch. 72-207; s. 3, ch. 77-112; s. 1, ch. 77-396.

287.161 Executive aircraft pool; assignment of aircraft; charge for transportation.—

(1) There is hereby created within the Bureau of Aircraft an executive aircraft pool consisting of five state-owned aircraft for the purpose of furnishing executive air travel. Such aircraft shall not be a model in excess of a two-engine prop jet. Aircraft included in the executive aircraft pool shall not be specifically assigned to any department or agency on any basis.

(2) The Bureau of Aircraft shall charge a rate of not less than 10 cents per passenger mile for all persons receiving transportation from the executive aircraft pool. However, if the aircraft is traveling with available seats, state employees receiving transportation from the executive aircraft pool shall not be charged more than 10 cents per mile.

(3) Fees collected for persons traveling by aircraft in the executive aircraft pool shall be deposited into the Bureau of Aircraft Trust Fund. Any excess of fees deposited in the Bureau of Aircraft Trust Fund on June 30 of each fiscal year, after cost of fuel, oil and normal maintenance are paid, shall be transferred to the General Revenue Fund unallocated.

History.—ss. 1, 2, ch. 72-207.

287.17 Limitation on use of motor vehicles and aircraft.—The aircraft and motor vehicles in the central motor pool or any branch thereof shall be available for official state business only.

History.—s. 22, ch. 69-106.

287.18 Repair and service of motor vehicles and aircraft.—The director of the Division of Motor Pool may require a department or any state agency having facilities for the repair of aircraft or motor vehicles and for the storage and distribution of gasoline and other petroleum products to repair aircraft and motor vehicles and to furnish gasoline and other petroleum products to any other department or agency and shall compensate for the cost of such services and products.

History.—s. 22, ch. 69-106.

287.19 Transfer of funds.—All moneys designated for or appropriated to any agency for the use, operation, maintenance, repair, or replacement of any state-owned or leased motor vehicles or aircraft shall be transferred to the Division of Motor Pool as required by the division.

History.—s. 22, ch. 69-106.

287.20 Motor vehicles to which law inapplicable.—The provisions of part II of chapter 287 do not apply to motor vehicles used exclusively by the Department of Highway Safety and Motor Vehicles for law enforcement purposes. Title to such vehicles shall be in the state.

History.—s. 22, ch. 69-106.

PART III

COMMUNICATIONS SYSTEMS AND SERVICES

287.25 Powers and duties of Division of Communications of the Department of General Services.—The Division of Communications of the Department of General Services shall have the following powers, duties, and functions:

(1) To develop a state plan for communications services for all state agencies.

(2) To coordinate the purchase, lease, and use of all communications services for state government, including communications services provided as part of any other total system to be used by the state or any of its agencies.

(3) To advise state agencies and political subdivisions of the state as to systems or methods to be used to meet communications requirements efficiently and effectively.

(4) To consolidate the communications systems and services of state agencies and to provide for their joint use by the agencies.

(5) To assume management responsibility for any consolidated system or service.

(6) To enter into agreements for the support and use of the communications services of state agencies and of political subdivisions of the state.

(7) To provide for the rendering of aid between state government and its political subdivisions with respect to the organizing of communication systems.

(8) To use or acquire communications facilities now owned or operated by any state agency.

(9) To standardize policies and procedures for the use of such services.

(10) To delegate to state agencies the powers of acquisition, lease, and utilization of communications facilities and services.

(11) To purchase from or contract with suppliers and communications common carriers for communications facilities or services, including private line services.

(12) To apply for, receive, and hold, or assist agencies in applying for, receiving, or holding, such authorizations, licenses, and allocations or channels and frequencies to carry out the purposes of part III of chapter 287.

(13) To acquire real estate, equipment, and other property.

(14) To cooperate with any federal, state, or local civil defense agency in providing for emergency communications services.

(15) Unless delegated to the agencies, to control and approve the purchase, lease, and use of all communications equipment and facilities, including communications services provided as part of any other total system to be used by the state or any of its agencies.

(16) To take ownership, custody, and control of existing communications equipment and facilities, including all right, title, interest, and equity therein, to carry out the purposes of this part. However, the provisions of this subsection shall in no way affect the rights, title, interest, or equity in any such equipment or facilities owned by, or leased to, the state or any state agency by any telephone company.

(17) To prescribe rules and regulations for the use of the state communications system.

(18) To provide a means whereby political subdivisions of the state may utilize the state communications system upon such terms and under such conditions as the division may establish.

(19) To apply for and accept federal funds for any of the purposes of this part as well as gifts and donations from individuals, foundations, and private organizations.

History.—s. 22, ch. 69-106; s. 1, ch. 70-327.
cf.—s. 229.8051 Public broadcasting program system.

287.26 Construction of terms, "communications" or "communications system."—Any reference in this part to "communications" or "communications system" means any transmission, emission, and reception of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, optical, or other electromagnetic systems and shall include all facilities and equipment owned, leased, or used by all agencies and political subdivisions of state government.

History.—s. 22, ch. 69-106.

287.27 Cooperative use of systems and services.—State departments shall cooperate and assist in the joint use of communications systems and services. The director of the Division of Communications shall develop a system of equitable billings and charges for communication services provided in any consolidated or joint-use system of communications.

History.—s. 22, ch. 69-106.

287.28 Emergency assumption of control.—In the event of an emergency, the Governor may direct civil defense assumption of control over all or part of the state communications system.

History.—s. 22, ch. 69-106.

287.29 Statewide system of regional law enforcement communications.—

(1) It is the intent and purpose of the Legislature that a statewide system of regional law enforcement communications be developed whereby maximum efficiency in the use of existing radio channels is achieved in order to deal more effectively with the apprehension of criminals and the prevention of crime generally. To this end, all law enforcement agencies within the state are directed to provide the Division of Communications of the Department of General Services with any information the division requests for the purpose of implementing the provisions of subsection (2).

(2) The Division of Communications is hereby authorized and directed to develop a statewide system of regional law enforcement communications. In formulating such a system, the division shall divide the state into appropriate regions and shall develop a program which shall include, but not be limited to, the following provisions:

(a) The communications requirements for each county and municipality comprising the region.

(b) An interagency communications provision which shall depict the communication interfaces between municipal, county, and state law enforcement entities which operate within the region.

(c) An organizational layout provision which shall include each law enforcement entity and the number of radio operating units, fixed, mobile, and handheld, per entity.

(d) Frequency allocation and use provision which shall include, on an entity basis, each assigned and planned radio channel and the type of operation, simplex, duplex, or half-duplex, on each channel.

(e) An operational provision which shall include the dispatching, logging, and operating procedures as pertains to communications on an entity basis, a regional basis, and an emergency basis.

(f) A law enforcement agency service telephone provision which shall include the telephone and numbering plan throughout the region.

(3) The statewide system of regional law enforcement communications shall be developed by the Division of Communications no later than June 1, 1973. The division shall be responsible for the implementation and coordination of such system into the state communications plan. The division shall adopt any necessary rules and regulations for implementing and coordinating such system.

(4) The director of the division is designated as the director of the statewide system of regional law enforcement communications and, for the purpose of carrying out the provisions of this section, is authorized to coordinate the activities of the system with other interested state agencies and local law enforcement agencies.

(5) No law enforcement communications system shall be established or present system expanded after July 1, 1972, without the prior approval of the Division of Communications.

(6) Within the limits of its capability the Department of Law Enforcement is encouraged to lend assistance to the Division of Communications in the development of the statewide system of regional law enforcement communications proposed by this section.

History.—ss. 1-6, ch. 72-296; s. 1, ch. 77-174; s. 12, ch. 79-8.

PART IV

SECURITY OF STATE PROPERTY

287.35 Powers and duties of the Division of Security.—The Division of Security of the Department of General Services shall have the following powers and duties:

(1) To provide and maintain the security of state-owned or state-leased property, excluding state universities and custodial institutions, the governor's office, the governor's mansion and the grounds thereof, and the Supreme Court.

(2) To employ:

(a) Security agents who hold certification as police officers in accordance with the minimum standards and qualifications as set forth in s. 943.13 and the provisions of chapter 110, who shall have the authority to bear arms, make arrests, and apply for arrest warrants; and

(b) Guards and administrative, clerical, technical, and other personnel as may be required.

(3) To enforce rules of the Department of General Services governing the regulation of traffic and parking on state-owned or state-leased property, including, but not limited to, issuing citations for the violation of such rules or the traffic laws of the state or any county or municipality and impounding illegally or wrongfully parked vehicles.

(4) To delegate its duties provided in this section to any state agency occupying such state-owned or state-leased property.

History.—s. 2, ch. 76-247; s. 1, ch. 77-174.

287.36 Investigations.—The Division of Security shall not have the authority to conduct investigations of any kind, except traffic accident investigations and investigations relating to the security required by this part. Any other matters that warrant criminal investigation shall be referred to the appropriate law enforcement agency for investigation, including records, reports, or statements relating to such matters.

History.—s. 2, ch. 76-247.

287.37 Arrests.—Persons arrested by security agents of the Division of Security shall be delivered to the sheriff of the county in which the arrest takes place.

History.—s. 2, ch. 76-247.

287.38 Ex officio security agents.—The Department of Highway Safety and Motor Vehicles, the Department of Law Enforcement, and law enforcement officers of counties and municipalities shall be ex officio security agents of the Division of Security and may, when authorized by the division, enforce rules and laws applicable to the powers and duties of the division to provide and maintain the security required by this part.

History.—s. 2, ch. 76-247; s. 13, ch. 79-8.

287.39 Contracts with counties, municipalities, or licensed private security agencies.—The Division of Security may contract with any county, municipality, or licensed private security agency to provide and maintain the security of state-owned or state-leased property required by this part upon such terms as the division may deem to be in the best interest of the state.

History.—s. 2, ch. 76-247.

287.40 Equipment.—

(1) The Division of Security is specifically authorized to purchase, sell, trade, rent, lease, and maintain all necessary equipment, uniforms, motor vehicles, communication systems, housing facilities, and office space, and perform any other acts necessary for the proper administration and enforcement of this part, pursuant to part I of chapter 287. The division may prescribe a distinctive uniform to be worn by security personnel in the performance of their duties pursuant to subsection 287.35(3). The division may prescribe a distinctive emblem to be worn by all security agents or guards.

(2) It is unlawful for any unauthorized person to wear a uniform or emblem prescribed by the division, or a similar uniform or emblem, or to impersonate, pretend, or represent himself to be a security agent or guard. Any person violating the provisions of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 2, ch. 76-247.

287.41 Bonding required of officers and agents.—The Department of General Services shall insure that each officer and agent of the Division of Security is adequately bonded in accordance with its procedures relating to blanket bonding of public employees.

History.—s. 2, ch. 76-247.

287.43 Rules; traffic regulation.—The Department of General Services shall adopt and promulgate rules to regulate traffic and parking on state-owned or state-leased property, not in conflict with any state law or county or municipal ordinance, and to carry out the provisions of this part.

History.—s. 2, ch. 76-247.

CHAPTER 288

COMMERCIAL DEVELOPMENT AND CAPITAL IMPROVEMENTS

288.03 Powers and duties of division.—The general purposes of the Division of Economic Development of the Department of Commerce shall be to guide, stimulate, and promote the coordinated, efficient, and beneficial development of the state and its regions, counties, and municipalities in accordance with present and future needs and resources and the requirements of the prosperity, convenience, comfort, health, safety, and general welfare of the people of the state. For the accomplishment of such purposes, the division shall have the power and authority to:

(1) Create and build Florida industries.

(2) Promote commerce and the sale of Florida products.

(3) Encourage employment for Florida citizens.

(4) Raise the earning level of Florida's citizens.

(5) In order to promote and develop business, agriculture, industry, commerce, and employment for citizens of the state, plan and conduct a campaign of information, advertising, and publicity relating to the business, industrial, commercial, agricultural, educational, transportation, and residential facilities, advantages, and products of the state and all parts thereof.

(6) Disseminate any such information pertaining to Florida by:

(a) Preparing and circulating motion pictures.

(b) Preparing, purchasing, and distributing by mail or other means of advertising, literature, and other material, including exhibits.

(c) Although not specifically detailed but nevertheless included in such media, promoting and encouraging of, and, if necessary, contributing to, the happening and the holding of events and activities within the state, including follow-up contacts by personnel of the division within or without the state which in the judgment of the division will beneficially publicize the state in furtherance of the purposes, powers, and duties of the division as prescribed in this chapter.

(7) Encourage and cooperate with other public and private organizations or groups in their efforts to publicize the agricultural and industrial advantages of the state.

(8) Plan and carry out programs designed to enlarge and improve trade with other states and with foreign countries, and particularly with countries in the Western Hemisphere.

(9) Study and recommend annually to the Governor and the Legislature, by January 15, such actions or measures as are necessary or desirable to remove

barriers to free and advantageous flow of commerce and to relieve restrictions or burdens imposed by law or otherwise which adversely retard or affect the legitimate expansion and development of commerce and industry.

(10) Encourage research designed to further new and more extensive uses of the natural and other resources of the state, with a view to the development of new products and industrial processes.

(11) Promote and encourage the expansion and development of markets for Florida products.

(12) Serve as a clearinghouse for research, planning and programs to relieve the industrial problems of the state.

(13) Investigate and study conditions affecting Florida business, industry and commerce, collect and disseminate information and encourage technical studies, scientific investigations, statistical research and educational activities necessary or useful for the proper execution of the powers and duties of the Division of Economic Development.

(14) Plan and develop an effective business information service that will directly assist Florida industry and also encourage industries outside the state to use business facilities within the state.

(15) Compile, collect and periodically make available scientific indexes and other information relating to current business conditions.

(16) Study long-range trends and developments in the industries of the state and analyze the reasons underlying such trends; study costs and other factors affecting successful operation of businesses within the state; and make an annual report to the Governor and to the Legislature, by January 15, including recommendations for the improvement of any conditions, and for the elimination of any restrictions or burdens imposed by law, or otherwise existing, which adversely affect or retard legitimate development and expansion of business, industry, agriculture, and commerce.

(17) Upon request of the Governor, inquire into and report to him concerning any program of public state improvements and the financing thereof.

(18) Advise, assist and cooperate with municipal, county, regional, metropolitan area and other local planning and development agencies within the state in preparing plans and programs for physical and economic development of such areas.

(19) In accordance and compliance with any federal law or regulation now enacted or hereafter to be enacted, act as the official agency of the state to work with federal agencies in matters affecting any purpose as to which the Legislature has not designated another state officer, board, bureau, commission, department, or agency in relation thereto; state, regional, county, metropolitan area or municipal planning, planning or construction of public works, urban redevelopment, and other matters concerning the acquisition, planning, construction, development, financing, control, improvement, or distribution of lands, buildings, structures, facilities, goods or services in the interest of the public, or for public purposes, or involving the expenditure of public funds, and act as the official agency of the state in connection with the grant or advance of any federal or other funds or credits to the state or through the state to its local governing bodies, in compliance with any such federal law.

(20) Accept, and expend, without the necessity of appropriation by the Legislature, any gift or grant of money made to the division for any or all of the purposes specified in this section.

(21) Provide, arrange, and make expenditures for transportation, lodging, meals, and other reasonable and necessary items and services for such necessary persons as determined by the head of the department or his designated representative, in connection with the performance of promotional and other duties of the division; however, entertainment expenses shall be authorized only when meeting with business prospects, potential prospects, purchasers of Florida exports, potential purchasers of Florida exports, and foreign governmental dignitaries defined in subsection (23). All expenditures in excess of $10 made pursuant to this section shall be substantiated by paid bills therefor. Complete and detailed justification for all expenditures made pursuant to this section shall be shown on the travel expense voucher or attached thereto. Transportation and incidental expenses, other than those provided in s. 112.061, shall only be authorized for officers and employees of the state, other authorized persons, and business prospects when traveling pursuant to subsection (23). All other transportation and incidental expenses pursuant to this section shall be as provided in s. 112.061. Operational or promotional advancements, as defined in s. 288.35(4), obtained pursuant to this section, shall not be commingled with any other funds. Any unused operational, promotional, or other funds advanced pursuant to this section shall be refunded promptly within 5 work days after completion of the travel period.

(22) Pay by advancement or reimbursement, or a combination thereof, the costs of per diem of officers and employees of the state and other authorized persons, for foreign travel at the current rates as specified in the federal publication "Standardized Regulations (Government Civilians, Foreign Areas)," and incidental expenses as provided in s. 112.061(8). The provisions of this subsection shall apply for any state officer or employee traveling in foreign countries for the purpose of promoting economic development of the state, if such travel expenses are approved and certified by the agency head from whose funds the traveler is paid. As used in this subsection, the term "authorized person" shall have the same meaning as provided in s. 112.061(2)(e). With the exception of provisions concerning rates of payment for per diem, the provisions of s. 112.061 are applicable to the travel described in this subsection. As used in this subsection, "foreign travel" means all travel outside the United States. Persons traveling in foreign countries pursuant to this section shall not be entitled to reimbursements or advancements pursuant to s. 112.061(6)(a)2.

(23) Pay by advancement or reimbursement, or by a combination thereof, the actual reasonable and necessary costs of meals, lodging, and incidental expenses of officers and employees of the state and other authorized persons [1]when meeting with a business prospect of the state, purchaser of Florida ex-

ports, or foreign governmental dignitaries. Furthermore, when actually traveling with a business prospect or purchaser of Florida exports or foreign governmental dignitaries, the actual cost of transportation is allowable. As used in this subsection, "business prospect" means any person or representative of a firm actively considering the location or relocation of a business within the state. With the exception of provisions concerning rates of payment, the provisions of s. 112.061 are applicable to the travel described in this subsection.

(24) Annually prepare a list, for the calendar year, of new companies locating in the state, existing companies expanding operations in the state, companies moving operations out of the state, companies halting operations for bankruptcy or other reasons, and companies of 100 employees or more involved in layoffs of at least 15 percent of their full-time employees. This list is to be submitted to the Governor and to the Legislature by February 15 of each year. Each listing shall include, but not be limited to, the company's:

(a) Standard Industrial Code or subcategory.
(b) Location in Florida.
(c) Investment, in dollars.
(d) Number of employees and the increase or decrease in such number, if applicable.
(e) Type business and services offered or products produced, sold, etc., if applicable.
(f) In the case of new companies locating in the state and companies moving operations out of the state, the reasons the company took such action.

History.—s. 3, ch. 29788, 1955; s. 1, ch. 65-8; s. 2, ch. 65-173; ss. 1, 3, ch. 65-178; ss. 17, 35, ch. 69-106; s. 82, ch. 71-355; s. 1, ch. 73-283; s. 1, ch. 74-230; s. 1, ch. 76-202; s. 1, ch. 77-18; s. 1, ch. 77-174; s. 1, ch. 78-184; s. 1, ch. 78-375.

[1]**Note.**—The words "when meeting" were inserted by the editors to correct an apparent error in engrossing House Amendment 3 to S.B. 1357 (ch. 78-375). See 1978 Senate Journal, p. 778.

288.06 Contracts; research activities.—In the performance of its duties, the Division of Economic Development of the Department of Commerce is empowered and authorized to make and enter into contracts, and to assume such other functions as are necessary to carry out the provisions of this chapter that are not inconsistent with this or other laws. The division may make and enter into contracts with other boards, commissions, agencies and institutions of this state or other states, upon such terms as may be agreed upon, to have such studies and research activities conducted as may be necessary and proper, the cost thereof to be paid out of funds which may be appropriated to the division.

History.—s. 6, ch. 29788, 1955; ss. 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 1, ch. 77-174.

288.07 Accessibility of records, data, and information of other state agencies.—In collecting and assembling information, the Division of Economic Development of the Department of Commerce is authorized to make use of such pertinent data as may be secured from boards, commissions, officials, agencies and institutions in the state. The division shall have access to records, data, information and statistics of such other boards, commissions, agencies, officials and institutions, except such records or information that may be required by law to be confidential or secret, and any and all such state agencies are required to furnish or make available to the division, as requested, such records, data, information and statistics necessary or proper for the operation of the division.

History.—s. 7, ch. 29788, 1955; ss. 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 1, ch. 77-174.

288.075 Confidentiality of records.—

(1) "Economic development agency" means the Division of Economic Development of the Department of Commerce or any industrial development authority created in accordance with part III of chapter 159 or by special law.

(2) Upon written request from a private corporation, partnership, or person, information, records, reports, data, and documents of an economic development agency which contain or would provide information concerning plans, intentions, or interests of such private corporation, partnership, or person to locate, relocate, or expand any of its manufacturing or other business activities in Florida shall be privileged and confidential and shall not be published or open to public inspection and shall be exempt from the provisions of s. 119.07(1). This privilege and confidentiality shall only apply for a period not to exceed 24 months from the date an initial inquiry is received by the economic development agency, except upon petition by any party to a court of competent jurisdiction and upon determination by said court that the petitioner has proven, in the opinion of the court, need for access to such documents.

(3) Nothing herein shall be construed to waive any provision of chapter 120 or any other provision of law requiring a public hearing.

(4) No public officer or employee acting in his individual capacity shall enter into a binding agreement with any corporation, partnership, or person when such public officer or employee has knowledge that information concerning such corporation, partnership, or person is confidential pursuant to this section, until 90 days after such information is made public.

(5) Any person who is an employee of an economic development agency who violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 77-75; s. 1, ch. 79-395.

288.08 Publications; sale at cost.—The Division of Economic Development shall have authority to sell at approximate cost to the state such of its publications as, in its judgment, should not be furnished gratis to those who wish to use publications of the division in the conduct of their business; and any amounts of money received by the division from said source shall be added to amounts duly appropriated for its use in the prosecution of its purposes, powers and duties hereunder.

History.—s. 8, ch. 29788, 1955; ss. 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 1, ch. 77-174.

288.09 Acceptance of gifts or grants.—The Division of Economic Development is authorized to accept any grant, payment or gift of funds or property made by the United States or any department or agency thereof, or by any individual, firm or corporation, municipality or county or organization for any

or all of the purposes specified in this chapter, and the division may expend said funds in accordance with the terms and conditions of any such grant, payment or gift.

History.—s. 9, ch. 29788, 1955; ss. 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 1, ch. 77-174.

[1]288.10 Organization of advisory committees.—The Division of Economic Development is authorized to encourage the organization of advisory boards or committees among interested groups of citizens, including those representing industry, commerce, business, labor, agriculture, forestry, planning, transportation, the professions, the press, civic affairs, and other groups as the division may deem advisable. Such boards or committees shall advise with the division as to its work and it shall, as far as practicable, cooperate with such advisory boards or committees to secure the active aid thereof in the accomplishment of the aims and fulfillment of the duties of the division.

History.—s. 10, ch. 29788, 1955; ss. 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 1, ch. 77-174; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

288.105 Economic Development Advisory Committee.—There is hereby created the Economic Development Advisory Committee.

(1) The committee shall consist of nine members to be appointed by and serve at the pleasure of the Governor.

(2) Each member of the committee shall receive reimbursement for expenses actually and necessarily incurred in the performance of duties.

(3) The Economic Development Advisory Committee shall annually, on or before November 1, submit to the Legislature and to the Division of Economic Development of the Department of Commerce a plan for implementing the intent of the economic development legislation.

History.—s. 2, ch. 78-184.

288.13 Cooperation with other units, boards, agencies, and individuals.—Express authority and power is hereby given any county, municipality, drainage district, road or bridge district, school district or any other political subdivision, board or commission in the state to make and enter into with the Division of Bond Finance of the Department of General Services, contracts and leases, within the provisions and purposes of this chapter. The division is hereby expressly authorized to make agreements with and enter into any and all contracts with any political subdivisions of the state.

History.—s. 3, ch. 15861, 1933; CGL 1936 Supp. 4151 (112); s. 2, ch. 22821, 1945; s. 11, ch. 29788, 1955; ss. 22, 35, ch. 69-106.

Note.—Former s. 420.04.

288.14 Board of Trustees of Internal Improvement Trust Fund may cooperate.—The Board of Trustees of the Internal Improvement Trust Fund may convey and grant to the Division of Bond Finance of the Department of General Services, and enter into agreements permitting the use and occupation by the division, with or without compensation, of land under its control and not in use for state purposes, including swamps, overflowed lands, bottoms of streams, lakes, rivers, bays, and other waters of the state, and the riparian rights thereto appertaining, as, in the judgment of said board may be reasonably necessary in carrying out the provisions of this chapter.

History.—s. 4, ch. 15861, 1933; CGL 1936 Supp. 4151(113); s. 11, ch. 29788, 1955; s. 2, ch. 61-119; ss. 22, 27, 35, ch. 69-106.

Note.—Former s. 420.05.

288.15 Powers of Division of Bond Finance.—There is hereby granted to and vested in the Division of Bond Finance of the Department of General Services the power, right, franchise, and authority:

(1) To take, exclusively occupy, use, and possess rights-of-way for any projects, enterprises or undertakings of the division, over and across state-owned lands not otherwise in use for state purposes.

(2)(a) The division is hereby authorized and empowered to exercise the power of eminent domain and may condemn for the use of said division any and all lands, easement, right-of-way, riparian rights, property, and property rights of every description required in carrying out the objects and purposes of this chapter.

(b) The proceedings for condemnation hereunder may be instituted and conducted in the name of the division, and the procedure shall be the same as is prescribed by chapter 73.

(3) To own and to acquire by donation, purchase, or otherwise, real and personal property, tangible and intangible, and to lease, sell, alienate, and dispose of the same or any part or parts thereof in carrying out the objects and purposes of this chapter.

(4) To subscribe for, purchase, acquire, own, sell, or otherwise dispose of bonds and obligations of municipalities and political subdivisions of the state, needful or incident to carrying out the objects and purposes of this chapter, and exercise all the rights, powers, and privileges incident to ownership thereof.

(5) In order to carry out the objectives and purposes of this chapter the division is authorized to acquire, own, construct, operate, maintain, improve and extend public buildings, facilities, or works within the state which are of the character hereinafter specifically mentioned. All public buildings, facilities, and works which the division is authorized to own, construct, operate and maintain must be such as can ultimately be owned and operated by an agency, department, board, bureau, or commission of the state. All or any such buildings, facilities or works may be of a revenue-producing character in order that the cost of the same or some part thereof, improvements or extensions thereto may be paid from receipts therefrom including in Tallahassee only rentals, leases, and sales to both public and nonpublic agencies through the issue and sales or disposition of revenue bonds, notes, or certificates of said division. The building, facilities, and works which said division is hereby authorized to acquire, construct, operate, maintain, improve, and extend are:

(a) Such water control and conservation and facilities or works in connection therewith as are authorized by and are in conformity with the provisions of the [1]Florida Department of Water Resources Act.

(b) Toll bridges or tunnels, and toll roads wherever the same are connected with or form a part of the

state system of public roads. The location and construction of same shall first be approved by the Division of Planning and Programming of the Department of Transportation.

(c) To accept as a gift or grant or to purchase or lease from the Federal Government any personal property or any real property, fixtures, or appurtenances thereto, located in the state, payment for which can be made from the revenues derived therefrom, which will be used in the development of the agriculture, forest and reforestation of the state or such property as will provide recreation for the public and citizens of the state.

(d) It is expressly declared that said Division of Bond Finance shall not be authorized:

1. Except as is provided in s. 288.13, to acquire, own or construct any buildings, facilities or works which are to be maintained and operated solely for municipal or local purpose; and

2. To so accept, purchase or lease from the Federal Government any property or business ordinarily owned and operated by private business; provided, however, this provision shall not prohibit or limit such purchase, acceptance of gift or lease of surplus property to be used for noncompetitive government purposes.

(e) Public buildings, facilities and additions or improvements to existing buildings and facilities for ultimate use in connection with any of the several state institutions, departments, bureaus, boards or commissions, and in furtherance of this paragraph, the Division of Building Construction and Property Management of the Department of General Services and the State Board of Education are authorized to cooperate with the Division of Bond Finance and to do and perform all acts and things necessary thereto. Any property acquired by the Division of Bond Finance under the provisions of this chapter may ultimately be conveyed to the state free and clear of all debt or other encumbrance.

(f) The Division of Bond Finance is hereby authorized to collect reasonable rentals, tolls or charges for the use of public buildings, facilities or works constructed, acquired or owned by it and for the products and services of the same exclusively for the purpose of paying the expenses of improving, repairing, maintaining and operating its facilities and properties and paying the principal and interest on its obligations. Said division is authorized by reasonable regulations to prescribe for the use of buildings, facilities, works or projects owned and operated by it, the amount of rentals, tolls or charges and may make and enter into contracts with any municipality, district, county or other political subdivision, board, commission, agency or department of the state for the use of said projects or sale of the products or services thereof; provided, that the receipts from any project shall not be expended on any other project except as provided in subsection (8) hereof.

(g) Provided, however, that the provisions of this chapter shall not be construed to authorize the construction, acquisition, ownership or operation by the division of any project other than the class of projects referred to in this subsection.

(6) To secure, assemble, study, map, plat, and chart any and all data which may pertain to the governance, rehabilitation, welfare, health, transportation, commerce, marketing, finance, business, population, land use, sanitation, waterways, mineral resources, parks, wildlife, public buildings and property; and the laws relating to social, economic, or conservational matters of the state, its political subdivisions and its people for the purpose of advising and assisting, proposing and recommending to state administrative officers, the state Legislature and the people of the state, plans for the future development, welfare and governance of the state, in order that the state's plan of development may be coordinated, its economic resources be conserved, and the welfare of its people be promoted.

(7) It is expressly provided:

(a) That nothing in this chapter shall be construed as vesting in said Division of Bond Finance the power, right, or privilege to engage in private enterprise or business for profit; and

(b) That nothing in this chapter shall authorize the purchase, condemnation, or other acquisition by the division of the properties or securities of privately owned utilities or any part of same.

(8) The division is hereby authorized and directed to proceed with the acquisition of land and buildings thereon now needed or to be needed for use in whole or in part by any agency, board, bureau or commission of the state, such acquisition to be within the area defined by the Division of Building Construction and Property Management of the Department of General Services for the long-range development of the proposed Capitol Center; and

(a) To construct, acquire, own, and operate buildings and facilities thereon, such buildings and facilities to be financed by the revenue they yield, through the issuance of revenue certificates;

(b) To have specific authority in financing the acquisition, construction, and operation of such buildings and facilities, to utilize rentals to both public and nonpublic agencies as well as any regularly appropriated state or other public funds; however, no revenue from lands, buildings, or facilities now owned by the state may be pledged to finance the acquisition of land, buildings, or facilities pursuant to the provisions of this law, except revenue from land, buildings, or facilities purchased or acquired pursuant to the provisions of this law.

(9) Subsections (5) and (8) shall be liberally construed to effectuate the objectives and purposes thereof and the public policy of the state as hereby declared.

History.—ss. 5, 6, ch. 15861, 1933; CGL 1936 Supp. 4151(114), (115); ss. 3, 4, ch. 20509, 1941; s. 3, ch. 22821, 1945; ss. 1-3, ch. 26851, 1951; s. 11, ch. 29788, 1955; s. 2, ch. 57-57; s. 2, ch. 65-173; s. 3, ch. 65-178; s. 2, ch. 65-255; s. 2, ch. 65-525; s. 18, ch. 69-216; ss. 22, 23, 25, 35, ch. 69-106; s. 84, ch. 71-355; s. 2, ch. 73-326; s. 2, ch. 75-70.

[1]**Note.**—Reference to "Florida Department of Water Resources Act," contained in s. 3, ch. 22821, Laws of Florida, 1945, was to S.B. 90, of the 1945 Regular Session, which failed to be enacted.

Note.—Former s. 420.06.

288.17 Division of Bond Finance; revenue certificates.—The Division of Bond Finance of the Department of General Services is authorized to issue interest-bearing revenue certificates for construction of all state buildings approved by the Legislature in its appropriation acts and requested by the

Department of General Services or by the Board of Regents.

History.—s. 1, ch. 29831, 1955; s. 1, ch. 65-512; s. 1, ch. 67-603; ss. 22, 35, ch. 69-106; s. 85, ch. 71-355.

288.18 Planning, promoting and supervising state building projects.—

(1) The Division of Building Construction and Property Management of the Department of General Services shall be responsible for promoting any state building project financed as provided by law in any community where a state building is needed.

(2) Whenever the Division of Bond Finance and the Board of Administration shall find a building project financially feasible, all state agencies, commissions, bureaus, or branch offices of any department occupying rented office space in the area, shall occupy space in the state buildings to the extent that space is available.

(3) Any state agency required to occupy space by the Division of Building Construction and Property Management of the Department of General Services may contract for such space and pledge such rentals as are provided and appropriated by the Legislature for the purpose of financing the retirement of revenue certificates for the lifetime of any issue.

History.—s. 2, ch. 29831, 1955; ss. 22, 35, ch. 69-106; s. 83, ch. 71-377; s. 2, ch. 75-70.

288.23 Division authorized to acquire roads and bridges.—

(1) The Division of Bond Finance of the Department of General Services is authorized and empowered, upon the application of any county or counties evidenced by resolution of the board or boards of county commissioners thereof, to acquire by purchase, gift, or eminent domain and/or to construct within such county or counties so making application therefor, any road or bridge, including the acquisition of necessary rights-of-way therefor, connecting state highways within such county or counties, provided, however, in the event the said division shall determine, agree, or contract to build or construct any road or bridge under the provisions hereof then it shall so advise the Department of Transportation of such determination, agreement, or contract and shall give the Department of Transportation complete copies of all documents, agreements, resolutions, contracts, and instruments relating to such matter and shall request the Department of Transportation to do such construction work including the acquisition of necessary rights-of-way, planning, surveying, and actual construction of such project and shall also transfer to the credit of Department of Transportation in the Treasury of the state the funds hereinafter provided for such projects and the Department of Transportation shall thereupon be authorized, empowered and directed to proceed with such construction, including the acquisition of necessary rights-of-way, and to use the said funds for such work, and no other work, in the same manner that it is now authorized to use the funds otherwise provided by law for its use in construction of roads and bridges.

(2) The authority herein and hereby conferred to acquire rights-of-way shall be construed to extend to and include the acquisition of new rights-of-way separately to be used in the future for the construction of new roads and new bridges and for the acquisition of rights-of-way to be used in the future for widening or four-laning or extending, or otherwise improving, existing state roads and bridges. Provided, however, that no rights-of-way shall be acquired hereunder except for use in the construction of roads and bridges that have been prior to such acquisition legally designated as state roads and bridges, and provided further, that if any provision or any part of any provision of this amended section shall be held invalid, such invalidity shall not affect the validity of the remaining provisions of this amended section. The acquisition of rights-of-way as provided above separately and in advance of the construction of improvements on such rights-of-way, shall be and constitute a separate project or purpose under the provisions of this chapter or under the provisions of any other law or laws, and the Division of Bond Finance shall be fully authorized to issue its bonds, notes or certificates in the manner provided in this chapter to finance the cost of the acquisition of such rights-of-way separately and in advance of the construction of improvements on such rights-of-way.

History.—s. 1, ch. 23758, 1947; s. 11, ch. 29788, 1955; s. 1, ch. 57-86; ss. 22, 23, 35, ch. 69-106.

Note.—Former s. 420.12.

288.24 Division authorized to acquire ferries and toll ferries.—

(1) The Division of Bond Finance of the Department of General Services is authorized:

(a) To acquire, own, maintain, and operate ferries and toll ferries wherever the same are connected with or form a part of or are auxiliary to the state system of public roads.

(b) To fix and collect reasonable rentals, tolls or charges for the use of any ferries operated by or under agreement with the said division.

(c) To enter into a contract or contracts with the Department of Transportation for the acquisition, maintenance or operation of any such ferry or ferries.

(2) The acquisition, ownership, maintenance, and operation of said ferries and toll ferries shall be exercised in accordance with existing laws governing the powers of said division in connection with other buildings, facilities, additions, and improvements.

History.—ss. 1-4, ch. 25009, 1949; s. 11, ch. 29788, 1955; ss. 22, 23, 35, ch. 69-106; s. 60, ch. 79-164.

Note.—Former s. 420.121.

288.27 Lease or sale by division.—The Division of Bond Finance is authorized and empowered to lease or sell roads or bridges acquired or constructed pursuant to s. 288.23 to the Department of Transportation, upon such terms and conditions as will secure sufficient revenue for paying all cost incurred in connection with the acquisition or construction of such roads or bridges and which will represent the fair market value thereof for leasehold and for purchase purposes.

History.—s. 3, ch. 23758, 1947; s. 11, ch. 29788, 1955; ss. 22, 23, 35, ch. 69-106.

Note.—Former s. 420.14.

288.28 Department of Transportation authorized to purchase.—The Department of Transportation is hereby authorized and empowered to lease or purchase from the Division of Bond Finance of the Department of General Services such roads or bridges as may have been acquired or constructed under the provisions of s. 288.23 and to pay either the rental or the purchase price from the surplus gasoline taxes which may in the future accrue to the credit of the county or counties in which the road or bridge is located, under the provisions of s. 9, Art. XII of the State Constitution.

History.—s. 4, ch. 23758, 1947; s. 1, ch. 26768, 1951; s. 11, ch. 29788, 1955; ss. 22, 23, 35, ch. 69-106; s. 18, ch. 69-216.
Note.—Former s. 420.15.

288.281 Financing construction or acquisition of roads and bridges; additional method.—

(1) Upon request of any county, any road or bridge district, or any authority, evidenced by a resolution duly adopted by the governing body thereof, the Division of Bond Finance of the Department of General Services is authorized and empowered to issue and sell interest bearing bonds, notes, or certificates in its own name for and on behalf of said county, road or bridge district, or authority, for the purpose of financing the construction of roads or bridges within the county, district, or authority, or the acquisition of rights-of-way for such roads. The governing body of the county, district, or authority may request in said resolution that the division construct or acquire said project by and through its statutory agent, the Department of Transportation.

(2) Any county, road or bridge district, or authority making application to the Division of Bond Finance pursuant to this section may prescribe the terms, conditions, and limitations under which said bonds, notes, or certificates shall be issued and sold and the proceeds of the sale of said bonds, notes, and certificates shall be applied.

(3) Any bonds, notes or certificates issued by the division pursuant to this section may be secured by and payable as to both principal and interest, in whole or in part, from the 20 percent surplus gasoline tax funds accruing under the provisions of s. 9, Art. XII of the State Constitution, tolls or other revenue derived from the operation of the project, or ad valorem taxes or any combination thereof that may be legally available to said county, road or bridge district, or authority. If authorized by the Department of Transportation bonds, notes, or certificates may be additionally secured by and payable as to both principal and interest from legally available 80 percent surplus gasoline tax funds accruing to the Department of Transportation under the provisions of s. 9, Art. XII of the State Constitution.

(4) This section is intended to be cumulative of other powers granted to the Division of Bond Finance, the Department of Transportation, the counties, districts, and authorities under other provisions of law and is not intended to repeal, abrogate, or modify any such provisions.

History.—s. 1, ch. 61-433; ss. 22, 23, 35, ch. 69-106; s. 18, ch. 69-216.

288.29 Ratifying prior transactions.—Any transaction heretofore consummated, or in the process of consummation, in whole or in part, concerning the acquisition, condemnation, financing, construction, lease, or sale of any such road or bridge within the intendment of ss. 288.23, 288.24, 288.27, 288.28, 288.29, 288.30, be and the same is hereby ratified, legalized and confirmed.

History.—s. 5, ch. 23758, 1947; s. 11, ch. 29788, 1955.
Note.—Former s. 420.16.

288.30 Cumulative provisions.—Sections 288.23, 288.24, 288.27, 288.28, 288.29, are intended to be cumulative of other powers granted to the Division of Bond Finance and the Department of Transportation under other provisions of law, and are not intended to repeal, abrogate or modify any such provisions.

History.—s. 6, ch. 23758, 1947; s. 11, ch. 29788, 1955; ss. 22, 23, 35, ch. 69-106.
Note.—Former s. 420.17.

288.31 Armories; financing construction authorized.—

(1) The Division of Bond Finance of the Department of General Services shall have the power to borrow money and incur obligations by way of bonds, notes or revenue certificates and issue such obligations for the purpose of financing either in whole or in part the construction of armories in such counties and municipalities as designated by the State Armory Board. The authority hereby conferred shall empower the said division to issue such certificates or bonds for the financing of the share or portion of the cost to be borne by a county or municipality when required by the provisions of a grant of funds from the state or the federal government or any other source, or to authorize the borrowing and issuing of obligations for financing such an armory in its entirety. Bonds, notes or certificates issued hereunder shall be issued in conformity to all the provisions of chapter 215, and the division shall be empowered to fix the rentals or charges to be collected for the purpose of the retirement or purchase of said obligations. The division and the county or municipality shall be empowered to enter into such lease, or leases, as may be necessary to insure the providing of sufficient funds to retire such obligations and when the said obligations shall have been fully paid, the armory shall be conveyed to the state. Leases with the county or municipality under the terms of this section shall provide for the control of the building and its use to be vested in the military commander representing the Armory Board in accordance with the provisions of s. 250.41.

(2) For the purpose of determining the amount of the contribution of any county or municipality toward the requirement of matching state or federal funds, real estate provided or donated by such county or municipality may be considered as a portion of the contribution required to the amount of the fair appraised value of the same as determined by the Armory Board, and all lands, buildings and structures shall be conveyed to and become the property of the Division of Bond Finance when it acts under the provisions of this section, the same to be conveyed to the state when all obligations against same shall have been paid in full.

(3) Nothing in this section shall be construed as authorizing the pledging, mortgaging or otherwise hypothecating the real estate and armory building,

but the obligations issued hereunder shall pledge only the income from the armory building as covered in its rental by the county or municipality or from other sources.

(4) The purpose of this section is to provide a means for financing and supplying the funds necessary to be furnished by a county or municipality to meet and match funds made available by the state or federal government on a matching basis or to provide the total amount of the construction costs of armories.

(5) Counties and municipalities are hereby authorized and empowered to levy taxes not to exceed 1 mill to provide the funds necessary for the lease or leases herein provided and for the retirement of bonds or certificates of indebtedness issued by the division under the provisions of this section.

(6) Nothing in this section, however, shall be construed to repeal any provision of chapter 250, as amended in 1949.

History.—s. 1, ch. 24200, 1947; ss. 1, 2, ch. 25125, 1949; (2), s. 10, ch. 26484, 1951; s. 11, ch. 29788, 1955; ss. 22, 35, ch. 69-106.

Note.—Former s. 420.18.

cf.—s. 130.02 County bond issue for construction.
s. 250.40 Armory board; how armories obtained.

288.32 Urban Planning Assistance Revolving Trust Fund.—

(1) There is hereby created a revolving trust fund (hereinafter referred to as the "fund") which shall be known as the Urban Planning Assistance Revolving Trust Fund.

(2) The fund shall be used exclusively for the purpose of paying the costs of any or all federal urban planning assistance projects, which shall be administered by the Department of Community Affairs under the provisions of s. 701 of the Federal Housing Act of 1954 or any successor thereto. Provided, however, that any moneys expended from the fund for any such project shall be repaid into the fund by the Federal Assistance Grant upon receipt by the Department of Community Affairs of the full amount of the federal grant for such project when such project has been completed in its entirety and reviewed and audited by the appropriate federal authorities.

(3) Procedures for administering said fund shall be formulated by the agency or agencies concerned with the administration thereof.

(4) Upon the completion, discontinuation or termination for any cause of all federal urban planning assistance projects under s. 701 of the Federal Housing Act of 1954 or any successor thereto, or when for any other reason the fund created hereby is no longer needed to effectuate the purposes of this act, the full amount of the fund shall be paid over to and deposited in the general revenue fund of the State of Florida and thereupon the provisions of this act shall be null, void and of no force nor effect.

(5) This act shall be construed to have the effect of superseding any general or special law concerning the subject matter of this act or any part thereof, and shall be liberally construed so as to effectuate the purposes hereof.

History.—ss. 1-5, 7, ch. 63-459; ss. 18, 35, ch. 69-106.

288.33 School buildings; financing construction authorized.—

(1) Upon the request of the school board of any district with the approval of the State Board of Education evidenced by a resolution duly adopted by the governing body of each of such boards, the Division of Bond Finance of the Department of General Services is authorized and empowered to issue and sell interest-bearing revenue bonds, notes or certificates in its own name for the purpose of constructing, within the county, school buildings or additions thereto for rent, lease or purchase by the school board of the district. The Division of Bond Finance may, by contract, make the school board its agent for the acquisition or construction of such school buildings, classrooms, or facilities.

(2) Any school board, making application to the Division of Bond Finance pursuant to this section may prescribe the terms, conditions and limitations under which said bonds, notes, or certificates shall be issued and sold and the proceeds of the sale of said bonds, notes, and certificates shall be applied.

(3) Under no circumstances shall any bonds, notes or certificates issued under this section by the division be construed as an obligation of the state nor of its subdivisions nor shall the state or its subdivisions under any theory be bound therefor. They shall be solely and only the obligations of the division in its corporate and representative capacity and shall be secured only by such revenues as shall be pledged as security for the payment thereof.

(4) Any revenue bonds, notes or certificates issued by the Division of Bond Finance pursuant to this section may be secured by a lease-purchase agreement executed by the school board, which agreement may remain in effect until the bonds and all interest thereon and any refunding thereof have been paid in full. As security for the rentals agreed to be paid under the terms of the lease-purchase agreement, the school board may pledge and agree to pay as such rentals any moneys legally available for school purposes to such school board not prohibited by the Florida Constitution. Each school board requesting the construction of school buildings under this section shall annually request in its budget sufficient funds to meet the annual rentals agreed to be paid the Division of Bond Finance for lease or purchase of said buildings.

(5) As further security for the repayment of said revenue bonds, notes or certificates, the said school board is authorized to pledge as rentals any funds which may be appropriated by the legislature for school purposes to said school board. The authority to pledge funds provided for in this subsection is expressly limited to any funds as, if, and when appropriated, in that the legislature is under no obligation to make any future appropriation.

(6) Any school board requesting the Division of Bond Finance to construct school buildings pursuant to this section shall use said leased buildings for school purposes so long as a need exists therefor and until all of said revenue bonds, notes or certificates and the interest thereon, including any refundings thereof are paid in full; and thereupon title to said buildings shall vest in the school board.

(7) This section is intended to be cumulative to

the other powers granted to the Division of Bond Finance and is not intended to repeal or abrogate any such other powers. In financing school buildings pursuant to this section the division may utilize all the powers granted under this chapter.

(8) No approval of any other state board, body, agency, or official other than as specified herein, shall be required for the issuance of such revenue bonds, notes or certificates as provided in this section except the approval of the State Board of Administration in the manner now provided by law.

History.—s. 1, ch. 67-428; ss. 22, 28, 35, ch. 69-106; s. 1, ch. 69-300.

288.34 Division of Tourism; powers and duties.—

(1) The general purposes of the Division of Tourism of the Department of Commerce shall be to guide, stimulate, and promote the coordinated, efficient, and beneficial travel and leisure development of the state and its regions, counties, and municipalities in accordance with present and future needs and resources and the requirements of the prosperity, convenience, comfort, health, safety, and general welfare of the people of the state. For the accomplishment of such purposes, the division shall have the power and authority to:

(a) Create and build Florida tourism.

(b) Encourage employment for Florida citizens.

(c)1. Encourage visitors from other states and other countries to come to Florida.

2. Manage and otherwise coordinate its activities and functions of visitors' centers and welcome stations within the State of Florida.

3. Provide services and information designed to inform tourists and other visitors concerning Florida's many tourist and visitor attractions and to disseminate any such information by means of commonly used media within the state.

(d) Plan and conduct campaigns of information, advertising, and publicity relating to the recreational, scenic, historic, and transportation facilities and attractions of the state and all parts thereof and disseminate such information pertaining to Florida through and by means of the following media:

1. Newspaper advertising outside and inside the state;

2. Magazine advertising in magazines of state and national circulation;

3. Outdoor advertising outside and inside the state;

4. Radio and television advertising over stations outside and inside the state or networks extending outside the state;

5. Preparation and circulation of motion pictures;

6. Preparation, purchase, and distribution by mail, or by other means, of advertising, literature, and other material, including exhibits; and, although not specifically detailed but nevertheless included in such media, the promotion and encouragement of, and, if necessary, the contribution to, the happening and the holding of events and activities within and without the state, including follow-up contacts by personnel of the division within or without the state, which in the judgment of the division will beneficially publicize the state in furtherance of the purposes, powers, and duties of the division as prescribed in this section.

(e) Assist in carrying out any program of information, special events, and publicity designed to attract Florida tourists, visitors, and other interested persons from outside the state.

(f) Encourage and cooperate with other public and private organizations or groups in their efforts to publicize the attractions and vacation advantages of the state.

(g) Promote and encourage conventions, sporting events, and other special events.

(h) Provide, arrange, and make expenditures for transportation, lodging, meals, and other reasonable and necessary items and services for such persons as the division deems proper, in connection with the performance of the promotional and other duties of the division.

(i) Charge and collect a reasonable fee equal to the approximate cost to the state for researching or compiling information or handling charges, publications, materials, or services which, in its judgment, should not be furnished gratis to those requesting the information, research, handling, material, publication, or other services. Any amounts of money received by the division from such sources shall be restored to the appropriations of the division and otherwise made available for its use in the performance of its duties, powers, and purposes.

(j) Charge and collect registration fees at conferences, seminars, and other meetings conducted in furtherance of the division's duties, powers, and purposes. Such fees shall be deposited in the State Treasury and restored to the expense appropriation of the division, and shall be disbursed exclusively for the reasonable and necessary expenses of the conference, seminar, or meeting for which it was collected. Any funds collected pursuant to this paragraph which remain unexpended after the expenses of the conference, seminar, or meeting have been paid shall be deposited to the General Revenue Fund, unallocated.

(k) Pay by advancement or reimbursement, or by a combination thereof, the costs of per diem, and incidental expenses of officers and employees of the state and other authorized persons for foreign travel at the current rates as specified in the federal publication "Standardized Regulations (Government Civilians, Foreign Areas)." As used in this paragraph, the term "authorized person" shall have the same meaning as provided in s. 112.061(2)(e). With the exception of provisions concerning rates of payment for costs of per diem, the provisions of s. 112.061 are applicable to the travel described in this paragraph. As used in this paragraph, "foreign travel" means all travel outside the United States. All transportation and incidental expenses pursuant to this section shall be as provided in s. 112.061. Persons traveling in foreign countries pursuant to this section shall not be entitled to advancements or reimbursements pursuant to s. 112.061(6)(a)2.

(l) Pay by advancement or reimbursement, or by a combination thereof, the actual reasonable and necessary costs of travel, meals, lodging, and incidental expenses of officers and employees of the state and other authorized persons when traveling with travel writers, tour brokers, or others connect-

ed with the tourist industry, and while traveling in connection with travel or trade shows. With the exception of provisions concerning rates of payment, the provisions of s. 112.061 are applicable to the travel described in this paragraph.

(2) In the performance of its duties, the division is empowered and authorized to make and enter into contracts and to assume such other functions as are necessary to carry out the provisions of this section that are not inconsistent with this or other laws. The division may make and enter into contracts with other boards, commissions, agencies, and institutions of this state or other states, upon such terms as may be agreed upon, and to have such studies and research activities conducted as may be necessary and proper, the cost thereof to be paid out of funds which may be appropriated to the division.

(3) The division is authorized to encourage the organization of advisory boards or committees among interested groups of citizens. Such boards or committees shall advise the division as to its work, and it shall, as far as practicable, cooperate with such advisory boards or committees to secure the active aid thereof in the accomplishment of the aims and fulfillment of the duties of the division.

(4) The Division of Tourism, upon receipt of a declaration, petition, resolution, certified copy of an ordinance, or other clear directions from a community, board of county commissioners, municipality, county, city, specified region or area of the state, or other governmental or quasi-governmental agency whose substantial interests are affected that removal of motorist services directional signs, as defined in s. 479.01(18), from specific defined areas would cause a substantial economic hardship in such defined areas, shall forward such declaration, resolution, or finding, together with such supportive information as is available and a certification by the Division of Tourism that such removal would, in fact, cause a substantial economic hardship in a specific defined area, to the Department of Transportation for transmittal to the United States Secretary of Transportation for approval as provided in 23 U.S.C. s. 131(o).

History.—s. 2, ch. 74-230; s. 2, ch. 75-276; s. 2, ch. 77-18; s. 3, ch. 77-110; s. 4, ch. 78-8; s. 2, ch. 78-375; s. 118, ch. 79-400.

[1]288.344 Florida Tourism Commission; creation; membership; powers and duties.—

(1) Within the Department of Commerce there is created the "Florida Tourism Commission," hereinafter referred to as the "commission." The chairman of the commission shall be the Director of the Division of Tourism. The commission shall consist of nine persons who are resident citizens of the state, each of whom is, and has been, actively engaged in the category for which he is named.

(a) One member shall be designated a "hotel-motel member" and shall be primarily engaged in the hotel-motel business as an owner, operator, or manager of a hotel or motel.

(b) One member shall be designated an "attractions member" and shall be primarily engaged in the attractions business as an owner, operator, or manager.

(c) One member shall be designated an "area promotion member" and shall be primarily engaged in area promotion as a full-time occupation. As used in this section, "area promotion" is defined as organizations, individuals, and groups, both private and public, who are involved in the promotion and advertising of cities, counties, or authorities, or groups within such cities, counties, or authorities, primarily for tourist-related purposes.

(d) One member shall be designated a "transportation member" and shall be primarily engaged in the transportation industry as an owner, operator, or manager.

(e) One member shall be designated a "restaurant member" and shall be primarily engaged in the restaurant industry as an owner, operator, or manager.

(f) Two members shall be designated "at-large members" and shall be actively engaged in the tourism industry.

(g) One member shall be the chairman of the Tourist Advisory Council.

(2) The members of the commission shall possess the qualifications herein provided and shall, with the consent of the Secretary of Commerce, be appointed from the Tourist Advisory Council by the Director of the Division of Tourism. The director shall appoint five members to 4-year terms, and four members to 3-year terms. Members shall serve until their respective successors are appointed and qualified. The regular term shall begin on July 1 and shall end on June 30 of the fourth or third year, depending on the length of the appointment. The qualifications of each member of the commission shall continue throughout the respective term of his office, and, in the event a member should, after appointment, fail to meet the qualifications or classification which he possessed at the time of his appointment, said member shall resign or be removed and be replaced with a member possessing the proper qualifications and classification.

(3) A majority of the members of the commission shall constitute a quorum for the transaction of all business and the carrying out of the duties of the commission. No member of the commission shall receive any salary or other compensation, but each member shall receive:

(a) The sum of $25 per day for each day, or fraction thereof, spent by him while enroute to or from, and in actual attendance in, regular or special meetings of the commission, meetings of committees of the commission, or in transacting other business authorized by the commission, whether within or without the state, to cover his personal expenses while in attendance thereon.

(b) His traveling expenses, including mileage at the rate allowed by law to state employees per mile traveled by automobile or actual fare when traveling by airplane, railway, including pullman, boat, or other manner of transportation, necessarily incurred for the transaction of such business.

(c) Amounts paid for telephone and telegraph charges, as provided for in s. 112.061.

(4) For the accomplishment of its purposes, the commission shall have the power and authority to perform such duties and functions as authorized by the Secretary of Commerce.

History.—s. 4, ch. 77-110; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

[1]**288.347 Tourism Advisory Council; creation; membership; function.**—There is created within the Division of Tourism of the Department of Commerce the Tourism Advisory Council, hereinafter referred to as the "council." The council shall consist of 37 persons who are resident citizens of the state, each of whom is, or has been, actively engaged in the tourism industry or a related industry. The members of the council shall possess the qualifications herein provided and shall, with the consent of the Secretary of Commerce, be appointed by the Director of the Division of Tourism, who shall appoint 19 members to 4-year terms, and 18 members to 3-year terms. The council shall function as a body from which the Florida Tourism Commission may obtain differing and varying views as to what actions or proposals are needed throughout the state regarding tourism. The council shall meet no less than quarterly, in conjunction with the commission, to offer its views on the state of the tourism industry and to recommend proposed action.

History.—s. 5, ch. 77-110; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

288.35 Definitions.—The following terms, wherever used or referred to in this part, shall have the following meanings:

(1) "Corporation" means any corporation organized for the purpose of establishing, operating, and maintaining a foreign trade zone.

(2) "Government agency" means the state or any county or political subdivision thereof; any state agency; any consolidated government of a county, and some or all of the municipalities located within said county; any chartered municipality in the state; and any of the institutions of such consolidated governments, counties, or municipalities. Specifically included are airports, port authorities, and industrial authorities.

(3) "Act of Congress" means the Act of Congress approved June 18, 1934, entitled an Act to provide for the establishment, operation, and maintenance of foreign trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes, as amended, and commonly known as the Foreign Trade Zones Act of 1934, 19 U.S.C. ss. 81a-81u.

(4) "Operational and promotional advancements" means any advance of state funds which are drawn from the State Treasury for the purpose of paying legal obligations of the state on a cash basis.

History.—s. 1, ch. 76-42; s. 3, ch. 78-375.

288.36 Foreign trade zones; authority to establish, operate, and maintain.—Any corporation or government agency shall have the power to apply to the proper authorities of the United States for a grant of the privilege of establishing, operating, and maintaining foreign trade zones and foreign trade subzones under the provisions of the Act of Congress and, when the grant is issued, to accept the grant and to establish, operate, and maintain the foreign trade zones and foreign trade subzones and do all things necessary and proper to carry into effect the establishment, operation, and maintenance of such zones, all in accordance with the Act of Congress and other applicable laws and rules and regulations.

History.—s. 2, ch. 76-42.

288.37 Foreign trade zones; authority to select and describe locations and make rules.—Any corporation or government agency may select and describe the location of the foreign trade zones or foreign trade subzones for which an application is made under the provisions of the Act of Congress and make such rules and regulations concerning the establishment, operation, and maintenance of the foreign trade zones or foreign trade subzones as may be necessary to comply with the Act of Congress or as may be necessary to comply with the rules and regulations made in accordance with the Act of Congress.

History.—s. 3, ch. 76-42.

288.38 Applicability of state laws and rules concerning citrus fruit and products.—Any application for establishment of a foreign trade zone made pursuant hereto shall include a provision that all laws of this state and rules of the Florida Department of Citrus applicable to citrus fruit and processed citrus products shall equally apply within any foreign trade zone so established.

History.—s. 4, ch. 76-42.

288.39 Assistance to small businesses.—

(1) SHORT TITLE.—This section may be cited as the "Small Business Assistance Act."

(2) LEGISLATIVE PURPOSE.—The purpose of this section is to promote the establishment, preservation, and strengthening of small businesses in this state by:

(a) Promoting and coordinating activities of federal, state, and local governments and of business and trade associations, universities, foundations, professional organizations, and similar groups, which activities are of benefit to small businesses.

(b) Providing technical and managerial assistance to small businesses.

(3) DEFINITION OF SMALL BUSINESS.—As used in this section, "small business" means a business which is owned and operated independently of any other business entity and which has not more than 25 employees or not more than $500,000 in gross receipts a year.

(4) DUTIES OF THE DIVISION OF ECONOMIC DEVELOPMENT OF THE DEPARTMENT OF COMMERCE.—The Division of Economic Development of the Department of Commerce shall establish and administer programs to:

(a) Provide a system for the development, collection, summarization, and dissemination of information helpful to any person in establishing or operating a small business, including information on:

1. Identification and development of new business opportunities.
2. Feasibility studies.
3. Market research.
4. The operation, management, and financing of small businesses.
5. Programs of federal, state, and local govern-

mental agencies which benefit small businesses.

(b) Assist and counsel small businesses on:

1. How to deal with federal, state, or local governmental agencies.

2. How to meet federal, state, or local regulation.

3. Policies of federal, state, and local governments relating to procurement and disposal of government property and government contracts.

(c) Receive complaints and suggestions concerning policies and activities of federal, state, and local governmental agencies which affect small businesses; develop, in cooperation with the agency, proposals for changes in policies or activities to alleviate any unnecessary adverse effects to small businesses; and work with the agency in implementing the changes.

(5) ANNUAL REPORTS.—On March 1 of each year, beginning with March 1, 1978, the Division of Economic Development of the Department of Commerce shall make a written report to the Governor, the President of the Senate, and the Speaker of the House of Representatives with respect to the implementation of this section. The report shall contain information on:

(a) The establishment and administration of the information system, including:

1. The information available.

2. How the information is disseminated.

3. The number and types of small businesses which have used the information system and what percentage the number using the system represents of the total number of small businesses in the state.

(b) The types of assistance and counseling that are available to small businesses from the department and contract agents; the number and types of businesses which have requested assistance or counseling, whether or not the assistance or counseling requested was provided, and, if such assistance or counseling was provided, the nature of the assistance or counseling; and what percentage the number of businesses assisted or counseled represents of the total number of small businesses in the state.

(c) The complaints and suggestions received by the department or contract agents and any changes in policies which have been developed or implemented to alleviate unnecessary adverse effects to small businesses.

(d) How the appropriations to carry out this section were spent and will be spent for the remainder of the current fiscal year.

(e) Plans and specific objectives to be accomplished by the department in the next fiscal year to further the purpose of this section. Except for the first report required by this section, each report shall contain information on whether or not the plans and specific objectives of the department were accomplished.

(f) Recommended amendments to this section.

(g) The budget for the next fiscal year.

(6) COOPERATION WITH FEDERAL AGENCIES.—The Division of Economic Development of the Department of Commerce, with the approval of the Legislature, shall cooperate with any federal agency which offers any program that is of benefit to small businesses and that is consistent with the purpose and the programs of this section.

[1](7) SMALL BUSINESS ADVISORY COUNCIL.—

(a) There is created within the Division of Economic Development a Small Business Advisory Council, which shall serve in an advisory capacity to the division.

(b) The council shall be composed of 10 members who are representatives of small businesses. The members of the council shall be appointed by the Governor for 2-year terms, except that 5 of the initial members shall be appointed for 1-year terms. Members may be reappointed.

(c) Members of the council shall serve without compensation, but shall be reimbursed for traveling expenses in accordance with s. 112.061.

(d) The council shall meet as soon as practicable after the initial 10 members are appointed, and thereafter shall meet at least twice a year and at the call of the Director of the Division of Economic Development. The council shall annually elect one of its members to serve as chairman.

(e) The Division of Economic Development shall provide the council with the staff necessary for the council to carry out its duties. However, no staff shall be hired for the specific purpose of supporting the council; such support shall be a secondary function of existing staff of the Division of Economic Development.

(f) The council shall:

1. Serve as a source of expertise and information on small businesses.

2. Keep the division informed with respect to problems of, and matters affecting, small businesses.

3. Advise the division, upon request of the division, with respect to any matters relating to small businesses.

(8) FOUR-YEAR REPORT; TERMINATION OF PROGRAMS; AUTOMATIC REPEAL.—

(a) On March 1, 1981, in addition to the annual report required by subsection (5), the Department of Commerce shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a comprehensive analysis of the cost of each program provided under subsection (4) or any amendment thereto, as compared to the benefits which have accrued to small businesses of this state and to the economy of this state as a result of that program and a recommendation as to whether or not that program should be continued.

(b) If the Legislature fails to enact legislation to continue any program provided under subsection (4) or any amendment thereto in the regular session which follows the date the report required by this subsection is made, or if the Governor vetoes such legislation, that program shall be terminated by the department as of July 1, 1981. If no program provided under subsection (4) or any amendment thereto is continued, this section and all amendments hereto are repealed effective July 1, 1981.

History.—ss. 1-8, ch. 77-218; s. 4, ch. 78-323; s. 119, ch. 79-400.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this subsection prior to that date.

288.501 Short title.—Sections 288.501-288.518

shall be known and may be cited as the "Florida Industrial Siting Act."

History.—s. 1, ch. 79-147.

288.502 Legislative intent.—

(1) The Legislature finds and declares that, in order to protect and promote the health, safety, welfare, and prosperity of the state and its citizens and improve the quality of life of the citizens of the state, it is appropriate to promote the creation of new jobs for Florida's citizens and expansion of the industrial economy of the state, so long as such projects are consistent with the protection of our natural resources and environment and are located, constructed, and operated in a manner that facilitates orderly and planned growth and development in the state. The Legislature further finds that the accomplishment of such public purposes requires that the state establish procedures to coordinate and facilitate state decisions relating to industrial plant siting, new business development, and expansion of existing facilities so as to enhance job opportunities for citizens of this state who are unemployed or underemployed.

(2) The Legislature finds that these objectives can best be achieved by the implementation of a process whereby all state permit applications are centrally coordinated and all state permit decisions are reviewed on the basis of standards and recommendations of the deciding state agencies. It is the intent of the Legislature that this procedure shall not compromise standards or policies for the protection or enhancement of the state's natural resources and environment.

(3) It is the intent of the Legislature that the procedures for certification established by this act shall be applicable to a proposed project at the option of the applicant. The initial decision to apply for certification under this act shall be solely within the discretion of the developer of a project.

(4) It is the intent of the Legislature that applicants applying for certification, to the maximum possible extent, should hire full-time workers from among the unemployed and underemployed citizens of the state and should fully utilize available on-the-job programs.

History.—s. 1, ch. 79-147.

288.503 Definitions.—As used in ss. 288.501-288.518, unless the context otherwise requires:

(1) "Agency" means an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of government, including each state agency. The term does not include any local governmental entity other than a multicounty water management district.

(2) "Application" means the documents required by the department to be filed to initiate a certification proceeding.

(3) "Board" means the Governor and Cabinet, with the Governor acting as chairman.

(4) "Certification" means the written order of the board approving an application in whole or with such modifications or conditions as the board may deem appropriate.

(5) "Completeness" means a condition which exists when the application addresses all applicable sections of the prescribed application form adopted by the department, but does not mean that said sections are sufficient in comprehensiveness of data or in quality of information provided.

(6) "Department" means the Department of Environmental Regulation.

[1](7) "Division of State Planning" means the Division of State Planning of the Department of Administration and is synonymous with the "state land planning agency" referred to in chapter 380.

(8) "Hearing officer" means the hearing officer assigned by the Division of Administrative Hearings pursuant to s. 120.65(2) to conduct the hearings required by this act.

(9) "License" shall have the same meaning when used in this act as that term is defined in chapter 120.

(10) "Local governmental entity" means a governmental entity which is authorized to exercise zoning and land-use regulatory authority over the jurisdiction wherein the proposed project is to be located.

(11) "Notice of intent" means that notice filed with the department by the developer of an industrial project prior to submission of an application pursuant to this act.

(12) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, governmental agency, or public utility district or any other entity, public or private, however organized.

(13) "Industrial project" or "project" means any new business activity or any expansion of or addition to an existing business activity which:

(a) Has the potential for creating 50 or more full-time employment opportunities;

(b) Is engaged in industrial, commercial, wholesale, or retail business activity; and

(c) Must secure licenses from two or more agencies.

The term "industrial project" or "project" does not include residential housing construction or development or electrical power plants certified pursuant to [2]ss. 403.501-403.517 or projects which are located in or discharge into Outstanding Florida Waters as defined in chapter 17-3, Florida Administrative Code, as amended. A person proposing construction within aquatic preserves may use the procedures established pursuant to this act only so long as such construction is water-dependent and consistent with the applicable aquatic preserves acts contained in chapter 258. A person proposing construction within the special waters category of Outstanding Florida Waters may use the procedures established pursuant to this act only so long as such construction is consistent with chapter 17-3, Florida Administrative Code, as amended.

(14) "State comprehensive plan" means that plan prepared in accordance with the provisions of part I of chapter 23.

(15) "Sufficient" or "sufficiency" means the application is "complete" and that it also contains an adequate quality and volume of information to ena-

ble the department or its consultants to commence the studies required by s. 288.509. An application which is determined to be sufficient as to a majority of its sections shall be processed for certification on a schedule agreed to by the applicant and the parties so long as the schedule provides that a sufficient application is available to all parties at least 60 days prior to the certification hearing. Failure to provide these materials within such time shall be deemed good cause for delaying the certification hearing. If such materials are not provided within 6 months of the filing of the complete application with the department, the application shall be considered to have been withdrawn unless a later time has been agreed to by the applicant, the department, and all parties.

(16) "Water management district" means the water management district created pursuant to chapter 373 which exercises jurisdiction over the area wherein the proposed project is to be located.

History.—s. 1, ch. 79-147.

[1]**Note.**—See s. 2, ch. 79-190, which abolished the Division of State Planning of the Department of Administration, and s. 48, ch. 79-190, which transferred all powers, duties, and functions of the Division of State Planning under ss. 380.012-380.10 to the Department of Community Affairs.

[2]**Note.**—The words "ss. 403.501-403.517" were substituted by the editors for "s. 403.501."

288.504 Department of Environmental Regulation; powers and duties.—The Department of Environmental Regulation shall have the following powers and duties in relation to this act:

(1) To adopt, promulgate, or amend reasonable procedural rules to implement the provisions of this act.

(2) To prescribe the form, content, and necessary supporting documentation required for the submission of complete and sufficient applications and notices of intent.

(3) After January 1, 1980, to receive notices of intent and applications and to initially determine the completeness and sufficiency thereof, subject to review of such determinations by the hearing officer.

(4) To make or contract for studies of applications.

(5) To administer the processing of applications for project certifications and to ensure that the applications are processed as expeditiously as possible.

(6) To notify all affected agencies of the filing of a notice of intent within 15 days of receipt of the notice and to publish public notice that the department has received such notice of intent.

(7) To notify all affected agencies of the filing of an application within 15 days of receiving the application and to publish public notice that the department is processing such application.

(8) To require an application fee not to exceed $25,000. The application fee shall be paid to the department upon the filing of each application. A fee schedule shall be adopted by the department by rule on a sliding scale related to the size and type of project being proposed by the applicant. A minimum fee of $2,500 shall be required for each application. All reasonable expenses and costs of these proceedings incurred by the department, the local governmental agency, the Division of Administrative Hearings, the [1]Division of State Planning, and the water management district, including those which are associated with the cost of publication of public notices, the preparation and conduct of the hearing, the recording and transcription of proceedings, and the studies of project certification required by this act, shall be paid from the application fee or notice of intent fee. Any sums remaining after the payment of authorized costs shall be refunded to the applicant within 90 days of the issuance or denial of certification or withdrawal of the application or notice of intent. The applicant shall be provided with an itemized accounting of the expenditures.

(9) To prepare a written analysis which shall be filed with the hearing officer and served on all parties no later than 3 months after the complete application is filed with the department, which analysis shall include:

(a) A statement indicating whether the proposed project will be in compliance with the rules of the department and of other agencies.

(b) The report from the [1]Division of State Planning as required by s. 288.509.

(c) The report of the water management district as required by s. 288.509.

(d) The studies conducted pursuant to s. 288.509.

(e) The comments received by the department from any other state, local, or federal agency.

(f) A summary of the comments received by the department from any person not party to this proceeding.

(g) The statement of approval of the local government required by s. 288.505, including such modifications or conditions as the local governmental entity within its authority may deem appropriate.

(h) The recommendation of the department as to the disposition of the application and any proposed conditions of certification which the department believes should be imposed.

(10) To publish public notice of the filing of the notice of intent and the application and of all hearings conducted pursuant to this act.

(11) To prescribe reasonable means for monitoring the effects arising from the construction and operation of projects which have been granted a certification under this act to assure continued compliance with the terms of the certification.

History.—s. 1, ch. 79-147.

[1]**Note.**—See s. 2, ch. 79-190, which abolished the Division of State Planning of the Department of Administration, and s. 48, ch. 79-190, which transferred all powers, duties, and functions of the Division of State Planning under ss. 380.012-380.10 to the Department of Community Affairs.

288.505 Local government approval.—

(1)(a) No certification hearing shall be held until the hearing officer has received a final statement of approval from the local governmental entity that the project is in compliance with chapter 380, if applicable to the project, and all local development ordinances, including, but not limited to, the local government comprehensive plan, if one has been adopted, and zoning, land-use, and local pollution control ordinances. The statement of approval granted by the local governmental entity, including such modifications or conditions as the local governmental entity within its authority may deem appropriate, shall be filed with all parties and the hearing officer at least 60 days prior to the certification hearing.

(b) In the event the statement of approval from the local government is not submitted within 60 days

prior to the certification hearing, such hearing shall be delayed until all parties have had a 60-day period in which to review the local government's statement of approval. A certification hearing under s. 288.51 shall be canceled and the application shall be withdrawn if a statement of approval is not received within 6 months of the filing of the complete application with the department. Upon approval, the local governmental entity may not change such ordinances, plans, or development orders so as to affect the project until the procedures of this act, including any board or court reviews, are completed.

(2) A statement of approval of a project which is the subject of an application for certification shall not eliminate any requirements of any other statutes administered by a local government. A denial by a local government of an application for a statement of approval for a project shall not be appealable to the board under this act.

(3) The local governmental entity's statement of approval shall be effective for 2 years, during which time the zoning and land use of the project may not be altered except with the concurrence of the applicant or as provided in s. 163.3191.

History.—s. 1, ch. 79-147.

288.506 Applicability and certification.—The provisions of this act shall apply only to those projects for which an application for certification has been submitted pursuant to this act after January 1, 1980. The determination to submit an application for certification under this act shall be solely within the discretion of the applicant. When a person does not choose to submit an application for certification pursuant to this act, all state permitting or licensing provisions otherwise in effect shall continue to apply to said project. However, no permit application which is the same as, or substantially similar to, any application which has been submitted pursuant to the permitting or licensing provisions otherwise in effect shall be resubmitted under this act once the issuance of a notice of intent to deny the application or final agency action has taken place. Once an application is submitted pursuant to this act and processed to the point that the recommendation of the department pursuant to s. 288.504(9) has been filed, no application which is the same or substantially similar shall be resubmitted pursuant to the permitting or licensing provisions otherwise in effect.

History.—s. 1, ch. 79-147.

288.507 Appointment of hearing officer; determination of completeness and sufficiency.—

(1) Within 7 days of receipt of an application, whether complete or not, the department shall request the Division of Administrative Hearings to designate a hearing officer to conduct the hearings required by this act. The division director shall designate a hearing officer within 7 days of receipt of the request from the department. Upon being advised that a hearing officer has been appointed, the department shall immediately file a copy of the application and all supporting documents with the hearing officer, who shall docket the application.

(2) Within 10 days of receipt of an application, the department shall file a statement with the Division of Administrative Hearings and with the applicant declaring its position with regard to the completeness, not the sufficiency, of the application. If the department declares the application to be incomplete, then, within 15 days of the receipt by the department of the application, the applicant shall file with the Division of Administrative Hearings and with the department a statement agreeing with the statement of the department and withdrawing the application or contesting the statement of the department. If the application is not withdrawn, the hearing officer shall schedule a hearing on the statement of completeness. The hearing shall be scheduled as expeditiously as possible, but no later than 30 days after the receipt of the application by the department. The hearing officer shall make his decision within 10 days of the hearing. If the hearing officer determines that the application was not complete as filed, then the applicant shall either complete the application or shall withdraw the application. If the hearing officer determines that the application was complete at the time it was filed, then the times provided in this act shall run from the date of the filing of such application.

(3) Should the department determine within 15 days after initiation of the studies required by this act that an application is so insufficient as to prevent proper evaluation of a project, it shall consult with the applicant to determine if the insufficiency can be timely rectified. If the consultation indicates that the insufficiency cannot be timely rectified, the department, after notice to the applicant, shall so advise the hearing officer and other parties. Within 15 days of being advised, the hearing officer shall schedule a hearing on this issue. The hearing shall be held no later than 30 days after the receipt of the department's position. The hearing officer shall make a decision on this issue within 10 days of the hearing. If the hearing officer determines that the application is so insufficient as to prevent proper evaluation of a project, then the applicant shall correct this deficiency, and the time limits shall be adjusted accordingly. If the hearing officer determines that the application is sufficient, then the times provided in this act shall run from the date of filing of the application.

History.—s. 1, ch. 79-147.

288.508 Notice of intent to file application.—

(1) In order to facilitate the conduct of studies required by this act and expedite the processing of the application which may be filed subsequently, the applicant for a proposed project may file a notice of intent to file an application with the department.

(2) The department shall establish by rule a procedure by which an applicant, after public notice, may enter into binding written agreements with the department as to the data and the level of information which must be included in an application filed pursuant to this act. It is the legislative intent of this subsection to encourage paperwork reduction, to discourage unnecessary data gathering, and to encourage coordination of this process with federal environmental reviews when such are required by law.

History.—s. 1, ch. 79-147.

288.509 Reports and studies.—

(1) It shall be the duty of the department to provide copies of the application and notice of intent as filed within 7 days of receipt thereof to the [1]Division of State Planning, the water management district and the regional planning agency which have jurisdiction over the area wherein the proposed project is to be located, the Department of Community Affairs, the Department of Commerce, the Department of Transportation, the Department of Natural Resources, the Game and Fresh Water Fish Commission, the Department of Health and Rehabilitative Services, the Department of Business Regulation, the Department of Agriculture and Consumer Services, the Department of State, and the local governmental entities which have jurisdiction.

(2) Within 60 days of the filing of a complete application, the [1]Division of State Planning shall prepare and submit to the department a report and its recommendation as to whether the proposed project unreasonably interferes with the achievement of the goals and objectives of any adopted state comprehensive plan and with respect to any other matters within its jurisdiction.

(3) Within 60 days of the filing of the complete application, the water management district shall prepare and submit to the department a report and its recommendation as to the impact of the proposed project on the water resources of the district. The report may include the comments of the water management district with respect to any other matters in its jurisdiction.

(4) It shall be the duty of the department to conduct, or contract for, studies of the proposed project, including, but not limited to, the following:

(a) The environmental impact of the project, including impacts on water quality, air quality, fish and wildlife, and cultural resources.

(b) The impact of the project on the economy of the area, including provisions of employment opportunities and related economic impacts.

(c) The impact of the project on necessary public facilities, including transportation facilities.

(d) The impact of the project on energy demand.

(e) Compliance of the project with agency standards.

(5) The department shall initiate the studies required by subsection (4) no later than 15 days after the complete application is filed. The department shall keep the applicant informed as to the progress of the studies and any issues raised thereby.

(6) The studies required by subsection (4) shall be completed no later than 2 months after the date the studies are initiated.

History.—s. 1, ch. 79-147.

[1]**Note.**—See s. 2, ch. 79-190, which abolished the Division of State Planning of the Department of Administration, and s. 48, ch. 79-190, which transferred all powers, duties, and functions of the Division of State Planning under ss. 380.012-380.10 to the Department of Community Affairs.

288.51 Proceedings; parties; participants.—

(1)(a) A certification hearing shall be held by the hearing officer no later than 4 months after the complete application is filed with the department. At the conclusion of the certification hearing, the hearing officer shall, after consideration of all evidence of record, submit to the board a recommended order no later than 5½ months after receipt of the complete application by the department. The recommended order shall include findings of fact and conclusions of law as to each license required of the applicant.

(b) The certification hearing shall be held in the county of the proposed project and as near as practicable to the project site.

(2)(a) Parties to the proceedings shall include:

1. The applicant.
2. The [1]Division of State Planning.
3. The water management district with jurisdiction.
4. The department.
5. The Department of Natural Resources, when the use or purchase of state-owned lands is involved.

(b) Upon the filing with the hearing officer of a notice of intent to be a party at least 30 days before the certification hearing, the following shall also be parties to the proceeding:

1. Any agency not listed in paragraph (a), as to matters within its jurisdiction.
2. Any county or municipality in whose jurisdiction the proposed project is to be located.
3. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or industrial groups; or to promote orderly development of the area in which the proposed project is to be located.

(c) Except as provided in paragraph (d), failure of a state agency described in subparagraph (b)1. to file a notice of intent to be a party within the time provided herein shall constitute a waiver of the right of that state agency to participate as a party in the proceeding and of its right to assert jurisdiction to regulate, permit, or license such project.

(d) Other parties may include any persons, including those persons enumerated in paragraph (b) who have failed to timely file a notice of intent to be a party, whose substantial interests are affected and being determined by the proceeding and who timely file a motion to intervene pursuant to chapter 120 and applicable rules. Intervention pursuant to this paragraph may be granted at the discretion of the hearing officer, upon such conditions as he may prescribe, any time prior to 15 days before the commencement of the certification hearing. Parties who are granted permission for untimely intervention pursuant to this paragraph shall be bound by the status of the proceedings as they find them as of the date intervention is granted, unless otherwise ordered by the hearing officer in his discretion.

(e) Any state agency whose properties or works are being affected pursuant to s. 288.511(2) or from whose rules the applicant is seeking a variance pursuant to s. 288.514(2) shall be made a party upon the request of the department or at the agency's own request.

(3) When appropriate, any person may be given an opportunity to present oral or written communications to the hearing officer at the certification hearing. If the hearing officer proposes to consider such communications, then all parties shall be given an opportunity to cross-examine the person or challenge or rebut such communications.

(4) The hearing officer shall have all powers and duties granted to hearing officers by chapters 120 and 403 and by the rules of the department and the Administration Commission, including the authority to resolve disputes over the completeness and sufficiency of an application for certification.

History.—s. 1, ch. 79-147.

[1]Note.—See s. 2, ch. 79-190, which abolished the Division of State Planning of the Department of Administration, and s. 48, ch. 79-190, which transferred all powers, duties, and functions of the Division of State Planning under ss. 380.012-380.10 to the Department of Community Affairs.

288.511 Final disposition of application.—

(1) Within 45 days of receipt of the hearing officer's recommended order, the board, pursuant to applicable law, shall act upon the application by written order, approving in whole, approving with such conditions as the board shall deem appropriate, or denying the issuance of a certification and stating the reasons for issuance or denial.

(2) In regard to the properties and works of any agency which is a party to the certification hearing, the board shall have the authority to decide issues relating to the use thereof, the connection thereto, or the crossing thereof for the project and to direct such state agency to execute, within 30 days of the entry of certification, the necessary license or easement for such use, connection, or crossing, subject only to the conditions set forth in such certification.

(3) The issuance or denial of the certification by the board shall be final agency action.

History.—s. 1, ch. 79-147.

288.512 Alteration of time limits.—Any time limitation in this act may be altered by stipulation or by the hearing officer upon good cause shown by any party.

History.—s. 1, ch. 79-147.

288.513 Local powers not preempted; rulemaking power.—

(1) Notwithstanding any other provision of this act, this act does not preempt any ordinance, rule, regulation, or decisionmaking power of any local governmental entity. It is the intent of this act that local decisionmaking shall not be limited hereby, except as expressly provided in s. 288.505(1).

(2) The board shall have the power to adopt reasonable procedural rules to carry out its duties under this act and to give effect to the legislative intent that this act is to provide an efficient, simplified, centrally coordinated permitting process.

History.—s. 1, ch. 79-147.

288.514 Effect of certification.—

(1) Subject to the conditions of certification set forth therein, any certification signed by the Governor as chairman of the board shall constitute the sole license of the state and any agency as to the approval of the construction and operation of the proposed project.

(2) The certification may include variances, exceptions, and exemptions as otherwise allowed by law from nonprocedural standards or rules of the department or any other standards or rules of any other agency which were expressly considered during the proceedings and which otherwise would be applicable to the construction and operation of the proposed project. However, the board's authority to grant such variances, exceptions, or exemptions shall be subject to the nonprocedural requirements and limitations specified in the applicable statutes or rules.

(3) The certification shall be in lieu of any license, permit, certificate, or similar document required by any agency pursuant to, but not limited to, chapter 161, chapter 253, chapter 298, chapter 370, chapter 373, chapter 376, chapter 381, chapter 387, chapter 403, the Florida Transportation Code, or 33 U.S.C. 1341.

(4)(a) A project certified pursuant to this act shall comply with rules adopted by the department subsequent to the issuance of the certification which prescribe new or stricter criteria, to the extent that the rules are applicable to such projects. Except when express variances, exceptions, or exemptions have been granted, subsequently adopted applicable rules of the department which prescribe new or stricter criteria or which prescribe more lenient criteria shall operate as automatic modifications to the conditions of certification.

(b) No term or condition of certification shall be interpreted to preclude the postcertification exercise by any party of whatever procedural rights it may have under chapter 120, including those related to rulemaking proceedings.

(5) The certification received pursuant to this act shall be effective for a period of 7 years from the date of issuance by the board. Applicants wishing to renew may seek recertification pursuant to this act or may seek to renew each individual license, permit, certification, or other document which is covered by this act through each agency's applicable procedures. Renewal of variances made a part of the certification, when renewable under the appropriate statute or rule, may be sought as part of recertification proceeding or individually through each agency's applicable procedures.

History.—s. 1, ch. 79-147.

288.515 Revocation or suspension of certification.—Any certification may be revoked or suspended pursuant to chapter 120:

(1) For any material false statement in the application or in the supplemental or additional statements of fact or studies required of the applicant when a true answer would have warranted the board's refusal to recommend a certification in the first instance.

(2) For failure to comply with the terms or conditions of the certification.

(3) For violation of the provisions of this act or rules or orders issued hereunder.

History.—s. 1, ch. 79-147.

288.516 Review.—Proceedings under this act shall be subject to judicial review as provided in chapter 120.

History.—s. 1, ch. 79-147.

288.517 Enforcement of compliance.—Violations of this act shall be enforced as provided in ss.

403.121, 403.131, 403.141, and 403.161 and other applicable laws.

History.—s. 1, ch. 79-147.

288.518 Amendment or modification of certification.—A certification may be amended or modified after issuance in any one of the following ways:

(1) The parties to the certification proceeding may amend or modify the terms and conditions of the certification by mutual written agreement. Upon execution of the agreement by the parties, the provisions of s. 120.57 shall apply to proceedings for approval or denial of the agreement by the board.

(2) If the parties to the certification proceeding are unable to reach a mutual written agreement or amendment or modification of the terms and conditions of the certification, a petition for modification setting forth:

(a) The proposed amendment or modification;

(b) The factual reasons asserted for the amendment or modification; and

(c) The anticipated effects of the proposed modification on the applicant, the public, and the environment;

shall be filed with the board with copies being served on all parties to the original proceedings. The provisions of s. 120.57 shall apply to the proceedings for approval or denial of the petition by the board.

(3) As required by s. 288.514(4).

History.—s. 1, ch. 79-147.

CHAPTER 289

FLORIDA INDUSTRIAL DEVELOPMENT CORPORATION

289.011 Definitions.—As used in this act, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:

(1) "Corporation" means a Florida Industrial Development Corporation created under this act.

(2) "Financial institution" means any banking corporation or trust company, savings and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

(3) "Member" means any financial institution authorized to do business within this state which shall undertake to lend money to a corporation created under this act, upon its call, and in accordance with the provisions of this act.

(4) "Board of directors" means the board of directors of the corporation created under this act.

(5) "Loan limit" means for any member, the maximum amount permitted to be outstanding at one time on loans made by such member to the corporation, as determined under the provisions of this act.

History.—s. 1, ch. 61-177.

289.021 Industrial Development Corporation; incorporation.—

(1) Twenty-five or more persons, a majority of whom shall be residents of this state, who may desire to create an industrial development corporation under the provisions of this act, for the purpose of promoting, developing and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated by filing in the Department of State, as hereinafter provided, articles of incorporation. The articles of incorporation shall contain:

(a) The name of the corporation, which shall include the words "Industrial Development Corporation of Florida."

(b) The location of the principal office of the corporation, but such corporation may have offices in such other places within the state as may be fixed by the board of directors.

(c) The purposes for which the corporation is founded, which shall be to promote, stimulate, develop and advance the business prosperity and economic welfare of Florida and its citizens; to encourage and assist through loans, investments or other business transactions in the location of new business and industry in this state and to rehabilitate and assist existing business and industry; to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state; similarly, to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

(d) The names and post-office addresses of the members of the first board of directors, who, unless otherwise provided by the articles of incorporation or the bylaws, shall hold office for the first year of existence of the corporation or until their successors are elected and have qualified.

(e) Any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, dividing, limiting and regulating the powers of the corporation, the directors, stockholders, or any class of the stockholders, including, but not limited to a list of the officers, and provisions governing the issuance of stock certificates to replace lost or destroyed certificates, provided that no provision shall be contained for cumulative voting for directors.

(f) The amount of authorized capital stock and the number of shares into which it is divided, the par value of each share, and the amount of capital with which it will commence business and, if there is more than one class of stock, a description of the different classes; the names and post-office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the minimum amount of capital with which the corporation shall commence business which shall not be less than $100,000. The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation.

(g) The articles of incorporation shall be in writ-

ing, subscribed by not less than nine natural persons competent to contract and acknowledged by each of the subscribers before an officer authorized to take acknowledgments and filed in the Department of State for approval. A duplicate copy so subscribed and acknowledged may also be filed.

(h) The articles of incorporation shall recite that the corporation is organized under the provisions of this act.

(2) The Department of State shall not approve articles of incorporation for a corporation organized under this act until a total of at least 15 national banks, state banks, savings banks, industrial savings banks, federal savings and loan associations, domestic building and loan associations, or insurance companies authorized to do business within this state, or any combination thereof, have agreed in writing to become members of said corporation. The written agreement shall be filed with the Department of State with the articles of incorporation and the filing of same shall be a condition precedent to the approval of the articles of incorporation by the Department of State. Whenever the articles of incorporation shall have been filed in the Department of State and approved by it, and all filing fees and taxes prescribed by chapter 608, have been paid, the subscribers, their successors and assigns shall constitute a corporation, and said corporation shall then be authorized to commence business, and stock thereof to the extent herein or hereafter duly authorized may from time to time be issued.

History.—s. 2, ch. 61-177; ss. 10, 35, ch. 69-106.

289.031 Special corporate powers.—In furtherance of its purposes and in addition to the powers now or hereafter conferred on business corporations by the provisions of chapter 608, the corporation shall, subject to the restrictions and limitations herein contained, have the following powers:

(1) To elect, appoint, and employ officers, agents and employees; to make contracts and incur liabilities for any of the purposes of the corporation; provided, that the corporation shall not incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint stock company, association or trust, or in any other manner.

(2) To borrow money from its members and the Small Business Administration and any other similar federal agency, for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval; provided, that no loan to the corporation shall be secured in any manner unless all outstanding loans to the corporation shall be secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner.

(3) To make loans to any person, firm, corporation, joint stock company, association, or trust, and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith; provided, however, that the corporation shall not approve any application for a loan unless and until the person applying for said loan shall show that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution.

(4) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.

(5) To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, joint stock companies, associations, or trusts, and to assume, undertake, or pay the obligations, debts, and liabilities of any such person, firm, corporation, joint stock company, association, or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments.

(6) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint stock company, association, or trust, and while the owner or holder thereof to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon.

(7) To mortgage, pledge, or otherwise encumber any property, right or thing of value, acquired pursuant to the powers contained in subsections (4), (5), or (6), as security for the payment of any part of the purchase price thereof.

(8) To cooperate with and avail itself of the facilities of the United States Department of Commerce, the Division of Economic Development of the Department of Commerce, and any other similar state or federal governmental agencies; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof.

(9) To do all acts and things necessary or convenient to carry out the powers expressly granted in this act.

History.—s. 3, ch. 61-177; ss. 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 120, ch. 79-400.

289.041 Securities of Industrial Development Corporation, authorized financial transactions.—Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of asso-

ciation, articles of organization or trust indentures:

(1) Any person including all domestic corporations organized for the purpose of carrying on business within this state and further including without implied limitation public utility companies and insurance companies, and foreign corporations licensed to do business within this state, and all financial institutions as defined herein, and all trusts, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owners of said stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state except as otherwise provided in this act; provided, however, that a financial institution which does not become a member of the corporation shall not be permitted to acquire any shares of the capital stock of the corporation.

(2) All financial institutions are hereby authorized to become members of the corporation and to make loans to the corporation as provided herein.

(3) Each financial institution which becomes a member of the corporation is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds, securities, or other evidences of indebtedness created by, or the shares of the capital stock of the corporation, and while owners of said stock to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state; provided, that the amount of the capital stock of the corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed 10 percent of the loan limit of such member.

(4) The amount of capital stock of the corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire.

History.—s. 4, ch. 61-177.

289.051 Membership, financial institutions; loans to corporation, limitations.—

(1) Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by said board. Each member of the corporation shall make loans to the corporation as and when called upon by it to do so, on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(a) All loan limits shall be established at the thousand dollar amount nearest to the amount computed in accordance with the provisions of this section.

(b) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation would exceed the greater of the following:

1. Twenty times the aggregate of the amount then paid in on the outstanding capital stock of the corporation and the retained earnings of the corporation.

2. Twenty times the amount then paid in on the outstanding capital stock of the corporation.

(c) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

1. Twenty percent of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding, amounts validly called for loan but not yet loaned.

2. The following limit, to be determined as of the time such member becomes a member on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership, or in the case of an insurance company, its last annual statement to the Department of Insurance: 2½ percent of the capital and surplus of commercial banks and trust companies; one-half of 1 percent of the total outstanding loans made by savings and loan association and building and loan associations; 2½ percent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies; 2½ percent of the unassigned surplus of mutual insurance companies, except fire insurance companies; one-tenth of 1 percent of the assets of fire insurance companies; and such limits as may be approved by the board of directors of the corporation for other financial institutions. However, no limit shall exceed $250,000.

(2) Subject to subsection (1)(c)1., each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

(3) All loans to the corporation by members shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times, and which shall bear interest at a rate of not less than one-quarter of 1 percent in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans.

History.—s. 5, ch. 61-177; s. 1, ch. 67-316; ss. 13, 35, ch. 69-106; s. 1, ch. 76-77.

289.061 Membership duration; withdrawal. —Membership in the corporation shall be for the duration of the corporation; provided, that upon written notice given to the corporation 5 years in advance, a member may withdraw from membership in the corporation at the expiration date of such notice. A member shall not be obligated to make any loans to the corporation pursuant to calls made sub-

sequent to notice of the intended withdrawal of said member.

History.—s. 6, ch. 61-177.

289.071 Powers of stockholders and members.—

(1) The stockholders and the members of the corporation shall have the following powers of the corporation:

(a) To determine the number of and elect directors as provided in s. 289.091;

(b) To make, amend and repeal bylaws;

(c) To amend this charter as provided in s. 289.081;

(d) To dissolve the corporation as provided in s. 289.151;

(e) To do all things necessary or desirable to secure aid, assistance loans, and other financing from any financial institution, and from any agency established under the Small Business Investment Act of 1958, Pub. L. No. 85-699, 85th Congress, or other similar federal laws now or hereafter enacted;

(f) To exercise such other of the powers of the corporation consistent with this act as may be conferred on the stockholders and the members by the bylaws.

(2) As to all matters requiring action by the stockholders and the members of the corporation, said stockholders and said members shall vote separately thereon by classes, and, except as otherwise herein provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

(3) Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held by him, and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than $1,000 shall have one additional vote, in person or by proxy, for each additional $1,000 which such member is authorized to have outstanding on loans to the corporation at any one time as determined under s. 289.051(1)(c)2.

History.—s. 7, ch. 61-177.

289.081 Amendments to articles of incorporation.—

(1) The articles of incorporation may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds of the votes to which the stockholders shall be entitled and two-thirds of the votes to which the members shall be entitled. No amendment of the articles of incorporation which is inconsistent with the general purposes expressed herein, or which authorizes any additional class of capital stock to be issued, or which eliminates or curtails the right of the Department of Banking and Finance to examine the corporation or the obligation of the corporation to make reports as provided in s. 289.121, shall be made. No amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation, or makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of any outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided herein, or affects a member's voting rights as provided herein, shall be made without the consent of each member affected by such amendment.

(2) Within 30 days after any meeting at which an amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and due adoption thereof, shall be submitted to the Department of State, which shall examine them and if it finds that they conform to the requirements of this act, shall so certify and endorse its approval thereon. Thereupon, the articles of amendment shall be filed in the Department of State and no such amendment shall take effect until such articles of amendment shall have been filed as aforesaid.

History.—s. 8, ch. 61-177; ss. 10, 12, 35, ch. 69-106.

289.091 Conduct of corporation business and affairs.—

(1) The business and affairs of the corporation shall be managed and conducted by a board of directors, a president, a vice president, a secretary, a treasurer, and such other officers and such agents as the corporation by its bylaws shall authorize.

(2) The board of directors shall consist of such number, not less than 15 nor more than 21, as shall be determined in the first instance by the incorporators and thereafter annually by the members and the stockholders of the corporation. The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the stockholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies except vacancies in the office of director which shall be filled as hereinafter provided. The board of directors shall be elected in the first instance by the incorporators and thereafter at the annual meeting, which annual meeting shall be held during the month of January, or, if no annual meeting shall be held in the year of incorporation, then within 90 days after the approval of the articles of incorporation at a special meeting as hereinafter provided.

(3) At each annual meeting, or at each special meeting held as provided in this section, the members of the corporation shall elect two-thirds of the board of directors and the stockholders shall elect the remaining directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after the election and until their successors are elected and qualified unless sooner removed in accordance with the provisions of the bylaws.

(4) Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the stockholders shall be filled by the directors elected by the stockholders.

(5) Directors and officers shall not be responsible for losses unless the same shall have been occasioned

by the willful misconduct of such directors and officers.

History.—s. 9, ch. 61-177.

289.101 Surplus.—Each year the corporation shall set apart as earned surplus not less than 10 percent of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one-half of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the determination of the directors made in good faith shall be conclusive on all persons.

History.—s. 10, ch. 61-177.

289.111 Corporation depository.—The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated. The corporation shall not receive money on deposit.

History.—s. 11, ch. 61-177.

289.121 Periodic examinations; reports.—The corporation shall be examined at least once annually by the Department of Banking and Finance and shall make reports of its condition not less than annually to said department and more frequently upon call of the department, which in turn shall make copies of such reports available to the Department of Insurance and the Governor; and the corporation shall also furnish such other information as may from time to time be required by the Department of Banking and Finance and Department of State. The corporation shall pay the actual cost of said examinations. The Department of Banking and Finance shall exercise the same power and authority over corporations organized under this act as is now exercised over banks and trust companies by the provisions of the Florida Banking Code, where such banking code is not in conflict with this act.

History.—s. 12, ch. 61-177; ss. 10, 12, 13, 35, ch. 69-106.

289.131 Meetings.—

(1) The first meeting of the corporation shall be called by a notice signed by three or more of the incorporators, stating the time, place and purpose of the meeting, a copy of which notice shall be mailed, or delivered, to each incorporator at least 5 days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

(2) At such first meeting, the incorporators shall organize by the choice, by ballot, of a temporary clerk; by the adoption of bylaws; by the election by ballot of directors; and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Ten of the incorporators shall be a quorum for the transaction of business.

History.—s. 13, ch. 61-177.

289.141 Corporative existence.—The period of duration of the corporation shall be 50 years, subject, however, to the right of the stockholders and the members to dissolve the corporation prior to the expiration of said period as provided in s. 289.151.

History.—s. 14, ch. 61-177.

289.151 Dissolution.—The corporation may, upon the affirmative vote of two-thirds of the votes to which the stockholders shall be entitled, and two-thirds of the votes to which the members shall be entitled, dissolve said corporation as provided by chapter 608, insofar as said chapter 608 is not in conflict with the provisions of this act. Upon any dissolution of the corporation, none of the corporation's assets shall be distributed to the stockholders until all sums due the members of the corporation as creditors thereof have been paid in full.

History.—s. 15, ch. 61-177.

289.161 Credit of state.—Under no circumstances shall the credit of Florida be pledged to any corporation organized under the provisions of this act.

History.—s. 16, ch. 61-177.

289.171 Federal Small Business Investment Act, applicability.—Any corporation organized under the provisions of this act shall be a state development company, as defined in the Small Business Investment Act of 1958, Pub. L. No. 85-699, 85th Congress, or any other similar federal legislation, and shall be authorized to operate on a statewide basis.

History.—s. 17, ch. 61-177.

289.181 Tax exemptions, tax credits, etc.—Any tax exemptions, tax credits, or tax privileges granted to banks, savings and loan associations, trust companies, and other financial institutions by ss. 196.27 and 201.10, or by any other general laws are granted to corporations organized pursuant to this act.

History.—s. 18, ch. 61-177.

289.191 Occupational license tax.—Every corporation organized and engaged in business under the provisions of this act shall pay an annual state occupational license tax of $50. Counties and municipalities are authorized, in addition, to levy the occupational license taxes as prescribed in s. 205.041; provided, however, no county or municipality shall levy any such occupational license tax in a greater amount than those prescribed in said s. 205.041.

History.—s. 19, ch. 61-177.

289.201 Fiscal year.—Corporations organized under this act shall adopt the calendar year as their fiscal year.

History.—s. 20, ch. 61-177.

CHAPTER 290

FLORIDA NUCLEAR CODE AND SOUTHERN INTERSTATE NUCLEAR COMPACT LAW

290.011 Short title.—This chapter shall be known and may be cited as the "Florida Radiation Protection Act."

History.—s. 1, ch. 78-373.

290.021 Declaration of policy.—It is the responsibility of the State of Florida, for protection of the public health and safety:

(1) To institute and maintain a program to permit development and utilization of sources of radiation for purposes consistent with the health and safety of the public.

(2) To prevent any associated harmful effects of radiation upon the public through the institution and maintenance of a regulatory program for all sources of radiation, providing for:

(a) A single effective system of regulation within the state.

(b) A system consonant with those of other states.

(c) Compatibility with the standards and regulatory programs of the Federal Government for byproduct, source, and special nuclear materials.

History.—s. 1, ch. 78-373.

290.031 Definitions.—As used in this act, unless the context clearly indicates otherwise:

(1) "United States Nuclear Regulatory Commission" means the United States Nuclear Regulatory Commission or its successor agency.

(2) "Agreement materials" means those materials licensed by the state, under agreement with the United States Nuclear Regulatory Commission or its successor agency, which include byproduct, source, or special nuclear materials in a quantity not sufficient to form a critical mass, as defined by the Atomic Energy Act of 1954, as amended.

(3) "Agreement state" means any state which has consummated an agreement with the United States Nuclear Regulatory Commission under the authority of s. 274 of the Atomic Energy Act of 1954, as amended, as authorized by compatible state legislation providing for acceptance by that state of licensing authority for agreement materials and the discontinuance of such activities by the United States Nuclear Regulatory Commission.

(4) "Atomic energy" means all forms of energy released in the course of nuclear fission or nuclear fusion or other atomic transformations.

(5) "Byproduct material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(6) "Department" means the Department of Health and Rehabilitative Services.

(7) "Emergency" means any condition existing outside the bounds of nuclear operating sites owned or licensed by a federal agency, and further any condition existing within or outside of the jurisdictional confines of a facility licensed by the department and arising from byproduct material, source material, special nuclear materials, or other radioactive materials, which is endangering, or could reasonably be expected to endanger, the health and safety of the public or to contaminate the environment.

(8) "General license" means a license effective pursuant to rules promulgated under the provisions of this act without the filing of an application to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing, byproduct, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially.

(9) "Ionizing radiation" means gamma rays and X rays, alpha and beta particles, high speed electrons, protons, neutrons, and other nuclear particles; but not sound or radio waves or infrared, ultraviolet, or visible light.

(10) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state, or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Nuclear Regulatory Commission, or any successor thereto, and other than Federal Government agencies licensed by the United States Nuclear Regulatory Commission, or any successors thereto.

(11) "Radiation machine" means any device designed to produce, or which produces, radiation or nuclear particles when the associated control devices of the machine are operated.

(12) "Radioactive material" means any solid, liquid, or gas which emits ionizing radiation spontane-

ously; however, this definition shall not include radioactive wastes regulated pursuant to the Hazardous Waste Management sections of the Federal Resource Conservation and Recovery Act of 1976 or the Department of Environmental Regulation's assumption of that program.

(13) "Source material" means:

(a) Uranium, thorium, or any other material which the department declares to be source material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such; or

(b) Ores containing one or more of the foregoing materials in such concentration to be source material.

(14) "Special nuclear material" means:

(a) Plutonium, uranium 233, uranium 235, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the department declares to be a special nuclear material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such, but does not include source material; or

(b) Any material artificially enriched by any of the foregoing, but does not include source material.

(15) "Specific license" means a license, issued after application, to use, manufacture, produce, transfer, receive, acquire, own or possess quantities of, or devices or equipment utilizing, byproduct, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially.

History.—s. 1, ch. 78-373.

290.041 Designation of state radiation protection agency.—The department is hereby designated the state agency to administer a statewide radiation protection program consistent with the provisions of this act.

History.—s. 1, ch. 78-373.

290.052 Powers and duties of the Department of Health and Rehabilitative Services.—For protection of the public health and safety, the department is authorized to:

(1) Develop comprehensive policies and programs for the evaluation, determination, and amelioration of hazards associated with the use of or disposal of ionizing radiation. Such policies and programs shall be developed with due regard for compatibility with federal programs for regulation of byproduct, source, and special nuclear materials.

(2) Advise, consult, and cooperate with other public agencies and with affected groups and industries.

(3) Encourage, participate in, or conduct studies, investigations, public hearings, training, research, and demonstrations relating to the control of sources of ionizing radiation, the measurement of ionizing radiation, the effect upon public health and safety of exposure to ionizing radiation, and related problems.

(4) No later than January 1, 1979, adopt, promulgate, amend, and repeal rules and standards which may provide for licensing or registration relating to the manufacture, production, transportation, use, handling, storage, disposal, sale, lease, or other disposition of radioactive material and radiation machines as may be necessary to carry out the provisions of this act. The recommendations of nationally recognized bodies in the field of radiation protection shall be taken into consideration in such standards relative to permissible dosage of ionizing radiation.

(5) Provide necessary and desirable services to any agency of the state which will acquire, lease, develop, or operate land and facilities to be used for fostering development of the state's economic potential in the atomic energy field, including, but not limited to, the concentration of storage of radioactive byproducts and wastes. Such services may include, but are not limited to, site evaluation, critique of private or public site monitoring activities, and developing plans for perpetual custody and maintenance of radioactive materials held for custodial purposes at any publicly or privately operated facility located within the state.

(6) Require the submission of plans, specifications, and reports for new construction and material alterations on design and protective shielding of installations for radioactive material and radiation machines, excluding X-ray machines of less than 25,000 volts potential, and on systems for the disposal of radioactive waste materials, for the determination of any ionizing hazard; and may render opinions and approve or disapprove such plans and specifications. Nothing in this subsection shall require any facility required to submit plans and specifications to the department under s. 395.09 to submit additional plans and specifications.

(7) Require all sources of ionizing radiation to be shielded, transported, handled, used, stored, or disposed of in a manner to provide compliance with the provisions of this act and rules and standards adopted hereunder.

(8) Conduct evaluations of the levels of radioactive materials in the environment for the purpose of determining whether there is compliance with, or violation of, the provisions of this act or the rules issued pursuant thereto, or to otherwise protect the public health and safety.

(9) Collect and disseminate information relating to the control of sources of ionizing radiation, including, but not limited to:

(a) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations.

(b) Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under the provisions of this act.

(10) Require, on forms prescribed and furnished by the department, registration, periodic re-registration, or licensing of sources of ionizing radiation other than byproduct, source, and special nuclear material.

(11) Exempt certain sources of ionizing radiation, or kinds of uses or users, from the licensing or registration requirements set forth in this act when the department determines that the exemption of such sources of ionizing radiation, or kinds of users or uses, will not constitute a significant risk to the health and safety of the public.

(12) Promulgate rules pursuant to this act which may provide for recognition of other state and federal licenses as the department shall deem desirable,

subject to such registration requirements as it may prescribe.

(13) Respond to any emergency which involves possible or actual release of radioactive materials, carry out required decontamination, and otherwise protect the public health and safety.

(14) Develop and implement a responsible data management program for the purpose of collecting and analyzing statistical information necessary to protect the public health and safety.

History.—s. 1, ch. 78-373.

290.061 Manufacture and possession of byproduct, source, and special nuclear materials; licensing.—

(1) The Governor is authorized to enter into agreements with the Federal Government providing for discontinuance of certain of the responsibilities of the Federal Government with respect to sources of ionizing radiation and the assumption thereof by this state.

(2) Upon signing of an agreement as provided in subsection (1), the department shall provide by rule for general or specific licensing of persons to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess byproduct, source, or special nuclear materials or devices, installations, or equipment utilizing such materials. Such rule shall provide for amendment, suspension, or revocation of licenses. Each application for a specific license shall be in writing, on forms prescribed and furnished by the department, and shall state such information, and be accompanied by such documents, including, but not limited to, plans, specifications, and reports for new construction or material alterations, as the department may determine to be reasonable and necessary to decide the qualifications of the applicant and to protect the public health and safety. The department may require all applications or statements to be made under oath or affirmation. Each license shall be in such form and contain such terms and conditions as the department may deem necessary. No license issued under the authority of this act, and no right to possess or utilize sources of ionizing radiation granted by any license, shall be assigned or in any manner disposed of; and the terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules or orders issued in accordance with the provisions of this act.

(3) Any person who, on the effective date of an agreement under subsection (1), possesses a license issued by the Federal Government shall be deemed to possess the same pursuant to a license issued under this act, which shall expire either 90 days after receipt from the department of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

(4) Nothing in this act shall authorize any regulatory or licensing activities which are regulated by the Federal Government unless the Federal Government shall delegate appropriate authority for such activities to the State of Florida.

History.—s. 1, ch. 78-373.

290.072 Inspection, agreements, and training programs.—

(1) Authorized representatives of the department shall have the authority to enter upon any public or private property, other than a private dwelling, at all reasonable times for the purpose of determining compliance with the provisions of this act and rules and standards adopted hereunder.

(2) The Governor may enter into agreements with the Federal Government, other states, or interstate agencies, whereby this state will perform, on a cooperative basis with the Federal Government, other states, or interstate agencies, inspections, emergency responses to radiation accidents, and other functions related to the control of radiation.

(3) The department is authorized to institute training programs for the purpose of qualifying personnel to carry out the provisions of this act and may make said personnel available for participation in any program or programs of the Federal Government, other states, or interstate agencies in furtherance of the purpose of this act.

(4) The department is authorized to institute educational programs for the purpose of training or educating persons who possess, use, handle, transport, or service radioactive materials or radiation machines.

History.—s. 1, ch. 78-373.

290.081 Records.—

(1) The department is authorized to require each person who possesses or uses a source of ionizing radiation to:

(a) Maintain appropriate records relating to its receipt, storage, use, transfer, or disposal and maintain such other records as the department may require, subject to such exemptions as may be provided by rule.

(b) Maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring may be required by the department, subject to such exemptions as may be provided by rule.

Copies of all records required to be kept by this subsection shall be submitted to the department or its duly authorized agents upon request.

(2) The department is authorized to require that any person possessing or using a source of ionizing radiation, at the request of any employee for whom personnel monitoring is required, furnish to such employee a copy of such employee's personnel exposure record annually, upon termination of employment, and at any time such employee has received excessive exposure.

History.—s. 1, ch. 78-373.

290.091 Emergency orders.—Whenever the department finds that an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order stating the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding any provision of this act, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediate-

ly, and on application to the department shall be afforded a hearing within 10 days. On the basis of such hearing, the emergency order may be continued, modified, or revoked within 30 days after such hearing, as the department may deem appropriate under the evidence.

History.—s. 1, ch. 78-373.

290.101 Impounding of materials.—

(1) Authorized representatives of the department shall have the authority, in the event of an emergency, to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this act or any rules promulgated hereunder.

(2) The department may release such sources of ionizing radiation to the owner thereof upon terms and conditions in accordance with the provisions of this act or may bring an action in the appropriate circuit court for an order condemning such sources of ionizing radiation and providing for the destruction or other disposition so as to protect the public health and safety.

History.—s. 1, ch. 78-373.

290.111 Bonds.—

(1) The department shall require the posting of a bond by licensees to provide funds in the event of abandonment, default, or other inability of the licensee to meet the requirements of the department. The department is hereby authorized to establish bonding requirements. In establishing such requirements, the department shall give consideration to the potential for contamination, injury, cost of disposal, and reclamation of the property.

(2) All bonds forfeited shall be paid to the department for deposit by the State Treasurer in a special fund known as the Radiation Reclamation Fund. All moneys in such fund are hereby appropriated and may be expended by the department as necessary to assure the protection of the public health and safety from the dangerous effects of ionizing radiation. Moneys in this fund shall not be used for normal operating expenses of the department.

(3) A bond deemed acceptable in Florida shall be a bond issued by a fidelity or surety company authorized to do business in Florida, a personal bond supported by such collateral as the department deems satisfactory, or a cash bond.

(4) All state, local, or other governmental agencies shall be exempt from the requirements of this section and s. 290.121. The department is authorized to exempt classes of licensees from the requirements of this section when a finding is made that such exemption will not result in a significant risk to the public health and safety.

History.—s. 1, ch. 78-373.

290.121 Perpetual care trust funds.—

(1) The department may require a licensee to deposit funds, on a quarterly basis, in a trust fund when it is deemed there is a reasonable possibility that the licensed facility may eventually cease to operate although still containing, or having associated with the facility property, licensable radioactive material which will require maintenance, surveillance, or other care on a continuing and perpetual basis.

(2) In order to provide for the proper care and surveillance of facilities subject to subsection (1), the state may acquire, by gift or transfer from another government agency or private person, any and all lands, buildings, and grounds necessary to fulfill the purposes of this section. Any such gift or transfer is subject to approval and acceptance by the state.

(3) The department may, by lease or license with any person, provide for the operation of a site or facility subject to this section for the purpose of carrying out the provisions of this act. Any lessee or licensee operating under the provisions of this subsection shall be subject to the provisions of this section.

(4) The funds required by subsection (1) shall be established at such rate that interest on the sum of all funds reasonably anticipated as payable shall provide an annual amount equal to the anticipated reasonable costs necessary to maintain, monitor, and otherwise supervise and care for the lands and facilities as required in the interest of public health and safety. In arriving at the rate of funds to be deposited, the department shall consider the nature of the licensed material, size and type of facility, estimated future receipts, and estimated future expenses of maintenance, monitoring, and supervision.

(5) Recognizing the uncertainty of the existence of a person or corporation in perpetuity, and that ultimate responsibility to protect the public health and safety must be reposed in a solvent government, without regard to the existence of any particular agency or department thereof, all lands, buildings, and grounds acquired by the state under subsection (2) shall be owned in fee simple absolute by the state and dedicated in perpetuity to the purposes stated in subsection (2). All radioactive material received at such facility and located therein at time of acquisition of ownership by the state becomes the property of the state.

(6) In the event a person licensed by any governmental agency other than the State of Florida desires to transfer a facility to the state for the purpose of administering or providing perpetual care, a lump sum deposit shall be made to a trust fund. The amount of such deposit shall be determined by the department, taking into consideration the factors stated in subsection (4).

History.—s. 1, ch. 78-373.

290.131 Fees.—The Department of Health and Rehabilitative Services is authorized to charge and collect reasonable fees for special and general licenses. The fees shall not exceed the estimated costs to the department of performing licensing and regulatory duties. All such fees shall be deposited to the credit of the Radiation Protection Trust Fund, to be held and applied solely for salaries and expenses of the department incurred in implementing and enforcing the provisions of this act.

History.—s. 1, ch. 78-373.

290.141 Prohibited uses.—It is unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess any source of radiation unless licensed, registered, or exempted

by the department in accordance with the provisions of this act and the rules adopted and promulgated hereunder.

History.—s. 1, ch. 78-373.

290.151 Injunctive relief.—A civil action may be instituted in the circuit court on behalf of the department for injunctive relief to prevent the violation of the provisions of this act or rules promulgated under this act, and said court may proceed in the action as in other civil actions and may restrain in all such cases any person from violating any of the provisions of this act or the rules promulgated hereunder.

History.—s. 1, ch. 78-373.

290.161 Penalties.—

(1) Any person who violates any of the provisions of this act or any rule promulgated hereunder shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who interferes with, hinders, or opposes any agent, officer, or member of the department in the discharge of his duties under this act shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Any person who fails to comply with a lawful order issued pursuant to this act within the time fixed by the department or the time allowed for review under s. 290.151, whichever is longer, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 78-373.

290.171 Construction.—This act is cumulative and is intended to supplement existing laws, and no part shall be construed to repeal any existing law, specifically enacted for the protection of public health and safety, with the exception of those sections included in this act.

History.—s. 1, ch. 78-373.

[1]290.30 Definitions; Southern Interstate Nuclear Compact.—As used in this act, unless the context requires otherwise:

(1) "Compact" means the Southern Interstate Nuclear Compact;

(2) "Board" means the Southern Interstate Nuclear Board.

History.—s. 1, ch. 61-227; s. 2, ch. 79-348.

[1]Note.—Section 2, ch. 79-348, amended this section effective "only when the substance of section 1 is adopted by nine party states to the Southern Interstate Nuclear Compact and the Congress of the United States consents to the substance of section 1." As amended, this section will read:

290.30 Definitions; Southern States Energy Compact.—As used in this act, unless the context requires otherwise:

(1) "Compact" means the Southern States Energy Compact;

(2) "Board" means the Southern States Energy Board.

[1]290.31 Florida party to Southern Interstate Nuclear Compact.—The Southern Interstate Nuclear Compact is enacted into law and entered into by the state as a party, and is of full force and effect between the state and any other states joining therein in accordance with the terms of the compact, which said compact is substantially as follows:

(1) POLICY AND PURPOSE.—The party states recognize that the proper employment of nuclear energy, facilities, materials and products can assist substantially in the industrialization of the South and the development of a balanced economy for the region. They also recognize that optimum benefit from an acquisition of nuclear resources and facilities requires systematic encouragement, guidance and assistance from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis; it is the purpose of this compact to provide the instruments and framework for such a cooperative effort to improve the economy of the South and contribute to the individual and community well-being of the people of this region.

(2) BOARD.—

(a) There is hereby created an agency of the party states to be known as the Southern Interstate Nuclear Board (hereinafter called the board). The board shall be composed of one member from each party state designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the board may provide for the discharge of his duties and the performance of his functions thereon (either for the duration of his membership or for any less period of time) by a deputy or assistant, if the laws of his state make specific provision therefor. The Federal Government may be represented without vote if provision is made by federal law for such representation.

(b) The board members of the party state shall each be entitled to one vote on the board. No action of the board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes are cast in favor thereof.

(c) The board shall have a seal.

(d) The board shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The board shall appoint an executive director who shall serve at its pleasure and who shall also act as secretary, and who, together with the treasurer, shall be bonded in such amounts as the board may require.

(e) The executive director, with approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

(f) The board may establish and maintain, independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old age and survivors' insurance, provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The board may borrow, accept or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

(h) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services (conditional or otherwise) from any state or the United States or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same.

(i) The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold and convey real and personal property and any interest therein.

(j) The board shall adopt bylaws, rules and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules and regulations. The board shall publish its bylaws, rules and regulations in convenient form and shall also file a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(k) The board annually shall make to the governor of each party state a report covering the activities of the board for the preceding year, and embodying such recommendations as may have been adopted by the board, which report shall be transmitted to the legislature of said state. The board may issue such additional reports as it may deem desirable.

(3) FINANCES.—

(a) The board shall submit to the executive head or designated officer or officers of each state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(b) Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. One-half of the total amount of each budget of estimated expenditures shall be apportioned among the party states in equal shares; one-quarter of each such budget shall be apportioned among the party states in accordance with the ratio of their populations to the total population of the entire group of party states based on the latest official decennial census; and one-quarter of each such budget shall be apportioned among the party states on the basis of the relative average per capita income of the inhabitants in each of the party states based on the latest computations published by the federal census-taking agency. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

(c) The board may meet any of its obligations in whole or in part with funds available to it under subsection (2)(h), provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under subsection (2)(h), the board shall not incur any obligation prior to the allotment of funds by the party jurisdiction adequate to meet the same.

(d) Any expenses and any other costs for each member of the board in attending board meetings shall be met by the board.

(e) The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the board shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the board.

(f) The accounts of the board shall be open at any reasonable time for inspection.

(4) ADVISORY COMMITTEES.—The board may establish such advisory and technical committees as it may deem necessary, membership on which to include but not to be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies and officials of local, state and federal government, and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

(5) POWERS.—The board shall have the power to:

(a) Ascertain and analyze on a continuing basis the position of the South with respect to nuclear and related industries.

(b) Encourage the development and use of nuclear energy facilities, installations and products as part of a balanced economy.

(c) Collect, correlate and disseminate information relating to civilian uses of nuclear energy, materials and products.

(d) Conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspects of:

1. Nuclear industry, medicine or education or the promotion or regulation thereof.

2. The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of nuclear energy, materia products, installations or wastes.

(e) Organize and conduct, or assist and cooperate in organizing and conducting, demonstrations of nuclear product, material or equipment use and disposal and of proper techniques or processes for the application of nuclear resources to the civilian economy or general welfare.

(f) Undertake such nonregulatory functions with respect to nonnuclear sources of radiation as may promote the economic development and general welfare of the region.

(g) Study industrial, health, safety and other standards, laws, codes, rules, regulations and administrative practices in or related to nuclear fields.

(h) Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or ordinances of the party states in any of the fields of its interest and competence as in its judgment may be appropriate. Any such recommendation shall be made, in the case of Florida, through the Department of Commerce.

(i) Prepare, publish and distribute (with or without charge) such reports, bulletins, newsletters or other material as it deems appropriate.

(j) Cooperate with the Atomic Energy Commission or any agency successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest.

(k) Act as licensee of the United States Government or any party state with respect to the conduct of any research activity requiring such license and operate such research facility or undertake any program pursuant thereto.

(l) Ascertain from time to time such methods, practices, circumstances and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states to coordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents. The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic areas covered by this compact.

(6) SUPPLEMENTARY AGREEMENTS.—

(a) To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of this compact, any two or more of the party states (acting by their duly constituted administrative officials) may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify its purpose or purposes, its duration and the procedure for termination thereof or withdrawal therefrom, the method of financing and allocating the costs of the activity or project and such other matters as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this act shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or the activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the board.

(b) Unless all of the party states participate in a supplementary agreement, any costs thereof shall be borne separately by the states party thereto. However, the board may administer or otherwise assist in the operation of any supplementary agreement.

(c) No party to a supplementary agreement entered into pursuant to this act shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

(7) OTHER LAWS AND REGULATIONS.—Nothing in this compact shall be construed to:

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

(b) Limit, diminish or otherwise impair jurisdiction exercised by the Atomic Energy Commission, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative Act of Congress.

(c) Alter the relations between the respective internal responsibilities of the government of a party state and its subdivisions.

(d) Permit or authorize the board to exercise any regulatory authority or to own or operate any nuclear reactor for the generation of electric energy; nor shall the board own or operate any facility or installation for industrial or commercial purposes.

(8) ELIGIBLE PARTIES, ENTRY INTO FORCE AND WITHDRAWAL.—

(a) Any or all of the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia shall be eligible to become party to this compact.

(b) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law; provided that it shall not become initially effective until enacted into law by seven states.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until the governor of the withdrawing state shall have sent formal notice in writing to the governor of each other party state informing said governors of the action of the legislature in repealing the compact and declaring an intention to withdraw.

(9) SEVERABILITY AND CONSTRUCTION.—The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof.

History.—s. 2, ch. 61-227; ss. 17, 35, ch. 69-106; s. 1, ch. 79-348.

[1]**Note.**—Section 1, ch. 79-348, amended this section effective "only when the substance of section 1 is adopted by nine party states to the Southern Inter-

state Nuclear Compact and the Congress of the United States consents to the substance of section 1." As amended, this section will read:

290.31 Florida party to Southern States Energy Compact.—The Southern States Energy Compact is enacted into law and entered into by the state as a party, and is of full force and effect between the state and any other states joining therein in accordance with the terms of the compact, which compact is substantially as follows:

(1) POLICY AND PURPOSE.—The party states recognize that the proper employment and conservation of energy and employment of energy-related facilities, materials, and products, within the context of a responsible regard for the environment, can assist substantially in the industrialization of the South and the development of a balanced economy for the region. They also recognize that optimum benefit from an acquisition of energy resources and facilities requires systematic encouragement, guidance, and assistance from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis; it is the purpose of this compact to provide the instruments and framework for such a cooperative effort to improve the economy of the South and contribute to the individual and community well-being of the people of this region.

(2) BOARD.—

(a) There is hereby created an agency of the party states to be known as the Southern States Energy Board (hereinafter called the board). The board shall be composed of three members from each party state, one of whom shall be appointed or designated in each state to represent the governor, the state senate, and the state house of representatives, respectively. Each member shall be designated or appointed in accordance with the law of the state which he represents and shall serve and be subject to removal in accordance with such law. Any member of the board may provide for the discharge of his duties and the performance of his functions thereon (either for the duration of his membership or for any less period of time) by a deputy or assistant, if the laws of his state make specific provision therefor. The Federal Government may be represented without vote if provision is made by federal law for such representation.

(b) Each party state shall be entitled to one vote on the board, to be determined by majority vote of each member or member's representative from the party state present and voting on any question. No action of the board shall be binding unless taken at a meeting at which a majority of all party states are represented and unless a majority of the total number of votes are cast in favor thereof.

(c) The board shall have a seal.

(d) The board shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The board shall appoint an executive director who shall serve at its pleasure and who shall also act as secretary, and who, together with the treasurer, shall be bonded in such amounts as the board may require.

(e) The executive director, with approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board's functions irrespective of the civil service, personnel, or other merit system laws of any of the party states.

(f) The board may establish and maintain, independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old age and survivors' insurance, provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm, or corporation.

(h) The board may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same.

(i) The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold, and convey real and personal property and any interest therein.

(j) The board shall adopt bylaws, rules, and regulations for the conduct of its business and shall have the power to amend and rescind these bylaws, rules, and regulations. The board shall publish its bylaws, rules, and regulations in convenient form and shall also file a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(k) The board annually shall make to the governor of each party state a report covering the activities of the board for the preceding year and embodying such recommendations as may have been adopted by the board, which report shall be transmitted to the legislature of said state. The board may issue such additional reports as it may deem desirable.

(3) FINANCES.—

(a) The board shall submit to the executive head or designated officer or officers of each state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(b) Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. One-half of the total amount of each budget of estimated expenditures shall be apportioned among the party states in equal shares; one-quarter of each such budget shall be apportioned among the party states in accordance with the ratio of their populations to the total population of the entire group of party states based on the latest official decennial census; and one-quarter of each such budget shall be apportioned among the party states on the basis of the relative average per capita income of the inhabitants in each of the party states based on the latest computations published by the federal census-taking agency. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

(c) The board may meet any of its obligations in whole or in part with funds available to it under paragraph (2)(h), provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under paragraph (2)(h), the board shall not incur any obligation prior to the allotment of funds by the party jurisdiction adequate to meet the same.

(d) The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the board shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual report of the board.

(e) The accounts of the board shall be open at any reasonable time for inspection.

(4) ADVISORY COMMITTEES.—The board may establish such advisory and technical committees as it may deem necessary, membership on which will include, but not be limited to, private citizens; expert and lay personnel; representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, and voluntary health agencies; and officials of local, state, and federal government, and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

(5) POWERS.—The board shall have the power to:

(a) Ascertain and analyze on a continuing basis the position of the South with respect to energy, energy-related industries, and environmental concerns.

(b) Encourage the development, conservation, and responsible use of energy and energy-related facilities, installations, and products as part of a balanced economy and a healthy environment.

(c) Collect, correlate, and disseminate information relating to civilian uses of energy and energy-related materials and products.

(d) Conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspects of:

1. Energy, environment, and application of energy, environmental, and related concerns to industry, medicine, or education or the promotion or regulation thereof.

2. The formulation or administration of measures designed to promote safety in any matter related to the development, use, or disposal of energy and energy-related materials, products, installations, or wastes.

(e) Organize and conduct, or assist and cooperate in organizing and conducting, demonstrations of energy product, material, or equipment use and disposal and of proper techniques or processes for the application of energy resources to the civilian economy or general welfare.

(f) Undertake such nonregulatory functions with respect to sources of radiation as may promote the economic development and general welfare of the region.

(g) Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to energy and environmental fields.

(h) Recommend such changes in, or amendments or additions to, the laws, codes, rules, regulations, administrative procedures and practices, or ordinances of the party states in any of the fields of its interest and competence as in its judgment may be appropriate. Any such recommendation shall be made, in the case of Florida, through the Department of Commerce.

(i) Prepare, publish, and distribute (with or without charge) such reports, bulletins, newsletters, or other material as it deems appropriate.

(j) Cooperate with the United States Department of Energy or any agency successor thereto, any other officer or agency of the United States, any other governmental unit or agency or officer thereof, and any private persons or agencies in any of the fields of its interest.

(k) Act as licensee of the United States Government or any party state with respect to the conduct of any research activity requiring such license and operate such research facility or undertake any program pursuant thereto.

(l) Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of energy and environmental incidents in the area comprising the party states, coordinate the nuclear, environmental, and other energy-related incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states, and facilitate the rendering of aid by the party states to each other in coping with energy and environmental incidents. The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with energy and environmental incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic areas covered by this compact.

(6) SUPPLEMENTARY AGREEMENTS.—

(a) To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of this compact, any two or more of the party states (acting by their duly constituted administrative officials) may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify its purpose or purposes, its duration and the procedure for termination thereof or withdrawal therefrom, the method of financing and allocating the costs of the activity or project, and such other matters as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this subsection shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or the activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the board.

(b) Unless all of the party states participate in a supplementary agreement, any costs thereof shall be borne separately by the states party thereto. However, the board may administer or otherwise assist in the operation of any supplementary agreement.

(c) No party to a supplementary agreement entered into pursuant to this subsection shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

(7) OTHER LAWS AND REGULATIONS.—Nothing in this compact shall be construed to:

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order, or ordinance of a party state or subdivision thereof now or hereafter made, enacted, or in force.

(b) Limit, diminish, or otherwise impair jurisdiction exercised by the United States Department of Energy or any agency successor thereto or any other federal department, agency, or officer pursuant to and in conformity with any valid and operative Act of Congress.

(c) Alter the relations between the respective internal responsibilities of the government of a party state and its subdivisions.

(d) Permit or authorize the board to exercise any regulatory authority or to own or operate any nuclear reactor for the generation of electric energy; nor shall the board own or operate any facility or installation for industrial or commercial purposes.

(8) ELIGIBLE PARTIES, ENTRY INTO FORCE AND WITHDRAWAL.—

(a) Any or all of the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia, the Commonwealth of Puerto Rico, and the United States Virgin Islands shall be eligible to become party to this compact.

(b) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law, except that it shall not become initially effective until enacted into law by seven states.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until the governor of the withdrawing state shall have sent formal notice in writing to the governor of each other party state informing said governors of the action of the legislature in repealing the compact and declaring an intention to withdraw.

(9) SEVERABILITY AND CONSTRUCTION.—The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable, and if any phrase, clause, sentence, or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof.

290.32 Florida participation.—

[1](1) The Governor shall appoint the board member from Florida. The member or the Governor may designate another person as his deputy or assistant.

(2) Any supplementary agreement entered into under s. 290.31(6) requiring the expenditure of funds shall not become effective as to Florida until the required funds are appropriated by the Legislature.

(3) The department, agencies and officers of this state, and its subdivisions are authorized to cooperate with the board in the furtherance of any of its activities pursuant to the compact, provided such proposed activities have been made known to, and have the approval of, either the Governor or the Department of Health and Rehabilitative Services.

History.—s. 3, ch. 61-227; s. 5, ch. 63-474; s. 22, ch. 65-420; ss. 17, 35, ch. 69-106; s. 2, ch. 78-373; s. 3, ch. 79-348.

[1]**Note.**—Section 3, ch. 79-348, amended this subsection effective "only when the substance of section 1 is adopted by nine party states to the Southern Interstate Nuclear Compact and the Congress of the United States consents to the substance of section 1." As amended, subsection (1) will read:

(1)(a) The Governor shall appoint one member of the Southern States Energy Board. The member or the Governor may designate another person as the deputy or assistant to such member.

(b) The President of the Senate shall appoint one member of the Southern States Energy Board. The member or the president may designate another person as the assistant or deputy to such member.

(c) The Speaker of the House of Representatives shall appoint one member of the Southern States Energy Board. The member or the speaker may designate another person as the assistant or deputy to such member.

TITLE XX

PENSIONS AND WAR VETERANS

CHAPTER 291

CONFEDERATE PENSIONS

291.02 Persons entitled to pensions; amount; requirements.—Any person who enlisted and served in the military or naval service of the Confederate States during the War Between the States of the United States, and did not desert the Confederate service, and who performed service in actual line of duty for a period of not less than 1 year, or who was in actual service at the time of the close of said war, unless incapacitated for such duty by reason of wounds received or disease contracted while in line of duty, or who was otherwise honorably discharged for any cause, and shall have been a bona fide citizen of this state for 8 years next preceding the filing of his claim for pension, shall be entitled, upon application, to receive a pension in the amount of $900 per annum, in monthly payments of $75 each; provided, however, that no soldier or soldier's widow, who is now on the pension roll and drawing a pension shall be required to make other and further proof; provided, further, that no applicant for a pension under this section, who has previously made satisfactory proof of service under any former law, which proof of service meets the requirements of this section, although not now on the pension roll, shall not be required to make new proof of service; provided, further, that the provisions of this section shall apply to all those who were members of the Florida Reserve, and also those known as "home guards," which were in the service of the state during the War Between the States of the United States; provided, further that the provisions of this section shall apply to those who were members of the militia of any of the Confederate States, who saw actual service in the Confederate service for at least 1 year, or who were in the service at the end of the war, and who have been bona fide residents of the state for 15 years; provided, further, that any soldier or sailor who performed actual service for a period of 1 year or more in line of duty and was absent from his command at the time same was mustered out, upon a furlough granted him after January 15, 1865, shall not be presumed to have deserted the service and shall be entitled to a pension under the provisions of this section, unless proven to be a deserter; and provided, further, that a discharge from a federal prison by reason of sickness, where such sickness is shown by official records

and also by positive proof, shall not be considered a desertion.

History.—s. 1, ch. 4894, 1901; s. 2, ch. 5600, 1907; s. 2, ch. 5885, 1909; s. 2, ch. 6424, 1913; s. 2, ch. 6818, 1915; s. 2, ch. 7259, 1917; s. 1, ch. 7924, 1919; s. 1, ch. 7925, 1919; RGS 1444; s. 1, ch. 8400, 1921; s. 1, ch. 10208, 1925; CGL 2098; s. 1, ch. 18046, 1937; CGL 1940 Supp. 2098(1); s. 1, ch. 22912, 1945; s. 1, ch. 26906, 1951.

291.03 Home guards of other states not eligible for pension.—Soldiers of organizations known as "home guards" of other states in the War Between the States, shall not be eligible to a pension under the laws of this state; provided this section shall not affect the pension of any soldier or the widow of any soldier on the pension roll of this state at this time; and, provided this section shall not apply to those who are 80 years of age and have resided continuously in the state for 60 years prior to May 28, 1931.

History.—s. 1, ch. 14735, 1931; CGL 1936 Supp. 2102(1).

291.04 Widows of deceased soldiers or sailors entitled to pensions; amount; requirements.—

(1) The widow of any deceased soldier or sailor who enlisted and served in the military or naval service of the Confederate States during the War Between the States of the United States and did not desert the service and who performed service in actual line of duty, for a period of not less than 1 year, unless incapacitated for such duty by reason of death, wounds received or disease contracted while in actual line of duty, or who was otherwise honorably discharged for any cause, shall be entitled to receive the sum of $1800 per annum, to be paid in 12 equal monthly installments upon the following conditions:

(a) Such widow shall have resided continuously in this state for a period of 8 years next preceding the date of filing her pension claim;

(b) Such a widow's marriage shall have been solemnized on or prior to June 1, 1917;

(c) Such widow of any such deceased soldier or sailor, who at the time of his death was drawing a pension either under this chapter or under a special act of the Legislature of this state, shall not be required to make proof of her husband's service;

(d) If such widow's husband, at the time of his death, was not drawing a pension, either under this chapter or under a special act of the Legislature of this state, then such widow of any deceased soldier or sailor shall make proof of her husband's service.

(2) There is hereby appropriated out of the General Revenue Fund a sufficient amount to cover the increase provided herein.

History.—s. 1, ch. 5109, 1903; s. 3, ch. 5600, 1907; s. 3, ch. 5885, 1909; s. 3, ch. 6424, 1913; s. 3, ch. 6818, 1915; s. 3, ch. 7259, 1917; s. 2, ch. 7924, 1919; RGS 1445; s. 2, ch. 8400, 1921; s. 2, ch. 10208, 1925; CGL 2099; s. 1, ch. 18046, 1937; CGL 1940 Supp. 2098(1); s. 2, ch. 22912, 1945; s. 1, ch. 28106, 1953; s. 1, ch. 29940, 1955; ss. 1, 2, ch. 57-801; s. 1, ch. 63-319; ss. 1, 2, ch. 65-330.

291.05 Rates and amounts of pensions provided by special acts.—All persons receiving pensions under special acts heretofore passed shall be paid, in lieu of the amounts they are now receiving thereunder, at the same rate and the same manner that all pensions are paid under this chapter.

History.—s. 1, ch. 5109, 1903; s. 3, ch. 5600, 1907; s. 3, ch. 5885, 1909; s. 3, ch. 6424, 1913; s. 3, ch. 6818, 1915; s. 3, ch. 7259, 1917; s. 2, ch. 7924, 1919; RGS 1445; s. 2, ch. 8400, 1921; s. 2, ch. 10208, 1925; CGL 2099; s. 1, ch. 18046, 1937; CGL 1940 Supp. 2098(1).

291.06 Widows of soldiers or sailors drawing pensions under special acts entitled to pension.—When any soldier or sailor, drawing pension under a special act of the Legislature, shall die and leave surviving him a widow whose marriage to him has not been dissolved, such widow, upon proof of marriage to, and death of, her husband, shall be granted a pension payable from the date of the death of her husband, and at the same time and rate as other pensioners are paid; and the Comptroller shall draw his warrants in payment of such pension so long as such widow continues to be a resident of the state.

History.—s. 1, ch. 9205, 1923; CGL 2101; s. 1, ch. 73-300.

291.07 Widows entitled to pensions under this chapter not debarred by remarriage.—The widow of any person entitled to pension under the law of this state by reason of service in or for the Confederate States during the War Between the States shall not be debarred from pension on account of remarriage.

History.—s. 1, ch. 18047, 1937; CGL 1940 Supp. 2099(1).

291.08 Additional pension for loss of eye, foot or hand in actual service.—All pensioners of the state, now or hereafter drawing a pension, who lost an eye, a foot, or a hand, in actual military service during the Civil War, shall be paid the sum of $5 per month in addition to the regular pension provided by law for pensioners of this state, and the Comptroller shall draw his warrants for such pensioners to include the additional sum of $5 per month herein provided.

History.—s. 1, ch. 9204, 1923; CGL 2100.

291.09 Pensioners of other states.—No person receiving a pension from any other state shall be entitled to a pension under this chapter.

History.—s. 1, ch. 4894, 1901; GS 753; s. 4, ch. 5600, 1907; s. 4, ch. 5885, 1909; s. 4, ch. 6424, 1913; s. 4, ch. 7259, 1917; RGS 1446; CGL 2102.

291.10 Payment of allowed claims; denied applications; additional proof; new applications; chaplains not affected; new proof not required where drawing pension; payment during absences from state, removal or incarceration.—

(1) The payment of all allowed claims shall be made from the date of the filing of the application in the Division of Retirement of the Department of Administration, unless the applicant is the widow of a soldier receiving a pension, at the time of his death, under this chapter, when payment shall be made to such widow from the date of the death of her husband if her application be filed within 90 days after his death. An applicant for pension under this chapter, whose application for pension has been denied by the division for any cause, shall file within 3 months of the denial of said application, additional proof that is satisfactory to the division; otherwise, the action of the division will be considered final on such application. Such action of the division shall not prevent a new application from being made and filed under the provisions of this chapter, which, if granted, shall entitle the person applying to receive a pension from the date of filing of such new application. Nothing in this chapter shall be construed to

prevent chaplains in the regular Confederate service from receiving a pension.

(2) Any person who drew a pension from the state on or before May 21, 1919, and is entitled to a pension under this chapter, shall not be required to make new proof and shall be paid from May 21, 1919.

(3) Payments shall not continue to pensioners during absences from this state of longer duration than 12 months. When a pension has been discontinued because of such absence, it shall be renewed upon return of pensioner to this state where it is shown that such absence was not permanent; provided, that payments to pensioners be discontinued immediately upon their removal from this state, if said removal is shown to be permanent. Upon any pensioner being incarcerated or confined in any state institution in this state, the payment of any pension shall be discontinued during such time of confinement, unless such pensioner has a wife or minor children dependent upon him or her for support, when such pension shall be paid to those so dependent upon such pensioner.

History.—s. 1, ch. 4894, 1901; s. 6, ch. 5600, 1907; s. 5, ch. 5885, 1909; s. 5, ch. 6424, 1913; s. 5, ch. 7259, 1917; s. 3, ch. 7924, 1919; RGS 1447; CGL 2103; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

291.11 Restoration of pension suspended for absence from state when physical infirmity, etc., prevents pensioner from returning.—Any pensioner on the pension roll of this state, who has reached the age of 83 years or more, whose pension shall have been suspended because of absence from the state for more than 12 months, shall be restored to the pension roll of this state upon application therefor, where it is made to appear that such person is unable to return to the state by reason of physical infirmity, blindness or other sufficient cause to be determined by the Division of Retirement.

History.—s. 1, ch. 14781, 1931; CGL 1936 Supp. 2121(1); ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

291.12 Proof.—Applicants for pensions under this chapter shall make oath before an officer authorized to administer oaths and use a seal, stating the company and regiment in, or ship upon, which he enlisted and served, the date of enlistment and date and cause of discharge, his citizenship and rights to the benefits of this chapter. He shall furnish the affidavit of a commissioned officer under whom, or two comrades with whom, he served, or the transcript from the muster roll from the Adjutant General's office at Washington, to establish the service claimed, or other documentary evidence satisfactory to the Division of Retirement.

History.—s. 1, ch. 4894, 1901; s. 6, ch. 5600, 1907; s. 6, ch. 5885, 1909; s. 6, ch. 6424, 1913; s. 6, ch. 7259, 1917; RGS 1448; CGL 2104; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

291.13 County commissioners investigate claims.—The board of county commissioners, of the county in which the applicant resides, shall investigate all claims made under this chapter and report upon the application whether or not the pension applied for should be granted.

History.—s. 1, ch. 4894, 1901; s. 7, ch. 5600, 1907; s. 7, ch. 5885, 1909; s. 7, ch. 6424, 1913; s. 7, ch. 7259, 1917; RGS 1449; CGL 2105.

291.14 Division to furnish application blanks.—The Division of Retirement shall furnish, annually, suitable blanks for making such reports, and shall file applications immediately upon receipt of same.

History.—s. 1, ch. 4894, 1901; s. 8, ch. 5600, 1907; s. 8, ch. 5885, 1909; s. 8, ch. 6424, 1913; s. 8, ch. 7259, 1917; RGS 1450; CGL 2106; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

291.16 County commissioners examine pension rolls annually; report to division; persons dropped.—The county commissioners of each county shall, at least once a year, examine the pension rolls of their respective counties and ascertain whether or not any person on said pension roll should be dropped from same by reason of not being entitled to draw pension under the provisions of this chapter, and make report of their findings to the Division of Retirement, which may drop such pensioners from the list, if, in its judgment, the same should be done. The Division of Retirement may discontinue from the pension roll any pensioner, upon satisfactory evidence that said pensioner is not entitled, under the provisions of this chapter, to receive a pension.

History.—s. 1, ch. 4894, 1901; s. 3, ch. 5109, 1903; s. 10, ch. 5600, 1907; s. 10, ch. 5885, 1909; s. 10, ch. 6424, 1913; s. 10, ch. 7259, 1917; RGS 1452; CGL 2108; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

291.17 Cooperation of Confederate veterans.—The several camps of Confederate veterans of this state are requested to cooperate with the boards of county commissioners and Division of Retirement in purging the roll, if there be persons on said roll who are not justly entitled to receive a pension.

History.—s. 11, ch. 7259, 1917; RGS 1453; CGL 2109; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

291.18 Certificates.—The Division of Retirement shall forward to each pensioner, who is not on the pension roll at the time of the passage of this law, a certificate that he is entitled to draw a pension, which shall be prima facie evidence to all courts of the same.

History.—s. 1, ch. 4894, 1901; GS 760; s. 11, ch. 5600, 1907; s. 11, ch. 5885, 1909; s. 11, ch. 6424, 1913; s. 12, ch. 7259, 1917; RGS 1454; CGL 2110; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

291.21 Division prescribes regulations.—The Division of Retirement shall prescribe rules and regulations for the carrying out of the provisions of the pension laws of this state, see that laws are complied with, and shall make reports and recommendations to the Governor, at least 30 days before the meeting of the Legislature. Said division may make rules and regulations for the conduct of its business as it may deem proper, not in conflict with the spirit and purpose of the pension law.

History.—s. 4, ch. 5109, 1903; GS 762; s. 14, ch. 5600, 1907; s. 14, ch. 5885, 1909; s. 14, ch. 6424, 1913; s. 4, ch. 6818, 1915; s. 14, ch. 7259, 1917; RGS 1457; CGL 2113; s. 1, ch. 61-19; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

291.22 Monthly payment of pensions.—Payments of pensions granted to persons in this state shall be made monthly, and the Comptroller shall issue his warrant on the State Treasurer in favor of each pensioner granted a pension under the laws of

this state, for a sum equal to one-twelfth of the amount annually granted to such person, and the Division of Retirement shall mail the same out on the last secular day of each month.

History.—s. 1, ch. 7260, 1917; RGS 1458; CGL 2114; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

291.23 Mailing of warrants for month of December in each year.—The division shall mail out the warrants for December of each year to the Confederate veterans on the pension roll of this state, in time so that they will be delivered to said pensioners not later than December 20 in each year.

History.—s. 1, ch. 7755, 1918; RGS 1459; CGL 2115; ss. 31, 35, ch. 69-106.

291.27 Division may make additional rules.—The Division of Retirement may make such additional rules and regulations, not inconsistent with the provisions of this chapter, as may be deemed necessary to safeguard the pension fund and to better carry out the objects and purposes of this chapter.

History.—s. 4, ch. 7260, 1917; RGS 1462; CGL 2118; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

291.28 Maximum charge for service to pensioner when fee not agreed upon before service is rendered.—It is unlawful for any person to demand or charge any soldier, or the widow of any soldier, applying for a pension under the laws of this state, more than $5 for all services rendered the person applying for such pension, when no fee or contract has been agreed upon between the parties before such service has been rendered or performed.

History.—s. 1, ch. 7261, 1917; RGS 1463; CGL 2119.

291.29 Maximum charge for service to pensioner.—It is unlawful for any person to charge any soldier, or the widow of any soldier, applying for a pension under the laws of this state a fee of more than $15 for all services rendered in connection with the obtaining of such pension, where such charge for such service has been agreed upon.

History.—s. 2, ch. 7261, 1917; RGS 1464; CGL 2120.

291.30 Penalty for charging unlawful fees for service rendered applicant for pension.—Any person charging, accepting or collecting more than the fees stipulated in ss. 291.28 and 291.29, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 3, ch. 7261, 1917; RGS 5405; CGL 7548; s. 161, ch. 71-136.

291.31 Division required to investigate war record of special act pensioners; strike name from pension roll; notice to pensioner of intention to strike name.—The Division of Retirement shall investigate the war record of each and every soldier who, or whose widow, has been heretofore, or may hereafter be, granted a pension under special act of the Legislature and if it be found to the satisfaction of the said division that any soldier who is now receiving or may hereafter receive a pension, or whose widow is now receiving or may hereafter receive a pension, under special act of the Legislature, deserted the army or navy of the Confederacy or did not render service to the Confederate States or the state or of any other state as a soldier or sailor of the Confederate States, or of the state, or of any other state, the division shall strike the name of such soldier or the widow of such soldier from the pension roll of the state and discontinue all payments of pension immediately such action is taken. Before the division shall strike off any name from the pension roll, a written notice of such intended action shall be first given to the pensioner whose name is proposed to be stricken, which notice shall be mailed at least 15 days before the division shall strike any such name, and such pensioner shall have an opportunity to furnish evidence before the division in support of his pension before his name shall be stricken.

History.—s. 1, ch. 9206, 1923; CGL 2121; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

291.32 Pensioner to designate under oath person to receive money accrued between last payment and date of death.—Upon the death of any pensioner, all money accrued from the date of last payment to date of death shall be paid to the person who shall have been designated by such pensioner, said designation to be under oath and on a form prescribed by the Division of Retirement and filed in the office of said division during the lifetime of such pensioner. Upon the failure of any pensioner to so designate a beneficiary, or upon the death of the designated beneficiary prior to the death of the pensioner, such money shall be paid to his personal representative. Upon proof of death being made of any such pensioner, the State Comptroller shall issue a warrant payable to the person so designated by the pensioner or the personal representative of the pensioner, as the case may be.

History.—s. 1, ch. 18045, 1937; CGL 1940 Supp. 2121(2); s. 1, ch. 21970, 1943; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326.

291.325 Cost-of-living adjustment.—

(1) The purpose of this section is to provide cost-of-living adjustments commencing July 1, 1974, to the monthly pensions payable under this chapter, as provided herein.

(2) On July 1, 1974, the director of the Division of Retirement shall adjust the pensions being paid under this chapter by increasing said pensions by a percentage which shall be equal to the percentage change in the average cost-of-living index, as defined in chapter 121, over the period between April 1, 1965, and March 31, 1973. The percent of increase, as of July 1, 1974, shall be 32 percent, which is the average cost-of-living increase percentage from April 1, 1965, through March 31, 1973.

(3) On July 1, 1975, and each July 1 thereafter, the director shall adjust the pensions being paid on said date. The percentage of such adjustment shall be equal to the percentage change in the average cost-of-living index during the preceding 12-month period, April 1 through March 31, ignoring changes in the cost-of-living index which are greater than 3 percent during the preceding fiscal year.

History.—s. 3, ch. 74-303; s. 1, ch. 77-174.
cf.—s. 112.05 Retirement; cost-of-living adjustment.

CHAPTER 292

SERVICE OFFICERS

[1]292.04 Council on veterans' affairs created.—There is hereby created, within the Division of Veterans' Affairs of the Department of Community Affairs, an Advisory Council on Veterans' Affairs. The members of the council shall be appointed by the Governor and shall consist of one from each congressional district and one from the state at large, all of whom shall be veterans of a war in which the United States was or is a participant, and who were separated from the Armed Forces of the United States under honorable conditions. Each member of the council shall be a citizen of the state; members of the council shall serve for terms of 4 years, except that one member of the first council appointed hereunder shall serve for 1 year, two members for 2 years, and two members for 3 years, and two members for 4 years. Members shall serve without compensation, but members shall be reimbursed for traveling expenses as provided in s. 112.061.

History.—s. 1, ch. 22695, 1945; s. 1, ch. 57-133; s. 19, ch. 63-400; s. 23, ch. 63-572; ss. 18, 35, ch. 69-106; s. 4, ch. 78-323.

[1]**Note.**—Repealed by s. 4, ch. 78-323, effective October 1, 1981, except for the possible effect of laws affecting this section prior to that date.

292.05 Duties of division.—

(1) The Division of Veterans' Affairs shall provide assistance to all former, present, and future members of the Armed Forces of the United States and their dependents in preparing claims for and securing such compensation, hospitalization, vocational training, and other benefits or privileges to which said persons or any of them are or may become entitled under any federal or state law or regulation by reason of their service in the Armed Forces of the United States. All services rendered under the provisions of the law shall be without charge to the claimant.

(2)(a) The Secretary of Community Affairs shall employ a Director of the Division of Veterans' Affairs to serve under the direction, supervision, and control of the secretary in carrying out the provisions of this chapter. The director shall be selected by the secretary from a list of three persons nominated by the Advisory Council on Veterans' Affairs. The director's salary shall be fixed by the secretary. The director shall be a resident of the state; must have served as a member of the Armed Forces of the United States during a period of war, as defined in Title 38, U.S.C., in which the United States was or is a participant; and must have been separated from such service under honorable conditions. In addition, the director shall have at least a 4-year degree from an accredited university or college and 6 years of administrative experience in veterans' affairs, or any equivalent combination of experience, training, and education totaling at least 10 years in veterans'-affairs-related work.

(b) The provisions of this section relating to the qualifications for employment as the Director of the Division of Veterans' Affairs of the Department of Community Affairs or as assistant to the director shall not apply to any person employed as state service officer of the division or as assistant to the state service officer, on June 23, 1977.

(3) Except as may otherwise be provided in this law, the director may employ such personnel and incur such expenses as he may deem necessary to carry out the objects and purposes of this law and may also prescribe the salary standards, rights, powers, duties, and qualifications of all persons employed hereunder.

(4) The Division of Veterans' Affairs shall have authority to promulgate rules pertaining to all veteran service work and the duties of all veteran service officers in the state.

(5) The division shall, on June 30 and December 31 of each year, make a semiannual written report to the Governor of the state, the Speaker of the House of Representatives, and the President of the Senate, which report shall show the expenses incurred in veteran service work in the state; the number, nature, and kind of cases handled by the division and by county and city veteran service officers of the state; the amounts of benefits obtained for veterans; the names and addresses of all certified veteran service officers, including county and city veteran service officers; and such other information and recommendations as may appear to the division to be right and proper.

(6) The division shall administer the provisions of this chapter and shall have the authority and responsibility to apply for and administer any federal programs and develop and coordinate such state programs as may be beneficial to the particular interests of the veterans of this state. Such programs shall be subject to the annual budget and appropriations process prescribed by law.

History.—s. 2, ch. 22695, 1945; s. 23, ch. 63-572; ss. 18, 35, ch. 69-106; s. 1, ch. 74-163; ss. 2, 9, ch. 77-330.

292.07 Veterans' affairs officers.—The Director of the Division of Veterans' Affairs is hereby authorized to appoint one assistant director and such number of veterans' affairs officers as may be necessary, in his discretion, to carry out the purposes of this law; and the director is further authorized to fix their respective salaries, subject to rules of the Department of Administration and to budgetary approval by the Administration Commission.

(1) The duties of the assistant director and the veterans' affairs officers shall be prescribed by the director.

(2) The director and his staff shall also be reimbursed for traveling expenses as provided in s. 112.061.

(3)(a) The residence and other qualifications of such assistant director and veterans' affairs officers shall be the same as those prescribed for the director, except that the assistant director and the veterans' affairs officers shall meet the administrative and veterans' affairs experience requirements promulgated by the Department of Administration for an assistant director and veterans' affairs officers I and II, respectively. The director may prescribe additional qualifications as a condition precedent to their appointment and employment.

(b) The provisions of this section relating to the qualifications for employment as the Director of the Division of Veterans' Affairs of the Department of Community Affairs or as assistant to the director shall not apply to any person employed as state service officer of the division, or as assistant to the state service officer, on June 23, 1977.

History.—s. 4, ch. 22695, 1945; s. 2, ch. 28213, 1953; s. 19, ch. 63-400; ss. 18, 35, ch. 69-106; ss. 3, 9, ch. 77-330.

292.10 Local governing bodies authorized to assist war veterans; powers.—The board of county commissioners of each county and the governing body of each city in the state are hereby granted full and complete power and authority to aid and assist wherever practical and feasible the veterans, male and female, who have served in the Armed Forces of the United States in any war and received an honorable discharge from any branch of the military service of the United States, and their dependents, in presenting claims for and securing such compensation, hospitalization, education, loans, vocational training, and other benefits or privileges to which said veterans, or any of them, are or may become entitled under any federal or state law or regulation by reason of their service in the Armed Forces of the United States.

History.—s. 1, ch. 23017, 1945; s. 4, ch. 77-330.

292.11 County and city veteran service officer.—

(1) Each board of county commissioners may employ a county veteran service officer; provide office space, clerical assistance, and the necessary supplies incidental to providing and maintaining a county service office; and pay said expenses and salaries from the moneys hereinafter provided for. The governing body of any city may employ a city veteran service officer; provide such office space, clerical assistance, and supplies; and pay expenses and salaries. A county or city veteran service officer must be a veteran who served as a member of the Armed Forces of the United States during a period of war, as defined in Title 38, U.S.C.; who served at least 18 months' active duty in the Armed Forces; and who was separated from such service under honorable conditions, or the surviving spouse of any such veteran. Any honorably discharged wartime veteran who was so discharged for service-connected or aggravated medical reasons before serving 18 months of active duty; who completed a tour of duty other than active duty for training, regardless of the length of the tour; or who satisfied his military obligation in a manner other than active duty for training or reserve duty shall be eligible for employment as a county or city veteran service officer. Every county or city veteran service officer, in order to be eligible for employment as a county or city veteran service officer, shall have a 2-year degree from an accredited university, college, or community college or a high school degree or equivalency diploma and 4 years of administrative experience.

(2) Any county or city desiring to employ a county or city veteran service officer under the provisions of this section may notify the division of its intention to do so and request the division to furnish it with the name or names of a person or persons qualified to fill such position. The division shall thereupon certify to such county or city the name or names of candidates for such position who meet the requirements and qualifications prescribed by the division. The county or city may thereupon employ any person or persons so certified by the division. Duties, compensation, and terms of employment shall be prescribed by the board of county commissioners or, where applicable, by the governing body of the city.

(3) Any person employed by any county or city under the provisions of this section shall, from the time of his employment, be subject to such rules as the Division of Veterans' Affairs may from time to time prescribe. Appropriations made by any county or city, or both, for the purposes set forth in this section are hereby declared to be appropriations for a county or municipal purpose, as the case may be.

(4) The Division of Veterans' Affairs of the Department of Community Affairs is directed to establish a training program for county and city veteran service officers. Every county or city veteran service officer employed under the provisions of this chapter shall attend the training program established by the division and successfully complete a test administered by the Division of Veterans' Affairs prior to assuming any responsibilities as a county or city veteran service officer. The division shall further establish periodic training refresher courses which each county or city veteran service officer shall attend and complete as a condition of remaining in employment as a county or city veteran service officer. County and city veteran service officers shall be reimbursed for traveling expenses, as provided in s. 112.061, in fulfilling the requirements of this section.

(5) The provisions of subsection (1) shall not apply to, or in any way affect, the employment of any county or city service officer who was so employed prior to July 1, 1974.

History.—s. 2, ch. 23017, 1945; ss. 1-3, ch. 74-288; s. 5, ch. 77-330; s. 121, ch. 79-400.

292.12 Cooperation with other agencies.—The board of county commissioners of each county and the governing body of each city in the state may, in order to accomplish the purposes of this law, work jointly with any agency of the Federal Government, any present or future state agency or commission, or any other county in the state, or any municipality in such county; may contribute directly from the funds herein provided to any such agency, commission, political entity, or municipality in furtherance of the purpose of this law; and may, with any other county or municipality, employ jointly a county or city vet-

eran service officer to carry out for such counties and cities the purposes of this law.

History.—s. 3, ch. 23017, 1945; s. 6, ch. 77-330; s. 122, ch. 79-400.

292.13 Services to be without charge.—All services performed by any county or city veteran service officer employed hereunder for any veteran or his or her dependents shall be rendered without charge to said veteran or said dependents.

History.—s. 4, ch. 23017, 1945; s. 7, ch. 77-330.

292.14 Construction of law.—It is the intent and purpose of the Legislature that in construing this law the broadest interpretation be given to the same, in order to carry out and effectuate the purposes of this law.

History.—s. 5, ch. 23017, 1945.

292.15 Taxation and appropriation.—The boards of county commissioners of the several counties of the state be and the same are hereby expressly authorized and empowered to levy a tax not to exceed one-half mill, or use available funds on hand and unappropriated, whether derived from taxation or otherwise, for the purpose of aiding and assisting the veterans described in s. 292.10, by providing a veteran service officer and maintaining a veteran service office in said county, and to disburse said moneys at such times and in such manner and under such terms and conditions as may be provided by resolution of said boards of county commissioners from time to time.

History.—s. 6, ch. 23017, 1945; s. 8, ch. 77-330.

292.16 Construction of ss. 292.10-292.15.—Sections 292.10 to 292.15 shall not be construed to be exclusive, but shall be cumulative and supplemental to other acts relating to the same general purposes of this law.

History.—s. 7, ch. 23017, 1945.

CHAPTER 293

UNIFORM VETERANS' GUARDIANSHIP LAW

293.01 Short title.—This chapter may be cited as the "Uniform Veterans' Guardianship Law."

History.—s. 18, ch. 14579, 1929; CGL 1936 Supp. 2146(1).
cf.—Ch. 295 Veterans in general.

293.02 Definitions.—As used in this chapter:

(1) "Person" includes a partnership, corporation or an association.

(2) "Administration" means the Veterans' Administration or its predecessors or successors.

(3) "Estate" and "income" shall include only moneys received by the guardian from the Veterans' Administration and all earnings, interest, and profits derived therefrom.

(4) "Benefits" shall mean all moneys payable by the United States through the Veterans' Administration.

(5) "Administrator" means the Administrator of Veterans' Affairs as head of the Veterans' Administration or his successor.

(6) "Ward" means a beneficiary of the Veterans' Administration.

(7) "Guardian" as used herein shall mean any person acting as a fiduciary for a ward.

History.—s. 1, ch. 14579, 1929; CGL 1936 Supp. 2146(2); s. 1, ch. 73-304.

293.03 Appointment of guardian for ward authorized.—Whenever, pursuant to any law of the United States or regulation of the Veterans' Administration, the administrator requires, prior to payment of benefits, that a guardian be appointed for a ward, such appointment shall be made in the manner hereinafter provided.

History.—s. 2, ch. 14579, 1929; CGL 1936 Supp. 2146(3); s. 1, ch. 73-304.

293.04 Number wards for whom one guardian may act.—

(1) Except as hereinafter provided, it is unlawful for any person to accept appointment as guardian of any ward if such proposed guardian shall at that time be acting as guardian for five wards. In any case, upon presentation of a petition by an attorney of the Veterans' Administration under this section alleging that a guardian is acting in a fiduciary capacity for more than five wards and requesting his discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from such guardian and shall discharge such guardian in said case.

(2) The limitations of this section shall not apply where the guardian is a bank or trust company acting for the wards' estates only. An individual may be guardian of more than five wards if they are all members of the same family.

History.—s. 3, ch. 14579, 1929; CGL 1936 Supp. 2146(4); s. 1, ch. 73-304.

293.05 Petition for appointment of guardian.—

(1) A petition for the appointment of a guardian may be filed in any court of competent jurisdiction by or on behalf of any person who under existing law is entitled to priority of appointment. If there be no person so entitled, or if the person so entitled shall neglect or refuse, to file such a petition within 30 days after mailing of notice by the Veterans' Administration to the last known address of such person, indicating the necessity for the same, a petition for such appointment may be filed in any court of competent jurisdiction by or on behalf of any responsible person residing in this state.

(2) The petition for appointment shall set forth the name, age, place of residence of the ward, the names and places of residence of the nearest relative, if known, and the fact that such ward is entitled to receive moneys payable by or through the Veterans' Administration and shall set forth the amount of moneys then due and the amount of probable future payments.

(3) The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward.

(4) In the case of a mentally incompetent ward, the petition shall show that such ward has been rat-

ed incompetent on examination by the Veterans' Administration, in accordance with the laws and regulations governing the Veterans' Administration.

History.—s. 4, ch. 14579, 1929; CGL 1936 Supp. 2146(5); s. 1, ch. 73-304.

293.06 Appointment of guardian of minor ward; certificate setting forth age and necessity.—Where a petition is filed for the appointment of a guardian of a minor ward, a certificate of the administrator or his representative setting forth the age of such minor, as shown by the records of the Veterans' Administration, and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the Veterans' Administration, shall be prima facie evidence of the necessity for such appointment.

History.—s. 5, ch. 14579, 1929; CGL 1936 Supp. 2146(6); s. 1, ch. 73-304.

293.07 Appointment of guardian of mentally incompetent ward; certificate setting forth incompetence rating and necessity for appointment.—Where a petition is filed for the appointment of a guardian of a mentally incompetent ward, a certificate of the administrator or his representative, setting forth the fact that such person has been rated incompetent by the Veterans' Administration, on examination in accordance with the laws and regulations governing such Veterans' Administration, and that the appointment of a guardian is a condition precedent to the payment of any moneys due such person by the Veterans' Administration, shall be prima facie evidence of the necessity for such appointment.

History.—s. 6, ch. 14579, 1929; CGL 1936 Supp. 2146(7); s. 1, ch. 73-304.

293.08 Notice by court of petition filed for appointment of guardian.—Upon the filing of a petition for the appointment of a guardian, under the provisions of this chapter, the court shall cause such notice to be given as provided by law.

History.—s. 7, ch. 14579, 1929; CGL 1936 Supp. 2146(8).

293.09 Guardian's bond.—

(1) Before making an appointment under the provisions of this chapter, the court shall be satisfied that the guardian whose appointment is sought is a fit and proper person to be appointed. Upon the appointment being made, the guardian shall execute and file a bond to be approved by the court in an amount not less than the sum due and estimated to become payable during the ensuing year. The said bond shall be in the form and be conditioned as required of guardians appointed under the guardianship laws of this state. The court shall have power, from time to time, to require the guardian to file an additional bond.

(2) Where a bond is tendered by a guardian with personal sureties, such sureties shall file with the court a certificate under oath that shall describe the property owned, both real and personal, and that they are each worth the sum named in the bond as the penalty thereof, over and above all their debts and liabilities and exclusive of property exempt from execution.

History.—s. 8, ch. 14579, 1929; CGL 1936 Supp. 2146(9).

293.10 Guardian required annually to file with court full and accurate accounts; certified copy of accounts to Veterans' Administration; hearing on accounts and notice thereof.—Every guardian, who shall receive on account of his ward any moneys from the Veterans' Administration shall file with the court, annually, on the anniversary date of the appointment, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath of all moneys so received by him, of all disbursements thereof, and showing the balance thereof in his hands at the date of such account and how invested. A certified copy of each of such accounts filed with the court shall be sent by the guardian to the office of the Veterans' Administration having jurisdiction over the area in which such court is located. The court shall fix a time and place for the hearing on such account not less than 15 days nor more than 30 days from the date of filing same and notice thereof shall be given by the court to the aforesaid Veterans' Administration office not less than 15 days prior to the date fixed for the hearing. Notice of such hearing shall in like manner be given to the guardian.

History.—s. 9, ch. 14579, 1929; CGL 1936 Supp. 2146(10); s. 1, ch. 73-304.
cf.—ss. 294.08, 294.09 Procedure at hearing.

293.11 Failure of guardian to file accounts is grounds for removal.—If any guardian shall fail to file any account of the moneys received by him from the Veterans' Administration on account of his ward within 30 days after such account is required by either the court or the Veterans' Administration, or shall fail to furnish the Veterans' Administration a copy of his accounts as required by this chapter, such failure shall be grounds for removal.

History.—s. 10, ch. 14579, 1929; CGL 1936 Supp. 2146(11); s. 1, ch. 73-304.

293.12 Guardian's compensation; bond premiums.—Compensation payable to guardian shall not exceed 5 percent of the income of the ward during any year. In the event of extraordinary services rendered by such guardian, the court may, upon petition and after hearing thereon, authorize additional compensation therefor, payable from the estate of the ward. Notice of such petition and hearing shall be given the proper office of the Veterans' Administration in the manner provided in s. 293.10. No compensation shall be allowed on the corpus of an estate received from a preceding guardian. The guardian may be allowed from the estate of his ward reasonable premiums paid by him to any corporate surety upon his bond.

History.—s. 11, ch. 14579, 1929; CGL 1936 Supp. 2146(12); s. 1, ch. 73-304.

293.13 Investment of funds of estate by guardian.—Every guardian shall invest the funds of the estate in such manner or in such securities, in which the guardian has no interest, as allowed by law and approved by the court.

History.—s. 12, ch. 14579, 1929; s. 1, ch. 17473, 1935; CGL 1936 Supp. 2146(13).

293.14 Guardian's application of estate funds for support and maintenance of person other than ward.—A guardian shall not apply any portion of the estate of his ward for the support and maintenance of any person other than his ward, ex-

cept upon order of the court after a hearing, notice of which has been given the proper office of the Veterans' Administration in the manner provided in s. 293.10.

History.—s. 13, ch. 14579, 1929; CGL 1936 Supp. 2146(14); s. 1, ch. 73-304.

293.15 Certified copies of public records made available.—Wherever a copy of any public record is required by the Veterans' Administration to be used in determining the eligibility of any person to participate in benefits made available by such Veterans' Administration, the official charged with the custody of such public record shall, without charge, provide the applicant for such benefits, or any person acting on his behalf, or the representative of such Veterans' Administration, with a certified copy of such record. For each and every certified copy so furnished by the official the said official shall be paid by the board of county commissioners the fee provided by law for copies.

History.—s. 14, ch. 14579, 1929; CGL 1936 Supp. 2146(15); s. 7, ch. 29749, 1955; s. 1, ch. 73-304.

293.16 Procedure for commitment of veteran to Veterans' Administration hospital; powers and custody; notice required.—

(1) Whenever, in any proceeding under the laws of this state for the commitment of a person alleged to be of unsound mind or otherwise in need of confinement in a hospital or other institution for his proper care, it is determined after such adjudication of the status of such person as may be required by law that commitment to a hospital for mental disease or other institution is necessary for safekeeping or treatment and it appears that such person is eligible for care or treatment by the Veterans' Administration or other agency of the United States Government, the court, upon receipt of a certificate from the Veterans' Administration or such other agency showing that facilities are available and that such person is eligible for care or treatment therein, may commit such person to said Veterans' Administration or other agency. The person whose commitment is sought shall be personally served with notice of the pending commitment proceeding in the manner as provided by the law of this state; and nothing in this act shall affect his right to appear and be heard in the proceedings. Upon commitment, such person, when admitted to any facility operated by any such agency within or without this state shall be subject to the rules and regulations of the Veterans' Administration or other agency. The chief officer of any facility of the Veterans' Administration or institution operated by any other agency of the United States to which the person is so committed shall with respect to such person be vested with the same powers as superintendents of state hospitals for mental diseases within this state with respect to retention of custody, transfer, parole, or discharge. Jurisdiction is retained in the committing or other appropriate court of this state at any time to inquire into the mental condition of the person so committed, and to determine the necessity for continuance of his restraint, and all commitments pursuant to this act are so conditioned.

(2) The judgment or order of commitment by a court of competent jurisdiction of another state or of the District of Columbia, committing a person to the Veterans' Administration, or other agency of the United States Government for care or treatment shall have the same force and effect as to the committed person while in this state as in the jurisdiction in which is situated the court entering the judgment or making the order; and the courts of the committing state, or of the District of Columbia, shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of such person, and of determining the necessity for continuance of his restraint, as is provided in subsection (1) of this section with respect to persons committed by the courts of this state. Consent is hereby given to the application of the law of the committing state or district in respect to the authority of the chief officer of any facility of the Veterans' Administration, or of any institution operated in this state by any other agency of the United States to retain custody, or transfer, parole or discharge the committed person.

(3) Upon receipt of a certificate of the Veterans' Administration or such other agency of the United States that facilities are available for the care or treatment of any person heretofore committed to any hospital for the insane or other institution for the care or treatment of persons similarly afflicted and that such person is eligible for care or treatment, the superintendent of the institution may cause the transfer of such person to the Veterans' Administration or other agency of the United States for care or treatment. Upon effecting any such transfer, the committing court or proper officer thereof shall be notified thereof by the transferring agency. No person shall be transferred to the Veterans' Administration or other agency of the United States if he be confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of insanity, unless prior to transfer the court or other authority originally committing such person shall enter an order for such transfer after appropriate motion and hearing.

(4) Any person transferred as provided in this section shall be deemed to be committed to the Veterans' Administration or other agency of the United States pursuant to the original commitment.

History.—s. 15, ch. 14579, 1929; CGL 1936 Supp. 2146(16); s. 1, ch. 21795, 1943.

293.17 Provisions for discharge of guardian of minor and incompetent wards.—When a minor ward, for whom a guardian has been appointed under the provisions of this chapter or other laws of this state, shall have attained his majority and, if incompetent, shall be declared competent by the Veterans' Administration and the court, and when any incompetent ward not a minor shall be declared competent by said Veterans' Administration and the court, the guardian shall, upon making a satisfactory accounting, be discharged upon a petition filed for that purpose.

History.—s. 16, ch. 14579, 1929; CGL 1936 Supp. 2146(17); s. 1, ch. 73-304.

293.18 Construction and application of chapter.—This chapter shall be construed liberally to secure the beneficial intents and purposes thereof and shall apply only to beneficiaries of the Veterans'

Administration. It shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History.—ss. 17, 19, ch. 14579, 1929; CGL 1936 Supp. 2146(18); s. 1, ch. 73-304.

293.19 Court costs in small estates.—Guardians who are holding funds received from, or who are currently in receipt of funds from, the Veterans' Administration for the ward, and where the amount so received during the accounting year does not exceed the sum of $500, and where the funds on hand at the end of the accounting year do not exceed the sum of $500, the court costs in such cases for docketing, indexing, filing, auditing, recording, and passing by order or otherwise of annual reports shall not exceed the sum of $2.

History.—s. 2, ch. 21795, 1943.

293.20 Administrator of Veterans' Affairs as party in interest.—The Administrator of Veterans' Affairs shall be a party in interest in any proceeding for the appointment or removal of a guardian or for the removal of the disability of minority or mental incapacity of a ward, and in any suit or other proceeding affecting in any manner the administration by the guardian of the estate of any present or former ward whose estate includes assets derived in whole or in part from benefits heretofore or hereafter paid by the Veterans' Administration. Not less than 15 days prior to hearing in such matter, notice in writing of the time and place thereof shall be given by mail (unless waived in writing) to the office of the Veterans' Administration having jurisdiction over the area in which any such suit or any such proceeding is pending.

History.—s. 3, ch. 21795, 1943.

CHAPTER 294

SUPPLEMENTAL VETERANS' GUARDIANSHIP LAW

294.01 Provisions applicable to Uniform Veterans' Guardianship Law.—The provisions of this chapter shall supplement and be applicable to chapter 293 (Uniform Veterans' Guardianship Law).

History.—s. 21, ch. 14579, 1929; CGL 1936 Supp. 2146(20).

294.03 Copy of petition mailed to ward prior to hearing.—A copy of the petition, provided for in s. 293.05, shall be mailed by the clerk of the court to the person or persons for whom a guardian is to be appointed, to the last known address of such person or persons, not less than 5 days prior to the date set for the hearing of the petition by the court.

History.—s. 2, ch. 11906, 1927; CGL 2134.

294.04 Guardians of beneficiaries of "War Risk Insurance Act" or "World War Veterans' Act of 1924"; persons ineligible to serve.—It is unlawful for a circuit judge to appoint either himself, or a member of his family, as guardian for any person entitled to the benefits of an Act of Congress known as the "War Risk Insurance Act" or entitled to the benefits of an Act of Congress known as the "World War Veterans' Act of 1924," as amended, except in cases where the person entitled to such benefits is a member of the family of the circuit judge involved.

History.—s. 4, ch. 11906, 1927; CGL 2136; s. 24, ch. 73-334.

294.05 Guardian empowered to receive moneys due ward from U. S. Government for military or naval service.—In addition to the power granted the guardian under the provisions of chapter 293, he shall also have the right to receive for the account of the ward any money due from the United States Government in the way of arrears of pay, bonus, compensation or insurance, or other sums due by reason of his service (or the service of the person through whom the ward claims) in the military or naval branch of the United States Government.

History.—s. 6, ch. 11906, 1927; CGL 2138.

294.06 Guardian required to file inventory; failure is grounds for discharge and forfeit of commissions.—Every guardian shall, within 30 days after his qualification and whenever subsequently required by the circuit judge, file in the circuit court a complete inventory of all the ward's personal property in his hands, and also, a schedule of all real estate in the state belonging to his ward, describing it and its quality, whether improved or not, and if improved in what manner, and the appraised value of same. Failure on the part of the guardian to conform to the requirements of this section shall be grounds for discharge of the guardian, in which case the guardian shall forfeit all commissions.

History.—s. 6, ch. 11906, 1927; CGL 2138; s. 24, ch. 73-334.

294.07 Notice of appointment of general guardian filed; veterans' guardianship closed; responsibilities and penalties transferred to general guardian.—When the appointment of a general guardian is made in the proper court and such guardian has qualified and taken charge of the other property of the ward, such general guardian shall file notice of such appointment in the court where the guardianship under chapter 293 is pending and have this guardianship settled up and closed so that the general guardian may take charge of the money referred to and described in chapters 293 and 294. When the appointment of a general guardian for such person, whether incompetent or minor children, or other beneficiaries entitled to the benefits of the "World War Veterans' Act of 1924" as amended, and the "War Risk Insurance Act" as amended, has been confirmed by the court having jurisdiction, such general guardian shall be responsible and be subject to the provisions and penalties contained i the aforesaid Acts of Congress as well as the reo ments pertaining to guardians as set forth i ters 293 and 294.

History.—s. 6, ch. 11906, 1927; CGL 2138.

294.08 Notice to ward or next of kin of hearing on annual accounts.—The court need not appoint a guardian ad litem to represent the ward at the hearing provided for in s. 293.10. If the residence of the next kin of said ward is known, notice by registered mail shall be sent to such relative. Notice also shall be served on the ward, or if said ward be mentally incapable of understanding the matter at issue, such notice may be served on the person in charge of the institution where such ward is detained, or on the person having charge or custody of said ward.

History.—s. 7, ch. 11906, 1927; CGL 2139.
cf.—s. 1.01 Registered mail defined to include certified mail.

294.09 Judge of court required to examine vouchers and audit accounts; affidavits required to support improper items; rejected items; decree recorded; accounts and vouchers filed.—The judge of the court on the day of which the hearing is had as provided for in s. 293.10 shall carefully examine the vouchers and audit and state the account between the guardian and ward. Proper evidence shall be required in support of vouchers or items of the account that may appear to the court not to be just and proper, such evidence to be taken by affidavit or by any other legal mode. If any voucher be rejected, the item or items covered by said disapproval of any voucher or vouchers shall be taxed against the guardian personally. After such examination, the court shall render a decree upon said account which shall be entered on record and the account and vouchers shall be filed. Such partial settlement shall be taken and presumed as correct on final settlement of guardianship.

History.—s. 8, ch. 11906, 1927; CGL 2140.

294.10 Guardian's petition for authority to sell ward's real estate; notice by publication required; penalties.—When any guardian of the estate of an infant or incompetent shall have the control or management of any real estate, the property of such infant or incompetent, and shall deem it necessary or expedient to sell the same, the guardian shall apply either in term time or in vacation by petition to the judge of the circuit court for the county in which said real estate may be situated for authority to sell the same, and if the prayer of said petition shall appear to the judge reasonable and just and financially beneficial to the estate of the ward, he may authorize said guardian to sell said estate under such conditions as the interest of said infant or incompetent may, in the opinion of the said judge, seem to require. Such authority shall not be granted unless the guardian shall have given previous notice, published once a week for 4 successive weeks in a newspaper published in the county where the application is made, of his intention to make application to such judge for authority to sell the same, setting forth in said notice the time and place and to what judge said application will be made. If the lands lie in more than one county, application shall be made in each county. Failure on the part of the guardian to comply with the provisions of this section shall make him and his bondsmen individually responsible for any loss that may accrue to the estate of the ward involved, and shall be ground for the immediate removal of such guardian as to his functions, but not discharge him as to his liability or discharge the liabilities of his sureties.

History.—s. 9, ch. 11906, 1927; CGL 2141; s. 24, ch. 73-334.

294.11 Guardianship petition; clerk of circuit court's fee; notice, etc., filed; copies of documents required by Veterans' Administration; attorney's fee.—Upon the filing of the petition for guardianship, granting of same and entering decree thereon, the clerk of circuit court shall be entitled to a fixed charge or cost of $10, which shall include the cost of recording the petition, bond and decree and the issuing of letters of guardianship. The notice from the Veterans' Administration and the certified copy of the physical examination made by neuropsychiatric experts, etc., need not be recorded but must be kept in the file. Upon issuing letters of guardianship or letters appointing a guardian for the estate of an infant or incompetent, the clerk of circuit court shall send to the regional office of the Veterans' Administration having jurisdiction in this state, two certified copies of the letters and two certified copies of the bond approved by the court, without charge or expense to the estate involved. The fee for the attorney filing said petition and conducting said proceedings shall be fixed by the court in an amount as reasonably small as possible and not to exceed $25.

History.—s. 10, ch. 11906, 1927; CGL 2142; s. 1, ch. 73-304; s. 24, ch. 73-334.

294.12 Final settlement of guardianship; notice required; guardian ad litem fee; papers required by Veterans' Administration.—On the final settlement of the guardianship, the notice provided herein for partial settlement must be given and the other proceedings conducted as in case of partial settlement, except that a guardian ad litem may be appointed to represent the ward, whose fee shall in no case exceed $15. However, if the said ward has been pronounced competent and is shown to be mentally sound and appears in court and is 18 years of age, the settlement may be had between the guardian and the ward under the direction of the court without notice to next of kin, or the appointment of a guardian ad litem. A certified copy of said final settlement so made in all cases must be filed with the Veterans' Administration by the clerk of the court.

History.—s. 11, ch. 11906, 1927; CGL 2143; s. 1, ch. 73-304; s. 13, ch. 77-121.

CHAPTER 295

LAWS RELATING TO VETERANS; GENERAL PROVISIONS

295.01 Children of deceased or disabled veterans; education.—It is hereby declared to be the policy of the state to provide educational opportunity at state expense for dependent children either of whose parents entered the Armed Forces from the state and died in that service or from injuries sustained or disease contracted therein between April 6, 1917, and July 2, 1921; December 7, 1941, and September 2, 1945; and June 25, 1950, through January 31, 1955; and from August 4, 1964, to the date of the cessation of hostilities as determined by the United States Government, or who have died since or may hereafter die from diseases or disability resulting from such war service, or who have been determined by the Veterans' Administration of the Federal Government to have a service-connected 100 percent disability rating for compensation, when the parents of such children have been bona fide residents of the state for 5 years next preceding their application for the benefits hereof, and subject to the rules, restrictions, and limitations hereof.

History.—s. 1, ch. 20966, 1941; s. 1, ch. 21655, 1943; s. 1, ch. 28195, 1953; s. 1, ch. 67-455; s. 16, ch. 69-180.

295.015 Children of prisoners of war and persons missing in action; education.—

(1) It is hereby declared to be the policy of the state to provide educational opportunity at state expense for dependent children either of whose parents became classified as prisoners of war or missing in action in the service of the Armed Forces of the United States between June 25, 1950, through January 31, 1955, or during the period from August 4, 1964, to the date of the cessation of hostilities, as determined by the United States Government, or civilian personnel captured or officially listed as missing while serving with the consent or authorization of the United States Government, for so long as such parent remains classified in such status, when the parents of such children have been bona fide residents of the state for 5 years next preceding their application for the benefits hereof, and subject to the rules, restrictions and limitations hereof.

(2) The provisions of ss. 295.03, 295.04, and 295.05 shall apply.

History.—s. 2, ch. 72-346.

295.02 Use of funds; age, etc.—All sums appropriated and expended under this chapter shall be used to pay tuition and registration fees, board, and room rent and to buy books and supplies for the children of deceased or disabled veterans, as defined and limited in s. 295.01, or of prisoners of war or missing in action, as defined and limited in s. 295.015, who are between the ages of 16 and 22 years and who are in attendance at a state-supported institution of higher learning, including community colleges and vocational-technical schools. Any child having entered upon a course of training or education under the provisions of this chapter, consisting of a course of not more than 4 years and arriving at the age of 22 years before the completion of said course may continue said course and receive all benefits of the provisions of this chapter until said course is completed. The Department of Education shall administer this educational program subject to regulations of the department.

History.—s. 2, ch. 20966, 1941; s. 1, ch. 63-124; s. 2, ch. 63-204; s. 17, ch. 69-180; ss. 15, 35, ch. 69-106; s. 70, ch. 72-221; s. 1, ch. 72-346; s. 1, ch. 74-211.

295.03 Minimum requirements.—Upon failure of any child benefited hereby to comply with the ordinary and minimum requirements of the institution attended, both as to discipline and scholarship, the benefits hereof shall be withdrawn as to him or her and no further moneys expended for his or her benefits so long as such failure or delinquency continues.

History.—s. 3, ch. 20966, 1941.

295.04 Appropriation; benefits.—The sum necessary for the purpose hereof shall be appropriated in the General Appropriations Act for each fiscal year, provided that no student shall receive an amount in excess of tuition and registration fees. Only students in good standing in their respective institutions shall receive the benefits hereof, and no student shall receive such benefits for more than 12 quarters, 8 semesters, or 8 trimesters.

History.—s. 4, ch. 20966, 1941; s. 38, ch. 26869, 1951; s. 2, ch. 63-124; s. 17, ch. 65-130; s. 18, ch. 69-180; s. 1, ch. 73-305; s. 2, ch. 74-211.

295.05 Admission; enrollment.—Eligibility for admission is not affected by this chapter, but all children receiving benefits hereunder shall be enrolled according to the customary rules and requirements of the institution attended.

History.—s. 5, ch. 20966, 1941.

295.07 Veterans' reemployment or reinstatement and preference in appointment and retention.—A veteran shall be reemployed or reinstated to the position or an equivalent position that he or she held with the state or any of its political subdivisions prior to honorable military service, if the veteran returns to the position within 1 year of his or her normal date of separation or, when a person has been extended beyond his or her normal date of honorable discharge or separation due to military requirements, of the date of discharge or separation subsequent to that extension. The state and its political subdivisions shall give preference in appointment and retention in positions of employment, except those included under s. 110.051(2) on June 29, 1977, to:

(1) Those disabled veterans who have served on active duty in any branch of the Armed Forces of the United States; who have been separated therefrom under honorable conditions; and who have established the present existence of a service-connected disability which is compensable under public laws administered by the U.S. Veterans' Administration, or who are receiving compensation, disability retirement benefits, or pension by reason of public laws administered by the U.S. Veterans' Administration and the Department of Defense.

(2) The spouse of any person who has a total disability, permanent in nature, resulting from a service-connected disability and who, because of this disability, cannot qualify for employment, and the spouse of any person missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign government or power.

(3) A veteran of any war who has served on active duty for 181 consecutive days or more, or who has served 180 consecutive days or more since January 31, 1955, and who was discharged or separated therefrom with an honorable discharge from the Armed Forces of the United States of America if any part of such active duty was performed during the wartime era.

(4) The unremarried widow or widower of a veteran who died of a service-connected disability.

History.—s. 1, ch. 24201, 1947; s. 1, ch. 70-7; s. 1, ch. 77-422; s. 1, ch. 78-372.
cf.—s. 1.01(15) Definitions; veteran.

295.08 Competitive examination systems preference points; professional and scientific services.—For those positions for which an examination is used to determine the qualifications for entrance into employment with the state or its political subdivisions, 10 points shall be added to the earned ratings of those persons included under s. 295.07(1) or s. 295.07(2), and 5 points shall be added to the earned rating of those persons included under s. 295.07(3) and (4), provided that such person has obtained a qualifying score on the examination for the position. The names of persons eligible for preference shall be entered on an appropriate register or list in accordance with their respective augmented ratings. However, except for classes of positions with Federal Government designations of professional or technician for which the lowest range of the salary is over $9,000 per annum, the names of all persons qualified to receive a 10-point preference whose service-connected disabilities have been rated by the Veterans' Administration to be 30 percent or more shall be placed at the top of the appropriate register or employment list, in accordance with their respective augmented ratings. A veteran's 5-point preference shall expire July 1, 1982, or 5 years from the date of honorable discharge or separation from the United States Armed Forces, whichever is later; however, the 10-point preference for a disabled veteran shall be permanent. Respective augmented rating is the examination score or evaluated score in addition to the applicable veteran's preference points.

History.—s. 2, ch. 24201, 1947; s. 1, ch. 77-422.

295.09 Promotion examinations; preference points.—When a career service system or other merit-type system is used for selection of employees, the state and its political subdivisions shall, on promotional examinations, award preference points, as provided in s. 295.08, to those persons included in s. 295.07(1), (2), (3), and (4). Such persons shall be promoted ahead of all those who appear in an equal or lesser position on the promotional register. This provision shall apply only to such person's first promotion after employment, reinstatement, or reemployment.

History.—s. 3, ch. 24201, 1947; s. 1, ch. 77-422; s. 2, ch. 78-372.

295.10 Noncompetitive positions; preferences.—In all positions in which the employment of persons is not subject to the career service system or other merit-type systems, preference in appointment and employment shall be given by the state and its political subdivisions first to those persons included under s. 295.07(1) and (2) and second to those persons included under s. 295.07(3) and (4) who have made application by July 1, 1982, or within 5 years of the veteran's date of honorable discharge or separation, whichever is later, and to those persons included under s. 295.07(4) who have made application by July 1, 1982, or within 5 years of the date of the veteran's death, whichever is later, provided such persons possess the minimum qualifications necessary to the discharge of the duties involved. For the purpose of this section, noncompetitive positions are not considered to be under the career service system or other merit-type system. When such person is an applicant and is qualified for the position but is not employed due to employment of a person not included in s. 295.07(1), (2), (3), or (4), a report shall be filed in accordance with s. 295.11, outlining the reasons for such employment. Failure to file such report shall be prima facie evidence of a violation of this section, punishable as provided in s. 295.14.

History.—s. 4, ch. 24201, 1947; s. 2, ch. 77-422; s. 3, ch. 78-372.
cf.—s. 1.01(15) Definitions; veteran.

295.11 Report of reason for not employing preferred applicant; investigation.—The appointing or employing officer of any state agency or any agency of a political subdivision thereof shall forthwith file in writing with the Director of the Division of Veterans' Affairs of the Department of Community Affairs the reasons that a person not included under s. 295.07(1), (2), (3), or (4) is preferred for employment over a person included under said section. This includes all positions that are classified as noncompetitive or appointive positions, except those outlined in s. 110.051(2) on June 29, 1977. The Division of Veterans' Affairs shall, upon the written request of any person specified in s. 295.07(1), (2), (3), or (4), investigate any complaint filed by such person when the person has in fact filed an application for the position. If the division finds the equities to be with the complainant, it shall have the power to seek relief through the [1]Career Service Commission or through the courts.

History.—s. 5, ch. 24201, 1947; ss. 18, 35, ch. 69-106; s. 3, ch. 77-422; s. 4, ch. 78-372; s. 33, ch. 79-190.

[1]Note.—Words "Career Service" substituted for "Personnel" by the editors to conform to Senate Amendments 41 and 42 to Amendment 1 to C.S. for H.B.'s 1604 and 1649, which deleted provisions relating to creation of a "Personnel" commission and, in effect, retained the "Career Service" designation. See Senate Journal 1979, pp. 850, 853, 870, 871 and s. 22, ch. 79-190.

295.12 Law not applicable to.—Nothing contained in ss. 295.07-295.12 is intended to apply to any position that is exempt under s. 110.205(2).

History.—s. 6, ch. 24201, 1947; s. 4, ch. 77-422; s. 34, ch. 79-190.

295.123 Deserters and others; inapplicability of chapter.—The provisions of this chapter shall not apply to any person who has been classified by any branch of the Armed Forces of the United States as a deserter or who received less than an honorable discharge upon separation or discharge from the Armed Forces.

History.—s. 5, ch. 77-422.

295.125 Preference for admission to vocational training.—

(1) It is the intent of the Legislature through enactment of this section to assist returning veterans of the Southeast Asian conflict to train themselves for a civilian future. Although the provisions of this section apply only to state-supported vocational-technical facilities and programs, it is the further intent of the Legislature to encourage privately supported vocational-technical schools and centers to join with the state in assisting our returning veterans by providing preferences for them in admission procedures and standards.

(2) In determining order of admission or acceptance for students, every vocational training center, vocational-technical school, or vocational program which receives state funding or support shall give preference as provided in subsection (3) to a person who served in the Armed Forces of the United States at any time during the period August 4, 1964, to January 27, 1973, and who has been separated therefrom under honorable conditions, if such person's enrollment is directly related to his present employment or to his securing employment.

(3) The name of each person qualified for preference under the provisions of subsection (2) shall be placed on the waiting list for acceptance or admission, if any, in a position which would reflect the same order of preference as if he had been placed on the waiting list 36 months previously or on the day he entered the Armed Services of the United States, whichever is later.

History.—s. 1, ch. 74-210; s. 1, ch. 77-174; s. 1, ch. 77-214.

295.13 Disability of minority of veterans and spouse removed, benefits under Servicemen's Readjustment Act.—The disability of minority of any person otherwise eligible for a loan, or guaranty or insurance of a loan, pursuant to chapter 37 of Title 38 U.S.C., "Home, Farm and Business Loans," and of the minor spouse of any eligible veteran, in connection with any transaction entered into pursuant to said Act of the Congress, as heretofore or hereafter amended, shall not affect the binding effect of any obligation incurred by such eligible person or spouse as an incident to any such transaction, including incurring of indebtedness and acquiring, encumbering, selling, releasing, or conveying property, or any interest therein, if all or part of any such obligation be guaranteed or insured by the government or the Administrator of Veterans' Affairs pursuant to said act and amendments thereto; or if the administrator be the creditor, by reason of a loan or a sale pursuant to said act and amendments. This section shall not create, or render enforceable, any other or greater rights or liabilities than would exist if neither such person nor such spouse were a minor.

History.—s. 1, ch. 28204, 1953; s. 24, ch. 69-353.

295.14 Penalties.—

(1) Any employee in the career service or other merit-type system or any appointed officer of the state or its political subdivisions who willfully violates any provision of this act or of any rule adopted pursuant to the authority herein granted shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who is convicted of a misdemeanor under this section shall, for a period of 5 years, be ineligible for appointment to or employment in a position in the state career service, and, if he is an employee of the state, he shall forfeit his position.

History.—s. 6, ch. 77-422; s. 5, ch. 78-372; s. 61, ch. 79-164.

295.15 Legislative intent.—It is the intent of the Legislature to provide preference and priority in the hiring practices of this state as set forth in this chapter. In all written job announcements and audio and video advertisements used by employing agencies of the state and its political subdivisions, there shall be a notation that certain veterans and spouses of veterans receive preference and priority in employment by the state and are encouraged to apply for the positions being filled.

History.—s. 6, ch. 77-422.

295.151 Application of ch. 78-372, Laws of Florida.—The provisions of chapter 78-372, Laws of Florida, shall not be deemed to apply to retired mili-

tary personnel insofar as this act grants a point preference to such persons in applying for employment.

History.—s. 6, ch. 78-372.

295.16 Disabled veterans exempt from certain license or permit fee.—No totally and permanently disabled veteran who is a resident of Florida and honorably discharged from the Armed Forces, who has been determined by the Veterans Administration of the Federal Government to have a service-connected 100 percent disability rating for compensation, or who has been determined to have a service-connected disability rating of 100 percent and is in receipt of disability retirement pay from any branch of the uniformed armed services, shall be required to pay any license or permit fee, by whatever name known, to any county or municipality in order to make improvements upon a mobile home owned by the veteran which is used as the veteran's residence; provided, however, such improvements shall be limited to ramps, widening of doors, and similar improvements for the purpose of making the mobile home habitable for veterans confined to wheelchairs.

History.—s. 1, ch. 78-69.

cf.—s. 1.01(15) Definitions; veteran.

TITLE XXI

DRAINAGE

CHAPTER 298

DRAINAGE AND WATER CONTROL

298.001 Districts designated as "water control" districts.—A water-management district or a drainage district heretofore or hereafter created pursuant to the method authorized in chapter 298 or a water-management district created by special act to operate under the authority of chapter 298 shall be designated as a water control district.

History.—s. 1, ch. 78-153.

298.01 Formation of water control district.—

(1) The Department of Environmental Regulation, or a majority of the owners of any contiguous body of wet or overflowed lands or lands subject to overflow, situated in one or more counties in this state, may form a water control district, hereinafter referred to in this chapter as "district," for the purpose of preserving and protecting water resources, for sanitary or agricultural purposes, or when the same may be conducive to the public health, convenience or welfare, or of public utility or benefit, by drainage, irrigation, or water management. For that purpose, the Department of Environmental Regulation or a majority of the owners of said lands may make and sign a petition in which shall be stated:

(a) The name of the proposed district and the number of years the same is to continue;

(b) The boundary line of the proposed district;

(c) The names, so far as known, and the last known post-office address of the owners of lands or other property in said district and the owners of lands immediately adjacent and contiguous to the boundaries of the proposed district, as said addresses appear on the tax rolls of the land situated within the district or immediately adjacent and contiguous thereto, together with a description of the lands as they appear on the tax rolls and the number of acres owned by each. When the name or post-office address of the owner of any of said lands or other property is unknown this fact shall be set out in said petition;

(d) That the owners of the lands within said district whose names are subscribed to said petition are willing to and do obligate and bind the lands owned by them situated in the proposed district to pay the tax which may be assessed against their respective lands to pay the expense of organizing and of making and maintaining the improvements that may be necessary to effect the purposes of this chapter;

(e) That the proposed district is in the best interests of all owners within the district and the public as a whole;

(f) That no harm will result to any landowners within the district or owners of land immediately adjacent and contiguous thereto or to the public interest and welfare and, if so, then to what extent.

(2) There shall be attached to the petition and published with the notice required by s. 298.02 a map or plat of the county or counties in which said proposed district shall be located, showing the boundary line of the proposed district and the section, township, and range lines, together with natural geographic features and existing roads, streets, and highways.

(3) The petition shall contain a prayer asking that the lands described therein be declared a district under provisions of this chapter.

(4) The petition may be signed by the Department of Environmental Regulation or by a majority of the owners of said lands, or it may be signed by both the department and the owners of lands. After the petition has been so signed, subscribed to, and acknowledged, it shall be filed in the office of the clerk of the circuit court of the county in which such land, or the greater part thereof, is situated. A certified copy of the petition and all notices shall be filed in the official records of any other counties in which lands are situated.

History.—s. 1, ch. 6458, 1913; RGS 1098; CGL 1451; s. 7, ch. 22858, 1945; ss. 25, 35, ch. 69-106; s. 1, ch. 72-291; s. 1, ch. 79-5; s. 17, ch. 79-65.

298.02 Notice of application to form district.—

(1) Immediately after the petition has been filed, the clerk in whose office it has been filed shall give notice by causing publication to be made once a week for 4 consecutive weeks in a newspaper of general

circulation published in each county in which lands and other property described in the petition are situated. The notice shall be substantially in the following form:

Notice of Application to Form a Water Control District

Notice is hereby given to all persons interested in the following described lands in ..... County, Florida, viz. ...(Here describe the property as set out in the petition)... that a petition asking that the foregoing lands be formed into a water control district under chapter 298 of the Florida Statutes has been filed in this office and that the foregoing lands will be affected by the formation of said district and rendered liable to taxation for the purpose of paying the expenses of organization and making and maintaining the improvements that may be necessary to effect the reclamation of the lands included in such district. You and each of you are hereby notified to file within 20 days after the final notice has been published for 4 weeks as required by said chapter, at the office of the Clerk of the Circuit Court of ..... County, any reason why said district, as set forth in said petition, shall not be organized as a public corporation of the State of Florida. Any interested party, regardless of ownership of land included in said district, may file with the Department of Environmental Regulation his objections or relevant comments on the formation of the district.

OWNERS OF RECORD OF LAND WITHIN THE PROPOSED DISTRICT AND OF LAND CONTIGUOUS THERETO

NAME ADDRESS DESCRIPTION OF LAND

.....

.....

Date of first publication ....., 19.....

...(Clerk of the Circuit Court)...

..... County, Florida.

(2) The certificates of the clerk or the affidavit of another, with a copy of said notice affixed, showing that said notice has been published as required by this chapter, shall be sufficient evidence of such fact.

(3) The circuit court of the county in which the petition has been filed shall thereafter maintain and have original and exclusive jurisdiction, coextensive with the boundaries and limits of said district, without regard to county lines, for all purposes of this chapter.

(4) In addition to the publication of notice, a copy of the petition and the attached map or plat, together with a summons, shall be served on the water management district, created under chapter 373, in which lands described in the petition are situated; on the board of county commissioners of the county, and the governing body of any municipality, in which the lands are situated; and on the Department of Environmental Regulation, in the manner provided by the Florida Rules of Civil Procedure for the service of pleadings and papers on parties. In addition thereto, a copy of the notice as published and a copy of the petition and the attached map or plat shall be mailed by the clerk to each person owning land within, and to each person owning land immediately adjacent and contiguous to, the boundaries of the proposed district as shown on the current tax roll, and the clerk shall file a certificate of mailing. The parties served and receiving notice by mail shall have 20 days after the date of service or the date of mailing, or the time allowed in the published notice, in which to file objections to the formation of the district. The Department of Environmental Regulation shall, in the case of every petition, file with the court its objections, recommendations, or proposed amendments to the petition. Service of process may be waived in writing.

History.—s. 2, ch. 6458, 1913; RGS 1099; CGL 1452; s. 20, ch. 29737, 1955; s. 2, ch. 72-291; s. 3, ch. 76-187; s. 1, ch. 77-174; s. 2, ch. 79-5; s. 18, ch. 79-65.

298.03 Objections to formation of district; hearing; decree incorporating district filed; decree filed in counties affected.—

(1) Any owner of lands in the proposed district who may not have signed the petition, any owner of land not within, but contiguous to, land in the district, or any governing body having authority over any of the area to be included in the district may appear, and the Department of Environmental Regulation shall appear, within 20 days of the date of the notice and advocate or resist the organization and incorporation of said district. If any owner shall desire to resist the establishment of the district, he shall file his objection in writing, stating therein his reasons why the said district should not be organized and incorporated or why his lands or any part thereof should not be included therein; or he may deny the statements in said petition. The Department of Environmental Regulation shall have a period of 20 days from the date of the notice in which to file its objections unless such time is extended by the court for a period of no more than an additional 20 days. No final hearing shall be held, nor any final judgment entered, until the answer of the Department of Environmental Regulation has been filed and the time and location of the said final hearing shall have been served, giving at least 20 days' notice, on every party, including the department, who filed an answer either advocating or resisting organization of said district.

(2) Such objections, if any there be, shall be heard by the court in a full and complete hearing, without unnecessary delay, on a day to be named by the court or judge thereof, upon application of the petitioners or any of those signing the said petition. Upon the hearing, which may be adjourned from time to time, for good cause shown, of the said objections, if any have been filed, if the court shall be of the opinion that the establishment of the said district and the improvements to be made thereunder will be for the advantage of the owners of the real property therein or that the same would be in the interest of the public health, convenience or welfare, it shall overrule said objections.

(3) In case all such objections are overruled, or in case no such objections have been filed, the court thereupon shall, by its order duly entered of record, declare and decree said district a public corporation of this state, for a term not exceeding the time mentioned in said petition. No district shall be established or consolidated under any provisions of this

chapter until there shall have been first obtained the written approval or consent of a majority of the owners of the lands within said district. If the court finds that the lands set out in said petition should not be incorporated into a district, it shall dismiss said proceedings and adjudge the costs against the said petitioners in proportion to the acreage represented by each. Any person having signed the petition shall have no right to have such proceedings dismissed as to him without the written consent of a majority of the other owners who signed said petition. The petition may be amended as any other pleading.

(4) Immediately after the district has been declared a corporation by the court, the clerk thereof shall transmit to the Department of State a certified copy of the findings and decree of the court incorporating the district, and the same shall be filed with the Department of State. A copy of the finding and decree, together with a plat of the district, shall also be filed in the office of the clerk of the circuit court in each of the counties having land in the district, where the same shall become a permanent record. Each clerk shall receive a service charge for filing and recording the finding, decree and plat as provided in s. 28.24.

History.—s. 3, ch. 6458, 1913; RGS 1100; CGL 1453; s. 35, ch. 29737, 1955; ss. 10, 35, ch. 69-106; s. 16, ch. 70-134; s. 1, ch. 70-439; s. 3, ch. 72-291; s. 19, ch. 79-65.

298.04 Change of venue in proceedings under chapter.—No change of venue shall be allowed in any of the proceedings had under the provisions of this chapter, except where the judge of the court in which the petition has been filed shall be disqualified for any of the reasons stated in the statute of this state relating to the change of venue in civil cases. If the judge of such court is disqualified or is charged by any person interested in the formation of said district with being disqualified, for any of the reasons stated in the statutes, said judge shall call in a judge from some other judicial circuit of this state to sit and hear the proceedings and render his decree and judgment, the same as the regular judge could have. Such judge shall retain jurisdiction in such reclamation proceedings only until the disqualification of the regular judge of the circuit court shall have been removed. Said judge so called shall receive for his services mileage and compensation as now provided by law under similar conditions.

History.—s. 33, ch. 6458, 1913; RGS 1130; CGL 1485.
cf.—Ch. 47 Venue.

298.05 Revival of cause on death of party to any proceedings under chapter; constructive service on nonresidents.—No action under this chapter shall abate by reason of the death or disability of any party to any proceeding, but upon suggestion of such death or disability the cause shall be immediately revived in the name of the heirs, devisees, or their legal representatives, and summons shall be served on such heirs, devisees, and legal representatives at least 5 days before the day set for hearing the cause; if the heirs, devisees, or legal representatives of the deceased party are nonresidents, notice by publication shall be given them in the manner and for the time provided for in s. 298.02, and the cause shall then proceed in all respects as in case of the original parties being in court.

History.—s. 34, ch. 6458, 1913; RGS 1131; CGL 1486; s. 21, ch. 29737, 1955.

298.06 Dissolution of district in certain cases.—If, after determining the objections made to the commissioners' report, the court shall find that the estimated costs of works and improvements as reported by the board of commissioners, or as amended by the court, exceed the estimated benefits, the court shall then render its decree, declaring the incorporation of the district to be dissolved as soon as all costs incurred, which shall include court costs and all obligations and expenses incurred in behalf of the district by the board of supervisors, shall have been paid, and if the uniform tax levied under the provisions of s. 298.29 be found insufficient to pay all such costs the board of supervisors shall make such additional uniform tax levies as will be necessary to pay such deficiency; provided, that in estimating the cost of constructing the works and improvements of the district the amount of interest that might accrue upon bonds that may be issued by the board of supervisors under the provisions of this chapter shall not be considered as a part of the cost of construction.

History.—s. 36, ch. 6458, 1913; RGS 1133; CGL 1488.

298.07 Amending former decree incorporating district; changing boundary lines and water-management plan; form of notice; objections, hearing and determination on petition.—

(1) The board of supervisors or the Department of Environmental Regulation, for and on behalf of any district organized under the provisions of this chapter, or the owners of land adjacent to such district, shall have the right to file a petition, which shall be subscribed to and acknowledged, in the office of the clerk of the court organizing said district, praying the court to amend its former decree incorporating the district by correcting the names of the landowners, by striking out any such names, or by adding, striking out or correcting the description of any land within or alleged to be within the boundary lines of any such district or in any other manner amend its decree. The petition may ask permission of the court to amend or change the water-management plan, or to correct any errors, omissions, or other mistakes that have been discovered in the water-management plan; or said petition may ask that the boundary lines of said district be extended so as to include lands not described by, and included in, the petition and decree of the court incorporating the district. If such petition asks the court's permission to change the water-management plan, or in any manner to change the boundary lines of such district, it shall also ask the court to appoint three commissioners, as provided for under the provisions of s. 298.30, to appraise the land that shall be taken for rights-of-way, holding basins, or other work or assess the benefits and damages to any or all lands, public highways, and railroad and other property already in the district or that may be annexed to the district by the proposed amendments, and changes to the water-management plan or the proposed change in the boundary lines of said district. If such petition proposes to change the boundary lines of said district, there shall be attached to the petition

and published with the notice required by subsection (2) a map or plat of the county or counties in which said proposed district shall be located, showing the proposed location of the new boundary lines of the district and the section, township, and range lines, together with natural geographic features and existing roads, streets, and highways.

(2) As soon as said petition and attachments, if applicable, have been filed, the clerk of the court shall give notice in the manner and for the time provided for in s. 298.02, said notice to be substantially in the following form:

"Notice of Hearing

To the owners and all persons interested in the lands corporate, and other property in and adjacent to ..... Water Control District:

You, and each of you, are hereby notified that (here state by whom petition was filed), has filed in the office of the Circuit Court of ..... County, Florida, a petition praying said court for permission to (here insert the prayer of said petition), and unless you show cause to the contrary within 20 days after the publication of this notice as required by law, the prayer of said petition may be granted.

OWNERS OF RECORD OF LAND WITHIN THE DISTRICT AND OF LAND CONTIGUOUS THERETO

NAME	ADDRESS	DESCRIPTION OF LAND
.....	.....	.....
.....	.....	.....

Date of first publication ....., 19.....

(Clerk of the Circuit Court)

..... County, Florida."

(3) Any owner of land or other property located in the district, any owner of land or property located outside of the district that will be affected by the proposed changes, amendments, and corrections enumerated in the petition, and the Department of Environmental Regulation shall have the right to file objection to the granting of the prayer of said petition within the time allowed in this section. The court shall hear said petition and all objections that may have been filed against said petition in a full and complete hearing on a day to be named by said court or the judge thereof upon application of any party interested and enter its decree according to its findings.

(4) The clerk of the court shall, within 10 days after the granting of the decree, transmit a certified copy of the petition to the secretary of the board of supervisors and also shall transmit a copy of the same to each of the clerks of the circuit courts of the counties having land in the district and to the Department of State. Each such clerk shall file and record the same in his office, and for such filing and recording he shall receive a service charge as provided in s. 28.24. If the decree of the court provides that "the plan of reclamation" may be amended, changed, or corrected or the boundary lines of the district extended, the court shall appoint three commissioners possessing the same qualifications as the commissioners appointed under the provisions of s. 298.30 to appraise property to be taken, assess benefits and damages, and estimate the cost of improvements, the same as is required of commissioners acting under the provisions of s. 298.32. The commissioners shall make their report in writing and file the same with the circuit court clerk, after which, the same shall proceed in the same manner as is now provided for the organization of districts. If the petition is dismissed the district shall pay the cost; but if the petition is sustained in whole or in part, the objectors shall pay the court costs incurred by reason of the objections.

(5) In addition to the publication of notice, a copy of the petition and the attached map or plat, together with a summons, shall be served on the water management district, created under chapter 373, in which lands described in the petition are situated; on the board of county commissioners of the county, and the governing body of any municipality, in which the lands are situated; and on the Department of Environmental Regulation, in the manner provided by the Florida Rules of Civil Procedure for the service of pleadings and papers on parties. In addition thereto, a copy of the notice as published and a copy of the petition and the attached map or plat shall be mailed by the clerk to each person owning land within, and to each person owning land immediately adjacent and contiguous to, the boundaries of the existing or proposed district as shown on the current tax roll, and the clerk shall file a certificate of mailing. The parties served and receiving notice by mail shall have 20 days after the date of service or the date of mailing, or the time allowed in the published notice, in which to file objections to the amendment of the former decree. The Department of Environmental Regulation shall, in the case of every petition, file with the court its objections, recommendations, or proposed amendments to the petition. Service of process may be waived in writing.

History.—s. 39, ch. 6458, 1913; RGS 1136; CGL 1491; s. 2, ch. 29737, 1955; ss. 10, 25, 35, ch. 69-106; s. 17, ch. 70-134; s. 1, ch. 70-439; s. 4, ch. 72-291; s. 4, ch. 76-187; s. 1, ch. 77-174; s. 3, ch. 79-5; s. 20, ch. 79-65.

298.08 Adjacent districts may be consolidated; elections; petition to court; notice; objections, hearing and decree.—

(1) Any two or more adjacent districts, established under this chapter, whether incorporated in the same or different counties, may be united and consolidated in one district, and such new district and the board of supervisors thereof shall have the rights, powers and privileges of any district organized under this chapter. In order to effect such consolidation, the board of supervisors of each of the original districts shall call an election in the same manner as elections for supervisors, stating the time, place and object of such election.

(2) If a majority of the owners voting in each district vote in favor of the proposition to unite and consolidate such districts, the board of supervisors of each district shall present a petition to the circuit court of the county in which the greatest amount of the lands is located, accompanied with a complete return of said election, in which petition shall be stated the names of the original districts, when incorporated, the names of the owners of the lands, and the boundaries of the districts. When said peti-

tion has been filed, notice shall be given of such filing in the manner provided for in s. 298.02 to those persons named, who shall have the time provided for in s. 298.02 in which to file any objections. Said notice shall include the map or plat filed with the petition, and shall state substantially the contents of said petition, the objects sought, and the term of court at which said matter is to be heard.

(3) Any person owning land in either of said districts, on or before the first day of said court, may file objections to the regularity or sufficiency of any of the proceedings had in the premises, and if such objections are overruled, or if no objections are made, the court shall make an order that any two or more of the several districts so asking to be united shall be united and consolidated as one district, under some appropriate designation, with all the rights, powers and privileges of such districts organized under this chapter. The lands so included in the new district shall be subject to all liens, liabilities and obligations of the original districts, and a new board of supervisors shall be elected, as is now provided in case of election of supervisors.

(4) All orders made in regard to extension of time, boundaries, or uniting districts shall be spread on the records of the circuit court, and a certified copy thereof shall be filed with the clerk of the circuit court of each county in which any of the lands are located and also with the Department of State. The clerk shall receive a service charge as provided in s. 28.24 for filing and recording the certificates.

History.—s. 44, ch. 6458, 1913; RGS 1141; CGL 1498; ss. 10, 35, ch. 69-106; s. 18, ch. 70-134; s. 1, ch. 70-439; s. 5, ch. 72-291.

298.09 Extending corporate life of district; meeting of landowners; petition to court; proceedings, etc.—

(1) Whenever the board of supervisors of any district organized under this chapter finds that in order to raise funds to complete the water-management plan, pay for works already completed, pay bonds outstanding and interest thereon or interest on the same, restore any works, or construct new works; or whenever for any other cause, the time for which any district has been incorporated should be extended, the board shall call a meeting of landowners of the district in the same manner as is provided for in s. 298.11. The notice shall state the time, place, and purpose of the meeting. If the vote of the majority of the owners represented at the meeting be cast in favor of the extension of the district's corporate existence, a petition will be presented to the court organizing the district asking for an extension of time. The meeting shall be conducted in the same manner as is provided in s. 298.11 for the election of supervisors, except that one member of the board of supervisors shall act as chairman of the meeting, and the secretary of the board, or his deputy, shall act as clerk. If a majority of the owners represented at the meeting shall vote in favor of the extension, the board of supervisors shall, not less than 10 days before the next term of the circuit court, file a petition with the clerk of the court praying for the extension of the corporate existence of the district. Said petition shall be subscribed to and acknowledged. After the filing of the petition, the same proceedings shall be had as are provided for in this chapter for the incorporation of the district. If the petition is granted by the court, within 10 days thereafter the clerk shall transmit copies of the decree to the secretary of the board of supervisors, the Department of State, and the clerk of the circuit court of each county having land in the district. Each such clerk shall file and record the same in his office, and for such service he shall receive a service charge as provided in s. 28.24. In case the court finds that the extension should not be allowed, the petition shall be dismissed and the cost incurred in the case shall be paid by the district.

(2) In addition to the publication of notice, a copy of the petition, together with a summons, shall be served on each owner of land, as shown on the county tax roll, within the boundaries of the proposed district, on each owner of land, as shown on the county tax roll, immediately adjacent and contiguous to the boundaries of the proposed district, on the local governing bodies which have authority over any of the area included in the district or proposed to be included in the district, and on the Department of Environmental Regulation in the manner provided for process and service of process in chapters 48 and 49 and the Florida Rules of Civil Procedure, as from time to time amended. The person served shall have 20 days after service of original process under chapter 48, the time allowed in the notice as published herein, or the time allowed under chapter 49, in the case of constructive service, in which to file objections to the amendment to the former decree. The Department of Environmental Regulation shall, in the case of every petition, file with the court its objections, recommendations, or proposed amendments to the petition. Service of process may be waived in writing.

(3) The Central and Southern Florida Flood-Control District, if the lands within the boundaries of the proposed district are situated in said district, or the Southwest Florida Water-Management District, if the lands within the boundaries of the proposed district are situated in said district, shall be served with a copy of the petition and summons as provided in subsection (2) and shall have the time allowed as provided for in said subsection in which to file objections to the amendment of the former decree. Said districts shall file with the court their objections, recommendations, or proposed amendments to the petition.

History.—s. 45, ch. 6458, 1913; RGS 1142; CGL 1499; ss. 10, 35, ch. 69-106; s. 19, ch. 70-134; s. 1, ch. 70-439; s. 6, ch. 72-291; s. 21, ch. 79-65.

298.10 Appeal not to act as supersedeas.—No appeal from any action of the circuit court had under this chapter shall be permitted to act as supersedeas or to delay any action or the prosecution of any work begun under the provisions of this law.

History.—s. 35, ch. 6458, 1913; RGS 1132; CGL 1487.

298.11 Election of board of supervisors; Department of Environmental Regulation to represent state at election; if no election held, department to appoint supervisors, etc.—

(1) Within 20 days after any district shall have been organized and incorporated under the provisions of this chapter, the clerk of the circuit court in which the petition has been filed shall, upon giving notice by causing publication thereof to be made

once a week for 2 consecutive weeks in some newspaper published in each county in which lands of the district are situate, the last insertion to be not less than 10 nor more than 15 days before the day of such meeting, call a meeting of the owners of the lands situate in said district, at a day and hour specified, at some public place in the county in which the district was organized, for the purpose of electing a board of three supervisors, to be composed of owners of the lands in said district and residents of the county or counties in which such district is situate.

(2) The landowners, when assembled, shall organize by the election of a chairman and secretary of the meeting, who shall conduct the election; at such election each and every acre of land in the district shall represent one share, and each owner shall be entitled to one vote in person or by proxy in writing duly signed, for every acre of land owned by him in such district, and the three persons receiving the highest number of votes shall be declared elected as supervisors. Landowners owning less than 1 acre shall be entitled to one vote. The landowners shall at such election determine the length of the terms of office of each supervisor so elected by them, which shall be respectively 1, 2 and 3 years, and they shall serve until their successors shall have been elected and qualified.

(3) The Department of Environmental Regulation, at any such meeting, may represent the state, and shall have the right to vote for supervisors, or upon any matter that may come properly before said meeting to the extent of the acreage owned by the state in such district, which vote may be cast by any person designated by said Department of Environmental Regulation. Guardians may represent their wards, executors and administrators may represent estates of deceased persons, and private corporations may be represented by their officers or duly authorized agents. The owners of a majority of the acreage included in such district shall be necessary to constitute a quorum for the purpose of holding such election, or any election thereafter, and in case the owners of a majority of the acreage included in such district are not present in person or duly represented, at the time and the place stated in the notice calling such meeting, then no election shall be held, and notice of such failure shall be given in writing by any person interested to the Department of Environmental Regulation, which shall as soon as practicable appoint three competent persons who own land in such district as such supervisors for the term of 1, 2 and 3 years respectively, and who shall hold their office until their successors are elected or appointed and qualified.

(4) Any such supervisor so appointed by the said Department of Environmental Regulation may be removed by the said department for dishonesty, incompetency or failure to perform the duties imposed upon him by this chapter, and any vacancies which may occur in any such office so filled by appointment shall be filled by the said department as soon as practicable.

(5) The Melbourne-Tillman Water Control District shall have five supervisors. Three supervisors shall be elected by the landowners pursuant to the applicable provisions of this section. Two supervisors, who are district residents, shall be appointed by the Brevard County Board of County Commissioners by majority vote at a regularly scheduled commission meeting for a term of 3 years. The commission may publish notice of this meeting and may take any public testimony which, in its discretion, it feels might bear upon such appointments. Should the landowners fail to elect a supervisor for any reason, the Department of Environmental Regulation shall not have power to appoint; instead, the Brevard County Board of County Commissioners shall appoint a competent person who owns land in said district within 30 days. A supervisor so appointed shall hold office until a successor is elected or appointed. Any supervisor appointed by the Brevard Board of County Commissioners may be removed by the board for dishonesty, incompetency, or failure to perform the duties imposed on him by this chapter.

History.—s. 4, ch. 6458, 1913; RGS 1101; CGL 1454; ss. 25, 35, ch. 69-106; s. 7, ch. 72-291; s. 1, ch. 76-181; s. 4, ch. 79-5; s. 22, ch. 79-65.

298.12 Annual election of supervisors; term of office, etc.—

(1) Every year in the same month after the time for the election of the first board of supervisors, it shall call a meeting of the landowners in the district in the same manner as is provided for in s. 298.11, and the owners of land in such district shall meet at the stated time and place and elect one supervisor therefor, or in case of their failure to elect, the Department of Environmental Regulation shall appoint such supervisor, in like manner as prescribed in s. 298.11, who shall hold his office for 3 years or until his successor is elected and qualified; and in case of a vacancy in any office of supervisor elected by the landowners, the remaining supervisors, or if they fail to act within 30 days, the Department of Environmental Regulation, may fill such vacancy until the next annual meeting, when a successor shall be elected for the unexpired term.

(2) A vacancy in any of the three elected positions on the Melbourne-Tillman Water Control District Board of Supervisors which is not filled by a vote of the district's landowners pursuant to the provisions of this section shall be filled by the Brevard County Board of County Commissioners within 30 days. The supervisor so appointed shall fill such vacancy until the next annual meeting when a successor shall be elected by the landowners for the unexpired portion of the term. A vacancy in any of the two appointed supervisor positions shall be filled by the Brevard County Board of County Commissioners within 30 days.

History.—s. 5, ch. 6458, 1913; RGS 1102; CGL 1455; ss. 25, 35, ch. 69-106; s. 2, ch. 76-181; s. 5, ch. 79-5.

298.13 Supervisor's oath of office.—Each supervisor, before entering upon his official duties, shall take and subscribe to an oath before some officer authorized by law to administer oaths, that he will honestly, faithfully and impartially perform the duties devolving upon him in office, as supervisor of the district in which he was elected or appointed, and that he will not neglect any of the duties imposed upon him by this chapter.

History.—s. 6, ch. 6458, 1913; RGS 1103; CGL 1456; s. 6, ch. 79-5.

298.14 Organization of board; annual reports to landowners; compensation of members of board; proviso.—The board of supervisors, immediately after their election or appointment, shall meet at some convenient place and choose one of their number president of the board, and elect some suitable person secretary, who may or may not be a member of the board, and who may be required to execute bond for the faithful performance of his duties, as the board of supervisors may require. Such board shall adopt a seal with a suitable device, and shall keep a record of all of its proceedings in a substantially bound book to be kept for the purpose, which shall be open to inspection by any interested person, his agent or attorney. The board of supervisors shall report to the landowners, at the annual meeting held under the provisions of s. 298.12, of what work has been done, either by engineers or otherwise. The members of the board shall be reimbursed for their traveling expenses pursuant to s. 112.061, but the board shall receive no compensation for their service unless the landowners at the annual meeting shall determine to pay a compensation, which in no event shall exceed $25 per day for the time actually engaged in work for the district and in attending sessions of the board; provided, however, that if the secretary be a member of the board he shall be entitled to compensation as provided in this chapter.

History.—s. 7, ch. 6458, 1913; RGS 1104; CGL 1457; s. 11, ch. 63-400; s. 1, ch. 65-517.

298.15 Board of supervisors to keep record of proceedings, etc.—The board of supervisors of any district organized under this chapter shall cause to be kept a well-bound book, entitled "record of board of supervisors of ..... district," in which shall be recorded minutes of all meetings, proceedings, certificates, bonds given by all employees and any and all corporate acts, which record shall at all times be open to the inspection of anyone interested, whether taxpayer or bondholder. Copies of the record of proceedings shall be filed with the clerk of the circuit court of the county or counties in which district lands are located and with the Department of Environmental Regulation. Any interested person, whether landowner or not, shall be permitted to inspect the record of proceedings.

History.—s. 28, ch. 6458, 1913; RGS 1125; CGL 1478; s. 8, ch. 72-291; s. 23, ch. 79-65.

298.16 Appointment of chief engineer; engineer's bond and duties.—

(1) Within 30 days after organizing, the board of supervisors shall appoint a chief engineer, who may be an individual, copartnership or corporation, and who shall engage such assistants as the board of supervisors may approve. Such chief engineer shall enter into a bond with good surety, in a sum to be named by said board, and which bond and surety shall be approved by said board, conditioned that he will faithfully and honestly perform all the duties required of him by said supervisors, and deliver to his successor all instruments, papers, maps, documents and other things that may have come into his hands by virtue of his employment.

(2) The chief engineer shall have control of the engineering work in said district, and he may, whenever he deems it necessary, confer with the chief engineer of this state, or the Department of Environmental Regulation, and he may, by and with the consent of the board of supervisors, consult any eminent engineer and obtain his opinion and advice concerning the reclamation of lands in said districts. The said engineer shall make all necessary surveys of the lands within the boundary lines of said district, as described in the petition, and of all lands adjacent thereto that will be improved or reclaimed in part or in whole by any system of drainage that may be outlined and adopted.

(3) The engineer shall make a report in writing to the board of supervisors, with maps and profiles of said surveys, which report shall contain a full and complete plan for draining and reclaiming the lands described in the petition, or adjacent thereto, from overflow or damage by water, with the length, width and depth of such canals, ditches, dikes or levees, or other works that may be necessary, in conjunction with any canals, drains, ditches, dikes, levees or other works heretofore constructed or built by the Board of Trustees of the Internal Improvement Trust Fund, or any other person, that may now be in process of construction, or which may be hereafter built by them, that may be necessary or which can be advantageously used in such plan for reclamation; and also, an estimate of the costs of carrying out and completing the plan of reclamation, including the cost of superintending the same and all incidental expenses in connection therewith. Maps and profiles shall also indicate so far as necessary the physical characteristics of the lands, and location of any public roads, railroads and other rights-of-way, roadways and other property or improvements located on such lands. A copy of the report required by this section shall be filed with the Department of Environmental Regulation.

History.—s. 8, ch. 6458, 1913; RGS 1105; CGL 1458; ss. 25, 27, 35, ch. 69-106; s. 9, ch. 72-291; s. 24, ch. 79-65.

298.17 Appointment and duties of treasurer of district; appointment of deputies; bond of treasurer; audit of books; disbursements by warrant; form of warrant.—The board of supervisors in any district shall select and appoint some competent person, bank or trust company, organized under the laws of the state, as treasurer of such district, who shall receive and receipt for all the drainage taxes collected by the county collector or collectors, and he shall also receive and receipt for the proceeds of all tax sales made under the provisions of this chapter. Said treasurer shall receive such compensation as may be fixed by the board of supervisors. Said board of supervisors shall also have the authority to employ a fiscal agent, who shall be either a resident of the state or some corporation organized under the laws of Florida and authorized by such laws to act as such fiscal agent for municipal corporations, who shall assist in the keeping of the tax books, collections of taxes, the remitting of funds to pay maturing bonds and coupons, and perform such other service in the general management of the fiscal and clerical affairs of the district as may be determined by such board; and said board shall have the right to define the duties of such fiscal agent and fix its compensation. Said board of supervisors shall

furnish the secretary and the treasurer with necessary office room, furniture, stationery, maps, plats, typewriter and postage. The secretary and the treasurer, or either of them, may appoint, by and with the advice and consent of the board of supervisors, one or more deputies as may be necessary. Said treasurer shall give bond in such amount as shall be fixed by the board of supervisors, conditioned that he will well and truly account for and pay out, as provided by law, all moneys received by him as taxes from the county collector, and the proceeds from tax sales for delinquent taxes, and from any other source whatever on account or claim of said district, which bond shall be signed by at least two sureties, or by some surety or bonding company, approved and accepted by said board of supervisors, and said bond shall be in addition to the bond for proceeds of sales of bonds, which is required by s. 298.47. Said bond shall be placed and remain in the custody of the president of the board of supervisors, and shall be kept separate from all papers in the custody of the secretary or treasurer. Said treasurer shall keep all funds received by him from any source whatever deposited at all times in some bank, banks or trust company to be designated by the board of supervisors. All interest accruing on such funds shall, when paid, be credited to the district. The board of supervisors shall audit or have audited the books of the said treasurer of said district at least once each year and make a report thereof to the landowners at the annual meeting and publish a statement within 30 days thereafter, showing the amount of money received, the amount paid out during such year, and the amount in the treasury at the beginning and end of the year. A certified copy of said annual audit shall be filed with the state auditor. The treasurer of the district shall pay out funds of the district only on warrants issued by the district, said warrants to be signed by the president of the board of supervisors and attested by the signature of the secretary. All warrants shall be in the following form:

\$.....Fund ..... No. of Warrant .....
Treasurer of ..... Water Control District, State of Florida. Pay to ..... Dollars out of the money in ..... fund of ..... Water Control District. For .....

By order of board of supervisors of ..... Water Control District, Florida.

(President of District.)

Attest:

(Secretary of District.)

History.—s. 25, ch. 6458, 1913; RGS 1122; s. 1, ch. 9129, 1923; CGL 1475; s. 10, ch. 72-291; s. 7, ch. 79-5.

298.18 Supervisors to employ attorney for district; duty of attorney.—The board of supervisors within 30 days after organizing shall employ an attorney to act for the district and to advise said board. Such employment shall be evidenced by an agreement in writing, which, as far as possible, shall specify the exact amount to be paid to said attorney for all services and expenses. Such attorney shall conduct all legal proceedings and suits in court where the district is a party or interested, and shall in all legal matters advise the said board of supervisors, all officers, employees or agents of said district and board, and generally look after and attend to all matters of a legal nature for said board and district. When the said board may deem it necessary, it may, by and with the advice of said attorney, and under the like terms and conditions as above set forth, employ another attorney.

History.—s. 27, ch. 6458, 1913; RGS 1124; CGL 1477.

298.19 Appointment and duties of superintendent of plant and operations and overseers.—For the purpose of preserving any ditch, drain, dike, levee or other work constructed or erected under the provisions of this chapter and for the taking care and the operation of the equipment owned by said district and the maintenance of the canals and other works of said district, including the removal of obstructions from the same, and such other duties as may be prescribed by said board, the board of supervisors may employ a superintendent of plant and operations who shall have charge and supervision of the works of the district after the construction of the same, and said board also may employ or appoint an overseer or overseers who shall hold their positions at the will of the board, and who shall assist said superintendent in the performance of the work aforesaid.

History.—s. 40, ch. 6458, 1913; RGS 1137; s. 1, ch. 9129, 1923; CGL 1492.

298.20 Supervisors to fix compensation for work and employees.—The board of supervisors, except where otherwise provided, shall, by resolution, at time of hiring or appointing, provide for the compensation for work done by any officer, engineer, attorney or other employee and shall also pay the fees, and necessary expenses of all court and county officers who may, by virtue of this chapter, render service to said district. Reimbursement of travel expenses shall be made as provided by s. 112.061. It is understood that the ordinary fee statute does not apply to services rendered under this chapter by any county officer, but each such officer shall receive only a reasonable compensation for services actually rendered, the same to be fixed by the court in which the proceeding is pending, except where otherwise provided in this chapter, that said districts or petitioners for such corporations may prepare, write or print all copies of petitions, writs, orders and decrees or other papers, and furnish same to the clerk or other officer for his use, and in such event said officer shall be entitled to receive as compensation for issuing the said writs and copies of petitions, decrees, orders or other papers, only the reasonable value of the services actually rendered.

History.—s. 37, ch. 6458, 1913; RGS 1134; CGL 1489; s. 19, ch. 63-400; s. 8, ch. 79-5.

298.21 Supervisors may remove officers and employees.—The board of supervisors may at any time remove any officer, attorney, chief engineer or other employee appointed or employed by said board.

History.—s. 47, ch. 6458, 1913; RGS 1144; CGL 1501.

298.22 Powers given supervisors to effect reclamation of land in district.—In order to effect the drainage, protection and reclamation of the land in the district subject to tax, the board of supervisors may:

(1) Clean out, straighten, open up, widen, or change the course and flow, alter or deepen any canal, ditch, drain, river, watercourse, or natural stream; and concentrate, divert or divide the flow of water in or out of said district; construct and maintain main and lateral ditches, canals, levees, dikes, dams, sluices, revetments, reservoirs, holding basins, floodways, pumping stations and siphons, and may connect same, or any of them, with any canals, drains, ditches, levees or other works that may have been heretofore, or which may be hereafter constructed by the [1][Department of Environmental Regulation], and with any natural stream, lake or watercourse in or adjacent to said district;

(2) Build and construct any other works and improvements deemed necessary to preserve and maintain the works in or out of said district; acquire, construct, operate, maintain, use, sell, convey, transfer or otherwise provide for pumping stations, including pumping machinery, motive equipment, electric lines and all appurtenant or auxiliary machines, devices or equipment;

(3) Contract for the purchase, construction, operation, maintenance, use, sale, conveyance and transfer of the said pumping stations, machinery, motive equipment, electric lines and appurtenant equipment, including the purchase of electric power and energy for the operation of the same;

(4) Construct or enlarge, or cause to be constructed or enlarged, any and all bridges that may be needed in or out of said district, across any drain, ditch, canal, floodway, holding basin, excavation, public highway, railroad right-of-way, track, grade, fill or cut; construct roadways over levees and embankments; construct any and all of said works and improvements across, through or over any public highway, railroad right-of-way, track, grade, fill or cut, in or out of said district; remove any fence, building or other improvements, in or out of said district;

(5) Shall have the right to hold, control and acquire by donation or purchase and if need be, condemn any land, easement, railroad right-of-way, sluice, reservoir, holding basin or franchise, in or out of said district, for right-of-way, holding basin for any of the purposes herein provided, or for material to be used in constructing and maintaining said works and improvements for drainage, protecting and reclaiming the lands in said district.

(6) Condemn or acquire, by purchase or grant, for the use of the district, any land or property within or without said district not acquired or condemned by the court on the report of the commissioners assessing benefits and damages, and shall follow the procedure set out in chapter 73.

(7) The board of supervisors may implement and authorize construction of only those improvements outlined in the plan of reclamation.

History.—s. 26, ch. 6458, 1913; s. 1, ch. 7897, 1919; RGS 1123; CGL 1476; s. 1, ch. 14714, 1931; ss. 25, 27, 35, ch. 69-106; s. 11, ch. 72-291.

[1]**Note.**—Bracketed language substituted by the editors for the following: "Board of Trustees of the Internal Improvement Trust Fund or the Department of Natural Resources of the state." See s. 15, ch. 75-22, which merged the Board of Trustees of the Internal Improvement Trust Fund into the Department of Natural Resources and transferred all powers, duties, and functions, etc., of the board not transferred elsewhere by ch. 75-22 to the department. See, also, s. 11, ch. 75-22, which transferred all powers, duties, and functions of the Department of Natural Resources relating to water management districts, as set forth in ch. 298, to the Department of Environmental Regulation.

298.23 Supervisors given power to take land for rights-of-way, etc.; payment, etc.—The board of supervisors of a district organized under this chapter shall not have the right to enter upon, or appropriate, any land for rights-of-way, holding basins or other works of the district, until the prices awarded to the owners of such land shall have been paid to such owners, or into the hands of the clerks of the circuit courts organizing such district for the use of such owners; and if the sums awarded be not so paid within 5 years from the date of filing the commissioner's reports, all proceedings as to the taking of such property for rights-of-way, holding basins and other works, not so paid for, shall abate at the cost of said district. Whenever any land is acquired by any district under the provisions of this chapter and the price of such property has been paid the owner by the district, the title, use, possession and enjoyment of such property shall pass from the owner and be vested in the district, and subject to its use, profit, employment and final disposition. The price awarded for all lands acquired by any district for rights-of-way, holding basins, or other works, and the amount of damage assessed by the board of commissioners and confirmed by the court to any tract or parcel of land or other property in the district, shall be paid in cash to the owner thereof or to the clerk of the court for the use of such owner, and that portion of any tract or parcel of land not taken for use of the district shall be assessed for the benefits accruing in accordance with the provisions in this chapter.

History.—s. 29, ch. 6458, 1913; RGS 1126; CGL 1479; s. 9, ch. 79-5.

298.24 Bridges to be built in compliance with plans approved by engineer, etc.; requiring construction of bridges; constructing ditches across highways, etc.—All bridges contemplated by this chapter and all enlargements of bridges already in existence shall be built and enlarged according to and in compliance with the plans, specifications and orders made or approved by the chief engineer of the district. If any such bridge shall belong to any corporation, or be needed over a public highway or right-of-way of any corporation, the secretary of said board of supervisors shall give such corporation notice by delivering to its agent or officer, in any county wherein said district is situate, a copy of the order of the board of supervisors of said district declaring the necessity for the construction or enlargement of said bridge. A failure to construct or enlarge such bridge, within the time specified in such order, shall be taken as a refusal to do said work by said corporation, and thereupon the said board of supervisors shall proceed to let the work of constructing or enlarging the same at the expense of the corporation for the cost thereof, which costs shall be collected by said board of supervisors from said corporation, by suit therefor, if necessary. But before said board of supervisors shall let such work, it shall give some agent or officer of said corporation, authorized by the laws of

this state to accept service of summons, or upon whom service of summons for said corporation might be made, at least 20 days' actual notice of the time and place of letting such work. Any owner of land, within or without the district, may, at his own expense, and in compliance with the terms and provisions of this chapter, construct a bridge across any drain, ditch, canal or excavation in or out of said district. Each district shall have full authority to construct and maintain any ditch or lateral provided in its "plan of reclamation," across any of the public highways of this state, without proceedings for the condemnation of the same, or being liable for damages therefor. Within 10 days after a dredge boat or any other excavating machine shall have completed a ditch across any public highway, a bridge shall be constructed and maintained over such drainage ditch where the same crosses such highway; provided, however, the word corporation as used in this section shall not apply to counties.

History.—s. 30, ch. 6458, 1913; RGS 1127; CGL 1480; s. 10, ch. 79-5.

298.25 Type of bridges over drains in large counties.—Whenever any district cuts or digs a drain, canal or ditch across any public highway, in counties having a population of not less than 130,000, according to the last preceding state census, the style, type and character of such bridge shall be determined by the engineer of the county and the chief engineer of the district, and approved by a majority of the board of county commissioners as soon as the plan of reclamation, locating such canals, drains or ditches, is filed in the office of the clerk of the circuit court of the county or counties in which the lands within the district are located; and the cost of the same, as estimated by the chief engineer of the district, shall be included by the commissioners of the district in the assessment for the construction of the plan of reclamation.

History.—ss. 1, 2, ch. 11344, 1925; CGL 1481, 1482; s. 11, ch. 79-5.
cf.—s. 11.031 Official census.

298.26 Chief engineer to make annual reports to supervisors; approval of reports; water-management plan.—The chief engineer shall make a report in writing to the board of supervisors once every 12 months and oftener, if said board shall so require. Upon receipt of the final report of said engineer concerning the surveys made of the lands contained in the district organized and the lands adjacent thereto and for reclaiming the same, the board of supervisors shall adopt such report, or any modification thereof approved by the chief engineer, after consulting with him or someone representing him. Thereafter such adopted report shall be the plan for draining or reclaiming such lands from overflow or damage by water, and it shall, after such adoption, be known and designated as the water-management plan, which plan shall be filed with the secretary of the board of supervisors and by him copied into the records of the district. A copy of all such annual reports and the water-management plan shall be filed with the Department of Environmental Regulation. At least once each 5 years the department shall review the water-management plan and propose such modifications as it may deem proper.

History.—s. 9, ch. 6458, 1913; RGS 1106; CGL 1459; s. 12, ch. 72-291; s. 25, ch. 79-65.

298.27 When plan insufficient, supervisors have power to make new plans; additional levy; may issue bonds; procedure.—

(1) Where the works set out in "the plan of reclamation" of any district are found insufficient to reclaim, in whole or in part, any or all of the lands of the district, the board of supervisors shall have the right to formulate new or amended plans, containing new canals, ditches, levees or other works, and additional assessments may be made in conformity with the provisions of s. 298.32, the same to be made in proportion to the increased benefits accruing to the lands because of the additional works.

(2) If it should be found at any time that the amount of total tax levied under the provisions of s. 298.36, or that the funds derived from the sale of bonds under the provisions of ss. 298.47-298.50, are insufficient to pay the cost of works set out in "the plan of reclamation," the board of supervisors may make an additional levy to provide funds to complete the work and, in addition thereto, 10 percent of said total amount for emergencies; and, if in their judgment it seems best, may issue bonds not to exceed the amount of said additional levy.

(3) If it should be found, at any time, that the plan of reclamation as adopted requires modification by widening, lowering or deepening the canals or ditches, or widening or raising the levees, or enlarging or improving the other works authorized by the plan of reclamation, or the construction of additional canals, ditches or levees, and that the amount of the total tax levied under the provisions of s. 298.36, or that the funds derived from the sale of bonds under the provisions of ss. 298.47-298.50, are not sufficient to carry out the plan of reclamation with such modification, the board of supervisors may file its petition in the office of the clerk of the court organizing said district, praying the court's permission to change the plan of reclamation and asking the court to appoint three commissioners, as provided for under the provisions of s. 298.30, to appraise the land that shall be taken for such enlarged or improved works and assess the benefits and damages to any or all lands, public highways, railroads or other property in the district by the proposed amendments and changes to the plan of reclamation.

(4) Notice of the filing of such petition shall be given, and a hearing shall be held, and commissioners shall be appointed in the same manner as provided in s. 298.07, possessing the same qualifications as commissioners appointed under the provisions of s. 298.30; who shall appraise the property to be taken, assess benefits and damages and estimate the cost of improvement; and who shall proceed in the manner provided in s. 298.32. The commissioners may, in a proper case, confirm any previous assessment made under the provisions of this chapter. Said commissioners shall make report in writing, and file the same with the circuit court clerk, after which the same shall be proceeded with in the same manner as is now provided for in the case of an original incorporation and assessment.

(5) After the lists of lands with the assessed benefits and the decree and judgment of court have been filed in the office of the clerk of the circuit court, as provided in s. 298.34, then the board shall have power to levy an additional tax of such portion of said benefits on all lands in the district to which benefits have been assessed, as may be found necessary by the board of supervisors to pay the increased cost of the completion of the proposed works and improvements, as shown in said "plan of reclamation," as amended, including the cost of superintending the same, and all incidental expenses in connection therewith; and, in addition thereto, 10 percent of said total amount for emergencies; and, if in their judgment it seems best, may issue bonds not to exceed the amount of said additional levy. The additional taxes authorized to be levied under the provisions of this section shall be levied and collected in the same manner as taxes levied under the provisions of s. 298.36.

(6) Bonds issued under the provisions of this section shall draw interest at a rate not to exceed 7½ percent per annum, payable semiannually, and shall be made payable at such time and at such place as the board of supervisors may determine. Any additional tax authorized to be levied under the provisions of this section shall be apportioned to, and levied upon, each tract of land in said district in proportion to the benefits assessed and not in excess thereof, and in case bonds are issued as herein provided, then the amount of the interest (as estimated by said board of supervisors), which will accrue on such bonds, shall be included and added to the said additional levy. The interest to accrue on said bonds shall not be included as part of the cost of construction, in determining whether or not the expenses and costs of making the improvements shown in the plan of reclamation are equal to, or in excess of the benefits assessed.

History.—s. 46, ch. 6458, 1913; s. 1, ch. 7309, 1917; RGS 1143; CGL 1500; s. 24, ch. 73-302; s. 12, ch. 79-5.

298.28 Watercourses to be connected with drainage of district; connecting drains after completion of plan of drainage.—At the time of the construction, in any district incorporated under this chapter, of "the plan of reclamation", all canals, ditches or systems of drainage already constructed in said district and all watercourses shall, if necessary to the drainage of any lands in said district, be connected with and made a part of the works and improvements of the plan of drainage of said district, but no canals, ditches, drains, or systems of drainage constructed in said district, after the completion of the aforesaid plan of drainage of said district, shall be connected therewith, unless the consent of the board of supervisors shall be first had and obtained; which consent shall be in writing and shall particularly describe the method, terms and conditions of such connection, and shall be approved by the chief engineer. Said connection, if made, shall be in strict accord with the method, terms, and conditions laid down in said consent. If the landowners wishing to make such connection are refused by the board of supervisors, or decline to accept the consent granted, the said landowners may file a petition for such connection in the circuit court having jurisdiction in said district, and the matter in dispute shall in a summary manner be decided by said court, which decision shall be final and binding on the district and landowners. No connection with the works or improvements of said plan of drainage of said district, or with any canal, ditch, drain or artificial drainage, wholly within said district, shall be made, caused or affected by any landowners, company or corporation, municipal or private, by means of, or with, any ditch, drain, cut, fill, roadbed, levee, embankment or artificial drainage, wholly without the limits of said district, unless such connection is consented to by the board of supervisors, or in the manner provided for in this chapter.

History.—s. 48, ch. 6458, 1913; RGS 1145; CGL 1502.

298.29 Levy of taxes; collection of taxes; supervisors may borrow money and issue negotiable papers.—

(1) The board of supervisors of any district organized under the provisions of this chapter shall, as soon as it has organized, as provided under s. 298.14, levy a uniform tax of not exceeding $1 per acre upon each acre of land within such district, as defined in the petition and decree incorporating said district, to be used for the purpose of paying expenses incurred or to be incurred in organizing said district, making surveys of the same, assessing benefits and damages, and paying other expenses necessarily incurred, as may be estimated by the board and chief engineer, before said board may, by provisions of this chapter, provide funds to pay the total costs of works and improvements of the district.

(2) In case the boundary lines of the district be extended, under the provisions of this chapter, so as to include lands not described and contained in the petition, the same uniform assessment shall be made on such other lands as soon as same shall have been annexed and included in the district. Such shall be due and payable as soon as assessed and become delinquent 90 days thereafter. It shall become a lien upon the land against which it is assessed from the date of assessment, and shall be collected in the same manner as the annual installment of tax. In case the sum received for such assessment exceeds the total cost of items for which the same has been levied the surplus shall be placed in the general fund of the district and used to pay cost of construction. If the corporation of the district be dissolved, as provided in this chapter, the amount of surplus, if there be any, shall be prorated and refunded to the landowners paying such assessment. If it shall appear as necessary to obtain funds to pay any expense incurred or to be incurred, in organizing said district before a sufficient sum can be obtained by the collection of said uniform tax, the board of supervisors may borrow a sufficient amount of money to meet emergencies at a rate of interest as provided by general law, and may issue negotiable notes or bonds therefor, signed by the members of the board, and may pledge any and all assessments made under the provisions of this section for the repayment thereof. Section 12, Art. VII of the State Constitution shall be complied with as to all bonds within its purview. Said board of supervisors may issue, to any person performing work or service, or furnishing anything of value in the organization of said district, negotia-

ble evidence of debts, bearing interest as provided by general law. In the event any installment of taxes has been levied for the payment of any obligation of any district, or in the event of the levy of a maintenance tax, the board of supervisors may issue notes bearing a rate of interest not exceeding 8 percent per annum, which notes shall be payable out of said installment of taxes or maintenance tax so levied, and shall not be in excess of 75 percent of said levy or liens. The proceeds derived from such notes shall be used only for the purpose of meeting such maturing obligations of said district, or for any other purpose for which said installment and maintenance taxes have been levied.

History.—s. 10, ch. 6458, 1913; RGS 1107; s. 1, ch. 9129, 1923; CGL 1460; s. 15, ch. 69-216; s. 13, ch. 72-291.

298.30 Appraisal of lands for rights-of-way, etc.—Within 20 days after the adoption of the plan of reclamation, the secretary of the board of supervisors shall prepare and transmit a certified copy thereof to the clerk of the circuit court organizing said district; and at the same time, a board of supervisors shall file with said clerk a petition asking the judge of said court to appoint three commissioners to appraise the lands within and without said district to be acquired for rights-of-way, holding basins and other drainage works of the district, and to assess benefits and damages accruing to all lands in the district by reason of the execution of the plan of reclamation. Immediately after the filing of such petition, the judge of said court shall, by an order, appoint three commissioners, who shall be freeholders residing within the state, and who shall not be landowners in said district, nor of kin within the fourth degree of consanguinity to any person owning land in said district. A majority of said commissioners shall constitute a quorum and shall control the action of the board on all questions.

History.—s. 11, ch. 6458, 1913; RGS 1108; CGL 1461; s. 22, ch. 29737, 1955; s. 13, ch. 79-5.

298.31 Clerk to notify commissioners of appointment; meeting of commissioners; duties of clerk; organization of commissioners.—The clerk of the circuit court, upon the filing of said order of appointment, shall notify each of said commissioners of his appointment by written or printed notice, and in the same he shall state the time and place for the first meeting of said commissioners; the secretary of the board of supervisors, or his deputy, shall attend such meeting, and shall furnish to said commissioners a complete list of lands, described in the petition or adjacent thereto, that will be affected by carrying out and putting into effect the plan of reclamation, and the names of the owners of such lands, as shown in the petition and the decree of the court incorporating the district. Said secretary shall also furnish to said commissioners a copy of the plan of reclamation, with maps and profiles in his office. The commissioners at said meeting, or within 10 days thereafter, shall each take and subscribe to an oath that they will faithfully and impartially discharge their duties as such commissioners and make a true report of the work done by them. The said commissioners shall, also, at said meeting, elect one of their own number chairman, and the secretary of the board of supervisors, or his deputy, shall be ex officio secretary of said board of commissioners during their continuance in office.

History.—s. 12, ch. 6458, 1913; RGS 1109; CGL 1462.

298.32 Proceedings of commissioners; duties of district attorney and chief engineer; assessment; change of plan; property assessable; compensation; assessment of lands outside district.—

(1) Immediately after qualifying, as provided in s. 298.31, the commissioners shall begin their duties. They may, at any time, call upon the attorney of the district for legal advice and information relative to their duties, and the chief engineer or one of his assistants shall accompany said commissioners when engaged in the discharge of their duties and shall render his opinion in writing when called for. Said commissioners shall proceed to view the premises and determine the value of all lands, within or without the district, to be acquired and used for rights-of-way, holding basins or other works set out in the plan of reclamation. They shall assess the amount of benefits, and the amount of damages also, if any, that will accrue to each governmental lot, 40-acre tract, or other subdivision of land (according to ownership), public highways, railroads and other rights-of-way, not traversed by such works and improvements, from carrying out and putting into effect the plan of reclamation theretofore adopted. The commissioners, in assessing the benefits to lands, public highways, railroad and other rights-of-way, not traversed by such works and improvements, as provided for in the plan of reclamation, shall not consider what benefits will be derived by such property after other ditches, improvements or other plans for reclamation shall have been constructed, but they shall assess only such benefits as will be derived from the construction of the works and improvements set out in the plan of reclamation, or as the same may afford an outlet for drainage or protection from overflow of such property. The commissioners shall give due consideration and credit to any other canal, drain, ditch, dike, levee, or other system of reclamation which may have already been constructed and which affords partial or complete protection to any tract or parcel of land in the new district. The public highways, railroads and other rights-of-way, shall be assessed according to the increased physical efficiency and decreased maintenance cost of roadways, by reason of the protection to be derived from the proposed works and improvements. The commissioners shall have no power to change the plan of reclamation provided for in this chapter.

(2) The board of commissioners shall prepare a report of their findings, which shall be arranged in tabular form, the columns of which shall be headed as follows: column one, "owner of property assessed"; column two, "description of property assessed"; column three, "number of acres assessed"; column four, "amount of benefits assessed"; column five, "amount of damages assessed"; column six, "number of acres to be taken for rights-of-way, holding basins, etc."; column seven, "value of property to be taken." They shall also, by and with the advice of the engineer of the district, estimate the cost of the

works set out in the plan of reclamation, which estimate shall include the cost of property required for rights-of-way, holding basins and other works and damages, and the probable expense of organization and administration, as estimated by the board of supervisors, and shall tabulate the same. Said report shall be signed by at least a majority of the commissioners and filed in the office of the clerk of the circuit court organizing such district. The secretary of the board of supervisors, or his deputy, shall accompany said commissioners while engaged in their duties, and shall perform all clerical work for said board. He shall also, under the advice, supervision and direction of the attorney for the district, prepare their report. Said board of commissioners shall report to the board of supervisors the number of days each has been employed and the actual expenses incurred. Each commissioner shall be paid $5 per day for his services, and reimbursed for traveling expenses as provided in s. 112.061. In case the report of said commissioners shall contain assessments of benefits and damages to lands not included in the original petition as signed and filed, the board of supervisors shall file in the office of said clerk a petition praying that the court grant permission for the extension of the boundary lines of said district, so as to embrace all lands that will be benefited, as shown by the report of said commissioners. After such petition has been filed, the same shall be proceeded with in accordance with the provisions of this chapter, governing the extension of boundary lines of districts.

History.—s. 13, ch. 6458, 1913; RGS 1110; CGL 1463; s. 19, ch. 63-400; s. 14, ch. 79-5.

298.33 Form of notice of filing of commissioners' report; publication of notice.—

(1) Upon the filing of the report of the commissioners, the clerk of said circuit court shall give notice thereof, by causing publication to be made once a week for 2 consecutive weeks in some newspaper published in each county in the district, the last publication to be made at least 10 days before a return date of said circuit court, to be named in such notice, on which exceptions may be filed. It shall not be necessary for the clerk to name the parties interested, but it shall be sufficient to say:

"Notice of filing Commissioners' Report for ..... Water Control District

Notice is hereby given to all persons interested in the following described land and property in ..... County (or Counties), in the State of Florida, viz.: (Here describe land and property) included within ..... Water Control District that the commissioners heretofore appointed to assess benefits and damages to the property and lands situated in said district and to appraise the cash value of the land necessary to be taken for rights-of-way, holding basins and other works of said district, within or without the limits of said district, filed their report in this office on the ..... day of ....., 19....., and you and each of you are hereby notified that you may examine said report and file exception to all, or any part thereof, on or before ....., 19.....

First publication ....., 19.....

(Clerk of the Circuit Court)

..... County, Florida."

(2) Where lands in different counties are contained in said report, the said notice shall be published in some newspaper in each county in which such lands so affected are situate, and it shall not be necessary to publish a list of all said lands in each county, but only that part of same situated in the respective counties.

(3) A copy of the report of the commissioners, together with a copy of the above notice as published, shall be served on the water management district created under chapter 373 in which the lands are situated; the board of county commissioners of the county, and the governing body of any municipality, in which the lands are situated; and the Department of Environmental Regulation, in the manner provided by the Florida Rules of Civil Procedure for the service of pleadings and papers on parties. In addition thereto, a copy of the report of the commissioners together with a copy of the above notice as published shall be mailed by the clerk to each person owning land within, and to each person owning land immediately adjacent and contiguous to, the boundaries of the district as shown on the current tax roll, and the clerk shall file a certificate of mailing.

(4) When a district has authority by special or local legislation to designate units within the district for development and to adopt a water-management plan or plans for such units, then a copy of the report of the commissioners as to the unit of development together with a copy of the above notice as published shall be mailed only to each owner of land located within the boundaries of the unit and served on the agencies as provided in subsection (3).

History.—s. 14, ch. 6458, 1913; RGS 1111; CGL 1464; s. 2, ch. 29737, 1955; s. 14, ch. 72-291; s. 1, ch. 76-187; s. 1, ch. 77-174; s. 15, ch. 79-5.

298.34 Filing exceptions to report; hearing; determination by court, etc.—

(1) The Department of Environmental Regulation shall, and the district, or any owner of land or other property to be affected by said report may, file exception to any part, or all, of the report of said commissioners within the time specified in s. 298.33.

(2) All exceptions shall be heard and determined by the court in a full and complete hearing so as to carry out liberally the purposes and needs of the district. If it is shown, upon the hearing of all of said exceptions, that the estimated cost of construction of improvements contemplated in the water-management plan is less than the benefits assessed against the lands in said district, the court shall approve and confirm said commissioners' report; but, if the court, upon hearing the objections filed, finds that any or all such objections should be sustained, it shall order the report changed to conform with such findings, and when so changed the court shall approve and confirm such report and enter its decree accordingly.

(3) The court shall adjudge and apportion the costs incurred by the exceptions filed, and shall condemn any land or other property, within or without the boundary lines of the district, that is shown by the report of the commissioners to be needed for rights-of-way, holding basins or other works, or that

may be needed for material to be used in constructing said works, following the procedure provided in chapters 73 and 74. Any property owner may accept the assessment of damages in his favor made by the commissioners, or acquiesce in their failure to assess damages in his favor, and shall be construed to have done so, unless he gives the supervisors of the district, on or before the time shall have expired for filing exceptions, as provided in this chapter, notice in writing that he demands an assessment of his damages by a jury; in which event the supervisors of the district shall institute in the circuit court of the proper county an action to condemn the lands and other property that must be taken or damaged in the making of such improvements, with the right and privilege of paying into court a sum to be fixed by the circuit court or judge, and proceeding with the work, before the assessment by the jury.

(4) Any person or party interested may prosecute an appeal to the appropriate district court of appeal in the manner and within the time provided by the Florida Appellate Rules. If it shall be ascertained and determined that any tract or lot of land, or parts thereof upon which the uniform tax authorized and levied as provided in s. 298.29, has been paid, will not be benefited by or receive any benefit from, the completion of the plan for improvement, then the uniform tax so paid upon such tract, lot or part thereof, shall be refunded and paid to the person paying same.

(5) The clerk of the circuit court shall transmit a certified copy of the court decree and a copy of the commissioners' report, as confirmed or amended by the court, to the secretary of the board of supervisors of the district. The clerk of the circuit court shall also transmit a certified copy of the decree and that part of the report affecting land in each county to the clerk of the circuit court of each county having lands in the district or affected by the report, where the same shall be filed and become a permanent record. Each such clerk shall receive a service charge as provided in s. 28.24, for receiving, filing and recording same.

History.—s. 15, ch. 6458, 1913; RGS 1112; CGL 1465; s. 22, ch. 63-559; ss. 25, 35, ch. 69-106; s. 20, ch. 70-134; s. 15, ch. 72-291; s. 26, ch. 79-65.

298.35 Powers of supervisors to carry out "the plan of reclamation"; engineer to be superintendent of works.—The board of supervisors of the district shall have full power and authority to build, construct, excavate and complete any and all works and improvements which may be needed to carry out, maintain, and protect "the plan of reclamation." To accomplish that end the said board of supervisors may employ men and teams and purchase machinery, employ men to operate same, and directly have charge of and construct the works and improvements in such manner, or by use of other or more efficient means than provided for in the plans adopted. They may, at their discretion, let the contract for such works and improvements, either as a whole or in sections, and when such contracts are let they shall be advertised and let to the lowest and best bidder, who shall give a good and approved bond, with ample security, conditioned that he will well and promptly carry out the contract for such work and improvements; which contract shall be in writing and to which shall be attached and made a part thereof, complete plans and specifications of the work to be done and improvements to be made under such contract, which plans and specifications shall be prepared by the chief engineer and shall be incorporated in, and attached to, the contract; such contract shall be prepared by the attorney for the district and approved by the board of supervisors and signed by its president and the contractor, and executed in duplicate. The chief engineer shall be the superintendent of all the works and improvements, and shall, at least once each year and when required, make a full report to said board of all work done and improvements made, and make suggestions and recommendations to the board as he may deem proper.

History.—s. 16, ch. 6458, 1913; RGS 1113; CGL 1466; s. 16, ch. 79-5.

298.36 Assessing land for reclamation; apportionment of tax; lands belonging to state assessed; drainage tax record.—

(1) After the lists of lands, with the assessed benefits and the decree and judgment of court, have been filed in the office of the clerk of the circuit court as provided in s. 298.34, then the board of supervisors shall, without any unnecessary delay, levy a tax of such portion of said benefits, on all lands in the district to which benefits have been assessed, as may be found necessary by the board of supervisors to pay the costs of the completion of the proposed works and improvements, as shown in said plan of reclamation and in carrying out the objects of said district; and, in addition thereto, 10 percent of said total amount for emergencies. The said tax shall be apportioned to, and levied on, each tract of land in said district in proportion to the benefits assessed, and not in excess thereof.

(2) In case bonds are issued, as provided in this chapter, a tax shall be levied in a sum not less than an amount, 90 percent of which shall be equal to the principal of said bonds. The amount of bonds to be issued for paying the cost of the works as set forth in the plan of reclamation shall be ascertained and determined by the board of supervisors; provided, however, that the total amount of all bonds to be issued by the district shall in no case exceed 90 percent of the benefits assessed upon the lands of the district. The amount of the interest (as estimated by said board of supervisors), which will accrue on such bonds, shall be included and added to the said tax, but the interest to accrue on account of the issuing of said bonds shall not be construed as a part of the costs of construction in determining whether or not the expenses and costs of making said improvements are equal to, or in excess of, the benefits assessed.

(3) The benefits, and all lands in said district belonging to the state, shall be assessed to, and the taxes thereon shall be paid by, the state out of funds on hand, or which may hereafter be obtained, derived from the sale of lands belonging to the state. This provision shall apply to all taxes in any district including maintenance and ad valorem taxes, either levied under this or any other law, and to taxes assessed for preliminary work and expenses, as provided in s. 298.29, as well as to the taxes provided for in this section.

(4) The secretary of the board of supervisors, as soon as said total tax is levied, shall, at the expense

of the district, prepare a list of all taxes levied, in the form of a well-bound book, which book shall be endorsed and named "DRAINAGE TAX RECORD OF ..... WATER CONTROL DISTRICT ..... COUNTY, FLORIDA," which endorsement shall be printed or written at the top of each page in said book, and shall be signed and certified by the president and secretary of the board of supervisors, attested by the seal of the district, and the same shall thereafter become a permanent record in the office of said secretary.

History.—s. 17, ch. 6458, 1913; RGS 1114; s. 1, ch. 12040, 1927; CGL 1467; s. 17, ch. 79-5.

cf.—s. 153.05 Water system improvements and sanitary sewers; special assessments.
s. 196.31 Taxes against state properties; notice.
s. 235.34 Sanitary improvements; expenditures authorized.

298.365 Collection of annual installment tax; lien.—Annual installment taxes levied under s. 298.36 shall become due and be collected during each year at the same time that county taxes are due and collected, and said annual installment and levy shall be evidenced to and certified by the board of supervisors not later than August 31 of each year to the property appraisers of counties in which lands of the district are situated. Said tax shall be extended by the county property appraisers on the county tax rolls and shall be collected by the tax collectors in the same manner and time as county taxes and the proceeds thereof paid to said district. Said tax shall be a lien until paid on the property against which assessed and enforceable in like manner as county taxes.

History.—s. 16, ch. 72-291; s. 1, ch. 77-102.

298.366 When unpaid taxes delinquent; penalty.—All taxes provided for in this chapter shall be and become delinquent and bear penalties on the amount of said taxes in the same manner as county taxes.

History.—s. 17, ch. 72-291.

298.401 Property appraisers and tax collectors; compensation; characterization of services.—

(1) In any district or subdistrict whose area shall extend into not more than two counties, the property appraisers of each county containing lands within such districts where drainage taxes are assessed on the county tax roll by the county property appraiser shall be paid an amount equal to 1 percent of the total of taxes of the district, by each assessed within his county, except errors, and 1 percent on delinquent taxes when redeemed. The tax collectors of each county containing lands within the district shall be paid an amount equal to 1 percent of the total of taxes of the district by each collected, and 1 percent upon delinquent taxes when collected.

(2) The services of the property appraisers and tax collectors in assessing and collecting such district taxes are hereby declared to be special services performed directly for these districts and any payment therefor shall not be considered a part of the general income of the official's office, nor come under the provisions of ss. 116.03 and 145.12. The personnel required to do said special work shall be paid for such special services from the receipts provided in subsection (1), above.

(3) The provisions of this section shall not apply, repeal or affect any local law or general law of local application heretofore passed, fixing and establishing the compensation of county property appraisers or tax collectors.

History.—ss. 1-4, ch. 25196, 1949; s. 1, ch. 77-102; s. 18, ch. 79-5; s. 62, ch. 79-164.

cf.—s. 145.10 Salary of property appraiser.
s. 145.11 Salary of tax collector.

298.41 Taxes and costs a lien on land against which taxes levied; subdistricts.—

(1) All drainage taxes provided for in this chapter, together with all penalties for default in payment of the same, all costs in collecting the same, including a reasonable attorney's fee fixed by the court and taxed as costs in the action brought to enforce payment, shall, from the date of assessment thereof until paid, constitute a lien of equal dignity with the liens for state and county taxes, and other taxes of equal dignity with state and county taxes, upon all the lands against which such taxes shall be levied as is provided in this chapter.

(2) If any district, organized or established under the provisions of this chapter, shall be within the boundaries of a district theretofore established under the laws of this state, the district last organized and established shall be designated as a subdistrict, and the lien for taxes assessed or levied for the purpose of such subdistrict, with the penalties for default in the payment thereof and all costs incurred, shall be a lien of equal dignity with the lien for drainage taxes assessed or levied for the district first established. A sale of any of the lands within a district for state and county or other taxes shall not operate to relieve or release the lands so sold from the lien for subsequent installments of drainage taxes, which lien may be enforced as against such lands as though no such sale thereof had been made.

History.—s. 22, ch. 6458, 1913; RGS 1119; s. 1, ch. 9129, 1923; s. 2, ch. 12040, 1927; CGL 1472; s. 18, ch. 72-291; s. 19, ch. 79-5.

298.465 District taxes; delinquent; discounts; etc.—The collection and enforcement of all taxes levied by said district shall be at the same time and in like manner as county taxes, and the provisions of the Florida Statutes relating to the sale of lands for unpaid and delinquent county taxes, the issuance, sale, and delivery of tax certificates for such unpaid and delinquent county taxes, the redemption thereof, the issuance to individuals of tax deeds based thereon, and all other procedures in connection therewith shall be applicable to said district and the delinquent and unpaid taxes of said district to the same extent as if said statutory provisions were expressly set forth in this chapter. All taxes shall be subject to the same discounts as county taxes.

History.—s. 19, ch. 72-291.

298.467 Department not authorized to borrow money, etc.—In the exercise of its powers, duties, and functions relating to water control districts as set forth in this chapter, the Department of Environmental Regulation shall not have the authority to borrow money, issue notes, or incur indebtedness.

History.—s. 11, ch. 75-22; s. 2, ch. 77-114; s. 20, ch. 79-5.

298.47 Supervisors may issue bonds.—

(1) The board of supervisors may, if in their judgment it seems best, issue bonds not to exceed 90 percent of the total amount of the taxes, exclusive of the amount for interest, levied under the provisions of s. 298.36, in denominations of not less than $100, bearing interest from date at rate as provided by general law, payable semiannually, to mature at annual intervals within 30 years, commencing after a period of years not later than 10 years, to be determined by the board of supervisors, both principal and interest payable at some convenient banking house or trust company's office to be named in said bonds, which said bonds shall be signed by the president of the board of supervisors, attested with the seal of said district and by the signature of the secretary of the said board. Section 12, Art. VII of the State Constitution shall be complied with as to all such bonds as are within its purview. All of said bonds shall be executed and delivered to the treasurer of said district, who shall sell the same in such quantities and at such dates as the board of supervisors may deem necessary to meet the payments for the works and improvements in the district. Said treasurer shall, at the time of the receipt by him of said bonds, execute and deliver to the president of the board of said district, a bond with good and sufficient sureties to be approved by the said board of supervisors, conditioned that he shall account for and pay over, as required by law and as ordered to do by said board of supervisors, any and all money received by him on the sale of such bonds, or any of them, and that he will only sell and deliver such bonds to the purchaser or purchasers thereof, under and according to the terms herein prescribed, and that he will return, duly canceled, any and all bonds not sold to the board of supervisors when ordered by said board so to do, which said surety bond shall remain in the custody of the said president of said board of supervisors, who shall produce the same for inspection or for use as evidence whenever and wherever legally requested so to do.

(2) The aforesaid bond of said treasurer may, if the said board shall so direct, be furnished by a surety or bonding company, which may be approved by said board of supervisors; provided, if it should be deemed more expedient to the board of supervisors, as to money derived from the sale of bonds issued, said board may, by resolution, select some suitable bank or banks, or other depository, as temporary treasurer or treasurers, to hold and disburse said moneys on the orders of the board as the work progresses, until such fund is exhausted or transferred to the treasurer by order of the said board of supervisors.

History.—s. 41, ch. 6458, 1913; RGS 1138; s. 1, ch. 9129, 1923; s. 3, ch. 12040, 1927; CGL 1493; ss. 25, 35, ch. 69-106; s. 15, ch. 69-216; s. 20, ch. 72-291.

cf.—s. 215.685 State, county, municipal, etc., bonds; maximum rate of interest.

298.48 Sale of bonds and disposition of proceeds.—The bonds shall not be sold for less than 95 cents on the dollar, with accrued interest, shall show on their face the purpose for which they are issued, and shall be payable out of money derived from the aforesaid taxes. The said treasurer shall promptly report all sales of bonds to the board of supervisors, which board shall at reasonable times thereafter, prepare and issue warrants in substantially the forms provided in s. 298.17 for the payment of the maturing bonds so sold and the interest payments coming due on all bonds sold. Each of said warrants shall specify what bonds and accruing interest it is to pay, and the said treasurer shall place sufficient funds at the place of payment to pay the maturing bonds and coupons when due, as well as a reasonable compensation to the bank or trust company for paying same. The successor in office of any such treasurer shall not be entitled to said bonds or the proceeds thereof until he shall have complied with all the foregoing provisions applicable to his predecessor in office. The funds derived from the sale of said bonds or any of them shall be used for the purpose of paying the cost of the drainage works and improvements and such costs, expenses, fees and salaries as may be authorized by law and used for no other purpose.

History.—s. 41, ch. 6458, 1913; RGS 1138; s. 1, ch. 9129, 1923; s. 3, ch. 12040, 1927; CGL 1493.

298.49 Interest upon matured bonds, etc.—

All bonds and coupons not paid at maturity shall bear interest at the rate of 6 percent per annum from maturity until paid, or until sufficient funds have been deposited at the place of payment, and the said interest shall be appropriated by the board of supervisors out of the penalties and interest collected on delinquent taxes or any other available funds of the district. Any expense incurred in paying said bonds and interest thereon, and a reasonable compensation to the bank or trust company for paying same, shall be paid out of other funds in the hands of the treasurer and collected for the purpose of meeting the expenses of administration.

History.—s. 41, ch. 6458, 1913; RGS 1138; s. 1, ch. 9129, 1923; s. 3, ch. 12040, 1927; CGL 1493.

298.50 Levy of tax to pay bonds, sinking fund.—

(1) The board of supervisors in making the annual tax levy, as provided in this chapter, shall take into account the maturing bonds and interest on all bonds, and make provisions in advance for the payment thereof. In case the proceeds of the original tax levy made under the provisions of s. 298.36 are not sufficient to pay the principal and interest on all bonds issued, then the board of supervisors shall make such additional levies upon the benefits assessed as are necessary for this purpose, and under no circumstances shall any tax levies be made that will in any manner or to any extent impair the security of said bonds or the fund available for the payment of the principal and interest of the same.

(2) A sufficient amount of the drainage tax shall be appropriated by the board of supervisors for the purpose of paying the principal and interest of the said bonds and the same shall, when collected, be preserved in a separate fund for that purpose and no other. Should said drainage tax prove insufficient for the payment of any bonds issued subsequent to June 1, 1927, additional taxes apportioned to the amounts of said drainage tax may be levied in such amounts as may be necessary for such purposes.

History.—s. 41, ch. 6458, 1913; RGS 1138; s. 1, ch. 9129, 1923; s. 3, ch. 12040, 1927; CGL 1493.

298.51 Defaults, receivership for district, etc.—If any bond or interest coupon on any bond issued by said district is not paid within 60 days after its maturity, a court of competent jurisdiction, on the application of any holder of such bond or interest coupon so overdue, may appoint a receiver for the district; said receiver shall be a resident of the state or some corporation organized under the laws of Florida and authorized by such laws to act as receiver; such appointment by such court shall not be made except upon reasonable notice of such application for such appointment having been given to the board of supervisors of said district; and the proceeds of taxes collected by the receiver shall be applied after payment of costs, first to overdue interest, and then to payment pro rata of all bonds issued by the said district which are then due and payable; and the said receiver may be directed to foreclose, by suit, as provided in this chapter, the lien of said taxes of said lands, and said suits so brought by the receiver shall be conducted as, and governed by, the provisions applicable to suits by the said district as provided, and with like effect; and the decrees, deeds and all other acts herein shall have the same presumptions in their favor; provided, however, that when all costs, overdue interest and bonds which are then due and payable, as provided in this chapter have been paid, the receiver shall be discharged and the affairs of the district conducted by a board of supervisors of said district as provided by law.

History.—s. 41, ch. 6458, 1913; RGS 1138; s. 1, ch. 9129, 1923; s. 3, ch. 12040, 1927; CGL 1493.

298.52 Refunding and extending bonds.—

(1) Any district now or hereafter created or organized under any general or special law heretofore or hereafter enacted by the state may, whenever in the judgment of the governing board thereof it is advisable and for the best interests of the landowners in the district, refund any or all of the then outstanding bonded indebtedness of such district by taking up and canceling any or all of its outstanding bonds as and when they become due, or before they are due, if the holders thereof will surrender them, and issuing in lieu thereof new bonds of such district payable in such longer time, not to exceed 50 years from their date, as said governing board may determine.

(2) Such refunding bonds shall not exceed in the aggregate the amount of the bonds refunded thereby, and shall bear interest at a rate not exceeding 8 percent per annum, payable semiannually, and may be exchanged for the outstanding bonds at par or sold for not less than 95 cents on the dollar and accrued interest, and the proceeds used solely in the payment of outstanding bonds. Any discount or expense of such sale of the refunding bonds shall be paid out of the maintenance fund of the district, if any, or out of surplus in the sinking fund, if any.

(3) Any landowner shall have the right at any time within 30 days after the adoption of the resolution providing for the issuance of the refunding bonds, to pay the full amount of uncollected principal or assessment chargeable to his land for the payment of the bonds proposed to be refunded, and his lands shall thereby be released from any tax or assessment for the payment of said bonds. His land shall remain liable, subject to the limitations prescribed in the law under which the original bonds were issued and the original or revised benefits assessed against said land, for any additional tax which may be required to pay said bonds by reason of other lands in the district not paying the tax or assessment.

(4) Unless and until refunding bonds shall have been authorized and issued, the governing board shall continue the levy of annual taxes sufficient to pay the outstanding bonds and interest thereon as they fall due. When any bonds of such district are refunded pursuant to the authority hereby conferred, the collection of corresponding installments of tax or assessment shall likewise be deferred. The governing board shall make proper provision for the payment of the principal and interest of said refunding bonds in like manner as was required in the case of the issuance of original bonds by the law under which such district is or may have been incorporated; and the holders of such refunding bonds shall have the same rights as are given the holders of bonds under the law under which such district is or may have been incorporated.

(5) Any landowner failing to avail himself of the privilege conferred by this section of paying in full the unpaid principal tax or assessment against his land shall not be heard to complain by reason of additional interest to be collected from his lands by reason of the extension of the bonds.

(6) Taxes or assessments levied for the payment of refunding bonds and the interest thereon shall be secured by the same lien as other taxes of such district levied for the payment of the original bonds, and the additional interest which will accrue on account of such refunding bonds shall be included and added to the original drainage tax and shall be secured by the same lien; but the interest to accrue shall not be considered as a part of the cost of construction in determining whether the tax exceeds the benefits assessed.

(7) No proceedings shall be required for the issuance of refunding bonds other than those provided by this section; provided, however, that the validity of all bonds issued under this chapter and the validity of all proceedings had incident to and culminating in the issuance of such bonds shall, prior to the sale or delivery of such bonds, be determined and established in the manner now or hereafter provided by law for the validation of bonds issued by counties, municipalities, taxing districts or other political districts or subdivisions of this state.

History.—s. 1, ch. 13627, 1929; CGL 1936 Supp. 1493(1); s. 7, ch. 22858, 1945; s. 21, ch. 72-291; s. 21, ch. 79-5.

cf.—Ch. 75 Validation of bonds; procedure.
s. 726.01 Fraudulent conveyances void.

298.54 Maintenance tax.—To maintain and preserve the ditches, drains or other improvements made pursuant to this chapter and to repair and restore the same, when needed, and for the purpose of defraying the current expenses of the district, including any sum which may be required to pay state and county taxes on any lands which may have been purchased and which are held by the district under the provisions of this chapter, the board of supervisors may, upon the completion of the said improvements, in whole or in part as may be certified to the

board by the chief engineer, levy annually a tax upon each tract or parcel of land within the district, to be known as a "maintenance tax." Said maintenance tax shall be apportioned upon the basis of the net assessments of benefits assessed as accruing from original construction, and shall be evidenced to and certified by the board of supervisors not later than August 31 of each year to the property appraisers of counties in which lands of the district are situated, and shall be extended by the county property appraisers on the county tax rolls and shall be collected by the tax collectors in the same manner and time as county taxes, and the proceeds therefrom paid to said district. Said tax shall be a lien until paid on the property against which assessed and enforceable in like manner as county taxes.

History.—s. 42, ch. 6458, 1913; RGS 1139; s. 1, ch. 9129, 1923; s. 1, ch. 10281, 1925; CGL 1496; s. 22, ch. 72-291; s. 1, ch. 77-102.

298.55 Readjustment of assessment of benefits; petition; notice; hearing; determination; readjustment once every 5 years.—

(1) Whenever the owners of 25 percent or more of the acreage of the lands in the district shall file a petition with the clerk of the circuit court organizing the district, stating that there has been a material change in the values of the property in the district since the last previous assessment of benefits and praying for a readjustment of the assessment of benefits for the purpose of making a more equitable basis for the levy of the maintenance tax, the circuit court shall give notice of the filing and hearing of said petition in the manner and for the time provided for in s. 298.02. Such notice may be in the following form:

"Notice is hereby given to all persons interested in the lands included within the ..... Water Control District that a petition has been filed in the office of the Clerk of the Circuit Court of ..... County, ... praying for a readjustment of the assessment of benefits for the purpose of making a more equitable basis for the levy of the maintenance tax in said district, and that said petition will be heard by said circuit court on the first day of the next ..... term of said court.

Date of first publication ....., 19.....

(Clerk of the Circuit Court)

..... County."

(2) Upon the hearing of said petition, if said court shall find that there has been a material change in the values of the lands in said district since the last previous assessment of benefits, the court shall order that there be made a readjustment of the assessment of benefits for the purpose of providing a basis upon which to levy the maintenance tax of said district. Thereupon, the court shall appoint three commissioners possessing the qualifications of commissioners appointed under s. 298.30 to make such readjustment of assessment in the manner provided in s. 298.32. Said commissioners shall make their report, and the same proceedings shall be had thereon, as nearly as may be, as are provided for the assessment of benefits accruing for original construction, except that in making the readjustment of the assessment of benefits said commissioners shall not be limited to the aggregate amount of the original or any previous assessment of benefits. In the event there is no such readjustment of benefits for a period of 5 years, the Department of Environmental Regulation may file a petition praying for a readjustment of the assessment of benefits with the clerk of the circuit court organizing the district. The court shall consider the petition in the same manner as provided above for petitions filed by owners within the district.

History.—s. 43, ch. 6458, 1913; RGS 1140; CGL 1497; s. 23, ch. 72-291; s. 2, ch. 76-187; s. 22, ch. 79-5.

298.56 Bonds issued secured by lien on lands benefited; assessment and collection of taxes may be enforced.—All bonds issued by any board of supervisors under the provisions of this chapter shall be secured by a lien on all lands and other property benefited in the district, and the board of supervisors shall see to it that a tax is levied annually and collected under the provisions of this chapter, so long as it may be necessary to pay any bond issued or obligation contracted under its authority; and the making of said assessment and collection may be enforced by mandamus.

History.—s. 51, ch. 6458, 1913; RGS 1148; CGL 1505.

298.57 Landowner in district may construct drains across land of intervening landowner; proceedings.—Any landowner within a district organized under this chapter may construct ditches to drain his lands into the public ditches; and if any intervening landowner should refuse permission to cross his land with such ditch, the landowner seeking to construct such ditch may, by proceedings in the circuit court, to be conducted in the same manner as condemnation proceedings instituted by railroads, condemn a right-of-way for ditch. In such proceedings the jury shall deduct from the damages the benefits that will accrue to such intervening landowner by the construction of such ditch, and such intervening landowner shall have the right to use such ditch for the drainage of his own lands.

History.—s. 50, ch. 6458, 1913; RGS 1147; CGL 1504; s. 23, ch. 79-5.
cf.—Ch. 73 Eminent domain.

298.59 Supervisors authorized to obtain consent of United States.—In case the plan of reclamation of any district organized and incorporated under this chapter and the improvement provided thereunder be of such nature as requires the permission or consent of the Government of the United States, or any department or officer of the Government of the United States, the board of supervisors of the district may obtain the required permission or consent of the Government of the United States or any proper officer or department thereof; and to that end the board of supervisors may bind the district to comply with any conditions that may be attached to such permission or consent, including the giving of any bond or other obligation for the faithful performance of such conditions.

History.—s. 1, ch. 7308, 1917; RGS 1152; CGL 1509; s. 24, ch. 79-5.

298.60 Unpaid warrants issued by district to draw interest.—Any warrant issued under this chapter that is not paid when presented to the treasurer of the district because of lack of funds in the treasury, such fact shall be endorsed on the back of such warrant; and such warrant shall draw interest thereafter at the rate of 6 percent per annum, until

such time as there is money on hand to pay the amount of such warrant and the interest then accumulated; but no interest shall be allowed on warrants after notice to the holder or holders thereof that sufficient funds are in the treasury to pay said endorsed warrants and interest.

History.—s. 31, ch. 6458, 1913; RGS 1128; CGL 1483.

298.61 Sureties on bonds may be bonding company; payable to district; provisions, etc.—The sureties required on any or all bonds required to be given by this chapter may be a surety or bonding company approved by the board of supervisors and shall be made payable to the district by its corporate name, in which name all suits shall be instituted and prosecuted. All penalties herein named shall be payable to and recoverable by said district. All bonds required by this chapter shall cover defaults of deputies, clerks or assistants of the officers appointing them.

History.—s. 32, ch. 6458, 1913; RGS 1129; CGL 1484.

298.62 Lands may be acquired for rights-of-way and other purposes.—Any and all districts and subdistricts created or organized under the laws of the state may acquire by gift, purchase, exchange, donation or condemnation, any lands within or without the said district for canal rights-of-way, or for other general purposes of the said district, and if acquired by condemnation the procedure shall be as prescribed in chapters 73 and 74.

History.—s. 1, ch. 8558, 1921; CGL 1510; s. 25, ch. 79-5.

298.63 Bonds to secure loans from Secretary of Interior.—

(1) All districts in this state, whether existing under authority of general law or special enactment, may issue bonds or other evidence of indebtedness with or without interest in an amount not exceeding the total indebtedness of district issuing such bonds at the time of the issue authorized hereunder, for the purpose of enabling such districts to comply with and take advantage of the provisions of any Act of the Congress authorizing the Secretary of the Interior or other government agency to make loans to drainage and levee districts.

(2) All districts in this state, as aforesaid, are further authorized to do all other acts and things required of them as a prerequisite to securing from the Secretary of the Interior, or other government agency, loans authorized by federal law now in force or which may be enacted hereafter.

History.—ss. 1, 2, ch. 14507, 1929; CGL 1936 Supp. 1522(1), 1522(2); s. 26, ch. 79-5.

cf.—Ch. 75 Validation of bonds.

298.65 Auditing of district records by Auditor General, powers; penalties.—

(1) The Governor may, when requested by a resolution adopted by the local governing authority of any district or subdistrict, direct an audit to be made by the Auditor General of the accounts, books and records of any district or subdistrict; and every officer and employee thereof shall furnish to the Auditor General or his assistants all books, records, information or any and all documents pertaining to the financial affairs of any such district. The district shall not be required to pay any of the costs of such examination. Upon the completion of the audit of any district, as herein provided, the Auditor General shall deliver one copy of the same to the Governor of the state and one copy to the board of commissioners, trustees or other governing body of the district so audited.

(2) The Auditor General or his assistants may summon witnesses and administer oaths to them and inquire of them under oath as to any and all affairs concerning any such taxing district or its financial affairs; provided, that if any witness or person summoned fails to appear, or having appeared refuses to testify, or having testified, testifies falsely, he shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Each and every officer, employee or agent of any such taxing district in the state, who refuses to furnish any information or to disclose any records requested and desired by the Auditor General, or his assistants, in auditing and checking the affairs of any such taxing district in the state, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, ch. 16977, 1935; CGL 1936 Supp. 1522(4), (5), 7498(1); s. 8, ch. 69-82; s. 162, ch. 71-136; s. 27, ch. 79-5.

298.66 Obstruction of drainage canals, etc., prohibited; damages; penalties.—No person may willfully, or otherwise, obstruct any canal, drain, ditch or watercourse or damage or destroy any drainage works constructed in any district.

(1) Any person who shall willfully obstruct any canal, drain, ditch or watercourse or shall damage or destroy any drainage works constructed by any district, shall be liable to any person injured thereby for the full amount of the injury occasioned to any land or crops or other property by reason of such misconduct, and shall be liable to the district constructing the said work for double the cost of removing such obstruction or repairing such damage.

(2) Whoever shall willfully or otherwise obstruct any canal, drain, ditch, or watercourse, or impede or obstruct the flow of water therein, or shall damage or destroy any drainage works constructed by any district shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 5, ch. 6190, 1911; s. 52, ch. 6458, 1913; RGS 5293, 5294; ss. 1-3, ch. 10110, 1925; CGL 1518, 1519, 7413-7415; s. 163, ch. 71-136; s. 28, ch. 79-5.

298.68 The word "owner" defined.—The word "owner," as used in this chapter, shall mean the owner of the freehold estate, as appears by the deed record, and it shall not include reversioners, remaindermen, trustees or mortgagees, who shall not be counted and need not be notified by publication, or served by process, but shall be represented by the present owners of the freehold estate in any proceeding under this chapter.

History.—s. 38, ch. 6458, 1913; RGS 1135; CGL 1490.

[1]**298.70 Department of Natural Resources authorized to borrow money.**—The Department of Natural Resources may borrow money and incur obligations, from time to time, on such terms and at such rates of interest as it may deem proper for the purpose of raising funds to continue and prosecute to

final completion canals, drains, dikes, locks and reservoirs under construction by said department and build and construct such other canals, drains, dikes, locks and reservoirs as the said department may deem advantageous to the territory embraced in any district established or that may be established in this state.

History.—s. 1, ch. 6454, 1913; RGS 1155; CGL 1525; ss. 25, 35, ch. 69-106; s. 29, ch. 79-5.

[1]**Note.**—Section 11, ch. 75-22, transfers all powers, duties, and functions of the Department of Natural Resources relating to water management districts as set forth in ch. 298 to the Department of Environmental Regulation, but further provides that the Department of Environmental Regulation "shall not have the authority to borrow money, issue notes, or incur indebtedness." See, also, s. 298.467 as created by s. 2, ch. 77-114.

[1]298.71 Department of Natural Resources may issue notes; suit by holder; judgment.—The Department of Natural Resources may issue its promissory note or notes, or other written obligations, or evidence of indebtedness, for the repayment of such loans at such times and upon such terms and at such rates of interest as the said department may deem advisable; and if upon the maturity of such promissory notes, or written obligations, or other evidences of indebtedness, the same are not redeemed or paid, the said department may be sued by the holder or holders thereof, and any judgment obtained thereon shall be satisfied out of the proceeds of the drainage tax provided by law to be assessed on the lands embraced in the district.

History.—s. 2, ch. 6454, 1913; RGS 1156; CGL 1526; ss. 25, 35, ch. 69-106; s. 30, ch. 79-5.

[1]**Note.**—See, also, s. 298.467 as created by s. 2, ch. 77-114.

[1]298.72 Department of Natural Resources may use proceeds of drainage tax to pay loans, etc.—Any drainage tax provided by law to be assessed on the lands embraced in the district shall be available, and be used by the Department of Natural Resources for the repayment of any loan or loans obtained by said department under the provisions of this chapter.

History.—s. 3, ch. 6454, 1913; RGS 1157; CGL 1527; ss. 25, 35, ch. 69-106; s. 31, ch. 79-5.

[1]**Note.**—See, also, s. 298.467 as created by s. 2, ch. 77-114.

[1]298.73 Matured written obligations receivable in payment of taxes.—The promissory notes, or written obligations, or other evidences of indebtedness that may be issued by the Department of Natural Resources under the provisions of this chapter, may be used on or after maturity in the payment of drainage taxes on any lands in said district by whomsoever such lands may be owned, and the tax collectors of the several counties embraced in said district, in whole or in part, shall receive such notes, written obligations, or other evidences of indebtedness of said Department of Natural Resources on or after maturity in payment of such drainage taxes whenever the same may be tendered to such tax collectors to the extent of the principal and unpaid interest of such promissory notes, written obligations, or other evidences of indebtedness.

History.—s. 4, ch. 6454, 1913; RGS 1158; CGL 1528; ss. 25, 35, ch. 69-106; s. 32, ch. 79-5.

[1]**Note.**—See, also, s. 298.467 as created by s. 2, ch. 77-114.

298.74 Drainage of lakes.—It is unlawful for any person to drain or draw water from any lake of greater area than 2 square miles so as to lower the level thereof without first obtaining the written consent of all owners of property abutting on or bounded by said lake; provided, however, this section shall not apply to any lake included wholly within the Everglades Drainage District. Courts of equity shall have jurisdiction to enjoin any person from violating the provisions of this section.

History.—ss. 1, 2, ch. 6596, 1915; RGS 1190, 1191; CGL 1630, 1631.

298.76 Special or local legislation; effect, etc.—

(1) Chapter 298 is amended to provide that special or local laws may be enacted by the Legislature granting additional authority, powers, rights and privileges or taking away authority, powers, rights and privileges granted or provided for by said chapter 298 or any section thereof, pertaining to or affecting any district heretofore or that may be hereafter created as provided for by said chapter 298.

(2) It is hereby expressly provided that special or local laws may be enacted by the Legislature, changing the method of voting for a board of supervisors for any district heretofore or hereafter created and organized under said chapter 298.

(3) Special or local laws may be enacted by the Legislature providing a change in the term of office of the board of supervisors and changing the qualifications of the board of supervisors of any district heretofore or hereafter organized and created as provided for by said chapter 298.

(4) Special or local legislation may be enacted by the Legislature, changing the governing authority or governing board of any district heretofore or hereafter organized and created as provided for by said chapter 298, or any section thereof.

(5) Any special or local laws that may be hereafter passed and enacted by the Legislature, pertaining to any district heretofore or hereafter created and organized as provided by said chapter 298, shall prevail as to said district and shall have the same force and effect as though it had been a part of said chapter 298 or any section thereof at the time said district was created and organized.

History.—ss. 1-4, ch. 21972, 1943; s. 33, ch. 79-5.

298.77 Assessments; readjustment, procedure, notice, hearings, etc.—

(1) Whenever the board of supervisors or the owners of 25 percent or more of the acreage of the land of any district situated wholly in a single county existing under the general drainage laws of Florida, now chapter 298, joined by the holders of not less than 95 percent of the indebtedness outstanding against said district, shall file a petition with the clerk of the circuit court organizing such district, stating that there has been a material change in the value of the property in the district since the last previous assessment of benefits, contributed to by the drainage system; that a relatively large portion or portions of said district have become nontaxable for the purpose of paying the indebtedness of such district; that a named person, corporation or agency has purchased the obligations of said district at a discount and under circumstances whereby the district is expected to pay in discharge of its obligations a sum greatly less than the par value of said obligations; that improvements within such district made

possible or practicable by the drainage effected have been such as to enhance values in a portion or portions thereof more than in other portions of the district; and that developments in all parts of such district are believed to have been retarded by the inability of property owners to pay assessments and discharge individual properties from the lien of the drainage tax; and praying for readjustment of the assessment of benefits for the purpose of making a more equitable basis for the levy of taxes to pay the indebtedness of such district and to maintain its drainage system, the said clerk shall give notice of the filing and hearing of said petition in the manner and for the time provided for in s. 298.02.

(2) Such notice may be in the following form:

NOTICE IS HEREBY GIVEN to all persons interested in the lands included within the ..... Water Control District that a petition has been filed in the office of the Clerk of the Circuit Court of ..... County, Florida, praying for a readjustment of the assessment of benefits for the purpose of making a more equitable basis for the levy of taxes against the various pieces and parcels of land in said district to pay its indebtedness and maintain its drainage system, and that said petition will be heard by the said circuit court on the ..... day of ....., 19.....

Dated ....., 19.....

(Clerk of the Circuit Court)

..... County

(3) Any interested person may file answer to said petition before the return day and, if so, shall be duly heard, but if not, the cause shall proceed ex parte. Upon the hearing of said petition, if said court shall find that there has been a material change in the values of the lands in said district since the last previous assessment of benefits, contributed to by the drainage system, and that the other material allegations of the petition herein required to be set forth are substantially true, the court shall order that there be made a readjustment of the assessment of benefits for the purpose of providing a basis upon which to levy further and future taxes for the payment of the obligations of, and maintaining the drainage system in, said district. Thereupon the court shall appoint three commissioners possessing the qualifications of commissioners appointed under s. 298.30, to make such readjustment of assessment of benefits to each piece or parcel of land which has accrued or will accrue as a result of the drainage system in the manner provided in s. 298.32, and said commissioners shall make their report, and said proceeding shall be had thereupon as nearly as may be as provided for the assessment of benefits accruing for original construction; provided, that in making the readjustment of the assessment of benefits, said commissioners shall not increase the existing assessment, or unpaid portion thereof, on any piece or parcel of land; provided, further, that after the making of such readjustment, the limitation of 10 percent of the annual maintenance tax which may be levied shall apply to the amount of benefits as readjusted.

History.—s. 1, ch. 22103, 1943; s. 34, ch. 79-5.

298.78 Lien; release.—Any landowner shall have right at any time within 90 days after the date of said decree, or at any time thereafter with consent of holders of not less than 95 percent of bonds, to obtain a full release of his lands from the lien and liability of the assessment by the payment of an amount to be stated in the decree, which shall include the proportionate amount of the indebtedness chargeable against said piece or parcel of land, together with an additional amount estimated to be required to pay the bonds by reason of the failure of other pieces or parcels to pay the indebtedness so charged against them, said amounts to be approved by holders of not less than 95 percent of bonds.

History.—s. 2, ch. 22103, 1943.

TITLE XXII

PORTS AND HARBORS

CHAPTER 308

SHIPPING MASTERS

308.01 Appointment and duties.—There shall be created in and for the several ports of this state, one or more shipping masters, to be appointed by the mayor with the consent of the common council of each city or incorporated town in this state, whose business it shall be to provide and ship crews for vessels and seamen, in accordance with the laws of the United States, whenever required to do so, by proper authority, representing the vessels or owners.

History.—s. 1, ch. 1750, 1870; RS 933; GS 1287; RGS 2457; CGL 3866.

308.02 Bond, etc.; penalties.—Before obtaining the license provided for in s. 308.03, said shipping master shall execute a bond, with two good and sufficient sureties, to be approved by the mayor, in the sum of $2,000, payable to the mayor and his successors in office, conditioned for the honest and faithful transaction of all business appertaining to his office and occupation; and if any shipping master, or any other person by his consent, procurement, advice or connivance, shall be found guilty of harboring, concealing or enticing away any marine or seaman from a vessel, or encouraging any marine or seaman to mutiny or disobey lawful orders, he or they shall, in addition to the punishment provided by law for every such offense under this chapter, forfeit for the use of the port or town for which he is appointed, not less than $100 nor more than $1,000; the cause to be tried in the proper court on complaint of the mayor or party aggrieved.

History.—s. 2, ch. 1750, 1870; RS 934; GS 1288; RGS 2458; CGL 3867.

308.03 License and regulation; penalties.—The mayor and council may grant license in conformity to this chapter, under such rules and regulations as they may prescribe, and such ordinances and orders as in their judgment may be most conducive to the interests of their port, and for the government of the shipping and for the welfare and protection of the marine and seamen, subject to the laws of the United States, and for the direction and government of said shipping masters as they may deem proper; and the same at any time may amend or revoke, and may impose fines for the violation of such rules, ordinances, orders and regulations, provided such fines so imposed by city or town authority under this chapter shall not exceed $50 for each offense in violating said rules, orders and regulations or ordinances.

History.—s. 3, ch. 1750, 1870; RS 935; GS 1289; RGS 2459; CGL 3868.

308.04 Acting as shipping master without license; penalties.—Whoever attempts to exercise the calling of a shipping master, or falsely represents himself as a shipping master, in this state, not having been licensed or appointed by law, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 4, ch. 1750, 1870; RS 2750; GS 3745; RGS 5770; CGL 8000; s. 167, ch. 71-136.

CHAPTER 309

PROTECTION OF PORTS AND HARBORS

309.01 Deposit of material in tidewater regulated.—

(1) It is not lawful for any person to discharge or cause to be discharged, deposit or cause to be deposited, in the tide or salt waters of any bay, port, harbor or river of this state any ballast or material of any kind other than clear stone or rock, free from gravel or pebbles, which said clear stone or rock shall be deposited or discharged only in the construction or enclosures in connection with wharves, piers, quays, jetties, or in the construction of permanent bulkheads connecting the solid and permanent portion of wharves. It is lawful to construct three characters of bulkheads for retention of material in solid wharves. First, clear stone or rock enclosures, or bulkheads, may be built upon all sides to a height not less than 2½ feet above high watermark, and after the said enclosures have been made so solid, tight and permanent as to prevent any sand, mud, or gravel, or other material that may be discharged or deposited in them, from drifting or escaping through such enclosure, any kind of ballast may be discharged or deposited within same. The aforesaid enclosures may be constructed of wood, stone, and rock combined, the stone and rocks to be placed on the outside of the wood to a height not less at any point than 2½ feet above high watermark. Second, a bulkhead may be built by a permanent wharf consisting of thoroughly creosoted piles not less than 12 inches in diameter at the butt end, to be driven close together and to be capped with timber not less than 10 or 14 inches drift, bolted to each pile, and 1 or more longitudinal stringers to be placed on the outside of the bulkhead and securely anchored by means of iron rods to piles driven within the bulkheads, clear rock to be on the inside of the bulkhead, to a height of not less than 2½ feet above high water; and after this is done, ballast or other material may be deposited within the permanent enclosure so constructed. Third, a bulkhead may be constructed to consist of creosoted piles, as described herein, driven not exceeding 4 feet apart from center to center, inside of which 2 or more longitudinal stringers may be placed, and securely bolted to the piles. Inside of these longitudinal pieces 2 thicknesses of creosoted sheet piling are to be driven, each course of the sheet piling to make a joint with the other so as to form an impenetrable wharf, and within this permanent bulkhead so constructed, any ballast or other material may be deposited. No such enclosure, piers, quays or jetties shall be begun until the point whereat it is to be built shall have been connected by a substantial wharf with a shore or with a permanent wharf; provided, that the owners of wharves may at any time, with the consent of the [1]Board of Port Wardens and Pilot Commissioners of the Division of Occupations of the Department of Professional and Occupational Regulation of the port or harbor in which such wharves are situated, build wharves of clear stone or rock, or creosoted walls as hereinafter provided, on each side of their wharves from the shore to a point at which the water is not more than 15 feet deep, and when such walls have attained a height of 2½ feet above high watermark, and have been securely closed at the deepwater end by stone or creosoted walls of the same height, any kind of ballast may be deposited in them. The pilot commissioners of the different ports and harbors of this state shall designate by ordinance the depth of water at which enclosures, piers, quays, jetties and bulkheads may be built without obstruction to navigation within the bays, ports, rivers and harbors over which they respectively have jurisdiction. Nothing contained in this section shall interfere with any rights or privileges now enjoyed by riparian owners. While this section empowers those who desire to construct the several characters of wharves, piers, quays, jetties and bulkheads, provided for and described herein, nothing in this section shall be so construed as to require any person not desiring to construct a permanent wharf by filling up with ballast, stone or other material, to construct under the specifications contained herein; and nothing in this chapter shall be so construed as to prevent any person from constructing any wharf or placing any pilings, logs or lumber in any waters where he would have heretofore had the right so to do.

(2) This section shall not prohibit Escambia County from placing in Pensacola Bay, on the Escambia County side, beside the old Pensacola Bay Bridge, certain materials, as recommended by the Division of Marine Resources of the Department of Natural Resources, to increase the number of fish available for persons fishing from the old Pensacola Bay Bridge.

(3) This section shall not prohibit Manatee County from placing in the Manatee County portions of Sarasota Bay and Tampa Bay and in the Manatee River, certain materials, as recommended by the Division of Marine Resources of the Department of Natural Resources, to increase the number of fish available for persons fishing in the above areas.

(4) This section shall not prohibit Pinellas County from placing in Tampa Bay certain materials as recommended by the Division of Marine Resources of the Department of Natural Resources, to increase the number of fish available for persons fishing in the bay.

History.—Ch. 3298, 1881; RS 936; s. 1, ch. 4370, 1895; GS 1290; RGS 2460; CGL 3869; s. 1, ch. 61-11; s. 1, ch. 63-423; s. 1, ch. 65-26; ss. 25, 30, 35, ch. 69-106.

[1]**Note.**—See s. 2, ch. 79-36, which abolished the Division of Occupations of the Department of Professional and Occupational Regulation and renamed the department the Department of Professional Regulation. Also, the Board of Port Wardens and Pilot Commissioners was replaced by the State Board of Pilot Commissioners in ch. 75-201, and that board was renamed the Board of Pilot Commissioners by s. 2, ch. 79-36.

309.02 Deposit on wharf, etc., regulated.—It is not lawful for any person to deposit or cause to be deposited on any wharf or quay, any ballast, stone, earth, or like material, except such wharf or quay may be so secured as to prevent such ballast or other material from washing into the waters of the harbor.

History.—s. 3, ch. 3142, 1879; RS 937; GS 1291; RGS 2461; CGL 3870.

CHAPTER 310

PILOTS, PILOTING, AND PILOTAGE

310.001 Purpose.—The Legislature recognizes that the waters, harbors, and ports of the state are important resources, and it is deemed necessary in the interest of public health, safety, and welfare to provide laws regulating the piloting of vessels utilizing the navigable waters of the state in order that such resources, the environment, life, and property may be protected to the fullest extent possible. To that end, it is the legislative intent to regulate pilots, piloting, and pilotage to the full extent of any congressional grant of authority, except as limited in this chapter.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 16, ch. 78-140.

310.002 Definitions.—As used in this act:

(1) The word "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

(2) The term "pilot" means a licensed state pilot or a certificated deputy pilot.

(3) The term "board" means the [1]State Board of Pilot Commissioners.

(4) The word "port" means any place in the state into which vessels enter or depart and includes, without limitation, Fernandina, Nassau Inlet, Jacksonville, St. Augustine, Canaveral, Ft. Pierce, West Palm Beach, Port Everglades, Miami, Key West, Boca Grande, Charlotte Harbor, Punta Gorda, Tampa, Port Tampa, Manatee, St. Petersburg, Clearwater, Apalachicola, Carrabelle, Panama City, Port St. Joe, and Pensacola.

(5) The term "pilotage waters of the state" means the navigable waters within the boundaries of the state.

(6) The term "piloting" means the acts of pilots in conducting vessels through the pilotage waters of the state.

(7) The word "pilotage" means the compensation fixed by the board which is payable by a vessel, its owners, agents, charterers, or consignees to one or more pilots.

(8) The term "license" or "certificate" means the document issued by the board under seal of the department to pilots.

(9) The term "department" means the [2]Department of Professional and Occupational Regulation.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 16, ch. 78-140.

[1]**Note.**—See s. 2, ch. 79-36, which changed the name of the "State Board of Pilot Commissioners" to "Board of Pilot Commissioners."

[2]**Note.**—See s. 2, ch. 79-36, which changed the name of the "Department of Professional and Occupational Regulation" to "Department of Professional Regulation."

[1]310.011 Board of Pilot Commissioners; qualifications.—A board is established within the Division of Professions of the [2]Department of Professional and Occupational Regulation to be known as the [3]State Board of Pilot Commissioners. Said board shall be composed of 10 members, 5 of whom shall be licensed state pilots actively practicing their profession. Said board shall perform such duties and possess and exercise such powers relative to the protection of the waters, harbors, and ports of this state as are prescribed and conferred on it in this chapter.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 1, ch. 76-217; s. 1, ch. 77-457; ss. 2, 16, ch. 78-140.

[1]**Note.**—Ch. 78-431 added an additional lay member to each examining and licensing board in the Department of Professional and Occupational Regulation. Section 2, ch. 79-36, provides that each board with five or more members shall have at least two lay members. See s. 20.30.

[2]**Note.**—See s. 2, ch. 79-36, which changed the name of the "Department of Professional and Occupational Regulation" to "Department of Professional Regulation."

[3]**Note.**—See s. 2, ch. 79-36, which changed the name of the "State Board of Pilot Commissioners" to "Board of Pilot Commissioners."

[1]310.021 How board constituted.—

(1) The Governor shall appoint five active licensed state pilots who shall possess the qualifications specified in s. 310.011 and five citizens of the state who are not pilots, two of whom shall be actively involved in their professional or business capacity in maritime or marine shipping and three of whom shall not be involved or monetarily interested in the piloting profession or in the maritime industry or marine shipping, to constitute the members of the board. Members of the board shall be so classified by the Governor that the term of office of two shall expire in 1 year, two in 2 years, two in 3 years, and three in 4 years, from the date of appointment; thereafter, at the end of said terms, the Governor shall appoint members who shall serve for a term of 4 years. The Governor shall appoint the 10th member to the board for a term of 4 years. The Governor shall have power to remove members of the board from office for neglect of duty required by this law, for incompetency, or for unprofessional conduct. Any vacancy which may occur in said board in consequence of death, resignation, removal from the state, or other cause shall be filled for the unexpired term

by the Governor in the same manner. A majority of those serving on the board shall constitute a quorum.

(2) In appointing members to the board who are pilots, the Governor shall appoint one member from the state at large; one member from any of the following ports: Pensacola, Panama City, or Port St. Joe; one member from any of the following ports: Tampa Bay, Boca Grande, Punta Gorda, Charlotte Harbor, or Key West; one member from any of the following ports: Fernandina, Jacksonville, or Port Canaveral; and one member from any of the following ports: Ft. Pierce, Miami, Port Everglades, or Palm Beach.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 2, ch. 76-217; s. 1, ch. 77-457; ss. 3, 16, ch. 78-140.

[1]**Note.**—Ch. 78-431 added an additional lay member to each examining and licensing board in the Department of Professional and Occupational Regulation. Section 2, ch. 79-36, provides that each board with five or more members shall have at least two lay members. See s. 20.30.

310.032 Oath of members of the board.—Immediately, and before entering upon the duties of said office, the members of the board shall take the constitutional oath of office and shall file the same with the Department of State; there shall thereupon issue to said member a certificate of his appointment.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 16, ch. 78-140.

310.042 Organization of board; meetings.—

(1) Immediately after the appointment and qualification of its members, the board shall meet and organize. Said board shall annually elect a president, vice president, secretary, and treasurer from its membership; the offices of secretary and treasurer may be held by one person. Members, while attending official board meetings, shall receive per diem and mileage, as specified in s. 112.061, from place of their residence to place of meeting and return.

(2) Said board shall hold one or more regular meetings each year at some convenient place in the state on such date or dates as the board may select. Special meetings may be called by a majority of the board. The secretary of the board shall give written notice of all regular and special meetings to all pilots in addition to any other persons required by law to be notified.

(3) Within 14 days from any meeting of the board, the board shall forward a written report to each pilot outlining any actions of the board taken at the meeting which would affect any pilots.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 16, ch. 78-140.
cf.—s. 455.207 Boards within Department of Professional Regulations; organization; meetings; compensation and travel expenses.

310.051 Personnel; employment.—

(1) The department may appoint or employ such personnel as may be necessary to assist the department and the board in doing and performing any and all of the powers, duties, and obligations set forth in this chapter. Such personnel need not be licensed state pilots or members of the board. Such personnel shall be authorized to do and perform such duties and work as may be assigned by the department. Except as otherwise provided in this chapter, the department shall provide all legal services necessary in carrying out the provisions of this chapter.

(2) The department shall hire a person knowledgeable and experienced in matters related to piloting. Such person shall act for the department on matters of examination and investigation and, when he deems it necessary, in the selection of legal counsel qualified in admiralty law. On an annual basis, the board shall recommend to the department a person knowledgeable and experienced in matters related to piloting to fill this post, and the department may accept or reject the recommendation. If the department rejects the board's recommendation, the board shall continue to submit recommendations until one is accepted by the department. Unless there is affirmative action by both the board and the department, at the end of each year, the position shall be declared vacant and the board shall submit a new recommendation for a person to fill such position.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 5, 16, ch. 78-140.
cf.—s. 455.221 Legal and investigative services.

310.061 Provision for licensing state pilots.—

(1) There shall not be more than 3 pilots for the Port of Pensacola; 3 for the Port of Fernandina and Nassau Inlet; 16 for the St. Johns River, including the Port of Jacksonville; 18 for Tampa Bay, including the Ports of Tampa, Port Tampa, Manatee, and St. Petersburg; 4 for the Ports of Punta Gorda, Charlotte Harbor, and Boca Grande, inclusive; 3 for the Port of Panama City; 3 for the Port of Key West; 3 for the Port of Palm Beach; 3 for the Port of Ft. Pierce; 4 for the Port of Port Canaveral; 12 for the Port of Miami; 10 for the Port of Port Everglades; 3 for the Port of Port St. Joe; and two for any port not specifically mentioned in this chapter. Nothing herein shall be construed to require the appointment of the maximum number of pilots authorized for any port.

(2) The board shall determine the number of pilots in conformance with subsection (1) based on the supply and demand for piloting services and the public interest in maintaining efficient and safe piloting services.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 6, 16, ch. 78-140.

310.071 Application for license or certificate; qualification of applicants.—

(1) In addition to the requirements specified in this chapter, applicants for a license as a state pilot or for certificate as a deputy pilot shall also possess the following qualifications:

(a) Shall be at least 18 years of age.

(b) Shall have had 3 years' service as a deputy pilot or as an apprentice pilot in the port wherein license or certification is desired or, alternatively, equivalent maritime experience satisfactory to the board.

(c) Shall be in good physical and mental health.

(d) Shall have completed 12 years of formal education or the equivalent thereof satisfactory to the board.

(2) Each applicant for a license as state pilot or for a certificate as deputy pilot shall make application to the department upon such form and in such manner as shall be adopted and prescribed by said department. Each application shall be accompanied by a fee set by the board which shall not exceed $100, payable to the secretary of the department. No part

of the fee payable hereunder is returnable under any circumstances to the applicant.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 7, 16, ch. 78-140.

310.081 Department to examine and license state pilots and certificate deputy pilots; vacancies.—

(1) The department shall examine persons who file application as state pilot in all matters pertaining to the management of vessels and in regard to their knowledge of the channels, waters, harbors, and port where they wish to serve, and, if upon written examination the department finds them qualified to pilot all classes of vessels liable to enter that port and thoroughly familiar with the waters, the channels, the harbor, and the port, the department shall appoint and license as state pilots such number of pilots as in the discretion of the board are required to act in the ports of the state. However, the number of pilots appointed and licensed by the department shall not exceed the number provided for in s. 310.061.

(2) The department shall similarly examine persons who file applications for certificate as deputy pilot, and, if upon written examination the department finds them qualified, the department shall appoint and certificate such number of deputy pilots as in the discretion of the board are required in the respective ports of the state. A deputy pilot shall be authorized by the department to pilot vessels within the limits and specifications established by the licensed state pilots at the port where the deputy is appointed to serve.

(3) Pilots will hold their licenses or certificates pursuant to the requirements of this chapter so long as they possess the qualifications set out in this chapter and remain in active service in the ports for which they are appointed. Upon resignation or in the case of disability permanently affecting a pilot's ability to serve, the state license or certificate issued under this chapter shall be revoked by the department.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 8, 16, ch. 78-140.
cf.—s. 455.217 Examinations.

310.091 Powers of the department.—In addition to all other powers conferred by this chapter, the department shall have the following powers:

(1) To issue a license as a state pilot or a certificate as a deputy pilot to a qualified applicant who passes the examination conducted by the department.

(2) In the course of any investigation, to issue and serve witness subpoenas and subpoenas duces tecum and administer oaths and take testimony.

(3) To require holders of licenses or certificates and applicants for licenses or certificates to submit pertinent information under oath necessary to determine their qualifications or to enforce the provisions of this chapter.

(4) When any violation of this chapter or rule promulgated thereunder has occurred or is threatened by any person, to institute proceedings in the appropriate courts in this state to restrain and enjoin such actions.

(5) To require an applicant for vacancy, a licensed state pilot, or a certificated deputy pilot to submit proof of his mental or physical capability to serve, or to continue to serve, as a pilot or deputy pilot.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 9, 16, ch. 78-140.
cf.—s. 455.203 Department of Professional Regulation; powers and duties.

310.093 Rulemaking.—

(1) The board shall have the power to adopt rules necessary to the provisions of this act, in conformance with the provisions of chapter 120.

(2) The secretary of the department is deemed to be a person substantially affected by a rule or proposed rule for the purpose of seeking an administrative determination of the invalidity of such rule or proposed rule. The secretary may seek such administrative determination of the invalidity of any rule or proposed rule on the ground that it is an invalid exercise of delegated legislative authority or an undue restriction of competition, pursuant to chapter 120.

History.—s. 4, ch. 78-140.
cf.—s. 455.211 Board rules; final agency action; challenges.

310.099 Complaints; disciplinary proceedings.—

(1) Any complaint that a licensee has violated a provision of this chapter or any rule promulgated hereunder shall be filed with the department. Subsequent to its investigation, the department shall determine whether there exists probable cause to believe the allegations contained in the complaint are true. If the department finds probable cause, it shall petition the board for a hearing, and the Department of Legal Affairs shall prosecute the complaint before the board. The hearing, and the board's determination subsequent to the hearing, shall be in accordance with the provisions of chapter 120.

(2) A complaint may be filed pursuant to the provisions of subsection (1) by any person.

(3) Upon a finding of guilt by a hearing conducted pursuant to this chapter upon a filed complaint, the board shall have the power to revoke or suspend the license of a state pilot or the certification of a deputy pilot or to reprimand, censure, or otherwise discipline a licensee or certificate holder.

History.—s. 4, ch. 78-140.
cf.—s. 455.225 Disciplinary proceedings.

310.101 Discipline, suspension, revocation of license; powers.—The board shall have authority to discipline or suspend a licensed state pilot or certificated deputy pilot or to revoke the license or certificate of either, under this chapter or any antecedent law, who, after hearing, has been adjudged unqualified or guilty of any of the following:

(1) Failing to demonstrate the qualifications or standards for a license or a certificate contained in this chapter or in the rules and regulations of the board.

(2) Using narcotics or any other type drug, chemical, or material which impairs his ability to act as a pilot with reasonable skill and safety.

(3) Using alcohol to an extent which impairs his ability to fulfill his obligations as a pilot or which impairs his ability to act as a pilot with reasonable skill and safety.

(4) Violating a lawful rule promulgated by the board or violating a lawful order of the board.

(5) Negligence, incompetence, or misconduct in the performance of piloting duties.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 10, 16, ch. 78-140.
cf.—s. 455.227 Grounds for discipline; penalties; enforcement.

310.111 Casualty investigations, procedures, reports.—

(1) All casualties sustained by a vessel on which there is employed a licensed state pilot or a certificated deputy pilot shall be promptly reported to the board by the licensed state pilot or deputy pilot involved therein, on forms and in the manner prescribed by the board. The board, after receiving a report of casualty, shall decide if an investigation is necessary to determine the cause of the casualty and to ascertain whether the casualty resulted as a consequence of any act or omission of a licensed state pilot or certificated deputy pilot. The board shall investigate all casualties which involve loss of life and those casualties about which a complaint has been filed by one of the affected parties.

(2) The investigations required by this section shall be conducted at the port where the casualty occurs by a panel appointed by the president of the board of not less than three persons nor more than seven persons. A majority of the panel shall be appointed from the membership of the board, except that not more than one of the members of the board so appointed shall be a member who is not a pilot. Of the remaining members of any panel so appointed who are not members of the board, the board shall strive where feasible to appoint a pilot from the port in which the casualty occurred. When it is impractical to appoint a pilot from the port in which the casualty occurred, the board may appoint a pilot or pilots from other ports.

(3) Upon termination of a casualty investigation, the investigating panel shall submit written findings of fact, conclusions, and recommendations to the board. The investigating panel shall conduct and terminate its investigation and submit its written findings, conclusions, and recommendations to the board within 30 days from its appointment by the board. Within 60 days after receipt of written findings, conclusions, and recommendations, the same shall be considered by the board, and the board shall take such action as it deems appropriate, including initiation of revocation, suspension, or disciplinary action as provided in this chapter or the closing of the case.

(4) The panel shall convene within 48 hours after the appointment of the last member by the board and shall select from its members a chairman who shall have the authority of a hearing officer as provided under chapter 120. A stenographic record of all proceedings of the panel shall be kept and transcribed and upon transcription shall become a part of the records of the board.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 11, 16, ch. 78-140.

310.121 Biennial fees for licenses and certificates.—The department shall assess and collect biennially from each licensed state pilot and each certificated deputy pilot a fee, not to exceed $200 in the case of a licensed state pilot or $100 in the case of a certificated deputy pilot, such fees to be set by the board.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 12, 16, ch. 78-140.

310.131 Percentage of gross pilotage assessed.—The department shall assess the licensed state pilots in the respective ports of the state a percentage of the gross amount of pilotage earned by said pilots during each year, such percentage to be established by the board and not to exceed 2 percent, to be paid into the [1]Professional and Occupational Regulation Trust Fund, as created by this act within the department, by said pilots at such time and in such manner as the board shall prescribe or as shall be set forth in the Appropriations Act. The financial records of all pilots and deputy pilots relating to pilotage are subject to audit by the Auditor General.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 77-470; ss. 13, 16, ch. 78-140.
[1]Note.—See s. 4, ch. 79-36, which provides for the deposit of all fees, licenses, and other charges assessed by each board within the Department of Professional Regulation into the "Professional Regulation Trust Fund." See s. 215.37.

310.135 Trust fund; budget.—

(1) All moneys collected by the department from fees authorized by this chapter shall be paid into the [1]Professional and Occupational Regulation Trust Fund, which fund is created in the department. It is the intent of this provision that such fees collected, even to the exhaustion thereof, shall be directly applied by the department for the purposes provided in this act, with particular emphasis being placed upon enforcement of the provisions hereof. The Legislature shall appropriate funds from this trust fund sufficient to carry out the provisions of this chapter. The Legislature may appropriate any excess moneys from this fund to the General Revenue Fund.

(2) The department, with the advice of the board, shall prepare and submit a proposed budget in accordance with the law.

History.—s. 4, ch. 78-140.
[1]Note.—See s. 4, ch. 79-36, which provides for the deposit of all fees, licenses, and other charges assessed by each board within the Department of Professional Regulation into the "Professional Regulation Trust Fund." See s. 215.37.

310.141 Vessels subject to pilotage.—All vessels, except vessels exempted by the laws of the United States or vessels drawing less than 7 feet of water, shall have a licensed state pilot or certificated deputy pilot on board when entering or leaving ports of this state. Nothing herein contained shall be construed to deny the services of a state pilot to a vessel otherwise exempt who applies for such service.

History.—s. 2, ch. 75-201; s. 1, ch. 75-238; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 16, ch. 78-140.

310.151 Rates of pilotage.—

(1) The board is granted the power under this chapter to fix, by order, rates of pilotage to be charged by licensed state pilots and certificated deputy pilots after a hearing held pursuant to the Administrative Procedure Act. Such hearing shall be held at the port area affected by a proposed rate change unless all parties to the proposed change consent to the hearing being held at another location. The rates of pilotage in effect in the ports in the state on the effective date of this act shall be collectible and enforceable until the board fixes different rates

of pilotage as provided in this chapter. In addition to any other notice requirements imposed by law, the board shall provide notice of a hearing to consider changes in rates of pilotage for a particular port by publishing such notice in a newspaper of general circulation in the affected port area and mailing such notice to each person or organization which has requested advance notice of the proceedings of the board. Such publication and mailing of notice shall occur at least 14 days prior to the hearing.

(2) The board shall not consider an application for a change in rates unless such application is accompanied by a financial statement, including a statement of profit or loss and a balance sheet prepared by a certified public accountant, prepared at the expense of the pilot or pilots submitting the application.

(3) In fixing rates of pilotage pursuant to subsection (1), the board shall give due regard to the following factors:

(a) Length, net tonnage, gross tonnage, deadweight tonnage, freeboard or height above the waterline, and any other dimensions of the vessels to be piloted.

(b) The draft of the vessels to be piloted.

(c) The supply of, and demand for, pilotage services.

(d) The public interest in maintaining efficient, reliable, and safe pilotage service.

(e) Other factors relevant to the determination of reasonable and just rates, including any combination of two or more of the foregoing factors.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 14, 16, ch. 78-140.

310.161 Piloting without a license; penalties.—Whoever, without a license from the board, pilots any vessel on which is required a licensed state pilot or certificated deputy pilot as specified in s. 310.141 shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. The vessel and its owner shall be obligated to pay to the licensed state pilots at the port where the violation occurred, on demand by said pilots, double the pilotage rates which would have otherwise been applicable, and, if the pilots in said port must resort to legal action to obtain a judgment therefor, the court shall include in its judgment a reasonable attorney's fee.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 16, ch. 78-140.

310.171 Pilots may incorporate themselves.—Any one or more licensed state pilots may incorporate in the manner provided under chapter 607 or chapter 621.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 16, ch. 78-140; s. 3, ch. 79-9.

310.181 Corporate powers.—All the rights, powers, and liabilities conferred or imposed by the laws of Florida relating to corporations for profit organized under chapter 607 or chapter 608 or to corporations organized under chapter 621 shall apply to corporations organized pursuant to s. 310.171.

History.—s. 2, ch. 75-201; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 16, ch. 78-140.

CHAPTER 311

STEVEDORES

311.011 Definition of port authority.—The term "port authority" or "authority" shall mean any port authority in Florida created by or pursuant to the provisions of any general or special law, or any district or board of county commissioners or other governmental body acting as a port authority under or pursuant to the provisions of any general or special law, which is regulating and licensing stevedores on October 1, 1975.

History.—s. 3, ch. 75-201.

311.021 Appointment, licensing, and bonds of stevedores.—Each port authority licensing and regulating stevedores on the effective date of this act and each port authority in a county having a harbormaster under either chapter 313 or chapter 314 shall, upon examination, grant licenses to competent and trustworthy persons to act as stevedores as it may deem necessary for the efficient operation of its port, having due regard for the business of the port and harbor. The port authority shall impose upon each applicant for license a fee in an amount sufficient to cover the expenses of processing the application and examining the applicant. The port authority shall require from each person licensed by it a bond not to exceed $10,000, payable to the port authority and conditioned upon the proper performance of the licensee as a stevedore.

History.—s. 3, ch. 75-201.

311.031 Terms of licenses.—Persons licensed under s. 311.021 shall hold their licenses under such terms and conditions as are prescribed by the port authority. The port authority may revoke any license issued by it after due notice and hearing if the authority finds misconduct, neglect of duty, or other cause of complaint sufficient to justify such revocation.

History.—s. 3, ch. 75-201.

CHAPTER 313

HARBORMASTERS FOR PORTS IN GENERAL

313.01 Appointment and removal of harbormasters.—

(1) The Governor shall appoint, subject to confirmation by the Senate, all harbormasters required for the several ports of this state. They shall hold their offices for the term of 2 years, unless sooner removed. The Governor may make such appointment or fill any vacancy in such office, between the sessions of the Legislature, by appointment ad interim. Any harbormaster may be removed for neglect or breach of duty.

(2) In all counties having a population of more than 300,000, according to the last official census, the office and position of harbormaster as provided in chapters 313 and 314, is abolished.

History.—ss. 1, 4, ch. 3306, 1881; RS 953; s. 1, ch. 5223, 1903; GS 1322; RGS 2492; CGL 3902; s. 1, ch. 28347, 1953; s. 5, ch. 75-201; s. 7, ch. 77-85.
cf.—Ch. 314 Harbormasters for certain ports.

313.02 Bond.—Every harbormaster appointed for any port shall give an approved bond in the sum of $500, payable to the Governor of the state, for the faithful performance of his duty, such bond to be approved by the county commissioners of the county in which the port is situated, and by the Department of Banking and Finance, and to be filed with the Department of State.

History.—Ch. 3602, 1885; RS 954; GS 1323; RGS 2493; CGL 3903; ss. 10, 12, 35, ch. 69-106.

313.03 Deputies.—Each harbormaster may appoint as many deputies as he shall require for the needs of his port, such deputies to be paid by such harbormaster.

History.—Ch. 3602, 1885; RS 955; GS 1324; RGS 2494; CGL 3904.

313.04 Duties.—Every master of any vessel arriving at the ports in this state shall report to the harbormaster for a station, or for a berth at the wharves, and the harbormaster shall regulate and station or assign berths at the wharves to said vessel; and the harbormaster shall remove or cause to be removed, from time to time, all vessels not employed in receiving or discharging their cargoes to make room for such others as require to be more immediately accommodated for the purpose of receiving and discharging their cargoes, and to facilitate their dispatch. Said harbormasters shall be present at all times, either in person or by deputy, to facilitate by stationing or assigning berths at the wharves to vessels arriving at the port, and to facilitate them in discharging and receiving their cargoes and to prevent confusion and delay. And the harbormasters shall have full and absolute power to determine how far and in what instance it is the duty of masters, and others having charge of vessels, to accommodate each other in their respective situations.

History.—RS 956; s. 2, ch. 5223, 1903; GS 1325; RGS 2495; CGL 3905.

313.05 Compensation.—Harbormasters, respectively, shall receive from the master, owner or consignee of vessels coming into the port for which he is appointed for the services rendered by himself or his deputy, under the provisions of this section, not exceeding the sum of $20 for each vessel, according to the amount and value of the services rendered.

History.—s. 2, ch. 5223, 1903; GS 1326; RGS 2496; CGL 3906.

313.06 Obstructing or resisting harbormasters; penalties.—If any person, master, consignee, agent, wharfinger or wharfowner, lessee of a wharf or other person shall oppose or resist the harbormaster or his deputies in the execution of duty, or disobey any order given by either of said officers as to the manner of removing or adjusting the rigging of any vessel under the control of such person, he shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any master of a vessel who shall fail to report to the harbormaster for a berth at the wharves, on arriving in port, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 3602, 1885; s. 8, ch. 3752, 1887; RS 2745, 2746; s. 2, ch. 5223, 1903; GS 3741; RGS 5766; CGL 7996; s. 173, ch. 71-136.

CHAPTER 314

HARBORMASTERS FOR CERTAIN SPECIFIED PORTS

314.01 Appointment.—The Governor shall appoint, subject to confirmation by the Senate, one harbormaster for each port in the state, into which have come, during the past 5 years, vessels of 500 tons burden and upwards, at the average rate of not less than 250 vessels per year, according to the records of the United States customshouse at or nearest the port for which such appointment shall be made.

History.—s. 1, ch. 3752, 1887; RS 957; GS 1327; RGS 2497; CGL 3907; s. 8, ch. 77-85.

cf.—Ch. 313 Harbormasters for ports in general.

314.02 Bond.—Each harbormaster so appointed shall enter into a bond in the penal sum of $2,000, with two or more sureties, payable to the Governor of the state and his successors in office, conditioned for the faithful discharge of the duties of his office, by himself and his deputies, and for the payment of any damage any person may sustain in consequence of any wrongful act of such officer or his deputy under color of his office; such bond to be approved by the county commissioners of the county in which is situated said port and by the Department of Banking and Finance, and to be filed with the Department of State.

History.—s. 2, ch. 3752, 1887; RS 958; GS 1328; RGS 2498; CGL 3908; ss. 10, 12, 35, ch. 69-106.

314.04 Deputies.—Any harbormaster so appointed may appoint deputies to assist him in the performance of his duties, he paying them for their services and being responsible for their acts.

History.—s. 4, ch. 3752, 1887; RS 960; GS 1330; RGS 2500; CGL 3910.

314.05 Duties as to boarding vessel, etc.—The harbormaster, by himself or deputy, shall board every vessel entering the port for which he is appointed, after such vessel has been released by the health authorities of the port, demand of the master the certificate of the vessel's release by such health authorities and deliver the same within 24 hours to the Department of Health and Rehabilitative Services; but it is unlawful for any such officer, in boarding such vessels under this section, to solicit from such vessel any business either for himself or anyone else, and any violation of this provision by any such officer shall subject him to removal from his said office, by the Governor, if such violation be committed by the harbormaster, and, if committed by any deputy harbormaster, then, by the harbormaster, who in such cases shall remove promptly such deputy.

History.—s. 5, ch. 3752, 1887; RS 961; GS 1331; RGS 2501; CGL 3911; ss. 19, 35, ch. 69-106; s. 50, ch. 77-147.

314.06 Stationing vessels.—The master of every vessel arriving in a port for which a harbormaster shall be appointed, under the provisions of this chapter, shall apply to such harbormaster, or one of his deputies, for a station in the stream, or a berth at the wharves, and the harbormaster or his deputy shall forthwith station such vessel in the stream or at the wharves, as the case may be, so as to best facilitate the loading or discharge of such vessel, and at the same time interfere as little as possible with other vessels in the vicinity; but in stationing vessels at wharves or assigning them berths thereat, he shall conform in every instance to the wishes of the managers of such wharves as to their location at the same.

History.—s. 6, ch. 3752, 1887; RS 962; GS 1332; RGS 2502; CGL 3912.

314.07 Duties as to the loading or unloading of vessels.—The harbormaster appointed under the provisions of this chapter shall be present at all times, either in person or by deputy, to facilitate the loading or unloading of vessels by assigning to them berths at the wharves, and by requiring each to accommodate others needing more immediate accommodation, in accordance with the provisions of s. 314.06.

History.—s. 7, ch. 3752, 1887; RS 963; GS 1333; RGS 2503; CGL 3913.

314.08 Fees.—Such harbormaster shall receive from the master, owner or consignee of vessels coming into the port for which he is appointed under this chapter, for the services rendered by himself or deputy, under the provisions of this chapter, not exceeding the sum of $20, according to the amount and value of the services rendered.

History.—s. 9, ch. 3752, 1887; RS 965; GS 1334; RGS 2504; CGL 3914.

314.09 Change of station.—Should any vessel, after having been stationed by such harbormaster, require a change of station, application shall be made by the manager of such wharf to such officer, and he shall make such change, for which he shall receive no compensation, unless the vessel requiring such change requires to be removed to another wharf or out into the stream.

History.—s. 9, ch. 3752, 1887; RS 966; GS 1335; RGS 2505; CGL 3915.

314.10 Recovery of double amount.—Whenever any fee or compensation due the harbormaster under the provisions of this chapter is not paid within 48 hours from the rendition of the services for which the same is due, such officer may then demand the same from the master or his consignee, and upon refusal of payment may sue for and recover from the person owing the same double the amount which has been so demanded.

History.—s. 10, ch. 3752, 1887; RS 967; GS 1336; RGS 2506; CGL 3916.

CHAPTER 315

PORT FACILITIES FINANCING

315.01 Short title.—This law shall be known and may be cited as the "1959 Port Facilities Financing Law."

History.—s. 1, ch. 59-411.

315.02 Definitions.—As used in this law, the following words and terms shall have the following meanings:

(1) The term "port district" or the word "district" shall mean any district created by or pursuant to the provisions of any general or special law and authorized to own or operate any port facilities.

(2) The term "port authority" or the word "authority" shall mean any port authority in Florida created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law.

(3) The word "county" shall mean any county and the word "municipality" shall mean any municipality in Florida.

(4) The word "unit" shall mean any county, port district, port authority or municipality.

(5) The term "governing body" shall mean the board or body in which the general legislative powers of a unit shall be vested.

(6) The term "port facilities" shall mean and shall include harbor, shipping, and port facilities, and improvements of every kind, nature, and description, including, but without limitation, channels, turning basins, jetties, breakwaters, public landings, wharves, docks, markets, parks, recreational facilities, structures, buildings, piers, storage facilities, public buildings and plazas, anchorages, utilities, bridges, tunnels, roads, causeways, and any and all property and facilities necessary or useful in connection with the foregoing, and any one or more or any combination thereof and any extension, addition, betterment or improvement of any thereof.

(7) The word "cost" as applied to any port facilities shall mean and shall include the cost of acquisition or construction, the cost of all labor, materials, machinery and equipment, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and for 1 year after completion of construction, cost of plans and specifications, surveys and estimates of cost and of revenues, cost of engineering and legal services, all other expenses necessary or incident to determining the feasibility or practicability of such construction, the cost of acquiring or improving, enlarging and extending existing port facilities and preparing the same for sale or lease to provide funds for financing port facilities under the provisions of this law if, in the determination of the governing body, such acquisition, such improvement, enlargement and extension or such preparation for sale or lease are necessary to such financing, administrative expenses and such other expenses as may be necessary or incident to any financing herein authorized. Any obligation or expense heretofore or hereafter incurred by a unit in connection with any of the foregoing items of cost may be regarded as a part of such cost and reimbursed to the unit out of the proceeds of port facilities bonds issued under the provisions of this law.

History.—s. 2, ch. 59-411; s. 1, ch. 67-317.

315.03 Grant of powers.—Each unit is hereby authorized and empowered:

(1) To acquire, construct, lease, operate and maintain any port facilities either within or without or partly within and partly without the corporate limits of the unit, or within or partly within the corporate limits of any other unit on property owned or acquired by it; provided, however, that no unit shall acquire, construct, lease, operate or maintain port facilities other than channels or turning basins in any county of the state other than the county in which such unit is located without securing the prior approval or consent of the unit or units in which such port facilities are proposed to be located, which approval or consent, if given, shall be evidenced by a resolution or ordinance duly adopted.

(2) To acquire by purchase, grant, gift or lease or by the exercise of the right of eminent domain and to hold and dispose of any property, real or personal, tangible or intangible, or any right or interest in any such property, for or in connection with any port facilities, whether or not subject to mortgage, liens, charges or other encumbrances.

(3) To add to or extend, or cause or permit to be added to or extended, any existing lands or islands now or hereafter owned by a unit bordering on or being in any waters by the pumping of sand or earth from any land under water or by any other means of construction, as a part of or for the purpose of providing any port facilities or for the purpose of improving, creating or extending any property of the unit for use of or disposal by the unit.

(4) To construct, or cause or permit to be constructed, an island or islands in any waters by the pumping of sand or earth from any land under water or by any other means of construction, as a part of or for the purpose of providing any port facilities.

(5) To construct any bridge, tunnel, road or

causeway, or any combination thereof, to, from or between any port facilities.

(6) To dredge or deepen harbors, channels and turning basins, to cooperate with the United States or any agency thereof in the dredging or deepening of any harbor, channel or turning basin, to enter into contracts with the United States or with any agency thereof concerning any such dredging or deepening project, and to pay such amounts to the United States or any agency thereof or to others as shall be required by the terms of any such contract.

(7) To fill in, extend and enlarge, or cause or permit to be filled in, extended and enlarged, any existing port facilities, to demolish and remove any and all structures thereon or constituting a part thereof, and otherwise to prepare the same for sale or lease to provide funds for financing port facilities under the provisions of this law.

(8) To acquire any existing port facilities and to fill in, extend, enlarge or improve the same, or to cause or permit the same to be extended, enlarged or improved, for any public purpose or for sale or lease for the purpose of providing funds for the acquisition by the unit of any port facilities or for the payment of bonds, notes or other obligations of the unit for or in connection with any port facilities.

(9) To sell at public or private sale or lease for public or private purposes all or any portion of any port facilities now or hereafter owned by the unit, including any such facilities as extended, enlarged or improved, and all or any portion of any property of the unit improved, created, extended or enlarged under the authority of this law, on such terms and subject to such conditions as the governing body shall determine to be in the best interests of the unit.

(10) To contract for the purchase by the unit of any port facilities to be constructed, enlarged, extended or improved by any public body, agency or instrumentality or by any private person, firm or corporation, and to provide for payment of the purchase price thereof in such manner as may be deemed by the governing body to be in the best interests of the unit, including, but without limitation, the sale or exchange of any property of the unit therefor or the issuance of bonds or other obligations of the unit.

(11) To accept loans or grants of money or materials or property at any time from the United States or the State of Florida or any agency, instrumentality or subdivision thereof, upon such terms and conditions as the United States, the State of Florida, or such agency, instrumentality or subdivision may impose.

(12) To exercise jurisdiction, control and supervision over any port facilities now or hereafter acquired, owned or constructed by the unit.

(13) To operate and maintain, and to fix and collect rates, rentals, fees and other charges for any of the services and facilities provided by the port facilities now or hereafter acquired, owned or constructed by the unit excluding state bar pilots.

(14) To lease or rent, or contract with others for the operation of all or any part of any port facilities now or hereafter acquired, owned or constructed by the unit, on such terms and for such period or periods and subject to such conditions as the governing body shall determine to be in the best interests of the units.

(15) To contract debts for the acquisition or construction of any port facilities or for any other purposes of this law, to borrow money, to make advances, and to issue bonds or other obligations to finance all or any part of such acquisition or construction or in the carrying out of any other purposes of this law.

(16) To make advances to the United States or any agency or instrumentality thereof in connection with any port facilities, including the dredging or deepening of any harbor, channel or turning basin to serve any port facilities.

(17) To enter on any lands, waters or premises, within or without the unit or within the corporate limits of any other unit, for the purpose of making surveys, soundings and examinations with relation to any existing or proposed port facilities.

(18) To contract with the United States or the State of Florida or any agency or instrumentality thereof or with any public body or political subdivision or with any private person, firm or corporation with reference to any of the powers hereby granted.

(19) To perform any of the acts hereby authorized through or by means of its own officers, agents or employees or by contract.

(20) To do all acts and things and to enter into all contracts and agreements necessary or convenient to carry out the purposes of this law.

History.—s. 3, ch. 59-411; s. 1, ch. 67-137.

315.031 Promoting and advertising port facilities.—

(1) Each unit is authorized and empowered:

(a) To publicize, advertise and promote the activities and port facilities herein authorized;

(b) To make known the advantages, facilities, resources, products, attractions and attributes of the activities and port facilities herein authorized;

(c) To create a favorable climate of opinion concerning the activities and port facilities herein authorized;

(d) To cooperate with other agencies, public and private, in accomplishing these purposes;

(e) To enter into agreements with the purchaser or purchasers of port facilities bonds issued under the provisions of this law to establish a special fund to be set aside from the proceeds of the revenues collected under the provisions of s. 315.03(13), during any fiscal year, for the promotional activities authorized herein.

Nothing herein shall be construed to authorize any unit to expend funds for meals, hospitality, amusement or any other purpose of an entertainment nature.

(2) All obligations, expenses and costs incurred under the provisions of this section shall be paid from such fund when vouchers thereof, approved by the governing body of the unit, are exhibited to the responsible authority making disbursements for the governing body.

History.—s. 1, ch. 67-228.

315.04 Other consents or approvals; use of state lands.—Except as hereinafter provided in this section, and except as provided in s. 315.03(1), the approval or consent of any other political subdivision or public body, agency or instrumentality of the State of Florida, except the Board of Trustees of the Internal Improvement Trust Fund, shall not be required for the exercise of any of the powers granted by this law. Any municipality located in a county authorized by law to operate port facilities or in which there is a port district or a port authority shall exercise any powers granted by this law only if the governing body of such county, port district or port authority shall by resolution determine that the best interests of the county will be served thereby and consent thereto. The State of Florida hereby consents to the exercise of any and all powers granted by this law without further authorization or approval thereof by any of its agencies or instrumentalities, except as may be required from the Board of Trustees of the Internal Improvement Trust Fund as to the use of any state lands lying under water which are necessary for the accomplishment of the purposes of this law.

History.—s. 4, ch. 59-411; ss. 27, 35, ch. 69-106.

315.05 Port facilities bonds.—

(1) The governing body is authorized to provide by resolution, at one time or from time to time, for the issuance of bonds of a unit for the purpose of paying all or a part of the cost of any one or more port facilities. The bonds of each issue or series shall be dated, shall bear interest at such rate or rates, and shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the governing body, and may be made redeemable before maturity, at the option of the unit, at such price or prices and under such terms and conditions as may be fixed by the governing body prior to the issuance of the bonds.

(2) The governing body shall determine the form of the bonds including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds, and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and any bond may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such bond shall be the proper officers to sign such bond although at the date of such bond such persons may not have been such officers.

(3) Notwithstanding any other provisions of this law or any recitals in any bonds issued under the provisions of this law, all such bonds shall be deemed to be negotiable instruments under the laws of Florida. The bonds may be issued in coupon or in registered form, or both as the governing body may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of coupon and registered bonds. The issuance of such bonds shall not be subject to any limitations or conditions contained in any other law, and any bonds issued by a unit under this law shall not be considered in computing the amount of indebtedness which the unit may incur under any other law.

(4) The governing body may sell such bonds in such manner, either at public or private sale, and for such price as it may determine to be for the best interests of the unit. Prior to the delivery of definitive bonds, the unit may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

(5) The governing body may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost. Bonds may be issued under the provisions of this law without obtaining the consent of any commission, board, bureau or agency of the state, and without any other proceeding or the happening of any other condition or thing than those proceedings, conditions or things which are specifically required by this law.

History.—s. 5, ch. 59-411; s. 25, ch. 73-302; s. 1, ch. 79-401.

315.06 Sources of payment and security for bonds.—

(1) The governing body may provide that bonds issued under the provisions of this law shall be payable from and secured by a pledge of any one or more of the following sources:

(a) Revenues of any one or more port facilities now owned or hereafter acquired or constructed by the unit;

(b) Proceeds of the sale or lease of all or any part of any port facilities now or hereafter owned by the unit as such facilities may be extended, enlarged or improved, or of any property of the municipality improved, created, extended or enlarged or prepared for sale or lease under the authority of this law;

(c) Any money received by the unit from the United States or any agency or instrumentality thereof in connection with any port facilities or in repayment of any advances made by the unit for all or any part of the cost of any port facilities.

(2) The governing body may provide that such bonds shall be general obligations of the unit for which the full faith, credit and taxing power of the unit shall be additionally secured by a pledge of revenues, sale or lease proceeds or money received by the unit from the United States or any agency or instrumentality thereof as herein authorized. The governing body of such unit may provide that such bonds shall be payable as to principal and interest in the first instance from such revenues, sale or lease proceeds or money received by the unit from the United States or any agency or instrumentality. The governing body of any unit may additionally secure any such bonds by a mortgage or other encumbrance, subject to such terms and conditions as it shall provide, upon all or any part of any port facilities now or hereafter owned by the unit, as such facilities may be extended, enlarged or improved, or of any property of the unit improved, created, extended or en-

larged or prepared for sale or lease under the authority of this law, and the governing body is hereby authorized to sell at public or private sale or lease any of such port facilities or property, subject to such terms and conditions and for such price, payable at one time or from time to time in installments as the governing body may provide, and to apply the proceeds of any such sale or lease, after paying all costs in connection therewith, to payment of the cost of any port facilities financed under the provisions of this law or to the payment of the principal of or the interest or redemption premiums on any bonds issued hereunder or to the payment of any other obligation or obligations herein authorized.

History.—s. 6, ch. 59-411.

315.07 Contracts for borrowing of money.—The governing body may contract with any person, firm, corporation or public body or with the United States or any agency or instrumentality thereof for the borrowing of money for paying all or any part of the cost of any one or more port facilities, and any such contract may contain such terms, conditions or provisions as the governing body may determine not in conflict with the provisions of this law. The provisions of s. 315.06 applicable to bonds shall be applicable also to contracts entered into under the above provisions of this section. Any such contract may be hypothecated by the unit, and the unit may borrow money under such terms and conditions as it shall determine in anticipation of the receipt of funds under such contract.

History.—s. 7, ch. 59-411.

315.08 Trust agreement or resolution.—In the discretion of the governing body, any bonds issued under the provisions of this law may be secured by a trust agreement by and between the unit and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or the resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the unit in relation to the acquisition of property and the acquisition, construction, improvement, maintenance, repair, lease, operation and insurance of any port facilities in connection with which such bonds shall have been authorized, the custody, safeguarding or application of all moneys, and conditions or limitations with respect to the issuance of additional bonds. It shall be lawful for any bank or trust company incorporated under the laws of Florida which may act as depositary of the proceeds of bonds or of revenue or other funds to furnish such indemnifying bonds or to pledge such securities as may be required by the governing body. Any such trust agreement or resolution may set forth the rights and remedies of the bondholders and of the trustee under any such trust agreement, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the governing body may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution shall be treated as a part of the cost of the operation of the port facilities.

History.—s. 8, ch. 59-411.

315.09 Remedies.—Any holder of bonds issued under the provisions of this law or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under such trust agreement or resolution, and may enforce and compel the performance of all duties required by this law or by such trust agreement or resolution to be performed by the unit or by any officer thereof, including the fixing, charging and collecting of rates, rentals and other charges.

History.—s. 9, ch. 59-411.

315.10 Refunding bonds.—The governing body is hereby authorized to provide by resolution for the issuance of refunding bonds of the unit for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this law or which shall have been issued to provide funds for the payment of the cost of any port facilities under the provisions of any other law, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the governing body, for the additional purpose of acquiring or constructing additional port facilities. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the unit in respect of the same, shall be governed by the provisions of this law insofar as the same may be applicable.

History.—s. 10, ch. 59-411.

315.11 Exemption from taxation.—As adequate port facilities are essential for the welfare of the inhabitants and the industrial and commercial development of the area within or served by the unit, and as the exercise of the powers conferred by this law to effect such purposes constitutes the performance of proper public and governmental functions, and as such port facilities constitute public property and are used for public purposes, the unit shall not be required to pay any state, county, municipal or other taxes or assessments thereon, whether located within or without the territorial boundaries of the unit, or upon the income therefrom, and any bonds issued under the provisions of this law, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the state. The exemption granted by this section shall not be applicable to any

tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.
History.—s. 11, ch. 59-411; s. 8, ch. 73-327.

315.12 Bonds, legal investments.—Bonds issued by a unit under the provisions of this law are hereby made securities in which all public officers and public bodies of the state and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or unit officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the unit is now or may hereafter be authorized by law.
History.—s. 12, ch. 59-411.

315.13 Action by resolution.—All action required or authorized to be taken under the provisions of this law by the governing body may be by resolution, which resolution may be adopted at the meeting of the governing body at which such resolution is introduced and shall take effect immediately upon such adoption. Except as otherwise provided in this law, no resolution under this law need be published or posted, nor shall any such resolution require for its passage more than a majority of all the members of the governing body then in office.
History.—s. 13, ch. 59-411.

315.14 Public purposes.—It is hereby determined and declared that each and all of the powers conferred by this law and the exercise thereof are proper public and municipal purposes.
History.—s. 14, ch. 59-411.

315.15 Additional and alternative method.—This law shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to the powers conferred by any other law, either general, special or local, and shall not be regarded as in derogation of any power now existing. Bonds may be issued and any other action may be taken hereunder notwithstanding that any other law, either general, special or local, may provide for the issuance of bonds for a like purpose or for the taking of like action and without regard to the requirements, restrictions or procedural provisions contained in any other law, either general, special or local.
History.—s. 15, ch. 59-411; s. 1, ch. 67-499.

315.16 Liberal construction.—This law, being necessary for the welfare of the inhabitants of the state, shall be liberally construed to effect the purposes thereof.
History.—s. 16, ch. 59-411.